

Business groups assail state job bias legislation

By DONNA LEUSNER

New Jersey's business community yesterday registered its opposition to legislation designed to overturn a half-dozen U.S. Supreme Court decisions that civil rights advocates contend erode gains made over 20 years.

The bill (S-3047/A-3000), sponsored by Sen. Wynona Lipman (D-Essex), will be voted on later by the Senate State Government Committee, which heard testimony on it yesterday.

It would establish grounds for an unlawful employment practice if race, color, religion, sex or national origin was a factor in being denied a job or promotion even if there were other factors.

That language is intended to reverse a 1989 Supreme Court decision in which the court allowed an employer to claim that it might have arrived at the same decision to deny a job or promotion if discrimination had not occurred.

Philip Kirschner, representing the 13,000-member Business and Industry Association, said the bills go "greatly beyond its professed aim of simply reversing certain U.S. Supreme Court decisions.

"Rather, this will affect a sea change in the treatment of equal employment complaints, converting every change into a court action, making the existing administrative procedure of mediation and conciliation an unused and forgotten option and building up a backlog of cases calling on scarce court resources."

If it becomes law, Kirschner contended, "the only other option left to employers is the distasteful one of insuring numerical balance through quotas."

Proponents disagreed. They said the laws on the books before the 1989 U.S. Supreme Court decisions did not result in widespread establishment of quota systems, but numerical standards—how many employees from a certain ethnic background were employed at a company—could be used as



Photo by Frank DiGiacomo

Peter van Schaick, a Montclair lawyer who specializes in representing workers in job discrimination cases, testifies before the Senate State Government Committee in Trenton

a tool for employers to examine hiring and promotion policies.

President Bush used that quota argument last year in vetoing a federal civil rights bill which New Jersey activists said was used as the basis for the New Jersey legislation. Bush continued to make that argument after congressional sponsors added a statement saying that the bill should not be construed as requiring employers to adopt hiring or promotion quotas.

Congress could not come up with the two-thirds majority needed for an override, but the measure has been re-

introduced as the Civil Rights Act of 1991.

However, Seton Hall law professor Marc Denbeaux said many people who encounter job discrimination do not file suits because fear for their jobs outweighs a gain of perhaps several thousand dollars they could possibly get in filing suit for being denied a promotion from secretary to administrative assistant.

Describing the Business and Industry Association's objections as "reflecting a policy that is not consistent with our philosophy of civil rights," Den-

beaux said. "One of the American principles of civil rights is to make people feel they have a right to fair treatment."

Other proponents of the bill, including the Public Advocate, the Commission on Sex Discrimination, minority lawyers associations and the New Jersey Rainbow Coalition, argued that it would strengthen state law and restore civil rights discarded in six U.S. Supreme Court decisions in 1989.

The Advocate and Melanie Griffin, executive director of the Commission on Sex Discrimination in the Statutes, urged the committee to expand the bill to include pregnant women. The Advocate further argued that it should include caretakers of the seriously ill, who could be discriminated against solely on the basis of association, and persons wrongly perceived as having a disability because they come from a certain racial class or other group that may be statistically more likely to have a particular illness or infirmity.

Like the federal legislation, the state measure would allow courts for the first time to award compensatory and punitive damages for employment discrimination. Gov. Jim Florio last April signed a law allowing jury trials for the first time in job discrimination cases.

The state measure also would allow the prevailing party in a court action to be awarded attorney's fees.

Peter van Schaick, a Montclair lawyer who specializes in representing workers in job discrimination cases, testified that large law firms do not often represent workers in such cases because it is not lucrative. Additionally, he said it is difficult to bring cases in federal court because most of the judges were "conservative" appointments made in the last 10 years of Republican administrations.

Denbeaux said many large law firms do not represent employees in job discrimination cases because they often represent the corporations where the employees are working.

In 1991, after the Jury Trial Bill had passed, and before the 1991 Civil Rights Act had passed, van Schaick worked with Senator Byron Baer on amendments to the New Jersey Law Against Discrimination tracking the 1991 Act. When that act passed, there was no need for A.3000, and the bill died.

The photographer caught van Schaick debating with Senator Gerald Cardinale, the Republican with an anchor position on the ideological right, before Senator Wynona Lipman brought down her gavel.