

The Fight for Indian Employment Preference in the Bureau of Indian Affairs: Red Power Activism in Denver, Colorado, and *Morton v. Mancari*

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I. INTRODUCTION

Affirmative action or reverse discrimination? Judgment about affirmative action policy varies depending on an individual's race, sex, social status, and other qualifications. Affirmative action, for which the executive orders under the Kennedy and Johnson administrations, as well as the Civil Rights Act of 1964, actively pushed, aims at providing preference to members of minority groups that have historically been the target of discrimination. Native Americans, as one such group, also benefitted from the programs, but their unique status in the United States led to a different discussion regarding this anti-discrimination policy.¹ As a result of their treaty relationships with the United States, which acknowledge both their historical nation-to-nation relationship and their status as indigenous people, Native Americans have benefitted from unique preferential programs that solely targeted them as a group. As the civil rights movement of African Americans and other minority groups in the 1950s and 1960s contributed to the promotion of affirmative action programs, the Native American rights movement that emerged in the following decades greatly contributed to promoting preferential programs for Indian populations.

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The 1960s and 1970s witnessed the rise of Native American political activism. Starting with the fish-ins on the Pacific Coast in the early 1960s and continuing through the 1978 Longest Walk to Washington, D.C., the Red Power movement reshaped the relationship between the federal government and Indian people. Native Americans voiced their past and present grievances, engaged in militant activities, and drew national news coverage.² Urban Native Americans, especially those who were young and educated, no longer tolerated the wrongs committed by the federal government and took the leading role in this activism. Away from tribal communities, urban Indians needed to join together regardless of their tribal backgrounds. Although such a pan-Indian cooperation often posed difficulties, the distance from individual tribal communities had a positive aspect as it enabled urban Native Americans to pursue their specific goals, including cultural renewal, better employment, and educational opportunities, without being entangled in tribal politics.

The resentment of Native Americans had festered over a long history of mistreatment by European Americans. In the 1960s and 1970s, however, the major cause of urban Indian activism was rooted in the relocation and employment assistance programs of the Bureau of Indian Affairs (BIA).⁴ The so-called Indian relocation program started in 1950 as a national program and terminated in 1973. The program provided for financial and employment assistance as well as vocational training to Indians who wished to improve their lives by leaving their familiar reservations and moving to urban environments. Through this program, over one hundred thousand rural Native Americans made their way to destination cities, mainly in the West and the Midwest, including Los Angeles, San Francisco, Denver, and Chicago.⁵ However, the gap between their expectations for a better life and the reality of urban conditions disillusioned many relocated Indians and their offspring who were raised in cities. Local Indian organizations became a great source of support, but the increasing frustration led urban Indian people, particularly youths, to participate in political activism and voice their grievances. Among the variety of issues confronting urban Native Americans, employment was one of the most urgent, since better employment opportunities was the sole reason that many moved from familiar rural reservations to alien cities.

In this article I analyze one of the actions Red Power staged in the Denver metropolitan area and the following lawsuits that determined the future of Indian preference policy in federal employment. The protest against discrimination at the local BIA office in Littleton, Colorado, spread nationwide

and became a large movement demanding Indian preference in BIA employment. The 1974 Supreme Court decision in *Morton v. Mancari*, following earlier conflicting court decisions, confirmed the Indian preference policy and helped “Indianize” the agency.

In section 2 I discuss the occupation of the Plant Management Engineering Center in Littleton, Colorado, one of the Red Power activities that took place in the Denver metropolitan area. While the Red Power movement has recently gained increased attention from historians and sociologists examining contemporary Native American issues, the literature on Native American political activism has mainly focused on activities on the West Coast, where Red Power activism emerged in the early 1960s and where the most radical activities occurred.⁶ Possibly due to its smaller Native American population and the more modest nature of Red Power activism there, Denver has received almost no attention from scholars. By investigating the Red Power actions staged in Denver, one of the original destination cities for the BIA’s relocation program, I attempt to reveal the nature of a local Red Power activism that aimed at the improvement of working conditions.

In section 3 I discuss the legal battles over Indian preference in BIA employment. Between 1971 and 1974, Indian employees and their non-Indian counterparts sued the federal government and officials over discrimination and asked the courts to determine how the government understood the balance between racial equality and Indian preference. While a diverse literature has examined Red Power activism and its impact since the 1960s, the legal battles that followed the more militant activities have received little attention except from specialized legal scholars. The demands and outcomes of the activism and battles in courts over Indian preference show the reality of urban Indian life in the 1970s, which were symbolized by negative keywords, such as poverty, unemployment, disillusionment, and anger, as well as positive ones, including power, achievement, self-determination, and cooperation.

II. OCCUPATION OF THE PLANT MANAGEMENT ENGINEERING CENTER, LITTLETON, COLORADO

Many Native Americans remember the 1969 occupation of Alcatraz Island in the San Francisco Bay as one of the most significant events of the Red Power movement. On November 20, 1969, seventy-eight American Indians, seventy of whom were students at the University of California at Los Angeles, formed the Indians of All Tribes (IAT) to occupy the island. The

takeover continued for nineteen months, and the IAT's demands displayed urban Indians' interest in their cultural heritage. IAT, for instance, requested establishment of an Indian-controlled cultural center and an Indian museum on the island.⁷ The demands represented urban Indians' strong pan-Indian identity and the amalgamation of urban Indians from diverse backgrounds.

The participants in the Alcatraz takeover achieved nationwide support from both Indians and non-Indians, including BIA commissioner Louis R. Bruce (Mohawk-Oglala Sioux).⁸ Bruce showed his support for the occupation and stated in a letter to Democratic Senator Fred R. Harris of Oklahoma:

This occupation is an illustration of the growing determination of the Indian people, and especially young Indians, to have control over their own destinies and to preserve and protect the Indian heritage which has sustained so many through years of trial and deprivation. I heartily support this determination as vital in the development of the leadership that can help the Indian people effectively chart their own course to lives of dignity, self-respect and independence in modern American society.⁹

Indian people in Denver also supported the takeover. By the end of December 1969, fifteen of them, including Helen Peterson (Oglala Lakota), an official of the Denver Commission on Community Relations who had served as the executive director of the National Congress of American Indians (NCAI) from 1953 to 1962, signed a resolution of support. The resolution declared: "Be it resolved that this group . . . offers its unqualified support of the Indians of Alcatraz Island . . . and hereby petition the Government of the United States of America to grant said Alcatraz Island to a cooperation [of Indians]."¹⁰ The Calls of the Council Drums (CCD), one of local Indian organizations in Denver, also sent a formal resolution of support for the Alcatraz takeover in response to a request from the IAT.¹¹ The mutual support among urban Indians in various cities, who had less connection with tribal governments and interacted with a variety of tribal members in urban areas, exemplified their effort to create a new unifying identity and establish their political credentials.

At the start of the 1970s, Indian people in the Denver area also began to voice resentments of their own and discussed their problems in the urban environment. Among diverse economic and social issues confronting Denver Indians, discrimination in employment was one of the most serious and immediate concerns. On March 12, 1970, the National Indian Youth Council (NIYC), a national pan-Indian organization of three thousand young Indian



Figure 1. Native Americans walk a picket line in downtown Denver to protest discrimination by the BIA (Denver Public Library, Western History Collection, X-32052).

people that promoted an Indian self-determination policy, filed a series of charges against the BIA for its discrimination against Native American employees.¹² The Plant Management Engineering Center (PMEC), located at 1100 West Littleton Boulevard in Littleton, Colorado, was among those offices that received complaints.¹³ In 1969 BIA employees at an additional ten locations, such as in New Mexico at the Indian Affairs Data Center in Albuquerque and the BIA Supply Warehouse in Gallup, filed similar complaints.¹⁴ The Indian group of PMEC employees, consisting of fourteen of seventeen Native American employees at the PMEC, claimed that the BIA gave preference to non-Indians in hiring and promotions. According to the group, the PMEC was “run like a private refuge where non-Indian employees can draw enormous salaries and gain unreasonable privileges while paying only lip-service to their duty to the impoverished Indian people it serves,

and to the qualified Indians it employs.”¹⁵ Despite the BIA’s mandate to give preference to Indian employees, non-Indians occupied the better-paying jobs and higher positions at the P MEC.¹⁶

The Indian employees filed these complaints based on the premise that the Indian Reorganization Act (IRA, also called the Wheeler-Howard Act) of 1934 established Indian preference as the BIA’s policy.¹⁷ Section 19 of this act specifically dealt with Indian preference policy and directed the secretary of the Interior to:

establish standards of health, age, character, experience, knowledge and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.¹⁸

The act used the term “Indian” to mean a person who was a member of a federally recognized tribe, or a descendant of such members and who lived on a reservation, or who was of half or more Indian blood.¹⁹ In spite of the stated policy, the Indian employees of the P MEC claimed that the BIA preferred non-Indian employees over Indian employees and often discriminated against Indian employees in initial hirings and later promotions.

Complaints filed by the P MEC Indian employees proved to be justifiable. In 1969, when Louis R. Bruce became the third Native American BIA commissioner, only 15.3 percent of BIA employees at General Schedule (GS) 12 or above (starting at approximately \$14,000 a year) were Native Americans, while at lower grades, almost 100 percent of BIA employees were Native Americans.²⁰ Although 53 percent of BIA personnel overall were Indians, this fairly large percentage was likely due to the large number of entry-level Indian employees.²¹ The situation at the P MEC accorded with the statistics of overall BIA employees. According to the formal complaint filed on March 12, 1970, only 17 of 119 employees at the P MEC were Indians, despite the provision of Indian preference in hiring. Fourteen of those 17 Indian employees earned between \$4,300 and \$7,100 annually (GS 4 and below), and only one Indian employee made over \$10,000 per year. On the other hand, non-Indian employees occupied all the higher positions (GS 12 and above), and none of the non-Indian employees earned less than \$6,800.²² These data indicate, as claimed by the Indian complainants, that there was “a clearly defined program by the BIA to keep Indian employees in the lowest paying, most menial jobs, while promoting non-Indians to all of the upper-

echelon positions.”²³ The great disparity in incomes was also apparent between the Denver Indians and the total Denver population. In 1970, for example, the Indian population in the Denver metropolitan area numbered 4,348 and their median family income was \$7,163, while the Denver median family income stood at \$10,734.²⁴

The Indian employees further asserted that the P MEC officials’ unwillingness to offer training opportunities to Indian employees halted their career advancement and offered an example of discriminatory practice at the P MEC. For example, the complainants claimed that between July 1968 and July 1969 the P MEC used a little over \$9,000 on training programs for employees, but spent the money solely on non-Indian employees.²⁵ The record confirmed that the P MEC completely ignored the policy mandate established under the Equal Employment Opportunity Program of the Department of Interior, which stated, “When training programs (such as for administrative and management development) are announced, direct effort is to be made to urge Indians and employees of other minority groups to compete for selection.”²⁶

In addition to discrimination in hiring, promotion, and training, the Indian group charged the non-Indian officials with inefficient operation and waste of government funds and supplies supposedly provided for Native Americans. A fifty-four-page document submitted by the Indian employees claimed that several employees spent a large amount of their time “circulating information on the stock market” or “order[ing] blanks and catalogs for a cosmetics company.”²⁷ Moreover, top officials made “extravagant use of their travel privileges,” with “one executive using his own car [taking] his family to Oregon all paid for by the government.”²⁸ Twelve Indian employees at the P MEC (known as the “Littleton Twelve”) signed the complaints and sent them to Edward E. Shelton, director of the Interior Department’s Office of Equal Employment Opportunity, and BIA commissioner Louis R. Bruce.²⁹

Local Indian organizations in Denver quickly showed their support of the Littleton Twelve. On March 15, 1970, the White Buffalo Council of American Indians (WBC), the oldest local Indian organization, established in 1955, held a special meeting and voted its official support for the complainants. The next day, the WBC transmitted a statement to Commissioner Bruce and BIA officials at the P MEC among others. In that letter, the WBC pointed out that “Indian employees in BIA service often become discouraged as new people are brought in and rapidly promoted over the Indians who have long been in BIA service.”³⁰ Facing discrimination in a federal

agency, which is supposed to devote its services to the Indian population, the Indian workers became frustrated.

As was the case with Red Power activists all over the nation, the Denver Indians also considered direct action a key to success. On March 16, 1970, approximately fifty Indians led by the WBC, CCD, NIYC, American Indian Movement (AIM), and the United Scholarship Service (USS) picketed the P MEC. Floyd Westerman (Sioux), CCD representative, demanded that Stuart C. Edmonds, acting P MEC director, address their complaints quickly.³¹ Otherwise, the BIA should expect “repercussions,” and they were “not going to be peaceful.”³² After a telephone conference with officials in Washington, D.C., the Indians were “harassed by a carload of Anglo youth, who pelted the Indians with eggs and snowballs,” according to the *Denver Post*.³³ That day marked the beginning of a three-day takeover by a group of thirty Indians led by Duane Bird Bear (Hidatsa) and Bruce Glenn (Sioux). The group formed a steering committee that drew up a list of eleven demands and vowed to remain in the building until the government accepted all the demands. Local Indian organizations and individuals as well as church groups supported the takeover, delivering food and supplies.³⁴

Commissioner Bruce quickly responded to the demands of Indian employees and occupants who picketed the Littleton P MEC. On March 20, Bruce flew from Washington to meet with the Indian group. The next day, approximately fifty Indian protesters presented their complaints to Bruce in a two-hour meeting. Afterward, Bruce signed a statement without hesitation. It read:

As commissioner of Indian Affairs and foremost as an Indian myself, I am aware that discrimination against Indians does exist in the Bureau of Indian Affairs. I hereby pledge to stringently and aggressively enforce all provisions of the Equal Employment Opportunity Program to insure that the government speedily and adequately deals with Indian grievances.³⁵

The Indian protestors also requested Bruce to dismiss top officials at the P MEC. After negotiating with the Indian protestors, Bruce temporarily suspended three officials there: Charles McCrea, chief official; Stuart C. Edmonds, assistant chief; and Leona L. Morris, administrative assistant.³⁶ In addition to his recognition of discrimination against Indians by the BIA, Bruce endorsed five core demands presented by the Indian protestors. Among these were:

Indian preference . . . [must] be extended to promotions, employment, transfer,

training . . . ; that cross-training and/or promotion be guaranteed for Indians within one year after hiring; that a timetable for full employment of Indians . . . be implemented . . . ; that . . . training programs . . . be implemented; that [a] review board be established to guarantee . . . Indian people receive fair treatment.³⁷

After Bruce had dinner with the Indian group and left the P MEC, eleven Indians, all of them in their twenties, locked themselves in the office and chained the front and back doors of the building. They intended to stay in the building until the government met all their demands or until the police arrested them. The demands included a schedule of full hiring of Indians in the BIA; the dismissal of Bruce, McCrea, and Edmonds; and a \$50,000 fund to investigate the BIA. Nine of eleven Indian protestors who had locked themselves inside the P MEC were arrested on charges of trespassing and interference.³⁸

As the protest expanded nationwide, the ultimate goal shifted from the end of discriminatory treatment at the P MEC to bringing about Indian self-determination and Indian preference in the BIA all over the nation.³⁹ The Indian activists saw Indian self-control of the BIA essential, as the agency solely served the Indian population. Harry Buckanaga (Sioux), one of the Indian supporters of the arrested Indians, claimed: "The BIA is our agency and we're supposed to control it. No longer will we depend on somebody else to speak of our problems."⁴⁰ Duane Bird Bear, one of the local leaders of the demonstrations, pointed out the resentment of Native Americans against the control of Indian affairs by non-Indians: "Do you realize that in the top 35 administrative positions for BIA in Washington, all but a few are Anglos? These are people pulling down \$18,000 to \$24,000 a year to tell Indians how they should live their lives."⁴¹ The complainants characterized the BIA's attitude as follows: "authoritarian-paternalism: one in which the supervisory personnel flaunt their power, make their own law, and deny even minimal responsibility or human dignity to their subordinates, and do so under the guise that their subordinates are children (i.e. Indians and therefore incompetents needing a firm hand over them)."⁴²

Not only the local Indian leaders, but also nationally known Indian activists paid attention to the protest in Denver. On March 17, 1970, Clyde Bellecourt (Ojibwa), the national executive director of AIM, arrived in Denver to support the protest activities. Bellecourt agreed with the Indian employees at the P MEC and characterized the BIA's paternalism as "treating Indians as though they are children and can't manage their own affairs." Because of this attitude, Bellecourt continued, American Indians "haven't even had the



Figure 2. Native American protestors marching in Denver, March 22, 1977 (Denver Public Library, Western History Collection, X-32055)

opportunity to make a mistake, yet the BIA makes hundreds of mistakes a day across the U.S.”⁴³ The aim of radical Indian activism was not to abolish the BIA, but to reorganize it to reflect the voices of the general Indian population and bring about Indian self-determination by “Indianizing” the BIA.

On March 22, a group of some thirty-five Indians gathered at the PMEC to protest the arrest of the nine Indians who remained in the building following Bruce’s departure. After giving several speeches, the Indian protestors marched a mile from the PMEC to the Arapahoe County Jail.⁴⁴ One protestor, Tillie Walker (Mandan), executive director of the USS in Denver, claimed that Commissioner Bruce had little understanding of Indian problems. Walker pointed out that Bruce, who “is supposed to be an Indian, but came to Washington from Greenwich Village,” had little chance of finding a solution to the Indians’ plight. She claimed, “When you’ve grown up like a white person and have never been part of an Indian community, you don’t seem to really care. You have to have an Indian heart.”⁴⁵ Indian demonstrators at the PMEC drew a thick line between themselves and Commissioner

Bruce, someone who enjoyed high social status and never had firsthand experience of the hard life of being an Indian.

At the height of the Red Power movement, many Indians demanded the resignation of Commissioner Bruce, who they considered to be elitist and who they thought failed to understand the problems that Indian people faced on a daily basis. However, Bruce eventually recognized the need for some change within the BIA. In February 1972, for instance, Bruce commented on Indian self-determination at a meeting of the organization Western Oklahoma Indian Leaders:

We Indians have been demanding the privilege of full involvement and an opportunity to plan programs for our own destiny. . . . I want non-Indians to stop telling us what is wrong, what to do, and how it should be done. We are as capable of deciding issues that affect us as are they—but we the Indian people must take the initiative.⁴⁶

Even though Bruce tried to identify himself with the general Indian population and showed his intense support for Indian control, the Indian community, at least in Denver, did not recognize him as one of them.

Once the media reported the arrests of the Indian protesters at PMEC, a wave of demonstrations spread throughout the nation. For instance, in cities including Minneapolis, Sacramento, Chicago, and Cleveland, AIM leaders coordinated demonstrations at the local BIA offices. NIYC chapters at college campuses held meetings and vowed to take over local BIA offices after the semester break, while teams of NIYC members toured reservations, explaining the situation and demands of the PMEC. On March 28, NIYC reported that “at the present according to the Associated Press, 100 Indians have been arrested sitting-in BIA offices around the country in support of what has now become known as the ‘Littleton Twelve.’”⁴⁷ One of the spokesmen for the growing protest emphasized the significance of the event claiming, “This is really the first time Indians have acted so massively around a single issue. We will continue until the discrimination against the ‘Littleton Twelve’ is corrected and the BIA enacts policies that prevent such practices against Indians it employs everywhere.”⁴⁸

While the protest was ongoing, positive changes in the administration at the PMEC occurred. On March 24, the BIA appointed Barney Old Coyote (Crow), an official in the BIA office in Sacramento, to replace McCrea as head of the PMEC, pending completion of the investigation of discrimination.⁴⁹ The appointment of an Indian as the new director was a step forward in realizing Indian self-determination. At the press conference, Old Coyote

emphasized BIA officials' willingness to meet the protestors "for dialogue at any time, anywhere and on any subject." He also urged the unity of American Indians, saying, "We must try and bring ourselves and friends together. It doesn't do any good to fight among ourselves."⁵⁰ The newly appointed P MEC head also called for an end to protests and demonstrations, as the demonstrators had already made their point and got the federal officials' attention.⁵¹

The investigation of discrimination at the P MEC took six months to complete. On September 2, Alexander MacNabb, director of BIA operation services, reported that all parties agreed not to release any information about the investigation. That same month, the BIA removed Charles McCrea from his position as P MEC director. However, MacNabb did not imply that they found McCrea guilty of discrimination and mentioned that the situation at the P MEC required significant changes in hiring and promoting procedures.

The protest activities at the P MEC brought about the replacement of the former top officials with an Indian director and other new personnel. The local direct action, which spread all over the nation, drew the federal government's attention to the concerns of the BIA's Indian employees as well as the issues shared by urban Native Americans in general. To confirm the Indian preference policy and realize Indian self-determination through the control of the BIA, the Indian employees also took the matter to court.

III. BATTLES IN COURT: THE FREEMAN CASE AND *MORTON V. MANCARI*

While the protest activities at the P MEC and on the streets led to some positive transformations at the local office, the Indian employees and their supporters took the further step of taking the case to court and discussed both in court and outside of it the issue surrounding Indian preference. The move represented a new style of political activism among Native Americans that utilized the courts as a battle ground. Between 1971 and 1974, both Indian and non-Indian employees of the BIA sued the government agencies and their officials over discrimination. Two district courts and the Supreme Court considered the legality of the Indian preference and reached three different decisions. The conflicting decisions represented the different readings of the Indian Reorganization Act of 1934 and the understanding of Indian preference, especially whether the preference measure constituted "racial" discrimination.

In February 1972, a year after the P MEC workers had filed their complaints, Enola E. Freeman, one of the complainants, instituted a suit against

Secretary of the Interior C. B. Morton, BIA Commissioner Bruce, and PMEC chief Peter M. Martin. The charge involved the BIA's earlier failure to implement Indian preference in hiring, training, and promotion. Freeman filed suit on behalf of herself and all other Indian employees who suffered from a similar situation. The class action suit stated that 73 percent of all Indian workers at the BIA held positions at GS 5 or lower. Jobs at this rating were mainly clerical, while supervisory positions were at a level of GS 10 or above. Of all non-Indian employees at the BIA, approximately 81 percent were at GS 6 or above. This reality suggested that the Interior Department and the BIA failed to follow the Equal Employment Opportunity Program, which called for promotional opportunities and training for Indians and other minority workers.⁵² It also demonstrated that the BIA failed to keep the promise it made just one year before.

Complaints of discrimination within the BIA and succeeding protests met with favorable legislative action and court decisions. On June 26, 1972, Commissioner Bruce, with the approval of the secretary of the Interior, issued a directive requiring the BIA to give preference to qualified Indians, not only in initial appointments, but also in reinstatements and promotions. This new policy stated that "where two or more candidates who meet the established qualification requirements are available for filling a vacancy, if one of them is an Indian, he shall be given preference in filling the vacancy."⁵³ Bruce supported the extension of Indian preference policy because he believed the policy would "basically be a means of enhancing opportunities for Indians in the operation and management of the Bureau's program, a goal which is consistent with President Nixon's announced policy of increased self-determination in Federal and local matters affecting Indian people."⁵⁴

The non-Indians did not remain silent but observed that such proceedings seemed to work against their interests. The BIA's non-Indian employees fought back as they believed the Indian victory in court and the federal government's increasing support for Indian employees threatened their status. On August 14, 1972, shortly after Bruce announced the expanded provision of Indian preference, a group of four non-Indian employees, who called themselves Dedicated Americans Revealing the Truth (DART), filed a class action suit in the United District Court for New Mexico against the Indian preference policy of the BIA.⁵⁵ The plaintiffs, C. R. Mancari and Jules Cooper, employees at the Southwest Polytechnic Institute in Albuquerque, and Anthony Franco and Wilbert Garret, employees in the data processing division at the BIA Albuquerque regional office, claimed that the 1972 Equal

Employment Opportunity Act (EEOA) repealed the “so-called ‘Indian Preference Statutes,’ and that such statutes deprived them of rights to property without due process of law, in violation of the Fifth Amendment.”⁵⁶ The Indian Reorganization Act of 1934 established Indian preference policy by giving Indians “the preference to appointment to vacancies” in the BIA “without regard to civil service laws.”⁵⁷ The non-Indian employees named as defendants Rogers C. B. Morton; Louis R. Bruce; Walter O. Olson, director of the BIA Albuquerque office; and Anthony Lincoln, director of the BIA Navajo area office.⁵⁸ The district court decided that the 1972 EEOA had indeed repealed the Indian preference policy by prohibiting racial discrimination in most federal employment.⁵⁹ This decision overturned the new Indian preference policy introduced by Commissioner Bruce that same year, which had expanded preference not only in hiring but also in promotion.

While the New Mexico court held that Native Americans were members of a minority group eligible for affirmative action programs, the reality in New Mexico proved to be far from ideal. In November 1972, the federal Civil Rights Commission conducted public hearings in New Mexico to investigate the effectiveness of affirmative action plans. The commission found that New Mexico’s Indians faced serious discrimination and an extremely high unemployment rate. In New Mexico, Spanish-speaking Americans benefited the most in affirmative action programs, while federal and state government agencies, as well as private companies with federal contracts, hired only a few African Americans and almost no Indians. The commission concluded that the employment of Spanish-speaking Americans and African Americans deprived American Indians of the benefit of affirmative action programs. Maurice B. Mitchell, one of two commissioners who participated in the hearings and also the chancellor of the University of Denver, commented: “It seems that the affirmative action programs work to the detriment of American Indians.”⁶⁰

At the end of 1972, another reversal came from the federal district court in Washington, D.C. The court decision in Enola E. Freeman’s case supported an expanded policy of Indian preference in the BIA. On December 21, 1972, the District Court for the District of Columbia agreed to the concept of Indian preference defined by Freeman. The plaintiff argued that Indian preference upheld in the IRA implied that “a minimally qualified Indian *must* be hired even though there may be available a more capable, better qualified non-Indian applicant for the position.”⁶¹ Rogers C. B. Morton and his party had no objection to Freeman’s concept of preference, yet they claimed that Indian preference should apply only in the initial hiring. Judge

Howard F. Corcoran read it otherwise, stating, “A ‘vacancy’ is a ‘vacancy’ no matter how created.” He said that the BIA needed to apply preference in all phases of promotion. The court understood that in passing the IRA, Congress declared that “the BIA becomes an agency staffed with Indians performing services for Indians.” It also realized that this interpretation of the IRA would leave the BIA’s non-Indian employees in a “relatively frozen position” and “dim their promotional prospects” in the bureau.⁶² Regarding preferences in training participation, the court rejected Freeman’s claim, since section 11 of the IRA provided a \$250,000 appropriation annually for training and education of American Indians. “Undoubtedly, Congress intended to train Indians to fulfill the new responsibilities being made available to them,” Corcoran stated, “but it was through the allocation of additional funds, not application of the preference statute that this intention was to be executed.”⁶³

The Freeman case, in which BIA Indian employees tested the limits of Indian preference, led the Washington, D.C. District Court to order:

All initial hirings, promotions, lateral transfers and reassignments in the Bureau of Indian Affairs . . . , however created, be declared governed by [the IRA] which requires that preference be afforded qualified Indian candidates; and . . . the plaintiff’s motion for a declaration that the filling of vacancies in training programs . . . is also governed by the same preference statute be denied.⁶⁴

Now Indian employees in the BIA could achieve preference in promotions or in filling any vacancies within the bureau, in addition to initial hiring. The court rejected preference for participation in training programs. Nonetheless, the court decision became a major step for Indian self—determination in the BIA.

The earlier decision in New Mexico that supported non-Indian employees was also overturned. On June 17, 1974, the Supreme Court of the United States, on appeal, overturned the decision of the U.S. District Court for the District of New Mexico in the case of *Morton v. Mancari* and supported the Indian preference provision. It aimed “to give Indians a greater participation in their own self-government; to further the Government’s trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life.”⁶⁵ Judge John Blackmun further clarified the status of American Indians to differentiate them from other minority groups. He stated:

Contrary to the characterization made by appellees, this preference does not con-

stitute “racial discrimination.” Indeed, it is not even a “racial” preference. Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups.⁶⁶

Because the said “employment criterion” included specific requirements in order to be considered an “Indian” under the IRA (i.e., “blood quantum,” membership in a federally recognized tribe, and place of residence), the preference policy was not established solely based on “race.”

Supported by such legal victories, Indian self-determination proceeded throughout the 1970s with enhanced Indian employment in the BIA. In addition to encouraging judicial decisions, legislative activities such as the passage of the Indian Self-Determination and Education Act of 1975, supporting Indian preference, boosted Indian self-determination in the Indian service agencies.⁶⁷ By 1980, 78 percent of all BIA employees were Native Americans, compared to 53 percent a decade earlier. This included Indian appointments to such positions as assistant secretary for Indian Affairs in the Department of the Interior and Indian area directors.⁶⁸

For the whole Denver Indian community, however, the transformation of economic and employment conditions seemed less obvious. According to a report prepared by the Colorado State Employment Services in the mid-1970s, the estimated rate of unemployment among Indians amounted to 30 percent, while that of whites was only 6 percent.⁶⁹ As for income comparison, the gap between white Denverites and the American Indian population became smaller, but remained significant. For instance, in 1979 the median white family income in the Denver metropolitan area was \$24,400 while that of an Indian family was \$18,141.⁷⁰ Continuing racism and the lack of proper education and vocational training often prevented Denver Indians from finding stable jobs and left them to struggle with the continuous danger of unemployment and poverty.

IV. CONCLUSION

The protest against discrimination at the PMEC started with Indian employees at the PMEC and their supporters, organized by the WBC and CCD. As the movement spread all over the nation with assistance from national Indian organizations, including NIYC and AIM, the demand for improvements in the local BIA office grew into larger demands. Activists called for the execution of the Indian preference policy, and the ultimate goal became

Indian self-determination by transforming the BIA into a 100 percent Indian-operated agency. The three court decisions that followed the direct action each read the words of the IRA differently, and the conflicting outcomes showed the complicated nature of racial equality and Indian preference.

In the early stages of the local Red Power movement, most Indian complaints focused on issues of employment, training, and self-determination with the goal of the appointment of more Indian officials in the BIA. By the end of 1970s, when the radical activities of the Red Power movement declined, it had achieved many, if not all, of its goals. The combination of Red Power activities in the P MEC case, which involved both local and national Indian organizations and legal tactics, enabled the Denver Indians to show the nation the will of the Indian people, their desire to express their dissatisfaction, and their determination to take control over their lives. The more experienced Indian activists in the 1970s could organize the Indian people more effectively and utilize the courts as another stage for their fight for their rights. Supported by a favorable response from the federal government and courts to Indian demands, local Red Power activism materialized Indian preference in employment, which was essential for Indian self-determination.

While the Native American community and scholars have debated whether militant direct action or legal battles in courts were more effective in gaining rights for Indian people, the occupation of the P MEC and the Freeman case provide one example of how the combination of local direct action and national court battles transformed federal policy. The case also offers some ideas for future policy aiming to bring about racial equality in employment. In the case of Indian and non-Indian employees at the BIA, Indian employees were able to enjoy preference due to the Indians' unique relationship with the U.S. government and status as indigenous people of the country. As the Supreme Court decisions in *Gratz v. Bollinger* and *Grutter v. Bollinger* in 2003 (which decided that affirmative action for graduate school admission was constitutional but unconstitutional at the undergraduate level) proved, the court has also struggled to make decisions, and outcomes have been quite complicated.⁷¹ The United States still questions whether American society is ready for a color-blind policy and whether affirmative action helps advance racial equality. The battles over Indian preference at the BIA, which involved the federal government, both Indian and non-Indians employees, activists, and those in the community who supported them, provide one possible course of action for implementing the ideal of equality in American society.

NOTES

¹ There are various terms used to identify indigenous peoples of North America, and each name has its own historical and cultural significance and connotation. I recognize the existence of intriguing debates over names, but in this article I will use “Native Americans” primarily and “American Indians,” “Indian people,” and “Indians” interchangeably.

² Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture* (New York: Oxford University Press, 1996), 162–64.

³ Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 1985), 23.

⁴ Troy R. Johnson, “Roots of Contemporary Native American Activism,” *American Indian Culture and Research Journal* 20 (1996): 130.

⁵ Azusa Ono, “Crossroads of Indian Country: Native American Community in Denver, Colorado, 1950–2005” (PhD diss., Arizona State University, 2008), 13–55.

⁶ A collection of literature on Red Power activism has appeared in the last two decades. Some of the major works include: Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: The New Press, 1996); Troy Johnson, Joane Nagel, and Duane Champagne, eds., *American Indian Activism: Alcatraz to the Longest Walk* (Champaign: University of Illinois Press, 1997); Daniel M. Cobb, *Native Activism in Cold War America: The Struggle for Sovereignty* (Lawrence: University of Kansas Press, 2007).

⁷ Indians of All Tribes to Brothers and Sisters, December 16, 1969, Mike Taylor Papers, box 5, folder 25: Alcoholism, Denver Museum of Nature and Science (hereafter cited as DMNS); Johnson, “Roots of Contemporary Native American Activism,” 146.

⁸ Louis R. Bruce served as the commissioner of Indian Affairs from August 8, 1969 to January 20, 1973. He was born on the Onondaga Reservation located close to Syracuse, New York. He had had multiple professions: as an owner of a large dairy farm in New York, one of the founders and executive directors of the National Congress of American Indians (NCAI), and as a part-time lecturer at Columbia University and other well-known universities. The occupation of the BIA building in Washington, D.C., in 1972 led to his forced resignation before he achieved his goal of transforming the BIA into a service agency for Indian people. Joseph H. Cash, “Louis Rook Bruce, 1969–73,” in Robert M. Kvasnicka and Herman J. Viola, eds., *The Commissioners of Indian Affairs, 1824–1977* (Lincoln: University of Nebraska Press, 1979), 333–40.

⁹ Louis R. Bruce to Senator Fred R. Harris, January 26, 1970, Fred R. Harris Collection, box 197, folder 22, Carl Albert Congressional Research and Studies Center Congressional Archives, University of Oklahoma, Norman, Oklahoma (hereafter cited as CAC). Fred R. Harris served as senator from 1964 to 1973 and is the husband of La Donna Harris (Comanche), the president of Americans for Indian Opportunity.

¹⁰ “Indians in Denver Back Alcatraz Plan,” *Denver Post*, December 21, 1969.

¹¹ Indians of All Tribes to Brothers and Sisters, December 16, 1969, Mike Taylor Papers, box 5, folder 25: Alcoholism; *Alcatraz Indians of All Tribes Newsletter* 1 (February 1970), 17, Mike Taylor Papers, box 17, folder: Alcatraz 1970, DMNS.

¹² National Indian Youth Council News Release, March 26, 1970, Fred R. Harris Collection, box 197, folder 22, CAC; Johnson, “Roots of Contemporary Native American Activism,” 135.

¹³ “Denver Indian Relocation Center,” *Denver Post*, February 17, 1970.

¹⁴ The employees at the Sanostee School (Sanostee, NM), Intermountain School (Brigham City, UT), and Shiprock Agency (Shiprock, NM) also filed complaints alleging discrimination in the areas of employment, promotion, and training. “What Employment and In-Service

Training Programs Have Been Developed for Indians?" box 5, folder: Personnel-BIA Employment, General Correspondence and Related Records, 1969–72, National Archives, Washington, D.C. (hereafter cited as NADC); Robert W. (Red) Fenwick, "Indian Affairs Units Silent on Charges," *Denver Post*, March 13, 1970; Rykken Johnson, "Indian Leader Charges BIA Is Discriminatory," *Rocky Mountain News*, March 14, 1970.

¹⁵ "Formal Complaint of Discrimination Brought by Employees of the Bureau of Indian Affairs against the Bureau of Indian Affairs and the Plant Management Engineering Center, Littleton, Colorado, 12 March 1970," box 3, folder: Littleton, Colorado Information, General Correspondence and Related Records, 1969–72, NADC.

¹⁶ Fenwick, "Indian Affairs Units Silent on Charges"; George Lane, "Indians Continue BIA Lock-in," *Denver Post*, March 20, 1970.

¹⁷ The IRA, consisting of nineteen sections, had four main goals: to (re)establish Indian tribal government; to revive the idea of tribal co-ownership; to restore and protect tribal cultures; and to strengthen Indian rights in the judicial system.

¹⁸ Indian Reorganization Act of 1934, Public Law 73–383, *U.S. Statutes at Large* 48 (1934): 986.

¹⁹ *Ibid.*

²⁰ The General Schedule of federal jobs establishes ranks from 1 at the lowest to 18 at the highest.

²¹ Paul R. Wieck, "Indian Commissioner Keeps Ear to Ground," *Albuquerque Journal*, April 26, 1970, box 4, folder: Bruce, Louis R. –8–8–1969, 8NS-075–95–017 BIA United Pueblo Agencies "Mission Correspondence, 1969–74, Newspaper Clippings, December '66–December '76," National Archives, Denver, Colorado.

²² "Formal Complaint of Discrimination."

²³ *Ibid.*

²⁴ U.S. Department of Commerce, Bureau of Census, *1970 Census of Population*, vol. 1, chap. 3, part 7, table 23; Lawrence Herold, "Who and Where: A Social-Geographical Profile of Denver Metro Indians in the 1970s," box 10, folder 7: 1979–81 Special Projects, Anthropology, Denver Urban Indian Project, DMNS; U.S. Department of Commerce, *County and City Data Book 1972: A Statistical Abstract Supplement*, table 4: Urbanized Areas, 593.

²⁵ "Formal Complaint of Discrimination."

²⁶ *Ibid.*

²⁷ R.W. (Red) Fenwick, "Bias against Indians Charge Names BIA," *Denver Post*, March 12, 1970, Mike Taylor Papers, box 1, folder 5: Indian Problems: *Denver Post* Series, 7/5/70, DMNS.

²⁸ "Formal Complaint of Discrimination."

²⁹ "Formal Complaint of Discrimination"; National Indian Youth Council News Release, March 26, 1970, Fred R. Harris Collection, box 197, file 22, CAC; Fenwick, "Bias against Indians Charge Names BIA"; Fenwick, "Indian Affairs Units Silent on Charges"; Pat McGraw, "Indians Amplify Bias Charges," *Denver Post*, March 15, 1970. The PMEC employees who signed the complaints were Phyllis Culbertson, Corrine Dumarce Deal, Toni Guerue, Fray LaForge, Carson Sine, Robert Henderson, Patricia Feathers, Vaughn Arkie, Enola Freeman, Eileen Hickman, Katherine Sherman, and Glenda Tom.

³⁰ White Buffalo Council of American Indians, "WBC Supports Indian Employees," *Indian Times* (March 1970), 1, Western History Collection, Denver Public Library (hereafter cited as WHC, DPL).

³¹ *Ibid.*

³² Dennis Mason, "Indians Protest at Littleton BIA Office," *Denver Post*, March 17, 1970.

³³ *Ibid.*

³⁴ National Indian Youth Council News Release, March 26, 1970.

³⁵ Ibid.; “Bureau Chief ‘Aware’ of Bias,” *Denver Post*, March 22, 1970.

³⁶ George Lane, “3 Officials of BIA Suspended,” *Denver Post*, March 22, 1970.

³⁷ “Bureau Chief ‘Aware’ of Bias.”

³⁸ Lane, “Indians Continue BIA Center Lock-in”; “Nine Indians Are Jailed After a Four-Day Sit-In at Bureau Office in Colorado,” *New York Times*, 23 March 1970, 28.

³⁹ Similar sit-ins occurred in eight other cities in the West and Midwest. “Indianize the B.I.A.!” *Alcatraz Indians of All Tribes Newsletter* 1 (March 1970), 17, Mike Taylor Papers, box 17, folder: Alcatraz 1970, DMNS; “Indians Attempting to Widen Sit-ins,” *Denver Post*, March 24, 1970.

⁴⁰ Rykken Johnson, “Indian Group Again Pickets BIA Office,” *Rocky Mountain News*, March 23, 1970.

⁴¹ Alan Cunningham, “We’ll Stay Forever, If Necessary,” *Rocky Mountain News*, March 21, 1970.

⁴² “Formal Complaint of Discrimination.”

⁴³ “Bellocourt: Protest Not Over,” *Denver Post*, March 18, 1970, Mike Taylor Papers, box 1, folder 5: Indian Problems: *Denver Post* Series, 7/5/70, DMNS.

⁴⁴ Johnson, “Indian Group Again Pickets BIA Office”; “Nine Indians Plead Innocent, Released,” *Denver Post*, March 23, 1970.

⁴⁵ “Nine Indians Are Jailed after a Four-Day Sit-in at Bureau Office in Colorado,” *New York Times*, March 23, 1970.

⁴⁶ “Indian Participation in Decision-Making Vital,” *Denver Post*, February 17, 1970.

⁴⁷ National Indian Youth Council News Release, March 26, 1970, Fred R. Harris Papers, box 197, file 22, CAC.

⁴⁸ Ibid.

⁴⁹ “Indian Dispute: New Office Chief Gives Plans,” *Denver Post*, March 25, 1970, Mike Taylor Papers, box 1, folder 5: Indian Problems: *Denver Post* Series, 7/5/70, DMNS.

⁵⁰ Robert Threlkeld, “Peacepipe Urged on BIA Warpath,” *Rocky Mountain News*, March 25, 1970.

⁵¹ “Indian Dispute: New Office Chief Gives Plans”.

⁵² Robert Threlkeld, “Indian Employee of BIA Files Suit against Interior,” *Rocky Mountain News*, February 6, 1971.

⁵³ Commissioner of Indian Affairs to Secretary of the Interior, through Assistant Secretary, Public Land Management: Indian Preference Policy, September 23, 1971, National Indian Youth Council Records, 1935–2000, box 26, folder 16: Indian Preference/Petition, 1972, Center for Southwest Research, University of New Mexico.

⁵⁴ Commissioner of Indian Affairs to All Bureau Employees: Bureau Policy on Indian Preference, July 3, 1972, Records of the Office of the Commissioner Louis R. Bruce, 1969–72, box 14, folder: Indian Preference, NADC.

⁵⁵ Equal Employment Opportunity Act of 1972, Public Law 92–261, *U.S. Statutes at Large* 86 (1972): 103–13; American Indian Press Association, News Service, Preference-SP282 Records of the Office of the Commissioner Louis R. Bruce, 1969–72, box 1, folder: American Indian Press Association, News Service, NADC.

⁵⁶ Monroe E. Price and Robert N. Clinton, *Law and the American Indian: Readings, Notes, and Cases* (Charlottesville, VA: Michie Company, 1983), 56; Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, vol. 2 (Lincoln: University of Nebraska Press, 1984), 1124; “Judges Accept Class Suit on Indian Preferences,” *New York Times*, October 23, 1972.

⁵⁷ Indian Reorganization Act of 1934, Public Law 73–383, *U.S. Statutes at Large* 48 (1934): 986.

⁵⁸ “Judges Accept Class Suit on Indian Preferences.”

⁵⁹ *Morton v. Mancari*, 417 U.S. 535, 540 (1974); Prucha, *The Great Father*, 1125.

⁶⁰ Paul Delaney, "Minority Hiring Said to Hurt Some: Rights Panel Finds Indians Have Been Shortchanged," *New York Times*, November 17, 1972.

⁶¹ Senate Committee on Post Office and Civil Service, *Effects of Indian Preference on Employees of Indian Agencies: Hearings before the Subcommittee on the Committee on Post Office and Civil Service on S. 509 and S. 771*, 94th Cong., 1st Sess. June 18 and 19, 1975, 35.

⁶² *Ibid.*, 36.

⁶³ *Ibid.*, 37.

⁶⁴ *Ibid.*

⁶⁵ *Morton v. Mancari*, 541–42.

⁶⁶ *Morton v. Mancari*, 553–54. For further discussion on the Indian preference policy, consult: Karl A. Funke, "Educational Assistance and Employment Preference: Who Is an Indian?" *American Indian Law Review* 4 (1976): 1–45; Kevin N. Anderson, "Indian Employment Preference: Legal Foundations and Limitations," *Tulsa Law Journal* 15 (1979–80): 733–71.

⁶⁷ Indian Self-Determination Act of 1975, Public Law 93–638, *U.S. Statutes at Large* 88 (1975): 2203–17.

⁶⁸ Prucha, *The Great Father*, 1126.

⁶⁹ *Report on Urban and Rural Non-Reservation Indians: Final Report to the American Indian Policy Review Commission* (Washington, D.C.: Government Printing Office, 1976), 113.

⁷⁰ U.S. Department of Commerce, Bureau of Census, *1980 Census of Population*, vol. 1, chap. 3, part 7, table 130; table 140.

⁷¹ *Gratz v. Bollinger*, 539 U.S. 982 (2003),

http://www.supremecourt.gov/oral_arguments/argument_transcripts/02-516.pdf (accessed on September 29, 2010); *Grutter v. Bollinger*, 539 U.S. 306 (2003),

http://www.supremecourt.gov/oral_arguments/argument_transcripts/02-241.pdf (accessed on September 29, 2010).