

struction Trades Department, AFL-CIO, dated February 2, 1968, made clear that the standards of 29 C.F.R. Part 30 would continue to be applied under Executive Order 11246 and a reference to this effect in the Permanent Regulations would be informative and appropriate for employers.

Apprenticeship programs and hiring hall systems are common in the construction industry and are generally governed by agreements negotiated between contractors and labor unions. If the operation of such an apprenticeship program or hiring hall is considered to raise questions of compliance with Executive Order 11246, those questions can usually only be resolved with the union's agreement or by litigation. Pressuring the contractor alone to change the labor agreement or to evade its obligations is seldom effective.

Section 60-1.7 of the current regulations has not provided a satisfactory or effective procedure for dealing with such situations. It simply authorizes best efforts to secure union cooperation, permits public hearings to be held and allows other agencies to be notified of the compliance problem.

Under the circumstances, we disagree with the proposal to incorporate the substance of Section 60-1.7 of the current regulations in Section 60-1.9 of the Permanent Regulations without significant amendment. We recommend two specific changes:

1. amend Section 60-1.9(b) to provide for unions to participate in any contract compliance proceeding when changes are considered necessary in one of their collectively bargained agreements or arrangements.

2. amend Section 60-1.9(c) to provide that full use will be made of Title VII or other procedures for resolving compliance questions involving labor agreements or arrangements *before* Executive Order sanctions are imposed on contractors.

Two other substantive obligations imposed on contractors by the Proposed Permanent Regulations seem excessive. Each would make contractors guarantors that equal rights will not be abridged. The first is contained in Section 60-1.8 and relates to segregated facilities. This section is a restatement of the Order of the Secretary of Labor which now appears in 41 C.F.R. Chapter 60, Part 60-2. It requires contractors to "ensure that facilities provided for employees are provided in such a manner that segregation . . . *cannot* result." [Emphasis supplied.] In certain cases the *possibility* of segregation by employer custom *cannot* be ensured against. It is suggested that the sentence quoted be eliminated. The succeeding sentence makes clear that contractors may not tolerate segregation by employee custom. This phrasing would at least give contractors a chance to correct such segregation when it comes to their attention.

Even more extreme is the obligation Section 60-1.32 of the Proposed Permanent Regulations would place on contractors to protect individuals from intimidation or interference. This obligation is literally to take "*all necessary steps* to ensure that no person intimidates . . . (etc) *any individual* for the purpose of interfering with . . . *any . . . activity* related to the administration of . . . *any Federal, state or local laws requiring equal employment opportunity.*" [Emphasis supplied.] Intimidation should be discouraged vigorously but this proposal tries to make super policemen out of contractors. They are expected to take whatever steps are regarded as necessary to prevent any person (even if not an employee or applicant) from threatening any other individual (again regardless of whether or not there is an employment relationship) for the purpose of interfering with any equal employment opportunity proceeding—even one which does not directly involve the contractor.

It is suggested that Section 60-1.32 be limited to requiring contractors to take reasonable steps to avoid intimidation of employees and applicants on company property or work sites, to take appropriate action to discipline company employees who intimidate or try to intimidate individuals in matters involving the company and to give advance notice that such disciplinary action will be imposed.

In addition to the above-mentioned substantive matters, there are a number of procedural items in the Proposed Permanent Regulations on which we wish to comment.

1. Section 401 of Executive Order 11246 does not authorize the Secretary of Labor to delegate the power to issue "rules and regulations of a general nature." Proposed Section 60-1.3(t) appears to contemplate such a delegation, however,