11-9-1982

Legal Issues in Affirmative Action - Problems Affecting Women

Assembly Select Committee on Fair Employment Practices

Assembly Committee on Judiciary

ASSEMBLY SELECT COMMITTEE ON FAIR EMPLOYMENT PRACTICES

AND

ASSEMBLY COMMITTEE ON JUDICIARY

LEGAL ISSUES IN AFFIRMATIVE ACTION - PROBLEMS AFFECTING WOMEN

Hearing of November 9, 1982

Los Angeles City Hall
Room 250-B
200 North Spring Street
Los Angeles, California

Members of the Committee

Elihu M. Harris, Chairman
Charles Imbrecht, Vice Chairman

Leo Youngblood, Consultant
Richard Alatorre
Gerald N. Felando
Richard E. Floyd
Patrick J. Nolan
Sally Tanner

Rubin R. Lopez, Chief Counsel
Ray LeBov, Counsel
Howard Berman
Gary Hart
Walter Ingalls
William Leonard
Alister McAlister
Jean Moorhead
Richard Robinson
Dave Stirling
Larry Stirling
Art Torres
Maxine Waters
Phillip Wyman

TABLE OF CONTENTS

Testimony taken on November 9, 1983

83-3-208

ASSEMBLY SELECT COMMITTEE ON FAIR EMPLOYMENT PRACTICES

AND

ASSEMBLY JUDICIARY COMMITTEE

Los Angeles, California

November 9, 1982

CHAIRMAN ELIHU HARRIS: With the rain and other kinds of delays, I don't know when the other members are going to be here. But I think the best thing, in the interest of everyone else's time, is to begin. I'd like to begin with my opening statement, and then we'll proceed with witnesses.

Today, the Assembly Select Committee on Fair Employment Practices, and the Assembly Judiciary Committee are holding a joint interim hearing on legal issues on affirmative action problems affecting women.

Our purpose today, is to examine some of the problems confronted by women in employment. We will examine the areas of recruitment, hiring, mobility, the grievance procedures, and the emerging issue of collective bargaining. The committees are also very interested in examining the issue of ethnic women, and the progress they have made in equalizing their representation in the labor force.

Women make up 38.1 percent of the entire civilian work force in California, or 2.9 million jobs. Of that number, Black women account for only 223,780 of the jobs, and Hispanic women 383,624 jobs, all other non-whites represent 119,882 jobs. However, nearly 70 percent of those jobs are in clerical positions, which are

traditionally paid less.

The ultimate goal of the hearing is to focus on solutions to those problems that result in the under-utilization of women in many job classifications.

We've assembled an impressive group of witnesses: personnel administrators, private attorneys, advocate groups, and other experts familiar with the issue of sex discrimination. For those of you who have an agenda, we will be moving around that agenda in order to accommodate witnesses with travel plans or other business obligations. I would like to begin with Mr. Charles Walter, the Assistant Executive Officer of the State Personnel Board. Mr. Walter, if you would come forward I would appreciate it. Good morning, Mr. Walter, how are you?

MR. CHARLES WALTER: Good morning, Mr. Chairman, my name is Charles Walter, I am Assistant Executive Officer of the State Personnel Board. We appreciate the opportunity to present our views regarding affirmative action and the problems affecting women. With me is Laurie Hara who is the manager of the Personnel Board's Women's Program Unit, who will speak in more detail regarding the priorities and activities of that unit.

The Personnel Board is keenly aware of the discrimination that has characterized the status of women in employment in our society. We are aware of the stereotypes that have prevented women from having access to rewarding employment, the barriers in terms of excessive or irrelevant job requirements, the lack of opportunities to promote the decision of responsibility and satisfaction, and the inequitable compensation accorded to women.

In the State Civil Service system, the Personnel Board has made affirmative action and the achievement of a work force representative at all levels by ethnicity, sex, and disability its highest priority. Finding solutions to the problems facing women is a key element of that commitment. Since the establishment of the Women's Program Unit in the Public Employment and the Affirmative Action Division of the State Personnel Board, we've undertaken a variety of initiatives to improve the situation of women in the work force, including the creation of bridging classes to provide access to technical administrative jobs for women in clerical work; creating classes at higher pay levels to recognize the complexity and responsibility of the work done by women; the establishment of active liaison with women's groups; support and encouragement to departmental women's program officers in creating access for women to non-traditional jobs.

An example of the sequence and variety of changes undertaken to improve the representation of women is in the administrative category. This category includes management services technicians, staff services analyst, administrative assistants, social analyst, and constitutes over 8700 jobs in the State Civil Service. In 1974 there were approximately 545 of these positions occupied by women. In 1982 these women occupied approximately 5000 positions in this category. An increase that is almost tenfold.

One avenue of attack to improve representation in the administrative category was to eliminate artificial barriers to employment, promotion, and upward mobility of women. Specifically in recognition of the imbalance in representation of women among

the lowest paid occupations the Personnel Board developed bridging classifications. For example, management services technicians, designed to bridge the gap between low paying clerical occupations to professional administrative type positions; in this case the staff services analyst series. Second, modifications to the staff services career series were made, such as the establishing of a deep class to consolidate several classifications, eliminating unnecessary tests which reduce the number of examinations necessary for promotion. Revising minimum qualifications to recognize experience in lieu of education, thus, substantially increasing the pool of women from which state service could draw upon.

In addition, there is an intensive recruitment effort to attract women competitors into the examination for staff services analyst. The result has been a substantial increase in representation of women in the job category. While the increase in the representation of women in this category has been most dramatic, there has been an increase in representation of women in 17 or 19 categories of jobs that were used for comparison in both 1974 and 1982. It is also significant to note that over 53 percent of promotional appointments to nonclerical classes during the last fiscal year were achieved by women, despite the fact that they represent only 44 percent of all full-time career civil service employees.

A very significant statistic in assessing the result of affirmative action for women, is a steady increase in representation of women in nonclerical positions. In 1974, it was 19.7 percent; in 1982, it is 31.2 percent.

Despite these improvements in representation of women in

State Civil Service, significant problems remain and must be addressed. Women are not fully represented in many categories in employment. The average pay for all women in State Civil Service lags behind that of men by 29 percent, and the disparity is even greater for minority women. These pay lags reflect the disparate treatment in pay that predominately female classes have received, that can be ameliorated by means of implementing comparable worth concepts.

The Legislature and the Administration should give serious consideration to the appropriation of funds for that purpose. Increases in representation of women in law enforcement, crafts and trades, and fire fighting continue to be difficult. Creating an environment that is free of sex discrimination and sexual harassment requires continuing and intensive efforts. The Personnel Board intends to pursue diligently and assertively the achievement of solutions to these serious problem areas.

Another area of concern that affects all protected groups, including women, is the effectiveness of the discrimination complaint appeal process. Under the existing process, persons who believe they've been discriminated against must file their complaints through the departmental complaint process. If the complainant believes that the department director's decision is not correct, he/she may appeal to the State Personnel Board. During the past two years, the Personnel Board has decided 39 cases of alleged discrimination. Of these 39 cases of alleged discrimination, the Board has found discrimination in 23 cases, approximately 60 percent, and ordered appropriate remedies. In the 13 cases involving sex discrimination or sexual harassment, discrimination was found in eight cases.

As a result of comments from persons outside the Board and from the members of the Personnel Board staff, the Appeals Division of the Personnel Board has established a priority to complete an evaluation of the current discrimination complaint process, and assess the pros and cons of alternative processes during the current fiscal year. During this month the initial meeting with employee groups will take place for that purpose.

That completes my statement. Ms. Hara also has a statement.

CHAIRMAN HARRIS: Welcome. After I hear your statement, I may have questions for both of you.

MS. LAURIE HARA: Mr. Chairman, my name is Laurie Hara, and I'm the manager of the State Women's Program Unit of the State Personnel Board. My presentation will speak to the State Women's Program analysis, and the employment problems faced by women in state service, and the direction and activities we have taken to address those problems.

I would like to clarify that there have been many areas wherein significant progress has been made regarding women's concerns in state employment. However, in addressing the concerns of this committee, I have been asked to focus on the major problem areas we see at this time.

As for some background, the State Women's Program was established in 1975 within the State Personnel Board's Affirmative Action Division, in recognition of unique problems women encounter in access to, and advancement in State Civil Service employment. The structure of the State Women's Program includes departmental

women's program officers, The Women's Program Unit of the State Personnel Board, and The State Women's Program Advisory Committee.

CHAIRMAN HARRIS: Is there in each department a women's program officer?

MS. HARA: In most departments.

CHAIRMAN HARRIS: But not in all?

MS. HARA: It is not legislatively mandated, as our affirmative action is.

CHAIRMAN HARRIS: So, it is just a matter of whether or not that department head includes that in his/her budget?

MS. HARA: Correct.

CHAIRMAN HARRIS: All right.

MS. HARA: The women's program officers are responsible for advising departmental management of issues relating to representation and upward mobility of women within the department. The state program focuses on issues of statewide concerns such as: policies, service wide classification changes, and on targeting major problem areas, and on providing technical assistance to departmental women's program officers.

In order to ensure that the policies, program targets, and strategies that we identify are indeed priorities, the program established an Advisory Committee which currently meets on a bimonthly basis. In structuring the committee, consideration was given to ensure input from minority and disabled women, and persons with

substantial affirmative action implementation experience.

With the Advisory Committees' concurrence we have set up program direction which has as its priorities: 1) the severe under-representation of women in job categories of trades and crafts, law enforcement, an administrative line which includes career executives and other senior civil servants; 2) comparable worth; 3) discrimination; and 4) the special concerns of minority and disabled women.

In addition, we have recognized that problems continue to exist with regard to representation of women in scientific and engineering areas, mobility options from dead-end jobs, day care, and the problems of older and reentry women.

In recognition of resource limitations, priorities were established based on perceptions of the severity of problems and the potential for greatest impact. As a result, our activities in these lighter areas are limited to review and input on policies and proposals generated from outside of the program.

In the priority areas identified, we've been working on identifying problem areas and finding solutions. In the area of trades and crafts, for example, there are a number of problems which result in the significant under-representation of women. Some of these include: 1) minimum qualifications which frequently require journey level experience and have very few apprenticeships; 2) also, there's not a large recruitment pool of women with substantial years of experience; 3) until last year, recruitment efforts focusing on women were very limited; 4) some examinations have been validated, but there never have been enough female competitors to statistically assess the disparate impact; 5) veteran preference applies on most entry level examinations; and 6) the large number of specialized

classes, vocational testing and hiring, and the number of appointing powers involved make monitoring and patrolling difficult.

At the present time we're reviewing the classification structure to eliminate needless barriers existent in the classification structure. Further, we are exploring sub-entry; apprenticeship; career opportunity development, or other entry options which could be employed to better facilitate the employment of women.

In the area of recruitment, the first trade examinations that were conducted this year was for carpentry. Currently there's only one woman in the class, and historically few women have applied for the examination. In the previous exam, only one woman had applied. In this most recent exam, we had 25 female applicants and 16 successfully appeared on the list.

The major recruitment effort focused on the tradeswomen groups throughout California, as well as women support groups which proved receptive and helpful. In follow up with these groups as to why more women did not apply, the main reason stated was a concern about the actual opportunity for appointment within state government. Through continued involvement with these groups, we anticipate a greater participation rate in future examinations.

Other exams in the trades area have included painter, plumber, electrician, and a number of automotive classes. The statistics for these classes are similar to carpentry, in that some gains have been made, but they're very slight. More positive input and assistance from departments would help. Departments are mainly concerned that individually they have very few positions, so it's not worth the effort to generate a major recruitment effort.

One other approach we've used is to tap the public information records of the Division of Apprenticeship Standards, to identify individuals who might have an interest in state government. Probably the greatest achievement thus far, has been with the establishment of contact with tradeswomen's groups. Our major concern in that area is maintaining credibility with the groups. For their participation we need to reciprocate in hires, however, we still have the obstacle of veterans preference. The prior efforts of the State Personnel Board to address veterans preference through legislative action has not been successful.

CHAIRMAN HARRIS: Give me some idea of what was the Personnel Board's position. To wipe it out? To modify it? What was the position?

MR. WALTER: Basically, we were in favor of fundamentally eliminating veterans preference. But, we were also amenable to modifying it, either in time or to certain kinds of classes, that sort of thing to minimize the effect.

CHAIRMAN HARRIS: Is there any statistics that would indicate what effect veterans preference has in terms of hiring men over women, or veterans over non-veterans?

MS. HARA: All of the staff work that we had we provided to the committee staff, which gave some specific examples as to which area there was a distinct impact. At this point we're looking at about 90 percent of the persons receiving veterans preference, are men.

In the area of law enforcement, minimum qualifications are generally not an issue as they are in trades and crafts. Recruitment and physical standards have been our primary issue of concern. A major ongoing recruitment effort has been directed towards the state traffic officer cadet female. During 1979, 1980, and 1981, there were 681, 554, and 740 applications accepted respectively for each of those years. Through January to June of 1982, there were 3,557 applications received from women. The major difference for this increase is attributed to a change in the exam testing cycle, from periodic testing to continuous testing.

There are several recruitment strategies also, that are used to enhance the number of applications received from women. Extensive advertising was in newspapers, radios and television, the California Highway Patrol recruiters extensively visited college campuses, job fairs, shopping malls, and general outreach to women. The use of female traffic officer recruiters, has also been extremely successful in attracting female candidates.

The other major successful area is with correctional officer, which has had ongoing focused recruitment efforts, and has utilized the sub-entry classification of correctional officer trainee. This class recruits for eligibles from the Career Opportunity Development Program, which focuses on the disadvantaged of whom many are women.

Other successful recruitment efforts in the law enforcement area have been for state police officer cadet, correctional counselor, and parole agent; we are currently testing for an investigator assistant. The primary focus for these classifications have been

with women's groups on campuses, as well as students in law enforcement programs.

In terms of physical standards, we have been working closely with the Board's Test Validation and Construction Unit and departments, to insure standards are based on job relatedness and business necessity, and have the minimum amount of disparate impact. We have reviewed correctional officer entry standards, CHP maintenance standards, and most recently the developing standards for fire suppression classes.

Our major under-represented job category is administrative line, which encompasses top administrative positions such as career executive assignments. Our findings thus far seem to indicate that while there is a degree of discretion involved with the examination and selection process, such as weighing the value of experience and education, there is often a lack of consciousness of the impact of individual hires. In CHP, or Corrections where hundreds of officers are hired yearly, the impact is clear. Managerial hires are made on a position by position basis, so the impact is less evident as the hires are made. We currently are identifying the availability of women for top managerial positions, in order to determine whether the current rate of progress is reasonable, as well as to provide departments and a changing administration with relevant information in this regard.

On an ongoing basis we review all classification actions, establishing or changing positions in order to examine adverse impact on women, as well as to maximize opportunity for subsequent recruitment efforts.

CHAIRMAN HARRIS: Ms. Hara, may I interrupt one moment? Would you do me a favor? Since you have this in written form, we are going to have the whole statement included in the transcript of the hearing. If you could give me a synopsis, because I want to ask some questions. I think if you could just summarize these reports that you want to emphasize out of your statement, I think that would help me more.

MS. HARA: Essentially, we are monitoring the changes in classifications in the administrative hiring area. In comparable worth, basically we have discovered that there are a couple of areas where the State Personnel Board does have authority versus the Department of Personnel Administration, and that is in the area of transferring from one classification to another. In training and development assignments we currently have salary based criteria, which says if you're within a certain salary you can transfer. We feel there is distinctly a correlation between that limitation and the comparable worth concept, so we're looking at establishing new criteria other than salary based criteria over the next year.

In addition we're looking at clerical-management positions. In other words, in the third and fourth line clerical supervisory level, what kind of mobility options are there? And are positions at this level, indeed, managerial? And should they have mobility options to other top managerial positions?

In the area of discrimination we've recently completed an Inter-governmental Personnel Act grant, which provided for the implementation of a sexual harassment policy statewide. What we've done so far is that we've had all departments in state service

develop policies on sexual harassment. We've been assisting departments in developing training, and ensured that information was disseminated throughout departments to make available in orientation type packages. We are currently reviewing the training provided to EEO investigators and counselors, to ensure that they understand the issue and are able to provide assistance to people who come to them with complaints.

Our other area is the concerns of minority and disabled women. Over the last year we made a change to the way the state sets its goals for affirmative action. What that is, is in the past affirmative action goals were set for minority groups, and goals were set for women. There was a distinct feeling on the part particularly of minority women that they are often forgotten in that process. This year we asked that departments assess their representation on the basis of sex within ethnicity, and that they establish goals based on the under-representation by sex within ethnicity; so goals are now set for Hispanic women, for Black women, Filipinos, and others.

CHAIRMAN HARRIS: When will those goals be set?

MS. HARA: They were set for the '82-'83 year.

CHAIRMAN HARRIS: They've already been set? Okay.

MS. HARA: In addition, the State Personnel Board has instituted sanction procedures, wherein we provide for supplemental certification. I believe that area was covered before in earlier hearings. But supplemental certification allows us to provide in addition to the certification of eligibles, a supplemented list of those groups not represented in the top group of eligibles. When that

approach has been used it has affected the representation of women and we have seen significant increases, although there have been limitations in the sense that the number of hires made have not been substantial. This has had some impact on the areas that in the past have used veterans preference. The supplemental certification has allowed us to supplement the eligible list with women who otherwise would have been below the hiring levels with the veterans preference. In the area of biologists, for example, the increase was from one percent up to now 11 percent.

Essentially, that's the substance of the presentation.

CHAIRMAN HARRIS: Let me ask a few questions. I'm interested in this supplemental certification. Could you explain that? Either one.

MR. WALTER: When there are problems of severe and persistent under-representation, the Personnel Board identifies the classes and the departments that have those characteristics. The Personnel Board holds a hearing in which those problems are explored, and if it feels that it's necessary to make progress in terms of improving the representation, they order that supplemental certification be applied. What that is, is in addition to the norm, when a department has a vacancy they ask for certification of names of people eligible for appointment. In addition to those persons ordinarily certified, that list is augmented by persons from under-represented groups, be it women, Blacks, Hispanics, whatever. And from that pool the department alerts all of those people who are certified with the department, that they are then eligible for appointment. The department still has the authority to make the

selection for the appointment.

CHAIRMAN HARRIS: One of the things we are always concerned about is that the State Personnel Board is obviously the centerpiece for dealing with the issue of discrimination in public employment for state employees. Are the problems that are confronted in terms of discrimination, and affirmative action, and all the rest, correctable simply through administrative action or is there any legislation that you need in order to have the tools to deal with the problem? I know you mentioned veterans preference, are there any other examples of legislative remedies that may be required or advisable?

MR. WALTER: One thing that occurred to me, for example, is perhaps institutionalizing through legislation women's program officers in departments, giving more status to them.

CHAIRMAN HARRIS: Any others which come to mind? What about the sanctions? The sanctions, even though you mentioned they had been used, I know they've been used very sparingly and I understand when they have been used, they've been somewhat effective. But is there a reason, or is there anything to indicate that legislating some sanctions would have more effect or should in fact be considered?

MR. WALTER: Well, we believe we have the authority to undertake the type of sanctions we've done up to this point, and we think they are effective. Certainly, if it proves over time that the kind of actions we are able to take under existing law are not generating sufficient progress, we'd certainly be proposing

changes to the Legislature.

CHAIRMAN HARRIS: One other thing in terms of legislation. In terms of particularly minority women, whether it's the recruitment of minority women or upward mobility for minority women, I'm wondering, Ms. Hara, is there any indication that the effort to increase those numbers could be, again, institutionalized? You mentioned the idea of having women program officers in each department mandated through the Legislature. I guess what I'm really trying to get to is whether or not anything could be done to further improve the situation of the plight of minority women in state employment? I know that we have received a lot of documentation, particularly, as it relates to Hispanic women, and Black women who seem to have been victimized in terms of upward mobility and recruitment overall. They seem to all be kept concentrating on the lowest classification. What kind of things are indicated? What kind of things do you consider?

MS. HARA: I think one of the things that happened is that we have seen a significant increase in our minority women over the last eight years. In fact, the statistics we had were that in 1974, minority women constituted 7.6 percent of the work force. At this point in time, they constitute 14.5 percent of the work force. One of the problems is that a lot of the entry has been at the lowest level occupations. I'm not too sure in terms of legislatively what could be done to increase it. One of the problems we have is with the priority which upward mobility training receives within the departments, and within the state's current fiscal structure. We've

seen some significant reductions in training budgets.

CHAIRMAN HARRIS: Have you or has the State Personnel Board considered rather than reversing the veterans preference, perhaps giving preference to disadvantaged women who are particularly under-represented in certain classifications, i.e., Fish and Game Department and other kinds of things? Just based on some sense of trying to achieve some degree of parity, just based on historical discrimination, or other kinds of factual information to indicate this problem.

MR. WALTER: Our response has been in terms of supplemental certification. I'm not aware of any proposals for, say, additional points or something of that sort.

CHAIRMAN HARRIS: You think that supplemental certification will work, and that in fact will provide the opportunity necessary to achieve some parity for those groups?

MR. WALTER: We believe that along with some intensive effort in terms of the classification plan, and vigorous recruiting and training, those together will work.

MS. HARA: For example, in the area of junior civil engineers, the state hires quite a number of junior civil engineers. At this point in time, we make job offers to everybody on the list so supplementing the minorities, or women on that list really doesn't do anything in terms of speeding up the number of female hires. We need a greater candidate list.

CHAIRMAN HARRIS: Well, does the State Personnel Board need any working definition for disadvantaged women? Or minority women?

MR. WALTER: The categories that are identified in the sense--in terms of ethnic categories, our definition would be minority women and beyond that, I don't know. In the Career Opportunities Program, of course, there are those who would be welfare eligible, for example. That type of thing.

CHAIRMAN HARRIS: Okay. So, socioeconomic would be another factor for you to look for? A couple more questions. One, how much staff does the state have that is specifically concerned about opportunities for women and employment? Are you the only person working in that area for example, from the State Personnel Board, or is there anybody else? What's happening?

MS. HARA: Actually, we've got about two and a half staff, at this point.

CHAIRMAN HARRIS: Okay.

MR. WALTER: That's direct. There are, of course,...

CHAIRMAN HARRIS: ...Other people who are working...

MR. WALTER: ...Working on components of projects and what have you, throughout the Board...

CHAIRMAN HARRIS: So, they can get to this thing as a coordinating point for not only the State Personnel Board, but for

other departments--the women's program that exist within the other departments? How many of the 75 departments have women's program offices?

MS. HARA: Oh, there are more than that. I think we go by a list of about 100 departments.

CHAIRMAN HARRIS: Oh, you have a hundred? Oh, I saw some statistics here that indicated 75.

MR. WALTER: Well, when you get beyond about 60, they're awfully small organizations. But, in any event...

MS. HARA: In any event, we have roughly about 80, and many of whom are part-time...

CHAIRMAN HARRIS: Yes. People who basically just are assigned the responsibility along with their other...

MS. HARA: In addition to their other responsibilities.

CHAIRMAN HARRIS: I see. I see. Now, what kind of co-ordinated activities exist for those women? Are there reports that they file with you or do they each do their own thing? I mean, is there any kind of standardization in terms of women's programs throughout the State Civil Service?

MS. HARA: Not particularly. We set basic goals that we work together on, but in effect, they operate relatively independently in terms of choice of--we have monthly meetings with all of the women's program officers.

CHAIRMAN HARRIS: I see. You pointed out that all of the departments developed their own guidelines for the women's program and implementation of affirmative action...

MS. HARA: Well, the State Personnel Board issues guidelines, which are strictly that, as to what kinds of areas a women's program might focus on. Obviously, the needs of various departments are quite different. But even a women's program officer for the Department of CalTrans--CalTrans has one of the most substantial women's programs we've got...

CHAIRMAN HARRIS: For the most part, those programs developed by the departments are voluntary, is that what I'm hearing?

MS. HARA: Correct.

CHAIRMAN HARRIS: One--I guess one last question. What about the--is there any--tell me about the sanctions. What sanctions, in fact, have you used and to what effect?

MR. WALTER: Well, we have applied supplemental certification, we've got the sanction hearings for the Departments of Forestry, Fish and Game, Parks and Recreation, a number of classes in those departments have been subject to supplemental certification. In addition, certain staff services classes have been identified for supplemental certification.

CHAIRMAN HARRIS: But the sanctions basically haven't been budgetary?

MR. WALTER: No. That's correct, that's correct. The

sanctions also include requiring the department to set specific plans, with respect to affirmative action goals in the target class; requiring them to train supervisors and managers, with respect to affirmative action; requiring them to have a more intensive affirmative action program in the department, and the most fundamental part of it is the supplemental certification part.

CHAIRMAN HARRIS: I see. I appreciate very much your testimony, and we may be asking you further questions. Do you have anything else you wanted to add? Okay, thank you very much.

The next witness will be the Secretary of the State and Consumer Services Agency, Ms. Alice Lytle. Good morning. How are you doing?

MS. ALICE LYTLE: Good morning. I apologize...I apologize for being late.

CHAIRMAN HARRIS: I'm just glad you're here.

MS. LYTLE: Me too. I'm just glad to be off that airplane, I'll tell you that.

CHAIRMAN HARRIS: That, I understand. We could have arranged better weather for you, but...

MS. LYTLE: I meant to call ahead. (Laughter). My name is Alice Lytle, I'm Secretary of the State and Consumer Services Agency. Within State and Consumer Services, among other departments, I have the Department of Fair Employment and Housing which has jurisdiction over complaints of discrimination in private employment, housing and public accommodations, and the Ross Civil Rights Act

as well as the Unruh Civil Rights Act. I also have within State and Consumer Services Agency, the State Personnel Board.

As with a number of entities within State and Consumer Services, the State Personnel Board, while it is organizationally located within my agency and is subject to some extent to management directives from my agency. It is a separate constitutional entity, with a separate constitutional statutory mandate.

Before I launch into a discussion of the problems confronting women in public employment in California, I think it would be useful to just briefly reiterate the philosophical and legal rationale behind the whole concept of equal employment opportunity and affirmative action, because without that perspective sometimes confusion reigns, with respect to particular programs designed to advance those two causes.

Clearly, equal employment opportunity is the most simple of the two concepts. The concept is, of course, to eliminate those obstacles and barriers to full and equal opportunity for women. The affirmative action concept is just a wee bit more complicated, and certainly more controversial. People who would go to war to support equal employment opportunity, would go to war to fight against affirmative action opportunity. I think one of the problems is that people haven't thought out what the philosophical rationale is.

Clearly, for the better part of several centuries, women have not been allowed to participate fully in all aspects of human endeavor and life. In the labor force in the United States of America we have a competitive economy. That results in what many of our economists call a "zero-sum gain." If one person secures em-

ployment of necessity, another person or persons do not. We have never had, with the possible exception of a few war time economies, and with the exception of slavery, we have never had a full employment economy.

It is a mathematical certainty, therefore, that the competitive pool of people who were able to compete for jobs is quantitatively smaller because of the exclusion from that labor pool of large, indeed, huge numbers of women. Consequently, the persons who are privileged to be within that pool enjoy just that, a privilege. And, the efforts of affirmative action mechanisms are, to not create what people choose to call "reverse discrimination," but to eliminate the privilege that the persons within that blessed pool, the labor market, had been able to enjoy.

Having said that, I'd like to describe, then, the difference between the mandate of the Department of Fair Employment and Housing, and the State Personnel Board. For a number of years, the DFEH, if I may use that shorthand, exercised jurisdiction not only over private employment but over public employment.

In about the year 1978, the exercise of that authority was challenged, and the matter ended up in court with the State Personnel Board maintaining, among other things, that it had a constitutional mandate over state employment, and therefore, complaints of discrimination lodged by state workers could only be handled by the State Personnel Board. The Department of Fair Employment and Housing is presently under a court order not to accept cases of discrimination from state workers.

CHAIRMAN HARRIS: Is that case under appeal, or isn't it?

MS. LYTLE: That matter is going up through the courts now. It's on appeal.

Now, when I became Secretary, I decided that since the matter was under litigation I would not exercise any administrative authority, with respect to the exercise of State Personnel Board jurisdiction over those types of complaints.

However, it is clear that there needs to be a very consistent interpretation and application of applicable state law, that is the Fair Employment Practices Act, by both agencies. And, in response to a question you asked the preceding witness, I would suggest that this committee or some other look into the administrative application of the California Fair Employment Practices Act by the State Personnel Board. Because, it goes without saying, that it is absolutely essential that the law that the DFEH applies to private employers be the same law that the State Personnel Board applies to matters of discrimination by state workers.

Now, of course, the philosophical and legal underpinnings of equal employment opportunity and affirmative action make it very clear that any attempt to improve the opportunities, and the treatment of women in state government must be institutionalized. It is simply not enough that we pass laws, we have had numerous protective laws on the books for quite some time. It is simply not enough that we provide a department like the State Personnel Board with an administrative mandate. It is absolutely imperative that we look beyond the relatively simple task, believe it or not, of bringing more women into state government beyond the traditional classifications that women had been employed in. I call this a relatively simple matter, because compared to the task of institutionalizing

the changes necessary to give women equal opportunity, the task of bringing in more women is relatively easy.

Bureaucracies do not change fast, and they do not change easily. But, to the extent, this administration of Governor Edmund G. Brown, Jr. has left a legacy. It is, by and large, a legacy of institutionalized changes complemented by appropriate statutory changes, most particularly, a law that you, Assemblyman Harris, authored. And, that is the law that was designed to protect the affirmative action gains of people during the event of a layoff.

Now, in approaching the problem of applying the law in private and public employment, and in institutionalizing these changes it is critical that we understand that the problem is of such long standing and has proved so intransigent, and the people who run our bureaucracies are so resistant to the kinds of changes this committee is concerned with, it is critically important that we make certain we utilize as many different approaches in solving the problem as humanly possible.

To the extent, we focus on only one approach to the problem. We have limited gains, to be sure, but we could have far more gains if we took into account the other resources which we have at our disposal. For example, clearly the previous discussion of sanctions embodied an approach that one could characterize as punitive, and with respect to certain departments, particularly departments that have been guilty of the grievous conduct over the years or an absolute outrageous failure to make even minimal changes in their bureaucracies, a punitive or sanction approach is in order.

Moreover, the added benefit of an approach like that, particularly, with respect to departments whose records are absolutely

outrageous, one can establish good legal and administrative precedents for the use of a tool, for example, such as supplemental certification. I submit to you, however, that in addition to that approach, with respect to some departments and some department heads, particularly, with respect to independent constitutional agencies; you might find that a more assistive, if you will, or cooperative approach is a better approach. Particularly, when you're dealing with an officer or an office that has a separate constitutional mandate, and that can for all practical purposes tell you to go take a flying leap.

I further would add, that we have entities within and without state government who have responsibilities, either statutory or nonstatutory, in this area. I speak now, in particular, with respect to the unions. We have a collective bargaining law in this State. We have given our public unions a great deal of power with respect to their dealings with the State of California, now with that power comes a great deal of responsibility. I would suggest further, and I'd be happy to work with this committee on this, that mechanisms be devised for encouraging these unions to exercise their responsibilities in the area of equal employment and affirmative action.

I speak now, not just of their activities with regard to their rank and file membership and particularly their female members, I also speak with regard to their in-house management staff. I'm not terribly pleased with the representation on the staffs of many of our worker organizations. Although, at least one of them, and probably a number have very good records in this area.

I think that it's critical that the State Personnel Board, and other state regulatory entities exercise a very close and

effective liasion with worker advocacy groups that are not unions. I speak now, in particular, of the women advocacy groups, and the minority advocacy groups, and the disabled.

It is critical, however, when we utilize all these approaches, that we set our priorities carefully. I, quite frankly, have more than once been concerned about the expenditure of large amounts of time and energy on what I consider to be relatively unimportant changes within the system. To the extent we focus on minutiae, we take our time and energy away from the question of institutionalizing the changes that have to survive, for example, the Administration of Governor Edmund G. Brown, Jr. And, if he goes out of office and sees his programs dismantled, we have done him a very, very great disservice.

I would suggest that we focus on programs and not personalities, to the extend we can do that, sometimes you have to focus on personalities, particularly when they're being incredibly obstructive.

I feel it's critical that we note the constraints of institutionalizing the programs we need to institutionalize to make changes in our bureaucracies, and it takes no two-year study to know that one of the gigantic constraints are fiscal. When I was Chief of what was then the Division of Fair Employment Practices, and the Department of Industrial Relations, that division had a total budget of approximately $1.5 million. It was just a very bad joke on the minorities and women and disabled of the State of California. That department now has an annual budget of $10.8 million.

CHAIRMAN HARRIS: How much?

MS. LYTLE: Ten point eight million dollars. Clearly, a substantial increase, but equally clearly not enough money to pursue its mandate which is to eliminate discrimination in employment in the State of California.

CHAIRMAN HARRIS: Let me ask a question right here.

MS. LYTLE: Certainly.

CHAIRMAN HARRIS: If we, for some reason, are unable to get more money because of budgetary constraints, is there any or do you have any suggestions as to whether or not either the mandate ought to be narrowed, or that there ought to be some changes in terms of the access? In other words, perhaps more diversion of certain cases or something. Is there a prioritize of the resources that we do have available so it could be better utilized?

MS. LYTLE: I'd be very, very resistent to any attempt to narrow the mandate or to engage in too much of a task of setting priorities, because we have, for example, in the Fair Employment Practices Act ten protective groups. And, there is always the danger that you'll provide more resources for one group than the other, and that would be a terrible mistake. Moreover, there are ideas being studied in the department, and the department will probably tell you about some of these things that would enable them to pursue their mandates, perhaps, in a more innovative and creative fashion that would, without narrowing the protective legislation, provide them with a greater and more comprehensive use of their resources.

CHAIRMAN HARRIS: Is the legislative mandate specific

enough so that the department will function appropriately and aggressively, regardless, of the administration in power? Or, is it subject to a lot of political whim? Or, are there other things that can be done to make sure that, regardless of who's running the "Ship of State", that at least in this area we can be assured of some degree of consistency in terms of application of the law?

MS. LYTLE: There's no way to draw a statute that would render the department invulnerable to the kinds of political challenges you're describing. The protection that the department needs against that sort of thing will not come from a statute book; it will come from our Legislature; it will come from a constituency group; it will come from an advocacy group; perhaps, from some of the unions, but you can't draw a code that would protect it from a defunding attack.

CHAIRMAN HARRIS: Got it; all right.

MS. LYTLE: Another constraint is just the scope of the jurisdictional mandate. This isn't as much of a problem in the employment area as it is in others. But, clearly, there are aspects of the law that could use some refinements. There are aspects, in particular, of the procedures that are created by statutes that the department would like to change. Although, these changes don't go to the substantive protections of law, procedures are of course of critical importance in how effectively you implement the law or protect people. And, let's face it, another constraint is the kind of infighting that goes on too frequently among the protective groups, and I'm not sure that it would be sensible for me to say, "We ought to stop doing that."

I think human beings are human beings, and they'll always do this. But I do think that we must be very careful that the policies of company executives, the policies that filter down through the Legislature do not promote this kind of infighting; that we do not allow ourselves to be manipulated in such as way that we expend inordinate amounts of time and energy trying to narrow the protection given to some group in the hope that we will, therefore, widen the protection that some other group gets.

Another constraint, which is in part fiscal, is the problem of generation of litigation every time you institute an administrative mechanism for protecting women or minorities or the disabled. This is also related to the question you just asked, Mr. Assemblyman, and that is; activities on the part of an administration that might weaken the mandate of the department to the extent you expose yourself to litigation, you risk making very good law. For example, I feel that in a way litigation is welcome because you might institutionalize in our legal system a concept like supplemental certification, but you also expose yourself to the risk that the mechanism may be successfully challenged, and you've lost a very important tool to use. Moreover, this question of litigation is also related to fiscal constraints. Even if you use the Attorney General, you have to pay their lawyers. And, ocassionally, if you have an attorney general who is not particularly sympathetic to what it is a particular department is doing, you may find that the Attorney General's office will not represent you in a particular case, and you have to spend even more money going outside to hire an attorney, a private attorney, outside the state system; and these things cost money.

MR. LEO YOUNGBLOOD: Do you think there should be some aware of attorney fees in those cases where the litigate is successful?

MS. LYTLE: One of the proposed legislative strategies that the Department of Fair Employment is exploring, is the possibility of securing attorneys' fees and costs for the department when it is successful.

MR. YOUNGBLOOD: You mentioned earlier, concerning the lawsuit with the State Personnel Board, and the Department of Fair Employment and Housing. Do you feel that the State Personnel Board has a conflict of interest in this area, handling complaints from public employees or state employees?

MS. LYTLE: Clearly, one could say that a constraint operating on a fact finder, is that the fact finder is investigating itself. But, equally clearly, the internal grievance procedures in general that we have in state government have that built-in conflict, and I'm not just talking about the State Personnel Board in terms of grievance procedures, but whatever internal grievance procedures exist in departments and agencies. I, for example, have to rule on grievances brought by my employees against me.

MR. YOUNGBLOOD: Do you feel that's effective, or is it prone to bias?

MS. LYTLE: I don't think you can develop a system that utilizes human beings, and eliminate bias. I think that a number of these cases are successfully challenged by grievance through the

State Personnel Board system, and a great many of them win their cases; so theoretically there is a conflict, but in all practical purposes it doesn't work out as badly as one might think.

MR. YOUNGBLOOD: Thank you.

CHAIRMAN HARRIS: Please continue.

MS. LYTLE: Essentially, I've outlined the constraints, and I'd like to outline some of the possibilities for improvements.

CHAIRMAN HARRIS: Good.

MS. LYTLE: Clearly, this last administration, or Governor Brown's Administration, demonstrated how useful it is when you have a message being sent from a Chief Executive down to the agency secretaries, down to the department directors, that equal employment and affirmative action is a very top priority of an administration. The way that has worked in this administration (although it could have worked better), but the way it has worked is that department directors in answering, for example, to this agency secretary, have been made very aware of the fact that I am not proceeding on my own; that I am not pressing them for affirmative action mechanisms because it's something I like (although clearly they know that's a fact). They also know that I am pursuing a directive that emanated directly from the Governor's office, which means that they can't do an "end-run" around me and go to him and say, "Look, my programs are being held up because Alice Lytle insists on all this affirmative action." They know they can't get away with it; they don't even try. So, it's critical that each administration that comes in be made to understand that this is

a priority, and that it is expected that the message will come down from this administration to the sub-units of the bureaucracy that affirmative action and equal employment is a priority, and that the Legislature, and all other components of government have a responsibility to see to it that that message comes down.

The local public employers enjoy a fair degree of autonomy with respect to the administration of their merit systems. I'm not sure I would suggest that that be changed, but it is something that you might want to study, particularly in the area of EEO, and affirmative action. I'm not at all pleased with the record of a large number of local public employers in this area, and I don't think the State Personnel Board has sufficient authority over them to effect any meaningful change. I'm not sure that they should be given that authority; I really don't know. But, it's certainly an issue that I would look into.

I mentioned the worker organizations. The whole area of collective bargaining is probably repleat with opportunities for institutionalizing change, and a committee such as this is in a good position to explore all those opportunities for change. And, lest we forget, it's critically important that we understand that in many important aspects the State Personnel Board, and state programs in general can be used as, and frequently are, laboratories for creative innovative change. I think that the rest of the country, for example, is going to be watching the implementation, Assemblyman Harris, of your bill which created protections against diminution and representation through the layoff procedure.

CHAIRMAN HARRIS: Do you know if the Supreme Court--or if

the case has gone to the Supreme Court from Massachusetts?

MS. LYTLE: Uhm-huh.

CHAIRMAN HARRIS: On whether or not that is in fact done?

MS. LYTLE: Yes.

CHAIRMAN HARRIS: All right.

MS. JOANN LEWIS: It actually upheld it. They voted in favor of the teachers.

CHAIRMAN HARRIS: The Supreme Court?

MS. LEWIS: Yes. That was just...

CHAIRMAN HARRIS: Well, there's another case involving firefighters.

MS. LEWIS: Oh, okay. Because the thing with the teachers...

CHAIRMAN HARRIS: It's now pending before the U.S. Supreme Court. The U.S. Supreme Court has now agreed to hear a case that involves firefighters who are claiming that they--that any... Counts as reverse discrimination, not to follow seniority system procedures.

MS. LEWIS: Oh, all right. Okay.

MS. LYTLE: And, I think it's important that we protect that role of the State Personnel Board, and state government in general. Because much of the resistence to the institutionalization of these programs is bias; plain and simple. Much of it is fear, fear of litigation, fear of change, and to the extent California can serve as a model

for the institutionalization of successful programs. You've got to, by virture of that fact alone, encourage other states to adopt or at least explore the possibility of adopting some of these programs.

With that, I will terminate my testimony, and if you have any questions I'd be happy to answer them.

CHAIRMAN HARRIS: Madame Secretary, do you have a minute? What I'd like to do is to ask Ms. Lewis to come up now along with Ms. Armistead, and perhaps then if you have questions they may be generated, since you were the former director of the office and plus exercised some mutual responsibility. If I could ask questions of all of you, after we hear their testimony, please. Is there no seats up there? Can you get another seat up here? Could you give me another seat, or go outside and find a chair somewhere? (Laughter). Thank you. Welcome.

MS. LEWIS: Thank you.

CHAIRMAN HARRIS: Would you like to begin?

MS. LEWIS: Oh, it's up to us then?

CHAIRMAN HARRIS: You two are about to speak.

MS. LEWIS: Okay, I wanted to...

CHAIRMAN HARRIS: Would you identify yourself for the record, please?

MS. LEWIS: Sure. JoAnne Lewis, Director - Department of Fair Employment and Housing. I wanted to begin with some comments

with regard to the State's responsibility to expand, its ability to monitor and eliminate discriminatory practices, and to monitor the activities of various merit systems throughout the State of California. In looking at ways in which we can change practices that occur in public employment, it became clear to the Department that one of the major bodies responsible were the local civil service commissions, and the local merit systems at the county and city levels. Consequently, if we are in fact going to make any institutionalized changes in public employment, it is essential that we encourage leadership in these various bodies. It is my understanding that members of these commissions are appointed by local boards of supervisors, and city councils. And, when Alice was describing the responsibility of the State to be a laboratory for experimenting and institutionalizing certain programs, the State provides leadership to the local merit systems. In fact, they have a monitoring responsibility and provide technical assistance to the various civil service systems throughout this State.

In reviewing how the Department of Fair Employment can relate to these local civil service systems, we have identified that most civil service systems now know all the right steps to take, all the right procedures to follow in order to increase the number of women and minorities in their work force. What we have not been able to discern is the extent to which they will accept a leadership role to go beyond that, and let me give an example: One of the major problems is that women continue to make 57¢ on every dollar that a man makes. This is not overt discrimination, but rather because women are in positions that have traditionally been paid less than men

occupy. We need, then, to have the civil service commissions take a look at how jobs are evaluated in terms of their functions, and by so doing we will eliminate a significant area of discrimination against women that would not be affected by traditional means of discrimination. In other words, on an individual basis a woman will come in because she has been denied an opportunity at a particular job or for a promotion, and she may or may not be able to be hired or be promoted. That will benefit that one woman, but it will not help all of the other women who continue to be repressed by salaries and suffer a major form of discrimination in the work place. Local civil service systems have the ability, and the responsibility for reviewing that problem, attacking that problem, and assuming the leadership responsibility. In thinking about how these commissions should be encouraged to do this, I think that it's quite clear that the Governor encouraged the State Civil Service System to do it through a resolution, and an executive order. But, if we are able to similarly encourage local commissions, we have to do it through some sort of incentive response, and hold out the possibility of a different kind of sanction.

One of the major difficulties that we have discovered in trying to enforce and encourage changes in public employment, is the accountability system in local public employment and (I can't leave the state out of this, although, we don't have any responsibility for the state as yet), is that it is very difficult to hold the individuals accountable for their failure or to reward them for their successes. I believe that our elected officials are the ones who have the power to recognize when an individual they have appointed to a commission is doing an outstanding job, or when an individual they

have appointed to a commission is not doing an outstanding job, or an adequate job. It seems to me we need to use that system in a more effective way if we really are going to bring significant changes that will affect women in the work place.

We have as a department begun several programs to work with local governments, to encourage them to understand what is an adequate affirmative action program, what is an appropriate fair housing program? Use us as a technical resource in those areas. We have the capacity and the interest in doing that, because it's quite clear that the State will never be able to do it alone. If we cannot generate a responsiveness on the part of local governments, the problem we're discussing here today will continue throughout this administration and all subsequent administrations. This administration has made significant gain, has encouraged this approach, and I think it's a very worthwhile way to go about improving the responsiveness of local governments.

I guess the only thing I really wanted to summarize (my remarks) by saying that when we have an opportunity to take a law enforcement action as a department, as opposed to provide technical assistance, the long-term benefit is greater if we can provide technical assistance. Law enforcement should be the last step we need to take. Unfortunately, in most instances, by the time we get in there it's the only step we can take, and we'd like to reverse that trend, we'd like to put the movement further back in the process, to remove the impediments, and to encourage local governments to recognize that it's in their best interest; it's in their benefit; it's financially cheaper to be preventive than it is to have a state agency, or a federal agency, or anyone else do a law enforcement action against

them.

CHAIRMAN HARRIS: Let me ask a question. On the basis of cases that are filed through your department, is there any indication as to percentage of cases involving discrimination against women on the basis of sex, as opposed to the other nine categories of classifications?

MS. LEWIS: Yes. Women continue to be represented in our caseload. Last year we handled approximately 9200 cases, and of that 27% were on the basis of sex discrimination, and 99% of those were women; we do get a few men who complain of sex discrimination.

CHAIRMAN HARRIS: I see. Is there any predominance of minority women over other, or is it pretty much...

MS. LEWIS: We don't have the capability of making that distinction.

CHAIRMAN HARRIS: I see. Ms. Armistead.

MS. RAMONA ARMISTEAD: Yes, good morning. As you know I'm the attorney with the Fair Employment and Housing Commission, and basically, the scope that I had intended for today was to give you an overview of the cases which we've handled involving sex discrimination, and to touch upon the grievance procedure.

CHAIRMAN HARRIS: Yes.

MS. ARMISTEAD: First of all, I think it's important to bear in mind that the commission is mainly quasi-judicial in nature, and it resolves those cases which are brought to it by the Department

of Fair Employment and Housing. It does have the ability to issue...

CHAIRMAN HARRIS: Ramona, would you state your name again for the record, just in case?

MS. ARMISTEAD: Yes, Ramona Armistead of The Fair Employment and Housing Commission.

CHAIRMAN HARRIS: Thank you.

MS. ARMISTEAD: Okay. The commission does have the ability to issue precedent-setting decisions, and has been doing so since 1978. It also issues administrative regulations to interpret and implement the Fair Employment and Housing Act.

Let's see now, with respect to cases between 1978 and 1982, overall the commission has decided about 51 precedent-setting decisions. Of those, there have been 13 which are sex-based in nature, or 6.63% of the precedent setting cases that were based upon sex discrimination. That varies, a lot of them involve discriminatory refusal to hire, to promote, discriminatory termination, as well as discrimination in the terms and conditions of employment.

Now, with respect to the grievance procedure, I think the primary concern is probably the amount of time that it takes to resolve the cases that come before the commission. First of all, when the case starts out it goes to the department. The department has one year to conduct its investigation, and issue an accusation. After it issues an accusation or a complaint in the case, it has 90 days to go to public hearing. Following that, normally the administrative law judges who preside over the cases allow the parties approximately

one month to submit briefs. Following that, the administrative law judge has about one month to prepare proposed decision, and then forwards the proposed decision to the commission. That whole process takes approximately 17 months, or approximately one and one-half years. Following the commission's receipt of the administrative law judge's proposed decision, we have 100 days to decide whether to adopt the proposed decision. Usually, because of our workload, we make that decision right at the end of the 100 days. Once we determine, and in most instances we determine not to adopt the proposed decision from the administrative law judge, the parties are given opportunity to submit further argument to the commission; normally, that's 30 days. Following receipt of the argument, the commission has 100 days within which to issue a final decision. And, these time lines are all set by statute.

CHAIRMAN HARRIS: Why does the commission choose not to adopt the administrative law judge's decision?

MS. ARMISTEAD: All right, that's a very good question.

CHAIRMAN HARRIS: Yeah, either it's a very good question, or very poor administrative law judge's.

MS. ARMISTEAD: Well. (Laughter) Okay. What we have noticed with a lot of the decisions we're receiving from the administrative law judge's, is that, in our opinion, the decisions would not stand up on appeal, and that's our primary concern.

CHAIRMAN HARRIS: I see.

MS. ARMISTEAD: We want to establish good case law that's

sound, that fully implements the Fair Employment and Housing Act. In a number of instances we find that the proposed decisions do not reflect the law in this area. And, I think some reasons for that are, probably, that the administrative law judges are responsible for deciding a number of cases that cover a lot of different subject matters. They're not experts in this area of the law, and because of that we can very easily see when legal issues are decided incorrectly, as well as, sometimes probably because of their workload; even evidentiary issues are not, in our opinion, decided correctly. So, it requires the Counsel to the Fair Employment Housing Commission to go through, conduct extensive research, and then prepare decisions which we believe are legally sound, and which are more capable, or more reflective of the law in this area. So that, I think, is an area that needs to be addressed. The commission has not come to a decision as to how it should best be addressed. There has been some talk about the possibility of the commission being restructured so that there would be full time commissioners who would preside over the hearings rather than administrative law judges. The primary concern with that is financial, we don't know whether it's really realistic at this point to move toward that type of structure.

CHAIRMAN HARRIS: It's not, and I'll tell you to go back and tell them so they don't have to spend more time working on that.

MS. ARMISTEAD: (Laughter). So that is a problem, however, because in a lot of instances the proposed decisions are not accepted by the commission.

We believe that, probably, something that would help resolve the cases in a much speedier fashion, and possibly, even

eliminate the backlog for the department, would of course be for employees to use some type of internal grievance procedure, assuming there is one provided by the employer. We're reluctant to say, though, that this should be mandatory before persons could file with the department, this is not the requirement under Title 7 right now. We don't think that that would be an appropriate shift in California either, but certainly, I think that's a greater effort to be made, to have employers establish more effective grievance procedures, and that would ease the case load and facilitate speedier resolutions.

The primary problem which the commission faces is, of course, financial. The commission decides all of the cases statewide, it has a staff of six attorneys, and the problem is, of course, spreading the workload out so that cases can be decided quickly. Because of the financial situation, we don't foresee the ability to decide cases any sooner than we are now.

So, unless you have some questions...

CHAIRMAN HARRIS: Let me ask a few questions. First of all, I'd like to ask this. Are there any particular problems that the commission has noted, as it relates to discrimination against women, in any particular areas that have been, you know, of particular concern or difficulty in terms of resolution?

MS. ARMISTEAD: Well, I can just speak to the frequency of various kinds of cases.

CHAIRMAN HARRIS: Yes.

MS. ARMISTEAD: Of all of the sex-based cases, most of them involved refusals to hire.

CHAIRMAN HARRIS: Is that right?

MS. ARMISTEAD: And, we're also seeing more sexual harassment cases.

CHAIRMAN HARRIS: Refusals to hire, is that a situation based on, for example, irrelevant criteria? Using--is there physical requirements that may not be related to the job? What kinds of things involving refusal to hire?

MS. ARMISTEAD: Okay. There have been some instances where the job criteria has been unreasonable; for example, height and weight requirements. But also, what we're still seeing--or instances where job catagories are predominantly male dominated, are somewhat reserved for men only.

CHAIRMAN HARRIS: I see.

MS. ARMISTEAD: And, you know, we're of course concerned that at this point in time, in 1982, that that's still occurring.

CHAIRMAN HARRIS: Let me ask a question. I'm really concerned, Ms. Lytle, whether or not--I know that you have been, I guess, wearing two hats, and obviously having to kind of "straddle the fence" on the issue of the State Personnel Board versus the Fair Employment Practices Commission. The administration, obviously, at this point are they simply waiting for the outcome of litigation? Or, has no position as it relates to whether or not legislation, or the Constitutional Amendment may, in fact, be appropriate? It's like, again, with the State Personnel Board overseeing the discrimination complaints, it's almost like the fox guarding the hen house. And, I'm wondering

whether or not that's something that you've recognized, or just because of, I don't know, the--out of a political problem or the mores within families, they've decided just to kind of look the other way, or is there any perspective that you have?

MS. LYTLE: Well, there are a number of factors that I looked at when the litigation first started. One was, at the time, we were in discussions with the State Personnel Board about the question, the jurisdictional question. We, one, noted we didn't have that many cases filed by state employees. Two, we were desperately striving to staff and fund that organization, so that we could just take care of the private employee cases we have.

CHAIRMAN HARRIS: Okay.

MS. LYTLE: Three, we had a backlog that wouldn't quit. And so, quite frankly, when I sat down and set a bunch of priorities of the battles I was going to get into, I was also fighting the insurance industry at that time (a real jerk-annoy), and that took up an incredible amount of time. I just decided that it...

CHAIRMAN HARRIS: It wasn't that important at the moment.

MS. LYTLE: Well, in one respect it's very important. Clearly, I'd be doing an injustice to state employees if I said it wasn't. But, on another basis, once it got into court, it seemed to me that it would be sensible to leave it there rather than to go dashing off to the Legislature and ask for a Constitutional Amendment, or some kind of statute. And, I further felt particularly after I became agency secretary, that I now had the opportunity to work closely

with the State Personnel Board and help them affect the kind of changes I felt they really needed to affect.

CHAIRMAN HARRIS: In terms of discrimination against women in state employment, you heard the testimony of the State Personnel Board. Is there any reaction to that on the part of any of you, in terms of either the sanctions questions, or whether or not the idea of the supplemental certification is a satisfactory response to problems with departments that are particularly recalcitrated (the Department of Forestry), or is there other things that you ought to be doing? Really, I think the problem is fairly clear, that's why we're here, but I really would like to focus on solutions. How we, in fact, gain compliance; how we, in fact, achieve parity; whether or not recruitment is what it should be, those are the kind of things I hope that the witnesses will focus on, because that's what we really wanted to look at. Whether or not there are legislative or administrative, or even simply practice types of things that might be done to correct the problem as it relates to women in particular, since that's the focus of this hearing.

MS. LYTLE: Well, I only heard part of the State Personnel Board's testimony, but I happen to think that the sanctions mechanism, and the supplemental certification mechanism is an excellent one. There are constraints on its use, many of them are fiscal. I mean, it just costs a lot of money to hold these hearings, to engage particularly with the department that's recalcitrant, that's going to fight you tooth and nail.

Three, there are serious problems in terms of recruitment, and we have to bear in mind that a number of the activities, employment

activities, that the State engages in to select and promote people, the authority for those activities reside to a large extent within individual departments. They throw off, for example, the minimum specifications, many of which need some overhauling.

CHAIRMAN HARRIS: Well, should there be uniform guidelines? For example, you have a women's program in the State Personnel Board. We had the coordinator of that program testify, Ms. Hara. I'm wondering, whether or not there ought to be some uniformity required i.e., recruitment techniques, or procedures, or other kinds of things would have to be cleared through some kind of a central coordinating position, or that each department should be required to have an individual name, even if that person is part-time and has other responsibilities for women programs. I'm trying to see whether or not there are ways to institutionalize and formalize the process, opposed to leaving it sort of to chance. I'm hoping that, you know, each department based on its good intentions and whatever meritorious conduct, is going to do the right thing.

MS. LYTLE: I think that, clearly, you can't depend upon individual department directors to do the right thing, some of them will, most of them won't. I think that the women's groups within state government, are a critical factor in increasing the efficiency of the system in the area of women's rights. I'm loathed to focus entirely upon the State Personnel Board, not because I'm treading, you know, a narrow line (though, of course, I am), but quite frankly, I'm very resistent to taking other people off the hook.

CHAIRMAN HARRIS: Okay.

MS. LYTLE: Department directors and agency secretaries, many of them have shirked their responsibilities in this area. And, when a Senate or an Assembly Select Committee takes them to pass, they point at the State Personnel Board and they say; "Well, it's all their fault." Well, I've got a--there are a great many things about the State Personnel Board I'd like to see changed...

CHAIRMAN HARRIS: Yes.

MS. LYTLE: But, I hate to see a Huey Johnson, or a Dave Pesitin, both of whom are decent folks, but I would hate to see them taken off the hook.

CHAIRMAN HARRIS: Well, how do we trace down responsibility? I mean, do we have--can we do it by budgetary sanctions? I'm trying to figure out a way, either the Legislature, or the State Personnel Board, or someone - I mean - the buck has got to stop somewhere. Because I don't want the State Personnel Board, by the same token, being able to point to Huey Johnson or someone else, saying; "Well, it's their fault, we don't really have anything we can do to them other than tell them that they're wrong."

MS. LYTLE: Uhm-hum.

CHAIRMAN HARRIS: You know - I mean - I'd like to figure out someway that we would look to someone and say: "Why aren't you doing something about this recognized problem, as it relates to discrimination against women", or as it relates to the disparity of pay; equal pay for equal work, compared to pay kinds of things. I mean - that's the real problem - is that, everyone understands the problem. But,

when you get to talking about solution it's sort of like - well, all we can really do is point out the problem, but we really have difficulties with enforcing them because it's somewhere else.

MS. LYTLE: I think legislative oversight is an awfully good idea, particularly, if it's ongoing. This is a valuable committee, but I would suggest that you create a type of Auditor General. The responsibility of that office would be solely in the area of equal opportunity and affirmative action, and make it a permanent...

CHAIRMAN HARRIS: And, where should that occur, in the Legislature?

MS. LEWIS: In the Legislature.

MS. LYTLE: In the Legislature. Don't put it in the executive...

CHAIRMAN HARRIS: In the Auditor General's office?

MS. LYTLE: I'd create a separate office.

MS. LEWIS: Separate...

MS. LYTLE: I wouldn't have it answering to anyone, except the leadership of the two Houses. And, I would give it that responsibility, and I would precisely define its mandate; I'd fund it. I would make sure, if I had to, that statutes were on the books that required that the executive and local government work with this committee. And, I would not give this committee a sanction that they couldn't use. One of the problems, for example, with the Office of

Federal Contract Compliance, is that the sanction is too repugnant, "If you don't hire this woman, we'll snatch all your money." Nobody's going to do that. Nobody's going to de-fund anybody.

CHAIRMAN HARRIS: Is the Office of Federal Contract Compliance, is that another good analogy that we ought to look at in terms of the state? Will we have to set up some equivalence to the federal--we have--I--we don't need that...

MS. LYTLE: No, it doesn't work very well, believe me.

MS. LEWIS: No, no. We--the state did create something very analogous to the OFCCP, and that's within the Department of Fair Employment and Housing. But, if you looked at it, it would be in terms of what not to do in order to be effective.

CHAIRMAN HARRIS: Okay. All right. So, you think the existing administrative agencies and structure is satisfactory, the only thing is tightening them up, or putting them in, say perhaps, in the Legislature and...

MS. LYTLE: And, making them report to this auditor.

MS. LEWIS: Absolutely, to this office, ideal, excellent.

CHAIRMAN HARRIS: Okay. Excellent.

MS. LYTLE: And, you'd be surprised what kind of an affect that has, even in the absence of a mandate, because you are the Legislature. You control their budget, you control a great many

other operations within their bureau--their appointments, and sometimes it's enough (as you know) to fund them.

CHAIRMAN HARRIS: Yes.

MS. LYTLE: But, then, of course, that committee should work very closely with the women's groups, with the affirmative action officers, and let those entities borrow their prestige and their authority.

CHAIRMAN HARRIS: Yes. That's a good idea. Leo, you had a couple of questions?

MR. LEO YOUNGBLOOD: Well, I have one for Ms. Lewis. Are your investigators in your department specially trained to handle sex discrimination complaints?

MS. LEWIS: Yes, they are.

MR. YOUNGBLOOD: Okay. Is there any resulting confusion between the two processes that we've just heard discussed?

MS. LEWIS: The commission, and the department?

MR. YOUNGBLOOD: In the department, with the actual complainants, the person that's been discriminated against.

MS. LEWIS: There's a lot of confusion in the public mind between the department and the commission, it's still very confusing. Most people do not recognize that the department and the commission are separate entities, with separate responsibilities and legislative mandates (legal mandates). Probably, because when it was first created it was called the Fair Employment Practices Commission, and

that's been its title for 20 some-odd years, and it's only been the last three years. But, I think that once the complainant gets into the system the process takes care of itself, and that's quite clear, the distinction is quite clear once they have filed a complaint.

MR. YOUNGBLOOD: Do you find that most people that have been discriminated against, are they aware of their rights? Or, is there information available for them to make them aware?

MS. LEWIS: Surprisingly enough, even today, most people who come to see us are not aware of their rights, have not exhausted even preliminary things that they might do to resolve their own complaint. Many employers continue to be, or at least to state, that they are unaware of their responsibilities as employers. So, there's a tremendous vacuum in terms of education and information out there.

MR. YOUNGBLOOD: Is there any way that we can increase or educate the people as to what their rights are?

MS. LEWIS: Well, this is an effort that I think many, many bodies have been working on for a long time, including the department. There are professional organizations. This is something the department is encouraging, that professional employer organizations, housing organizations, the groups that deal with personnel officers, and other employers and management people, we focus on them to give them the information they need, in the hopes that that will expand the kind of information available to the employer community, as well as the complainants. We participate in seminars, we give seminars, we publish information in company newletters, and

in professional newletters in an effort to get the word out. I don't know that it will ever be resolved, I just think we have to keep widening the network.

MS. ARMISTEAD: I think another good thing, though, that the department is doing more of now, is issuing press releases when the commission...

CHAIRMAN HARRIS: Makes a decision.

MS. ARMISTEAD: Makes a decision, and when the department reaches a settlement agreement with a company. But, if I could just go back to the State Personnel Board jurisdictional issue, I should tell you that the Fair Employment and Housing Commission is opposed to the State Personnel Board having jurisdiction over complaints filed by state employees. And, the reasoning is that the department has been around, it has been handling discrimination cases for a very long time, and we believe it's developed valuable expertise in that area. In our opinion, their consultants have also acquired better training.

CHAIRMAN HARRIS: Personnel Board, the decision affects both the commission and the department, is that right?

MS. LYTLE: Right.

MS. ARMISTEAD: And, as far as recommendations are concerned, I believe that we may perceive problems with respect to the commissions ability to award punitive damages, and obviously, one of our strengths is the ability to have the strongest sanctions that are possible. We want to deter the discriminatory conduct as much as

we can, and being able to award punitive damages clearly facilitates that. We've interpreted the Fair Employment and Housing Act as granting us the authority to award punitive damages. The California Supreme Court was faced with that issue, but did not really address it. It addressed the question of whether a court could award punitive damages under the Act, and it said that it could. From looking at the decision, it's not clear whether - you know - if they were faced with that issue without the commission, it's not clear how they would resolve it. There's been some legislation that was introduced last year, that attempted to eliminate our ability to award punitive damages, assuming of course, that we do have it. And, it may be necessary at some point, to add some expressed language to the Act along those lines for a punitive or a statutory penalty, so that there will no question.

CHAIRMAN HARRIS: Thank you. I want to thank all of you for your time and your testimony. We're going to leave our record open for ten days, and Madame Secretary, in particular I would really appreciate any translation that you might have on the idea of that Auditor General, and how it might be structured, and how it might in fact be empowered. How the reporting mechanism might be with the various agencies. I think that's probably one of the best ideas that we've had, and something that I'd like to pursue.

MS. LYTLE: I'll have my staff people work on it.

CHAIRMAN HARRIS: That's great. Thank you. Is there anything else you'd like to add, or anything that you'd like to explore further for the purpose of our record? Like I said, the record

will be open ten days, and those solutions that you may think of in the ensuing few days, or if you stay longer and hear anything else that inspires an idea, we'd appreciate having it for the record, because we want to explore these possible solutions. Thank you.

MS. LYTLE/MS. LEWIS/MS. ARMISTEAD: Thank you.

CHAIRMAN HARRIS: Let me kind of very quickly tell you, I want to move very, very fast now, through the testimony. I want to tell you what I want to do. I would now like to hear from Ms. Virginia Taylor, Affirmative Action Officer for the California Highway Patrol. Then, we'll move to Ms. Boden, and the representatives from the various unions representing state employees and women, and then we'll go to the individual groups representing women in the work force. So, if we might hear from Ms. Virginia Taylor. Welcome, Ms. Taylor. How are you?

MS. VIRGINIA TAYLOR: Oh, fine. Mr. Chairman, my name is Virginia Taylor, and I'm the manager of the office of Equal Employment Opportunity for the California Highway Patrol. And, prior to the testimony that we've had from the State Personnel Board, and the Department of Fair Employment and Housing, I was going to talk about specifically the kinds of things that we had experienced in terms of our recruitment processes at the California Highway Patrol.

CHAIRMAN HARRIS: Good.

MS. TAYLOR: In deference to the time, and I think that - you know - in terms of what we are saying here, and the reasons we

are here is to find solutions to the problems, and to make recommendations for those solutions.

CHAIRMAN HARRIS: Well, tell me what your department has done, I know how it used to be, so tell me how it is. (Laughter)

MS. TAYLOR: Okay, fine. Well, that's great. It's one of the areas and I'm - you know - very proud of in terms of our recruitment program. The California Highway Patrol, as you know, was (I guess) blessed by the Papan Bill, in that we were augmented 500 positions in addition to the current positions that we have...

CHAIRMAN HARRIS: I want to state for the record - he only did that because he didn't want radar. (Laughter).

MS. TAYLOR: Oh, I see. Okay. Well, I'm glad we got something out of it in exchange. Through that, we were able to, and we have been able to project that we will increase considerably our representation of women in the California Highway Patrol. As you know, we have 6,000 employees in the patrol, and of those 6,000 employees we have 4000 that are uniform personnel, and 2,000 that are non-uniform personnel. So, you see, our focus in terms of the representation of women certainly has to be in the position, or in the areas where we can affect the greatest opportunities for women. So, we have focused on the uniform area, and not in deference to the non-uniform personnel, but this is generally the way we've gone. We have a ten year plan that says that it ends in 1987, by 1987, we should have at least 30% of our work force women in that total.

CHAIRMAN HARRIS: That's total work force?

MS. TAYLOR: The total work force, okay. So, in that respect, what we've done, we've gone full speed ahead in our recruitment program. And, our specific recruitment goals were established for each examination; we do establish examination goals.

I guess the statement that Alice said, in terms of bringing in numbers; we have no problems in bringing in numbers. I'm sure that departments, when you look at the recruitment process really can get women to apply for the positions, but it's really what happens in the interview process, and what happens in the processes that affect women in getting into employment that, really we need to be focusing on.

CHAIRMAN HARRIS: What are the current numbers in terms of the 6,000 employees?

MS. TAYLOR: Okay. In terms of the representation that we have now...

CHAIRMAN HARRIS: Yes, yes.

MS. TAYLOR: At this point, we have a total of about 17% women in the patrol, and this is overall, including the non-uniform positions.

CHAIRMAN HARRIS: How many uniformed, do you know?

MS. TAYLOR: Uniform, we have about 196 women, which comes out to about...

CHAIRMAN HARRIS: Five percent.

MS. TAYLOR: Five percent, yeah. We want to augment

those forces, and increase it to at least 10 to 15%.

CHAIRMAN HARRIS: With the changes--with the recruitment goals, and you're saying that you're meeting those, what are you finding as a result of the examination process? Is it being amended when you find that the screening out women from things that, perhaps, aren't as relevant as you might have originally thought i.e., physical requirements, height, weight, those kinds of things? What do you do?

MS. TAYLOR: Yes, we're looking at the total process. There are different things that have adverse impact on women in the process. One, is the fact that there's a very extensive background check and background investigation. And, we're looking at the area of whether the, as far as minority women are concerned, whether there's adverse impact in the way the background investigation is handled because there's a one-to-one interview. And, that kind of investigator has an awful lot of power to sway the interviewer to deal with the interveiw situation. If that person is biased in any way, then of course, some questions could come out, and depending upon how the individual handles themselves depends on whether that person is advanced to the next level. So, we want to look at that...

CHAIRMAN HARRIS: Yes. Why don't you explain the process, and what the weights are in terms of that. Okay, so a person is recruited, comes in and takes a written exam?

MS. TAYLOR: Yes.

CHAIRMAN HARRIS: What percentage is the written exam?

MS. TAYLOR: Okay. Well, we have - you know - there's all kinds of things in terms of written exams, but the percentage of people who pass the written exam is about 40%. So, we've decided that it doesn't add adverse impact, or a very little in that particular process.

The problem is after that, then we have--if they get to the exam, we have almost a 60% drop-out rate before they get to the exam.

CHAIRMAN HARRIS: That don't take the written exam?

MS. TAYLOR: Do Not Take; Do Not Show Up, period.

CHAIRMAN HARRIS: In other words, they sign-up...

MS. TAYLOR: And, don't show up.

CHAIRMAN HARRIS: Okay.

MS. TAYLOR: Okay. So, once we get them to the examination process, then we have a 40% pass rate. Okay. After the examination (the written examination), then we have what we call an oral examination. Up until recently we've experienced, and this is turning around to some degree because we have more frequent examinations, we have a continuous testing program now for women, whereas, we only use to have one exam per year. We have found that we had somewhere around a 45 to 50% drop-out rate in the interview, but now it's going down to about 35% in the interviews. So, we're hoping that part of that is getting more sensitive panels, getting more balanced panels, and getting more people, because we have more people in the process, and it's probably sheer numbers that's bringing that

up to some degree too. And, okay, once they pass the oral examination, then they advance to sort-of-a two-phases that goes concurrently, and that is the background investigation and the medical clearance. We've found that, as I said before, there's adverse impact in some form through the background investigation, and clearly the medical standards. We have some people that are fallen by the wayside, because either they are not conveying the truth in terms of their medical history. And, then when they investigate their medical backgrounds and we find that if they haven't been truthful, because the interview is the beginning of that process when that interview is taped, and everything is conveyed in the interview such as: drug addiction, arrests, that kind of thing (traffic violations is on tape); so the background investigator looks at that again and reviews that information. When that information is reviewed, if there's any inconsistencies or discrepancies between what the individual has conveyed in the interview and what actually comes out, then that - you know - depending upon how it came out, could be automatic termination from the continuous process. We have people who just, generally, have general medical problems, and of course, the standards of the patrol is that you - you know - are in good medical condition, no color-blindness - you know - that kind of thing. And, so we're talking about maybe, combined, another 40% dropping out in the process; that's the background and medical.

Then after that is completed, then they advance to--all of the women, in fact...

CHAIRMAN HARRIS: I started to crack a joke about the Highway Patrol being color-blind, but... (Laughter).

MS. TAYLOR: Oh, well that's (laughter). I understand. What we do then, is that you have the individuals who advance to the academy, and women stay in the academy 21 weeks, and men stay in the academy 20 weeks.

CHAIRMAN HARRIS: What happens in that extra week?

MS. TAYLOR: The extra week is to give those women an opportunity to build up the upper body strength, which is another problem in the--that presents itself in terms of adverse impact on women. In addition to that, the women who are not familiar with changing tires, and the mechanics of a car, and all that, they get that during that particular week, and then men join them in the second week.

The problem with that is that an individual could go through the academy in 21 weeks, graduate as a cadet, and still get "X'd" out of the patrol after that whole entire process is over, in the 30 day break-in period. We're finding that, there, again we have to look at that particular portion of--and we are looking at that particular portion of our process.

The 30 day break-in, again, is a very subjective process in that there are senior patrol people who are patrolmen, in this case because the most senior people in our department are men, are looking at the women and minorities, and they're doing an evaluation based on their ability to handle the everyday traffic problems. And, this is like on-the-job-training in a 30 day break-in period. If they don't make it in the 30 day break-in period, then they're out of the patrol. Okay. So we have...

CHAIRMAN HARRIS: How long is the probationary period after that, six months?

MS. TAYLOR: Then it's a year after that. So, we have another--we did, up until recently, have a 73% turn-over rate in the patrol for the drop out after the first year. Of course, we have other problems such as, being siphoned off--our women being siphoned off by the Department of Forestry, and Corrections, and other law enforcement agencies. In addition to that, we have problems of--most of our candidates - at the time they are candidates - are 20 years old, and at the time they're appointed they are 21; so that means that normally they're - you know - young adults, and either have families or they're...

CHAIRMAN HARRIS: They're about to.

MS. TAYLOR: Yes. So that what happens is that there are a lot of them who do not want to relocate to different areas, and so we experience a problem with people wanting to or not wanting to relocate around the state; so that's another problem.

We have - you know - all kinds of different variables that we have to consider when we deal with the women in the department. So, considering the fact that we have all these variables and all these steps within our process, the departments focused recruitment goals are still very high. And, they are: 60% minority and women, combined, and of course 40% Caucasian males.

Since January of '82, of the 14,247 applications we've had, and this is our most recent exam, we've received - as of October 8th - 8,554 or 60% were minorities and women. Of the 8,554 a total

4,526, or 31.8% were female applicants; so we have no problems with numbers. We will have on November 20th a male examination, and we did a special focus recuitment...

CHAIRMAN HARRIS: A male examination? What's a male examination?

MS. TAYLOR: An examination for males.

CHAIRMAN HARRIS: Oh, you have separate examinations?

MS. TAYLOR: We have a separate examination for them, but continuous testing...

CHAIRMAN HARRIS: It's the same exam, but...

MS. TAYLOR: It's the exact same exam, but women have a continuous testing program so that we can increase our representation of women, where with men we have exams at least about twice a year now.

CHAIRMAN HARRIS: How do you recruit for women?

MS. TAYLOR: How do we recruit women? Well, we have a very extensive recruitment program. We have eight divisions at the California Highway Patrol, and each division has two recruiters - assigned recruiters - in addition to recruiters that have--when they're not on background investigations, they do part of the recruitement; so we...

CHAIRMAN HARRIS: How many recruiters are women?

MS. TAYLOR: Okay. We have five women now.

CHAIRMAN HARRIS: Okay. Five of the sixteen?

MS. TAYLOR: Yes, five of the sixteen are women now. The ethnic representation at this point is three of the five are minority, and two Anglo females. We've just graduated last October, and they will get off of probation soon, and we will have an additional two Hispanic females in the field doing recruitment. So, we're hoping that maybe that will - you know - help us to get...

CHAIRMAN HARRIS: Are they going to traditional groups? Yeah, I mean, are they going to ethnic newspapers? Are they going to ethnic groups, organizations, etc.?

MS. TAYLOR: Yes. It's a very coordinated process, it's coordinated out of the Office of Equal Employment Opportunities...

CHAIRMAN HARRIS: Okay. Okay.

MS. TAYLOR: We've hit the media, and we've hit all ethnic...

CHAIRMAN HARRIS: Going to the schools and colleges?

MS. TAYLOR: Yes, exactly. So, we get the numbers, and the numbers come in and we get candidates, it's just the process in itself.

CHAIRMAN HARRIS: I understand.

MS. TAYLOR: We have a current goal to hire 32 women per class, or 28% of each cadet class, and so far we've been able to meet that.

CHAIRMAN HARRIS: Good.

MS. TAYLOR: So, we have now in this particular class we have 32 women in the current class, and it's resulted in continuous recruitment efforts in order to make sure that we have at least 28% of our classes--women in the highway patrol.

Since June 30th, the number of women in the law enforcement job category increased from 91 (2.2%) to 158 (3.7%), an increase of 1.5% of the total in just three months because of that particular goal. So, we feel that we're going to be able to meet our goals, our 60% goal, our 40% for women within the next five years, and we should have at least 5%--10% of our work force within the patrol. Women--and this is the retention, not only the recruitment but retention of women in the patrol.

We are currently budgeted, which we we're hoping that we'll get a budget that is equal to the one that we have now in our recruitment, or at least more. Prior to this year's budget, we were depending on $7,000 per quarter from the State Personnel Board in order to do our recruitment. This year we were alloted $124,000, all in one lump sum, to do our recruitment; so we're hoping that we'll at least have a hundred and twenty four more over the next coming year.

In talking about, what I consider a systematic approach - I mean - we definitely have particular needs at the patrol, and we certainly have a particular emphasis in terms of our particular problems, and meeting parity with women in law enforcement categories, and looking at the distribution of minorities and women within our department. But, I think one of the things in terms of my experience that I feel needs to be instituted in order to make sure that we have what I consider a very responsive affirmative action program on a

statewide basis, because my experiences are that top management, and the administrators, and the directors of the different departments are pretty sensitive to the affirmative action area in the sense that they are aware and they understand the mandates, understand the policies and procedures, and they know what they're responsible for and what they should be doing. However, because of the different field office structures, such as one with the Employment Development Department, Department of Health, the Department of Welfare; you have a lot of mid-management that operates in an autonomous type of position. They're pretty much their own bosses in those particular areas, and in that respect you can have a very, very aggressive affirmative action program that comes out of the executive office; but mid-management may not adhere to the policies and procedures. I feel that one of the areas--I don't know whether collective bargaining could really address this or not, but I feel that mid-management (the pay structure), should be tied to their performance. The performance of managers in terms of being accountable to achieve certain particular percentages or certain goals within their own commands (as we would call them in the highway patrol), or their own jurisdictions or divisions or areas or whatever should be tied to their pay. And, I think that to the extent that we cannot address mid-management--I mean--we continue to bring the department heads out to discuss the different problems in affirmative action, and--you know-- we talk to the different directors and have hearings of this nature and that kind of thing. So, the mid-management sort of escapes, they sort-of don't "get their day in court". A lot of them are not asked

to be accountable, or to respond to the different things that they have under their jurisdiction; so I feel that mid-management, the pay, and their performance, and their promotions should be tied to their affirmative action commitment. And, I also feel that--and this is--what I think in terms of the law, the AB 1350 which establishes the position of an affirmative action manager or officer within the department, I find that there's a great disparity in classifications of these particular persons. And, when you're talking about somebody who's at the management services technician level, as opposed to the--they range from MST's all the way up to CA-2's; so you're talking about, maybe, perhaps a staff service manager II or above, or a staff service manager I depending upon how the position relates within the department, having the authority and the structure within the department to be part of the management team, and to give input into that particular structure. But, when you're talking about a management services technician, that persons not even a part of the management structure, and therefore, has no authority and no credibility within the management structure to deal with some of the issues. So, I feel that to some degree if it cannot be standardized, at least there should be some kind of mandate that the affirmative action manager of each department be at the staff service manager I level or above. I think that that's just part of being part of the management structure, and being part of, of course, management. And, the department director holds the accountability for achieving affirmative action goals, but certainly the EEO manager has the responsibility for coordinating that particular responsibility, and bringing the issues to the forefront.

CHAIRMAN HARRIS: Ms. Taylor, I want to thank you for your testimony. I--well, I'll be candid with you and tell you that I am, to some extent, impressed. But, I had really thought that the highway patrol would have been much worse, rather than much better than the average department, as far as my awareness is of state government.

One of the things that I would really appreciate, either your submitting for the record, or you can mention it very quickly now, is in the area of promotions. And, whether or not there are plans and provisions now that you are adding to your work force minorities and women for their upward mobility, and what's happening with that.

MS. TAYLOR: Okay, fine. The promotional--the one problem that we're experiencing at the highway patrol is that the highway patrol is, of course, 50 years old...

CHAIRMAN HARRIS: Yes.

MS. TAYLOR: And, it's old-line organization, and the organization itself is based on being able to come through the ranks. So, that means that you have to start as a traffic officer when you're talking about uniform positions; you have to start as a traffic officer and work your way up. The commissioner of the patrol has done the same thing; he's worked his way up to the commissioner. But, what we're finding now is that bringing in numbers--of course, we have the stay power; women are staying in greater numbers. And, so we find that we can--well, at least we have the CWETA group in order to promote them up through the ranks. We have only one female

sergeant, and we have now on our list--we have a list of about 400 strong, and we have a representation of about 1% women on that list.

CHAIRMAN HARRIS: What percentage of the total manpower (uniform manpower) are officers?

MS. TAYLOR: For women? Do you mean women?

CHAIRMAN HARRIS: Period. How many are officers?

MS. TAYLOR: Oh, period. We have about - I guess - about 3%.

CHAIRMAN HARRIS: Three percent are officers?

MS. TAYLOR: Yes, are officers. And, of that, we have no minority females; none.

CHAIRMAN HARRIS: Okay.

MS. TAYLOR: In fact, in all of the California Highway Patrol, I'm the ranking minority female in the patrol; so that tells you something.

CHAIRMAN HARRIS: Okay. Okay.

MS. TAYLOR: The--we have women on the sergeants list...

CHAIRMAN HARRIS: I think I--I think I under...

MS. TAYLOR: You know, basically, what I'm saying is that we're trying to bring them up through the ranks.

CHAIRMAN HARRIS: I think I understand...right...okay... but right now, it's just the fact of getting them inside the department has been the first goal, and now...

MS. TAYLOR: And, now getting them up through the ranks.

CHAIRMAN HARRIS: Let me ask one last question, and then I'm going to--are you under a court order?

MS. TAYLOR: No, not yet. (Laughter from audience)

CHAIRMAN HARRIS: Thank you very much, I appreciate your testimony, Ms. Taylor.

MS. TAYLOR: Uhm-huh.

CHAIRMAN HARRIS: Ms. Dowden. We all appreciate your patience. Glad to see you, how are you doing?

MS. HELLAN DOWDEN: Thank you. I'm Hellan Dowden, from Service Employees International Union. And, I'm only going to speak very briefly, and then turn it over to some of our local rank and file people who will give you some firsthand experience of what's happening with affirmative action and public employment.

What I did bring as my testimony, though, in terms of what unions can do through collective bargaining. There's a copy of a collective bargaining agreement, which on page three states under affirmative action, what the policy of the county and the union is. And, under the clerical classifications what you will see is some programs that have been negotiated. They've been in the contract now for a number of years (every year), so they've

been improved on what we've been able to do with clerks, and I just want to briefly tell you. We've set up transfer and exam systems where we have a set of telephone numbers, this is within Santa Clara County contracts that I'm going to refer to, which tells clerks what transfer and promotional opportunities are available, and they also have these phones for the large departments. We also have a clerical education program, which is a joint management labor committee, to talk about what sort of training programs are needed to bring clerks up through positions, and into management positions and into other sorts of classifications.

There's time off for career advancement, not just for another clerical classification, but also to go into the professional classes. We have a whole system of wage differentials, which we've gotten out of steel worker contracts, and the other sort of industrial workers. Because, what we think we need to do is to try and make the clerical jobs, in terms of the contracts, like the language we have in other industrial contracts.

There is additional money for lead workers and computer operators, but probably the most exciting part is the promotional opportunity pilot project, where we've taken and looked at giving tuition reimbursement and on the job training to help people meet the minimum qualifications so they can pass tests for classes outside of the clerical classifications. And, we do this through a system of alternative staffing and training through lateral transfers, and we're able to take clerical workers and move them into classificatons such as: assessor, we have counselors, buyers, computer operators, etc., where there are very few women and very few

minorities. Our statistics when we started this program were pretty much like the state's; lowest paid workers were minority women. We have taken workers who are already in the work force and used the internal promotional examination procedure to move them up through the work force.

What's going on in Los Angeles County isn't quite as rosy as the picture I've painted for Santa Clara County, but I'll leave the copy of the contract with you.

CHAIRMAN HARRIS: Let me ask a few questions. One, what percentage of the union membership is women? Do you have any idea?

MS. DOWDEN: Our union membership is 64% women.

CHAIRMAN HARRIS: I see. I see. Have you noticed any particular problems, or other kinds of solutions that you might think should be of note? Since your union obviously has strong representation of women in the public work force from the standpoint of the percentage of its membership, then I would think that you're uniquely kind of experienced to comment on problems that women have, and also solutions that may have come out of the grievance procedures that you have. And, if other collective bargaining or other kinds of things you think would strengthen the role of the union in terms of dealing with problems of discrimination against women.

MS. DOWDEN: We represent a lot of women in the health fields. And, one area that--you know, that's also public and private employment; what we're seeing is what's been happening around the discrimination in the tests, where you see that minority

women are not passing, for example: the health exams, the LVN exam, the RN exam, the psychology exam. Over and over, we've had this problem with very few minorities even qualifying to take the test, and when they do, for example, only 2% of nurses (RN's), are minorities, and only about 57% of them pass the test. So, we really need to take a look, if there's something that we can do at the state level; we can take a look at those various tests. Another one, in fact, it was a problem in your district with psychologists in Alameda County, who couldn't pass the psychology exam. And, when we took a look at who didn't pass the exam, there was a high percentage of minorities. So, in terms of...

CHAIRMAN HARRIS: Is this the state exam for psychology?

MS. DOWDEN That's right. All of the licensure boards--Julian Dixon had a law passed before he left the Legislature, saying that the test had to be non-discriminatory. And, the RN Board, as you're probably aware of what's happened in the legislation when they tried to implement the program for the RN Board, the LVN Board has come up with a new exam which is much less discriminatory, we feel, than the old exam. The Psychology Board, nothing really has happened in that area, and there are many of these other health professional boards and other licensure boards in the state where we can do a lot to prepare people at the job level. But, when they have to be licensed by the state, we're finding that there is some bias in those tests that they're taking. Because, they're not job relevant as Julian Dixon's law said they should be, and they seem in terms of the outcome of the test, to discriminate against: 1)

older workers, minorities, and the cases where you have male and female, and in some cases women in taking those tests. So, we would suggest that as an area for you to review.

CHAIRMAN HARRIS: Is that because of the subjective nature of that test, or...

MS. DOWDEN: Some of them--I can tell you before we changed the LVN test, one of the questions was: There's an RN, a doctor, and an LVN waiting for an elevator, who gets on first?

CHAIRMAN HARRIS: (Laughter) All right.

MS. DOWDEN: And, so we changed the test. Now, there are other questions where we're not sure--you know, why certain groups aren't passing the psychology part, for example, of the RN test. And, right now they're trying to review and come up with a new RN test.

CHAIRMAN HARRIS: In the collective bargaining process, do you at all get into the examinations, and the fairness or the unfairness of the examinations? Or, is that something beyond the realm within collective bargaining?

MS. DOWDEN: At the local level--well, what we've done, for example, I'll give you my experience in Santa Clara. We take a look at people once they get into the system, however, we were a part of the Affirmative Action Council which really we couldn't as a union deal with that) we dealt with community groups. And, together we came forward, and made recommendations

through civil service to change the job's "spec" so they were relevant. What we've been doing though is we'll get a person hired in, as a dishwasher for example; once they're in the county, they can take the test promotionally to any of the other classifications, and they only have to pass the test in order to be considered for it. So, you don't have the same sort of standard once you have a test, and you take it on a promotional. So, what we've been trying to do is to get some of those tests made promotional; so we can bring in groups once they have experience in the work force, then move them up through the internal workings of the county.

We've also done things with rewriting job "specs", particularly in the clerical class; some hadn't been rewritten since 1953. And, when we made those job "specs" more relevant to the job, we found that a lot more people were passing them.

CHAIRMAN HARRIS: Mr. Youngblood, do you have a question?

MR. YOUNGBLOOD: Yes. You mentioned earlier about the training programs, you've included those in your collective bargaining agreements, is that correct?

MS. DOWDEN: Yes. They're all part of the--if you look under the clerical section, they're done through joint labor management programs. What we've done is we've chose--we have assessment clerks that have worked as assessment clerks for fourteen years, and there was not one female or a minority who was an assessor, and they are trying to tell us that there is no one out there who's capable of doing the job. So, we said to them: "Well look, you have these clerks who have been doing the job for fourteen years,

what do you mean? They answer all the questions when the assessors are out of the office." So, we were able to use the internal system through creating bridge classifications, to allow the people to meet the minimum qualifications, and then move them up through the system.

MR. YOUNGBLOOD: So, you would consider that the overall area of affirmative action and achievement of those goals would be a terming condition of employment, is that correct?

MS. DOWDEN: That's what we--yes. In the front of the contract, what it says basically is that--and I can read it to you, it's very brief. It says:

> "Affirmative Action: The county, and the union agree to cooperate to achieve equitable representation of women, minorities, and disabled to all occupational levels designated by federal, state, and county affirmative action goals and timetables as adopted by the Board of Supervisors."

So, that's sort of gotten our foot in a lot of doors.

MR. YOUNGBLOOD: Okay, thank you.

CHAIRMAN HARRIS: Thank you, very much. Would the other witnesses please come forth? Thank you. Welcome, how are you?

MS. BETH GARFIELD: Very good, thank you.

CHAIRMAN HARRIS: If you will identify yourself for the record, we'll begin.

MS. GARFIELD: Yes. My name is Beth Garfield, I'm on the staff of S.E.I.U. Local 660, I'm the supervisor of the clerical division.

CHAIRMAN HARRIS: Go ahead. (Laughter)

MS. KAREN DEMOTA: I'm sorry. I'm Karen Demota, I'm also on the staff of the Local 660, I'm a business agent for the clerical division.

MS. LOLA COATS: And, I'm Lola Coats. I'm a clerical employee with the District Attorney's Office, L. A. County. I'm represented by Local 660.

CHAIRMAN HARRIS: All right, go ahead.

MS. COATS: I'd like to start first by giving you a little background information on what Local 660 is. Six-sixty, is the local of the Service Employees International Union, it represents approximately 42,000 L. A. County workers.

CHAIRMAN HARRIS: How many?

MS. COATS: Forty-two thousand. Included in that 42,000...

CHAIRMAN HARRIS: Is that about--what--about--that's over half of the work force for the county, is that right?

Ms. COATS: That's correct. Yes, it is over half. Included in that 42,000, are more than 16,000 clerical workers, approximately 85% of whom are women, and approximately 65% of whom are minorities.

In a comparable work study of L. A. County workers, it was found that employees in female segregated jobs earned 71% of that of their counterparts in the male segregated jobs, for work of equal value. This is a decrepancy of $504.50 per month, or $2.90 per hour for the average worker.

CHAIRMAN HARRIS: Strange.

MS. COATS: The majority of female clerical workers in L. A. County, are the single head of their household. Being the single head of my own household and earning a salary of $1121 per month, I feel that I'm in the position to honestly speak to you of what the problems are that L. A. County clerical workers face.

One of the major problems that we face, is having no room for advancement. As an example, I would like to use my own situation: I entered the county as an Intermediate Typist Clerk, and was reclassified to Witness Coordinator, top salary for Witness Coordinator as of now is $1322 per month. The only movement now is to Supervisor Witness Coordinator (which I am due to be reclassified to in December), after that there is nothing.

There is a shortage of legal secretaries in the county, whose salary is a vast improvement over that of a Witness Coordinator, and a Supervisor Witness Coordinator. A false barrier of 90 words per minute shorthand requirement, stops many clerical employees in the legal departments from advancement into that legal secretary series. I say that it's a false barrier because it's seldom, if ever, used; most attorneys use the Dictaphone.

We work in that department; we're already familiar with the legal terminology; many of the questions that have to be asked, we're already asking them on the lower salary. But, that shorthand requirement is there to stop us from advancing into the higher salary positions.

With the situation being what it is in L. A. County, we feel that if we go out on our own and obtain more training and more education, we'd prefer to leave the county. There is an attrition rate of over 50% of L. A. County clerical workers; studies have shown that it is more costly to the employer...

CHAIRMAN HARRIS: How much of that is due to the inequities in pay, as opposed to the lack of upward mobility?

MS. COATS: I would say really, that it goes hand-in-hand. It boils down to, number one: It is such a low salary there is no room for movement. You look at the overall picture, and if I go out on my own and get more education, more training, I'm going to leave.

CHAIRMAN HARRIS: Yes.

MS. COATS: It costs the county more (or any employer more) to train new employees because of this high attrition rate than to use an on the job training to advance these employees who are interested in advancing.

CHAIRMAN HARRIS: Okay.

MS. COATS: To give you another example of the system in L. A. County, when you take a male window washer who earns more than

a female Witness Coordinator, something is wrong with the system. And, when you have the Reagan Administration notify a female Witness Coordinator in L. A. County, that she can only afford to pay between zero and $100 a year toward her daughter's college education, something is very wrong with that system.

CHAIRMAN HARRIS: Thank you. I'll mention very briefly, we are being joined by, as an observer, Councilman David Cunningham from the City of Los Angeles; a very strong advocate for women in the city, who's going to make sure that they get all the opportunities due them. Is that right, Councilman? (Laughter)

MS. GARFIELD: And, you're on record. (Laughter). Lola, has very articulately...

CHAIRMAN HARRIS: State your name again, please.

MS. GARFIELD: My name is Beth Garfield.

CHAIRMAN HARRIS: The tape doesn't always pick up the distinction, it's not just from me not being able to hear you.

MS. GARFIELD: Sure. Lola, has very articulately demonstrated the problems in the county, and what I'd like to do now is to outline for you some of the ways that we've attempted to resolve those problems.

CHAIRMAN HARRIS: Very good.

MS. GARFIELD: Unfortunately, the bottom is not the same kind of rosy picture that Helen has stated occurs in Santa Clara County, we have a very different type of Board of Supervisors here

in L. A. County...

CHAIRMAN HARRIS: Yes.

MS. GARFIELD: So, we have a lot of problems. But, as a union, Local 660 has long recognized that the economic status of women workers in this county must be changed. And, the only real way to change that economic status is to increase career opportunities, such as on the job training for these workers.

Local 660, has attempted to make these changes through the collective bargaining process. During negotiations, a year-and-a-half ago, Local 660 challenged the county to join in this commitment. What we did was, we proposed to include in our collective bargaining agreement a provision providing for a joint management labor committee to develop these types of career opportunities and on the job training.

The county did agree, after a lot of pushing on our part and a lot of organizing on our part, to include this provision. The committee was established. The representatives from Local 660's side are all members of the bargaining unit, clericals who actually work on the job and recognize the problem and need these career opportunities. Even though the committee has been meeting now for over a year-and-a-half we have still not gotten from the county any concrete commitments to make changes. We did have an agreement with the county, in fact, they have signed that agreement which was in the form of a recommendation to Hufford (Harry Hufford) who is the County Administrative Officer. But, we've recently been informed by the county that they are now going to back out of that agreement because of their budgetary constraints, and we have to

sit back down again and try to resolve the new problems and reach a new agreement. Well, this is a year-and-a-half later, it's going to take several months at the minimum to really get something in place. And, this is where we're meeting a tremendous amount of frustration, particularly since our members are very committed to these increased career opportunities.

One place in which we have had limited success though, is in working with the county to develop an on-site training program, or an appricticeship program for the data processing employee. We are now in the midst of developing that program, the problem is that the county has only committed to include five employees in that program. Well, this is (compared to the numbers that Lola was stating before, the 16,000), this is nothing; but at least it's a beginning, and we hope by setting this program up we can use it as a model for future programs.

Now, this program couldn't happen but for the CWETA funding of the state, and this is what I wanted to talk to you about directly. I understand that the CWETA program is slated for elimination, or at least the funding is over in 1984. We feel it absolutely essential that the CWETA program continue. We also feel that it's absolutely essential that it not only continue, but also that it be expanded to recognize some of the needs of these women workers. For example: the type that Lola was speaking of earlier, that so many of these women are the head of single family homes; that these things have to be taken into account; that there have to be stipends for child care, for travel; there has to be some payment for release time, all of that sort of thing.

Unfortunately, we're dealing with a county who is not willing to provide those things to its workers. It's informed us that, but for CWETA program there would be no program whatsoever; so we urge you to continue and to expand this program.

I'd like to just also briefly address the issue of comparable worth, this is something that also Local 660 has had a long commitment to, and will continue to work towards. Again, unfortunately, the county has been rather intransigent in its position in regard to comparable worth. We're going into negotiations this spring for our next two-year contract, comparable worth is going to be a high priority, as is career development. We feel that it's absolutely essential that the county recognize this as a high priority, and again, we ask your assistance in any way that you can provide it to us; to put whatever pressure you can on the county to work towards both the career development, and to the comparable worth.

CHAIRMAN HARRIS: Are you going to try to do that through reclassification and collective bargaining, or what.

MS. GARFIELD: Well, we will address--Karen's going to be addressing the whole situation of reclassificaton, unfortunately, that's worked the opposite way; it's worked against us. But, we'd like to talk to you about that, and we'd like to find ways to work with the Legislature to put as much pressure on the county as possible. Because, otherwise, the plight of the clerical workers particularly in the county will not change, and they will continue to be the same second-class citizens that they've been in the past.

MS. DEMOTA: I'm Karen Demota, and I'm a business agent with Local 660. I'd like to briefly address an example of what Los Angeles County terms or understands to be promotional opportunities, or an effort to make secretaries and clerical workers reclassified into higher paying positions. As both Beth and Lola stated we are all in favor of promotional opportunities for clerical workers, however what the county does is "cloak" it under the terms of affirmative action and promotional opportunities, and it really doesn't. An example of this is last summer, a reclassification effort that the county made without contacting the union, without consulting with any of the clerical workers in the job force, they took 1500 clerical workers out of the bargaining units they were in and reclassified them. How they reclassified them is what we feel is both outrageous, and discriminatory.

They took the 1500 people and based their reclassification not on their skills, nor on their experience or their knowledge, but on who they worked for. In other words, if you worked for a very important division chief in a large department your reclassification and position would be higher than if you worked for a division chief of a smaller department. So, what has happened is the union has been getting (did and continues to get) an enormous amount of calls from clericals who say, "Hey, I do exactly the same thing that Mary Brown does in a different facility, but because her boss is more important she gets paid more money." They union--our role is to meet with the county to negotiate and to work them, however, the county refuses to do that with us. When we asked to negotiate, they said: "No," basically. We filed an Unfair Labor Practice, the hearing officer agreed with us; they

had broken the law; we were right; they shouldn't have done what they did. However, the hearing officer's decision is still pending ERCOM's approval or disapproval of her decision; so we're still in abeyance over it. In the meantime, the situation has become more complicated and complex.

You know, the union maintains that this is a phony form of promotional opportunities, that this sort of promotional opportunity never would have been offered to a group of 1500 White males. The union maintains that skills, experience, and knowledge should be the determining factors in reclassification and career opportunities as they are for men. Finally, the union maintains that women in the county should be compensated for their skills, expertise (as men are), and not compensated on the basis of who their boss is, and in most cases being a male.

Lip services the county gives, is just that, under the guise of affirmative action, and we're asking for real nuts and bolts progress, and affirmative action programs that can truly give opportunities to the women in the county. I guess what we want from you, is we want you to know the pitfalls that we are encountering, we who are in collective bargaining and who have contracts. And, that any money that the county gets from the state should have some sort of strings attached, so that real honest-to-goodness affirmative action programs and career opportunities begin to really

for the clerical workers in the Los Angeles County.

CHAIRMAN HARRIS: So, you're saying that basically the collective bargaining process, basically, requires good faith that's not being honored by the county, and... Yes?

MS. COATS: Yes, I'd like to say--getting back to that career development committee, I've served on that committee; the Joint Labor Management Committee. And, through numerous meetings with management; through numerous meetings on our own time (I'm talking about the clerical employees now); our own time at night; our own time--lunch time, you know, we're sitting down hashing out what kind of recommendations we want to make to management. Finally, through head-knocking we come up with a joint recommendation. And, we think: okay--you know, now that you've got the "head honchos" in management who are sitting here (you would assume were in the position to approve this joint recommendation), that everything's okay; we'll make this recommendation. We could not even get to the point (after a year-and-a-half), of making that recommendation that we had jointly agreed to. And, according to the language in the contract we were supposed to have had it done in a year. We extended it another six months, and now the county won't even honor the recommendation.

CHAIRMAN HARRIS: So, you would probably concur then in the suggestion of the Secretary of the State and Consumer Affairs agency, that perhaps the Legislature should put an auditor general type of person there who would be able to review local as well as state agencies in determining whether or not they've been in compliance with the public policy.

MS. COATS: Most definitely.

MS. GARFIELD: But, that's not enough. What has to happen from there is there would have to be some sort of penalties

imposed on the local agencies if they don't comply.

CHAIRMAN HARRIS: Well, that's what the Auditor General would probably recommend, but you have to have some coordinating point to review, whether or not they in fact have been in compliance or not with public policy.

Is there anything else that you might offer in terms of solutions to the problems of discrimination against women, both in terms of the upward mobility (which seemed to be a focus), and also the recruitment? Are there other things that can be done? Obviously, there's a disparity between the union and the county as a base to the power of each to exercise some positiveness in terms of the problem, and the county's obviously not doing that. So, is there anything else that you can think of in terms of either legislation or administrative or other kinds of things?

MS. GARFIELD: One other thing is--and this really goes back to what Karen was talking about, and that's the reclassification and the refusal to involve the union in that. Our mechanism at the local level for resolving these disputes where there's been a violation, the Myers-Millias-Brown Act is really not sufficient.

ERCOM, which is composed of three individuals; those people are all appointed by the Board of Supervisors. If it's the Board of Supervisors who are perpetrating these policies, then those people who are so closely tied to them certainly are not going to say, you've done wrong and we're going to take action. And, this is of course...

CHAIRMAN HARRIS: ERCOM, is now what?

MS. GARFIELD: ERCOM is the Employee Relations Commission; it's at the local level.

CHAIRMAN HARRIS: Okay, I understand.

MS. GARFIELD: It's like PERS but at the local level. That's a real frustration that we have, and we have just found that based...

CHAIRMAN HARRIS: But, are these commissioners part-time citizen people?

MS. GARFIELD: Exactly...

CHAIRMAN HARRIS: Okay.

MS. GARFIELD: Exactly. These are people who generally are arbitrators or labor attorneys on the outside, but the problem is because they're so closely tied to the Board of Supervisors. Inevitably, because that's the way that they're appointed and removed; then we have a problem.

CHAIRMAN HARRIS: Okay. Any other questions? Thank you very much, I appreciate it. We will certainly try to look into it and see if we can do something to add a solution.

MS. GARFIELD: Thank you.

CHAIRMAN HARRIS: Okay. Now, Chris Maitland please, and Cheryl Parisi from AFSCME. Welcome. I'm sorry, there's another lady. Would you all identify yourselves as you speak?

MS. CHRISTINE MAITLAND: Yes we will. My name is

Christine Maitland, I'm a staff economist with AFSCME (The American Federation of State, County and Municipal Employees). To my left is Cheryl Parisi, she is a business agent for Council 36. And, on the far left is Gloria Larrigan, who is the Local 3090 President of AFSCME representing the L. A. City clericals. Gloria, will present our prepared statement, and then Cheryl and I will be happy to respond to any questions you may have.

CHAIRMAN HARRIS: Do we have copies of that? Or will you give us some copies?

MS. MAITLAND: No. We'll have copies within ten days. We do have some documents that we want to provide to you on what we see as solutions.

CHAIRMAN HARRIS: Okay, that's fine. Okay. Thank you.

MS. GLORIA LARRIGAN: The American Federation of State, County and Municipal employees has long been a leader in promoting the rights of women in the work place. More than 400,000 women are members of the AFSCME and are working through our union. We have called for action at the bargaining table, Legislature and the courts. Women have made great strides in the last 20 years, and there have been new education and job opportunities available. Attitudes have changed, but unfortunately...

CHAIRMAN HARRIS: See, let me interrupt you now. Sorry, I had to do it. Since you're going to submit it in writing, I'd like you to summarize rather than read verbatim since we're going

to have it in the record in writing so that everyone will have a chance to review it.

MS. LARRIGAN: Okay. What we need to do is to...

CHAIRMAN HARRIS: Take your time and just kind of peruse it, and just give us things that you think are particularly pertinent to note at this point.

MS. LARRIGAN: We think it's important to note the fact that the women in the work force are being geared to, and directed to, locate female dominated clerical positions. They are being made to assume these responsibilities at such low pay, being heads of households (most of the time they are sole heads of households), they have to undertake the responsibility not only of the household, the job; but on occasion have to undertake a second and/or third job outside the home.

The latest government figures show that 52% of all the women 16 years and older are in the work force now, and this has increased 44% since 1965. Although, women have increased in numbers in the labor work force, we are only earning 57¢ to the dollar that's being made; however, in 1963, we were earning 63¢. So, that's quite an...

CHAIRMAN HARRIS: In 1963, it was how much?

MS. LARRIGAN: Sixty-three cents.

CHAIRMAN HARRIS: And, how much now?

MS. LARRIGAN: 1955, it was 63¢, and now it's 57¢.

CHAIRMAN HARRIS: So, what it's going backwards?

MS. LARRIGAN: It's gone backwards. (Laughter).

CHAIRMAN HARRIS: That's encouraging. That's the kind of information we wanted. (Laughter) Geez.

MS. LARRIGAN: In the City of Los Angeles where I am the President of this local, there was a study made that shows that there was great disparity in the clerical job specifications. We have 60% of the job force being women; in para-professionals we have 66%; the administrators 6% are females; technicians 8%; protective services 7%, and skilled crafts 1%.

CHAIRMAN HARRIS: Now, this is in what--where?

MS. LARRIGAN: In the City of Los Angeles.

CHAIRMAN HARRIS: In the City of Los Angeles? Okay.

MS. LARRIGAN: According to a survey that was made. We have made great strides in the city this past year in bargaining, however, we still need to make more strides. We need to improve the salaries, so that the achievements that were achieved in San Jose, California can also be seen here in California--I mean Los Angeles.

CHAIRMAN HARRIS: San Jose, seems to be (in Santa Clara County from my recollection over a period of years), it seems to be almost a model in terms of aggressive programs, and other kinds of things related to women. Is that an inaccurate conclusion, or is

that in fact the case?

MS. LARRIGAN/MS. MAITLAND: Well...

MS. LARRIGAN: Go ahead.

MS. MAITLAND: Well, San Jose is the model here in California, particularly since it was such a media catching event with people on strike for comparable worth. And, it wasn't just the women out on strike, the men were joining them too, and that's why it has had the attention that it's had. And, also the union was successful in getting a lump of money there to be used to implement the comparable worth study.

CHAIRMAN HARRIS: Okay, thank you.

MS. LARRIGAN: AFSCME, has been leading in pay equity. They have filed charges in terms of pay equity in Washington, Connecticut, Illinois, Minnesota, and Wisconsin.

CHAIRMAN HARRIS: Let me ask a question. Was AFSCME--which union group is particularly involved, is it Santa Clara or San Jose?

MS. MAITLAND: The San Jose clericals is an AFSCME local.

CHAIRMAN HARRIS: I see. Were other unions also involved, or was AFSCME the only union involved in that entire issue of comparable worth?

MS. MAITLAND: Well, there are other unions that take on the issue of comparable worth.

CHAIRMAN HARRIS: I mean, in San Jose...

MS. MAITLAND: In the San Jose setting that was an AFSCME...

CHAIRMAN HARRIS: Okay, that's what I was wondering.

MS. MAITLAND: Yes, that was an AFSCME local.

CHAIRMAN HARRIS: Okay.

MS. LARRIGAN: Thus, everything has been summarized pretty well, and you will get a copy of this.

MS. MAITLAND: What we have provided you is the way that comparable worth studies can be done. How do you determine if there's a discrepancy in salary? And, in the written testimony itself, we have provided you with a short-hand form of how to determine that. We didn't see that anyone had really addressed that issue in terms of, specifically, how do you go about determining whether there is a discrepancy in salaries.

MS. PARISI: Uhm...

CHAIRMAN HARRIS: Yes.

MS. PARISI: We wanted to know--we represent 4,000 clerical workers in the City of Los Angeles, AFSCME also represents librarians and nurses employed by the City of Los Angeles; so we represent the majority of women employees working in the City of Los Angeles. In preparation for our own comparable worth analysis of city employment, we did a breakdown of the city's EEO fall report to the federal government, both for 1981 and '82. In the '81 and

'82 reports, we found that only 20% of the entire work force in the City of Los Angeles are female.

CHAIRMAN HARRIS: Is that right?

MS. PARISI: Only 20%. And, that female work force is segregated into female dominated job classifications, out of all the 4,000 clerical employees employed by the City of Los Angeles over 75% of those are women. Women are under-represented in mostly all the classes that I think Gloria outlined to you; so that our problem is clearly a two-fold one. One, obviously we do need to address the question of meaningful career ladders, and movement for women within the personnel system. And, it has been our experience that women tend to come into the system through the clerical series and stay there; there's simply no movement for them.

CHAIRMAN HARRIS: So then, there's a problem both with recruitment and absolute numbers, and also with the upward mobility -- opportunity for upward mobility. Is that right?

MS. PARISI: Absolutely, absolutely.

CHAIRMAN HARRIS: And, there's nothing being done at all? I mean, is there not a commitment to do it, or are there problems with the civil service system? Or what, in fact, do you see as the stumbling blocks changing the situations as you described it?

MS. PARISI: Well, currently we're in a system, I think, where we're running to stay in the same place. The city has contracted with the "Arthur Young Consultants", to do an analysis of the city's entire personnel system. We see many of those recommendations

as being totally inimical to the interest, and the rights of female employees in the City of Los Angeles, so we're now in the process of trying to fight to maintain the kinds of basic civil service protections that we have. We think most importantly, if the city would show - I think - a commitment to the principles of affirmative action to truly analyze its own career classification plan within the city. During the early '70's, there were a number of bridge classifications that were created in the City of Los Angeles, specifically, for the purposes of moving women from the female dominated clerical classifications through a para-professional level into some of the professional administrative and accounting series. Those classifications, are woefully under-utilized within the city, what we're finding is that in terms of department heads preparing their own budgets, that they simply don't use the classes. There are just a handful of people now in those classes so that on paper the city can say that they have sort of a mechanism for upward mobility. In reality and practice, more and more of what we're hearing is that the funds simply are not available to implement affirmative action. And, in face of the results that "Proposition 13", and budget cutbacks were affecting us all, I think that women workers are really bearing the brunt of that. Because, now what the employers are saying to us in bargaining is that; "we don't have the money to talk about the kinds of things that you need to talk about." Last year in bargaining we addressed the question of training, and we were simply shut down; we were told that there was no money to implement any kind of meaningful training program for clerical workers.

CHAIRMAN HARRIS: They've been able to avoid layoffs, is that right? Thus far?

MS. PARISI: In our own bargaining units the layoffs have been very minimal, there have been no layoffs among clerical employees because of the high turnover classification. Some of our librarians were laid off last year, I'd say about seventeen of them.

CHAIRMAN HARRIS: Were they rehired?

MS. PARISI: They're in the process now of being called back.

CHAIRMAN HARRIS: I see. Let me ask a question. You heard the proposed idea of an auditor general type person in the Legislature reviewing state and local agencies in terms of their compliance when there's affirmative action goals or requirements. Do you have any reaction to that? Or any other solutions that you think perhaps, in that vein, might be appropriate for us to consider as a legislative body?

MS. PARISI: We're very much supportive of such an idea, we think that there definitely needs to be some kind of outside monitor on the conduct of local employers, with regard to the whole question of affirmative action.

CHAIRMAN HARRIS: Okay.

MS. PARISI: Also, I think, I really want to add for the support for Beth Garfield's statement, that given local entities now receive large amounts of money from the state government in the form of bailout funds. And, the pay raises that we are able to negotiate (you know, in fact, are relying upon this money), that there should be some time that money should be designated to upgrade those female dominated job classifications which are underpaid, and which have been

demonstrated to be so. I think that that would be one very concrete way of supporting the principle of comparable worth in the bargaining process.

MS. MAITLAND: In terms of solution though, AFSCME feels that the bargaining process is the most expedient way; the courts take a long time; the Legislature often takes a long time to act. And we feel that it is the bargaining process that is the fastest way to address not only the issue of career development and comparable worth, but also things like child care, and alternative work patterns, and other things that affect working women.

CHAIRMAN HARRIS: Well, how do you respond to the SEIU experience with the county of Los Angeles, I mean, they bargained for some changes that obviously the county just reneged on. And--you know --I really--it's probably not an issue that people felt strongly enough about to strike, but - you know - so--I mean--I'm asking - you know - are there limits on the bargaining process as it relates to this particular item in the agenda? But, it's just not a high enough priority item, to make it a real strong issue for bargaining purposes.

MS. PARISI: Well again, bargaining in the public sector occurs in an arena, where many eyes are focused on the conduct of bargaining, and the kinds of issues that are raised.

CHAIRMAN HARRIS: Right.

MS. PARISI: And, clearly I think that the State Legislature has a concrete responsibility, and also a moral responsibility to try to influence the decisions and the policies that are enacted on the local level, with regard to some of these issues so that when we go

in to bargain some of these things, we're not met with the reality that funds are short.

CHAIRMAN HARRIS: I see. Okay. Anything anyone would like to add?

MS. LARRIGAN: Yes. I would in terms of the striking; a strike is fine if you can afford it, but most of the people and especially the clerical unit can't afford to go on strike. They've got families to support, and there is no way regardless of how much of a priority these issues may be, there's no way they can go on strike; that is a total last resort.

CHAIRMAN HARRIS: Yes. I hear you. It's a reality that has to be dealt with. Okay, thank you ladies very much, I appreciate your testimony.

LADIES: Thank you.

CHAIRMAN HARRIS: Ms. Cervantez, please.

MS. CHRIS CERVANTEZ: Good afternoon.

CHAIRMAN HARRIS: How are you?

MS. CERVANTEZ: My name is Chris Cervantez, and I'm statewide president of a state employees organization called CAFE de California. Just to give you a little bit of background, our organization originated back in 1975. We currently have Hispanic state employees of approximately 1500; 47% are female.

First of all, I want to thank you for the opportunity to present testimony today, Mr. Harris, and I will in fact give you a synopsis of my concerns. There are three major concerns that I would

like to express to you, with regard to state employment of Hispanic females. One is that, for your information, Hispanic females continue to remain the only woman's group that has not yet achieved 1970 labor force parity levels at 4.8%. Secondly, Hispanic females continue to be the lowest paid civil servant receiving an average salary of $1387 per month, as compared to the average female state employee salary of $1510. In addition, Hispanic females in comparison to other women's groups, are currently represented in six out of twenty job categories throughout state government. They are primarily concentrated in the clerical ranks at 11%, and in career opportunity development ranks, 11.9%.

Rather than go into a large history of our problem, what I'd like to do is to actually get into recommendations in terms of what we'd like to see acomplished, with regard to Hispanic females. In addition, I'd like to reiterate my support for some of the concepts that have been presented previously.

CHAIRMAN HARRIS: Okay.

MS. CERVANTEZ: One is, I submitted my testimony in writing, but in addition I've also submitted a petition that we presented to the Governor, the candidates for Governor, The Legislature, and The State Personnel Board.

CHAIRMAN HARRIS: An excellent document, I just had a chance to review it.

MS. CERVANTEZ: Oh, thank you. But, we have various pages throughout that basically are directed towards the needs of Hispanic females, and I would hope that you would pay some attention to it.

There are some recommendations that I'm not going to indicate today, but that I hope you would refer at a later date.

CHAIRMAN HARRIS: Yes.

MS. CERVANTEZ: One of the recommendations that I would like to see accomplished is that, within our petition we asked that a special section be required in the annual report to the Governor, and the Legislature on the state's affirmative action program, detailing the under-representation of Hispanics. Particularly...

CHAIRMAN HARRIS: A special--wait a minute--a special section from whom?

MS. CERVANTEZ: For Hispanics.

CHAIRMAN HARRIS: From whom though?

MS. CERVANTEZ: Oh! What do you mean from whom?

CHAIRMAN HARRIS: You said you wanted a special section in a report to...

MS. CERVANTEZ: Be required in the annual report. There's an annual report that goes to the Governor, and the Legislature on the state's affirmative action program.

CHAIRMAN HARRIS: From whom?

MS. CERVANTEZ: Oh, we would like it from The State Personnel Board, and the other ones that actually put the report together, okay?

CHAIRMAN HARRIS: Okay, that's what I wanted to understand.

All right. Okay.

MS. CERVANTEZ: Detailing the under-representation of Hispanics, particularly Hispanic females, and specific actions being taken to correct the under-utilization. I just want to comment, because our organization is comprised of both males and females, we'll be specifically interested not only in females, but - you know - males as well. Additionally, we would like to see that the state affirmative action policy be revised to include language that specifically states that all goals established for all groups be accomplished by ethnicity. I think, if you look at the current situation, affirmative action goals are treated on an aggregate level in that when you're looking at overall goal accomplishment, they look at the minorities; all minorities as opposed to the specific ethnic groups. We would like to see more direct attention be placed on the specific minority groups, so that we can accomplish our goals that have been established. In addition, departments achieve affirmative action goals for some groups, plus exceed their established goals with regard to labor force parity. And, we feel that in order to assure equitable representation for all groups, that they need to look at those groups that have actually achieved labor force parity. And, if in fact they have done that, they need to re-emphasize their focusing in terms of hiring two of the other groups that are under-represented; it's not being done at this rate currently.

Thirdly, we'd like to see a legislative review committee established to review existing state civil service processes which may be impeding the progress of women, particularly Hispanic females. One of the things that we would be interested in seeing happening, is the review of the examination process to determine if pass and fail

scoring systems could be implemented to allow for increased participation of women, particularly Hispanic females in non-traditional job categories.

We recommend a joint--one of the things that we're interested in knowing is that there's a great state deficiency with regard to the budget. We would like to see more joint agreements being developed with the private sector; so one of the recommendations we have is that a joint agreement be negotiated with both public and privated industry to provide training, internship, fellowship programs for women, particularly Hispanic females in non-traditional occupations such as: engineering, heavy equipment operators, state traffic officers, etc. To accomplish this, we would request that you establish a legislative private/public sector task force comprised of all women's groups, inclusive with Hispanic females, to insure appropriate policy program development implementation.

CHAIRMAN HARRIS: An excellent idea. You think a task force might be a good way?

MS. CERVANTEZ: Yes.

CHAIRMAN HARRIS: I have a couple of questions that I'm interested in. Do you see, particularly as it relates to Hispanic women, that recruitment is the principal problem? That they're not getting sufficient numbers of applicants from the--from Hispanic females for the various job classifications, or is it the examination process itself? Or, where is the problem in terms of achieving parity? I mean, is it the fact that people are not applying for jobs because they're not being sought out? Or, is it that they're applying and somehow not getting through the process of actually getting hired?

MS. CERVANTEZ: I think it's the combination of everything. You know, I think that depending on the particular exams, we know that there's some particular examinations where we have high application rates for Hispanic females. On the other hand, I think the recruitment efforts, in some instances, have something to be desired, there's no one direct answer that I could give you with regard to the situation regarding Hispanic females. I have to say that Hispanic females are much better off than the males, overall during recruitment.

CHAIRMAN HARRIS: What about--are there particular barriers i.e., language barries - you know - for example; in education there has been less of a problem because the requirements are bilingual education in terms of hiring teachers who, in fact, speak both Spanish and English. Is the lack of bilingual requirements, perhaps, in some of the other job classifications a factor in terms of the opportunity?

MS. CERVANTEZ: You know, I really would--in reviewing statistical data or information with regard to that factor, I couldn't give you that answer; that would be more appropriate for the State Personnel Board to respond to. I would think that that definitely would be some kind of factor, and maybe a say of such...

CHAIRMAN HARRIS: I'm just wondering, particularly as it relates to parity how many people there are, for example, that have limited English capabilities. Who, therefore, are sort-of screened out of the "hind process" because English is the only language that...

MS. CERVANTEZ: You know, that's really hard to consider; that would be something that would be interesting to pursue in terms of natural studies.

CHAIRMAN HARRIS: I understand. Okay.

MS. CERVANTEZ: We are having hearings before the State Personnel Board with regard to our situation with Hispanics overall. One of the issues that we will be addressing more specifically is the bilingual issue.

The other thing that I want to emphasize because of the budget deficit as such (and the training budget's dwindling at an enormous rate), we would request that legislation be developed to require departments to establish goals for women by a sex minority group; obviously, to insure proportionate amounts of state training monies are being expended for career development, and upward mobility training purposes. Our concern is that since the majority of Hispanic females are concentrated in office support, and career opportunity development categories, we'd like to see some transitioning occurring internal of the state civil service process. And, we know for a fact right now (and maybe it's changed in the last year, I have a substantial amount of training background in state civil service), but previous to me leaving (approximately a year-and-a-half ago), they had no goals established by ethnicity or steps, and I think really we need to do some monitoring of that process, because it hasn't occurred currently.

CHAIRMAN HARRIS: So then, do you like the idea of a so-called auditor general type individual within the Legislature to review agencies, state and local?

MS. CERVANTEZ: I like the idea provided that they - you know - you do have representation from the Hispanics as part of the staff.

CHAIRMAN HARRIS: Well, it's only going to be probably one

person, probably--but simply a person who would be--I don't know how much staff support would be available; but based on just an individual, at least, to coordinate and review; to accept documentation from various state or local agencies as to what they have done, or not done, as it relates to affirmative action goals in hiring and promotion.

MS. CERVANTEZ: I would support it provided that they would be given some kind of authority to pursue departments that aren't in fact achieving their goals.

CHAIRMAN HARRIS: Uhm-m, okay, I doubt they'll be doing that, because basically what they'd be doing is reporting to the Legislature, and the Legislature would obviously have the authority through the budget process to exercise some sanctions.

MS. CERVANTEZ: Isn't there anything that you guys can do in terms of the Legislature with regard to the budget? I mean, I would be--one of the things that I'm thinking about is, I was in support of Virginia Taylor's (from CHP) concept that legislation be adopted with regard to the budget in terms of all managers performance, relative to the hiring of women, particularly, minority women. You may want to consider something that ties directly to their employee benefits, in other words, if in fact they're accomplishing goals that have been set, maybe they should be receiving demerit salary adjustments as such...

CHAIRMAN HARRIS: Okay.

MS. CERVANTEZ: In proportion. The other thing that I wanted to mention is that the Asian state employees, in conjunction with our organization and numerous other coalitions, last year introduced a bill, Assembly Bill 3626 by Martinez; I don't know if you're familiar

with it.

CHAIRMAN HARRIS: Yes. It failed in the Senate.

MS. CERVANTEZ: It failed in the Senate Finance Committee. We would be interested in seeing that bill followed up in terms of pursuing it, primarily, because it reimburses those individuals that are successful in appeals of discrimination complaints, sexual harrassment, and the like; so that's something I'd be interested in.

CHAIRMAN HARRIS: We tried to stick that in a bill by Senator Rains at the last minute. The Legislature was unable to successfully get it out as time ran out on us, but we'll attend to that and see if we can take it up ourselves, and get another author.

MS. CERVANTEZ: Well, as far as we're concerned we'd really like to see that initiated, I think it's very beneficial. My understanding is that one of the biggest issues with that bill was that the cost was too high. And, that--I really kind of have problems with that, because I think that what you're in essence saying is that the high cost--is that the state is, in fact, discriminating blatantly.

There are a couple of others that I wanted to ask you. Oh! the other thing I wanted to support was the issue regarding legislation that all departments have women program officers. Well, that's "fine and dandy", but in the current situation in many departments women program officers are not funded at full-time level. In many instances they're funded at half-time or less; so if you do, in fact, initiate and implement some legislation I would hope that it would be at the full-time level to make it somewhat effective.

CHAIRMAN HARRIS: Some of the departments are so small

though, that we may not be able to do that due to the standpoint of release time to do--work full-time on that. But, the main idea is that there would at least be one person who had the programmatic responsibility for providing information, and for implementing whatever the program was for women. But, I understand your sentiments, and I think I concur.

MS. CERVANTEZ: I wouldn't be concerned with those departments that are so small, I'm concerned mostly with those with...

CHAIRMAN HARRIS: With the major hiring? Okay.

MS. CERVANTEZ: ...Major hiring, and that have promotional opportunities.

The other thing, the issue came up with veterans points, as far as preference points being given to veterans. You know, I would like to support and indicate that legislation be implemented for single persons, head of household preference points. I know--(Laughter) - you know - the majority of those will be women, obviously.

CHAIRMAN HARRIS: Yes, I understand.

MS. CERVANTEZ: I was reading a magazine recently, and in that magazine it was quoted that 60.5% of Hispanic females throughout the State of California are single head of household. And, it would seem to me that that would be an ideal type of a remedy to rectify the situation with women.

Other than that, that's pretty much--do you have any other questions that you wanted of me?

MR. YOUNGBLOOD: Let me ask one question. We have--I was

looking at some of these statistics, and we see that Hispanic women were promoted more than any other ethnic group, 6.1%. I was wondering is there any--is that the cause of any current program that's in effect?

MS. CERVANTEZ: Again, that's really hard to respond to. They are promoting, but then look at the bottom line statistics; they are very little in number in terms of representation in those categories that are administrative level or higher. My concern would be at looking at those clerical ranks, and the career opportunity development ranks to see if in fact that the promotions are at that level as well. Because frankly speaking, we're getting a lot of our hires at both levels, but the turnover rate is so high that I would think that we would need to do something with regard to transitioning them to assure appropriate upward mobility opportunities.

CHAIRMAN HARRIS: Thank you very much, Ms. Cervantez. I appreciate it. Now, Ms. Washington.

MS. WASHINGTON: With the committee's permission I'd like to call Lydia Baca, who is The Commission on the Status of Women's representative, up at the same time. And, I believe the personnel department also has a representative present...

MS. JUDY MEYER: Judy Meyer...

MS. WASHINGTON: Judy Meyer's.

MS. MEYER: I'm not speaking, I'm just here to observe.

CHAIRMAN HARRIS: Okay.

MS. WASHINGTON: Hopefully, the three of us can provide to

you some kind of example, or explanation, or our reasons why we feel the city is not moving aggressively enough in meeting our affirmative action goals. And, what measures we feel that should be undertaken by either the State Legislature, and/or the City Legislature that will improve that representation. Lydia, is going to begin the presentation by giving you a brief overview of the statistical information that is involved in our program.

CHAIRMAN HARRIS: Let me--if these statistics had come before the election, I would swear they came from Deukmejian.

MS. WASHINGTON: (Laughter) We have more to say.

CHAIRMAN HARRIS: All right.

MS. LYDIA BACA: Good afternoon. We appreciate this opportunity to talk to you about the City of Los Angeles' Affirmative Action Program implemented in 1973, and the progress that women have made since the adoption of this program. In 1973, as you will see from the referenced material you have before you, women made up 16% of the city's work force of some 41,000 people. Women now make up 20% of a work force of approximately 38,000. As we have provided your committees with a copy of our appendices, I won't go into the statistics in any detail. Briefly, women have progressed in seven of the eight employment categories. The number of female official administrators is up from 3 to 6%; professionals from 11.9% to 21.3%; protective services from 2.7% to 6.7%; para-professionals from 31% (one-third), to 65% (nearly two-thirds); and office and clerical professions from 70 to 74%. Skilled crafts, as you can see, from one-tenth of 1% to 1%, and finally, service and maintenance employees have gone up from 2.3 to 6.3%. The number of female technicians is

down, in large part due to the creation of a new para-professional class in the police department called The Police Service Representative.

Formerly classified radio telephone operators, the police service representative handles police complaint boards, and does routine clerical police work. The increase in the number of women in the protective services is due, mainly, to a consent decree implemented in 1980. The consent decree requires the department to hire a certain number of women for each of its training classes until 1985, when the number of females (sworn in personnel) in the police department must reach 20%. The city has met its hiring goals each year, and so far is doing so this year.

The fire department, has not hired women as fire fighters at all, as no woman has been able to pass the physical abilities tests. The department, however, does have a number of women serving as paramedics, possibly later in these hearings you will find that other cities and counties have discovered that there are different ways of--different types of physical requirements that can be requested.

The number of para-professional classes has grown considerably over the years with the creation of such programs as administrative aide, personnel aide, and accounting aide. These positions may lead to jobs in the professional category, and several women who came to the city as clerks are now near the top of this particular category.

The office clerical category has traditionally included most of the women working for the city, similar to the private sector, and it continues to do so. However, in 1973, three quarters of all women employees were in this category; but by 1982, the number had dropped to 61%.

The personnel department is not the only source of activity on the affirmative action program in the city. The Mayor's Affirmation

Action Task Force monitors the program, as do the various informal employee advocacy organizations such as the Affirmative Action Association for Women. The AAA, also conducts training programs such as interviewing techniques for women and men wishing to promote up the ranks.

Training is important to the success for the city's affirmative action program as well as to the overall running of the city, and particularly we find it important to women. The city conducts in-house training programs, arranges with local community colleges to teach classes of interest to employees in city buildings after work, and during work. And, it pays one-half of the cost of taking classes at the college level, which will improve job performance or assist on a promotional examination.

The city's personnel department developed a physical training program for paramedic trainee candidates last spring. The purpose of which was to help women and men build their strength and endurance, so that they could pass the fire department's physical abilities test. The fire department supplied the actual test equipment, and as a result of the program 66% of the women participating passed the test (a much higher pass rate than women who had not taken part in the program), although such factors as motivation, fitness before training, and skill level were not measured. The personnel department has indicated it will probably repeat the program when it is time to employ more paramedics. However, we feel it won't help the city to have an affirmative action program if it doesn't hire people who will benefit from it; proper recruitment, and dissemination of information is vital to the affirmative action program's success. As it relates to affirmative action the city's basic practice is to review the type of job needing to be filled, and the representation of women and

minorities currently in the class. Publicity about the job to be filled will be targeted to those groups who are under-represented.

The commission is very interested in seeing that the number of women that work in government increases, and I'd like to make a few suggestions on behalf of the commissions on how women can be encouraged to work for the various public agencies in California. Firstly, strict enforcement of laws dealing with equal employment opportunity is vital to the success of the affirmative action program. We find that affirmative action in general is a useful tool, women have progressed (although not far enough in the city), and we find that the actions and principles of affirmative action are important, but stricter enforcement is absolutely essential.

Secondly, employment information materials should be provided to schools, and should stress that all government jobs are open to women including those traditionally held by men such as: police officers, and skilled crafts positions. We feel more direct recruitment efforts are needed to hire women and minorities.

Thirdly, the development of employer supported child care should be encouraged. This may mean that a public agency may wish to provide a center free of charge to its employees' children, or provide available space in one of its buildings for a child care center while the employee pay staff, food, and equipment costs. The public agency may also assist employees in finding child care, there are a variety of ways that the public employer can assist employees in this area.

Lastly, we'd like to encourage more job sharing and flex-time programs. As I noted earlier, the City of Los Angeles has recently adopted such a program.

CHAIRMAN HARRIS: Let me ask a question. Are you aware of any governmental entity that has in fact sponsored or implemented national child care centers for its employees?

MS. BACA: In Sacramento, the Department of Motor Vehicles has donated, I believe, an auditorium on the ground floor. The child care center is sort of a collective effort by the parents who are involved. It's always been a struggle for them in terms of raising money and making improvements and all that, but it seems to be functioning pretty well. Generally, they are in near capacity, the kids seem to be happy and well cared for, and it was a real simple process - you know. All they did--it was just an auditorium, I think maximum capacity is somewhere around 200; they just partitioned off various areas, and built--in the restrooms just built little - you know - steps sort of to the wash basins and to the toilets.

CHAIRMAN HARRIS: Has there been any tangible results, by virtue of more women being able to work, or hired? Has anything been demonstrated as it relates to opportunities for women?

MS. BACA: In speaking to the director of the child care center and some of the people who were involved, there was some indication that absentee rates had been lowered. I don't believe that there's anything written on it; I don't think a study has been made...

CHAIRMAN HARRIS: No, I understand. Okay.

MS. BACA: ...But, that's what they have indicated to us.

CHAIRMAN HARRIS: It's a pretty interesting idea, and that's why I'm just wondering how and what kind of models might exist.

MS. BACA: That's the only model we know I do know, however, that the United Way and other agencies in the city are looking for some kind of a hook to develop a child care center in the central city area. It's been going on for about a year or so, and I think we need--we need some kind of a push to enable that to take place.

CHAIRMAN HARRIS: Okay.

MS. FAYE WASHINGTON: My name is Faye Washington, and I'm past President of the City of Los Angeles' Affirmative Action Association for Women. I would like to voice my appreciation for having an opportunity to speak to the committee this afternoon, and to share with the committee some of the things that the A.A.A.W. (I will, if I may, use that abbreviated format), feel that--is a current problem with progressing and meeting some of the goals that we have set for women in the public sector. Lydia, has elaborated on the various statistics, and we know from previous testimony that women may comprise about 20% of the city's total work force. The city has about 38,000 employees, and we make up about 20% of that. More than 75% of those females are concentrated in the clerical positions, and that, quite frankly is where A.A.A.W. has placed its greatest emphasis, is moving those employess either from the clerical positions into professional positions, and/or into non-traditional bridge classifications.

A.A.A.W., was formed about ten years ago, and it basically was formed when a group of females got together and were not satisfied with the manner in which the system was moving. They were not satisfied with the manner in which the personnel bulletins were being written (that would recall for examinations, promotional and otherwise), when we decided to get a voice into that whole process. That voice has been a very strong voice, and it has been a very calming

effect into the whole process. And, as a result of that we have seen some improvements in the City of Los Angeles, but far too few improvements. And, we really want to push for your efforts, and join with our efforts in making some of those results a little bit greater.

We'd like to concentrate on three primary areas in which we feel there's a problem. Training has been identified, and has been focused on by others as being a common problem that we have. Public agencies, we feel, must consider human resources as a valuable commodity. It is the one single common denominator for getting a task accomplished, and yet, if you survey various budgets you will find that fewer dollars are being appropriated for the purpose of preparing employees for higher promotional opportunities. Time and time again, we hear that we don't have the bucks to train the employees, we don't have the resources to provide the kinds of attentions that are needed. But, if we were to look at some creative methods, some innovative techniques of accomplishing the training function, training is not often concluded in a classroom situation; it can be achieved by a number of methods. It can be achieved by "on the job training"; it can be achieved by the mentoring process; it can be achieved within the department through a resourceful and a vital rotation policy within the department that will enable all employees to receive the same kind of valuable training that is necessary for them to move up through the career ladder. So, while we recognize that the dollars have been cut, we're not going to accept that as the reason why we cannot continue into this process. Because, we know that there are other means for achieving that goal, and we would like to see some of those other efforts explored and yet be put forth to accomplish this goal.

We're concerned with the various laws. True, the laws are becoming more and more protective of women's rights, in the last seven to ten years we've seen a surge in these kinds of laws. Yet, it is still necessary, in some cases, to bring lawsuits against a public agency to provide remedial actions. Case in point: the City of Los Angeles had a lawsuit brought against them by Franchon Blake, a female police officer. She attacked the City of Los Angeles for problems that had existed for years. We have a merit civil service system, we are an equal opportunity employer, and yet-n'-still, we have cases like this that are brought to our attention, and it is necessary for a consent decree to be forced upon the local agency before we will begin to take notice of a problem.

That leads me right into another aspect that we consider a problem, and that is some of the false physical requirements that are required in certain job positions. There has not to my knowledge in the city of L. A.--there's been an ongoing--don't get me wrong, the city has been really moving forward towards moving a lot of these barriers, but they need a little help; and that's what A.A.A.W. is all about.

We feel that there should perhaps be an overhaul of the cities and/or the state (the public agencies in general) classification plan. Essentially, what we have is a 1954 (a 1960 in some cases, and a 1928 in some cases), classification plan in that we're trying to accomplish some 1982 goals in terms of affirmative action, and it doesn't work. You've got to re-examine those classifications, and detect any artificial barriers that are present, and remove those barriers from that particular class so that you can see a surge in minority participation in those job classifications.

Franchon Blake's case resulted in the consent decree, and now the city's acting responsibly, and bringing into the work force (the police work force) their goal of 25% female employees. A couple of weeks ago personnel department has indicated that they're meeting those goals; so we can see from that that it is possible. But, a court should not have to tell the local agency, the state agencies that you must do this before it is done.

Comparable worth; it's really no secret that women on the average only earn about 59¢ on the dollar. We are concerned with the requirements that are placed on certain positions, and the duties of those positions; that they are not in fact comparable, and not in fact representative of the salaries that are paid for those positions. Again, we get the argument of finance; we cannot really finance a comparable worth study. In many cases the argument is geared down to the level where it should be more appropriately placed in the bargaining contracts. We would argue against that, we would argue that as a manager, as the employer of a great deal of employees that that management staff should take it upon themselves to enact those kinds of comparable studies (comparable worth studies), that are needed to bring about some agreement or some parity, at least, within those salaries; bringing that 59¢ closer to that dollar. We're not willing to--we would like the dollar, but we recognize that's going to be a long time coming. But, we do feel that we've got to start somewhere.

We, also, would support any kind of comprehensive training program. We would like to see efforts targeted on increasing the appointment of female executives at policy making levels. We have noted a great deal of increase in the lower level positions, in getting clerical employees out of the clerical series and into para-

professional positions; getting the clerical employees into non-traditional positions.

What our major concern is at this point, is having that level of sensitivity up for the female worker at the policy making level; getting females into that whole system, that whole structure. We would like to suspend the notion of the "good ol' boy network", and embark upon a program that will give females an opportunity to fairly compete for positions; we do not feel that is the case.

CHAIRMAN HARRIS: What's happening with the "good ol' girl network"?

MS. WASHINGTON: The "good ol' girl network" hasn't evolved yet, we're working on that. (Laughter).

CHAIRMAN HARRIS: All right, all right.

MS. WASHINGTON: There are several ways in which that can be accomplished. It's been pointed out that the city recently had completed a study done by "R. B. Young and Company", a consulting firm. And, in that study they recommended a program that is called, "The Management Service Program". That kind of program would in fact remove the requirement of certain civil service merit kind of testing, and place individuals into a pool whereby individuals can be promoted in that system without examination, and based upon performance on the job, and not necessarily performance in a test taking situation. We would support that kind of idea and have that idea used statewide. Because, there has got to come a time when we will make up for the discrepancies, the deficiencies that we now see represented in our statistics here. And, how do we go about that? We're going to sit back, and wait for the merit system to feed all of these people

through the system? No. The management, the Legislature, the local agency has got to take that in control, and when an appointment is possible, when a job opportunity is available appoint a female, and use affirmative goals as a criteria for making that appointment. And, have enough responsibility to say: "This is why I'm doing it, this person is qualified, as well qualified as the next person. And, I'm going to make this appointment on the basis of affirmantive action."

That leads me to another point where the Affirmative Action Association feels quite strongly, that there should be some kind of effort statewide and locally. An effort that would produce some kind of sensitivity training for the management employees. We have seen a lot of statistics thrown around, we have viewed a lot of affirmative action plans (and they're good affirmative action plans, they're excellent), and you've got to wonder after reading these plans, then why aren't we in a better position? Why are we here today trying to find more creative ways to make some changes there? I would say that it's basically the sensitivity level that is present in most management, and most policy making level positions; that it's not present. So, with that in mind perhaps we should consider training of those management employees, consider the training at the legislator level, and at those levels that really affect the policy making kinds of decisions. And, use that as a method of getting in and kind of turning around some of the biases that have been present for years; some of the biases that cannot be turned around with the comprehensive training program; some of the biases that cannot be turned around, if in fact, we had comparable worth studies. We've got to consider that and take control of that before any of these things should come about, if they are to actually evolve into some kind of workable format.

In listening to various testimonies that have gone forward today, I see that there is possibly an effort to--should be an effort made to establish some kind of coalition between groups such as myself (that I represent), and other female organizations statewide, because I heard some very good suggestions laid out before you today. They're suggestions that perhaps would benefit me; suggestions that might perhaps benefit someone else. If there is some effort made at the statewide level to in fact hold conferences. We hold conferences all the time at the League of California Cities, hearings that deal with personnel matters, that deal with grievance, discipline; why not hold a conference that deal with women issues and how you can affect changes in your local agency. It's kind of a sharing and sensitivity session whereby I would be enriched by what's happening at another locale, perhaps I might obtain or bring some idea that might assist me in furthering the goals within my own agency. I think that kind of effort (some kind of coalition that would establish a closer alliance between the various groups), is certainly needed.

I mentioned earlier about the classification studies, and to really embark upon a program that would in some way broaden those kinds of systems, and structure those kinds of systems on truly job relatedness. And, remove from those classification plans various false, artificial, physical limitations that really have no meaning whatsoever to the position that is being examined for.

I would also support Lydia's suggestion on the child care program. That is a program that is greatly needed statewide. Women do have a common problem, in many cases they are responsible for the care of the child. And, a lot of times that is the reason they are not present at certain training classes, their morale is lowered, their absentee rate is high because of the need for that kind of

service. I certainly think that it should--that kind of service should be sanctioned at the legislative level and carried down into the local agencies.

The job sharing programs: the City of L. A. currently has a policy in which employees can job share, they can break a position down, and only work four hours instead of the eight hours because of whatever problems that they might have. That is not, however, limited to women, that is with any employee. I think that kind of program should be sanctioned at the state level and carried down so that all agencies would be affected by that kind of program.

MR. YOUNGBLOOD: Could I ask you a question?

MS. WASHINGTON: Yes.

MR. YOUNGBLOOD: You stated earlier that you didn't want to include in the collective bargaining agreements the whole issue of comparable worth, why is that?

MS. WASHINGTON: I mentioned that, specifically, to say that it should be decided at a policy level, and it should be discussed at a policy level, and included at that level should the discussions get that far. But, I certainly don't think we should turn our heads and say; "No, this is more correctly placed in the bargaining positions", and not even considered the subject. We can't put our heads in the sand and pretend that it does not exist, and hope that it will go away in the bargaining process; so we've got to take control of it. And, that basically is why I paid that.

MR. YOUNGBLOOD: What other suggestions do you have in the area of increasing job mobility to go into those non-traditional roles,

technical craft skills...

MS. WASHINGTON: I mentioned briefly some of the para-professional positions, and a more exaggerated use of those kind--aggressive use of those kinds of positions. I've noted here recently with the city, the city acted responsibly several years ago, and they established a whole host of para-professional and bridge classes. But, as we go through the budget cutting process, I'm finding more and more of those positions are being cut out of the budget. Case in point: in 1974, there were 21 para-professional bridge class administrative aide positions in the police department; 1982 budget, I believe those positions have been cut to less than half that amount. We started out very aggressively, very "gung-ho"; but now we're kind of--we're going back in the opposite direction. I think as you look towards layoffs, and as you look towards your budget cutting exercises you've got to consider affirmative action, and the implications on the whole affirmative action program, what this exercise would do to that whole process. That has got to be a part of the decision making process that you embark upon when you begin to cut the funds for these various program.

MS. BACA: I think we're agreed pretty much that the affirmative action program itself is good, but lacks teeth. And, there has been some talk regarding the Arthur Young Report, about - you know - making managers (departmental managers) more responsible. But, the question is, in what way would they be responsible? You know, everybody should have - you know - a set of goals and job duties to perform. And, it would seem to make sense that affirmative action (the actual attainment of some kind of movement for women and minorities further up in the ranks of the professionals) should be - you know - one of

the cutting edges of whether or not someone's doing their job right. If they hire ten people, and if at least - you know - half of those people aren't women or minorities then they should be held accountable for that; there are no teeth in our plan. And, I'd just like to back up that statement by saying that out of clerical workers, one out of every three women working in the nation as a whole is a clerical worker, but in the city two out of--it's 61% - you know - instead of 30% it's 61%.

CHAIRMAN HARRIS: Let me--first of all, I want to thank you for your testimony, it's been very helpful, and very well prepared, and most articulately delivered.

I'm, I guess, particularly concerned because the City of Los Angeles is in my estimation, and certainly my experience, seems to be one of the (I assume) worse affirmative action records I've ever seen; certainly, as it relates to just the numbers of women in the work force (not even the classification). I can't think of any other city of comparable ethnic breakdown in the state that has these kind of statistics, or just women period. I'm sorry, I don't know the ethnic breakdown, I got off track a little bit, but I'm really wondering here, are there any answers or any suggestions as to why only 20%. I mean, have all the other women been hired? Or, is it just that non-availability of women...

MS. WASHINGTON: We can have consent decrees put in for all classifications, and maybe then we'll get 25% (Laughter)

CHAIRMAN HARRIS: Well, I'm surprised that they have--I'm surprised that consent decrees have not already been issued forth.

MS. WASHINGTON: Because, it has not been challenged, it has

not been involved in the form of a lawsuit.

CHAIRMAN HARRIS: That's amazing, that's really amazing.

MS. WASHINGTON: It's not been a classified...

MR. YOUNGBLOOD: So, you feel that's the only way that...

MS. WASHINGTON: That is not the only way! And, that's quite frankly, the reason I'm--in terms of the laws and how we take control of those laws, and not let the laws control us. I mean, that's very important, and I think in many cases we've got the cart before the horse. And, we're just not acting responsibly, and moving ahead fast enough.

CHAIRMAN HARRIS: Anything you would like to add for the record?

MS. MEYER: Just that - you know - in the private sector whenever they see a lawsuit coming down the pike they change right away, and we're very slow and cumbersome here in the city.

CHAIRMAN HARRIS: But, that's because you've got a city attorney, and you can figure out--kind of low and deep pockets. You can...

MS. WASHINGTON: Let me just kind of clarify that for just a brief moment. Our system here is a very rigid civil service system, and as you know, our civil service system that we operate now was founded in 1928, and we've been functioning on that system since that time. Only recently has the city moved toward reforming that system bringing it into the 1960's, '70's, '80's - you know. And - you know - it's with those kinds of efforts that maybe we'll be able to see some

change in that. Arthur Young, has proposed some very good recommendations that will, in fact, make some differences, and will bring more females into the work force, and will not require the courts to come in and tell us - you've got to have 25% females in this job category. Some of those recommendations speak to the pass points on examinations. The very rigid one, two, three, if you're number one you get appointed, if you're number four you're not even considered.

CHAIRMAN HARRIS: Yes, I understand.

MS. BACA: I would like to say one last thing about the firefighter's series. As you can see, there are no women firefighters in the entire City of Los Angeles. Now, the City of Los Angeles, I feel, is way behind other major cities in the United States. In many other locations they have discovered that agility is in many cases far more important than brute strength, for example, those tall ladders you can jump more easily. And, yet the City of Los Angeles has not altered its requirements in the least. I think that some kind of work needs to be done in this direction. As Faye was saying, there are a lot of artificial requirements imposed that are out of date, and unnecessary, and that discriminate against women.

CHAIRMAN HARRIS: Okay, and they aren't very purposeful, too. But, let me just--I want to recess the hearing for just about ten seconds. All right, the hearing is back in order. All right, thank you.

MS. WASHINGTON: Thank you very much.

CHAIRMAN HARRIS: Okay. Ms. Labrato, please. And, Ms. Johnson too, please. Would you both come forward?

MS. MARY LABRATO: Good afternoon.

CHAIRMAN HARRIS: Hi.

MS. MARY LABRATO: My name is Mary Labrato. I want to thank you very much for the invitation to speak before the committee.

CHAIRMAN HARRIS: Thank you.

MS. LABRATO: I'm currently an employee of The State Department of Health Services. For the past four years I've been involved in an attempt to resolve the effects of sexual harrassment, and sex discrimination by the management of a major...

CHAIRMAN HARRIS: The Department of Health?

MS. LABRATO: No, by the Department of Developmental Services.

CHAIRMAN HARRIS: Developmental Services, okay.

MS. LABRATO: During the past four years I've gone through basically the whole process, and hopefully I have learned some things that I would like to share with you, and personally offer any assistance that I can in this effort to improve the system.

CHAIRMAN HARRIS: Thank you.

MS. LABRATO: I wanted to start by briefly describing what had happened, is that--not the incident that happened, but the past four years in terms of procedure. And, then go into some of the problems that I've encountered, and possible solutions.

As background information, I started employment with the state as a psychologist in 1975. And, in 1978, while managing a large planning and evaluation operation for the Department of

Developmental Services as an out-of-class manager, I was involved in an incident of blatant sexual harrassment, and sex discrimination which included a threat that if I did not comply there would be retaliation. I immediately complained formally, an investigation occurred substantiating all the allegations. Seventeen people made statements substantiating allegations. At the time of the results of the investigation we were assured that there would be no retaliation, and if there was retaliation, that appropriate corrective action would be taken. Within one month of that incident I was denied the out-of-class reclassification promotion or whatever you want to call it, which was in the Governor's budget as a budget change proposal item. I was neither scheduled for an interview (formally told that I was being interviewed), as all the other male candidates were, nor informed of the results, and again, I filed another complaint; this time a director's level complaint. I believe that these events occurred because of my refusal to comply, and my subsequent complaint. I had been placed number one on the Manager II list, and had been highly recommended for the position. Upon learning that a candidate with less training and experience in the area of program evaluation had been selected, I again filed a complaint formally alleging sex discrimination. The department conducted an investigation over the next three months, and during that process (now being a little more in touch with procedural requirements) I realized that I was denied a lot of due process types of considerations. Time limits were extended without my approval; I was not informed of my rights throughout the process, or of my rights to appeal. At the end of the investigation in April of '79 (the incident had occurred in December of '78), the directors verified in writing that the incident had occurred (the procedures which had occurred that prevented me from receiving the promised

reclassification), but denied that there was any discrimination involved. I was informed by the labor relations staff, which was the staff that handled it instead of the civil rights service (I have no idea why), that there was no law, rule, requirement, or anything that they had violated by refusing to interview me. At that time, again being very naive, I resigned myself that that was the truth; not recognizing that sometimes the system doesn't inform us properly of rights, and all the responsibilities.

I was able, fortunately, in January of that year to move to health services, and I think that was one of the reasons why I was able to continue the procedure. I received a lot of help from people along the way. At that time health services became aware that there was an affirmative action policy which required the interviewing of all eligible interested minority and women candidates, and therefore, continued to pursue my complaint with The State Personnel Board. And, I also filed a complaint with the Department of Fair Employment and Housing, and The Equal Employment Opportunity Commission. In April of 1980, The State Personnel Board completed its initial staff report, and in fact, verified that I was a victim of sexual harrassment, and sex discrimination in retaliation for my refusal to comply.

CHAIRMAN HARRIS: This was when now?

MS. LABRATO: This was in April of '80.

CHAIRMAN HARRIS: Okay.

MS. LABRATO: The staff report recommended reinstatement, reclassification, appropriate corrective action and back pay award, and it promised a sexual harrassment policy. This report was amended, and came out again in September of '80, and since that time we've been

trying to implement it. As I indicated, I had requested that The State Personnel Board develop a statewide policy relating to sexual harrassment, and also clarifying, and changing procedures in dealing with complaints.

CHAIRMAN HARRIS: Are you telling me that--that the situation still hasn't been resolved?

MS. LABRATO: No, not completely resolved yet.

CHAIRMAN HARRIS: Part of it has?

MS. LABRATO: It's partly resolved.

CHAIRMAN HARRIS: And, your classification has been taken care of, and those things?

MS. LABRATO: The State Personnel Board adopted a resolution this last October ordering the department to reclassify me.

CHAIRMAN HARRIS: And back pay?

MS. LABRATO: Yes.

CHAIRMAN HARRIS: Okay.

MS. LABRATO: One of the interesting things that happened was (this issue between D.F.E.H., and The State Personnel Board), in June of '80, I got notice from The Department of Fair Employment and Housing that my file was being closed based on jurisdiction waived to another agency (The Equal Employment Opportunity Commission), and it was based on the battle between The State Personnel Board, and the D.F.E.H. And, then in January of '81, I received a "Right to Sue" letter from E.E.O.C. stating that because I hadn't filed with D.F.E.H.

60 days before the 300 day deadline that they couldn't resolve my complaint; so theoretically I have access to no designated 706 Agency for Title VII purposes. It's a real trap for state employees, the board is not designated as a 706 Agency, and therefore, some of those opportunities, and access issues in terms of council and conciliation, etc., are not available to state employees.

CHAIRMAN HARRIS: Since you didn't have the right to file then wouldn't that waive that requirement?

MS. LABRATO: Well, I, as a matter of fact have asked the E.E.O.C. to give me some information on that issue, because it seems that they by saying that I didn't give the D.F.E.H. 60 days, assumed that there was a 706 Agency for me to apply to.

CHAIRMAN HARRIS: Yes, right.

MS. LABRATO: And, so I'm checking now with the compliance officer. The other interesting thing that occurred was that there's a requirement in the government code that in order to file a suit against the state you have to file a board of control claim within a hundred days of the incident, which isn't very well publicized. And, fortunately, I was able to find out in order to file state and federal suits, and keep my rights and protections open. I think that this is one of the critical problems with the system, there's no information, there's no agency which publicizes all the information necessary so that a complainant knows of all the requirements for all procedures ranging from filing an administrative complaint through keeping your options for civil litigation open. I was fortunately lucky enough to keep my options open, talking to the right people at the right time and the right place, and put the puzzle

together. There are a lot of ways that I am pretty fortunate in terms of this system. I had witnesses to the incident, witnesses that were able to speak out and testify. I had an opportunity to seek employment in another department, and wasn't stuck to that job for economic reasons. I had more mobility than some people; I didn't have a, at that time, have a family at home to embarrass or to support, so I wasn't tied (again) to the job. I had all kinds of documentation that I needed, verification for the "out-of-class" experience; verification of the incident; a copy of the budget change proposal, those kinds of things.

CHAIRMAN HARRIS: And, in spite of all of those--I guess, benefits or advantages that you had the process was still complicated, cumbersome, confusing, conflicting, and so on, and so forth. And, you're saying that an employee who is obviously less educated, less economically secure, less independent, etc., would have probably been so baffled and befuddled by the process, they just simply would have either missed out completely or been lost in it somewhere.

MS. LABRATO: Yes, for sure. That's the thing that scares me the most (1) a person that is not able to economically afford to go through four years of pursuing administrative procedures, to keep getting pushed around. Somebody that has a family to support, and can't afford the emotional/physical strain of trying to battle the system. There are no resources set aside by the system for any kind of crisis counseling, legal counseling, basically it's an impossible situation; it's compounded because there are so many delays that are not necessary. The government code assures that discrimination complaints, for example, will be handled within six months by The State Personnel Board; this doesn't often occur. Time lines are violated

all over the place. Why are some complainants sent through the grievance procedure, and some sent through the discrimination complaint procedure? Why does--if a discrimination complaint involves an issue of exam appeal or punitive action, it's not handled as a discrimination complaint; it's handled as "those particular items". So we have no idea; we have no handle on the complexity of the problem, but we do know that there are problems.

I've been working, for the past six months now, with some of the advocacy groups, and I've supplied this information to the committee. We've been developing a list of issues, and possible solutions to be considered.

CHAIRMAN HARRIS: Do we have those?

MS. LABRATO: Yes.

CHAIRMAN HARRIS: Okay.

MS. LABRATO: Most of them focus on the assumption that The State Personnel Board will continue to be the agency that deals with discrimination in public employment, and that they will continue with the mandate to monitor the discrimination complaint system statewide.

CHAIRMAN HARRIS: Let me ask one other question. Would you say that the problem that you encountered were those that any person seeking a grievance based on discrimination would encounter? Or, were they particularly adverse based upon the fact that you were a woman, and that the nature of your complaint was sexual harrassment?

MS. LABRATO: I think, yes. The answer to that question is yes, and no. Some of those things, I think, are typical. Some of them are not, particularly the time that I was involved in the sexual

harrassment incident. It was such a new kind of issue, and people were not even really willing to accept it as a problem. You hear the typical myths about sexual harrassment: women ask for it; virtuous women are not harrassed, those kinds of things. And, I think that that was some of the problems, problems in terms of people not being informed of their rights, and the remedies available; problems with managers not being sensitive to.

CHAIRMAN HARRIS: Was there any disciplinary action taken against the--you know, whoever it was that in fact engaged in the act of discrimination?

MS. LABRATO: The harrassment, or the discrimination?

CHAIRMAN HARRIS: Either one.

MS. LABRATO: There was some disciplinary action taken as a result of the initial investigation on harrassment. There was--The State Personnel Board recommended or suggested that the department consider appropriate corrective action in terms of the discrimination; the department considered it, and did not...

CHAIRMAN HARRIS: But, they did on the harrassment?

MS. LABRATO: Yes.

CHAIRMAN HARRIS: Go on.

MS. LABRATO: That was so outrageous; there were 17 people that made statements...

CHAIRMAN HARRIS: One of the problems that I have constantly

been--I guess, notified of has been the problem of getting sanctions taken against an individual supervisor, or other decision makers who in fact is the perpetrator of the act.

MS. LABRATO: Well, I think in my case it was probably a typical...

CHAIRMAN HARRIS: Okay.

MS. LABRATO: Because we had a large amount of witnesses...

CHAIRMAN HARRIS: Okay.

MS. LABRATO: And--and, it wasn't a situation of one person against another...

CHAIRMAN HARRIS: Okay. One word against--okay.

MS. LABRATO: I think that that probably--that is not a typical response, and generally that what happens is that the victim is put into a no-win situation, and if they want any peace they have to leave as opposed to the perpetrator being moved. It is a perception that the--neither the appointing authority nor The State Personnel Board tends to impose very many sanctions or punitive actions against employees who are indeed violating the mandate for discrimination through work environment. I think the same kind of situation holds up for issues of not taking affirmative action very seriously, and in fact, they probably go hand-in-hand. And, one of the things that obviously could occur is making affirmative action and discrimination prevention a part of the regular management training so that managers have a sense--and supervisors, have a sense that this is a critical part of

the system and needs attention. There could be more of a focus on no-fault conciliation for departments that are willing to settle situations. The perception is that The State Personnel Board is not willing to exercise--oh well, initiate punitive actions against employees, indicating that they have no authority, that the appointing power is the only one that has authority.

CHAIRMAN HARRIS: Putting aside their willingness or unwillingness, do you think that they're the appropriate agency to resolve it? Because, maybe they're just not equipped, maybe there's an internal conflict there that can't be resolved in terms of their conflicting roles...

MS. LABRATO: Well, I think there are a lot of problems, but it's--my understanding is that there's no current procedural manual for the analyst to use; that there's no filing system which enables access to precedent material so that investigations are handled on an individual basis with standardized procedure; that there's no training as there would be in an agency designated to deal particularly with those issues. The time frame is very lengthy, the analyst often re-investigates non-contested facts, and I think that this is true in terms of departmental complaints as well. There's just a lack of training, a lack of focus on prevention. There is not a formal recognition of the problem as a problem nor the effects on victims of a discriminatory situation. I think probably the most critical thing is that employees are not really informed of their rights and responsibilities.

CHAIRMAN HARRIS: Good point. I appreciate it, is there anything you would like to add? Thank you very much. Ms. Johnson.

MS. LINNEA JOHNSON: My name is Linnea Johnson, and I'm appearing on behalf of the California Federation of Business and Professional Women's Clubs in California. I'm a practicing attorney in Auburn, California, I practice Title VII and employment discrimination law. I've also been employed in a personnel department in a public agency, and have performed management training seminars in the area of sexual harrassment.

My purpose here today is to acquaint the members of the committee with the major problems confronting a female public employee, who has been a victim of sex discrimination in employment. And, I might add that the problems of female public employees are really not unique. The problems extend to all victims of sex discrimination, and are common not only in public employment but also in private employment. But, first I want to give you an overview of the dilemma that any employer will find itself in, in handling EEO problems. It's a problem which I believe to be systemic not only in the grievance area, as Secretary Lytle discussed, but also it can be illustrated by the duties imposed on employers under the EEOC guidelines on sexual harrassment. For example, the guidelines require that the employer must raise the subject affirmatively with it's employees. Now, some progressive managers and employers are eager to raise the issue with their management staff so that they will know how to handle the problem. But, none are willing to raise the issue with their employees, and the question is, WHY? They fear it will percipitate lawsuits, and they particularly fear it will precipitate non-meritorious lawsuits, which will make them look bad. Even the employer with foresight, who realizes that if sexual harrassment is going on he or she wants to know about it, is understandably reluctant to raise the issue with his or her employees.

In a classic economic analysis, a business person wants to minimize their cost, and a public employee or employer is really no different. Sexual harrassment complaints mean litigation costs, damages, and a bad reputation. Most employers (public and private) choose the risk of non-compliance over the cost of compliance, and it is, indeed, economically rational behavior for them to do so.

Now, affirmative action officers often find themselves in a similar dilemma. They may be in harmony at the level of developing an affirmative action plan, with the goal of avoiding or limiting liability for their institution by implementing a plan in good faith. But, when an illegal act occurs and the affirmative action officer is called upon to investigate it, ultimately, that person is going to have to choose up sides, and they always choose up sides with the employer. The effect of this conflict of interest that every employer finds his or herself in is that private attorneys will not, as a rule, permit their clients to use internal grievance procedures, nor will they allow them to talk to administrative or to affirmative action officers who are investigating claims of illegal conduct. Again, when it comes to choose up sides the AA officer is on the wrong side. The systemic affect of these kinds of built-in disincentives, is that the economic incentive is more powerful, and internal grievance procedures and obligations don't work. I might also add, as the testimony you just heard indicated, those procedures are often long and cumbersome as was testified to for years. They're designed to wear plaintiffs down so that she'll give up.

Now against this backdrop of the internal remedies which fail EEOC plaintiffs, I'll focus my testimony on the adequacy of external remedies; that is, those outside the institutions that the law offers. And, there is one common thread running through all these problems

from an attorney's point of view, and that is that there is a lack of a holistic approach to the problem. For example, in the information area as was just testified to, the sources of information you get when you suffer an EEO problem are from your employer; that's usually incorrect. From friends; that's usually incorrect. You'll get some information from EEOC and D.F.E.H. which is usually correct, as far as it goes. You'll get some information from women's groups, and finally, if you're lucky enough to find an attorney who specializes in this area, you will get some information there. By the time you pull all this information together it is not consistent, the plaintiff finds herself in a quandry about what to do and where to go. And, personally I've had experience with clients where after having conversations with EEOC, D.F.E.H., and their employer, they're convinced I'm doing all the wrong things, and it's a real problem.

Now, a holistic approach (I think) to the problem would be an approach whereby all rights are preserved so that the client can go forward in any number of forums, and preserve her cause of action. Now, as Mary just testified to, that often will result in having to file a hundred day claim; having to file with the EEOC within three hundred days; having to file with D.F.E.H. within one year. If you choose to pursue a 1983 civil rights cause of action, that will require filing in federal court within three years. Your D.F.E.H. letter may not come in time; your EEOC letter may not come in time; you're going to have to be in court on your 1983 action before the other remedies have run their course. The point of all that information is that a holistic approach is virtually impossible, because the rights are fragmented between so many government agencies. To name just a few: The Department of Fair Employment and Housing, EEOC, the N.L.R.B., you may have to deal with EDD on unemployment; you may have to deal

with the worker's compensation lawsuit, and it is theoretically possible to involve all those agencies in one case. And, in fact, in most cases you will involve several of those agencies, if you are protecting all of the client's rights. The holistic approach also requires that you get information early on, so that you can choose your choice of forum. In some cases it is better to proceed in state court because of the California Supreme Courts recent decision on the availability of punitive damages. There is also a difference when it comes to what is required for a verdict in a jury trial. Finally, the speed of getting to trial is something to be considered too, and all this information is what's necessary to provide a holistic approach that protects the client's rights.

Finally, if you do choose to go to litigation, you may get a remedy two to three years down the road, if there's no appeal. It will cost you thousands of dollars merely in filing fees, expert witness fees, reporters fees for depositions, even if you find an attorney who will take the case on a contingent fee basis. Now, few private attorneys can afford to take these cases, and even fewer are in a position to bankroll the learning experience.

The solution (I think) is to--for the Legislature, perhaps, to provide a fund to advance costs to indigent plaintiffs including expert witness fees, because without them it's impossible to take your case to trial.

My conclusion is that we need a holistic approach. And, I think as the testimony of the witnesses from the Department of Fair Employment and Housing, and The Commission indicated this morning, a more and more substantial burden of enforcing EEO law is going to fall to the private sector for a number of reasons. One of the reasons is because the government agencies tend to be interested in impact

litigation, as well they should, because its most economical. How many people can they help with one case? The private attorney's emphasis is to help the individual client in that individual case, and therefore, the primary enforcement for the masses is going to fall to the private sector. The Legislature must recognize that, and the need for a holistic approach.

I think the Legislature must take action to redefine the role of all agencies that get involved in the process of an EEO lawsuit. And, it must further make available some kind of incentive to ensure that the private sector will be able to perform this function.

CHAIRMAN HARRIS: Let me ask a question to make sure I understand. You said, "There's a need for a holistic approach". But, I thought I heard you say earlier that is--the process is so fragmented that the holistic approach isn't very viable.

MS. JOHNSON: I don't think it's, probably, possible within a government agency.

CHAIRMAN HARRIS: Within the government, but in the private sector you think it is?

MS. JOHNSON: I think in the private sector it does occur, but...

CHAIRMAN HARRIS: Okay.

MS. JOHNSON: But, the private sector, I think, right now is not capable of meeting that need.

CHAIRMAN HARRIS: In the governmental sector, would it help if there was simply one individual, i.e., an affirmative action person

who's well informed, who would at least be able to give a person some kind of a summary of their rights and procedures, etc.? At least some procedural steps that they might take in implementing, in order to protect their rights.

MS. JOHNSON: I think that's a possibility, but I would stress that this is a very complicated area, and you would have to be very well versed in six to eight different areas of the law. And, I think, in order...

CHAIRMAN HARRIS: Well, how do you do a holistic approach unless you find some centerpiece, either inside or outside of government, where an individual can go?

MS. JOHNSON: I think that's true, I think the point I'm getting to is that that person would, probably, have to be a very highly trained professional, very highly trained. For example, I have one client who is a public employee, who attempted to preserve his rights at my instruction by filing with the Department of Fair Employment and Housing, and they refused to take his application. I had to intercede; that has happened on more than one occasion to me. Even for those areas that the Department of Fair Employment and Housing is directly responsible, right now, there is still a lot of misinformation coming out of there. So, what I'm saying is, if you form a new agency that pulls all this together, they will have to be very highly trained.

CHAIRMAN HARRIS: I understand. Okay. Thank you.

Okay, we have an indication that the Commission for Sex Equity of the Los Angeles Unified School District will be submitting--testifying. Phyllis Cheng, will be submitting testimony in writing for the

record, is there anyone else who would at this point want to advise the committee of their intentions to submit written testimony in lieu of oral testimony today? Who is that? Orange County? Fine, all right that's fine. Anyone else? Are there any other witnesses who have testified, or who have indicated that they wanted to testify here now? Fine.

First of all, I want to thank all of you for your patience and attendance, as you noticed I went through lunch, but I wanted to get out of here by two o'clock, and I barely made that. But, all of the testimony we've received will be carefully analyzed, and we will be coming out with some recommendations for the Legislature either for legislation, or for the possibility of some type of administrative changes in the various departments or agencies of the state. Also, we'd like to look into some ways of having a better way of enforcing public policy of affirmative action on local agencies that have been demonstrating some of the calcitrants, or inability to implement that policy.

So, I'd like to thank all of you again, and again advise you that if there are individuals who would like to make statements for our record, that it will be open for the next ten days. And, that you may, in fact, want to be in touch with the committee in Sacramento for that purpose. But, again, thank you all for being here, and with that the hearing is adjourned.

Mister Chairman and committee members, my name is Lori Hara, and I am the Manager of the State Women's Program Unit of the State Personnel Board. My presentation will speak to the State Women's Program analysis of the employment problems faced by women in State service and the direction and activities we have taken to address those problems. I would like to clarify that there have been many areas wherein significant progress has been made with regard to women's concerns in State employment, however, in addressing the concerns of this committee I have been asked to focus on the major problem areas we see at this time.

As some background, the State Women's Program was established in 1975 within the State Personnel Board's Affirmative Action Division in recognition of the unique problems women encounter in access to and advancement in State civil service employment. The structure of the State Women's Program includes departmental Women's Program Officers, the Women's Program Unit of the State Personnel Board and the State Women's Program Advisory Committee.

There are Women's Program Officer positions in most State departments who are responsible for advising departmental management of issues related to representation and upward mobility of women within the department. The State Program focuses on issues of statewide concern, such as policies and servicewide classification changes; on targeting major problem areas; and on providing technical assistance to departmental women's program officers.

In order to insure that the policies, program targets and strategies are indeed priorities, the Program established an advisory committee which currently meets bi-monthly. In structuring the committee consideration was given to insure input from minority and disabled women and persons with substantial Affirmative Action implementation experience. With the Advisory Committee's concurrence we have set a program direction which has as its priorities:

1. The severe underrepresentation of women in job categories of trades and crafts, law enforcement,

and administrative line which includes career executives and other senior civil servants.

2. Comparable worth;

3. Discrimination; and

4. The special concerns of minority and disabled women.

In addition we have recognized that problems continue to exist with regard to the representation of women in scientific and engineering areas, mobility options for dead-ended jobs, day care and the problems of older and re-entry women. In recognition of resource limitationspriorities were established based on perceptions of the severity of problems and the potential for greatest impact. As a result, our activities in these latter areas are limited to review and input on policies or proposals generated from outside of the program.

In the priority areas identified we've been working on identifying problem areas and finding solutions. In the area of trades and crafts, for example, there are a number of problems which result in the significant underrepresentation of women. Some of these include:

1. Minimum qualifications frequently require journey level experience, and apprenticeships are rare;

2. There is not a large recruitment pool of women with substantial years of experience.

3. Until last year recruitment efforts focusing on women were limited;

4. While some examinations have been validated, there have never been enough female competitors to statistically assess disparate impact;

5. Veterans preference applies on most entry-level examinations; and

6. The large number of specialized classes, locational testing and hires, and the number of appointing powers involved make monitoring difficult.

At the present time we are reviewing the classification structure to eliminate needless barriers. barriers existent in the classification structure. Further, we are exploring sub-entry, apprenticeship, COD or other entry options which could be employed to better facilitate the employment of women. In the area of recruitment, the first trades exam conducted this year was for carpenter. Currently, there is only one woman in the class and historically few women have applied for the examination. For example in the last exam, only one woman applied. This exam we had twenty-five female applicants and sixteen successfully appeared on the list.

The major recruitment efforts focusedon the tradeswomen's groups through out California as well as women's support groups which proved receptive and helpful. In follow-up with these groups as to why more women did not apply, the main reason stated was concern about actual opportunity for appointment within State government. Through continued involvement with these groups, we anticipate a greater participation rate in future exams.

Other exams in the trades have included Painter, Plumber, Electrician and a number of Automotive classes. The statistics for these classes are similar to Carpenter in that some gains have been made but they are slight. More positive input and assistance from departments would help. Departments main concern is that individually they have few positions and so it is not worth their effort.

One other approach we have used is to tap the public information records of the Division of Apprenticeship Standards to identify individuals who might have an interest in State gov-

ernment. Probably the greatest achievement thusfar has been the establishment of contact with the tradeswomen's groups. Our major concern in that area is maintaining credibility with these groups. For their participation we need to reciprocate in hires, however, we still have the obstacle of veterans preference.

The prior efforts of the State Personnel Board to address veterans preference through legislative action have not been successful. Staff of this committee has been provided with the information from the last attempt. Until such time as the veterans preference laws change there will be a substantial impact on women particularly in low turnover areas. With 90% veterans preference points granted to men, hiring of women will continue to be impacted. In the area of law enforcement minimum qualifications are generally not an issue. Recruitment and physical standards have been our primary issues of concern. In the area of Law Enforcement a major ongoing recruitment effort has been directed toward State Traffic Officer Cadet (female). During 1979, 1980,

1981 there were 681, 554 and 740 applications accepted respectively for each of those years. From January through June 1982 there were 3,557 applications received. The major difference for this increase is attributed to a change in the exam testing cycle from periodic testing to continuous testing.

There were several recruitment strategies used that enhanced the number of applications received from women. Extensive advertising was placed in newspapers, radio and television. California Highway Patrol recruiters extensively visited college campuses, job fairs, and shopping malls, reaching out to women. The female use of Traffic Officer recruiters have also been extremely successful in attracting female candidates.

The other major successful area is with Correctional Officer which has had ongoing focused recruitment efforts and has utilized a sub-entry classification of Correctional Officer Trainee. This class recruits for eligibles from the Career

Opportunities Development Program which focuses on the disadvantaged of whom many are women. Other successful recruitment efforts in the Law Enforcement area have been for State Police Officer Cadet, Correctional Counselor and Parole Agent. We are currently testing for Investigator Assistant. Primary focus for these classifica tions have been with womens' groups on campus as well as students in law enforcement programs.

In terms of physical standards, we have been working closely with the Board's Test Validation and Construction Unit and departments to insure standards are based on job relatedness and business necessity and have the minimum amount of disparate impact. We have reviewed Correctional Officer entry standards, CHP maintenance standards and most recently the developing standards for fire suppression classes.

Our other major underrepresented job category is administrative line which encompasses top administrative positions such as career executive assignments. Our findings thus far

seem to indicate that while there is a degree of discretion involved with the examination process such as in the weighing the value of experience and education, there is often a lack of consciousness of the impact of individual hires. In CHP or Corrections where hundreds of officersare hired yearly the impact is clear. Managerial hires are made position by position and the impact is less evident. We are currently identifying the availability of women for top managerial positions in order to determine whether the rate of progress is reasonable, as well as to provide departments and a changing administration with relevant information in this regard. On an ongoing basis we review all classification actions establishing or changing positions in order to examine adverse impact on women as well as to maximize opportunity for subsequent recruitment efforts.

Comparable worth has been identified by many women and several unions as a top priority area of concern. With the split in responsibility between the State Personnel Board and the Department of Personnel Administration it would at first ap-

pear that the SPB would not have any responsibilities in this area. What we have found is that there are two areas which we can review to recognize the impact of such discrimination. One area is that salary based criteria exists for transfer and training and development assignments, which limit mobility options. It is our intent to develop alternative criteria which corrects the inequities inherent in the salary determination for certain female dominated occupations.

In addition, another project is to review third and fourth line clerical supervisory positions and look at the mobility options currently available to other managerialpositions. This project will attempt to determine if there is a basis for providing clerical management more direct mobility to other departmental management classes which generally provide much higher compensation.

Discrimination is a continuing problem. While my program spends considerable time with complainants, we are not part

of the formal structure of complaint processing. In general, our activities in this area involve advising complainants, respondents and departments as to the interpretation of EEO laws and trying to channel complaints back into the system.

In the last year we completed a grant project which dealt with the issue of sexual harassment. The grant was designed to develop a statewide policy and insure that departments developed policies and disseminated information on sexual harassment. All of the grant objectives were met, and in addition we have developed a brochure which will be distributed to all departments, developed a resource listing for departments planning training on sexual harassment, and finally, we have reviewed current training programs for EEO counselors and investigators in order to ensure these courses will prepare departmental staff to deal with such problems.

The fourth priority identified is the concerns of minority and disabled women. The traditional view of affirmative action has been that it tends to pit minorities and women against each other. Additionally, it has been felt that while gains have been made for minority men and white women, minority women were often forgotten in the process. To insure the inclusion of minority women in the affirmative action planning process we established a policy to now require that departmental analysis of representation deficiencies look at the representation by sex within ethnicity and that where deficiencies exist, goals be established by sex within ethnicity.We also review proposals from other divisions of the State Personnel Board regarding "sanctions" proposals. These proposals have been made to more assertively approach the problems of severe underrepresentation in particular departments or classifications.

Where the sanctions approach has been used, it has been effective in increasing the representation of women at a significantly faster rate than had occurred before sanctions.

Although hiringin the sanctioned classes has been limited, we have seen increases ranging from +20% to double/triple the original number of women in these classes.

The effect of Veteran preference on women has been to limit hiring access in many open classes. Many of the sanctions classes are nontraditional areas for women. Further hiring is through open exams which require granting of veterans preference. For example, in the Department of Fish and Game we have been using supplemental certification for four entry level Biologist classes which grant veteran's preference. Since the application of supplemental certification, the representation of women employed in these classes has significant increased.Women now constitute 11% of these classes, up from 1% before supplemental certification.

While the focus of this presentation has been on problem areas, I feel it is also important to recognize the progress made to date. Women have increased their representation in 17 out of 19 job categories. In 1974 women had achieved par-

ity in four categories and were within 80% of parity in one category. As of 1982 parity has been achieved in seven categories and four more are within 80% of parity. We have seen a substantial increase in the number of women entering traditionally male dominated areas and are looking forward to seeing their increases at the supervisory and managerial levels.

NOV 15 1982

AFSCME®
AMERICAN FEDERATION STATE COUNTY MUNICIPAL EMPLOYEES AFL-CIO

3921 Wilshire Boulevard • Suite 620 • Los Angeles, California 90010 • (213) 385-7467

November 12, 1982

Mr. Elihu M. Harris, Chairman
Assembly Select Committee on Fair
Employment Practices
1127 11th Street
Sacramento, CA 95814

Dear Honorable Assemblyman Harris:

Thank you for the opportunity to testify before your Committee. Enclosed is a copy of our written testimony.

We are impressed with information presented and your obvious concern for the status of working women. If we can be of further assistance, please let us know.

Sincerely,

Christine Maitland
Staff Economist, AFSCME

CM:bc
Enclosures

TESTIMONY

Assembly Select Committee

on

Fair Employment Practices

The American Federation of State County and Municipal Employees (AFSCME) has long been the leader in promoting the rights of women in the workplace. More than 400,000 women are members of AFSCME and working through our union we have called for action at the bargaining table, in the Legislature, and in the Courts. The issues that concern working women include pay equity, career development, child care, maternity leave, sexual harassment, and alternative work patterns.

Women have made great strides in the last twenty years. There are new education and job opportunities available; attitudes have changed. But it is not enough ----

- It is not enough when millions of women work low paid dead end jobs.
- It is not enough when working women also continue to assume all the household and child care responsibilities.
- It is not enough when 60% of those living in poverty are women, many with children.
- It is not enough when almost two-thirds of all working women are single, widowed, divorced, seperated or have husbands who earn under $10,000/year.

- It is not enough when a female college graduate can expect to earn $2000/year less than a male high school graduate.

Let me share some information with you ----

- In 1980, the World Watch Institute issued a research report which states: "Although nearly half of the world's adult women are in the labor force out of choice or necessity, they have retained an unwilling monopoly on unpaid labor at home. The result is a pronounced imbalance between male and female workloads, with unhappy consequences for women, men and the children".

Working women are carrying a double burden. "If employed women with families also aspire to leadership positions, their extra hours of work, union activism and civic and cultural affairs can amount to working a triple day," the report continues.

- Those opposed to the ERA have the illusion that it is possible for women to choose not to work outside the home. The realities of economic survival today prohibits such "choice" for most women. In the U.S., as in all industrial nations today, an increasing number of women must work. Yet the U.S. is one of the few advanced nations with no national policy of leaves for parenting, no encouragement of flexible working hours and part-time or shared jobs, and no national policy of child care.

- According to the latest government figures, 52% of all women 16 years and older are working in the labor force. This figure has increased 44% since 1955, when only 36% of the female

population worked in the labor force. The proportion of mothers working has increased even more. Fifty-five percent of all mothers are now working. This represents a 95% increase since 1956 when only 28% of all mothers worked.

- Although women have increased their numbers in the labor force, their earnings compared to men have declined. Women now earn 57¢ for every dollar earned by men. In 1955, women earned 63¢ for every dollar earned by men. Two-thirds of the women who work earn less than $10,000/year. Half of women working are in jobs with no pensions.

- The fact is that wage gap between men and women persists because women are crowded into female dominated jobs which are underpaid and undervalued. Sixty-five percent of working women are crowded into three occupational categories: clerical, sales, and service. Women still comprise 99% of all secretaries, 97% of all nurses, 92% of all telephone operators, etc. The degree of job segregation is as severe today as it was 70 years ago, even with affirmative action and other programs implemented to improve women's occupational opportunities.

- In 1978, 11% of the population in the U.S. was below the poverty level. That has now risen to 14% in 1982 and many expect it to climb higher. 18 million (or 60%) of these in poverty are women, 11 million are children under the age of sixteen.

As an example of the problems facing women in California, consider the salaries and make-up of the workforce here in the city of Los Angeles. In the City's 1981 Report to the EEOC, over

50% of the male workforce earned more than $25,000/year compared with only 8% of the female workforce. Over half the female workforce in Los Angeles earned less than $16,000 while 70% of the male workforce in Los Angeles earned more than $20,000.

Currently, 20% of the City's workforce is female (compared with 44% in the civilian labor force). 60% of the women working in the City are in one job category --- clerical and office. Women comprise a disproportionately high percentage of paraprofessionals (66.1%) and clerical workers(75%). While they comprise a disproportionately low percentage of officials and administrators (6%), technicians (8%), protective services (7%), skilled crafts (1%), and service and maintenance (6%).

AFSCME is the bargaining agent for 4000 clericals in the L.A. City Clerical unit. Working with other unions representing employees in the city, AFSCME has made the following recommendations in response to proposed changes in the personnel system. A meaningful career ladder program must be established within the City's classification system. The current system tends to deny access from one classification grouping into another, consequently women tend to remain in "dead ended" female dominated classes. A career ladder program combined with employer sponsored training programs would help integrate our sex segregated workforce while encouraging the principle of promotion from within. Currently, a comparable salary study is underway in Los Angeles to examine the compensation levels of various job classifications.

AFSCME views the collective bargaining process in the absence of legislation or judicial recognition of pay disparity as the

most expedient means to address both career development and pay inequity. The best-known example is the City of San Jose, California.

In 1979, the City and AFSCME jointly commissioned a Hay Associates study. Both parties agreed to extensive input from union members and to implementation of study results. According to the study, "female jobs" paid about $3,000 per year less than "male jobs" with comparable point values.

During contract negotiations in 1981, the City offered a 6 percent general raise plus comparable worth adjustments for about 700 workers in female dominated jobs, the additional upgrading to cost about $1.3 million. The union called for a 10 percent general raise plus $3.2 million for upgrading over a four-year period.

After a nine-day strike, a settlement was reached. The new contract provides a 7.5 percent general raise and additional adjustments totaling about $1.45 million over a two-year period. The result was a landmark AFSCME victory for pay equity for workers in female-dominated jobs.

AFSCME has bargained this issue in Washington, Connecticut, Illinois, Minnesota and Wisconsin.

Proving the Case of Pay Equity

The first step in a pay equity case is to present a convincing case that unjustified pay disparities exist between male-dominated and female-dominated jobs. The first step should be a jointly sponsored study, with input from employees and managers.

In San Jose, Hay Associates used "quantitative" job evaluation system because it attempts to measure exact amount of base elements found in all jobs;

The Hay System conceives of jobs as being composed of aspects related to each other in the following order:

-Know-how: How much and what kind of knowledge is required to solve and meet the a-countabilities. (Accountabilities are the end result of the job itself, according to Hay jorgon.)

-Problem Solving: What will be the quality and quantity of problems faced by the job's incumbent as he/she attempts to meet these accountabilities?

-Accountability: What are the results this job is expected to produce?

-Measuring the Jobs: In measuring the worth of a job in relation to other jobs in the same organization, the Hay System claims to employ a "refined understanding" of the three basic elements. This "refinement" will lead to a concrete scale of measurement for use in evaluation.

It is assumed by the Hay System, that there exists a spectrum, or continuum of know-how, problem solving and accountability, and that a determination can be made concerning the exact quality of each basic element involved in the job.

If two classes have the same comparable worth value, or number of study points, they should be paid the same. The disparity is the difference between the wages of two classes, one predominately male, and the other predominately female) such as a Nurse (predominately female) and an Assistant Fire Master Mechanic (predominately

both having the same relative value with wage differences being $684 a month or $9,120 a year. Another example, a Legal Secretary (predominately female) and an Instrument Repair Technician (predominately male) both having again the same relative value, the wage difference is $780 a month or $9,432 a year.

This is pay disparity and as far as we're concerned, this is the result of sex discrimination. Discrimination fostered and perpetrated by the employer's relinace on the traditional market place approach to salary setting. A market place that most effectively establishes appropriate wages (subject to collective bargaining) for predominately male classes, but one that carries for predominately female classes an established practice of salary fixing on the basis of sex to get more by paying less.

We contend not that the male classes are overpaid and therefore wages should be adjusted somehow downward, but that predominately female classes have been underpaid and, therefore, should have these class wages adjusted upwards.

Women in Labor Organizations: Coinciding with greater numbers of women in the labor force, is the fact more women are joining labor unions. Between 1956 and 1976, some 1.1 million women joined labor unions, accounting for almost half of the growth of total membership during that period. The overall increase in union membership was only 13 percent while the number of women rose 34 percent.

Many unions have sought to provide women with equal opportunity in the workplace by including anti-discrimination clauses in collective bargaining agreements. By 1975, some 85 percent of the workers covered by major contracts (1,000 workers or more) were employed in establishments that had negotiated such provisions. Many unions seek to enforce such provisions through processing grievances, filing charges with state and federal agencies, and filing lawsuits.

Other issues addressed by unions in bargaining agreements include: child care, leave for pregnancy/parenting, and flexible working hours.

AFSCME has long been the leader in promoting the rights of women and minorities in the workplace. On July 14, when the ERA amendment was reintroduced into Congress, AFSCME President Gerald McEntee pledged AFSCME's support to "continue and strengthen its commitment to the women's movement in its fight for equal rights. However, working women cannot wait for the ERA to address marketplace discrimination. Unions like AFSCME must intensify their legal and contractual efforts to make sure that women workers receive equal pay for equal responsibilities ---- something the 1964 Civil Rights Act guarantees them."

It is the unions that have the resources and the expertise to fight these issues of pay equity, child care, job sharing, and other issues affecting the working women. And we have a responsibility to the working people of this nation.

CM:bc

Presented by: Christine Maitland, Staff Economist, AFSCME
Cheryl Parisi, Business Agent, Council 36
Gloria Larrigan, President, AFSCME Local 3090,
Los Angeles City Clericals

AFSCME
in the public service

CAREER DEVELOPMENT PROGRAM HANDBOOK

TABLE OF CONTENTS

INTRODUCTION

What is a Career Development Program?

A Career Development Program provides equitable opportunity for entry-level employees to move up to better paying jobs. It does this by providing training to long-term, dead-ended employees. A Career Development Program guarantees that AFSCME members will have the opportunity to advance in reasonable steps to higher level jobs while they continue to earn their salaries.

Career Ladders are designed which provide movement from entry to higher-level jobs, and On-The-Job Training is provided so that employees can move up. It is a Program in which:

- jobs are linked in a series of promotional sequences;
- employees move directly up or laterally through jobs that are related in skill and knowledge;
- the steps between jobs are small and close together to make it easy to progress from one to the next;
- each job on the Ladder helps prepare for the next higher level job by increasing skills, knowledge and experience;
- training and basic education related to the steps on the Ladder are offered on work-release time;
- employees are encouraged and assisted in meeting the requirements for the next job up the Ladder;
- selection of trainees is made by seniority of applicants to ensure equity and fairness;
- successful completion of training guarantees the new job.

AFSCME EXPERIENCE WITH CAREER DEVELOPMENT PROGRAMS

Your Employer needs a Career Development Program if:

- there are dead-end jobs;
- there are limited promotional opportunities;
- employees are blocked from promotion because of educational requirements;
- there are higher paying jobs that are consistently filled from the outside;
- more skilled personnel are needed.

Planning and implementing a Career Development Program through the joint effort of Union and Management is not easy to do. The Employer and Union must both recognize the need for the development of qualified employees to fill workforce requirements. The implementation of a Career Development Program is a stiff challenge to the local Union. However, AFSCME has done it before - and it works.

It worked in the Maryland State Hospitals, where a pilot Career Development Program became the basis for a statewide program. At Springfield Hospital in Maryland, a Nurse's Aide can enter the Career Ladder program and in two years become an LPN. It worked in Memphis where Career Development has been negotiated as part of a city-wide contract. Receptionists participating in Career Development can obtain bookkeeping skills and pre-supervisory training. It has worked in Detroit where many higher paying jobs were obtained for our members through a Career Development Program.

These programs have proven that lack of opportunity - not lack of ability or motivation - is what keeps low-skill/low-wage employees from advancing beyond their present jobs. Career Ladders provide a way for long-term employees to move upward into higher level jobs.

THE ADVANTAGES OF A CAREER DEVELOPMENT PROGRAM

The Employee gets:

- An Opportunity to Move Out of Dead-End Jobs Toward Higher Paying Positions Without Losing Time From the Job. Workers frequently cannot take advantage of after work classes because of family responsibilities or the need to "moonlight." Career Development includes making release time available so that the worker can attend classes during working hours.

- An Opportunity to Work Toward a High School Equivalency Diploma or a College Degree. Basic Education to obtain GEDs (high school equivalency diploma) is a fundamental part of the program. Sometimes it is necessary to learn remedial skills. Sometimes it is college level tutoring that is needed. Often tuition reimbursement and credit for work performed on the job are available.

- An Opportunity to Move Into a Desired Career Area. Career Development is not restricted to departmental promotions. Ladders offer horizontal as well as vertical movement. Employees are able to move from one area to another (e.g., from word processing to accounting, or from clerical to administrative).

To sum up, there should be no dead-end jobs or individuals. With motivation and opportunity, the employee can move steadily upward.

The Employer gets:

- Full Use of the Skills, Knowledge and Experience of the Long-Term Worker. The long-term employee has acquired valuable skills and knowledge. Also, the employee has proven worth and dedication, and is not, as all new hires are, an employment risk. Finally, the employee is strongly motivated once the opportunity to move into a more highly skilled job is available. Failures are rare.

- The Ability to Fill Vacancies Economically in Times of Skill Shortages. It is costly and time consuming to try to obtain scarce skills from outside. With a Career Development Program each job is a preparation for a higher level job; therefore, less formal training is required of these employees when they are promoted. Because of their previous job experience - previously acquired skills and knowledge - current employees require less training and can effectively fill the new jobs in the minimum of time.

- Reductions in Turnover, Absenteeism and Tardiness. Employees will tend to stay at a job where there are opportunities for advancement. Also, where such opportunities exist, improved employee morale will lead to a decline in absenteeism and tardiness and will result in a more productive work force.

- Improved Effectiveness of Affirmative Action Planning. The Career Development Program is designed to give equal employment opportunity by making training and education available to all employees.

In addition, the Employer may benefit from some of the by-products of a Career Development Program, such as an increased ability to respond to changes in technology, and an improved ability to provide new services.

Citizens of the local community, who help pay for the Program support your agency with their taxes, benefit by receiving better services. In addition, employees whose incomes are increased contribute to the general economic health of the community.

This Handbook has been prepared to guide AFSCME local Unions in establishing and operating Career Development Programs. The model Program presented here is based on Programs successfully implemented by AFSCME in a number of cities and states.

STEPS IN IMPLEMENTING A CAREER DEVELOPMENT PROGRAM

PART I: HOW TO PROPOSE A CDP TO THE UNION AND THE EMPLOYER

The Preliminary Stage

1. Explain Program to Union Leaders and Members
2. Set up a Union Career Development Committee
3. Plan Strategy for Presentation to Employer
4. Meet with Employer to Explain Program Concept
5. Negotiate a Preliminary Agreement
6. Establish Joint Union-Management Committee
7. Plan Activities for Design Stage

THE DESIGN STAGE

1. Collect and Analyze Data on Current Job Structure
2. Identify Current Promotional Opportunities
3. Identify Dead-End Jobs
4. If Necessary, Restructure Old Jobs or Design New Jobs
5. Design Career Ladders
6. Write a Training Proposal
7. Negotiate Formal Training Agreement between Union and Management

AFSCME in the public service

THE PRELIMINARY STAGE

The activities in the preliminary stage consist of seven steps, beginning with an explanation of the program to the local Union and ending with planning for the activities of the Joint Union-Management Committee.

Step 1: Explain the Program to the Union

Explaining the Program to the Union leadership is an important first step. The Union must start the Program and then provide the motivation to keep it going. The leadership of the AFSCME Council or Local must be enthusiastic about the opportunities that a Career Development Program provides for members in lower-level jobs without promotional opportunities.

The stages in developing a Career Ladder Program must be explained and the steps in those stages discussed.

Step 2: Set Up a Union Career Development Committee

Interested Union members should form a Career Development Committee to do the preliminary work. The Committee members should become knowledgeable about all the steps that must be taken to develop and implement the Program. Departments or Agencies and entry-level or dead-end jobs which lend themselves to the Career Ladder Program should be identified.

Step 3: Plan a Presentation to the Employer

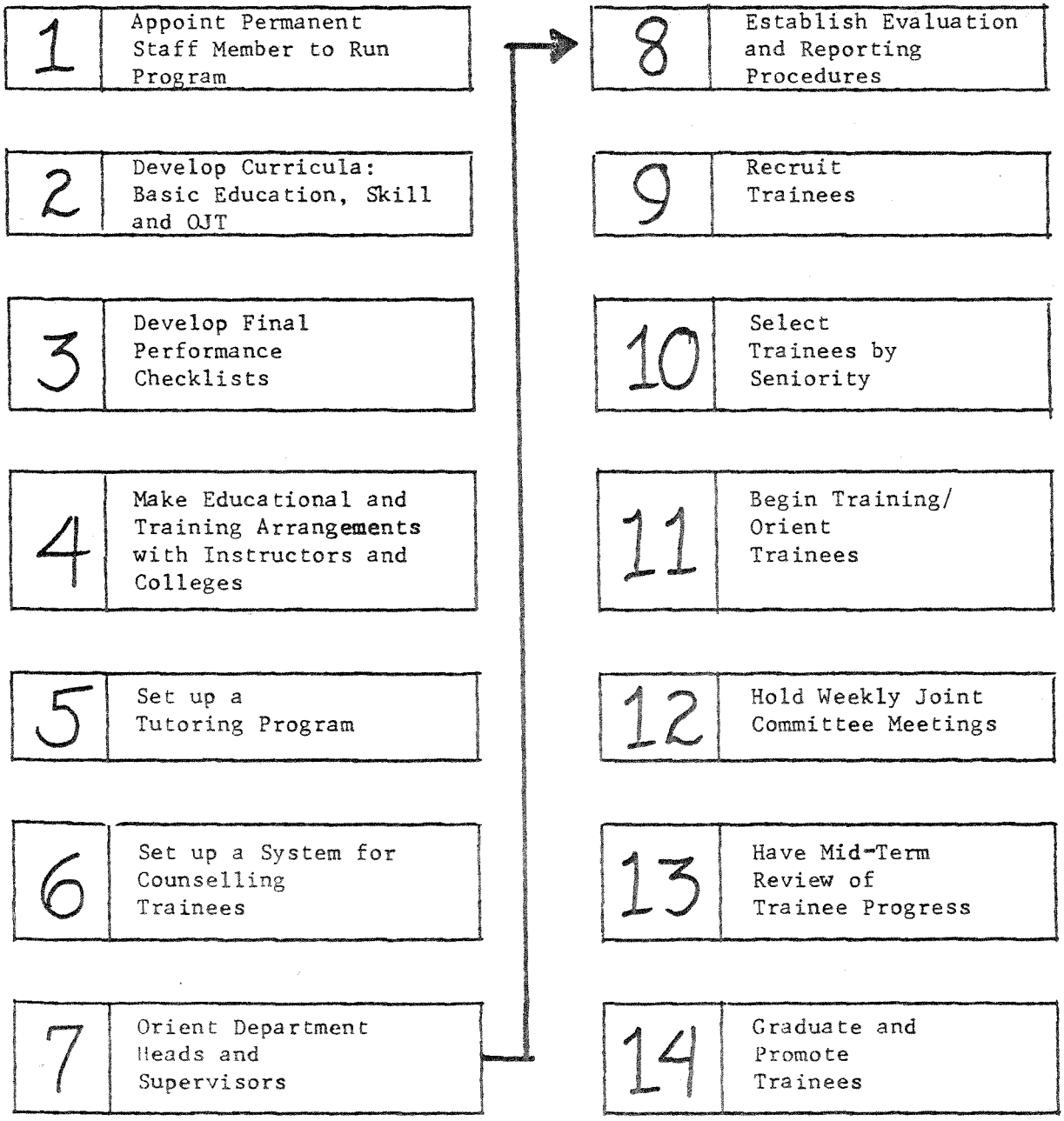
Committee members should draw up a plan to discuss the Career Development Program with the Employer. The advantages to the Employer listed in the introduction may be useful in planning this presentation.

Step 4: Meet With the Employer to Explain the Program

The Union Career Development Committee should meet with the Department or Agency Director and any appropriate personnel officers in the Department. The Committee may stress that a commitment to the principle of Career Development is needed and that the details of the Program will later be negotiated with the Employer.

STEPS IN IMPLEMENTING A CAREER DEVELOPMENT PROGRAM

PART II: HOW TO SET UP AND ADMINISTER TRAINING PROGRAMS



Step 5: Negotiate a Preliminary Agreement

A Preliminary Agreement might look like this:

> The Employer and the Union recognize the need for the development and training of qualified employees to fulfill the Employer's workforce requirements. The Employer agrees to the principles of Career Ladders and promotion from within its own organization. In keeping with such principles, the Employer and the Union shall establish a Career Development Program. The Employer agrees to participate in a Joint Union-Management Committee to develop a Career Ladder Program.

Step 6: Establish a Joint Union-Management Committee

A Joint Training Committee should consist of a specific number of members (three would be a good number) selected by the Union and an equal number selected by the Employer.

This Committee shall be responsible for the establishment and administration of a Career Development Program.

It is also desirable to involve any appropriate Civil Service Agency at this point, because changes in existing job structures or rules may be necessary. If Civil Service personnel are involved in the early stages, they may be more inclined to cooperate with the Program. Possibly, Civil Service could act as non-voting advisors to the Joint Committee.

Step 7: Plan Activities of the Joint Union-Management Committee for the Design Stage

The Joint Union-Management Committee should review and become familiar with the steps that must be taken to implement a Career Ladder Program. Specific tasks should then be assigned to members of this Committee.

THE DESIGN STAGE

The Design Stage begins with data collection and ends with the signing of a Joint Training Agreement between the Union and the Employer. All the steps in this stage are the responsibility of the Joint Union-Management Committee.

Step 1: Collect and Analyze Data on Current Job Structure

Basic information on the organization and existing staffing patterns is necessary to design a Career Development Program. This information, which should be readily available from the personnel department, includes:

- Organization Chart with name of Department, Department Head and Chief Steward for each Department;
- A Staffing Chart with:
  - all job titles graphed according to salary level, for the entire agency and each of its Departments;
  - number of employees in each job title;
  - number of budgeted positions in each title by Department;
  - the educational or credential requirement for each job title.

Step 2: Identify Current Promotional Opportunities

Once the Staffing Chart has been completed, the Committee can begin to identify any existing job and Career Ladders. The jobs on the Chart should be linked by lines indicating such Ladders if they exist.

Additional information is now necessary, such as:

- which jobs above entry level are being filled from outside;
- what are the customary ways of filling positions above entry level;
  - is promotion based on ability to perform related skills acquired by job experience (e.g., clerk typist to accounting clerk)?
  - is promotion based on seniority?

- which jobs are being filled by employees working out of title - either upward or downward (e.g., a receptionist filling out payroll records).

Committee members should also consider:

- What are the anticipated changes in service delivery?
- Are new programs (with promotional opportunities) planned?
- What areas receive special consideration in the agency's proposed budgets? The Union should have access to the proposed budget.

To summarize, the data collection so far includes:

1. Organization Chart
2. Staffing Chart
3. Current promotional opportunities
4. Other information collected by the Committee on agency needs, workforce shortages, and trends in service delivery.

Step 3: Identify Dead-End Jobs

Using the data collected, the Committee should identify jobs in which:

- there are no obvious or normal opportunities for promotion;
- no process exists to help the worker meet educational or credential requirements for promotion from a lower to a higher level job;
- the skill/knowledge distance between the job and the next higher job is too great for the two jobs to form steps on a career ladder.

Step 4: If Necessary, Restructure Old Jobs or Design New Ones

There may be a need for restructuring some existing jobs or creating completely new ones.

But restructuring done for job enrichment or career advancement is very different from that done to downgrade positions. Some employers have tried to restructure existing entry-level jobs to avoid CETA problems.

Jobs should be designed to creat upward mobility, but the functions must also be needed by the Employer. Both criteria have to be met.

In restructuring a job, job descriptions are broken down into tasks. These tasks may then be:

- considered sufficiently important and time consuming to be considered a separate job in their own right; or
- added to another set of tasks currently being performed to create a new, enlarged job; or
- added to a set of tasks not currently being performed (but needed) to create a new job.

Writing Job Descriptions for New or Restructured Jobs

In restructuring a job or creating a new job, a rationale for the job and a job description are necessary to justify the restructured/new job to the Employer and the Union. Since the Joint Committee is only making recommendations at this point, summary job descriptions containing less detail than the final descriptions may be adequate.

The data collected in Steps 1, 2, and 3 should serve as the basis for new job descriptions. Additionally, Department Heads and employees of the Departments affected by the proposed changes should be asked what tasks they believe should be included in the position.

Job descriptions should include:

1. a listing of all tasks to be performed in the job;
2. a statement of job relationships: Which Job Title supervises employees in the new Job Title? Will the employees in the new job supervise others and if so, whom?
3. Minimum requirements to be eligible for training or promotion to the new job:
   - previous job experience
   - education or credentials
   - skills (such as typing, shorthand, etc.)

Step 5: Design Career Ladders

The existing jobs, the restructured and the new jobs should now be placed on a chart showing the salary level for each job and the paths from one to the next. These new paths are called Career Ladders. As the example on the next page (Figure 1) shows, each Ladder should link jobs from entry level to the professional level, and should provide for lateral as well as vertical movement.

Step 6: Write a Career Ladder and Training Proposal

The Joint Committee should now prepare a proposal to be submitted to the Union and the Employer as the basis for negotiating a formal Training Agreement.

The proposal should include the following:

1. Career Ladders;

2. Rationales for and descriptions of new and restructured jobs;

3. The jobs for which training should be provided. Since the first program cannot include all jobs, the Joint Committee may recommend a number (say, 10) of jobs to be considered; out of these, the Union and the Employer may agree on a number (say, 5) for inclusion in the Program. In selecting jobs for training, the Union representatives on the Committee should have as their major concern the number of "dead-ended" employees who will be unblocked.

4. The number of employees to be trained and to be promoted to each new job title;

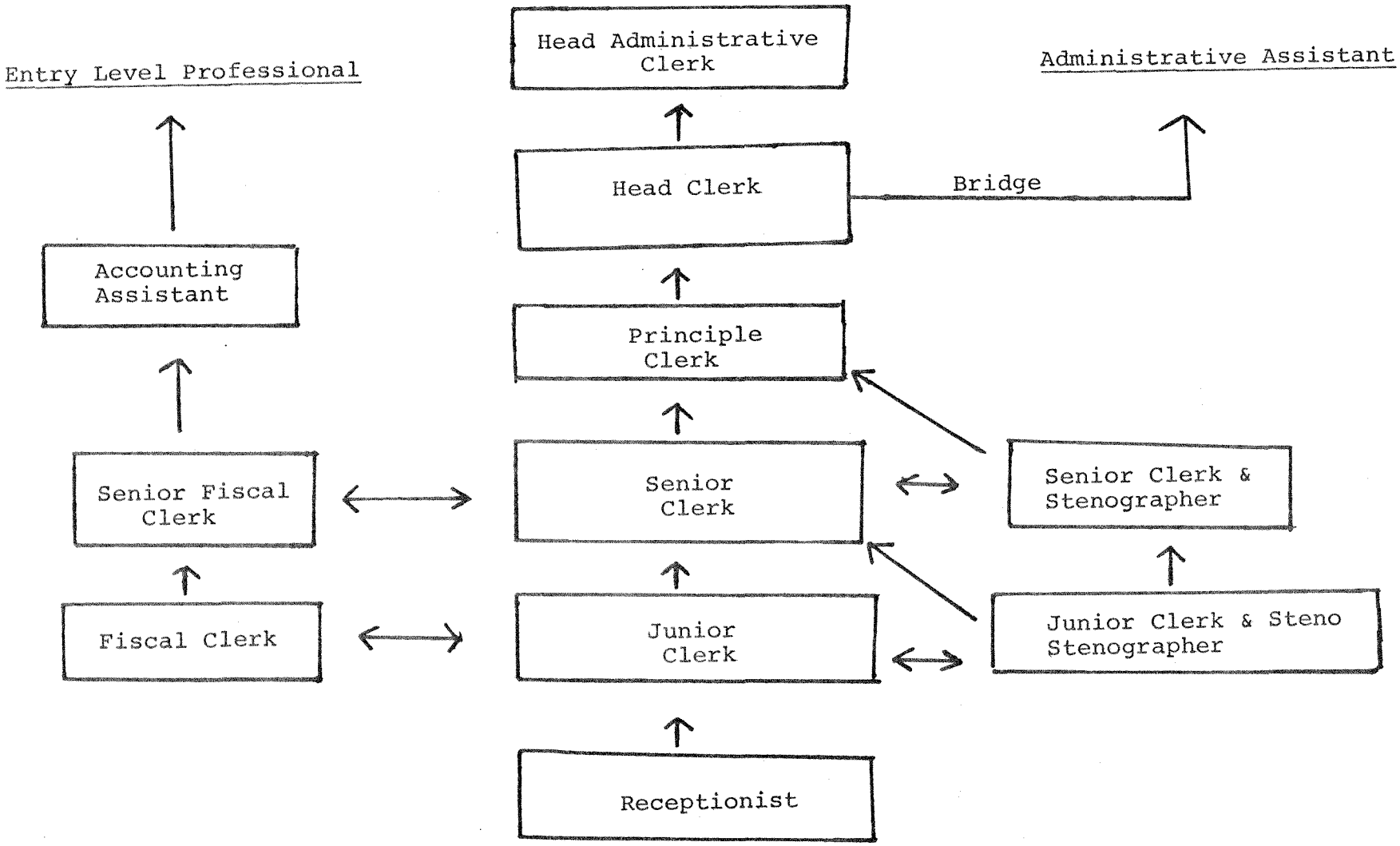
5. The process for selecting trainees. Seniority and previous job experience should be the only criteria.

6. The number of hours per week of training to be conducted on work-release time.

7. The length of the Training Program. Each course could include one-third job-related Basic Education, one-third Skills Training and one-third On-The-Job Training.

FIGURE I

SAMPLE CAREER LADDER



Step 7: Negotiate Formal Training Agreement Between Union and Employer Based on Final Job Descriptions

The proposal prepared by the Joint Committee (Step 6) will serve as the basis for the formal Training Agreement. Final agreement must be reached on the seven items listed above.

Funding for any additional costs, such as Basic Education or Skills Training, must be negotiated at this point. Some formal instruction may be available at community colleges for little or no cost. In most cases it will be necessary to negotiate a Training Fund to which the Employer will contribute (perhaps a certain amount per month, per employee).

In addition, the negotiators must agree on:

- criteria for determining successful completion of training;
- wage rates for new jobs;
- wage increases to be given to trainees upon successful completion of the mid-term review;
- location of on-site classrooms and the availability of other training facilities.

The Joint Committee will be responsible for:

- drafting the negotiated Training Agreement and getting it signed by Union and Management;
- monitoring the Career Development Program;
- administering any Training Funds.

PART II: HOW TO SET UP AND ADMINISTER TRAINING PROGRAMS

After the formal Training Agreement has been signed, the Joint Committee must implement the Program. The process described below contains 14 steps, each of which is critical to the development of a successful Career Development Program.

Step 1: Appoint Permanent Staff Member to Run Program

A permanent staff member should be responsible for the daily running of the Program.

The Joint Committee will be able to delegate many of the Program implementation tasks contained in Steps 2-14 below to the permanent staff member (called the Training Coordinator). However, the Committee retains the overall responsibility for seeing that each task is completed.

Step 2: Develop Curricula

Each curriculum is designed to have three equal parts: Skills Training, Basic Education, and On-The-Job Training. Skills Training for new jobs is first taught in a classroom setting and then is performed in supervised On-The-Job Training. Job-related Basic Education skills are taught to prepare the employee for the next higher level job. Basic Education training may run from communication skills to high school diploma programs or to college review.

Technical Assistance Available from AFSCME

Assistance in developing the training curricula may be obtained from AFSCME International.

Job-Related Basic Education

Basic Education is a key part of Career Development. In the Career Development context, Basic Education is job-related, and may be needed to:

- improve or refresh basic skills of trainees (e.g., remedial reading, basic arithmetic);
- assist trainees in working on a high school equivalency diploma;
- provide a college level review to trainees seeking college credits.

Developing New Curricula

If no appropriate curricula exist for certain target jobs in the Program, new training courses will have to be developed.

Briefly, the steps in developing curricula are:

1. Analyze and list the tasks - individual operations or steps - that have to be performed in the target job.

2. Express each task as a statement of what the trainee must be able to do to perform the target job correctly.

3. Write a course outline based on the performance tasks indicating the number of lessons to be taught and the objectives to be mastered in each lesson.

4. Determine the method of instruction (classroom or OJT) that would be most effective in helping the trainee master each lesson.

5. Obtain appropriate teaching aids and materials.

6. Develop a method of evaluation of trainee performance of the target job.

Step 3: Develop Final Performance Checklist

Upon completion of training, it is necessary to determine whether the trainees have adequately mastered the skills and knowledge required for them to function successfully in their new jobs. Therefore, a Performance Checklist must be developed for each course containing all the tasks the trainee will be required to perform.

Trainees graduate from a Program only if they have passed an on-the-job performance evaluation conducted by the OJT instructor using the Final Performance Checklist.

The items in this checklist should be performance items, not paper and pencil tests. Fitness to work in a higher level job is judged only by the performance of tasks which make up the job. This is an important element of the Program.

The evaluation items must be designed by the Joint Union-Management Committee, and both parties must be satisfied that they provide a valid indication of satisfactory performance in the new job.

If the jobs are under Civil Service, the Civil Service Commission must also be involved since employees must be given the new job title as well as the new wage. Trainees should be promoted with the Civil Service accepting the training and performance evaluation in lieu of the formal examination requirement.

Step 4: Make Educational and Training Arrangements with Instructors and Colleges

Selecting Instructors

Instructors in the program are responsible for teaching skills, for basic education, and for college level or technical courses.

Skill training and basic education instructors are approved by the Joint Committee. The Committee also approves the choice of educational institutions and courses; and, while it cannot select the college instructors, it can request those skilled in adult education.

Basic education instructors should have college degrees and some teaching experience. They can be recruited through adult education centers, newspaper advertisements, etc.

Skill instructors can be similarly recruited. They must meet the standards of the Employer in terms of licensure and/or education.

Orientation of Instructors

An orientation session must be conducted for all instructors who will be participating in the training program. The purpose of this session is to acquaint them with the goals of the Career Development Program and to explain:

- the components of the Program (skills, OJT, job-related basic education, GED);
- the procedures for evaluating trainee performance and reporting the results;
- the procedures for referring trainees to counselling or tutoring;
- logistical details (where classes will be held, availability of facilities and materials, whom to contact in case of problems or questions);
- procedures for evaluating staff.

Arrangements with Colleges

Local colleges may be able to provide skill training and other courses. Often a community or junior college will be more flexible than larger established institutions in shaping existing courses to suit the Department's needs and to effect changes where a suitable course cannot be found. These institutions will also be more likely to grant academic credit for work experience.

Step 5: Set Up a Tutoring Program

Additional after-hours tutoring could be provided for trainees having difficulty mastering the skills or information being taught in any course.

The skill training and basic education instructors should be available for special tutoring of individual trainees where an evaluation shows it is needed.

The trainees should be informed that the tutoring program is available and encouraged to use it as soon as they begin falling behind.

Step 6: Set Up a System for Counselling Trainees

The Training Coordinator is responsible for setting up a system for counselling trainees who are experiencing problems - work related or personal - that are affecting their performance in the Program. (For example, if a trainee is unable to study at home because she has young children, child care might be arranged for a few hours each day.)

The Training Coordinator should use all available Union, Agency and community resources to see that trainees' problems are resolved and that motivation remains high.

Step 7: Orient Department Heads and Supervisors

Although the Department Heads and Supervisor have been involved in the design of the Program, it is very useful to hold formal orientation sessions to explain:

- the final Union-Management Agreement;
- the Career Ladders, including new and restructured jobs;
- the plans for recruiting trainees;
- the tentative schedule for the Training Program.

Additional sessions should be held as the Program progresses, particularly in Departments from which trainees are being recruited and in which target jobs are located. It is essential that Supervisors of trainees be kept involved in every stage of the Program.

Step 8: Establish Evaluation and Reporting Procedures

Formal procedures must be established to monitor trainee progress through reports and performance evaluations. The results should be reported to the Training Coordinator and the Joint Committee.

Step 9: Recruit Trainees

All employees must be notified that a Training Program is scheduled and that applications are being accepted. Notice of the opportunity must be given in ample time for the workers to apply and for all applications to be considered.

The notice should be posted on bulletin boards in highly visible locations. In addition, a notice should be enclosed with each employee's pay check which would include:

- a letter explaining the nature of the target jobs, the duration of training, and job experience requirements.
- a training application, instructions on where to return the form, and the deadline for submitting applications.

In addition, Shop Stewards and Supervisors must be informed when the Training Programs will be held so that they can personally inform the workers in their Departments. A brief meeting with the Joint Committee should be arranged to inform the Stewards and Supervisors, in addition to more extensive briefings by the Training Coordinator.

Step 10: Select Trainees by Seniority

The Joint Union-Management Committee selects trainees from among the applicants on the basis of seniority.

The trainees selected should be individually informed, and a list of the trainees should be posted.

Step 11: Begin Training - Orient Trainees

An orientation session at the beginning of the Training Program will help familiarize trainees with all aspects of the Career Development Program. This session can be effective in increasing motivation by showing that the Union and the Agency support the Program, want the trainees to succeed, and will do everything possible to help them succeed.

The agenda for the trainee orientation session should include:

- Explanation of the various components of training and how they interrelate:
  - Orientation
  - Classroom skills
  - On-The-Job Training
  - Job-related basic education
  - GED
- Requirement for promotion is passing final performance checklist, but no other tests;
- People to contact in case of problems, questions, or just to talk.

Step 12: Hold Weekly Joint Committee Meetings

The Joint Committee and Training Coordinator should meet regularly during the training period to discuss the progress of the Program, and offer solutions to any problems that may arise.

At these meetings, reports on trainees' progress should be reviewed and arrangements made for tutoring or counselling trainees who are having difficulty.

Periodically, the Department Heads and Supervisors of the trainees should be invited to meet with the Committee and to voice any concerns they may have about the Program.

Step 13: Conduct Mid-Term Review of Trainee Progress

Halfway through the Training Program, the trainees are evaluated to determine whether or not they should remain in the Program.

Trainees who successfully pass the mid-term evaluation may be eligible for pay increases equal to half of the total increase for the new job (if this has been spelled out in the Training Agreement).

Step 14: Graduate and Promote Trainees

Final Performance Evaluation

The Final Performance Evaluation using the Checklist developed in Step 3 is made by the OJT instructor. Those trainees who pass the examination are ready for graduation from the Program and promotion to their new positions.

Graduation Ceremony

The trainee graduation ceremony should be a major event. The ceremony and resulting publicity will serve to:

- demonstrate to the trainees that they have accomplished the goals they set;
- encourage enrollment in future training and educational programs;
- build support for the Career Development Program.

ALTERNATIVE WORK PATTERNS

TABLE OF CONTENTS

INTRODUCTION

In the past decade there has been a growing interest in work schedules that deviate from the traditional 9 to 5, 5 day per week routine.

Some workers are interested because such a change may help in providing adequate child care, as the number of single parents with children and the number of two-parent households where both parents work increases. Other workers find flexible schedules allow them time to take care of personal business during regular business hours without using annual leave. In urban areas, flexible starting and quitting times may help employees avoid rush hour traffic congestion.

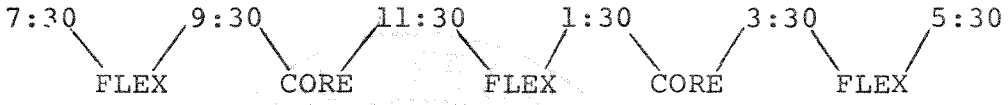
Despite some advantages of alternative work schedules, the union should proceed with caution. If used properly, alternative work schedules can have positive results; nevertheless, there are pitfalls and the potential for abuse. Therefore, a local union considering an alternative work pattern should carefully weigh the pros and cons discussed in this booklet before a change is instituted.

FLEXIBLE WORKING HOURS

Flexitime is a system of working that allows employees some choice of starting and quitting times. The workday is generally divided into periods of "core time" -- hours during which employees must be present; and "flexible time" -- hours during which employees may choose their time of arrival and departure.

There are a number of different models of flexitime scheduling:

A. Gliding Schedule. Allows an employee to vary arrival time on a daily basis without prior notification to the supervisor so long as it is within the established flexible time period.



B. Flexitour. The employee selects a starting time which automatically determines his or her quitting time each day. This schedule is followed until that time when new schedules are selected.

C. Variable Day. The employee may vary the length of the workday as long as she or he works during the core time and completes the basic work requirements for the week.

D. Variable Week. The employee may vary the length of the workday and/or the workweek as long as she or he works during the core time and accounts for the basic work requirements for the pay period.

These are some examples of the basic flexible work schedules. Other variations are possible.

Implications

Proposals to introduce a flexitime arrangement should be considered only after careful study of all its implications. In most establishments where flexitime has been tried, employees have been satisfied. They find it easier to schedule personal business into their day, enjoy the option of working either early or late, and find commuting easier.

But there are also drawbacks to flexitime:

- It threatens the concept of premium pay for time worked over 8 hours per day or 40 hours per week.

- Employees who did not have to punch a clock before the institution of a flexitime system may resent the need to begin time-keeping.

- The institution of flexitime may open up jobs for more part-timers who may not be covered by the union contract.

- It is actually a fairly minor alteration of the work environment. Although it allows employees to slightly rearrange their schedules, it does not provide them with more free time for family responsibilities or leisure.

It should be remembered that the introduction of flexitime provides advantages to employers. Studies show that use of flexitime leads to: reduced absenteeism; less use of sick leave to take care of personal business; elimination of tardiness; improved employee morale; lower turnover rate; and increased productivity. Given this, employees should not be reluctant to make demands (such as shortened work weeks or overtime pay) so that they too receive benefits from the flexitime system.

Employers may try to resist the use of flexitime by arguing that there will be times when the workplace is not adequately staffed, or that management will not be able to find people when they are needed. However, these problems can be overcome by careful scheduling, as with the flexitour plan.

IMPLEMENTING A FLEXITIME PROGRAM

Before adopting a flexitime program the following factors should be considered:

1. Employee attitudes should be surveyed to make sure that this is a desired experiment.

2. A flexitime program should be instituted only as the result of a collective bargaining or other union-management agreement.

3. Participation in any flexitime program should be voluntary.

4. Overtime compensation for hours worked beyond the basic 8 or 7½ hour day should be maintained.

5. The plan should be implemented on a trial basis for a specific period of time (not to exceed six months) and made permanent with the consent of the union. Periodic reviews should be made during the trial period.

COMPRESSED WORKWEEK

The compressed workweek system is a plan under which employees work the normal number of hours in the work week, such as 40 per week, but over fewer days than the normal 5 days. Some examples:

A. The 4-day week. This usually consists of 10 hours per day, 4 days a week.

B. The 3-day week. This consists of 12 to 13 hours per day, 3 days a week. A variation would be 3 long days and one half-day worked per week.

C. The 5-4/9 plan. This consists of an employee working 4 days one week and 5 days another week out of a two-week period.

The method of scheduling compressed work weeks can vary, depending on employer needs and employee desires. There could be a fixed schedule where all employees have the same day of the week off. There could be a rotating schedule that would allow the place of employment to be open longer hours. The employees' days off may be fixed, or may change from week to week.

Implications

Before instituting a compressed workweek it is important to consider all the possible implications:

- As with flexitime, overtime pay after 8 hours may be lost.

- Weekend work may be paid at straight time.

- The 4-day work week does not automatically mean three day weekends or even three consecutive days off.

- A job that causes extreme fatigue or stress may be difficult to perform for 10 hours a day.

Implementing the Compressed Workweek

A number of factors should be considered before adopting compressed work weeks:

1. A thorough canvass of employee attitudes and expectations should be conducted to ensure all members understand the change in scheduling.

2. Consideration must be given to the impact of civil service or personnel regulations, the collective bargaining agreement and other fringe benefits to determine how current benefits may be affected by any change in the workweek.

3. Care should be taken not to overburden any employees with additional mental and physical stress.

4. The effect of the compressed workweek on the level of employment should be analyzed. Will it reduce the number of jobs, or create employment opportunities?

5. If possible, provisions should be made for either overtime after 8 hours per day, or a shorter workweek.

CONTINUOUS SCHEDULING

Service occupations that require around-the-clock coverage, such as health care workers in hospitals and state institutions, lend themselves to schedules other than 5-day, 40-hour weeks. This could mean that employees must work fixed or rotating shift assignments, fixed or rotating days off, and/or varying lengths of on-duty and off-duty time. Some employees like this variation from the traditional work week. But care should be taken that such schedules do not result in too much stress on employees.

Some potential problem areas are:

- Long assignments on the same shift.

- Inadequate time off between on-duty assignments on different shifts.
- Long periods of consecutive work days.
- Short off-duty periods.
- Few weekends off.
- Unequal distribution of desirable schedules among employees.

Shift employees should analyze their own work situation to see if current scheduling provides optimum efficiency for the employer while providing satisfactory hours for the employees. An excellent guide to analyzing and developing shift schedules is the Work Schedule Design Handbook. (See references)

REDUCED HOURS OF WORK

A number of new approaches to work scheduling revolves around the concept of reduced hours. These options allow for greater integration of work life with family life and leisure activities. Although these options are growing in popularity, it should be noted that these options are beneficial only to those who can afford a reduction in income.

Work Sharing or Shortened Workweeks

Two distinct systems fall under the category of shortened workweeks:

A. The first type of work sharing reduces the number of hours each person works without reducing pay or benefits. It seeks to distribute the available work within the society to as many people as possible as a long term solution to unemployment on a national level. This type of work sharing is not connected to temporary economic downturns.

   Organized labor has long supported reduction in the hours of the full-time workweek without reduction in pay as a means of relieving unemployment.

B. The second type of work sharing is designed to be used in place of layoffs during recessions. Usually

the reduced worktime results in an equivalent reduction in pay.

California recently enacted a work sharing unemployment insurance program. This program allows workers who have had their hours reduced as an alternative to layoffs to receive unemployment insurance benefits as partial compensation for lost income.

Implications

An obstacle to widespread use of the work sharing system is the fact that it would violate the seniority system that has been built into most union contracts. Senior workers may be reluctant to give up part of their wages so junior workers can remain on the job. For this reason work sharing may work at specific work sites but would be very difficult to implement on a national scale.

Another obstacle is the cost of benefits for employers. Employers may have to continue paying some fixed costs, such as Social Security and Worker's Compensation, for the same number of employees even though they were getting less hours of work per employee.

An advantage to employers would be lower training and turnover costs. They would not have to lose their trained employees with cyclical reductions in work.

The social benefit of work sharing is its ability to protect individuals from being thrown into periodic or continued joblessness, and its potential for alleviating the many costs and problems associated with a high unemployment society.

Job Sharing

Job sharing is the sharing of a full-time job by two (or possibly more) people. Two patterns of job sharing are:

A. Job splitting. A job is split between two people, each person working half the hours to provide full-time coverage.

B. Job pairing. Two people divide a job, but have equal responsibility for the total job. This type revolves around the task to be performed rather

than simply the dividing of hours, and is especially attractive to professional employees.

Under job sharing the pay and benefits are likely to be better than that of traditional part-time work.

Implications

Job sharing programs hold many potential dangers for the union and the job sharing participants.

- If the union doesn't represent permanent part-time employees, the use of part-time workers can be used to circumvent the contract.

- There is a danger that overtime will decline because employees may be scheduled to work overlapping shifts during peak periods, may work five or six hours per day, or may be called in early or requested to stay late, without premium pay.

- Job sharing may conflict with a promotion system based on seniority, if part-time employees are made full-time employees within the bargaining unit.

- Productivity of part-time workers may appear higher than that of full-time employees, thereby providing unfair comparisons to full-time employees.

- Employees who choose a job sharing position may not be eligible for, or may receive lower unemployment compensation benefits, should they be laid off.

- Some job sharing programs lack any type of career development, or ability to bid on and transfer to full-time positions, if the employee desires.

There are some disadvantages to job sharing for the employer as well.

- There will be an increase in the cost of personnel management, federal and state unemployment contributions should double, and Social Security contributions will increase, if the combined salaries are above the current taxing levels.

- If benefits are to be pro-rated, medical insurance will probably be more expensive.

- More time will be needed for communication and administration, thereby decreasing the amount of time actually spent on work assignments.

On the positive side, job sharing may hold some benefits for the union and its members.

- If employees are allowed to trade day and time schedules with their partners, a large sick time accumulation may result. This could possibly increase payments upon retirement, or save employees from going on lost-time, or using annual leave in the case of serious illness.

- Job sharing could be a possible alternative to layoffs, if layoffs are a reality.

- A job sharing program may be of use to some union members who wish to go back to school, look for another job, or simply would prefer to work half-time.

Implementing Job Sharing

Before changes in hours are implemented, the following guidelines should be considered:

1. The new program should be instituted only as a result of collective bargaining or other union-management agreement.

2. There should be voluntary participation only.

3. Shift differentials should be maintained.

4. There should be union participation in the administration and evaluation of the program.

5. The union should have the right to discontinue participation after a trial period.

Permanent Part-Time

Under this work pattern, permanent employees are regularly scheduled to work significantly fewer than the specified number

of hours of full-time personnel. Unlike job sharing, a part-timer is an independent worker who has sole responsibility for his/her job. Benefits are usually available on a pro-rated basis.

Implications

Many of the drawbacks of permanent part-time work are similar to those listed under job sharing. Additional problems are:

- The proliferation of part-time jobs has a negative impact on full-time employment. Part-time work also tends to undermine labor standards and depress wage levels.

- Part-time jobs help disguise the problem of high unemployment, as workers settle for part-time work in preference to no work.

- Most part-time jobs are geared toward women and tend to segregate them into low skill, low paying jobs.

On the positive side, part-time jobs do provide employment opportunities for some people who would otherwise find it difficult to work, such as students, the elderly, the physically handicapped, and parents of young children.

When implementing part-time work schedules, consideration should be given to the guidelines listed under job sharing. Also, an attempt could be made to get full benefits for part-timers.

Parental Leave

Parental leave is an idea that is becoming increasingly popular as interest in a more equitable distribution of employment and child care responsibilities between men and women grows. It also helps alleviate problems caused by the critical shortage of child care centers. It can also serve as a type of work sharing by removing full-time employees from the workforce for a period of time, thus opening up positions for new workers.

There are a number of parental leave patterns. A few are:

A. A given period of time a mother or father may spend away from work after the birth of a child, with the guarantee he/she can return to the former position.

B. Reduced work hours after the birth of a child, with a guarantee of return to a full-time position.

C. Use of sick leave for child's illness.

D. Special leave days for participation in child rearing activities.

Sabbaticals

Sabbaticals are extended leaves from work that provide employees time to pursue personal interests. Sabbaticals can be used for educational purposes, to try out a new career, or just for added leisure time. They could be paid or unpaid.

Sabbaticals, like parental leave, could serve to open up job opportunities for more workers. Presently, most workers in this country who are eligible for sabbaticals are professional employees.

APPENDIX

SAMPLE CONTRACT LANGUAGE

Flexitime

Flexitime shall be defined as a work schedule structure requiring that all employees be in work status during a specified number of core hours with scheduling flexibility allowed for beginning and ending times surrounding those core hours.

The Employer and the Union agree to negotiate the implementation of flexitime in appropriate work environments. Implementation of flexitime or any variation thereof shall be by mutual agreement between the Employer and the Union.

Mutual agreement can be reached on the local level or at the appropriate division or department labor-management meeting. If a meeting to discuss flexitime is scheduled, the Union shall be allowed two representatives for each bargaining unit without loss of pay.

Four-Day Work Week

In lieu of the normal workweek as defined in this agreement, Management and the Union may discuss a workweek composed of four (4) consecutive days of comparable length followed by three (3) consecutive days off. Such workweek must total 37½ hours of work. If agreed to, the four (4) day workweek will be initially implemented on a trial basis for six months. At the end of the six months, the parties will review the experience with the four (4) day week and mutually decide whether to continue it. The participation of individual employees shall be voluntary.

Part-Time

Part-time employees shall earn vacation, sick leave, holiday pay, retirement credit and all other fringe benefits on a pro-rated basis determined by a fraction the numerator of which shall be the hours worked by the employee and the denominator of which shall be the normal working hours in the year required by the position.

Parenting Leave

Parenting leaves of absence shall be granted to pregnant employees, to parents of newborns or to adoptive parents who request

same. The leave shall commence upon the date requested by the employee and shall continue up to six months provided that such leave may be extended up to a maximum of one year.

Parenting leave shall be any combination of accumulated annual leave, or leave without pay at the employee's option. A pregnant employee shall be entitled to use accrued sick leave for the period she is unable to work for medical reasons certified by a physician.

No employee shall be required to take a leave of absence nor shall an employee's job duties be altered without her consent on account of pregnancy; nor shall there be any penalty for pregnancy.

Return From Leave

An employee returning from any approved leave shall be reinstated in his/her job or an equivalent position at the salary he/she would have received had employment been continuous.

Seniority and pension rights shall accrue while the employee is on leave.

Family Illness

Employees shall be granted up to seven (7) days paid leave per calendar year to attend to members of the immediate family, who are ill or injured. Such leave shall not be charged to any other leave.

REFERENCES

Alternative Work Schedule Directory. National Council for Alternative Work Patterns, 1978. (Contains 290 listings of private and public enterprises that have implemented flexitime, compressed workweek, permanent part-time, and job sharing programs. Each entry includes the organization's name, address, and phone number; a contact person; type of industry; type of program; number of employees participating; and a brief program description.)

"Innovations in Working Patterns." Report of the United States Trade Union Seminar on Alternative Work Patterns in Europe, May, 1978.

"Flexitime in the Public Sector." From the Midwest Monitor, September/October, 1979.

Flexitime: Where, When and How? P. Silverstein, J. Srb, Key Issues Series, No. 24. New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York, 1979.

"The 4-day, 40-hour Workweek: Its Effects on Management and Labor." Personnel Journal, November, 1975.

The Four Day/Forty Hour Workweek: A Selected Bibliography. Council of Planning Librarians, Exchange Bibliography No. 1248.

Work Schedule Design Handbook: Methods for Assigning Employees Work Shifts and Days Off. The Institute for Public Program Analysis, U.S. Department of Housing and Urban Development, Office of Policy Development and Research. (Applicable only to 4-day workweek, not flexitime or part-time.)

The Four-Day Workweek. Carmen Saso. Public Personnel Association, Special Report.

Questions Employers Ask About Job Sharing. New Ways to Work, Palo Alto, California, 1975.

Job Sharing in Municipal Government: A Case Study in the City Of Palo Alto. Action Research Liaison Office, Stanford University, 1975.

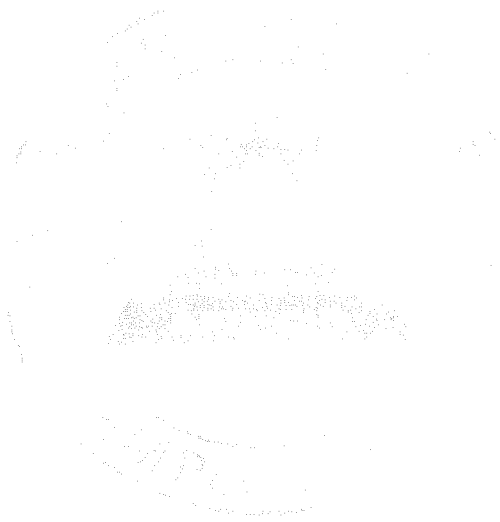
Job Sharing in the Public Sector. Olmsted, Ruggles, and Smith, New Ways to Work, 1979.

"Half-Time Blues." Suzanne Gordon, Working Papers For A New Society, Vol. 8, No. 3, May/June, 1981.

"Worksharing in the U.S.: Its Prevalence and Duration," Robert W. Bednarzik. Monthly Labor Review, July, 1980.

Designing Experiments in Use of Flextime and Compressed Work Schedules: Information for State and Local Government, United States Office of Personnel Management, Office of Intergovernmental Personnel Programs, February, 1981.

"New Work Schedules for a Changing Society," Bureau of National Affairs, Daily Labor Report, No. 188, September 29, 1981.



PAY EQUITY

A UNION ISSUE
FOR THE 1980'S

AFSCME
in the public service

TABLE OF CONTENTS

THE PROBLEM

Women earn less money than men -- much less!

Today the average earnings of full-time women workers are only 59 percent of the earnings of full-time male workers, despite the Equal Pay Act of 1963 and Title VII of 1964 Civil Rights Act, which make discrimination in wages illegal.

THE PRIMARY CAUSE - OCCUPATIONAL SEGREGATION

Sometimes women doing exactly the same job as men do get paid less. This undoubtedly contributes to the disparity between male and female earnings, but is a clear violation of the law, which requires equal pay for equal work.

But what contributes most to the disparity between the earnings of men and women is occupational segregation. Women are concentrated in a few occupational fields where they have traditionally worked; these jobs tend to be low paying, when compared to jobs predominantly held by males -- jobs which require comparable degrees of skill, knowledge, education, experience and responsibility.

About 80 percent of the nation's clerical workers are women, but only 6 percent of craft workers. A clerical worker averages $8,600 per year, while a craft worker averages over $25,000. Of all women workers, about one-third are clericals, while only 7 percent of male workers are clericals.

ONE SOLUTION - INTEGRATE THE WORK FORCE

Since the Civil Rights Act was enacted, most efforts at eliminating discrimination have focused on integrating the work force. If men and women were evenly distributed among all occupations, the earnings gap between men and women should close.

Good faith efforts on the part of many employers, educational institutions, and unions, as well as vigorous enforcement of the Civil Rights Act by the Equal Employment Opportunities Commission and the courts, have resulted in gains in the number of women now employed in some traditionally male fields. Women can now be found in almost all occupations -- even such traditionally male jobs as firefighter, coal miner and railroad engineer.

But it will probably take many years before the occupational employment patterns of men and women become similar, if ever. There are several factors:

1. Currently expanding employment opportunities are primarily in the clerical and service occupations, where women are already concentrated. At the same time, employment in the highly compensated blue collar occupations in manufacturing and construction is not growing. Thus, many women will continue to be employed in traditional occupations, if for no other reason than there will not be enough non-traditional jobs to go around.

2. To eliminate occupational segregation, significant numbers of men will have to enter traditional women's occupations. This is unlikely to occur as long as wages for the women's jobs remain depressed.

3. Some women want to remain in jobs traditionally held by females. They find careers in nursing, child care, and offices to be pleasant and personnally rewarding.

4. Despite the best efforts of interest groups, the Equal Employment Opportunity Commission, and the courts, women will still face barriers to entering non-traditional fields in large numbers. It will be many years before these barriers will be overcome.

It is essential that efforts continue to wipe out sex discrimination in education, apprenticeship, hiring and promotion. But, perhaps more importantly, a complementary effort aimed at providing pay equity and meaningful career ladders for jobs now predominantly held by women is essential.

COMPARABLE WORTH - THE CONCEPT

Traditionally, women's jobs have paid less than men's jobs merely because women were performing them. Employers believed that these jobs were not worth as much as jobs that men did, and that women were secondary earners in the family. Also, men were more likely to organize into strong unions and achieve higher pay.

Employers consider what other area employers pay for the same type of work indesigning salary schedules. Discriminatory wage patterns continue because jobs are currently not paid according to their relative value to the organization and jobs of equal value are not assigned similar wages. Even jobs that are dissimilar can be compared. Studies have shown that women's jobs are often underpaid relative to men's jobs, even when they are of comparable value to the employer.

COMPARABLE WORTH AND TITLE VII

There has been considerable controversy over whether Title VII of the Civil Rights Act covers pay discrimination claims based on the comparable worth concept. In a landmark decision in June, 1981, the United States Supreme Court at least partially opened the door to such claims.

In Gunther v. County of Washington, the Court held that women who were paid less than men could sue under Title VII even though their jobs were different from male jobs.

The Gunther case involved four jail matrons who guarded female prisoners in a county jail who were paid less than male guards who watched over male prisoners. The matrons contended they were being discriminated against because the County evaluated their jobs and determined that they should be paid about 95 percent as much as male guards since the matrons supervised fewer prisoners and devoted much of their time to clerical duties; however, their pay was only about 70 percent as much. The Court ruled that the matrons should be given the opportunity to prove that the pay discrepancy was due to sex discrimination.

By reaffirming Title VII's broad prohibitions against discrimination in pay rates, the decision creates a climate for bargaining in which AFSCME's efforts to achieve pay equity cannot be ignored by management.

The Court did not define exactly what evidence employees will have to produce to prove sex discrimination under Title VII. However, the Court stated emphatically that employers cannot avoid liability under Title VII simply by showing that women are not performing exactly the same jobs as men. Pay discrimination claims under Title VII are not restricted to the language in the Equal Pay Act which requires that jobs be identical. It is likely that women in public employment will frequently be able to show discrimination in wages and thus come under the Gunther umbrella.

IT MUST BECOME A UNION ISSUE

Because the courts and the EEOC have moved slowly on this issue, a push for progress in pay equity must come from union action at the local level. AFSCME councils and locals in some areas have already been successful in demonstrating that employer classification systems and pay plans were discriminatory and have won wage adjustments.

HOW TO PROCEED

Employers are unlikely to make changes in their basic classification system and address the issue of pay equity on their own. It is of prime import that the union demonstrates that some of the difference in wages for jobs is due to sex discrimination.

1. Prepare data showing existing pay levels for men and women. After a list of each employee's wages and classification is obtained, some simple calculations can be done to demonstrate that female employees earn less than male employees. An effective table might show that women hold most of the jobs in the lower pay grades, while men hold those at the top. For example:

DISTRIBUTION OF FEMALE AND MALE EMPLOYEES

IN EACH PAY GRADE

PAY GRADE	% FEMALE	% MALE
1 - $8,000/year	80%	20%
2 - 9,000/year	65%	35%
3 - 10,000/year	60%	40%
4 - 11,000/year	58%	42%
5 - 12,000/year	40%	60%
6 - 13,000/year	34%	66%
7 - 14,000/year	20%	80%
8 - 15,000/year	5%	95%

The distribution of all the females in the work force throughout the classification system can also be compared to the distribution of male workers. This might show again that most women hold jobs in lower grades and most men hold jobs in higher grades. For example:

DISTRIBUTION OF FEMALE AND MALE EMPLOYEES

IN WORK FORCE BY PAY GRADE

PAY GRADE	% FEMALE	% MALE
1 - $8,000	10%	2%
2 - 9,000	15%	3%
3 - 10,000	25%	5%
4 - 11,000	30%	10%
5 - 12,000	10%	30%
6 - 13,000	5%	25%
7 - 14,000	3%	15%
8 - 15,000	2%	10%
	100%	100%

Calculating the average wage for all males and for all females might also show management that sex discrimination does exist.

2. Choose a limited number of "benchmark" job titles which have relatively large numbers of employees. Include some occupations which are male dominated, some female dominated and some mixed.

- Count the number of males and the number of females in each job title.
- Designate job titles with 70 percent or more women as female dominated and with 70 percent or more men as male dominated; others will be designated as mixed.
- List the pay grade for each job title and compute the average wage for all workers holding the title; then calculate the average for all the males and the average for all the females separately.

3. Use this data to make pay equity a priority issue for the union membership. The different averages will show that women in female dominated job titles earn less than men in male dominated job titles.

Explain and discuss the pay discrimination at union functions and get the membership solidly behind the issue. Emphasize that the problem is not that some workers are overpaid, but that some are underpaid.

4. Consider filing a sex discrimination charge under Title VII with the EEOC, if the union's preliminary analysis indicates that the employer is engaging in discriminatory practices. If a charge is filed, EEOC will investigate the

complaint and try to resolve the issue between the parties. Under federal law, EEOC has 180 days to complete this process. If there is later a need to file a Title VII lawsuit alleging sex discrimination, this cannot be done unless an EEOC complaint has been filed. Should the union be able to successfully negotiate a solution, the complaint can always be withdrawn. The General Counsel's office can provide advice and assistance concerning the filing of EEOC complaints.

5. Try to get management to upgrade job titles which are paid less. Since management may not be willing to admit that there is a problem, it might be necessary to publicize the problem, using the data discussed above. Discussions with women's groups and legislators, newspaper articles, appearances by union offices on local t.v. and radio programs can generate pressure on managment to take the issue seriously.

If management agrees to discuss the issue, a further study may be necessary. The union should actively participate in its design and content. Because consultants who are hired to do job evaluations normally use a standard formate which does not consider the issue of pay equity, they should usually be avoided or the format drastically revised. These firms obtain repeat business and referrals by using a system that gets results that are similar for each client. Since the union is not interested in supporting the status quo, it should try to alter a firm's standard approach. Since the union and the employer are most knowledgeable about defining the important and valuable aspects of the job, they are the most qualified to do the evaluation. If some technical assistance is necessary, a consultant who has experience in job evaluation and the pay equity issue should be carefully chosen.

If a consultant is used, the union must monitor the process and attempt to ensure that the system is appropriately modified to measure comparable worth.

JOB EVALUATION - HOW IT WORKS, WHAT'S WRONG WITH IT, HOW TO IMPROVE IT

Whether a study on pay equity is to be done jointly by the employer and the union, or whether the union conducts its own study, the union must understand how job evaluation systems work. In many cases, the existing classification system undervaluing women's jobs is the result of a previous job evaluation study.

Although traditional job evaluation studies may appear objective and even scientific, they are usually designed to justify and perpetuate present discriminatory systems. In fact, most job evaluation systems continually undervalue women's jobs, and are also likely to downgrade other non-supervisory jobs.

To move toward pay equity, it may be necessary to challenge the job evaluation system presently in use, and to demonstrate that its bias results in lower classifications and pay scales for women's jobs.

Although a completely objective job evaluation system may be impossible, one minimizing sex bias can be developed in the following way:

1. Job Descriptions

A job evaluation study begins by preparing detailing job descriptions for each job through observation, interviews and questionnaires.

Job descriptions should be carefully reviewed with the employees presently performing the job.

- Does the job description accurately reflect what the incumbents do? It may be that the job actually entails important tasks and responsibilities that are not mentioned, or there may be duties that are given prominence in the description that they do not deserve.

- Is a catchall phrase such as "other related duties" included in the job description? Job descriptions should be as precise and detailed as possible. If an employee even temporarily performs the duties of a higher classification, he or she should receive extra pay. Often, however, employers expect clerical workers to do numerous tasks -- often considered "related" duties -- not mentioned in the job description with no extra pay.

- Do the qualifications accurately reflect the job requirements? Education and training qualifications may be unnecessarily high, making it impossible for lower-level employees to move into them. For example, if an administrative assistant job description calls for a college degree, could the job be done as well by a high school graduate who has some ability to write?

  On the other hand, a job description may require only a high school diploma for a job that actually requires some college work. In that case, the job description, and of course the pay scale, should reflect this.

- Does the job description accurately reflect the level and complexity of the job? Watch out for words such as "routine" and "simple." Filing licenses in alphabetical order may be simple and routine, but maintain-

ing a complicated filing system for a research department is not. If a job requires patience, tact, and the ability to work under pressure, for example, traits necessary to work in a welfare office, this should be noted in the job description.

2. Rating the Job - Factors and Points

Once the job descriptions are written, jobs are ranked in relation to each other.

Criteria are set up to measure certain components of the job such as skill and responsibility required to perform the function and working conditions. These criteria are called "factors" and a range of possible point values is assigned to each factor. The possible point values assigned to each factor determine how important each factor is. For example, if "skill" has a maximum value of 100 points and "responsibility" has a maximum value of 500 points, "responsibility" is weighted more heavily than "skill."

Each job is rated according to the level of each factor required to do the job and given points; then the points for each factor are added together to give a total value for the job. For example:

	Warehouse Worker	Keypunch Operator	Correctional Officer	Licensed Practical Nurse
Knowledge & Skills	61	70	92	106
Mental Demands	10	11	23	30
Accountability	13	15	35	35
Working Conditions	13	11	23	20
Total Points	97	107	173	187

There are a number of problems with factor rating systems which affect pay equity, some of which can be minimized by redesigning the study.

- Most job evaluation systems have different factors and weights for different types of jobs. Typically, there will be separate sets of factors for blue collar jobs, clerical jobs and professional and administrative jobs. Obviously, this makes comparisons impossible.

  Also the factors can be chosen and weighted to produce whatever results are desired. For example, the blue collar system may heavily weight the working conditions factor and give it little weight in the clerical rating system.

  <u>It is essential that a comparable worth study have one factor rating scale for all jobs</u>.

  No matter what weighting system is agreed upon, it will be subjective. The issue of whether "working conditions" or "skill" should be allowed to contribute 5 percent, 10 percent or 20 percent to the total score has no right or wrong answer. But making the decision based on what present wage patterns support does nothing to ensure pay equity.

  The factors should cover all important aspects of the job. In most job evaluation systems, the following factors are used:

* Skill and knowledge -

This factor is weighted heaviest in most evaluation systems so it is especially important that women's jobs be fairly rated.

Does the system allow sufficient differentiations among lower-level jobs? Some systems are designed primarily for rating higher-level jobs and do not. For example, a job requiring a high school diploma should be rated more highly than one that does not.

Do the ratings for manual skills undervalue clerical skills such as typing and shorthand, in comparison with blue collar skills such as driving a truck, operating a backhoe, or using simple hand tools?

Are skills common to women's jobs such as the ability to organize the way work is processed given appropriate recognition?

* Interpersonal skills -

Points for this factor are usually awarded based on how "important" the people are with whom the employee interacts. However, credit should be given for tactfully and sympathetically dealing with the public or with clients who may be difficult.

* Responsibility and Accountability -

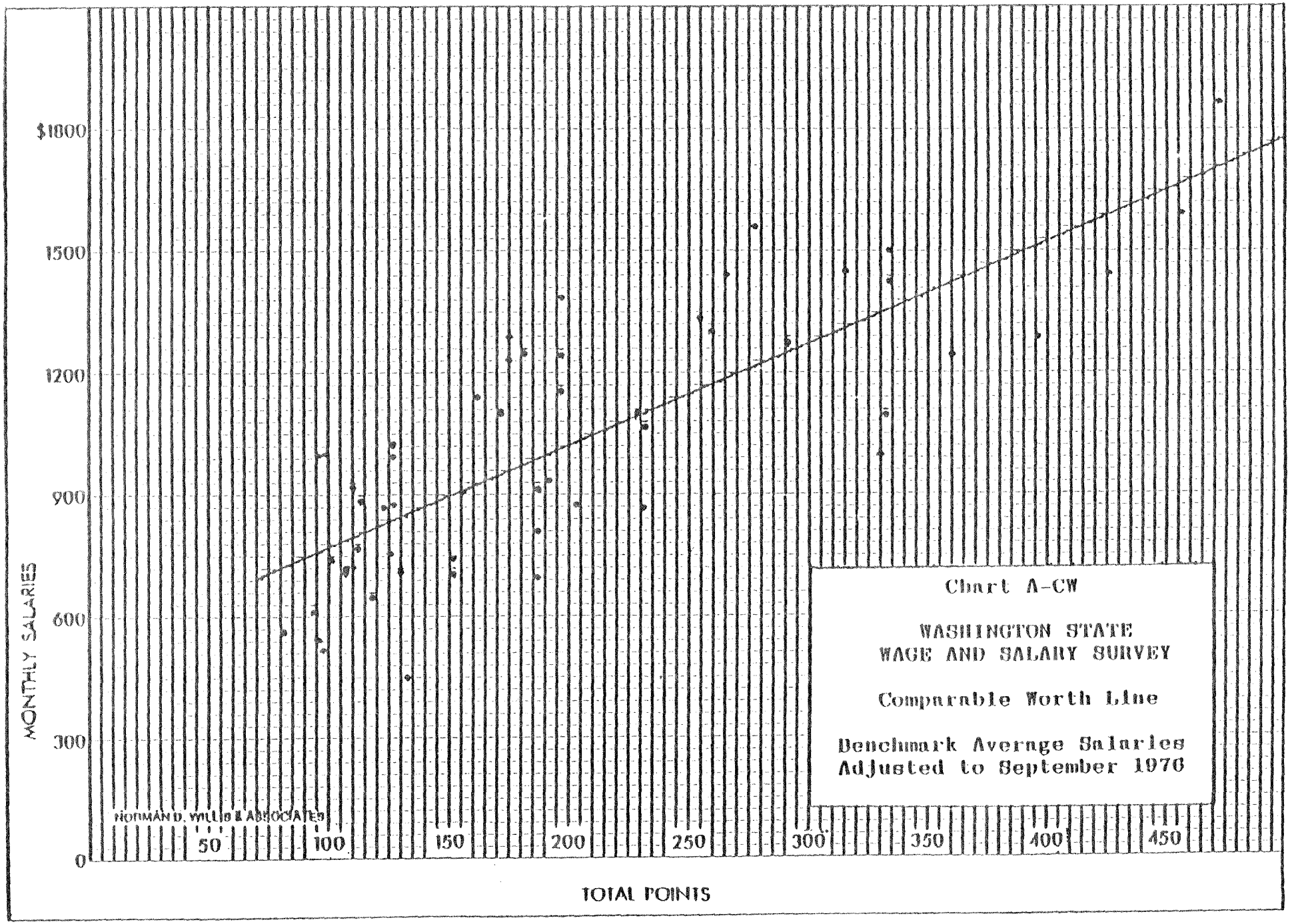
The amount of supervision exercised and received should be considered, but there are other aspects of this factor. For example, what happens if the employee makes a mistake? Will it be readily uncovered? How much harm can it cause not only to the employer, but to the public? Compare, for example, the responsibility of a worker in a day care facility with that of a parking lot attendant.

* Working Conditions -

Most evaluation systems give credit for heavy lifting but do not value the frequent lifting of lighter objects, working in tiring positions or working in a stressful environment. These are common to many women's jobs.

There is usually some credit given for working in hazardous jobs. Corrections and law enforcement jobs -- traditionally "male" -- are hazardous. Some traditionally "women's" jobs, such as aides in psychiatric facilities are too -- and they should receive adequate points. Injury statistics may be used to support this contention.

The AFSCME Research Department can provide additional references and technical assistance to help councils and locals in the job evaluation process. The most important things to remember, however, are to:


$1800
1500
1200
900
600
300
0
MONTHLY SALARIES
50
100
150
200
250
300
350
400
450
TOTAL POINTS
NORMAN D. WILLIS & ASSOCIATES
Chart A-CW
WASHINGTON STATE
WAGE AND SALARY SURVEY
Comparable Worth Line
Benchmark Average Salaries
Adjusted to September 1976

1. Account for all aspects of the job;

2. Use common sense;

3. Be on guard against any aspects of the system that can introduce sex bias.

3. Assigning Wage Rates based on the Value of the Job.

Once the job evaluation study is completed as outlined above, comparisons of wage rates for jobs of equal value can be made.

- Plot the wages and the number of points of each job on a graph to show the relationship. A "least squares regression line" can be calculated which shows what classifications would be paid if wages were based on comparable worth. The diagram prepared for the AFSCME-initiated Washington State comparable worth study is reproduced on the next page. It shows, for example, that a job worth 150 points should receive $900 per month, but that two jobs rated at about 150 actually paid less than $750 per month.

  The data generated by the study may be used to make the case that the employer is not providing pay equity.

- Construct graphs similar to the one on the previous page and calculate least squares regression lines for male dominated and female dominated jobs separately. These can be compared to each other and to the comparable worth line.

- Compute the wage that should be paid according to the results of the pay equity study for the different jobs. The comparable worth rate can be compared with the rates actually being paid. Below is part of one page from a table from the Washington State Study showing the point total for each occupation and the salary range based on comparable worth and present practice.

Comparable Worth Indicated Structure For

State of Washington Classifications

Classification	Total Points	Comparable Worth Indicated Pay Grade	Current Pay Grade
Warehouse Worker I	97	19	25
Clerk Typist I	94	19	15
Driver Mail Carrier	94	19	22
Clerk I	81	18	13

Note that warehouse workers (male) and clerk typists I (female) should make the same salary, but the warehouse workers pay is 10 grades above the clerk typist.

- Construct a table of "pairs" of male and female jobs with comparable point totals showing the pay discrepancies for these jobs of comparable value.

This approach differs greatly from traditional job evaluation which first ensures that the basic wage structure will not be disturbed and makes minor adjustments based on market wage rates.

The employer may argue that wages must be comparable to those being paid by other area employers whether they are discriminatory or not. But there will be no pay equity unless the general level of pay for women's jobs is raised in accordance with the findings of the study.

Implementing pay equity can be costly for the employer so that it may be necessary to upgrade positions in steps rather than all at once. However, nothing can be achieved until it is thoroughly documented that wage differentials exist because of sex discrimination.

The AFSCME Research Department is available to help in preparing a case for pay equity and to provide additional references and advice upon request.

CAFE de California, inc.

P. O. BOX 161207, SACRAMENTO, CALIFORNIA 95816

November 5, 1982

Honorable Elihu Harris
Chairman, Assembly Select Committee
on Fair Employment Practices
State Capitol
Sacramento, California 95814

Dear Mr. Chairman:

CAFE de California, the largest Hispanic state employee association concerned with the civil rights of Hispanic's in state government, appreciates the opportunity to present testimony to you and other committee members regarding "Legal Issues in Affirmative Action - Problems Affecting Women."

Hispanics continue to be the only ethnic minority group in state government that has not yet achieved 1970 Labor Force Parity representation. In addition, Hispanic females continue to remain the only women's group that has not yet achieved Labor Force Parity at 4.8%. All other groups have exceeded established LFP figures according to the July 1982 Report to the Governor and the Legislatureon the Annual Census of State Employees (see Attachment I) Hispanic females currently represent 4.7% or 5,612 persons of the state's full time labor force.

Hispanic females continue to be the lowest paid civil servant receiving an average salary of $1,387.00 as compared to the average female state employee salary of $1,510.00 and $2,121.00 for all state employees.

Hispanic females, in comparison to other women's groups are currently represented in six out of twenty job categories throughout state government. (See Petition to Address the Underrepresentation of Hispanics in State Government, Page 73.) These categories include clerical 11.0%, supervising clerical 5.8%, supervising professional technical 5.9%, administrative staff 6.6%, janitor and custodian 6.3% and COD 11.9%.

Historically these problems have been pervasive dating back to 1976 at which time a position paper was presented to State Personnel Board Mangement identifying critical problem areas relevant to Hispanic females. At that time 2.4% or 2,567 full time state positions were held by Hispanic females. Today 5,612 or 4.7% out of a full time civil service work-force of 120,568. This means a total increase of 2.3% or 3,045 persons have been hired over a six year period. This breakdowns to an average of 507 Hispanic female hires per year. Obviously there has been very little progress of hiring for Hispanic females into State Civil Service employment.

In light of this information, we request that the committee consider immediate implementation of the following recommendations to address the underrepresentation of Hispanic females in state service.

1. A special section be required in the Annual Report to the Governor and the Legislature on the State's Affirmative Action Program detailing the underrepresentation of Hispanics particularly Hispanic females and specific actions being taken to correct the under-utilization.

2. The State Affirmative Action policy needs to be revised to include language which specifically states that all goals established for all groups be accomplished by sex and ethnicity.

   Currently departments achieve affirmative action goals for some groups plus exceed established labor force parity levels for their respective departments. We feel in order to ensure equitable representation for all groups, particularly Hispanic females, departments who have achieved AA goals for some groups should refocus their hiring emphasis on those groups not represented at parity.

3. A legislative review committee be established to review existing state civil service processes which may be impeding the progress of women particularly Hispanic females. (i.e. Review of the examination process to determine if pass/fail scoring systems could be implemented to allow for increased participation of women particularly Hispanic females in non-traditional job categories.)

4. We recommend a joint agreement be negotiated with public/private industry to provide training/internship/fellowship programs for women particularly Hispanic females in non-traditional occupations such as Engineers, Heavy Equipment Operators, State Traffic Officer etc. To accomplish this, we request that you establish a Legislative Private/Public Sector Task Force comprised of all women's groups inclusive of Hispanic females to ensure appropriate policy/program development and implementation.

5. We request legislation be developed to require departments to establish goals for women by ethnic minority groups to ensure proportionate amounts of state training monies are being expended for career development and upward mobility training. Since the majority of Hispanic females are concentrated in office support and career opportunity development categories, our organization is concerned with ensuring state training opportunities are available for their transition into the other state civil service categories.

We hope that you will take our recommendations into consideration for possible implementation. Please contact me if you would like additional information or have any questions.

Sincerely,

Christina Cervantes

CHRISTINA CERVANTES
Statewide President
CAFE de California

CC:ls
cc: Statewide Board

ATTACHMENT 1

Total State Civil Service Work Force for March 1982

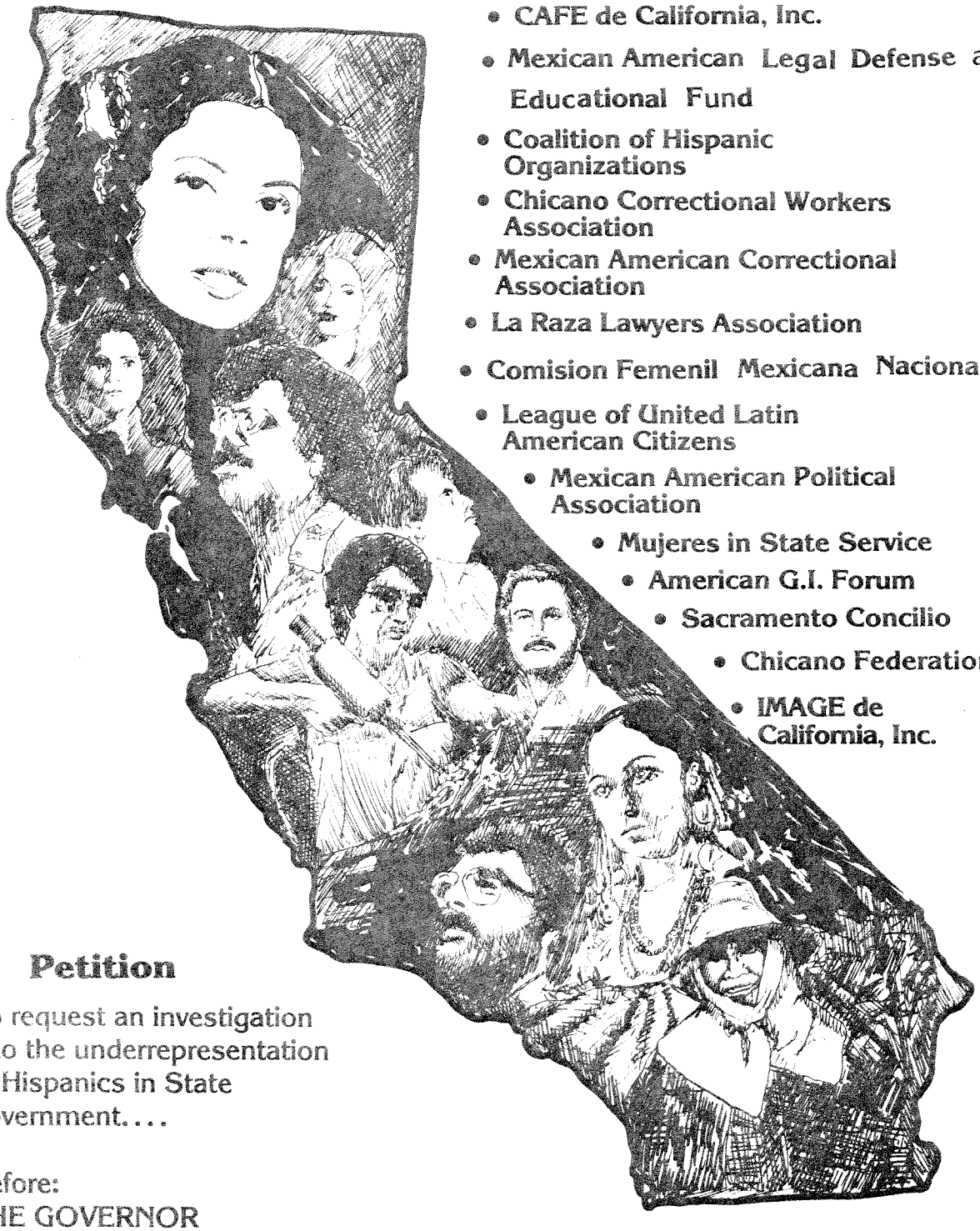
FEMALE ONLY

		Total	White	Black	Hispanic	Asian	Fil	Am. Ind.
Full Time	#	53,465	35,870	6,588	5,612	3,041	1,391	366
	%	44.3	29.8	5.5	4.7	2.5	1.2	0.3
Office Support		23,289	15,306	2,629	2,659	1,575	674	172
		88.4	58.1	10.0	10.1	6.0	2.6	0.7
Crafts and Trades		2,190	1,249	498	314	40	38	23
		13.1	7.5	3.0	1.9	0.2	0.2	0.1
Professional and Technical		25,595	17,776	3,078	2,353	1,323	643	144
		37.3	25.9	4.5	3.4	1.9	0.9	0.2
Administrative		1,601	1,162	203	130	81	11	9
		21.0	15.2	2.7	1.7	1.1	0.1	0.1
COD Classes		790	377	180	156	22	25	18
		60.4	28.8	13.8	11.9	1.7	1.9	1.4
1982								
LFP		38.1	29.0	2.8	4.8	1.0	0.3	0.2

(1970 U.S. Census)

Source: State Personnel Board: Report to Governor and Legislature on the Annual Census of State Employees, July, 1982.

P E T I T I O N E R S



- CAFE de California, Inc.
- Mexican American Legal Defense and Educational Fund
- Coalition of Hispanic Organizations
- Chicano Correctional Workers Association
- Mexican American Correctional Association
- La Raza Lawyers Association
- Comision Femenil Mexicana Nacional
- League of United Latin American Citizens
- Mexican American Political Association
- Mujeres in State Service
- American G.I. Forum
- Sacramento Concilio
- Chicano Federation
- IMAGE de California, Inc.

Petition

To request an investigation into the underrepresentation of Hispanics in State government....

Before:
THE GOVERNOR
CANDIDATES FOR GOVERNOR
THE STATE LEGISLATURE
THE STATE PERSONNEL BOARD

SEPTEMBER, 1982

INTRODUCTION

This petition is to inform the Governor of the State of California, the candidates seeking that office, the State Legislature and the State Personnel Board of the pervasive problem of under-employment of Hispanics by state government. It is also a request for specific relief in the four major problem areas of recruitment, hiring, promotions, and layoffs. Although this is a statewide petition, the petitioners are especially concerned with state employment practices in the greater Los Angeles area and the greater San Francisco Bay area where the majority of Hispanics in this state are concentrated; as well as the Sacramento area, which has the largest concentration of state jobs.

Petitioners are aware and appreciative of the efforts of the present administration, especially Governor Brown, who has made appointments of Hispanics to top level positions, including his cabinet and department heads, and who has been supportive of affirmative action and bilingual pay, the latter of which was initiated and implemented during his administration. However, little time is left of his administration to address the problem of underemployment of Hispanics in state government as addressed in this petition. In spite of Governor Brown's efforts, the patterns and practices of discrimination against Hispanics continue at a time when their population increases in the State of California. This discriminatory practice, unfortunately, is a lasting problem, which must be addressed by the state and a new administration.

The following analysis briefly outlines the history of this petition and the parties and then discusses the discrimination applied to Hispanic state employees in recruitment, hiring, promotion, and layoffs on both a statewide and regional level. The petition concludes with specific recommendations in the four major problem areas for improving the representation of Hispanics at

every level in state government.

The State of California is the largest industry providing services and raising public revenue in the state. As an employer, the administrative agencies and departments of the state historically have been and are currently engaged in what can be termed a pattern and practice of discrimination against Hispanics. This practice is not limited to any one agency or region, but is inherent in every operation of the state civil service system, both on a regional and state level. Thus, discriminatory patterns and practices continue to be implemented as a "tradition" by the institution.

In response to the complaints by state employees, CAFE de California, Inc. in 1982 undertook a study of Hispanic employment in five major state agencies, using the March 1982 statistics available from the State Personnel Board.[1] The study identified the number and percentage of Hispanics employed by each agency and department, traced the increases in Hispanic employment since 1977, compared Hispanic hiring to

---

1/ Annual Census of State Employees, published annually since 1974 by the State Personnel Board.

that of other minorities, projected the year Hispanics would achieve parity, and compared the level of Hispanic employment at various job levels, CAFE's conclusion from this study is that Hispanics are disproportionately excluded from the state, most agencies, most departments and most job categories. The results of the study indicate the following:

1. Hispanics are the only underrepresented ethnic minority group in state civil service. While Hispanics represented 13.7% of the state's civilian labor force, based on the 1970 U.S. Census, they only comprised 10% of the state's civil service work force as of June 30, 1982. Based on the 13.7% parity goal, an additional 4,500 Hispanics must be employed to achieve parity. The 1980 state labor force parity estimate for Hispanics is 16.5%. Based on this percentage, 7,500 additional Hispanics must be hired by the state.
2. Hispanics have achieved the 1970 labor force parity (13.7%) in only 9 of 75 (12%) departments. Compared to the 1980 labor force parity estimate (16.5%), only 3 of 75

(4%) departments have achieved parity for Hispanics.

3. Disabled Hispanics are the most poorly represented group in state service. None of the 75 departments surveyed had achieved parity for disabled Hispanics.
4. Hispanics, the largest minority group in California, are the only underrepresented minority group in state government.
5. Hispanics are hired at a rate significantly below their 1970 labor force parity percentage of 13.7%.
6. Based on current hiring trends and population data, Hispanic labor force parity may not be achieved in state service before the year 2000 unless state government takes extraordinary actions to accelerate the rate of Hispanic hiring.
7. Hispanic women are the lowest paid employees in state government.
8. Hispanics are heavily concentrated in low-paying jobs with little chance for advancement.
9. Hispanics have achieved parity in only 4 of the state's 20 major job categories.
10. State government, as well as other public

entities, have repeatedly documented the severe underrepresentation of Hispanics in the state civil service, and the state has not responded in an assertive and effective manner.

I. PARTIES

A. Petitioners

Petitioners represent both statewide and local Hispanic organizations located throughout the state. All of the petitioners have a deep concern for equal employment opportunities for Hispanics. Though not named, many more regional and community-based Hispanic organizations support this petition. The named petitioners are:

CAFE de California, Inc.
Mexican American Legal Defense and Education Fund (MALDEF)
IMAGE de California, Inc.
Coalition of Hispanic Organizations
Sacramento Concilio
La Raza Lawyers Association
Mexican American Political Association
Mujeres in State Service
American G.I. Forum
Mexican American Correctional Association
Chicano Correctional Workers Association
League of United Latin American Citizens (LULAC)
Chicano Federation

Comision Femenil Nacional

Petitioners file this petition on behalf of themselves and the approximately 4.5 million Hispanic persons who reside throughout the State of California.

B. Respondents

Respondents are the Governor, the new administration, the Legislature, the State Personnel Board, each agency secretary and each head of department, board and/or commission with over 50 permanent, full-time staff members; and those officials responsible for designing, developing, and implementing personnel policies relating to state employees, including but not limited to selection devices such as tests, promotion standards and procedures, recruitment of employees and affirmative action plans. The focus in this petition extends to all state agencies and departments where Hispanics are currently underrepresented in the work force.

II. STATE GOVERNMENT HAS NOT SUCCEEDED IN HIRING SUFFICIENT NUMBERS OF HISPANICS IN STATE CIVIL SERVICE WORK FORCE

In 1970, Hispanics comprised approximately 13.7% of the state's civilian labor force. In 1977 only two of the 75 departments surveyed by

CAFE employed Hispanics at or above that level.[2] By 1982 nine departments had achieved labor force parity. The Hispanic labor force parity for 1980 has been estimated at 16.5%. As of June 1982, only three departments exceeded this percentage. This underutilization represents government-wide lack of awareness and recognition of the employment needs of Hispanics and adversely impacts the delivery of government services to the Spanish speaking community.

This insensitivity has resulted in the development of affirmative action plans which continue to ignore the severe underrepresentation of Hispanics. In fact, some simply aggregate all minority data and analyze their EEO efforts in terms of the total number of minorities employed. Minority aggregation makes the underrepresentation of Hispanics less visible because of the over-parity representation of other minority groups. Other departments establish goals based on state-wide data. The statewide data for Hispanics is lower than the regional labor force data in areas like Los Angeles, for example; therefore, goals

---

2/ Annual Census of State Employees, 1977, published by the State Personnel Board.

based on statewide data may bear no resemblance to the regional population or available work force. State Personnel policies further exacerbate the situation by only requiring statewide recruitment plans from departments. Therefore, many departments will not develop regional recruitment goals unless specifically ordered to do so.

While Hispanics as a group suffer from discrimination in the state government, Hispanic women and disabled Hispanics suffer the most. Only 4.7% of state employees are Hispanic women -- the vast majority of them are in clerical positions. In fact, Hispanic women are the lowest paid in state government. Disabled Hispanics are the least represented group in state government. Disabled Hispanics comprise only 4.8% of all disabled employees. Because disabling injuries occur in all populations, we would expect that Hispanics should represent at least 13.7% of the disabled work force. Special emphasis programs, such as the Career Opportunities Development, and the Department of Rehabilitation should ensure that disabled Hispanics are served and employed by the state.

The state's achievements in the employment of Hispanics has not reached its expectations.

Renewed efforts must be made by state agencies, departments, boards and commissions to ensure that equal employment opportunity is not a meaningless phrase to Hispanics seeking state employment throughout the state.

III. HISPANIC COMMUNITIES HAVE BEEN DEPRIVED OF NEEDED SERVICES AND REVENUE AS A RESULT OF THE STATE GOVERNMENT'S FAILURE TO HIRE HISPANICS AT PARITY WITH THE CIVILIAN LABOR FORCE

As noted above in Section II, in 1970 13.7% of the state's labor force was Hispanic. Of the six state agencies, only one agency -- Youth and Adult Correctional Agency (13.9%) -- has achieved parity for Hispanics. Of the 75 departments reviewed, the average percentage representation of Hispanic employees was 9.0%.

This inequitable situation is particularly evident at certain regional levels. For example, in the Bay Area, Hispanics comprise 10% of the civilian labor force, yet Hispanics only comprise 6.3% of the state's regional work force. None of the departments based in the Bay Area hire Hispanics at their regional work force parity.

As a result of the failure to hire Hispanics at parity with the civilian labor force, Hispanic communities have been deprived of much

needed services and revenue. Millions of dollars in unrealized wages each year are lost to Hispanic communities because of the government's failure to hire Hispanics in numbers proportionate to their representation in the labor force. This loss of millions of dollars places additional burdens on communities which are already economically depressed and saddled with one of the highest unemployment rates in the state.

Moreover, the failure to hire Hispanics deprives all Hispanics of the services provided by the various state departments and state funded programs. The lack of concerned bilingual, bicultural employees contributes to the denial of services to eligible Hispanics from various state programs. Hispanic taxpayers, many of whom are not proficient in English, are denied access to programs their taxes pay for, merely because few state employees can communicate with them.

Clearly, barriers to Hispanic hiring must be removed. Such barriers hurt not just those Hispanics seeking state employment, but all Hispanics who are denied access to needed services and revenue.

IV. THE STATE GOVERNMENT HAS DISCRIMINATORY BARRIERS WHICH PREVENT HISPANICS FROM OBTAINING PROMOTIONS TO THE HIGHER LEVELS

Respondents have failed to promote sufficient numbers of Hispanics from lower levels to middle and upper level policy-making positions.[3] Hispanics have been disproportionately excluded from upward mobility programs and management career programs. Moreover, affirmative action plans that exist have not emphasized appointments of Hispanics to management positions.

In 1982, Hispanics represent 12.5% of all clerical workers, the lowest paid civil service rank, and only 5.5% of the administrative line levels, the highest civil service ranks in state service.

This phenomenon is not a coincidence, nor is it the result of a scarcity of qualified Hispanics. It is the result of arbitrary barriers and discriminatory attitudes acting in concert to relegate Hispanics to the lower level, lower-paying jobs. One method is the use of non-

---

3/ State Personnel Board, Management Information Section - Report 3510 for March 31, 1982, shows that Hispanics represented only 5.5% of upper level policy-making positions and only 8.9% mid-level positions.

competitive reassignments to fill vacancies at the higher levels. Under this method, the following scenario can occur:

- First, a vacancy occurs in a department at a high level; sometimes applications are accepted, but often they are not.
- Then, a state employee from another part of of the organization is temporarily assigned to the postion on an interim basis, presumably while a replacement is found.
- Finally, the position is formally announced as open for competition. The person temporarily assigned and performing the duties logically has an improved opportunity for selection and is usually the person chosen for the position.

Hispanics are rarely selected for these special assignments. Clearly, no qualified Hispanic within the organization or state civil service has a chance for promotion in this closed noncompetitive process.

V. LAYOFFS AS CURRENTLY IMPLEMENTED WILL DEPLETE AND EVENTUALLY ELIMINATE HISPANIC REPRESENTATION IN THE STATE WORK FORCE

In the wake of Proposition 13, major reductions of federal expenditures and other cost cutting efforts have caused potential layoff actions in the state. Several departments anticipate or are currently in the process of implementing layoffs. The Departments of Developmental Services, Education and Savings and Loan

are a few who expect layoffs. The Unemployment Insurance Appeals Board and General Services' printing plant have begun to implement layoffs.

In 1981, California enacted a law which requires affirmative action considerations to be given within the layoff process (AB 3001). Essentially, when discriminatory practices are found, the State Personnel Board has the authority to assure that recent affirmative action gains are protected by ordering other than a strict seniority based layoff.

Under strict seniority based layoffs, Hispanics would be the first laid off, since they are among the most recently hired. Since Hispanics are disproportionately represented in the lower ranks, they are at an increased risk of displacement through "bumping" actions.

There is yet another disturbing aspect to these layoffs. Not only do layoffs essentially eliminate Hispanic representation in the state work force, but they are also an inefficient method of releasing employees. Under the current layoff plan where employees are laid off on a seniority basis, there is no consideration for reviewing jobs and employees on the basis of competence, only on the basis of tenure. This

does not ensure that the most qualified person for the position is retained. We do not dispute that bona fide seniority systems have been upheld in courts; however, seniority layoffs have never been mandated by the law. The AB 3001 layoff process must be utilized to its fullest potential to protect recent Hispanic hires.

Management has the authority to determine which positions and/or programs will be cut. Presumably, positions for which the work is being substantially reduced or eliminated would be cut. Layoff determinations must consider the group of employees affected, as well as the constituents served by the program.

VI. RELIEF

The foregoing analysis has set forth the dimensions of the problems confronting Hispanics in the state sector. We have seen that Hispanics suffer from several inequities -- first, Hispanics suffer from being hired and promoted at a rate well below parity; second, the Hispanic community has been denied necessary services because of the state's failure to hire adequate numbers of bilingual and bicultural employees; and third, by being laid off at a disproportionate rate in times

of a layoff. These inequities must be remedied. To this end, Petitioners respectfully request the following relief from three specific areas of government:

A. The new administration should issue an Executive Order to:

1. Establish a Governor's Office of Hispanic Affairs to oversee the implementation of these recommendations and to successfully create a substantive image in the Hispanic community that the executive branch of state government is sensitive and concerned about their welfare.
2. Declare Hispanic hiring in state government a priority and have the State Personnel Board report to the Governor, annually, the progress made to <u>accelerate</u> Hispanic representation within civil service jobs.
3. Instruct departmental directors that Hispanic hiring is a paramount priority within the administration and periodically remind them of this objective.
4. Initiate an intensive drive to locate and identify potential Hispanic appointees. Hispanic organizations will assist, and a list of potential appointees shall be

referred to the Governor's office for appointment opportunities exempt from civil service.

5. Require the State Personnel Board to hold an annual public hearing to assess the progress being made to accelerate the hiring of Hispanics.

B. The California Legislature should enact Legislation which would:

1. Establish a Hispanic Coordinator position in each department, board and commission to specifically assist each department in improving their hiring of Hispanics.

2. Require a special section in the Annual Report to the Governor and the Legislature on the State's Affirmative Action Program, detailing the underrepresentation of Hispanics, and specific actions being taken to correct the underutilization.

In addition, the Legislature should hold public hearings in the summer of 1983 to assess the pervasiveness of Hispanic underrepresentation in state government, and to recommend any other Legislative action to cause improvement in Hispanic representation, including sufficient appropriation if necessary.

C. The State Personnel Board should implement the following actions:

1. Conduct a thorough investigation on the underrepresentation of Hispanics in state civil service. The investigation should culminate with specific reasons Hispanics continue to be the only underrepresented ethnic group in state service and specific actions the State Personnel Board will take to eliminate Hispanic underutilization.
2. Provide a copy of the investigation, conclusions and recommendations to all Petitioners by January 31, 1983 for review.

D. In the interim, the State Personnel Board should immediately:

1. Hold a public hearing to allow the leaders of the Hispanic community the opportunity to voice their concerns regarding state employment and state services provided to the public.
2. Actively encourage departments to consider hiring bilingual personnel.
3. Require a Hispanic individual in each interview panel for all entry level examinations.
4. Authorize the use of supplemental certifi-

cation of Hispanics for all entry level examinations.

5. Release a policy statement declaring Hispanic hiring as the number one affirmative action priority of the State Personnel Board.
6. Require double Hispanic parity goals be achieved by all departments in their seasonal, student assistant, graduate student assistant, graduate legal assistant and "TAU" appointments.
7. Allocate sufficient staff resources to accomplish these suggestions.
8. Recruitment efforts by all state agencies and departments must be implemented immediately or for a period to begin with resumption of hiring, if a job freeze applies. Said recruitment effort shall include, but shall not be limited to the following areas of concern:
   a. An interdepartment recruitment effort must be adequately funded. Special recruitment teams shall be created to increase the agencies' understanding and awareness of Hispanics. Furthermore, an interagency training facility shall be

established in a Hispanic community. This facility shall be utilized to help train and recruit Hispanic, Hispanic women and disabled Hispanic applicants to all state civil service positions.

b. An individual department and inter-department recruitment drive must be initiated at targeted colleges and universities where Hispanics are enrolled. This recruitment program shall include both vocational and professional colleges. Emphasis shall be placed upon locating and hiring Hispanics who shall fill field positions which either directly or indirectly provide governmental services to individual Hispanics or Hispanic organizations. Similar emphasis must be placed upon locating and hiring Hispanics for professional and managerial positions.

c. Departments must utilize the Student Assistant and Graduate Student Assistant Programs to hire Hispanic students during their college school years and begin to train them for professional and top level policy-making positions. High

school students must also be hired for summer positions and encouraged to continue their training both outside and within the agency.

d. Job fairs must be held in Hispanic communities, especially those recruiting for blue collar positions. At such fairs, information concerning employment opportunities and training opportunities must be made available in both English and Spanish through bilingual personnel.

e. The initiation of a new intensive drive to locate and identify potential Hispanic appointees. This list of potential appointees shall be referred to the Governor's office and all state agencies and departments for appointees of the next available positions. Such appointments shall include both state-wide and regional positions.

f. A program specifically aimed at the needs of Hispanic women and disabled Hispanics must be initiated. These programs shall be adequately funded and staffed by Hispanic women and disabled Hispanics at its policy-making level.

The purpose of the program will be to recruit Hispanic women and disabled Hispanics. It shall have the power to make recommendations to the various agency heads.

9. The Hispanic Program must be retained, expanded and encouraged to coordinate and participate in the implementation of the various remedies and activities contained in this petition.

10. Existing affirmative action plans must be reviewed and revised if they fail to address the needs of Hispanics or if they fail to set separate Hispanic applicant flow, recruitment and hiring goals to ensure equitable representation in the state work force. There shall be no aggregation of minorities in EEO data; rather, Hispanic will be viewed as a separate ethnic group within state affirmative action plans. Further, affirmative plans should set <u>regional</u> goals based on the Hispanic work force in the particular jurisdiction. Upward mobility programs must be directed to promote Hispanics at a rate equal to the population parity. Each

regional office as well as the state headquarters must establish a regional and statewide executive department training program with rotational assignments of one or two years in order to train future Hispanic managers. Upward mobility programs and executive training programs must make an even greater effort to include Hispanic women within their respective programs.

11. Hispanics must be targeted for increased participation in the various non-minority special emphasis programs for veterans, disabled and women. The evaluation of these programs' performance must also be linked to their ability to include Hispanics at parity with the Hispanic population.

12. The AB 3001 process must continue to be utilized in all layoffs to assure protection of recent Hispanic gains in representation within the work force.

13. All existing affirmative action plans must be revised to represent current population labor force figures based on the 1980 Census data.

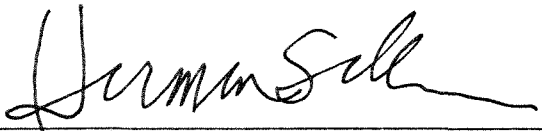
CONCLUSION

On the basis of the foregoing, Petitioners request Respondents to immediately address the issues raised in this petition. Petitioners stand ready to assist in arriving at the resolutions to the severe problem of Hispanic underrepresentation in state government.

DATED: September 16, 1982

Respectfully submitted,

CAFE de California, Inc.
Mexican American Legal Defense and Education Fund (MALDEF)
IMAGE de California, Inc.
Coalition of Hispanic Organizations
Sacramento Concilio
La Raza Lawyers Association
Mexican American Political Association
Mujeres in State Service
American G.I. Forum
Mexican American Correctional Association
Chicano Correctional Workers' Association
League of United Latin American Citizens (LULAC)
Chicano Federation
Comision Femenil Nacional

By: 

Herman Sillas, Jr.
Counsel for Petitioners

Assisted by: Danny Perez, Graphics
Freddy Gonzalez, Printing
Rudy Cuellar, Cover
Sam Gomez, Type setting

APPENDIX A

SUMMARY

OF

FINDINGS OF FACT

HISPANIC EMPLOYMENT IN THE STATE, AND MAJOR AGENCIES AND DEPARTMENTS

CAFE DE CALIFORNIA, INC.
1982

CAFE DE CALIFORNIA, INC.
P.O. Box 161207
Sacramento, California 95816

SUMMARY

The state government is among the largest employers in the state. Discrimination continues to exist, and much of that discrimination is aimed at Hispanics. The study of Hispanic employment in state government by CAFE de California, set forth in the following pages, makes this conclusion inevitable.

What Was Studied?

CAFE gathered datum on statewide employment, the six state agencies, and seventy-five state departments, boards and commissions, based on the latest statistics issued by the State Personnel Board. From this datum, an assessment was made of Hispanic, Hispanic female, and

Hispanic disabled representation. (Charts 1 through 7). An analysis was made of employment increases for Hispanics and other ethnic groups' for the period of 1977 to 1982 (Charts 8 through 13). A comparison was made of Hispanic hiring and promotions to that of other minorities (Charts 14 and 15). A projection for achievement of Hispanic parity was made, based on current hiring trends (Charts 17 and 18). A comparison was made of Hispanic salaries to those of other minorities and their relative representation at various levels of job responsibility (Charts 19 through 23).

The Results of the Study

The results of this study are shocking. Hispanics comprise 13.7% (based on the 1970 U.S. Census) of the state work force. Yet in only one of the six agencies are they employed at that rate. According to the 1980 U.S. Census estimate, Hispanics comprise 16.5% of the state civilian labor force. None of the agencies met this percentage.

Hispanics are heavily concentrated in low-paying jobs with little responsibility. Hispanics are represented in only four job categories out of the 20 major job categories used by the state.

These four are among the lowest paid in state service. Hispanics only make up 5.5% of the administrative line job category, which are the highest paid civil service jobs. In 1982, Hispanics were 12.2% clerical, 20.0% laborer and 18.7% janitor/custodian.

Only nine of 75 departments have achieved 1970 labor force parity for Hispanics and only three have achieved the 1980 labor force parity estimate.

Hispanics are not being hired at a rate equal to their representation in the labor force, and are, in fact, being hired at lower rates than other minority groups.

The State Government is Discriminating

Faced with these and other numbers vividly showing that Hispanics are often not hired in state jobs and, when hired, are likely to hold the least desireable jobs, we can only ask, "Why is this happening?" The most logical answer is that state government, employing more than 120,000 individuals, is discriminating.

Two decades ago, the public sector, including state government seemed a relatively benign employer compared to the rampant

discrimination in private industry. The impact of litigation and federal legislation has slowly changed the the private sector's hiring practices. For Hispanics, the state government has not maintained its role of leadership. The result: Hispanics are concentrated at the bottom of the state job ladder. They are more often in non-professional than in professional posts. In executive jobs they are virtually nonexistent.

Some offer the explanation that many state jobs are in Sacramento where the Hispanic population is small. Many routine state jobs are filled locally. But a great many are well-paid professional posts, and recruiting for them is done statewide and nationwide. Hispanics will and do move anywhere in the state for jobs. If Hispanics are not among those doing so, it is not for lack of qualifications or talent.

CAFE's position is that when Hispanics are hired at a rate far below their representation in the labor force, it is not accidental, it is not benign, it is not the preference of the people who are not hired, it is discrimination.

The State of California has not been responsive to substantial documented evidence of discrimination against Hispanics. Documented evidence has been available since 1974 and as

currently as 1982. The following publications provide a basis for this assertion:

1. Annual Census of State Employees, published yearly since 1974 by the State Personnel Board;

2. Report of the State's Affirmative Action Program, published yearly since 1977 by the State Personnel Board;

3. The Status of Spanish Speaking/Surnamed Employees in California State Civil Service, a special report published in 1975 by the State Personnel Board.

   This report found, "serious under-representation of Spanish Speaking/Surnamed in state service; unequal distribution of Spanish Speaking/Surnamed employees among specific State departments; lower salaries of Spanish Speaking/Surnamed by occupational areas in comparison to other state employees."

4. California State Employment, published in July 1980 by the California Advisory Committee to the United States Commission on Civil Rights.

   Under the report's conclusion and recommendations it states:

   "2. Hispanics are 50 percent below parity based on the 1970 Census.

   4. Minorities and women in state civil service, with the exception of

Hispanics, (emphasis added) meet or exceed parity with state work force percentages based on the 1970 Census."

In addition, the committee recommended that the responsibility for the affirmative action program be taken away from the Personnel Board.

5. Substantial documented evidence exists which demonstrates that numerous meetings between state government officials and Hispanic organizations have met with limited success in improving the representation of Hispanics.

Hispanic organizations such as CAFE de California, Inc., Mujeres in State Service, Image de California, Inc., Coalition of Hispanic Organizations and many others have met repeatedly with agency secretaries and department heads to address the under-representation of Hispanics in their agencies and departments. Because of the limited action government appointees took to eliminate disparate representation of Hispanics in their respective organization, the Coalition of Hispanic Organizations met with the Governor in December 1980. At

this meeting, the governor was presented with facts and specific recommendations designed to accelerate the employment of Hispanics in state civil service.

Recommendations for Change

Changes are in order and they need to be made quickly. CAFE strongly recommends the following measures along with those specified under "Relief".

1. Improved Recruitment: Agencies and departments should intensify efforts to recruit Hispanics. Links should be improved with Hispanic groups and developed with schools having high concentrations of Hispanic students. To let Hispanics know about job opportunities, good use should be made of the Hispanic print and electronic media. The state's Hispanic Project should be bolstered to ensure that local, regional, and statewide operations, have the resources needed to do their recruiting job well.
2. More Hiring: Barriers to Hispanic hiring must be removed. The state government must use bilingual Staff Services Analyst exams

and other creative techniques and approaches to assure barriers are done away with. Perhaps the foremost action necessary is an Executive Order which requires hiring of Hispanics in permanent state jobs as the state's number one affirmative action priority. This will sensitize government appointees to the need of hiring more Hispanics.

3. Promotion: Institutional barriers to the promotion of Hispanics and other minorities must also be struck down. Hispanics ought to be equally represented at all levels of the state hierarchy.

4. Commitment: Perhaps the most pressing need is for leadership, accountability and commitment -- a real commitment to raising the level of Hispanic state hiring. The incoming administration must demand Hispanic hiring at all levels and at approximate parity with the percentage of Hispanics in the state work force. The Governor must make it clear that agency secretaries and department heads will be held accountable for failings in this area, and periodic meetings should reflect

individual achievements and failures.

SURVEY OF HISPANIC EMPLOYMENT IN THE STATE, EACH AGENCY AND SELECTED DEPARTMENTS

"A person shall not be discriminated against...because of...national origin."

Government Code Section 19702 part (a) of the Laws and Rules governing the California State Civil Service.

"Each agency and department is responsible for establishing an effective affirmative action program. The State Personnel Board shall be responsible for providing statewide advocacy, coordination, enforcement, and monitoring of these programs."

Government Code Section 19790

"The Legislature shall evaluate the equal employment opportunity efforts and affirmative action progress of state agencies during its evaluation of the Budget Bill."

Government Code Section 19793

"In cooperation with the State Personnel Board, the director of each department shall have the major responsibility for monitoring the effectiveness of the affirmative action program of the department."

Government Code Section 19794

Over the years, state government has enacted a number of measures to ensure equal opportunity in the job market. At the federal level, the post-Civil War amendments to the Constitution and their early implementing legislation established the equality of all persons

before the law and the right to contract without regard to race.[4] In 1959, California enacted legislation called the Fair Employment Practices Act. The federal government followed suit in the mid 1960's via Executive Order 11246 and Title VII of the 1964 Civil Rights Act which prohibited federal contractors and private concerns from discriminating in employment because of race, color, religion, sex or national origin.

It was not, however, until 1972 that Congress turned its attention to this state's largest public employer -- state government. In that year, the scope of Title VII was widened to encompass discrimination by state government.

Contents of the Report

This report attempts to assess the extent to which California Hispanics have benefited from state laws and the expansion of Title VII. The report sets forth statewide agency and department work force statistics on Hispanic employment for permanent full-time employees. Part I examines the degree of Hispanic employment in the state, each agency, and selected departments and compares

---

4/ See generally the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

it to the California Hispanic labor force and to other minority groups. Moreover, it examines Hispanic female and disabled Hispanic employment in state government. Part II focuses on overall Hispanic representation trends since 1977 and shows a comparison to representation trends of other minority groups. In addition, it shows the appointment rates for Hispanics and other minorities. Part III shows the year Hispanics and Hispanic females would achieve parity for the state, each agency and selected departments. Two years are given for the departments. One projects the year when the 1970 13.7% parity goal would be reached, and the other when the 1980 16.5% (estimate) parity would be reached based on historical trends. Part IV informs on the salaries as well. Part V shows the distribution of Hispanic and Hispanic female for the state's 20 major occupational categories and provides a comparison to the representation of other minorities.

This report does not claim to be an exhaustive examination of Hispanic state employment. State employment is a complex area with variations within and among agencies, departments, job categories and job classifications which may produce substantial differences between apparently

similarly situated employees. Nevertheless, an examination of the most recent data on the race, ethnicity, sex and disability of state workers can help identify those areas in which Hispanic representation has increased and those in which greater efforts are needed to ensure that Hispanics are not the victims of systemic exclusion.

All the statistical charts used in this report provide the information in percentages only. To obtain the numerical data, please refer to the Annual Census of State Employees for the years of 1977, 1978, 1979, 1980, 1981 and 1982. These reports are published and distributed by the State Personnel Board.

PART I. HISPANIC REPRESENTATION IN THE STATE, EACH AGENCY AND SELECTED DEPARTMENTS

> "Statistics showing racial or ethnic imbalance are probative...because such imbalance is often a telltale sign of purposeful discrimination; absent explanation, it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired."
>
> Justice Potter Stewart writing for the United States Supreme Court in International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977) p. 339, footnote 20.

Chart I and Chart II set forth data on Hispanic and Hispanic female employment in state government and compare it to their respective 1970 labor force parity percentages and to other minority groups and the disabled monitored by the state.

In 1982, about 10.0% of the state's civil

service work force was Hispanic.[5] Although not shown, the 3.7% deficiency has increased to 6.6%, because of the increase of Hispanic participation in the state's civilian work force between 1970 and 1980. The estimated 1980 labor force parity percentage for Hispanics is 16.5%. This means about 7,500 additional Hispanic men and women must be hired to achieve labor force parity within state government. Hispanic females represented 4.7% of the state's work force, although they represented 4.8% of the civilian labor force in 1970. The estimated labor force parity for Hispanic women in 1980 is 5.8%. To achieve this percentage representation, 1,325 additional Hispanic women must be hired. In comparision to other minority groups, only Hispanics remain underrepresented in state government.

Chart 3 shows Hispanic representation in State agencies and compares it to both the 1970 and 1980 labor force parity percentages. Only one agency, Youth and Adult Corrections, has achieved the 1970 parity goal of 13.7%. However, none of the agencies has achieved the 1980 estimated parity goal of 16.5%.

5/ See the Annual Census of State Employees, 1982.

Chart 4 shows the number and percent of departments where 1970 labor force parity has been reached for Hispanics in comparison to other minority groups and the disabled. This provides dramatic evidence of severe and unusual under-representation of both Hispanics and the disabled as compared to other groups. Only 9 of 75 departments (12%) have achieved 1970 labor force parity. The disabled, however, have only achieved representation parity in seven departments (9.3%).

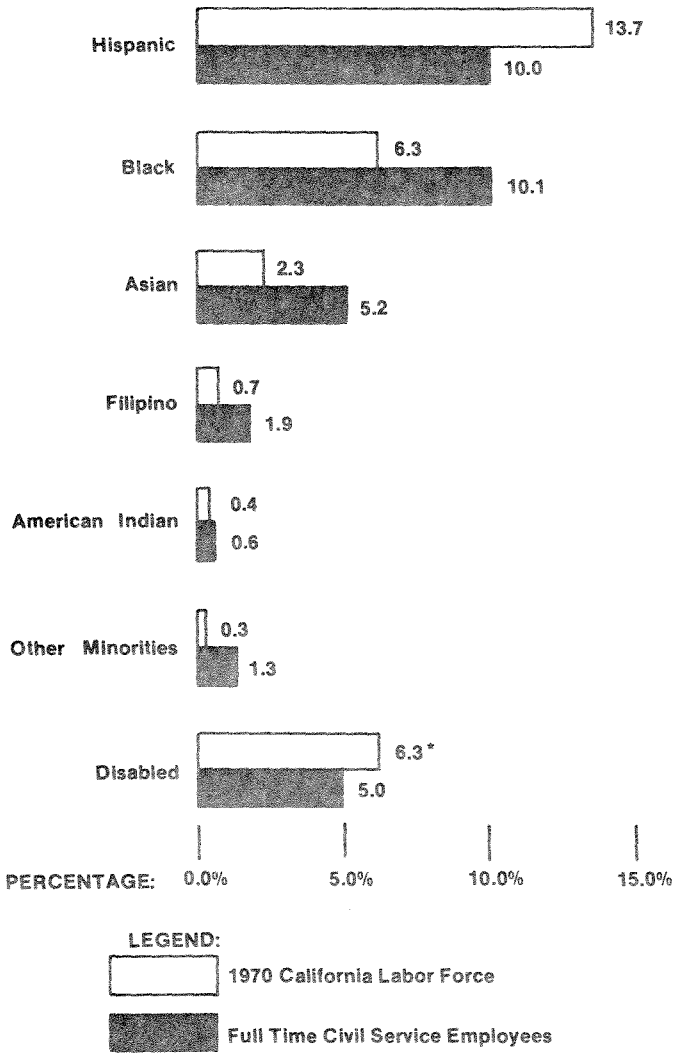
Chart 5 and Chart 6 demonstrate the representation percentages for Hispanic and Hispanic women within selected departments. Only the State Personnel Board has surpassed the 1980 16.5% parity goal estimate for Hispanics. The selected departments are the largest departments in state government.

Chart 7 demonstrates the representation percentage of disabled Hispanics within the state's work force that has identified itself as disabled for each of the selected departments. For example, the composition percentage of the statewide work force which identified itself as being disabled is 5.0%. This figure represents 100% whites and all other ethnic and racial minorities. Of this, only 4.8% is Hispanic.

Since there is no data available that shows the civilian labor force representation of Hispanics who are disabled, the 13.7% and 16.5% labor force parity percentages were applied for comparison purposes. It is reasonable to assume disabled Hispanics are at least equally represented in the disabled community in terms of those interested and capable of working as are Hispanics in the overall eligible labor force. The data shows that disabled Hispanics are poorly represented in all of the selected departments based on the comparison mentioned before. In fact, three departments, Finance, Personnel Administration, and Energy Commission, show no disabled Hispanics are working for them according to the State Personnel Board data. Although not shown, the state must employ 1,567 additional disabled people to achieve the State Personnel Board's goal of 6.3%. Of this, 677 must be disabled Hispanic hires to achieve the proportionate Hispanic representation within the State work force identified as disabled.

Chart 1

Minority and Disabled in California Labor Force and Civil Service Jobs, 1982



*Based on the State Personnel Board's parity goal.

Chart 2

Minority Females in California Labor Force and Civil Service Jobs, 1982

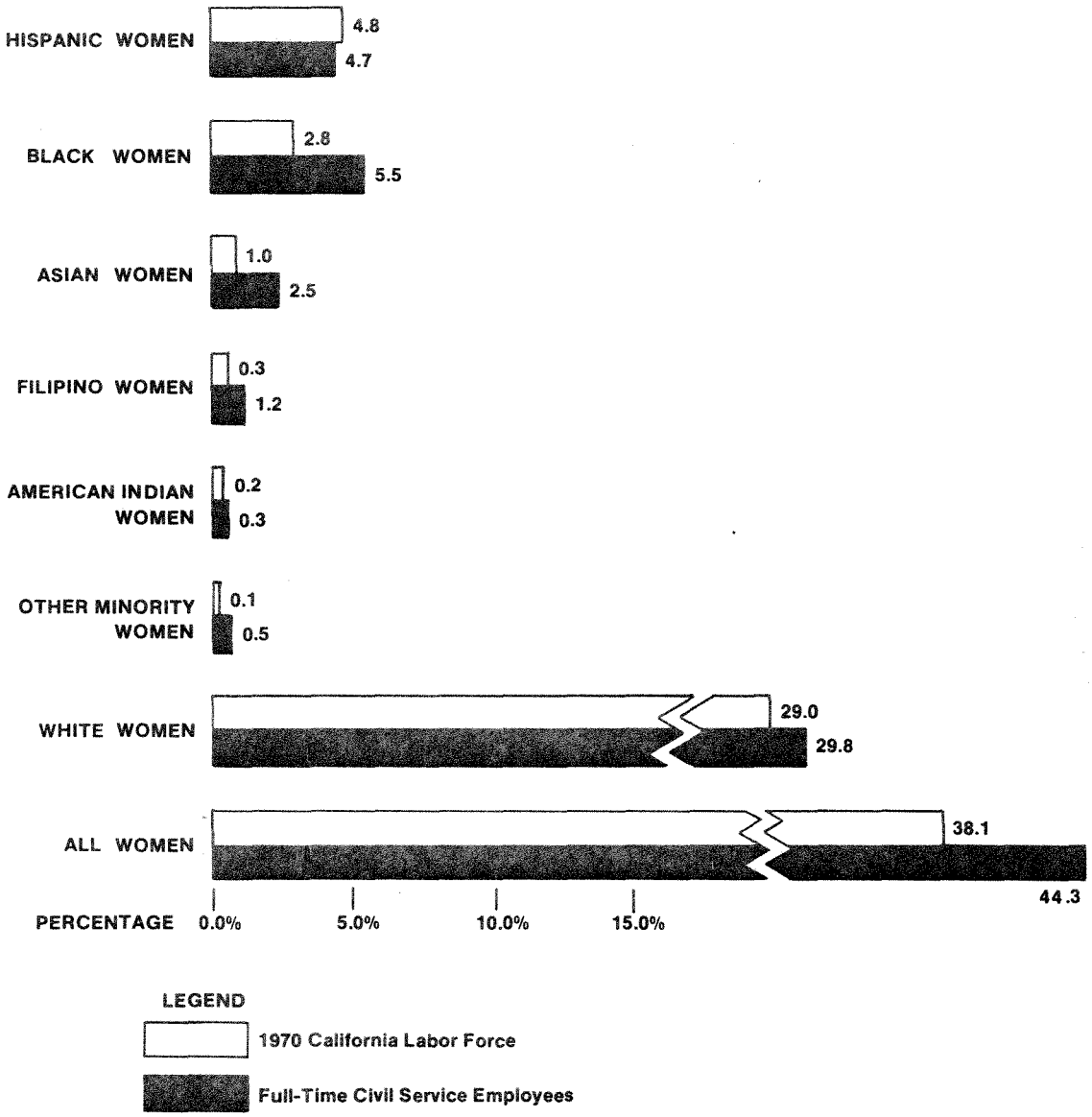


Chart 3

Hispanic Representation in State Agencies, 1982

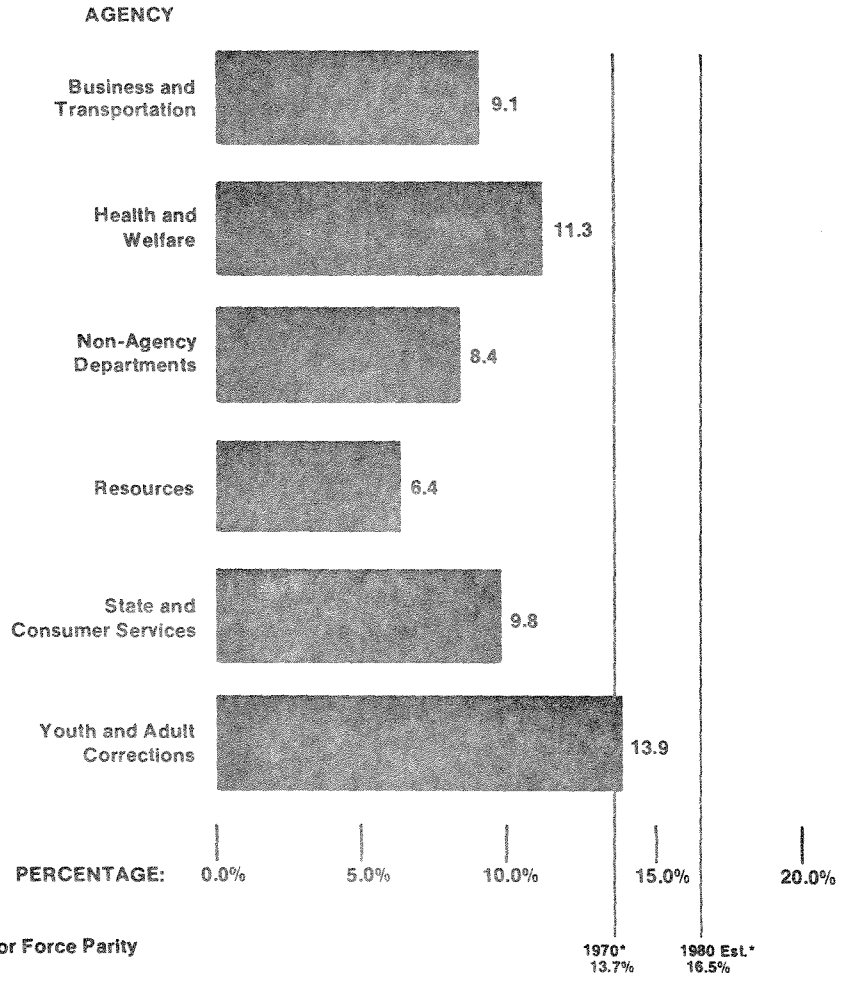
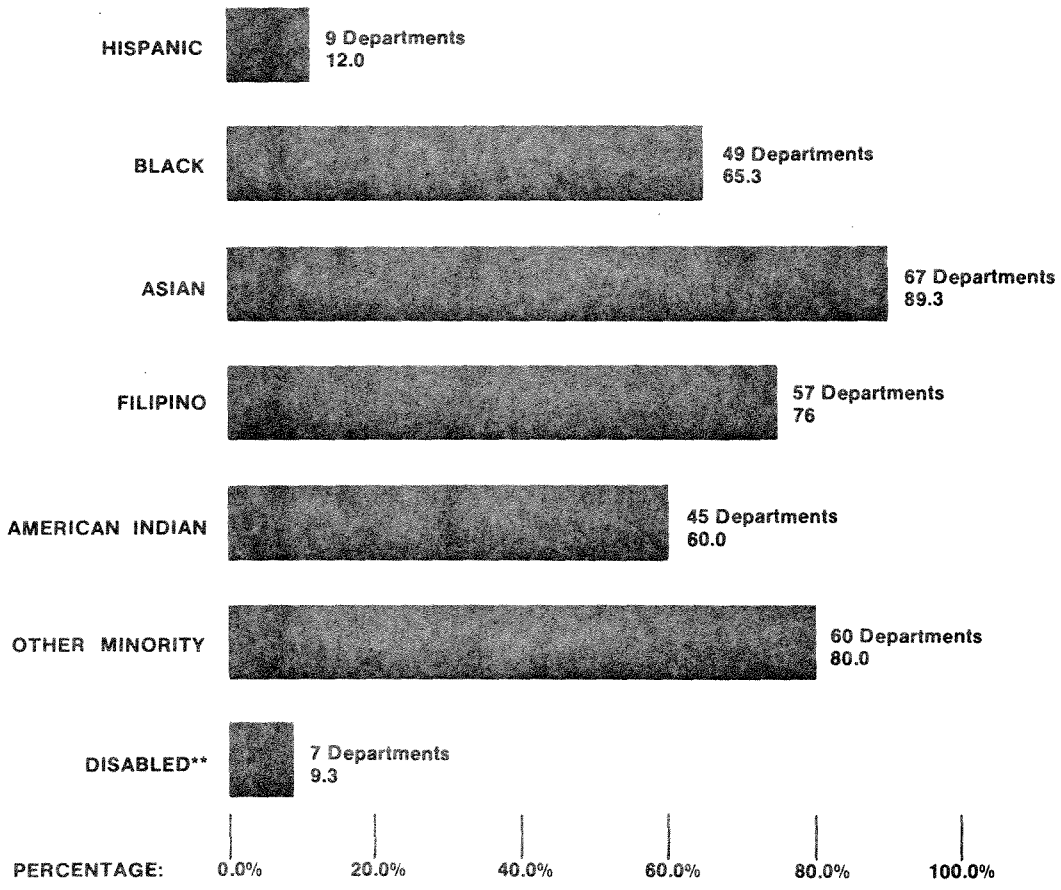


Chart 4

Number and Percent of Departments where 1970 Labor Force Parity Has been Achieved for Minorities and the disabled*



*The base percent is derived from dividing the number of departments where parity has been achieved for the respective group by 75 departments which have over 50 full-time employees.

** Based on the State Personnel Board's parity goal.

Chart 5

Hispanics in Selected State Departments in 1982

Percentages in Rank Order

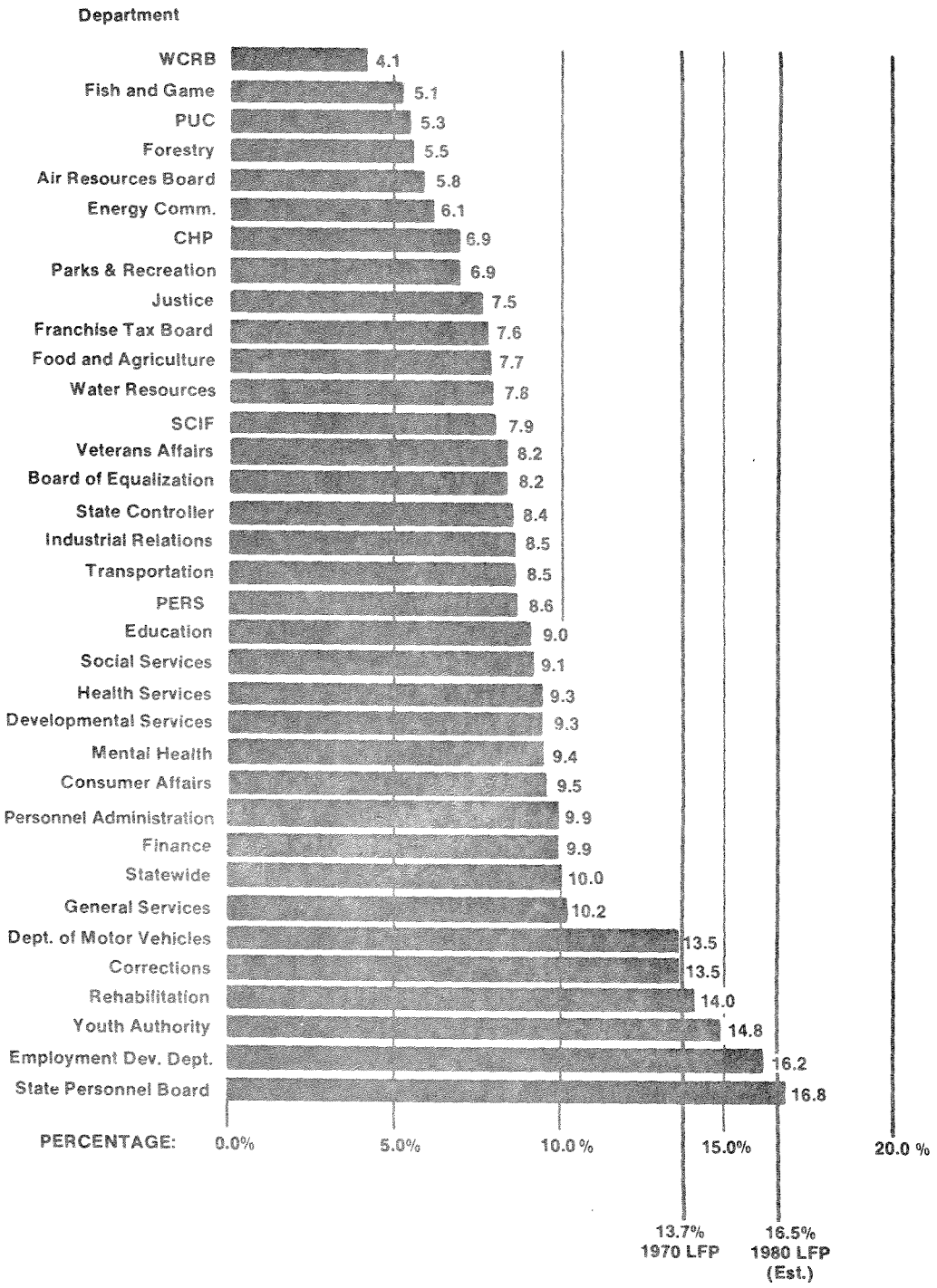
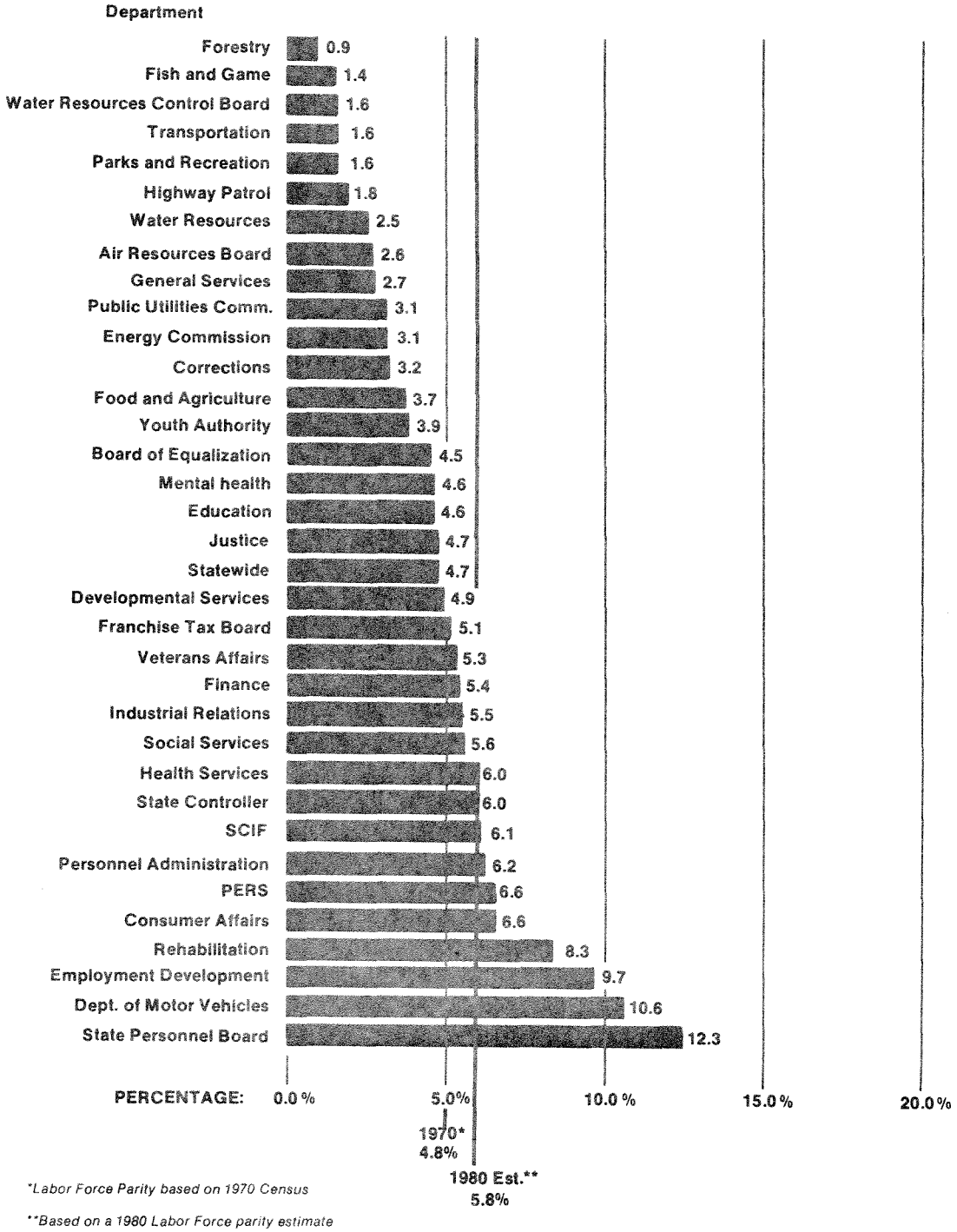


Chart 6

Hispanic Females in Selected State Departments in 1982

Percentages in Rank Order



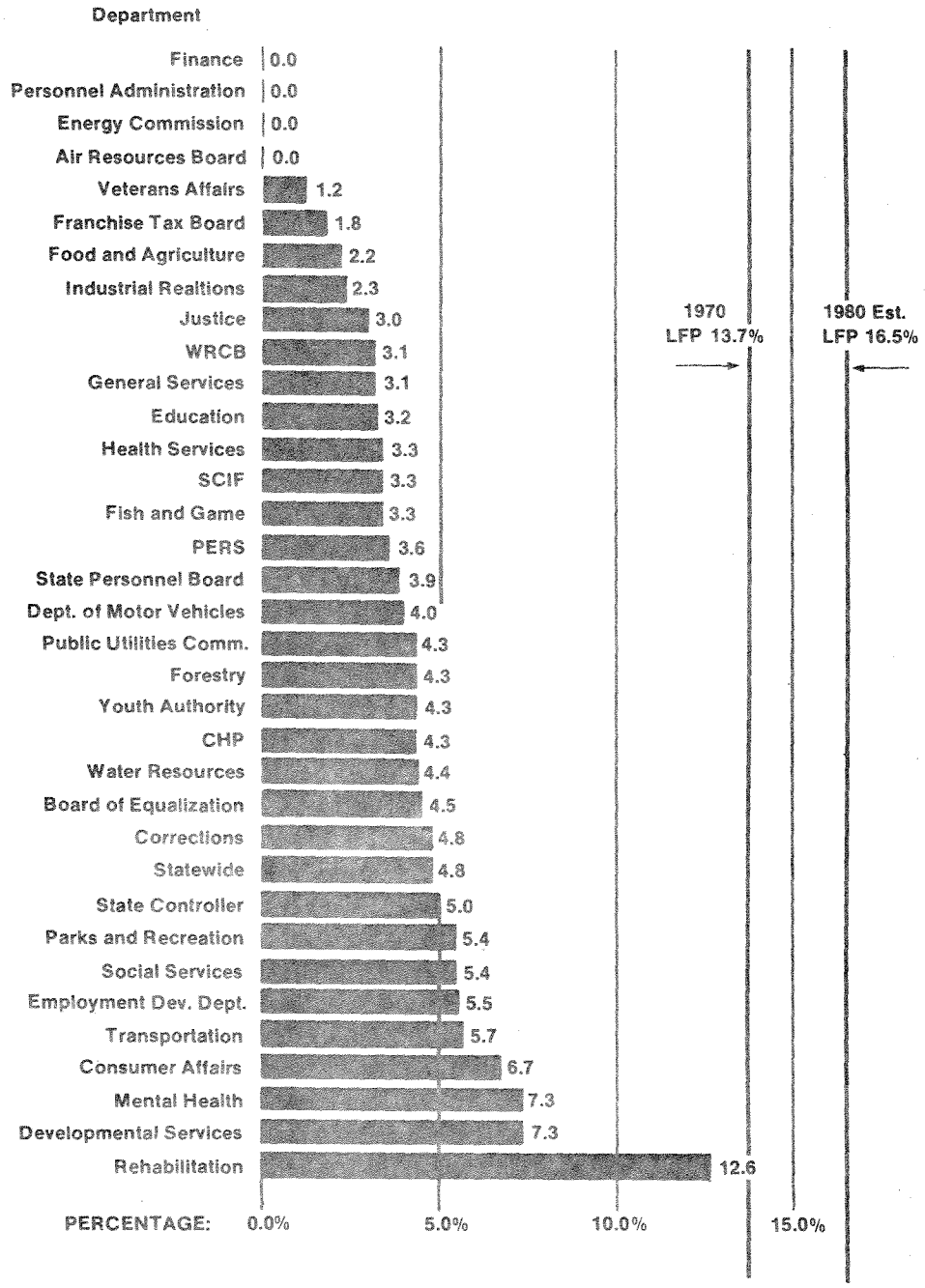
*Labor Force Parity based on 1970 Census

**Based on a 1980 Labor Force parity estimate

Chart 7

Disabled Hispanics in Selected State Departments in 1982*

Percentages in Rank Order



*This represents the Hispanic representation within the disabled workforce in the given department. For example, statewide disabled representation is 5.0% which is converted to 100% for comparison purposes. Of this, 4.8% is Hispanic disabled. Source: Administrative Services Division, State Personnel Board.

PART II. HISTORICAL GROWTH RATES FOR HISPANICS AND MINORITY EMPLOYMENT

Chart 8 provides growth trend information for Hispanics since 1977. In 1977 Hispanics represented 6.6% of the state's work force and in 1982 they represented 10% -- an increase of 3.4% in five years. Hispanics have been the only ethnic minority group underrepresented in state service in the last five years. The average yearly rate increase for Hispanics has been 0.68%. Between 1977 and 1978 Hispanic representation rose from 6.6% to 7.5%, an increase of 0.9%. However, between 1981 and 1982, Hispanic representation rose only 0.4%, less than half that of 1978.

Charts 9 through 13 show that all minority groups have continued to increase their representation percentage in state civil service, despite the fact that all other groups had achieved labor force parity as early as 1977.

Chart 14 provides data on the rate of Hispanic new hires for the state, and compares the rate to Hispanic labor force parity. The same information is provided for all the rest of the minority groups. Hispanics are the only ethnic minority group employed at a rate less than their labor force parity of 13.7%. All other minority groups are employed at rates a minimum of twice that of their labor force representation.

Chart 15 focuses on promotional rates for minority groups as compared to their labor force parity percentage. Hispanics are the only ethnic group promoted at less than their representation in the civilian labor force.

Chart 8

Hispanic Historical Composition Net Change Trends As Compared To Labor Force Parity

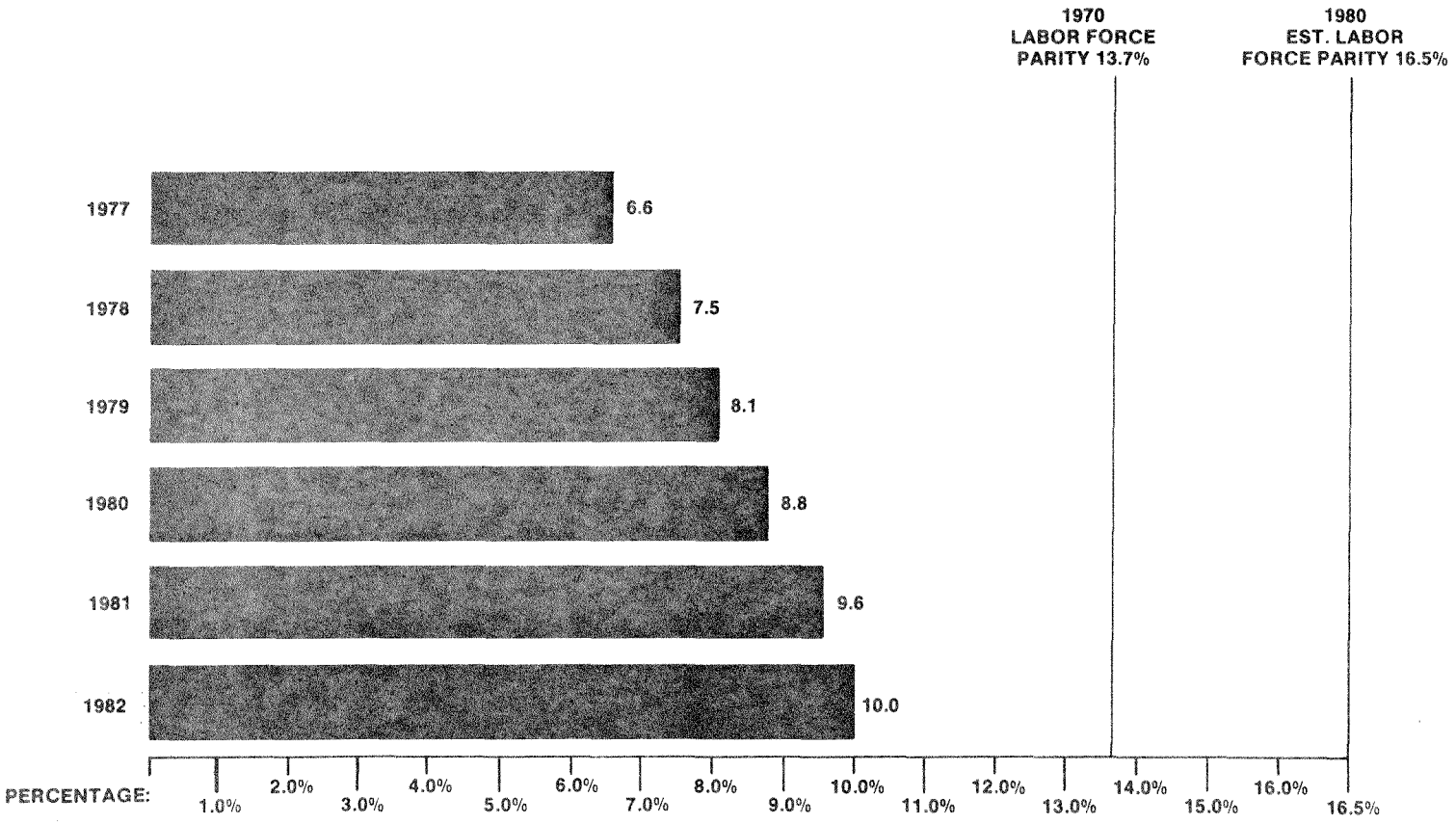


Chart 9

Black Historical Composition Net Change Trends As Compared To Labor Force Parity

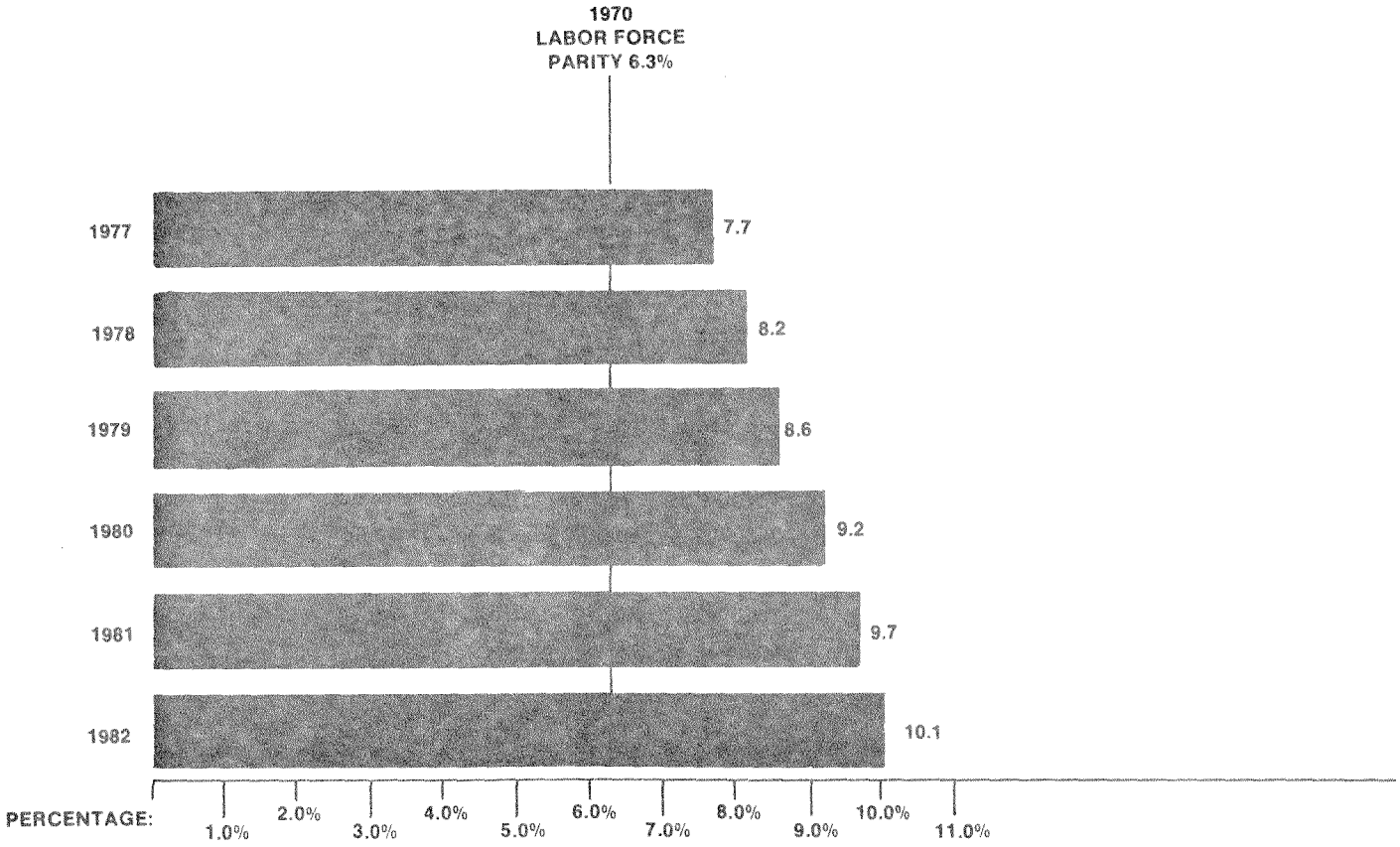


Chart 10

Asian Historical Composition Net Change Trends As Compared to Labor Force Parity

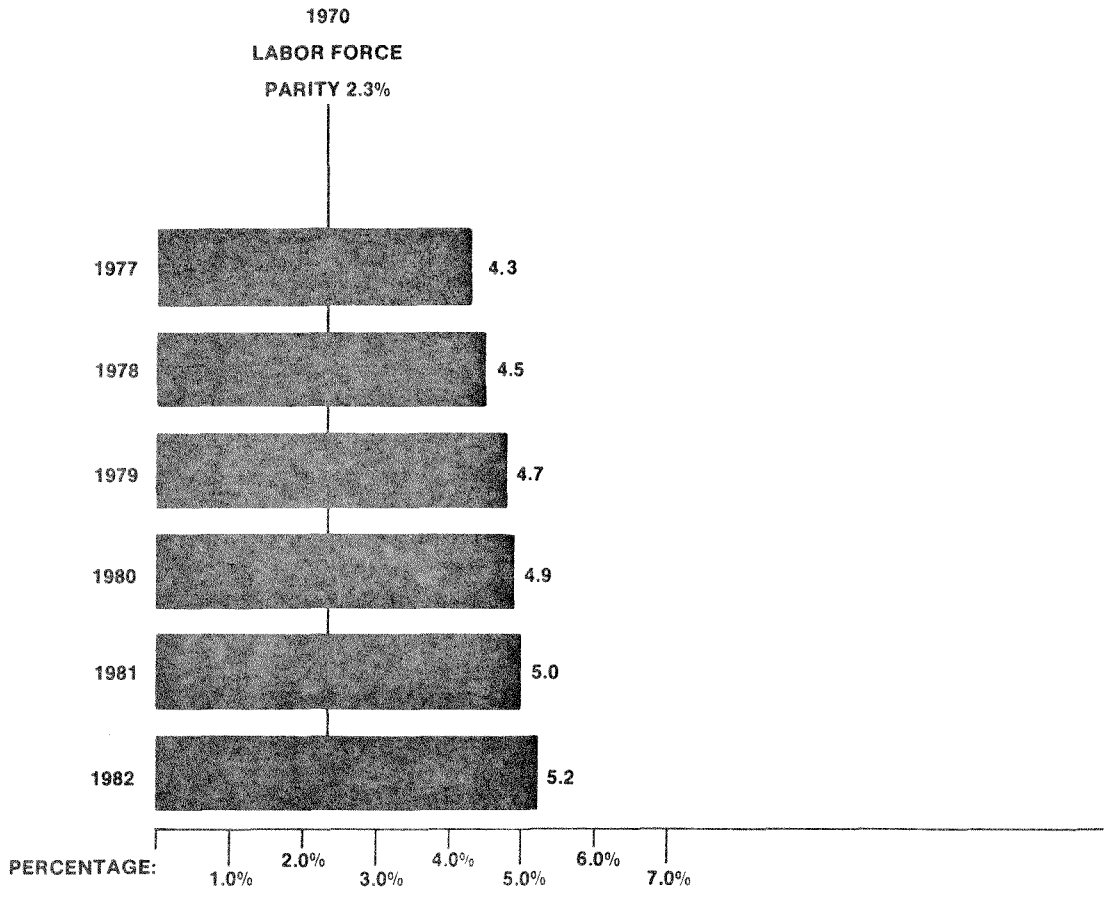


Chart 11

Filipino Composition Net Change Trends As Compared To Labor Force Parity

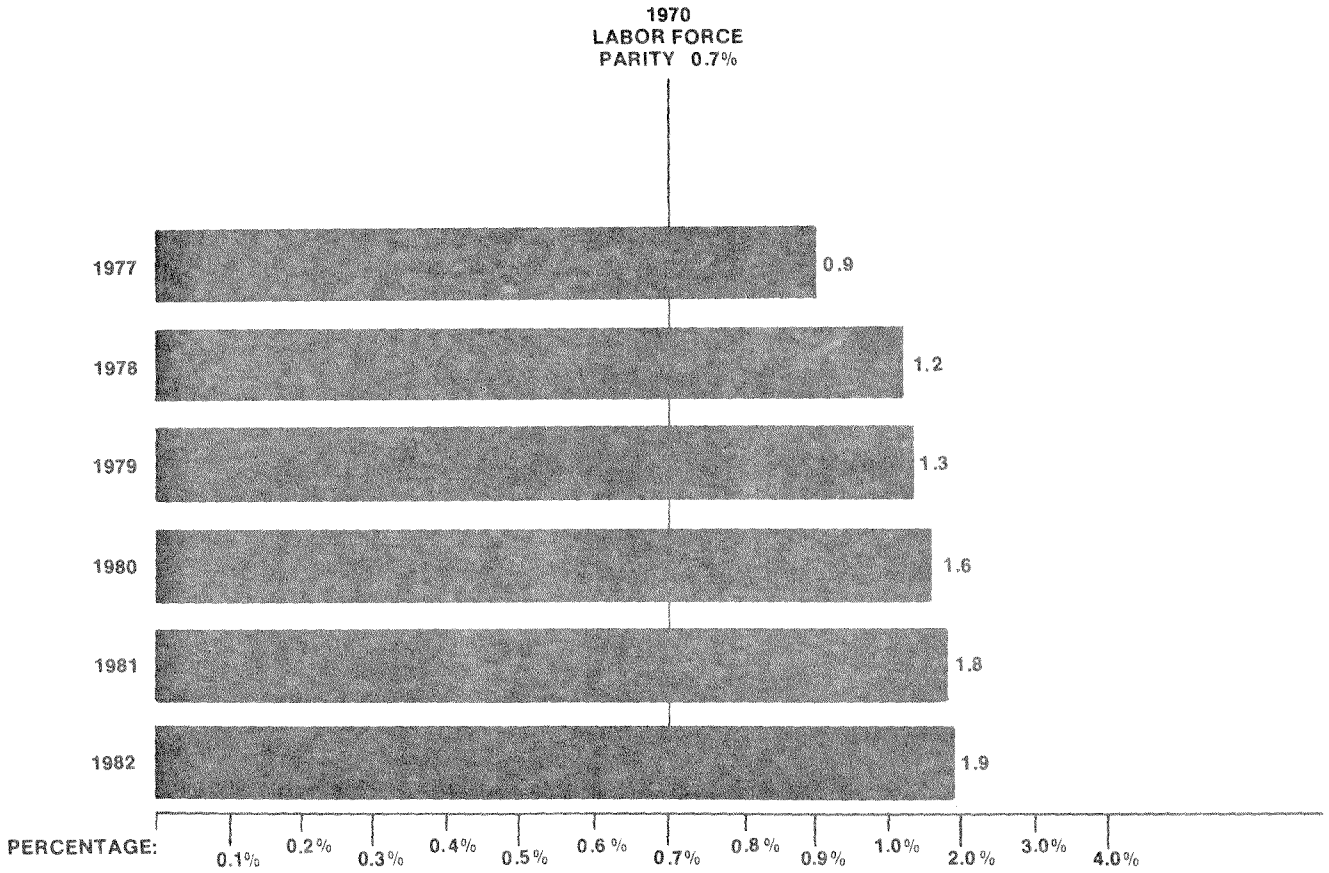


Chart 12

American Indian Historical Composition Net Change Trends As Compared to Labor Force Parity

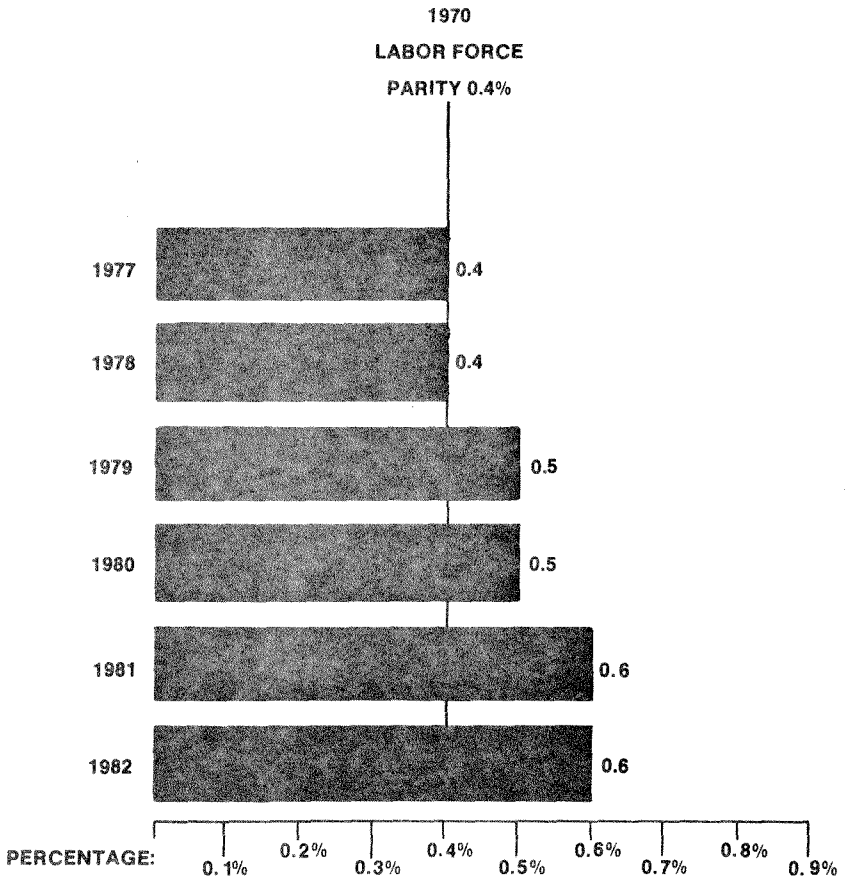


Chart 13

All Other Minority Races Composition Net Change Trends As Compared to Labor Force Parity

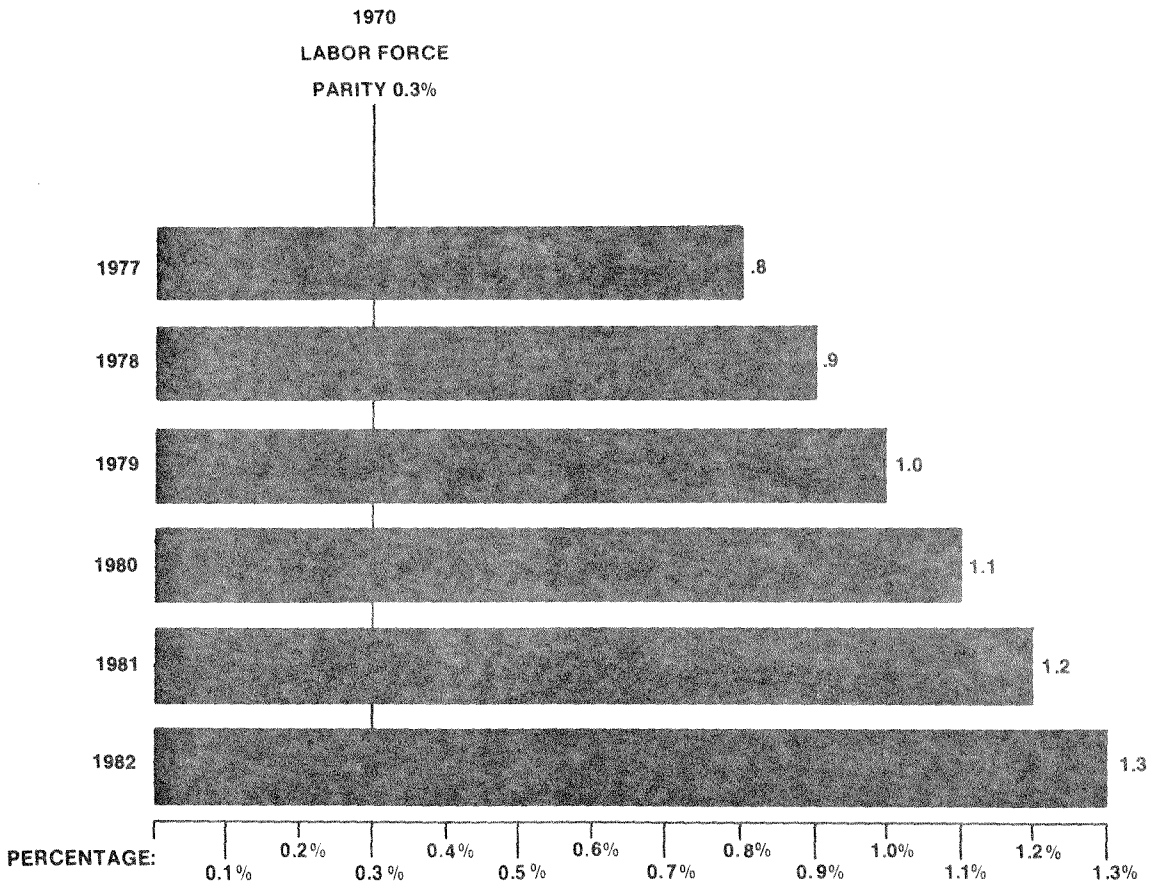


Chart 14

Minority Hiring Rates as Compared to their Labor Force Parity, 1982

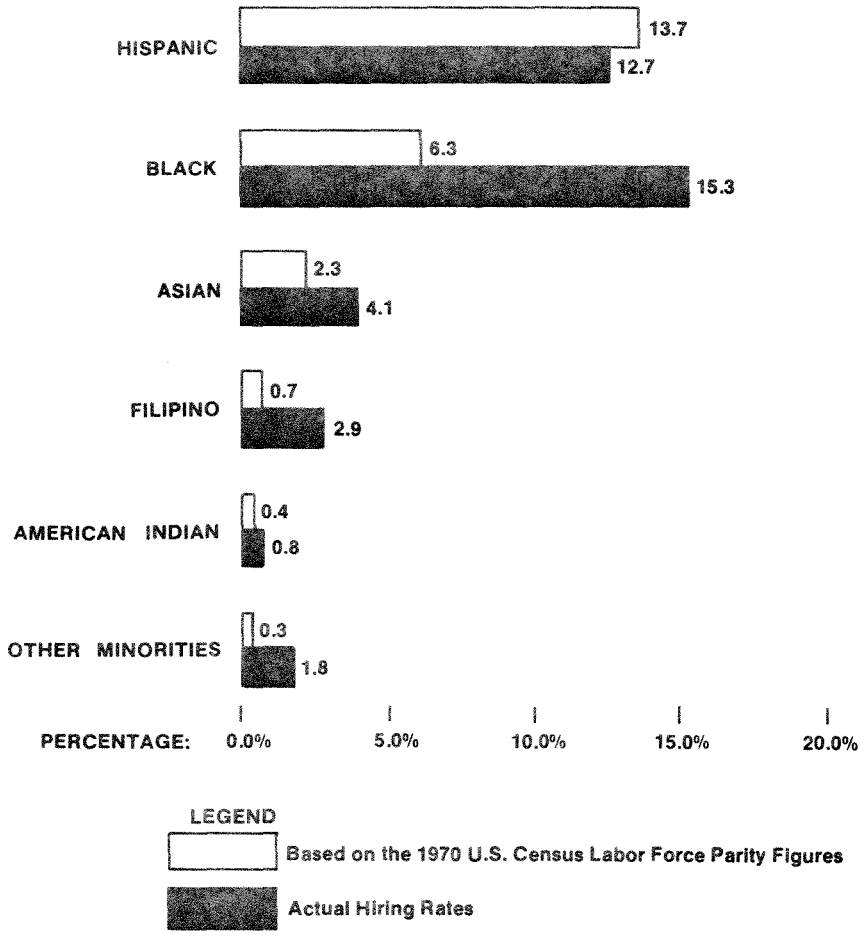
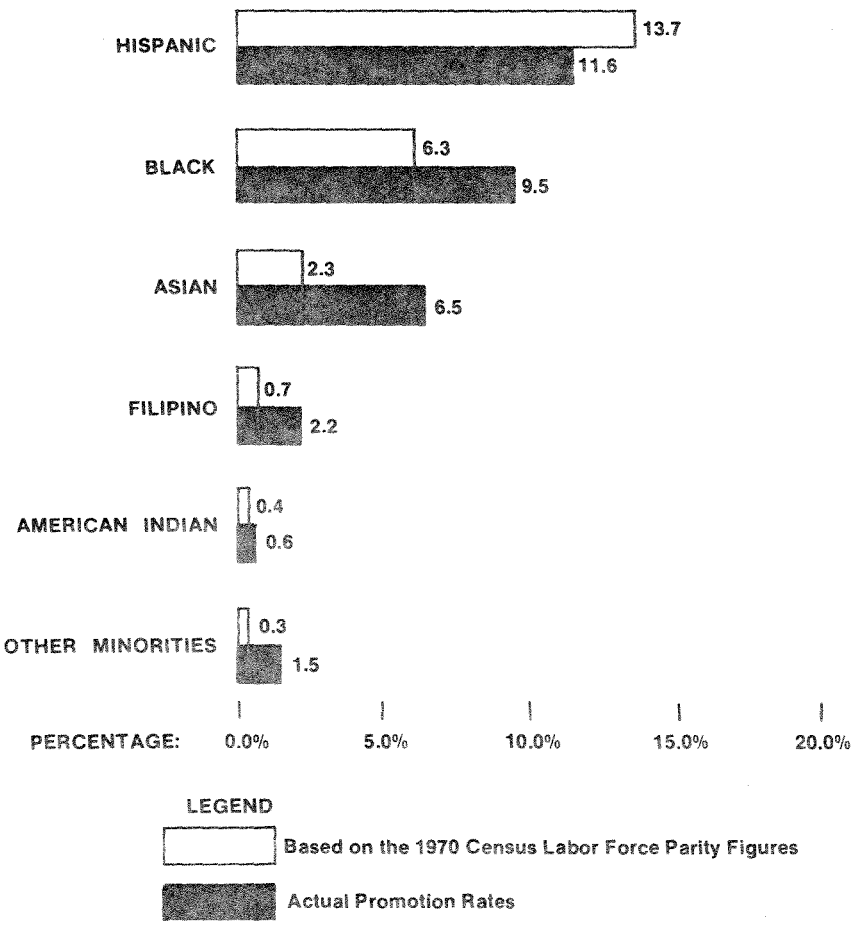


Chart 15

Minority Promotional Rates as Compared to their Labor Force Parity, 1982



PART III PROJECTIONS ON THE YEAR HISPANICS WILL ACHIEVE PARITY

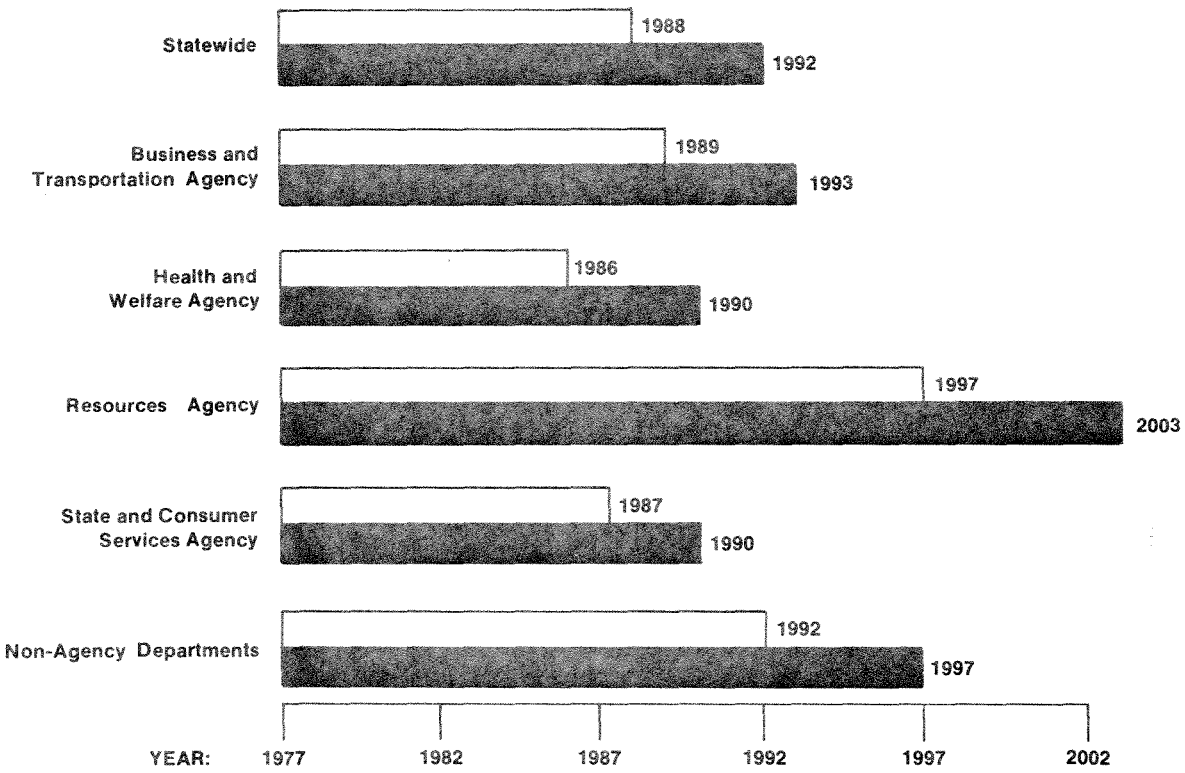
Charts 16 and 17 show, for agencies and selected departments, the year when labor force parity will be achieved. These projections represent future trends based on historical trends -- straight line projections. Most departments will not achieve labor force parity before 1990. This is alarming in view of the fact that the Hispanic population in the state will continue to grow and therefore extend the projections even longer. For example, if Hispanic population growth continues, and the current Hispanic hiring rate continues, Hispanics will not achieve parity until the year 2,000!

Chart 18 focuses on the Hispanic female. It is obvious that some departments still require greater attention to assure Hispanic females are

adequately represented within their given work force.

Chart 16

Parity Date Projections for Hispanics*



Legend:

Based on 13.7% Labor Force Parity (1970 U.S. Census Bureau)

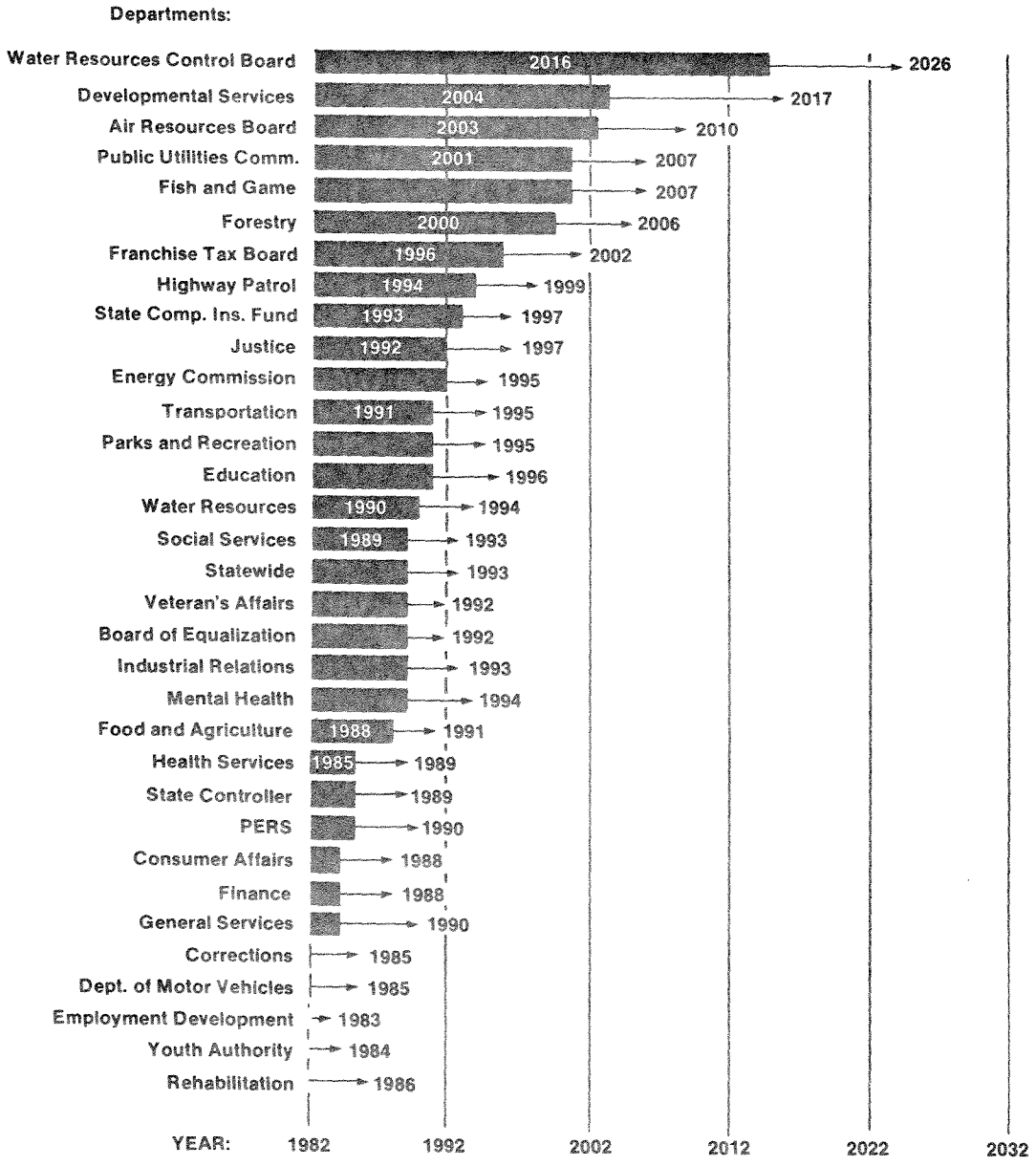
Based on 16.5% Labor Force Parity (1980 Estimate)

Straight-line projections are based on average net change from March 1977 to March 1982.

NOTE: The Youth and Adult Correctional Agency was not included because it has achieved 13.9% of Hispanic representaion within its work force. However, based on the 16.5% labor force parity estimate this agency would achieve parity in 1986.

Chart 17

Parity Date Projections for Hispanics in Selected Departments*



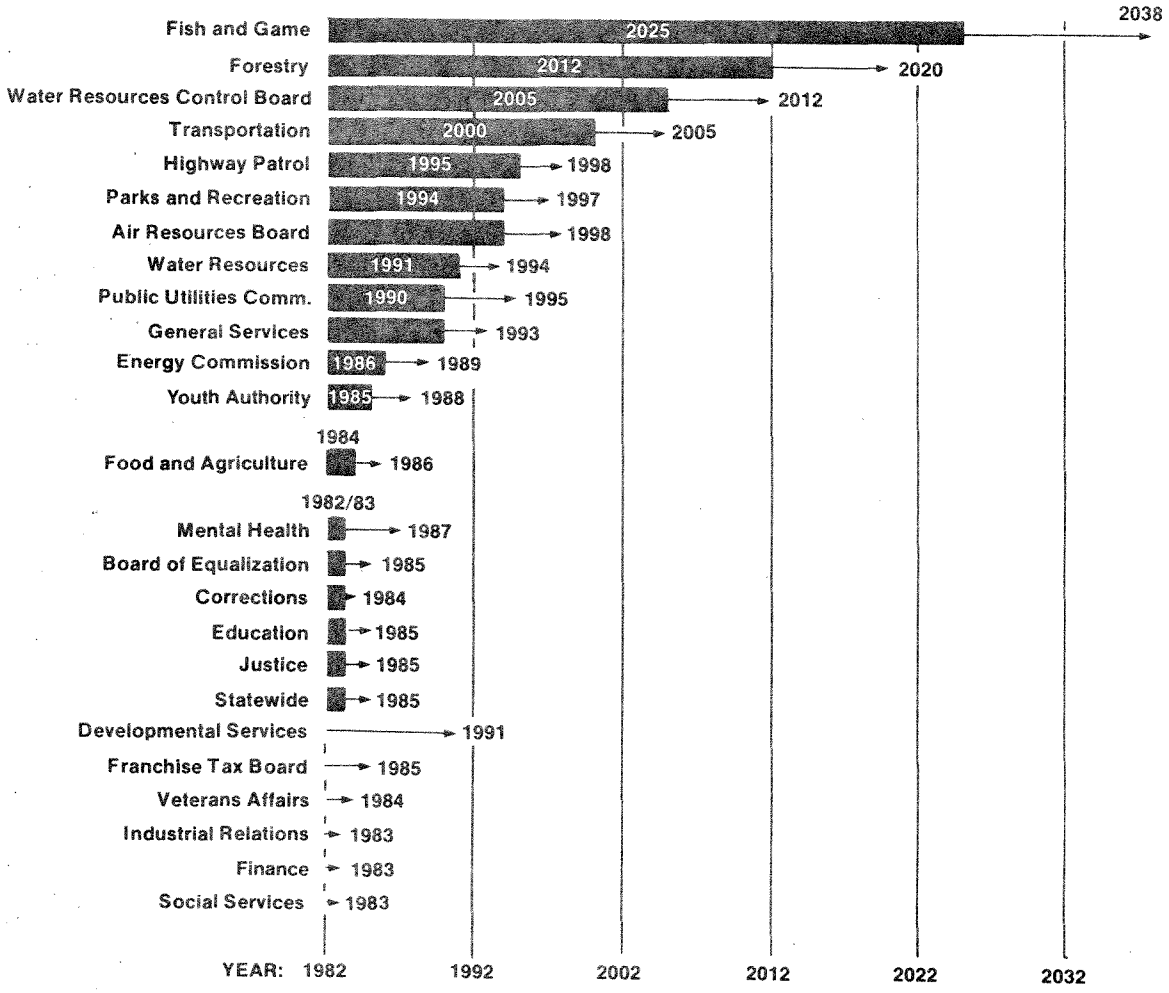
Indicates projected 1970 (13.7) parity dates for Hispanics

Indicates projected 1980 (16.5) parity dates for Hispanics

*Straight line projections are based on average net change from 4/1/77 to 3/31/82

Chart 18

Parity Date Projections for Hispanic Females In Selected Departments*



Indicates projected 1970 (4.8%) parity dates for Hispanic females

Indicates projected 1980 (5.8%) parity dates for Hispanic females

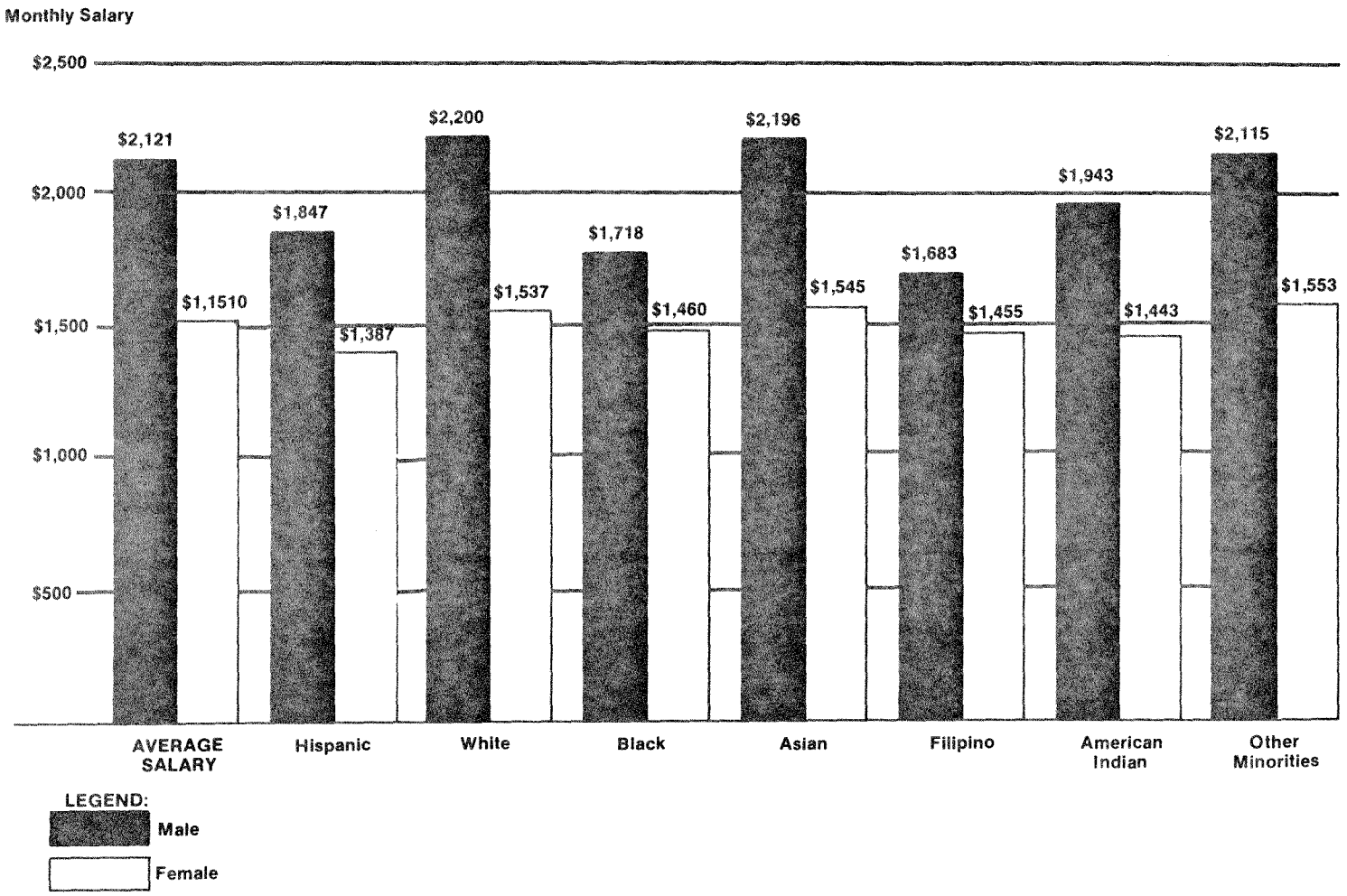
*Straight line projections are based on average net change from 4/1/77 to 3/31/82.

PART IV AVERAGE SALARIES OF ALL ETHNIC GROUPS AND WOMEN

Chart 19 sets forth data on average salaries of minorities and women. Hispanic women are the lowest paid employees in state government. Although Hispanics, as a group fair better than Hispanic women, they are typically paid $350.00 less than white employees. This information confirms that Hispanics employed by the state serve in the least responsible positions which have little or no impact on state policies and or services provided to the public.

Chart 19

A Comparison of Monthly Salaries by Sex within Ethnic Group, 1982



PART V DISTRIBUTION OF HISPANICS AND OTHER MINORITIES

Chart 20 shows Hispanics have achieved labor force parity in only 4 of the state's 20 major job categories. They are in the semi-skilled, janitor/custodian, laborers and career opportunities development occupations. They are least represented in the supervising professional, supervising sub-professional technical, supervising field representative and administrative line occupations. Hispanic representation of 13.7% has not been achieved in the most important jobs and is almost nonexistent at the higher levels.

Chart 21 compares the number and percent of job categories where parity has been achieved for each minority group. Hispanics have the poorest representation within the distribution of the state's work force when compared to all other minority groups. Hispanic representation has yet

to be achieved even at the clerical levels where most of the state's hires are made.

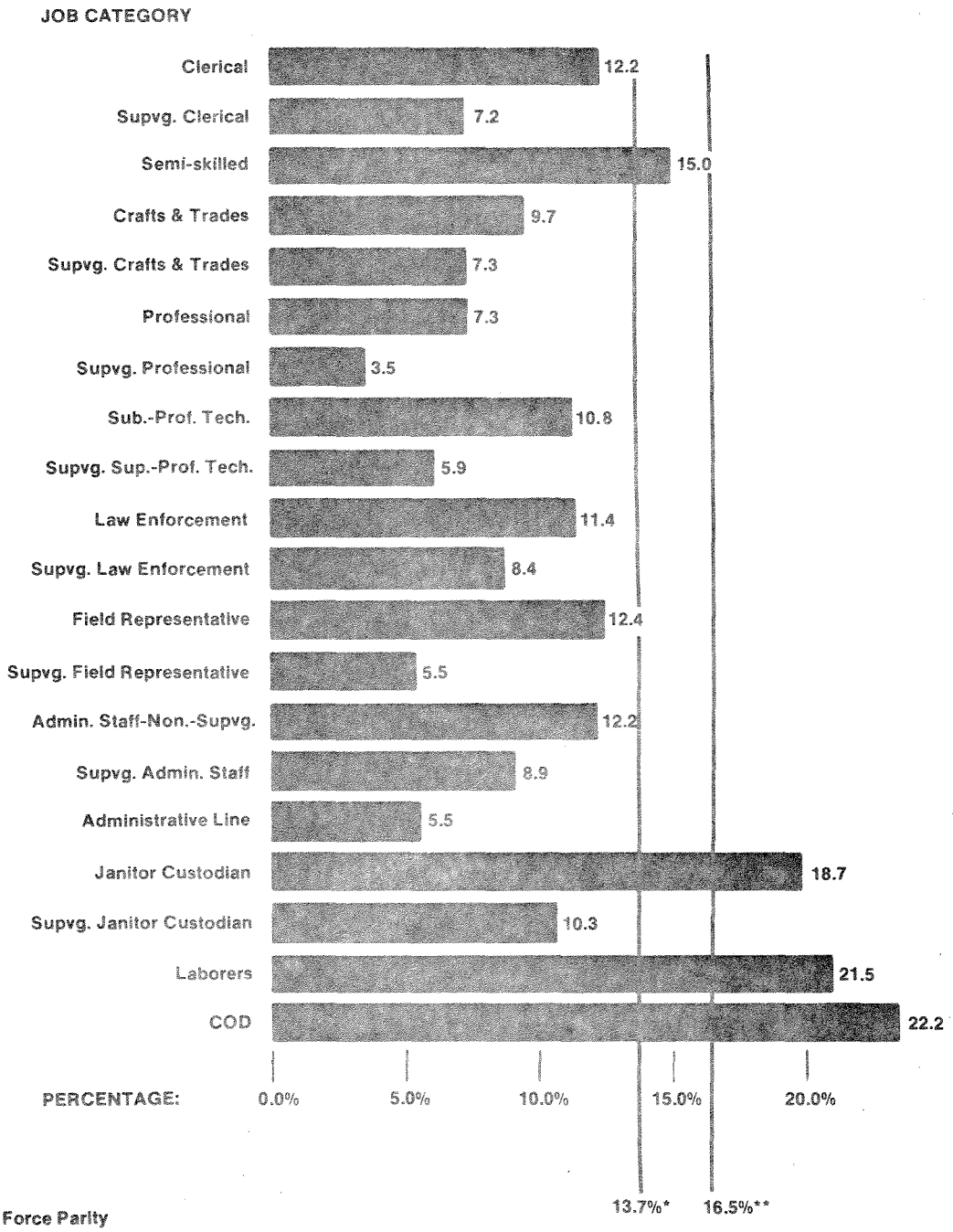
Chart 22 provides the distribution representation of Hispanic women. They are most represented in the clerical, supervising clerical, sub-professional technical, administrative staff, janitor/custodian and career opportunities development occupations. They are least represented in the non-traditional jobs for women in general, law enforcement and administrative line.

Chart 23 shows that, except for white women, Hispanic women are the most poorly distributed female group in state government.

Hispanics in general, and Hispanic females specifically, have not benefited from the extensive and well entrenched upward mobility program operating in the state. Hispanics are singularly being excluded as evidenced by the distribution information displayed.

Chart 20

Distribution of Hispanics in the State's 20 Major Job Categories, 1982



*Based on the 1970 U.S. Census

**Based on a 1980 Labor Force Parity Estimate

Chart 21

Job Categories in Which Parity (1970) Has Been Achieved For Minorities — Out of 20 Possible

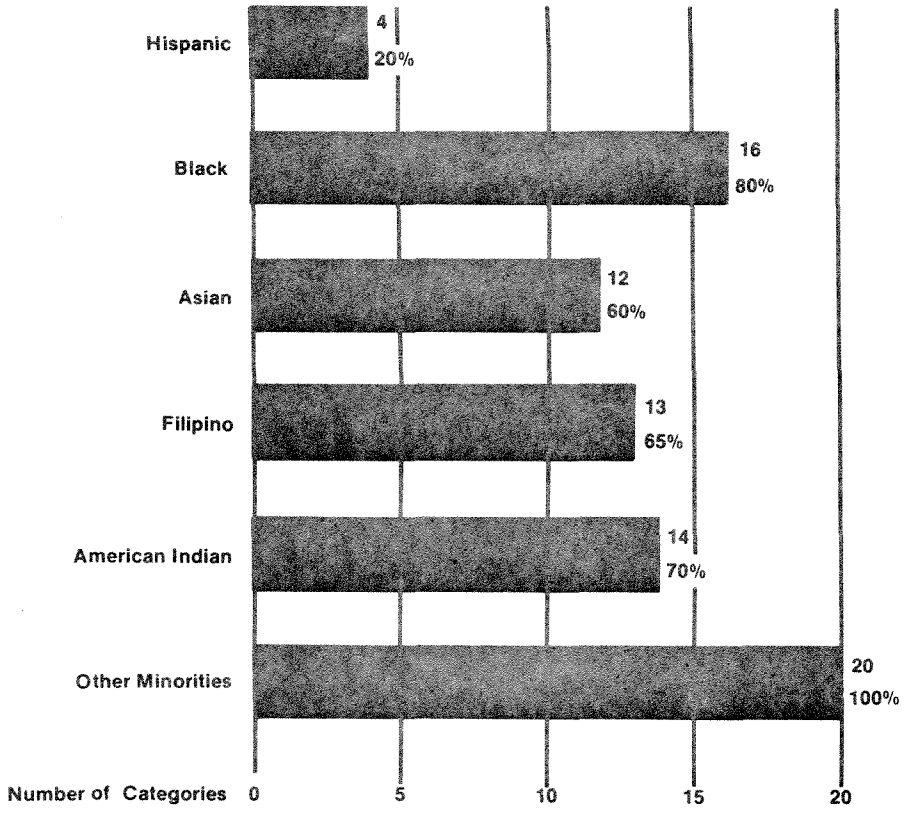
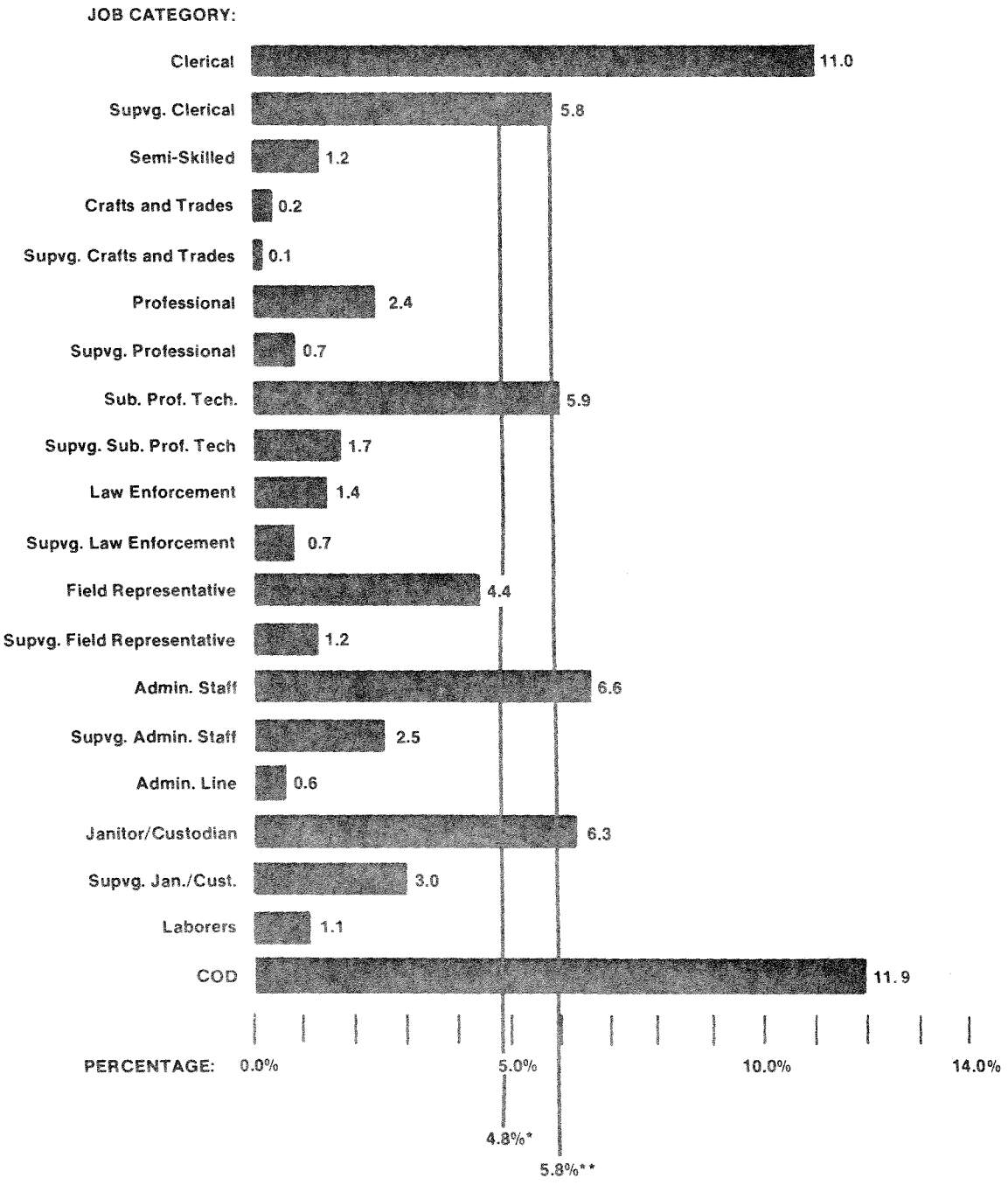


Chart 22

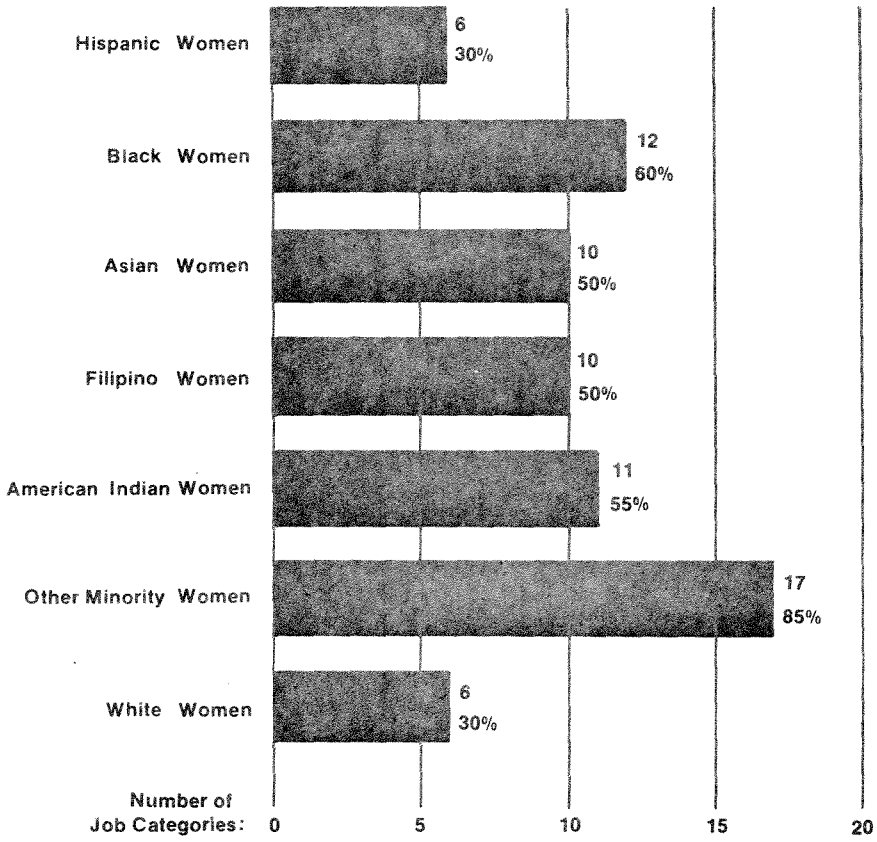
Distribution of Hispanic Females in the State's 20 major Job Categories, 1982



*Labor Force Parity based on 1970 census.
**Based on the 1980 estimated Labor Force Parity.

Chart 23

Job Categories In Which Parity (1970) Had Been Achieved For Minority Women — Out of 20 Possible.



NOV 15 1982

CALIFORNIA NOW, INC.
National Organization for Women

543 N. Fairfax Los Angeles, California 90036 (213) 651-1241

November 11, 1982

Mr. Leo Youngblood
Associate Consultant
Assembly Select Committee
on Fair Employment Practices
1127 11th Street
Sacramento, CA. 95810

Re: Testimony before Assembly Select Committee on Fair Employment Practices and the Assembly Committee on Judiciary

Dear Mr. Youngblood:

I am writing to thank the above Committees for the opportunity to testify on behalf of California NOW regarding the "Legal Issues in Affirmative Action - Problems Affecting Women." I am sorry that I was not able to stay at the hearing long enough to be able to testify before the Committees orally. Unfortunately, I hold the position of legal counsel to California NOW on a volunteer basis and I had work commitments which required my attention elsewhere. Nevertheless, I am enclosing an additional copy of my written testimony in case there are no copies remaining from those left at the hearing. I have a few other comments that I would be glad to share with you at a later time if you are interested.

Sincerely,

Jean E. Zoeller

Jean E. Zoeller
Assistant Coordinator -
Legal

JEZ:ns
Encl.

CALIFORNIA NOW, INC.
National Organization for Women
543 N. Fairfax Los Angeles, California 90036 (213) 651-1241

Testimony of Jean E. Zoeller
Assistant Coordinator - Legal
for California National
Organization for Women

before the

joint hearing of

the Assembly Committee on Judiciary
and the Assembly Select Committee
on Fair Employment Practices

on

Legal Issues in Affirmative Action
Problems Affecting Women

November 9, 1982

Mr. Chairman and committee members, I am pleased to be afforded this opportunity to discuss with you my views and the views of the California National Organization for Women ("Cal NOW") on the important issues relating to legal issues in affirmative action - problems affecting women.

My name is Jean E. Zoeller and I hold the position of legal counsel to Cal NOW. Cal NOW is an organization consisting of both women and men and it works on a number of fronts to bring women into full participation in society. Cal NOW is the largest feminist organization in the State with a membership of over 40,000.

I have chosen just a few of the areas suggested by the Committees to focus my testimony on today.

Initially, I must mention that Cal NOW and the 48 local NOW chapters around the State receive numerous telephone calls on a daily basis from women and interested men seeking advice regarding sex discrimination in employment problems. While I have no statistics regarding the percentage of these calls which involve allegations of sex discrimination in public employment, I have no reason to believe that this percentage differs in any respect, one way or the other, from the percentage of women employed in the public sector vis-a-vis all other employment. If I were to attempt to characterize the types of sex discrimination cases that we are asked about most frequently, I would place them in three categories: (1) discrimination in treatment, especially cases involving

pregnancy discrimination, (2) discrimination in promotion and (3) sexual harassment. A simple suggestion that I have for ways to eliminate some pregnancy discrimination would be the more complete dissemmination to employers, supervisors and employees of information regarding the rights of pregnant women. Many discriminatory decisions are made based on little knowledge of legal requirements. In addition, I believe that some sexual harassment occurs by middle level and low level supervisors without the knowledge of the employer. However, the employer should be aware of such treatment and perhaps increased monitoring of such activities as well as procedures for airing such concerns by employees should be implemented.

The majority of calls we receive regarding sex discrimination complaints, we send on to the Department of Fair Employment and Housing ("DFEH") or the Equal Employment Opportunity Commission ("EEOC"). The reason why an organization like DFEH must be kept strong and operative is that litigation, for the most part, is too expensive and takes too long before a final resolution is received. In addition, I would estimate that it takes twice as long to get to trial in state court as it does in federal court. Private litigation is often not an equitable and expeditious vehicle in sex discrimination cases because plaintiffs generally have little money and cannot afford the high cost of litigation, subjectively speaking plaintiffs' expected recoveries are small and courts grant only a minimal amount of attorneys fees.

The process utilized by DFEH for the resolution of sex discrimination cases is helpful in many cases because its major focus is on settlement. If a complaint can be settled, the DFEH offers a shorter time to resolution than does litigation and saves the plaintiff the cost of hiring an attorney. However, one complaint I hear often about DFEH is that many plaintiffs feel forced to settle claims that they otherwise would not settle. One reason for this is that women consistently tell me that they are more concerned about the principle of the matter, i.e., having the employer admit wrongdoing, than they are in any possible monetary remuneration.

Ways that I would suggest to make DFEH a more useful and effective tool for the victims of sex discrimination would include the following: increase its funding, increase its staff, increase the Department's capability to litigate more cases, increase the Department's ability to monitor the resolutions of both publicly and privately litigated cases and increase the Department's jurisdiction over all public employees. The suggestions listed above, I believe, would allow the Department to lend more attention to individual cases, to deal expeditiously with its high volume of cases, and to help victims of sex discrimination with problems from the filing of complaints through the implementation and enforcement of final orders.

In addition, although there are many laws on the books to help the victims of sex discrimination, they must be

implemented to be helpful. For example, although Government Code §11135 et seq was written, among other things, to allow a state agency to curtail funding to a discriminatory contractor, such statutes are not being implemented by the Secretary of the Health and Welfare Agency.

An additional factor which must be considered whenever the policies affecting women in employment are discussed, is the tremendously low pay full-time employed women receive vis-a-vis the pay received by full-time employed men. As a national average, women receive 59¢ for every $1.00 received by men. Unfortunately, this gap continues to increase. The only clear resolution to this problem is the implementation of policy and legislation for public and private employers alike which enforces a wage scale based on a comparable worth analysis.

Further, any employment policy which gives preference to veterans clearly discriminates against women. Women have traditionally been excluded from the military and currently are excluded from many facets of the military. The continuation of a veterans' preference policy as long as the military continues to discriminate against women is a clear instance of inbred sexual discrimination in employment.

In sum, although, discrimination against women in employment continues on many levels, inroads have been made in this regard. I hope that some of the suggestions made during this testimony will be considered by the committees in formulating new

legislation and policy in the future.

Thank you. I will be glad to respond to any questions you may have.

CALIFORNIA NOW, INC.
National Organization for Women
543 N. Fairfax Los Angeles, California 90036 (213) 651-1241

Testimony of Jean E. Zoeller
Assistant Coordinator - Legal
for California National
Organization for Women

before the

joint hearing of

the Assembly Committee on Judiciary
and the Assembly Select Committee
on Fair Employment Practices

on

Legal Issues in Affirmative Action
Problems Affecting Women

November 9, 1982

Mr. Chairman and committee members, I am pleased to be afforded this opportunity to discuss with you my views and the views of the California National Organization for Women ("Cal NOW") on the important issues relating to legal issues in affirmative action - problems affecting women.

My name is Jean E. Zoeller and I hold the position of legal counsel to Cal NOW. Cal NOW is an organization consisting of both women and men and it works on a number of fronts to bring women into full participation in society. Cal NOW is the largest feminist organization in the State with a membership of over 40,000.

I have chosen just a few of the areas suggested by the Committees to focus my testimony on today.

Initially, I must mention that Cal NOW and the 48 local NOW chapters around the State receive numerous telephone calls on a daily basis from women and interested men seeking advice regarding sex discrimination in employment problems. While I have no statistics regarding the percentage of these calls which involve allegations of sex discrimination in public employment, I have no reason to believe that this percentage differs in any respect, one way or the other, from the percentage of women employed in the public sector vis-a-vis all other employment. If I were to attempt to characterize the types of sex discrimination cases that we are asked about most frequently, I would place them in three categories: (1) discrimination in treatment, especially cases involving

pregnancy discrimination, (2) discrimination in promotion and (3) sexual harassment. A simple suggestion that I have for ways to eliminate some pregnancy discrimination would be the more complete dissemmination to employers, supervisors and employees of information regarding the rights of pregnant women. Many discriminatory decisions are made based on little knowledge of legal requirements. In addition, I believe that some sexual harassment occurs by middle level and low level supervisors without the knowledge of the employer. However, the employer should be aware of such treatment and perhaps increased monitoring of such activities as well as procedures for airing such concerns by employees should be implemented.

The majority of calls we receive regarding sex discrimination complaints, we send on to the Department of Fair Employment and Housing ("DFEH") or the Equal Employment Opportunity Commission ("EEOC"). The reason why an organization like DFEH must be kept strong and operative is that litigation, for the most part, is too expensive and takes too long before a final resolution is received. In addition, I would estimate that it takes twice as long to get to trial in state court as it does in federal court. Private litigation is often not an equitable and expeditious vehicle in sex discrimination cases because plaintiffs generally have little money and cannot afford the high cost of litigation, subjectively speaking plaintiffs' expected recoveries are small and courts grant only a minimal amount of attorneys fees.

The process utilized by DFEH for the resolution of sex discrimination cases is helpful in many cases because its major focus is on settlement. If a complaint can be settled, the DFEH offers a shorter time to resolution than does litigation and saves the plaintiff the cost of hiring an attorney. However, one complaint I hear often about DFEH is that many plaintiffs feel forced to settle claims that they otherwise would not settle. One reason for this is that women consistently tell me that they are more concerned about the principle of the matter, i.e., having the employer admit wrongdoing, than they are in any possible monetary remuneration.

Ways that I would suggest to make DFEH a more useful and effective tool for the victims of sex discrimination would include the following: increase its funding, increase its staff, increase the Department's capability to litigate more cases, increase the Department's ability to monitor the resolutions of both publicly and privately litigated cases and increase the Department's jurisdiction over all public employees. The suggestions listed above, I believe, would allow the Department to lend more attention to individual cases, to deal expeditiously with its high volume of cases, and to help victims of sex discrimination with problems from the filing of complaints through the implementation and enforcement of final orders.

In addition, although there are many laws on the books to help the victims of sex discrimination, they must be

implemented to be helpful. For example, although Government Code §11135 et seq was written, among other things, to allow a state agency to curtail funding to a discriminatory contractor, such statutes are not being implemented by the Secretary of the Health and Welfare Agency.

An additional factor which must be considered whenever the policies affecting women in employment are discussed, is the tremendously low pay full-time employed women receive vis-a-vis the pay received by full-time employed men. As a national average, women receive 59¢ for every $1.00 received by men. Unfortunately, this gap continues to increase. The only clear resolution to this problem is the implementation of policy and legislation for public and private employers alike which enforces a wage scale based on a comparable worth analysis.

Further, any employment policy which gives preference to veterans clearly discriminates against women. Women have traditionally been excluded from the military and currently are excluded from many facets of the military. The continuation of a veterans' preference policy as long as the military continues to discriminate against women is a clear instance of inbred sexual discrimination in employment.

In sum, although, discrimination against women in employment continues on many levels, inroads have been made in this regard. I hope that some of the suggestions made during this testimony will be considered by the committees in formulating new

legislation and policy in the future.

Thank you. I will be glad to respond to any questions you may have.

Law Offices
of
Linnea M. Johnson
1439 [redacted] LINCOLN WAY • [redacted]
AUBURN, CALIFORNIA 95603
(916) 885-1525

November 11, 1982

Mr. Leo Youngblood
Assembly Select Committee on Fair Employment
1127 11th Street
Sacramento, California 95814

Dear Leo:

Thank you for affording me the opportunity to speak before the committee. I think the hearing was well organized, and I was particularly happy with my being paired with the sexual harassment victim. Her first hand concerns served to illustrate the need for what I termed a holistic approach to employment problems.

Also, I bet you thought Jim Prosser and I would kill each other before we got back to Sacramento. In spite of the fact that we took an instant disliking to each other, the basis for which I will explain to you sometime, we had lunch together and ended up discussing a variety of topics. At this point, I would say I consider us good friends.

Please keep in touch with me and let me know if there is anything further I can do for you and the committee.

I also look forward to meeting your wife for dinner in Auburn.

Very truly yours,

Linnea M. Johnson
Attorney at Law

LMJ:gea

WOMEN IN ADMINISTRATIVE SERVICE CLASSIFICATIONS

(As of 9/30/82)
Labor Force Parity 38.1%

LEVEL	CLASS TITLE	No. of Women	% of Women
Clerical	Office Assistant II (General)	2,535	78.8
Bridging Class	Management Services Technician	369	85.6
Administrative	Staff Services Analyst	960	74.7
	Associate Analyst Level*	776	50.9
Supervising Administrative	Staff Services Manager I	167	30.4
	Staff Services Manager II	76	22.9
	Staff Services Manager III	15	12.2

*This number represents the Associate Budget, Management, Government, Personnel and Training Officer Classifications.

LOS ANGELES UNIFIED SCHOOL DISTRICT

COMMISSION FOR SEX EQUITY
450 NORTH GRAND AVENUE, H-256
P.O. BOX 3307
LOS ANGELES, CALIFORNIA 90051
(213) 625-4004

November 15, 1982

Honorable Elihu Harris, Chair
Assembly Committee on Fair Employment Practices
Assembly Judiciary Committee
State Capitol, Room 6031
Sacramento, California 95814

Dear Assemblyman Harris:

Thank you for extending the November 9, 1982 Judiciary and Select Committees on Fair Employment Practices hearing on "Legal Issues Affecting Women" for written testimony to be included in the record.

Enclosed is the testimony of the Commission for Sex Equity on women's employment equity in the Los Angeles Unified School District. The testimony describes two approaches used in the school system for ensuring equal employment opportunity and pay equity.

I hope that the testimony will be of interest to the Committees. Thank you for the time and concerns of the Committees in setting up hearings on women's employment equity.

Sincerely,

Phyllis W. Cheng
Executive Director

Enclosure.

LOS ANGELES UNIFIED SCHOOL DISTRICT

MEMBERS OF THE BOARD

Thomas F. Bartman, President
Richard E. Ferraro
Alan Gershman
John R. Greenwood
Anthony Trias
Rita D. Walters
Roberta L. Weintraub

COMMISSION FOR SEX EQUITY
450 NORTH GRAND AVENUE, H-256
P.O. BOX 3307
LOS ANGELES, CALIFORNIA 90051
(213) 625-4004

HARRY HANDLER
Superintendent of Schools

PHYLLIS W. CHENG
Executive Director

TESTIMONY ON THE STATUS OF WOMEN'S EMPLOYMENT EQUITY IN THE LOS ANGELES UNIFIED SCHOOL DISTRICT

California State Assembly Fair Employment Practics Committee

and Judiciary Committee

by

Phyllis W. Cheng

Executive Director

Commission for Sex Equity

Los Angeles Unified School District

November 9, 1982

The Commission for Sex Equity is an independent advisory body to the Los Angeles City Board of Education on issues related to sex discrimination in the Los Angeles Unified School District (LAUSD), California's largest school system. Among the Commission's charge is the issue of employment discrimination on the basis of sex. This testimony focuses on two approaches tried in the LAUSD to overcome women's occupational segregation and wage discrimination.

I. Remedy: Equal Opportunity

The progress since Title IX of the 1972 Education Amendments was passed "reveals a mixed picture" of a law that is a "half full, half empty glass," said the National Advisory Council on Women's Educational Programs upon release of its 1981 report. Since 1975, women have gained only 1% in overall public school positions nationally, even though 70% of all teachers are female. In 1981, women still make up less than 1% of the approximately 16,000 school superintendents.

The pattern of low female administrative positions in the nation's public schools is reflected in the LAUSD. As in other systems, the number of women to men is inversely proportional to rank in hierarchy. In 1980, women comprised 70% of all teachers, less than 10% of high school principals, 16% of junior high school principals, 35% of elementary school principals, less than 1% of adult school principals, and less than 10% of top administrative positions. As early as 1974, a study of LAUSD women by the Los Angeles Association of Secondary School Administrators found that the number of women holding administrative/supervisory credentials exceeds their representation in line administration.

One approach to solving the above dilemma is to channel women into under-represented positions through equal employment opportunity laws. A case in point is the 1980 class action settlement in Szewiola and Joyce v. LAUSD. The suit was brought by two women administrators, Irena Szewiola and Patricia Joyce, through the Center for Law in the Public Interest and Grey & Kohlweck on behalf of 20,000 certificated women similarly situated in the LAUSD. The Title VII suit alleged that LAUSD had illegally discriminated

against women in its promotion, recruitment, interview and requirement processes, and in its entrenchment of women in lower paying jobs. Instead of litigating the case, the LAUSD and the Center for Law in the Public Interest hammered out a consent decree which outlines specific goals and timetables for the promotion of women administrators.

On March 5, 1981, the Szewiola consent decree was approved by U.S. District Court, Central District of California. The agreement stipulates promotional targets according to a unique "applicant flow" formula where the percentage of qualified female applicants matches the percentage of actual appointments. The consent decree stipulates the following provisions:

- Promotional targets for the following positions be based on qualified female applicant flow at a minimum of 40%: elementary, secondary, and adult principals; elementary, secondary and adult assistant principals; deputy area administrators and administrative coordinators.
- Should the qualified female applicant flow for the above positions during the examination filing period fall below 40%, that an extention of the filing period be made to recruit all qualified female applicants.
- Should the qualified female applicant flow for the above positions during the examination filing period be above 50%, that the LAUSD would have the option of appointing four-fifths of the applicant flow or 50%, whichever is higher.
- Failure for women to place high enough on the eligibility lists is not a reasonable excuse for not meeting the minimum 40% assignment goals or the appropriate applicant flow percentage.
- Promotional targets for all other administrative positions be an annual 50% for women.
- Promotional targets for contract level assistant and area superintendents be 25% for the first five years, and 25% for the second five years.
- Existing eligibility lists established before July 1, 1980 be committed to at least 30% female promotion.
- LAUSD may seek court modification of the settlement should there be conflict with affirmative action goals or illegal reverse discrimination.

- o There be annual reporting to the court on implementation of the consent decree by LAUSD.
- o The life of the consent decree be for ten years (July 1, 1980 - June 30, 1990) or until a target of 50% female is reached for any of the above categories.

There are no backpay or special privileges for the named plaintiffs, but there is a non-retaliation clause within the decree. Even though the top six positions of the Superintendent's cabinet are exempted from the agreement, the goals of Szewiola still promise substantial opportunities for women in the 1980s.

In addition, the Commission for Sex Equity was named in the consent decree to assist in the recruitment of women. The Commission's foremost contributions to date have been expanding the notification of the decree's fairness hearing, monitoring its implementation, and initiating a special master's degree and credential program in the LAUSD Academy and California State University at Los Angeles for aspiring women administrators.

The precedent-setting consent decree carries implications which are national in scope, since ripple effects are likely to follow in other school systems. For example, the San Diego City Schools recently developed an affirmative action plan using the Szewiola consent decree as a blueprint. Women educators have discussed its application for other school districts and for higher education institutions. A reversal in the downward trend of women in educational administration may be triggered as a result of this good faith action by the Los Angeles City Board of Education.

II. Remedy: Comparable Worth

U.S. full-time working women earn 59¢ for every dollar earned by full-time working men. In recent years, women with four years of college education earned less than men with an eighth grade education, and women high school graduates earned less than men who never finished elementary school. Wage gaps between women and men have widened, and women are concentrated into twenty traditionally "female" occupations. The 1981 report of the National Academy of Sciences found that 60% of the wage disparity between women and men is due to sex discriminatory factors.

Women head 8 million households in the U.S. and constitute 43 million members of the civilian labor force. Over 50% of all women (16 and over) are working today. Of these working women between age 25 to 34 years old, 70% are married and have children under 18 at home. Despite the important role women must play in the economic support of their families, they continue to experience occupational segregation and are concentrated at the bottom of wage ladders. More than 60% of all women workers are in twenty predominantly female occupations such as teachers, librarians, nurses, clerical and service workers.

The wage disparity between women and men is indisputable. The National Academy of Sciences found that such factors as education, labor force commitment and experience do not explain the wage difference between women and men. The AFL-CIO estimates that only 15% of all working women are unionized. Traditional female jobs remain low-paid, segregated, and unprotected.

Using a sample of traditionally female and male dominated jobs in LAUSD, the Commission for Sex Equity discovered in 1981 that there is evidence of

some wage disparity in operation. For example, a teacher with five years of college education and student teaching experience earns less starting salary ($1163-$1348/pay period) than a painter with one year of journeyman experience and no high school graduation requirement ($1698/pay period). Similary, a secretary with two years of office experience earns less starting salary ($986-$1205/pay period) than a window washer with no education requirement and six months of experience ($1121/pay period). The same wage disparity held true when the Commission also compared the starting salaries of education aides with typewriter technicians, and salad cooks with gardeners. The jobs which paid higher were all male-dominated, and the jobs which paid lower were all female-dominated.

A vital, new approach to solving the above problem is to raise the wages of women through comparable worth solutions. Comparable worth is equal pay for jobs of comparable value according to levels of skills, responsibility, effort and working conditions. Comparable worth differs from the principle of equal pay for equal work stated in the 1963 Equal Pay Act. The new concept allows instead for different jobs to be compared. Comparable worth proposes to set wages by objective factors, and not only according to market trends which can perpetuate historic bias in the prevailing wage. Courts have begun to examine comparable worth under the provisions of Title VII of the 1964 Civil Rights Act. In County of Washington v. Gunther, the U.S. Supreme Court ruled in favor of raising wages comparably for female jailors performing similar, but not identical, jobs as male jailors. Following Gunther, the Equal Employment Opportunity Commission advised its investigators to be alert for wage discrimination and job segregation along sex and race lines.

In light of the need to have a defensible wage structure, job evaluation has become an important tool for setting wages. Job evaluation is essentially a method for ranking a set of jobs according to their worth or value to an institution. The use of values can be subjective, so job evaluation methods need to be both valid and reliable.

Comparable worth remedies have been tested in a number of states, cities and school districts. Most of the cases have resulted in higher wages for female-dominated jobs. In some cases, the action caused the private sector to also raise wages for female-dominated jobs in order to compete for skilled workers. While a few small school systems have carried out comparable worth remedies, none have applied comparable worth to teacher pay.

In California, comparable worth has emerged powerfully in the City of San Jose where municipal workers were able to win a contract to equalize pay for 67 different job classifications. At the legislative level, the California legislature approved S.B.459 (Carpenter) in 1981 which asked the State Personnel Board to study comparable worth solutions for state jobs.

Given the powerful scenario behind the issue of comparable worth, LAUSD Board Member Roberta Weintraub introduced motions to conduct pay equity studies in the school system in October of 1981 and in June of 1982. The Commission for Sex Equity responded to Ms. Weintraub's motions by publishing a preliminary study, Options Analysis: Motion to Study Equal Pay for Jobs of Comparable Worth in the Los Angeles Unified School District (Cheng, 1981). The report contained six recommendations as follows:

1. That the Board adopt the motion to conduct a comparable worth study for all sex segregated jobs in the LAUSD.

2. That a request for proposals be drafted to identify competitive bidders to carry out the study.

3. That a representative group of District personnel, representatives from union and women's organizations be assembled to advise job evaluation processes.

4. That a single job evaluation procedure be used for all classifications.

5. That measureable factors in job evaluation be representative of job worth, be reflective of job variability, and be weighted in a bias free manner.

6. That the study implementation observe system integrity, be statistically valid, and be free of sex-biased job titles.

The introduction of Ms. Weintraub's comparable worth motions failed both times. However, the notion of conducting a comparable worth study took root amongst the communities of women's, labor, legal, and civil rights group which resulted in the establishment of the Southern California Comparable Worth Coalition. This coalition is comprised of: the National Organization for Women; United Teachers of Los Angeles; Coalition of Labor Union Women; American Federation of State, County and Municipal Employees; Los Angeles County Federation of Labor; California Federation of Teachers; Service Employees International Union; National Lawyers Guild; and the University of California, Los Angeles. The Southern California Comparable Worth Coalition has held press conferences, sponsored comparable worth conferences to educate the rank and file employees, and has pressured the LAUSD to conduct comparable worth studies.

In the future, should the motion to conduct a comparable worth study in the LAUSD be tried, such an action would be significant on several fronts:

o The LAUSD would be the first school system to measure the value of teachers against other professions.

- Since the LAUSD is the largest school system in California and the second largest employer in Los Angeles County next to the county government, any comparable worth action would trigger similar actions in other systems and cause the prevailing wage to change.

- The application of comparable worth remedies in LAUSD would be a model for working with multiple unions, since there are four employee unions in the system.

- Given any legal challenge, courts may look favorably upon a system which took voluntary action to conduct job evaluation studies for comparable worth.

Since the LAUSD has already made efforts through a consent decree to promote women employees into administrative positions, the adoption of a comparable worth solution for traditionally female job categories would complete a well coordinated, two-pronged approach to ensure women's upward mobility. By upgrading traditionally depressed wages for female-dominated jobs and by opening non-traditional jobs for women, the LAUSD workforce will have the potential of becoming integrated.

Although the comparable worth motions did not pass upon first introduction in the LAUSD, a groundswell of support from a variety of labor and women's organizations suggests that the comparable worth motion was the beginning round of what appears to be a long-term effort.

III. Recommendations

In order to ensure women's employment equity in the State of California, the following recommendations are offered to your Committees.

1. That the Assembly Fair Employment Practices Committee and Judiciary Committee examine existing mechanisms for enforcing equal employment opportunity laws at the state, county, municipal, and special district levels.

2. That the Committees consider the introduction of legislation during this era of fiscal reductions and layoffs to ensure that reductions-in-force will not disproportionately affect women in California. That the

Committees review previous bills introduced to consider factors in addition to seniority (i.e., affirmative action goals, special skills, bilingual ability, etc.) for carrying out reductions-in-force.

3. That the Committees ensure that the study conducted as a result of S.B. 459 (Carpenter) on comparable worth be carefully considered, so that funding is appropriated for phasing in comparable worth solutions in state employment.

4. That the Committees consider the formation of task forces in various regions to be ongoing monitors of women's employment equity in California.

EXHIBIT A

MEMBERS
RICHARD ALATORRE
GERALD N. FELANDO
RICHARD E. FLOYD
PATRICK J. NOLAN
SALLY TANNER

California Legislature

Assembly Select Committee on Fair Employment Practices

1127 11th STREET
SACRAMENTO, CALIFORNIA 95814
(916) 323-9806
ASSOCIATE CONSULTANT
LEO YOUNGBLOOD

ELIHU M. HARRIS
CHAIRMAN

November 3, 1982

TO: Members of the Assembly Judiciary Committee and Select Committee on Fair Employment Practices

FROM: Leo Youngblood

RE: Hearing on Legal Issues in Affirmative Action - Problems Affecting Women

On November 9, 1982, the Assembly Judiciary Committee and the Assembly Select Committee on Fair Employment Practices will hold a joint interim hearing on "Legal Issues In Affirmative Action - Problems Affecting Women." The hearing is scheduled to begin at 10:00 a.m. at the Los Angeles City Hall, 200 North Spring Street, Room 250-B, Los Angeles.

The purpose of this memorandum is to provide background information for the hearing. In addition, related materials for your review have been enclosed in the hearing booklet.

HISTORICAL BACKGROUND

Both federal and California law have been extended to protect specific groups of people from employment discrimination based on sex, race, color, religion, national origin, pregnancy, age and handicap. Discrimination is prohibited in hiring, promotion, discharge, compensation, job assignments, and any other "terms, conditions or privileges of employment. 42 USC Section 2000e-1(a) (1), 42 USC Sections 1981-1988, 29 USC Sections 621-624, 29 USC Sections 701-796, Government Code Section 12940 (a), Equal pay for equal work is also mandated by federal and state law. 29 USC Section 206(d), Labor Code Section 1197.5.

In 1945, State legislation was enacted banning discrimination in employment including state and local government. Government Code Section 19702*. The Fair Employment Practices Act was passed in 1959 prohibiting discriminatory employment practices. (Section 12900, et. seq.) Both these statutes extended protection to women for discriminatory practices based on sex. However, the legislative history of Section 19702 indicates that it contains a provision making a distinction between those "positions which in the opinion of the appointing power and the Board require the services of a specific sex may be reserved to that sex." That exception was deleted in 1976.

The Fair Employment Practices Act created the State Division of Fair Employment Practices and the Fair Employment Commission. These two agencies were subsequently replaced by the Division of Fair Employment and Housing and the Fair Employment Practice Commission, to handle investigatory and administrative functions respectively. (See Administrative Complaint Procedure, infra)

Executive action by Governors Ronald Reagan and Edmund G. Brown, Jr. added to the laws available to combat discrimination. Executive order R-68-12 directed the State Personnel to create new job opportunities and develop new personnel policies to encourage the employment of the "disadvantaged in state government in order to reduce the welfare roles." Executive order B-74-2 prescribed an affirmative action/equal employment opportunities policy and required state agencies to develop affirmative action plans. The State Personnel Board was directed to assume responsibility for implementing the affirmative action goals.

The year 1978 saw the enactment of several laws which advanced equal employment opportunities. The Upward Mobility Act, (Sections 19400 et. seq.) requires state departments to develop effective procedures for advancing minorities, women and other protected categories. Sections 19790-19795 were added to mandate departments and agencies under the direction of the State Personnel Board to establish affirmative action plans and programs, increases the responsibility of Affirmative Action Officers, and implements an effective monitoring and reporting system. The State Personnel Board was authorized to enforce compliance with the objectives of the law and to ensure that state agencies and departments comply with federal laws and regulations.

*All references are to the Government Code unless otherwise indicated.

In 1980, the Legislature passed the State Employment Layoff Procedure Act (A.B. 3001, authored by Elihu Harris) which prescribes a process for assuring that members of protected classes will not suffer layoffs disproportionate to their composition in the work force.

ADMINISTRATIVE COMPLAINT PROCEDURE

A complainant who alleges sex discrimination may seek an administrative remedy, but is not required to do so. Prior to filing a lawsuit however, an employee is required to file an administrative claim. In California the Department of Fair Employment and Housing is the agency authorized to receive complaints. A complaint may be filed with the state up to one year from the date of the discriminatory act. However, state complaints should be filed within 240 days of the discriminatory act to prevent loss of Title VII protection.

The Department of Fair Employment and Housing (DFEH) has one year to conduct investigations and file a Notice of Complaint with the employer. Within 90 days of the filing of the Notice of Complaint, a hearing must be held, at which time evidence is received. An administrative law judge or a Fair Employment Practices Commission attorney has 100 days to adopt the proposed decision or issue a Notice of Opportunity for further argument. If such a notice is issued the Commission has 100 days to issue its final decision. Administrative Procedure Act, Section 11501 et. seq. However, at this point in the administrative procedure, if enough time has elapsed, or the administrative agency (EEOC or DFEH) has completed its investigation, or the plaintiff requests it, a "right to sue" letter is issued to the plaintiff. In Title VII actions, within 90 days of receipt of the letter a lawsuit must be filed. 42 USC Section 2000e-5(f) (1). In actions brought under the Fair Employment Practices Act the plaintiff has one year in which to commence a lawsuit (Section 12940).

The complaint procedure can be confusing and somewhat complicated. Administratively, several agencies may have overlapping functions and responsibilities. With different statutes of limitations depending on which law a complainant chooses, many times the action may be barred.

The committee will be receiving testimony from public personnel administrators, labor representatives, private attorneys and other experts familiar with sex discrimination.

Witnesses have been asked to prepare to answer questions in one or more of the following areas.

Recruitment

- The method of recruitment being used by public employers, local and state, to foster the hiring of women.

- Alternative methods that can be used by public employers to recruit women.

Hiring and Promotion

- The nature and number of claims filed against public employers which involve allegations of sexual discrimination in promotion and hiring.

- The existence of specific job categories in public employment in which women are underutilized.

- The extent and description of the unique problems faced by women in the public employment hiring and promotion process.

- Current programs being implemented, either by public or outside groups, to assist women in overcoming obstacles in the hiring and promotional process.

- Adequacy of programs that are being used by public agencies to overcome underutilization, of women in specified job categories.

- Alternative methods to overcome underutilization of women specified job categories.

- Ongoing commitment of departments/managers to the affirmative action policy of the state.

- Effect of the veterans preference on women.

- Effect of the rule of three on women.

Grievance

- Adequacy of grievance procedures used by public agencies to address claims of sexual discrimination.

- Legal or procedural barriers that uniquely affect complaints by women.

- Methods to increase the effectiveness of state agencies in handling sex discrimination complaints.

- Advantages or disadvantages of filing complaints under federal or state law.

- Effectiveness of current methods of disseminating information on employee rights and the grievance procedure.

Collective Bargaining

- Effect of collective bargaining in hiring, recruitment and promotion of women in public employment.

- Use of the collective bargaining process to assist affirmative action programs.

- Achievement of affirmative action goals as a term and condition of employment.

- Use of remedial measures such as bridging classes, training programs, etc.

If you would like more information on the hearing please contact me at 323-9806 or Rubin Lopez or Ray Lebov at 445-4560.

Note 8

8. —— Publishing

Under this subchapter, Commission had jurisdiction over charges of sexually based discrimination by employee of nonprofit corporation which was affiliated with a church and which operated as a public publishing house engaged in business of publishing, printing, advertising and selling religious and religiously oriented materials for purpose of carrying out church denomination's work. Equal Employment Opportunity Commission (U. S. A.) v. Pacific Press Pub. Ass'n, D.C. Cal.1979, 482 F.Supp. 1291.

9. Nonreligious educational institutions

University teacher who was not rehired allegedly as a result of sex discrimination, who alleged, in addition to acts of discrimination occurring prior to effective date of amendment removing exemption for private universities from this subchapter an invidiously motivated refusal to reconsider her termination after the faculty senate hearing panel had issued a report was sufficient to make this subchapter applicable to the alleged discrimination. Weise v. Syracuse University, C.A.N.Y.1975, 522 F.2d 397.

As amended, this subchapter proscribes discriminatory preference on the basis of sex by institutions of higher learning in their hiring, compensation, promotion and termination practices with respect to faculty members. Equal Employment Opportunity Commission v. Tufts Ins. of Learning, D.C.Mass.1975, 421 F.Supp. 152.

§ 2000e-2. Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer

for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

Members of Communist Party or Communist-action or Communist-front organizations

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a

member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National security

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

Businesses or enterprises extending preferential treatment to Indians

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to

any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109.

Historical Note

References in Text. The Subversive Activities Control Act of 1950, referred to in subsec. (f), is Act Sept. 23, 1950, c. 1024, Title I, 64 Stat. 987, which is classified principally to subchapter I (section 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title of Subchapter note set out under section 781 of Title 50, War and National Defense, and Tables volume.

1972 Amendment. Subsec. (a)(2). Pub.L. 92-261, § 8(a), added "or applicants for employment" following "his employees".

Subsec. (c)(2). Pub.L. 92-261, § 8(b), added "or applicants for membership" following "membership".

Effective Date. Section effective one year after July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm.News, p. 2137.

Library References

Civil Rights ⟸9.10 to 9.14.

C.J.S. Civil Rights §§ 59 et seq., 61, 65, 68, 69, 71 to 73.

Code of Federal Regulations

Guidelines of Equal Employment Opportunity Commission,
Affirmative action, see 29 CFR 1608.1 et seq.
Employee selection procedures, see 29 CFR 1607.1 et seq.
National origin, see 29 CFR 1606.1.
Religion, see 29 CFR 1605.1.
Sex, see 29 CFR 1604.1 et seq.
Loan services, applicability, see 12 CFR 528.1 et seq.

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE—Continued

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

SUBCHAPTER I—GENERALLY

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.

Historical Note

Codification. R.S. § 1977 is from Act May 31, 1870, c. 114, § 16, 16 Stat. 144.

Section was formerly classified to section 41 of Title 8, Aliens and Nationality.

Short Title of 1976 Amendment. Pub.L. 94–559, § 1, Oct. 19, 1976, 90 Stat. 2641, provided: "That this Act [amending section 1988 of this title] may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'."

found, on basis of disproportionate impact, that defendants had used hiring procedures that discriminated on basis of race in hiring of police officers could not be affirmed, modified or vacated until court determined whether plaintiffs had proven that discriminatory purpose was one motivation behind defendants' conduct; however, additional delineation of the issues and particularized review of evidence already on record was necessary before court undertook "sensitive inquiry" into purposeful discrimination. Arnold v. Ballard, D.C.Ohio 1978, 448 F. Supp. 1025.

176. Remand

In class action brought under this section to challenge alleged racial discrimination in employment by county sanitation department, where trial court did not determine whether there was purposeful discrimination but found plaintiff had made out prima facie case by statistical evidence, it was necessary to remand to determine whether plaintiff's evidence, including the statistical data, established a prima facie case of discriminatory purpose which, if unrebutted, would establish liability. Williams v. DeKalb County, C.A.Ga.1978, 582 F.2d 2, on remand 82 F.R.D. 10.

In employment discrimination action, failure of district court to make findings of fact as to job relatedness of educational and testing requirements utilized by county sanitation department required remand for findings of fact and application of case law. Williams v. DeKalb County, C.A.Ga.1978, 577 F.2d 248, rehearing 582 F.2d 2, on remand 82 F.R.D. 10.

Where portion of relief requested, in class action against the United States and heads of government departments for alleged systematic racial discrimination in hiring and promotion of government employees, save claims for back wages and for damages, both of which would impinge upon the Treasury, were in the nature of mandamus action, upon remand it would be within the power of the court to order promotion of plaintiffs if appropriate, and to institute affirmative remedies on behalf of the class if such remedies were necessary to overcome ultra vires discrimination by individual federal officials. Penn v. Schlesinger, C.A.Ala.1973, 490 F.2d 700, reversed on other grounds 497 F.2d 970, certiorari denied 96 S.Ct. 2646, 426 U.S. 934, 49 L.Ed.2d 385.

Record on appeal from dismissal of action by student dismissed from institution of higher learning because of incident at graduation ceremonies after student had been placed on probationary status was insufficient for determination whether the incident at the graduation ceremonies was the exercise of a right of constitutional dimensions, requiring remand. Yench v. Stockmar, C.A.Colo.1973, 483 F.2d 820.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

Historical Note

Codification. R.S. § 1978 is from Act Apr. 9, 1866, c. 31, § 1, 14 Stat. 27.

Section was formerly classified to section 42 of Title 8, Aliens and Nationality.

EXECUTIVE ORDER NO. 11063

Nov. 20, 1962, 27 F.R. 11527, as amended by Ex.Ord.No.12259, Dec. 31, 1980, 46 F.R. 1253

EQUAL OPPORTUNITY IN HOUSING

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284.

Historical Note

Codification. R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

1979 Amendment. Pub.L. 96–170 added "or the District of Columbia" following "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

Effective Date of 1979 Amendment. Amendment by Pub.L. 96–170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96–170, set out as an Effective Date of 1979 Amendment note under section 1343 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 96–170, see 1979 U.S.Code Cong. and Adm.News, p. 2609.

Cross References

Citizenship clause, see U.S.C.A.Const. Amend. 14, § 1.
Conspiracy to interfere with civil rights, damages for, see section 1985 of this title.
Jurisdiction of district courts of civil rights actions, see section 1343 of Title 28, Judiciary and Judicial Procedure.
Privileges and immunities clauses, see U.S.C.A.Const. Art. 4, § 2, cl. 1 and Amend. 14, § 1.

Federal Rules of Civil Procedure

One form of action, see rule 2, Title 28, Judiciary and Judicial Procedure.
Rules as governing procedure in all suits of civil nature whether cognizable as cases at law or in equity or admiralty, see rule 1.

Library References

Civil Rights ⇐13.5(1). C.J.S. Civil Rights §§ 114, 115, 119, 124.

West's Federal Forms

Allegations of jurisdiction, see §§ 1057, 1060.
Complaint, see §§ 1849, 1850, 1850.10, 1851, 1851.5, 1852.5 to 1852.15.
Declaratory judgments, see § 4781 et seq.
Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.
Three-judge courts, matters pertaining to, see § 6051 et seq.

§ 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy,

whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

Historical Note

Codification. R.S. § 1980 is from Acts July 31, 1861, c. 33, 12 Stat. 284; Apr. 20, 1871, c. 22, § 2, 17 Stat. 13. Section was formerly classified to section 47 of Title 8, Aliens and Nationality.

Cross References

Conspiracy against rights of citizens, see section 241 of Title 18, Crimes and Criminal Procedure.
Conspiracy to commit offense or to defraud United States, see section 371 of Title 18.
Conspiracy to impede or injure officer, see section 372 of Title 18.
Deprivation of rights under color of law, see section 242 of Title 18.
Equal protection, see U.S.C.A.Const. Amend. 14, § 1.
Jurisdiction of district courts of civil rights actions, see section 1343 of Title 28, Judiciary and Judicial Procedure.
Obstruction of justice, see section 1501 et seq. of Title 18, Crimes and Criminal Procedure.
Privileges and immunities, see U.S.C.A.Const. Art. 4, § 2, cl. 1, and Amend. 14, § 1.
Universal male suffrage, see U.S.C.A.Const. Amend. 15.
Woman suffrage, see U.S.C.A.Const. Amend. 19.

Library References

Conspiracy ⇐7.5 to 7.7, 29.5, 29.6. C.J.S. Conspiracy §§ 10.2, 57(1, 2).

West's Federal Forms

Allegations of jurisdiction, see §§ 1057, 1060.
Complaint, see § 1850 Comment.

Notes of Decisions

section relating to a conspiracy to deprive others of their civil rights would be struck, since even a cursory review of the amended complaint showed that the word "conspiracy" was not even mentioned, let alone alleged with the requisite clarity. Schwab v. First Appalachian Ins. Co., D.C.Fla.1973, 58 F.R.D. 615.

Complaint alleging that defendant had interfered with attorney-client relationship existing between plaintiffs, that defendant had made very critical comments about attorney, that he had defamed plaintiffs' character and that the plaintiffs had been deprived of their civil rights by defendant's action in furtherance of a conspiracy with another person was properly stricken and the cause dismissed on grounds of scurrility. Skolnick v. Nudelman, 1968, 237 N.E.2d 804, 95 Ill.App.2d 293.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

Historical Note

Codification. R.S. § 1981 is from Act Apr. 20, 1871, c. 22, § 6, 17 Stat. 15. Section was formerly classified to section 48 of Title 8, Aliens and Nationality.

Federal Rules of Civil Procedure

Joinder of persons needed for just adjudication, see rule 19, Title 28, Judiciary and Judicial Procedure.
Misjoinder and non-joinder of parties, see rule 21.
One form of action, see rule 2.
Permissive joinder of parties, see rule 20.
Substitution of parties, see rule 25.

Library References

Civil Rights ⟸15, 16.
Torts ⟸6.
C.J.S. Civil Rights §§ 24, 197 to 200.
C.J.S. Torts §§ 13 et seq., 40 et seq.

West's Federal Forms

Allegations of jurisdiction, see §§ 1057, 1060.
Answer,
Failure to join party, see §§ 2040 to 2042.
Statute of limitations, see §§ 2109 to 2113.

Note 26

Mayor and police superintendent were not liable to Puerto Rican upon whom police used excessive force, where mayor and superintendent did not improperly train police and did not acquiesce in denial of Puerto Rican's civil rights. Arroyo v. Walsh, D.C.Conn.1970, 317 F.Supp. 869.

Municipal corporation was not a "person" within meaning of this section under which plaintiff sought to recover damages for alleged violation of constitutional rights. Symkowski v. Miller, D.C.Wis.1969, 294 F.Supp. 1214.

Municipalities are immune from suit for their employees' alleged civil rights violations. Vason v. Carrano, 1974, 330 A.2d 98, 31 Conn.Super. 328.

27. Directed verdict

Plaintiff's testimony that police officer used racial epithets was at most evidence of individual "discriminatory animus" on part of officer and thus, since there was no evidence from which jury could have found agreement or concert of action necessary to constitute a conspiracy, defendants' motion for directed verdict was properly granted as to plaintiff's claims that his arrest violated this section and section 1985 of this title. Armstrong v. Borie, D.C.Pa.1980, 494 F.Supp. 902.

28. Summary judgment

In action seeking to recover damages for violation of, inter alia, civil rights, genuine issue of material fact existed relating to the time when plaintiff administrators and executors discovered their claims under this section, precluding summary judgment in favor of defendant. Vason v. Carrano, 1974, 330 A.2d 98, 31 Conn. Super. 338.

§ 1987. Prosecution of violation of certain laws

The United States attorneys, marshals, and deputy marshals, the magistrates appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

R.S. § 1982; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; June 25, 1948, c. 646, § 1, 62 Stat. 909; Oct. 17, 1968, Pub.L. 90–578, Title IV, § 402 (b)(2), 82 Stat. 1118.

Historical Note

References in Text. Sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, referred to in text, which related to crimes against the elective franchise and civil rights of citizens, were all repealed by Acts Mar. 4, 1909, c. 321, § 341, 35 Stat. 1153, or Feb. 8, 1894, c. 25, § 1, 28 Stat. 37. However, the provisions of sections 5508, 5510, 5516, 5518, and 5524 to 5532 were substantially reenacted by Act Mar. 4, 1909, and were classified to sections 51, 52, 54 to 59, 246, 428, and 443 to 445 of former Title 18, Criminal Code and Criminal Procedure. Such sections of former Title 18 were repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and are now covered by sections 241, 242, 872, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and Criminal Procedure.

Codification. R.S. § 1982 is from Acts Apr. 9, 1866, c. 31, § 4, 14 Stat. 28; May 31, 1870, c. 114, § 9, 16 Stat. 142.

Section was formerly classified to section 49 of Title 8, Aliens and Nationality.

Change of Name. "Magistrates" was substituted for "commissioners" pursuant to Pub.L. 90–578, Title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys." See section 541 of Title 28, Judiciary and Judicial Proce-

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

R.S. § 722; Pub.L. 94–559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96–481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330.

Historical Note

References in Text. This Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES,", referred to in text, mean titles XIII, XXIV, and LXX of the Revised Statutes, which comprise sections 530 to 1093, 1977 to 1991, and 5323 to 5550, respectively. For complete classification of these titles to the Code, see Tables volume.

Title IX of Public Law 92–318, referred to in text, is Title IX of Pub.L. 92–318, June 23, 1972, 86 Stat. 373, popularly known as the Education Amendments of 1972, which is classified principally to chapter 38 (section 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Tables volume.

The United States Internal Revenue Code, referred to in text, is classified, generally to Title 26, Internal Revenue Code.

The Civil Rights Act of 1964, referred to in text, is Pub.L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (section 2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables volume.

Codification. R.S. § 722 is from Acts Apr. 9, 1866, c. 31, § 3, 14 Stat. 27; May 31, 1870, c. 114, § 18, 16 Stat. 144.

Section was formerly classified to section 729 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by Act June 25, 1948, c. 646, § 1, 62 Stat. 869.

1980 Amendment. Pub.L. 96–481 substituted "Pub.L. 92–318, or title VI of the Civil Rights Act of 1964" for "Pub.L. 92–318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964".

1976 Amendment. Pub.L. 94–559 authorized the court, in its discretion, to allow a reasonable attorney's fee as part of the prevailing party's costs.

(II) if such wage order rate is not less than $2.30 an hour, by $0.30 an hour or by such greater amount as may be so recommended by a special industry committee.

(C) In the case of any employee in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the applicable increases prescribed by subparagraph (A) or (B) shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

(3) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a)(1) of this section which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under subsection (a)(1) of this section shall apply to such employee.

(4) Each minimum wage rate prescribed by or under paragraph (2) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 208 of this title) fixing a higher minimum wage rate.

Prohibition of sex discrimination

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided,* That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this

section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Employees of employers providing contract services to United States

(e)(1) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b) of this section, except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

Employees in domestic service

(f) Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

Chapter 6

DISCRIMINATION PROHIBITED

Chapter 6 was added by Stats.1980, c. 992, § 4.

Article 1

UNLAWFUL PRACTICES, GENERALLY

Article 1 was added by Stats.1980, c. 992, § 4.

§ 12940. Employers, labor organizations, employment agencies and other persons; unlawful employment practice; exceptions

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person

or to refuse to select the person for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of marital status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership such person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training

program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified or assisted in any proceeding under this part.

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(g) For the governing board of a school district to violate Section 44066 or 87402 of the Education Code.

(Added by Stats.1980, c. 992, § 4.)

Historical Note

Former § 12940, added by Stats.1963, c. 1786, p. 3571, § 1, requiring the department to maintain records and other evidence of the state's title to all proprietary lands, was repealed by Stats.1965, c. 371, p. 1529, § 149. See, now, § 14730.

§ 12941. Age; unlawful employment practice by employers; exceptions

(a) It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee

(k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.
(Amended by Stats.1981, c. 899, p. —, § 1.)

1981 Amendment. Rewrote subd. (f)(1).

Library References
Civil Rights ⇐ 61 et seq.
C.J.S. Civil Rights § 203 et seq.

§ 12935. Functions, powers and duties

The commission shall have the following functions, powers and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply * * * all provisions of this part, * * * (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12980, and * * * (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To establish and maintain a principal office within the state.

(d) To meet and function at any place within the state.

(e) To appoint an executive secretary, and such attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create or provide financial or technical assistance to such advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, marital status, or sex, and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(h) With respect to findings and orders made pursuant to * * * this part, to establish a system of published opinions which shall serve as precedent in interpreting and applying * * * the provisions of this part * * *.

(i) To issue publications and results of inquiries and research which in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. Such publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.
(Amended by Stats.1981, c. 625, p. —, § 2.)

Library References
Civil Rights ⇐62.
C.J.S. Civil Rights § 205.

CHAPTER 6. DISCRIMINATION PROHIBITED

ARTICLE 1. UNLAWFUL PRACTICES, GENERALLY

§ 12940. Employers, labor organizations, employment agencies and other persons; unlawful employment practice; exceptions

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of marital status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam Era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership such person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position

the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified or assisted in any proceeding under this part.

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(g) For the governing board of a school district to violate Section 44066 or 87402 of the Education Code.

(Amended by Stats.1981, c. 11, p. —, § 1; Stats.1981, c. 270, p. —, § 1.)

1981 Amendments. Added (4) to subd. (a).

Section 2 of Stats.1981, c. 270, p. —, provided:

"No state funds shall be used to challenge the provisions of this act in the courts."

Index to Notes

---

1. In general

State tolling principles are applicable in cases brought under 42 U.S.C.A. § 1981 providing for equal rights of all parties, where such tolling is "not inconsistent" with constitution or federal law, but filing of administrative complaint with equal employment opportunity commission does not toll running of statute of limitations on cause of action brought under 42 U.S.C.A. § 1981 based on same facts, and different rule would not be applied to charge filed with California state administrative agency whose mission was processing of employment discrimination complaints though California recognized "equitable tolling" principle. London v. Coopers & Lybrand (C.A.1981) 644 F.2d 811.

Elevated blood pressure which did not impair employee's ability to work but which employer believed, upon medical advice, would expose him to greater than normal risk of disability or death was not a "physical handicap" within meaning of the Fair Employment Practice Act (Labor C. § 1410 et seq., repealed; see, now, § 12900 et seq.), and thus employer was not forbidden from disqualifying respective employee on that basis. American Nat. Ins. Co. v. State of Cal. Fair Employment Practice Commission (1981) 170 Cal.Rptr. 887, 114 C.A.3d 1008.

A district may bring an action under either Bus. & Prof. C. § 17204, which provides for action for injunctions against any person performing or proposing to perform an act of unfair competition, or § 17206, which authorizes the district attorney to prosecute actions for collection of civil penalties assessed for acts of unfair competition, for pattern or practice of conduct prescribed under Labor C. § 1420(a) [repealed], which provided that it was an unlawful employment practice for employer to discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such person, Labor C. § 1420.1 (repealed), which provided that it was an unlawful employment practice for an employer to discriminate against an individual over the age of 40 on the basis of age, or Labor C. § 1420.35 (repealed), which provided that it was an unlawful employment practice to discriminate against a female employee because of pregnancy, childbirth or related medical condition. 63 Ops.Atty.Gen. 457, 5-29-80.

2. Racial discrimination

In action against city by restaurants which leased space from city, seeking, inter alia, a declaration that city was violating federal and state constitutions and civil rights law by imposing affirmative action racial quotas on restaurants, no substantial evidence supported trial court's finding that restaurants were being required to enter into a new affirmative action agreement; rather, the evidence simply indicated that city wished to negotiate, not impose, affirmative action agreement upon restaurants. Alioto's Fish Co., Ltd. v. Human Rights Commission of San Francisco (1981) 174 Cal.Rptr. 763, 120 C.A.3d 594.

Trial court was justified in concluding that requirement of investigation and determination of validity of complaints of racial and sexual discrimination in employment had been met pursuant to Labor C. § 1422 (repealed; see, now, Gov.C. § 12900 et seq.) governing complaint alleging unlawful employment practice. Motors Ins. Corp. v. Division of Fair Employment Practices (1981) 173 Cal.Rptr. 332, 118 C.A.3d 209.

Insofar as segments of judgment entered in action brought by black minority persons and black fire fighters association of city against city as public employer for alleged racial discrimination in hiring nullified fire department's written examinations, physical agility tests, height and weight requirements, and time in grade requirements and seniority weighting in respect of promotions and were based upon need to ameliorate the effect of past discriminatory practices, such provisions of judgment were invalid as being unlawfully discriminatory against Caucasian persons on account of their race alone. Hull v. Cason (1981) 171 Cal.Rptr. 14, 114 C.A.3d 344.

3. Marital status

The district court abstained from deciding question whether police officer's threatened termination because of his marriage to police department dispatcher violated Labor C. § 1420 (repealed; see, now, this section) making it an unlawful employment practice for employer, because of marital status of any person, to discharge such person from employment as no state court had construed applicable statutory provisions, and state law claim of violation of Labor C. § 1420 (repealed; see, now, this section) was potentially dispositive of case. Stearns v. Estes (D.C.1980) 504 F.Supp. 998.

3.5 Handicapped persons

Since employer's evidence, at best, showed a possibility that employee might endanger his health sometime in the future because of handicap to lower back, conjecture did not justify refusal to employ handicapped employee as truck driver, in light

of strong policy for providing equal employment opportunity. Sterling Transit Co., Inc. v. Fair Employment Practice Commission of State of Cal. (1981) 175 Cal. Rptr. 548, 121 C.A.3d 791.

4. Initiation of discrimination proceedings
Employment discrimination plaintiff's contacts with California fair employment practices commission sufficiently "initially instituted" employment discrimination proceedings with the commission to extend time for filing with equal employment opportunity commission from 180 to 300 days, even though plaintiff did not file formal complaint with the California agency, where she sent letter to the agency alleging that she had been discharged on account of her sex, she filled out agency "pre-complaint form" and sent it to the agency, and the agency declined to act on her claim. Saulsbury v. Wismer and Becker, Inc. (C.A.1980) 644 F.2d 1251.

§ 12941. Age; unlawful employment practice by employers; exceptions

(a) It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to require any changes in any bona fide retirement or pension programs or existing collective-bargaining agreements during the life of the contract, or until January 1, 1980, whichever occurs first, nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may make or have made to determine fitness for the job or position sought or held.

Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, and trade schools shall not, in and of themselves, constitute a violation of this section.

(b) This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred. * * *
(Amended by Stats.1981, c. 625, p. —, § 3.)

1981 Amendment. Deleted subd. (c).

Library References
Civil Rights ⇨ 9.10.
C.J.S. Civil Rights § 59 et seq.

1. In general
Music professor did not possess fundamental right to pursue his chosen profession; thus, application of a strict scrutiny standard of equal protection review to examination of exception under Labor C. § 1420.15 (repealed; see, now, § 12942) of class of tenured college professors from protection under age discrimination statute [Labor C. § 1420.1 (repealed; see, now, this section)] was not warranted. Kubik v. Scripps College (1981) 173 Cal.Rptr. 539, 118 C.A.3d 544.

A district may bring an action under either Bus. & Prof. C. § 17204, which provides for action for injunctions against any person performing or proposing to perform an act of unfair competition, or § 17206, which authorizes the district attorney to prosecute actions for collection of civil penalties assessed for acts of unfair competition, for pattern or practice of conduct prescribed under Labor C. § 1420(a) [repealed], which provided that it was an unlawful employment practice for employer to discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such person, Labor C. § 1420.1 (repealed), which provided that it was an unlawful employment practice for an employer to discriminate against an individual over the age of 40 on the basis of age, or Labor C. § 1420.35 (repealed), which provided that it was an unlawful employment practice to discriminate against a female employee because of pregnancy, childbirth or related medical condition. 63 Ops.Atty.Gen. 457, 5-29-80.

§ 12942. Continuation of employment beyond normal retirement date; effect on pension or retirement plans; compulsory retirement

Every employer in this state, except a public agency, shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his employment beyond the normal retirement date contained in any private pension or retirement plan.

Such employment shall continue so long as the employee demonstrates his ability to perform the functions of the job adequately and the employer is satisfied with the quality of work performed.

This section shall not be construed to require any change in funding, benefit levels, or formulas of any existing retirement plan, or to require any employer to increase such employer's payments for the provision of insurance benefits contained in any existing employee benefit or insurance plan, by reason of such employee's continuation of employment beyond the normal retirement date, or to re-

Asterisks * * * indicate deletions by amendment

§ 1197.5 Equal wage rates for all employees; variations; enforcement

(a) No employer shall pay any individual in his employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for the same quantity and quality of the same classification of work; provided, that nothing herein shall prohibit a variation of rates of pay for male and female employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, factor or factors other than sex, when exercised in good faith.

(b) Any employer who violates subdivision (a) of this section is liable to the employee affected in the amount of the wages of which such employee is deprived by reason of such violation.

(c) The provisions of this section shall be administered and enforced by the Division of Industrial Welfare. After receipt of a complaint alleging a violation of this chapter, made by an employee, authorized representatives of the division shall have authority to inspect payrolls and other employment records, to compare character of work and operations in which employees are engaged, to question such persons and to obtain such other information as is reasonably necessary in the enforcement of this section. If the division finds that an employer has violated Section 1197.5, it may supervise the payment of any sums found to be due and unpaid to employees under subdivision (a) of this section. Acceptance of payment of sum or sums made by an employer and approved by the division shall constitute a waiver on the part of the employee of his cause of action under subdivision (g) of this section.

(d) Every employer of male and female employees shall maintain records of the wages and wage rates, job classifications and other terms and conditions of employment of the persons employed by him. All such records shall be kept on file for a period of two years.

(e) Any affected employee may register with the Division of Industrial Welfare a complaint that the wages paid to him are less than the wages to which he is entitled under subdivision (a) of this section. The division shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to such employees.

(f) The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action

to recover unpaid wages under subdivision (a) of this section, and in addition to such wages shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his cause of action under subdivision (g) unless such action is dismissed without prejudice by the department or the division.

(g) Any employee receiving less than the wage to which he is entitled under this section may recover in a civil action the balance of such wages, together with the costs of suit, notwithstanding any agreement to work for a lesser wage.

(h) The burden of proof in any civil action shall be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors.

(i) A civil action to recover wages under subdivision (a) of this section may be commenced no later than two years after the cause of action occurs, if the employee does not have knowledge of such violation, and not later than 180 days after the cause of action occurs if the employee has knowledge of such violation.

(Added by Stats.1949, c. 804, p. 1541, § 1. Amended by Stats.1957, c. 2384, p. 4130, § 1; Stats.1965, c. 825, p. 2417, § 1; Stats.1968, c. 325, p. 705, § 1.)

Historical Note

As originally added in 1949, this section read as follows:

"No employer shall pay any female in his employ at wage rates less than the rates paid to male employees in the same establishment for the same quantity and quality of the same classification of work; provided that nothing herein shall prohibit a variation of rates of pay for male and female employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, interruptions of work for rest periods or restrictions or prohibitions on lifting or moving objects in excess of specified weight, whether or not required by any statute or regulation or order of any board or commission, whether federal, state or local, authorized to issue the same, or other reasonable differentiation, factor or factors other than sex, when in good faith based upon such differences, factor or factors.

"A variation in rates of pay as between the sexes is not prohibited where the variation is provided by contract between the employer and a bona fide labor organization recognized as a bargaining agent of the employees.

"Any action based upon or arising under this section shall be instituted within six months after the date of the alleged violation, but in no event shall any employer be liable for any pay due under this section for more than thirty days prior to receipt by the employer of written notice of claim thereof from the employee.

"The burden of proof shall be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors."

The 1957 amendment designated the first paragraph subdivision (a) and rewrote it to read as it now appears except for the changes made by the 1968 amendment; deleted the second paragraph; designated the third paragraph as a subdivision (f); designated the fourth paragraph as a subdivision (g) which is the present subdivision (h); and added subdivisions (b), (c), (d) and (e) which are present subdivisions (b), (e) and (g).

The 1965 amendment added the present subdivisions (c) and (d); designated, as subdivision (e), former subdivisions (c) and (d); inserted the words "woman" and "subdivision (a) of" in subdivision (e); added the present subdivision (f); designated, as subdivision (g), former subdivision (e); designated, as subdivision (h), former subdivision (g); inserted the words "in any civil action" in subdivision (h); and added subdivision (i) in lieu of former subdivision (f) which was the third paragraph of the section as originally added.

The 1968 amendment modified the section so as to apply to wage discrimination because of the sex of the individual rather than wage discrimination against females.

Cross References

Burden of producing evidence defined, see Evidence Code § 110.
Computation of time, see Government Code § 6800.
Division of industrial welfare, see § 70 et seq.
Payment of wages, see § 200 et seq.

Law Review Commentaries

Federal wage-hour law, 1967 review. Paul Grossman, (1967) 43 Los Angeles Bar Bull. 51.

Library References

Constitutional Law ⇐224.
Labor Relations ⇐1094, 1133.
C.J.S. Constitutional Law § 544.
C.J.S. Labor Relations § 1021.
C.J.S. Master and Servant § 151(5).

§ 1198. Maximum hours of work; standard conditions of labor; employment in violation

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for women and minors. The employment of any woman or minor for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

(Stats.1937, c. 90, p. 217, § 1198.)

Derivation: Stats.1913, c. 324, p. 632, § 11a, added Stats.1927, c. 248, p. 440, § 3.

Cross References

Hours for minors, see §§ 1390 to 1398.
Hours for women, see §§ 1350 to 1356.
Maximum hours fixed by order, see §§ 1182 to 1185, 1204.
Statutory regulations for minor employees, see §§ 1290 to 1311.
Statutory regulations regarding female employees, see §§ 1250 to 1256.

Law Review Commentaries

Federal wage-hour law, 1967 review. Paul Grossman, (1967) 43 Los Angeles Bar Bull. 51.

Library References

Labor Relations ⇐1382, 1383.
C.J.S. Master and Servant § 16.

§ 1195.5 Determination of computation and payment of wages in excess of minimum; examination of records; enforcement of payment of unpaid sums

The Division of * * * Labor Standards Enforcement shall determine, upon request, whether the wages of employees, which exceed the minimum wages fixed by the commission, have been correctly computed and paid. For this purpose, the division may examine the books, reports, contracts, payrolls and other documents of the employer relative to the employment of employees. The division shall enforce the payment of any sums found, upon examination, to be due and unpaid to the employees.
(Amended by Stats.1972, c. 1122, p. 2156, § 16; Stats.1976, c. 1184, p. 5288, § 1.)

§§ 1196, 1196.1 Repealed by Stats.1978, c. 1250, p. 4066, §§ 4, 5
See, now, §§ 98.6, 98.7.

§ 1197. Payment of less than minimum wage

The minimum wage for * * * employees fixed by the commission is the minimum wage to be paid to * * * employees, and the payment of a less wage than the minimum so fixed is unlawful.
(Amended by Stats.1972, c. 1122, p. 2156, § 17.)

Law Review Commentaries
Industrial Welfare Commission—authority to all employees. (1974) 5 Pacific L.J. 407.

§ 1197.5 Equal wage rates for all employees; variations; enforcement

(a) No employer shall pay any individual in * * * the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for * * * equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor * * * other than sex * * *.

(b) Any employer who violates subdivision (a) * * * is liable to the employee affected in the amount of the wages, and interest thereon, of which such employee is deprived by reason of such violation.

(c) The provisions of this section shall be administered and enforced by the Division of * * * Labor Standards Enforcement. * * * If the division finds that an employer has violated * * * this section, it may supervise the payment of any sums found to be due and unpaid to employees under subdivision (a) * * *. Acceptance of payment of sum or sums made by an employer and approved by the division shall constitute a waiver on the part of the employee of * * * the employee's cause of action under subdivision (g) * * *.

(d) Every employer * * * shall maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by * * * such employer. All such records shall be kept on file for a period of two years.

(e) Any * * * employee may * * * file a complaint with the division * * * that the wages paid * * * are less than the wages to which * * * the employee is entitled under subdivision (a) * * *. The name of any employee who submits to the division a complaint regarding an alleged violation of subdivision (a) shall be kept confidential by the division until validity of the complaint is established by the division, or unless such confidentiality must be abridged by the division in order to investigate the complaint. The name of the complaining

Asterisks * * * indicate deletions by amendment

employee shall remain confidential if the complaint is withdrawn before such confidentiality is abridged by the division. The division shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to such employees.

(f) The department or division may * * * commence and prosecute, unless otherwise requested by the employee or affected group of employees, a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages under subdivision (a) * * *, and in addition to such wages shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of * * * the employee's cause of action under subdivision (g) unless such action is dismissed without prejudice by the department or the division, except that such employee may intervene in such suit or may initiate independent action if such suit has not been determined within 180 days from the date of the filing of the complaint.

(g) Any employee receiving less than the wage to which * * * the employee is entitled under this section may recover in a civil action the balance of such wages, including interest thereon, together with the costs of the suit and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.

(h) * * * A civil action to recover wages under subdivision (a) * * * may be commenced no later than two years after the cause of action occurs * * *. (Amended by Stats.1976, c. 1184, p. 5288, § 3.)

Law Review Commentaries

Employment discrimination against women lawyers. Joan E. Baker (1973) 59 A.B.A.J. 1029.

Union liability for sex discrimination. (1971) 23 Hast.L.J. 295.

Index to Notes

1. In general

In action under equal employment opportunity provisions of Civil Rights Act, no "accommodation" was shown, within section defining "religion" as including all aspects of religious observance and practice as well as belief unless employer demonstrates that he is unable to reasonably "accommodate" without undue hardship on conduct of employer's business, and accommodation also would have run afoul of § 200 et seq. Yott v. North Am. Rockwell Corp. (D.C.1977) 428 F.Supp. 763, affirmed 602 F.2d 904, certiorari denied 100 S.Ct. 1316, 445 U.S. 928, 63 L.Ed.2d 761.

Discrimination in pay based on sex, which is persisted in after employee makes appropriate protest and request for equalization and after reasonable time and opportunity to eliminate discrimination, affords employee "good cause" to quit employment, for purposes of application of provisions of Un.Ins.C. § 1256; existence of claim by employee based on past discrimination which has ceased should not afford good cause to leave employment voluntarily since methods are available for enforcing such claim by legal process. Morrison v. California Unemployment Ins. Appeals Bd. (1976) 134 Cal.Rptr. 916, 65 C.A.3d 245.

Un.Ins.C. § 1256 disqualifying for unemployment compensation benefits claimants who have left their most recent work voluntarily without good cause must be considered with relation to equal pay provisions of § 1197.5 and Equal Pay Act of 1963 [29 U.S.C.A. 206(d)] and sex discrimination in employment provisions of this section and § 1411 et seq. and Title VII of Civil Rights Act of 1964 [42 U.S.C.A. 2000e et seq.]. Id.

Complaint alleging that employer paid more compensation to its male salesmen who were no more qualified than plaintiff, who was woman employee, for substantially same work performed by plaintiff stated cause of action under this section even though complaint patently sought to recover sums far in excess of those for which employee was entitled to bring suit under said section of Labor Code. Bass v. Great Western Sav. and Loan Ass'n (1976) 130 Cal.Rptr. 123, 58 C.A.3d 770.

2. Choice of remedies

This section does not require aggrieved party to exhaust administrative remedies prior to bringing suit. Bass v. Great Western Sav. and Loan Ass'n (1976) 130 Cal.Rptr. 123, 58 C.A.3d 770.

3. Limitation of actions

Triable issue of fact as to whether employee met requirements for invocation of equitable tolling doctrine precluded trial court's summary judgment limiting employee's recovery of back wages to the two-year period prior to commencement of the action. Jones v. Tracy School Dist. (1980) 165 Cal.Rptr. 100, 611 P.2d 441, 27 C.3d 99.

4. Attorney's fees

Where employee recovered damages from employer due to employer's violation of this section, prohibiting wage discrimination on the basis of sex, trial court lacked discretion to disallow award of attorney fees to employee. Jones v. Tracy School Dist. (App.1980) 165 Cal.Rptr. 100, 611 P.2d 441, 27 C.3d 99.

Cross References

Aid to the blind, see Welfare and Institutions Code § 12500 et seq.

Library References

Officers and Public Employees ⇐18. C.J.S. Officers and Public Employees § 11 et seq.

§ 19702. Types of prohibited discrimination; physical handicap defined

(a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, or physical handicap unless it can be shown that the particular handicap is job related.

(b) As used in this section, "physical handicap" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(c) As used in this section, "physical handicap" shall not include obesity or any other health impairment caused by such person's obesity.

(Added by Stats.1945, c. 123, p. 571, § 1. Amended by Stats.1963, c. 1253, p. 2776, § 1; Stats.1976, c. 1436, p. 6409, § 10; Stats.1977, c. 573, p. 1817, § 1.)

Historical Note

The 1963 amendment inserted "religious creed, color, national origin, ancestry".

The 1976 amendment deleted an exception which provided that "positions which in the opinion of the appointing power and the board require the services of a specific sex may be reserved to that sex".

The 1977 amendment added the provisions relating to physical handicap.

Derivation: Stats.1937, c. 753, p. 2110, § 201.

Cross References

Employment discrimination on racial grounds prohibited upon public works, see Labor Code §§ 1735, 1777.6.
Equal privileges and immunities, see Const. Art. 1, § 21.
Inalienable rights, see Const. Art. 1, § 1.
Notations on race to be omitted, see § 19704.
Opportunity to seek, obtain and hold employment as civil right, see Labor Code § 1412.
Unruh Civil Rights Act, see Civil Code § 51.
Wage discrimination against females prohibited, see Labor Code § 1197.5.

Law Review Commentaries

Affirmative action plans: the implications of Bakke. (1977) 10 U.C.D. Law Rev. 99.

Civil actions for damages arising out of violations of civil rights. Nathaniel S. Colley (1965) Hast.L.J. 189.

Layoff and equal employment; retroactive seniority as a remedy under Title VII. (1977) 10 U.C.D. Law Rev. 115.

Library References

Officers and Public Employees ⇐18, 20, 24.

C.J.S. Officers and Public Employees §§ 15, 16, 20, 25.

Notes of Decisions

I. In general

Where male and female applicants for promotion to position of parole agent II were equally qualified and where at the time of appointment, male and female applicants were available for promotion under the rule of the "three highest ranks," male applicant was denied no right under state or federal fair employment or civil rights laws relating to sex discrimination when female applicant was selected for promotion in an effort to further goals of affirmative action plan which the agency had adopted pursuant to the authority of this section and §§ 19057.1, 19702.1, 19702.5, and 19705. Dawn v. State Personnel Bd. (1979) 154 Cal.Rptr. 186, 91 C.A.3d 588.

§ 19702.1. Hiring and promotion; conformance with Federal Civil Rights Act of 1964

Hiring and promotion pursuant to this part shall conform to the Federal Civil Rights Act of 1964 [1].

(Added by Stats.1972, c. 915, p. 1636, § 1.)

[1] 42 U.S.C.A. § 2000e et seq.

Historical Note

Section 5 of Stats.1972, c. 915, p. 1636, provides: "The Legislature finds and declares that fair and nondiscriminatory hiring practices by cities and counties is a matter of statewide interest and concern."

Law Review Commentaries

Hiring practices: legislative review. (1973) 4 Pacific L.J. 629.

Library References

Civil Rights ⇐9.10 et seq.

C.J.S. Civil Rights § 59 et seq.

Notes of Decisions

I. In general

California state personnel board, unlike state fair employment practice commission, has authority to investigate complaints of retaliation under provisions of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-3). Greenlow v. California Dept. of Benefit Payments (D.C.1976) 413 F. Supp. 420.

Where male and female applicants for promotion to position of parole agent II were equally qualified and where, at the time of appointment, male and female applicants were available for promotion under the rule of the "three highest ranks," male applicant was denied no right under state or federal fair employment or civil rights laws relating to sex discrimination when female applicant was selected for promotion in an effort to further goals of affirmative action plan which the agency had adopted pursuant to the authority of this section and §§ 19057.1, 19702, 19702.5 and 19705. Dawn v. State Personnel Bd. (1979) 154 Cal.Rptr. 186, 91 C.A.3d 588.

§ 19702.2. Non job-related educational prerequisites or testing or evaluation methods; prohibition

Educational prerequisites or testing or evaluation methods which are not job-related shall not be employed as part of hiring practices

CHAPTER 10. PROHIBITIONS AND OFFENSES

§ 19683. Use or threat to use official authority to discourage report of violation of law

No state officer or employee nor any person whatsoever shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce or discriminate against any other state officer or employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or the Joint Legislative Audit Committee pursuant to Article 3 (commencing with Section 10540) of Chapter 4 of Part 2 of Division 2, or any other appropriate authority any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto. Any person guilty of such an act may be liable in an action for civil damages brought against him by the offended party. Notwithstanding the * * * provisions of Section 19582, a violation of this section shall not be a misdemeanor. * * *
(Amended by Stats.1981, c. 1168, p. —, § 12.)

1981 Amendment. In the first sentence, after "Attorney General" inserted the language beginning ", or the Joint Legislative Audit Committee" and ending "Division 2,"; in the last sentence, substituted "provisions" for "provision"; and deleted a second paragraph which read: "This section shall become operative on January 1, 1982."

§ 19702. Types of prohibited discrimination; physical handicap defined

Law Review Commentaries
Hiring goals, California state government and Title VII: Is this numbers game legal? (1977) 8 Pacific L.J. 49.

CHAPTER 11. MILITARY SERVICE

§ 19774. Reserve military units and national guard; scheduled reserve drill and other obligations

(a) Employee members of reserve military units and the National Guard required to attend scheduled reserve drill periods * * * or perform other inactive duty reserve obligations shall be granted military leave of absence without pay as provided by federal law.

(b) Notwithstanding subdivision (a) or any other provision of law, employee members may, at their option, elect to use vacation time or accumulated compensatory time off to attend scheduled reserve drill periods or perform other inactive duty reserve obligations.

(Amended by Stats.1981, c. 616, p. —, § 1.)

1981 Legislation.
Section 6 of Stats.1981, c. 616, p. —, provided:
"It is the intent of the Legislature in enacting this act to comply with the provisions of federal law relating to leaves of absence for public employees for purposes of military duty set forth in Section 2024 of Title 38 of the United States Code, as interpreted by the Attorney General in Opinions of the Attorney General No. 80-302 of June 10, 1980."

1. In general
A member of the national guard who is required to attend scheduled reserved drill periods during a time when he or she ordinarily would be employed in a regular work shift at a non-military job is entitled to an unpaid leave of absence from that place of employment to attend such drill. 63 Ops. Atty.Gen. 483, 6-10-80.

§ 19774.5 Repealed by Stats.1981, c. 616, p. —, § 2

Asterisks * * * indicate deletions by amendment

Article 4.5

UPWARD MOBILITY

Sec.

Article 4.5 was added by Stats.1977, c. 716, p. 2297, § 1.

§ 19400. Legislative intent

It is the intent of this article to aid the implementation of affirmative action programs in state agencies and departments by creating an effective upward mobility program for state employees concentrated in low-paying occupations. An upward mobility program is one in which career opportunities are developed, published and assistance provided which will allow employees in low-paying occupations to develop and advance to their highest potential. Because of the large percentage of women and minorities concentrated in these occupations such a program will help the state meet its affirmative action goals.

(Added by Stats.1977, c. 716, p. 2297, § 1.)

Historical Note

Former § 19400, added by Stats.1945, c. 1284, p. 2412, § 1, related to civil service employees unable to perform duties after return from military service, was repealed by Stats.1971, c. 446, p. 920, § 4. See, now, § 19786.

Library References

Officers and Public Employees ⇐11.7. C.J.S. Officers and Public Employees §§ 92 to 98.

§ 19401. Establishment of program

All departments and agencies of state government shall establish an effective program of upward mobility for occupational groups, which shall include, but not be limited to, clerical, supervisory clerical, semiskilled, crafts and trades, supervisory crafts and trades, custodial, supervisory custodial, laborers, and career opportunities development classes, as defined by the State Personnel Board.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19401, added by Stats.1945, c. 1306, p. 2455, § 2, amended by Stats.1947, c. 403, p. 1012, § 1; Stats.1949, c. 808, p. 1551, § 21; Stats.1955, c. 1534, p. 2813, § 4, relating to entry of an employee into military service pending action on certification to a higher position, was repealed by Stats.1971, c. 446, p. 920, § 4. See, now, § 19775.7.

§ 19401.1. Repealed by Stats.1971, c. 446, p. 920, § 4

Historical Note

The repealed section, added by Stats. 1949, c. 808, p. 1551, § 22, amended by Stats.1955, c. 1534, p. 2813, § 5; Stats. 1957, c. 920, p. 2128, § 3, related to the taking of the uncompleted portion of an open or promotional examination after return from military service. See, now, § 19775.8.

§ 19402. Annual goals

All upward mobility programs shall include annual goals and timetables which include the number of employees expected to progress from clerical and subprofessional positions to entry-level technical, professional, and administrative positions, and the time frame within which this progress shall occur. The State Personnel Board shall be responsible for approving each department's annual upward mobility goals and timetables.

Any department or agency of state government which determines that it will be unable to achieve such goals and timetables may request the State Personnel Board for a reduction in the goals. If the State Personnel Board determines that the department or agency has not made a good faith effort to achieve such goals and timetables, the board shall hold public hearings to determine the reasons for such deficiency, and to establish a program to overcome these deficiencies.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19402, added by Stats.1946, 1st Ex.Sess., c. 86, p. 117, § 1, amended by Stats.1947, c. 729, p. 1782, § 1; Stats. 1949, c. 808, p. 1552, § 23, relating to eligibility for and duration of educational leaves of absence for state civil service employees, was repealed by Stats.1971, c. 446, p. 920, § 4.

§ 19403. Bridging career ladders

The State Personnel Board shall, in cooperation with departments, establish bridging career ladders to provide upward mobility from subprofessional jobs to professional and managerial jobs on an ongoing basis.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19403, added by Stats.1947, c. 806, p. 1908, § 1, amended by Stats.1949, c. 808, p. 1552, § 24; Stats.1955, c. 1534, p. 2813, § 6, relating to regular civil service examinations held during a period of military leave and the taking of identical examinations upon an employee's release from military service, was repealed by Stats.1971, c. 446, p. 920, § 4. See, now, § 19775.9.

Library References

States ⇐53.

C.J.S. States §§ 81 to 83, 86, 93 to 98, 101, 136.

§ 19404. Counseling, training and job restructuring

In developing their upward mobility programs, departments shall endeavor to provide, to the greatest extent possible, the following opportunities for employees who meet criteria established by the department, demonstrate the aptitude or potential for advancement and wish to participate in:

(a) Career counseling utilizing individual professional, administrative, and technical employees who can serve as career models, and a course in group career counseling. Each employee, who wishes to participate in an upward mobility program, should be required to develop a career development plan. Career counseling should be provided for employees.

(b) Appropriate academic counseling.

(c) Training opportunities such as college programs related to special training programs. This training may include release time at reduced cost or no cost to the employee, and may be offered in geographically remote areas through cooperative arrangements with other departments and colleges.

(d) Training and development assignments.

(e) On-the-job training.

(f) Job restructuring, including the development of career ladders and lattices, and modification of requirements where employment barriers exist.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19404, formerly § 19398, added by Stats.1945, c. 68, p. 380, § 2, amended by Stats.1946, 1st Ex.Sess., c. 39, p. 62, § 1, renumbered § 19404 and amended by Stats.1947, c. 405, p. 1015, § 1; Stats.1949, c. 808, p. 1553, § 25; Stats.1955, c. 1534, p. 2814, § 7, relating to promotional examinations held during a period of military leave and the taking of identical examinations upon an employee's release from military service, was repealed by Stats.1971, c. 446, p. 920, § 4. See, now, § 19776.

Library References

States ⇐67. C.J.S. States §§ 120, 121, 136 to 138, 140.

§ 19405. Report

The State Personnel Board shall annually submit a report to the Legislature describing the performance of each department and agency in state government in terms of the number of employees served by the various programs required by this article, and the number of employees employed in higher positions.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19405, added by Stats.1955, c. 1534, p. 2815, § 8, amended by Stats.1957, c. 920, p. 2129, § 4; Stats.1967, c. 627, p. 1974, § 1; Stats.1969, c. 912, p. 1816, § 1, relating to voluntary extension of military enlistment by state civil service employees, was repealed by Stats.1971, c. 446, p. 920, § 4. See, now, § 19781.

Library References

States ⇐67. C.J.S. States §§ 120, 121, 136 to 138, 140.

§ 19406. Guidelines

The State Personnel Board shall prepare written guidelines for implementation of the upward mobility program described in this article within six months from the effective date of this article. The board shall involve representatives from a cross section of groups and organizations representing the target groups of state employees both in the initial discussion and in the subsequent preparation of such guidelines.

(Added by Stats.1977, c. 716, p. 2279, § 1.)

Historical Note

Former § 19406, added by Stats.1959, c. 438, p. 2375, § 1, amended by Stats.1965, c. 292, p. 1290, § 1; Stats.1967, c. 273, p. 1432, § 1, relating to reinstatement of civil service employees ordered into military training under the Reserve Forces Act of 1955, was repealed by Stats.1971, c. 446, p. 920, § 4.

Article 5

TRAINING

Sec.

Article 5, added as Article 6, Training, by Stats.1957, c. 1965, p. 3507, § 1, was renumbered Article 5 and amended by Stats.1971, c. 446, p. 920, § 5.

Former Article 5, Military and Defense Service, added by Stats.1945, c. 123, p. 562, § 1, consisting of §§ 13390 to 13406, was repealed by Stats.1971, c. 446, p. 920, § 5.

§ 19450. Formulation of plans by board; cooperation with appointing powers and supervisory officials; conflict of section with memorandum of understanding

(a) The board shall devise plans for and cooperate with appointing powers and other supervising officials in the conduct of employee training programs so that the quality of service rendered by persons in the state civil service may be continually improved.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1957, c. 1965, p. 3507, § 1. Amended by Stats.1978, c. 776, p. 2461, § 103.)

Historical Note

The 1978 amendment inserted subdivision designation "(a)" and added subd. (b).

Derivation: Former § 18700, added by Stats.1945, c. 123, p. 546, § 1, amended by Stats.1949, c. 1141, p. 2040, § 2.

Stats.1937, c. 753, p. 2100, § 140.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Library References

Officers and Public Employees ⇐107.

C.J.S. Officers and Public Employees §§ 193 to 196, 281.

§ 19451. Prescription of conditions; conflict of section with memorandum of understanding

For the purpose of meeting the needs of the state service for continuing employee educational development and the upgrading of employee skills, the board may prescribe: (a) conditions under which employees may be assigned to take out-service training; and (b) conditions under which employees may be reimbursed for tuition fees and other necessary expenses in connection with out-service training authorized by the appointing power to meet the needs of the service. The conditions prescribed by the board shall include but not be limited to the requirements that such training shall be of direct value to the state, be relevant to the employee's career development in state service, and be limited to providing knowledges or skills that cannot be provided through available in-service training. The board shall further prescribe the conditions under which an employee may be required to reimburse the state for the costs of such training in the event he fails to remain in state service for a reasonable time after receiving the training. The board shall report annually to the Governor and to each house of the Legislature concerning activities under this section.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1957, c. 1965, p. 3507, § 1. Amended by Stats.1971, c. 1350, p. 2669, § 2; Stats.1978, c. 776, p. 2461, § 104.)

Historical Note

The 1971 amendment substituted "continuing employee educational development and the upgrading of employee skills" for "scientific, technical, professional and management skills" in the first sentence; substituted "out-service training" for "specialized training" in the first sentence; and substituted "career development" for "duties" in the second sentence.

The 1978 amendment added the last paragraph.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Administrative Code References

Training, see 2 Cal.Adm.Code 531 et seq.

Library References

States ⇐62, 64.1(1). C.J.S. States §§ 47, 104 to 107, 112, 114, 115.

§ 19452. Programs for employees whose positions are about to be eliminated by automation, technological, or management-initiated changes; cooperation with other officials; conflict of section with memorandum of understanding

(a) To such extent as practicable and within available resources for this purpose, the appointing power shall arrange for such counseling and training of employees as may be reasonably needed to prepare them for placement in other state civil service positions when their positions have been or are about to be changed substantially or eliminated by automation, technological changes, or other management-initiated changes and the board shall devise plans for and cooperate with appointing powers and other supervising officials in the administration of counseling, training, and placement programs for employees so affected.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1965, c. 1346, p. 3233, § 1. Amended by Stats.1969, c. 1199, p. 2334, § 1; Stats.1978, c. 776, p. 2462, § 105.)

Historical Note

The 1969 amendment rewrote the section which previously read:

"The board shall devise plans for and cooperate with appointing powers and other supervising officials in the administration of training programs for employees whose positions have been or are about to be eliminated by automation or technological changes to prepare and qualify such employees for other positions in the state civil service."

The 1978 amendment inserted subdivision designation "(a)" and added subd. (b).

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Library References

Officers and Public Employees ⇐107.
States ⇐67, 72.
C.J.S. Officers and Public Employees §§ 103 et seq., 193 to 196, 281.
C.J.S. States §§ 120, 121, 123, 136 to 138, 140.

§ 19455. Rehabilitation of disabled state employees; referrals; training programs; conflict of section with memorandum of understanding

(a) The board and the Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of disabled state employees who can be benefited by rehabilitation services and might be retrained for other appropriate positions within the state service. The Department of Rehabilitation shall cooperate in devising training programs for the disabled employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1968, c. 1422, p. 2817, § 1. Amended by Stats.1978, c. 776, p. 2462, § 106.)

Historical Note

The 1978 amendment added the subdivision designation "(a)" and added subd. (b).

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Notes of Decisions

I. In general

State employee, who never argued that he was sufficiently disabled as result of heart attack to qualify for rehabilitation and retraining under this section and whose position was abolished for economy reasons prior to effective date of § 19555 providing for placement in other civil service positions and prior to effective date of 1969 amendment of § 19452 which pertained, at time of administrative proceedings involved, only to automation or technological changes, was not deprived of due process by alleged deprivation of right to retraining. Peradotto v. State Personnel Bd. (1972) 101 Cal.Rptr. 595, 25 C.A.3d 30.

Article 6

UNIFORMS, WORK CLOTHES, SAFETY EQUIPMENT, AND POLICE PROTECTIVE EQUIPMENT

Sec.

Article 6 was added by Stats.1972, c. 908, p. 1612, § 1, eff. Aug. 15, 1972, operative July 1, 1972.

The heading of former Article 6, Training, was renumbered Article 5 and amended by Stats.1971, c. 446, p. 920, § 5.

Cross References

Memorandum of understanding involving higher education employers and employees to control over the provisions of this article if in conflict, see § 3572.5.

§ 19460. Definitions; conflict of section with memorandum of understanding

As used in this article:

(a) "Board" means the State Board of Control.

(b) "Uniform" means outer garments, excluding shoes, which are required to be worn exclusively while carrying out the duties and

responsibilities of the position and which are different from the design or fashion of the general population. This definition includes items that serve to identify the person, agency, functions performed, rank, or time in service.

(c) "Work clothes" means attire that is worn over, or in place of, regular clothing and is necessary to protect the employee's clothing from damage or stains which would be present in the normal performance of his duties, for example, aprons, lab smocks, shop coats, or coveralls; or is necessary for the required sanitary conditions, for example, agriculture inspectors, surgery personnel, or food service.

(d) "Safety equipment" means equipment or attire worn over, in place of, or in addition to, regular clothing, which is necessary to protect the employees' health and welfare, for example, helmets, goggles, safety harness, and fireman "turnout gear."

(e) "Police protective equipment" means equipment or attire worn by law enforcement personnel for the purpose of protecting themselves or the public from overt actions of others or to assist in the carrying out of related duties, for example, handgun, baton, billy, handcuffs, flashlight, whistle, leather belt, holster and cases or attachments.

(f) "State employees" means employees of the state and its agencies, but does not include employees of the University of California.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1613, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1978, c. 776, p. 2463, § 107.)

Historical Note

Section 4 of Stats.1972, c. 908, p. 1615, § 4, provides: "It is the intent of the Legislature to provide state funds for the replacement of uniforms for work clothing and for safety equipment and police protective equipment for employees of the University of California whose compensation is paid from the General Fund. The Regents of the University of California are requested to establish procedures and make determinations as required to provide comparable allowances to those provided to state employees and to report the cost thereof to the Department of Finance and the Joint Legislative Budget Committee.

The 1978 amendment added the last paragraph.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Administrative Code References

Clothing allowances, see 2 Cal.Adm.Code 897 et seq.

Library References

States ⇐60(1), 62. Words and Phrases (Perm. Ed.)
C.J.S. States §§ 47, 104 to 108.

§ 19460.5. Conflict of article with memorandum of understanding

If the provisions of this article are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1979, c. 1072, § 81, eff. Sept. 28, 1979.)

§ 19461. Responsibility for purchase; allowance; conflict of section with memorandum of understanding

(a) State employees shall be responsible for the purchase of uniforms required as a condition of employment. The state shall provide for an allowance not to exceed two hundred fifty dollars ($250) per year to state employees for the replacement of uniforms.

When such employees are not required to wear uniforms on a full-time basis, the state allowance shall not exceed one hundred fifty dollars ($150) per year.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1613, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1977, c. 364, p. 1342, § 1; Stats.1978, c. 776, p. 2463, § 108.)

Historical Note

The 1977 amendment added the second paragraph; and substituted "two hundred fifty dollars ($250)" for "one hundred fifty dollars ($150)" in the second sentence of the first paragraph.

The 1978 amendment inserted subdivision designation "(a)" and added subd. (b).

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

§ 19462. Conditions for receipt of allowance; conflict of section with memorandum of understanding

Each state employee, including employees having probationary status, employed in a position which is permanent and full time, or employed in a position which is less than full time for the equivalent of one year, shall receive the allowance for uniforms provided for in Section 19461, if:

(a) The uniform is clearly necessary for ready visual identification by the public for law enforcement, public safety, or other closely related purposes; and

(b) The employee is required by his appointing power to wear the uniform for the regular performance of his duties; and

(c) The uniform is authorized for wear only in an official capacity.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1613, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1974, c. 815, p. 1774, § 1; Stats.1978, c. 776, p. 2464, § 109.)

Historical Note

The 1974 amendment authorized allowance for part-time employees employed the equivalent of one year.

The 1978 amendment added the last paragraph.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

§ 19463. Implementation of provisions by board; conflict of section with memorandum of understanding

To implement the provisions of Sections 19461 and 19462, the board shall:

(a) Establish a procedure to determine what articles are to be included in calculating the amount of the uniform allowance.

(b) Determine the average annual replacement cost for each type of uniform based on departmental standards and taking into consideration normal uniform life. The allowance shall be the average annual replacement cost or two hundred fifty dollars ($250), whichever is less.

(c) Annually review uniform allowances and adjust them when necessary.

(d) Determine procedure for and frequency of payment.

(e) Determine when new employees become eligible.

(f) Determine the need for changes in uniforms based on departmental requests.

(g) Determine what degree of need for identification is necessary to support a uniform requirement.

(h) Establish procedures and make determinations as required.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1613, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1977, c. 364, p. 1342, § 2; Stats.1978, c. 776, p. 2464, § 110.)

Historical Note

The 1977 amendment substituted "two hundred fifty dollars ($250)" for "one hundred fifty dollars ($150)" in subd. (b).

The 1978 amendment added the last paragraph.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

§ 19464. Furnishing of work clothes to state employees; conditions; conflict of section with memorandum of understanding

Subject to the availability of funds appropriated specifically for that purpose, each state employee shall be furnished work clothes if:

(a) The work clothes are required for purposes of sanitation or cleanliness; and

(b) The work clothes are required by the appointing power; and

(c) The work clothes are of a standard size instead of a measured size.

Work clothes provided pursuant to this section will be maintained and owned by the state. Items lost or damaged due to the negligence of the employee, shall be replaced by the employee at his expense.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1614, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1978, c. 776, p. 2465, § 111.)

Historical Note

The 1978 amendment added the last paragraph.

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

§ 19465. Safety equipment and police protective equipment; furnishing of initial issuance; expense of replacement; conflict of section with memorandum of understanding

(a) The state shall furnish the initial issuance of all safety equipment and police protective equipment required by the employing state agency. All safety equipment and police protective equipment provided pursuant to this section shall remain the property of the state. Items lost or damaged due to the negligence of the employee, shall be replaced by the employee at his expense.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1972, c. 908, p. 1614, § 1, eff. Aug. 15, 1972, operative July 1, 1972. Amended by Stats.1978, c. 776, p. 2465, § 112.)

Historical Note

The 1978 amendment inserted subdivision designation "(a)" and added subd. (b).

Cross References

Effect of conflict between this section and memorandum of understanding with employee organization, see § 3517.6.

Chapter 8

SEPARATIONS FROM SERVICE

Chapter 8 was added by Stats.1945, c. 123, p. 564, § 1.

Article 1

GENERAL

Article 1 was added by Stats.1945, c. 123, p. 564, § 1.

Cross References

Career executive assignments, exemption from chapter, see § 19221.
Municipal and justice courts, discharge of clerk, marshal, deputies and attaches appointed from civil service lists, see § 71260.

Library References

Civil service and personnel management. Report of Assembly Interim Committee on Civil Service and State Personnel, 1957 to 1959, vol. 1, No. 3, p. 21. Vol. 1 of Appendix to Journal of the Assembly, Reg.Sess., 1959.

ARTICLE 2. PERFORMANCE REPORTS [REPEALED]

Article 2 was repealed by Stats.1981, c. 230, p. —, § 46.

§§ 19300 to 19304. Repealed by Stats.1981, c. 230, p. —, § 46
See, now, § 19992 et seq.

ARTICLE 3. ABSENCES [REPEALED]

Article 3 was repealed by Stats.1981, c. 230, p. —, § 47.

§§ 19330 to 19341. Repealed by Stats.1981, c. 230, p. —, § 47
See, now, §§ 19991.1 to 19991.9.

ARTICLE 4. TRANSFERS [REPEALED]

Article 4 was repealed by Stats.1981, c. 230, p. —, § 48.

§§ 19360 to 19363. Repealed by Stats.1981, c. 230, p. —, § 48
See, now, §§ 19994.1 to 19994.5.

§ 19365. Repealed by Stats.1981, c. 230, p. —, § 48
See, now, § 19994.6.

§§ 19367 to 19370. Repealed by Stats.1981, c. 230, p. —, § 48
See, now, §§ 19994.7 to 19994.10.

ARTICLE 5. TRAINING [REPEALED]

Article 5 was repealed by Stats.1981, c. 230, p. —, § 49.

§§ 19450 to 19455. Repealed by Stats.1981, c. 230, p. —, § 49
See, now, § 19995 et seq.

ARTICLE 6. UNIFORMS, WORK CLOTHES, SAFETY EQUIPMENT, AND POLICE PROTECTIVE EQUIPMENT [REPEALED]

Article 6 was repealed by Stats.1981, c. 230, p. —, § 50.

§§ 19460 to 19465. Repealed by Stats.1981, c. 230, p. —, § 50
See, now, §§ 19850 to 19850.5.

CHAPTER 8. SEPARATION FROM SERVICE

ARTICLE 1. GENERAL [REPEALED]

Article 1 was repealed by Stats.1981, c. 230, p. —, § 51.

§ 19500. Repealed by Stats.1981, c. 230, p. —, § 51
See, now, § 19996.

§§ 19502, 19503. Repealed by Stats.1981, c. 230, p. —, § 51
See, now, §§ 19996.1, 19996.2.

Asterisks * * * indicate deletions by amendment

Chapter 12

STATE CIVIL SERVICE AFFIRMATIVE ACTION PROGRAM

Sec.

Chapter 12 was added by Stats.1977, c. 943, p. 2876, § 2.

§ 19790. Establishment by each agency and department; goals and timetables

Each agency and department is responsible for establishing an effective affirmative action program. The State Personnel Board shall be responsible for providing statewide advocacy, coordination, enforcement, and monitoring of these programs.

Each agency and department shall establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Agencies and departments shall determine their annual goals and timetables by June 1 of each year beginning in 1978. These goals and timetables shall be made available to the public upon request. All goals and timetables shall then be submitted to the board for review and approval or modification no later than July 1 of each year.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

Historical Note

Section 1 of Stats.1977, c. 943, p. 2875, provided:

"The Legislature finds and declares that:

"(a) The State of California remains committed to its policy of nondiscrimination and equal employment opportunity and to continuing and expanding positive programs which will assure the strengthening of this policy. To this end the Legislature accepts leadership responsibility for insuring that equal employment opportunities are available to all applicants and employees in all agencies and departments in the state civil service system.

"(b) It is the policy of the Legislature to encourage the state civil service system to utilize to the maximum all available human resources to provide equal employment opportunity to all persons without regard to race, color, religion, national origin, political affiliation, sex, age, or marital status; and, insofar as possible, to achieve and maintain a work force in which are represented the diverse elements of the population of the State of California.

"(c) Beyond assurance of nondiscrimination, it is the policy of the State of California to have each state hiring unit initiate comprehensive written affirmative action programs which will take steps to remedy any disparate staffing and recruitment patterns.

"(d) This equal employment opportunity policy is adopted to insure that maximum utilization of human resources occurs, that true equality of opportunity is a reality with the State of California, and that the rights of all employees and applicants are safeguarded."

Library References

Civil Rights ⇐9.10.
Officers and Public Employees ⇐11.4.
C.J.S. Civil Rights § 59 et seq.
C.J.S. Officers and Public Employees §§ 57, 64, 65, 95.

§ 19791. Definitions

As used in this chapter:

(a) "Goal" means a projected level of achievement resulting from an analysis by the employer of its deficiencies in utilizing minorities and women and what reasonable remedy is available to correct such underutilization. Goals shall be specific by the smallest reasonable hiring unit, and shall be established separately for minorities and women.

(b) "Timetable" means an estimate of the time required to meet specific goals.

(c) "Underutilization" means having fewer persons of a particular group in an occupation or at a level in a department than would reasonably be expected by their availability.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

Library References

Words and Phrases (Perm.Ed.)

§ 19792. State personnel board; duties

The State Personnel Board shall:

(a) Provide statewide leadership designed to achieve positive and continuing affirmative action programs in the state civil service.

(b) Develop, implement, and maintain affirmative action and equal employment opportunity guidelines.

(c) Provide technical assistance to state departments in the development and implementation of their affirmative action programs.

(d) Review and evaluate departmental affirmative action programs to insure that they comply with federal statutes and regulations.

(e) Establish requirements for improvement or corrective action to eliminate the underutilization of minorities and women.

(f) Provide statewide training to departmental affirmative action officers who will conduct supervisory training on affirmative action.

(g) Review, examine the validity of, and update qualifications standards, selection devices, including oral appraisal panels and career advancement programs.

(h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of progress in affirmative action and equal employment opportunity within the state civil service. Such statistical information shall include specific data to determine the underutilization of minorities and women. The statistical information shall be made available during normal working hours to all interested persons. Data generated on a regular basis shall include, but not be limited to, the following:

(1) Current state civil service work force composition by race, sex, age, department, salary level, occupation, and attrition rates by occupation.

(2) Current local and regional work force and population data of women and minorities.

(i) Data analysis shall include, but not be limited to, the following:

(1) Data relating to the utilization by department of minorities and women compared to their availability in the labor force.

(2) Turnover data by department and occupation.

(3) Data relating to salary administration, such as average salaries by race and sex, and comparisons of salaries within state service and comparable state employment.

(4) Data on employee age, and salary level compared among races and sexes.

(5) Data on the number of women and minorities recruited for, participating in and passing state civil service examinations. Such data shall be analyzed pursuant to the provisions of Sections 19704 and 19705.

(6) Data on the job classifications, geographic locations, separations, salaries, and other conditions of employment which provide additional information about the composition of the state civil service work force.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

§ 19793. Annual report; contents

By November 15 of each year beginning in 1978, the State Personnel Board shall report to the Governor, the Legislature, and the Department of Finance on the accomplishment of each state agency and department in meeting its stated affirmative action goals for the past fiscal year. The report shall include information to the Legislature of laws which discriminate or have the effect of discrimination on the basis of race, color, religion, national origin, political affiliation, sex, age, or marital status. The Legislature shall evaluate the equal employment opportunity efforts and affirmative action progress of state agencies during its evaluation of the Budget Bill.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

§ 19794. Departmental directors; responsibilities

In cooperation with the State Personnel Board, the director of each department shall have the major responsibility for monitoring the effectiveness of the affirmative action program of the department.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

§ 19795. Affirmative action officer; appointment; duties; committee

The secretary of each state agency and the director of each state department shall appoint an affirmative action officer, other than the personnel officer, except in a department with less than 500 employees the affirmative action officer may be the personnel officer who shall report directly, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency or departmental affirmative action program. The departmental or agency affirmative action officer shall, among other duties, analyze and report on appointments of employees, request appropriate action of the departmental director or agency secretary, submit an evaluation of the effectiveness of the total affirmative action program to the State Personnel Board annually, monitor the composition of oral panels in departmental examinations, and perform other duties necessary for the effective implementation of the departmental and agency affirmative action plans.

The departmental and agency affirmative action officers shall be assisted in these responsibilities by an equal employment opportunity committee as determined by the department whose day-to-day responsibilities are vital to the effective implementation of the affirmative action program.

(Added by Stats.1977, c. 943, p. 2876, § 2.)

Assembly Bill No. 3001

CHAPTER 719

An act to add Section 19798 to the Government Code, relating to state employees.

[Approved by Governor July 26, 1980. Filed with Secretary of State July 27, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3001, Harris. State employees.

Existing law requires each state agency and department to establish an effective affirmative action program, with the State Personnel Board being responsible for the statewide advocacy, coordination, enforcement, and monitoring of these programs.

This bill would provide that the board, in establishing order and subdivisions of layoff and reemployment, when it finds past discriminatory hiring practices, shall adopt by rule, a process that provides that the composition of the affected work force before and after the layoffs will be the same.

The people of the State of California do enact as follows:

SECTION 1. Section 19798 is added to the Government Code, to read:

19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented.

O

97 40

Senate Bill No. 459

CHAPTER 722

An act to amend Section 18852 of, and to add Section 19827.2 to, the Government Code, relating to state government.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 459, Carpenter. State employees: salaries.

Present law: (1) requires the State Personnel Board to establish minimum and maximum salary limits for classes of state employees and to provide for intermediate steps within such limits to govern the extent of the salary adjustment which an employee may receive at any one time; (2) authorizes, under specified conditions, establishment of more than 1 salary range or rate or method of compensation within a class.

This bill would also authorize establishment of more than 1 salary range or rate or method of compensation where necessary to meet the provisions of state law recognizing differential statutory qualifications within a profession.

Existing law does not establish a state policy for the setting of state salaries for female-dominated jobs on the basis of comparability of the value of the work.

This bill would make related findings and would establish such a policy . This bill would also require the Department of Personnel Administration to review and analyze existing relevant information, as specified, and to provide the information annually to the appropriate legislative policy committee and to the parties meeting and conferring, as specified. This bill would also provide that in case of its conflict with the provisions of a memorandum of understanding entered into pursuant to the State Employer-Employee Relations Act, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

The people of the State of California do enact as follows:

SECTION 1. Section 18852 of the Government Code is amended to read:

18852. (a) Salary ranges shall consist of minimum and maximum salary limits. The board shall provide for intermediate steps within such limits to govern the extent of the salary adjustment which an employee may receive at any one time; provided, that in classes and

positions with unusual conditions or hours of work or where necessary to meet the provisions of state law recognizing differential statutory qualifications within a profession or prevailing rates and practices for comparable services in other public employment and in private business, the board may establish more than one salary range or rate or method of compensation within a class.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 19827.2 is added to the Government Code, to read:

19827.2. (a) The Legislature, having recognized December 1980 statistics from the U.S. Department of Labor, finds: that 60 percent of all women 18 to 64 are in the workforce, that two-thirds of all those women are either the head of household or had husbands whose earnings were less than ten thousand dollars ($10,000), and that most women are in the workforce because of economic need; that the average working woman has earned less than the average working man, not only because of the lack of educational and employment opportunities in the past, but because of segregation into historically undervalued occupations where wages have been depressed; and that a failure to reassess the basis on which salaries in state service are established will perpetuate these pay inequities, which have a particularly discriminatory impact on minority and older women; and, therefore, it is the intent of the Legislature in enacting this statute to establish a state policy of setting salaries for female-dominated jobs on the basis of comparability of the value of the work.

(b) The department shall review and analyze existing information, including those studies from other jurisdictions relevant to the setting of salaries for female-dominated jobs. This information shall be provided on an annual basis to the appropriate policy committee of the Legislature and to the parties meeting and conferring pursuant to Section 3517.

(c) For the purpose of implementing this section, the following definitions apply:

(1) "Salary" means, except as otherwise provided in Section 18539.5, the amount of money or credit received as compensation for service rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business, but including the reasonable value of board, rent, housing, lodging, or similar advantages received from the state.

(2) "Comparability of the value of the work" means the value of

the work performed by an employee, or group of employees within a class or salary range, in relation to the value of the work of another employee, or group of employees, to any class or salary range within state service.

(3) "Skill" means the skill required in the performance of the work, including any type of intellectual or physical skill acquired by the employee through experience, training, education, or natural ability.

(4) "Effort" means the effort required in the performance of the work, including any intellectual or physical effort.

(5) "Responsibility" means the responsibility required in the performance of the work, including the extent to which the employer relies on the employee to perform the work, the importance of the duties, and the accountability of the employee for the work of others and for resources.

(6) "Working conditions" means the conditions under which the work of an employee is performed, including physical or psychological factors.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

O

EXHIBIT D

SUMMARY OF STATISTICAL DATA

Women's Representation in Work Force

Women make up 38.1% of the entire civilian work force in California, or 2.9 million jobs. Black women comprise 2.8% (223,780 jobs) of the workforce. Hispanic women make up 4.8% of the labor force or 383,624 jobs. All other nonwhites account for 1.5% (119,882 jobs) of the labor force.

By comparison, there are 53,465 women who are full-time state employees. This figure represents 44.3% of the work force and shows an increase in representation of 0.7% since 1981 (869 jobs). Of the 53,465 women, Black women accounted for 12.5% (6,588), Hispanic women 10.4% (5,612), Asian women 5.6% (3,041), Filipino women 2.6% (1,391) and American Indian .6% (366).

Female representation in non-clerical positions increased from 30.9% in 1981 to 31.2% of the workforce in 1982. Women are most represented in the clerical, supervising clerical, subprofessional, technical and administrative staff/nonsupervisory job categories. They are least represented in the crafts and trades, law enforcement, administrative line, semiskilled and field representative job categories.

Average Salary

The average salary for full-time women employees is $1,510. This represents 81.6% of the average salary for all full-time employees. In 1981, their average salary was $1,395, which was 80.6% of the average salary of all full-time employees.

In addition to women's average salaries being below the overall average ($1,850), there is a greater disparity in the salaries of most minority women. Hispanic women have an average salary of $1,387, Filipino women $1,455, American Indian women $1,443, Polynesian women have an average salary of $1,669 and Black Women $1,460.

Statewide in the past year, the number of supervisory clerical positions decreased .5%. However, there was a 1% increase in the number of women in administrative line staff categories.

New Hires

In 1981-82 females constituted 59.3% of all intake new hires. Of those, only 38.9% were in nonclerical positions. Black females comprised 9.5% (1,533) of all new hires. The 1,146 Hispanic women hired constituted 7.1% of all new hires. Asian

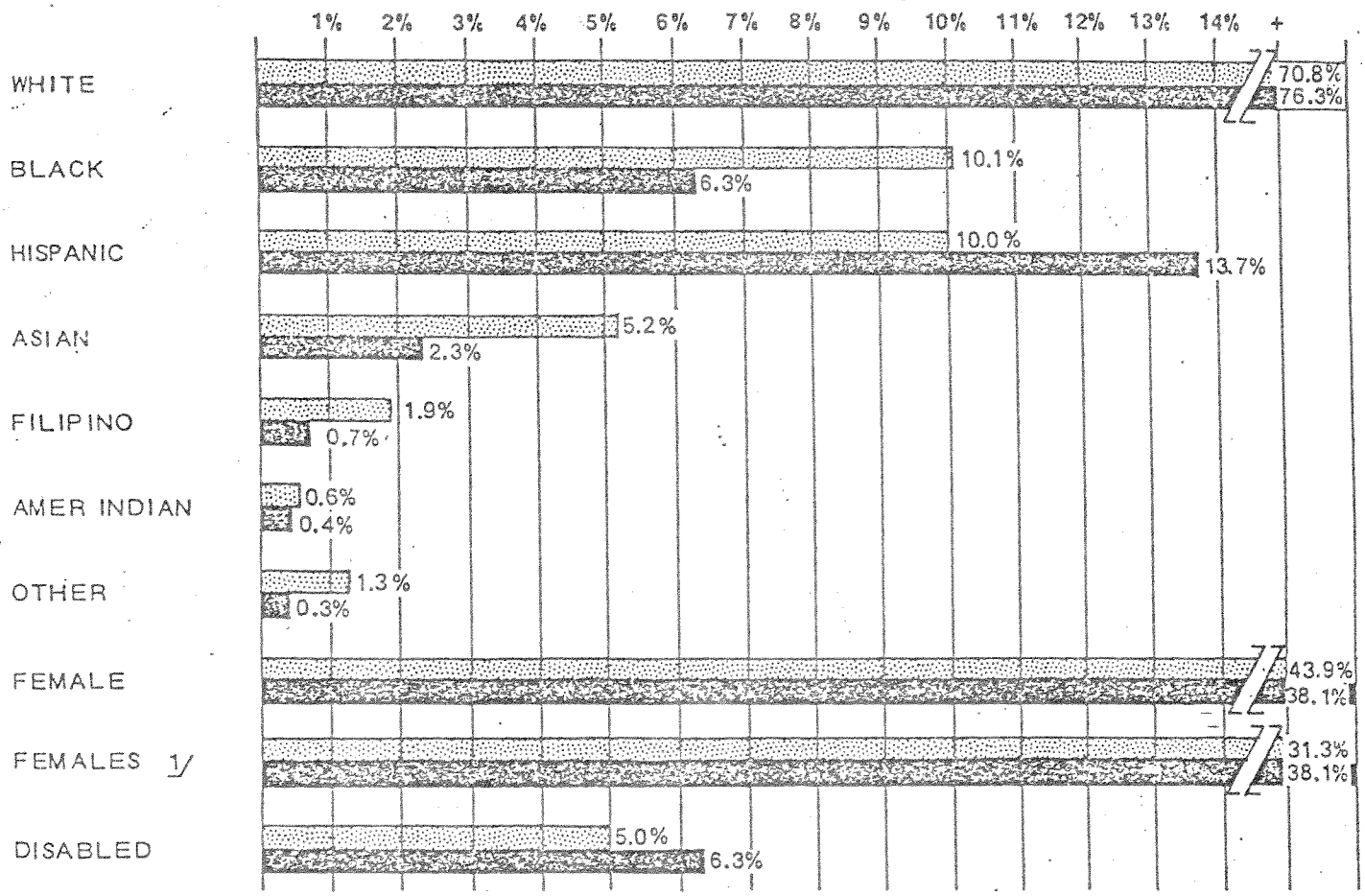
women constituted 2.7% (435) of the new hires, Filipino women 1.9% or 306 new hires, and American Indian women were hired to 64 positions or 0.4% of the total new hires. 52.3% of all promotions were given to women. Black women received 5.6% of all promotions (746). Hispanic women 6.1% or 812 promotions, Asian women 3.3% (439), Filipino women 1.2% (159) of all promotions and American Indian women were promoted 39 times or .3% of all promotions. 53.9% of all nonclerical promotions went to females.

Distribution Throughout State Departments

Females are least represented in nonclerical positions in the following departments: Forestry, California Highway Patrol, Transportation, Fish and Game, and Parks and Recreation. The departments with the highest representation are: Motor Vehicles, Personnel Board, Developmental Services, Veterans Affairs and Social Services, each with 55% or more females in nonclerical positions.

EXHIBIT E

CHART 1
STATEWIDE WORK FORCE REPRESENTATION
COMPARED TO LABOR FORCE PARITY
JUNE 30, 1982

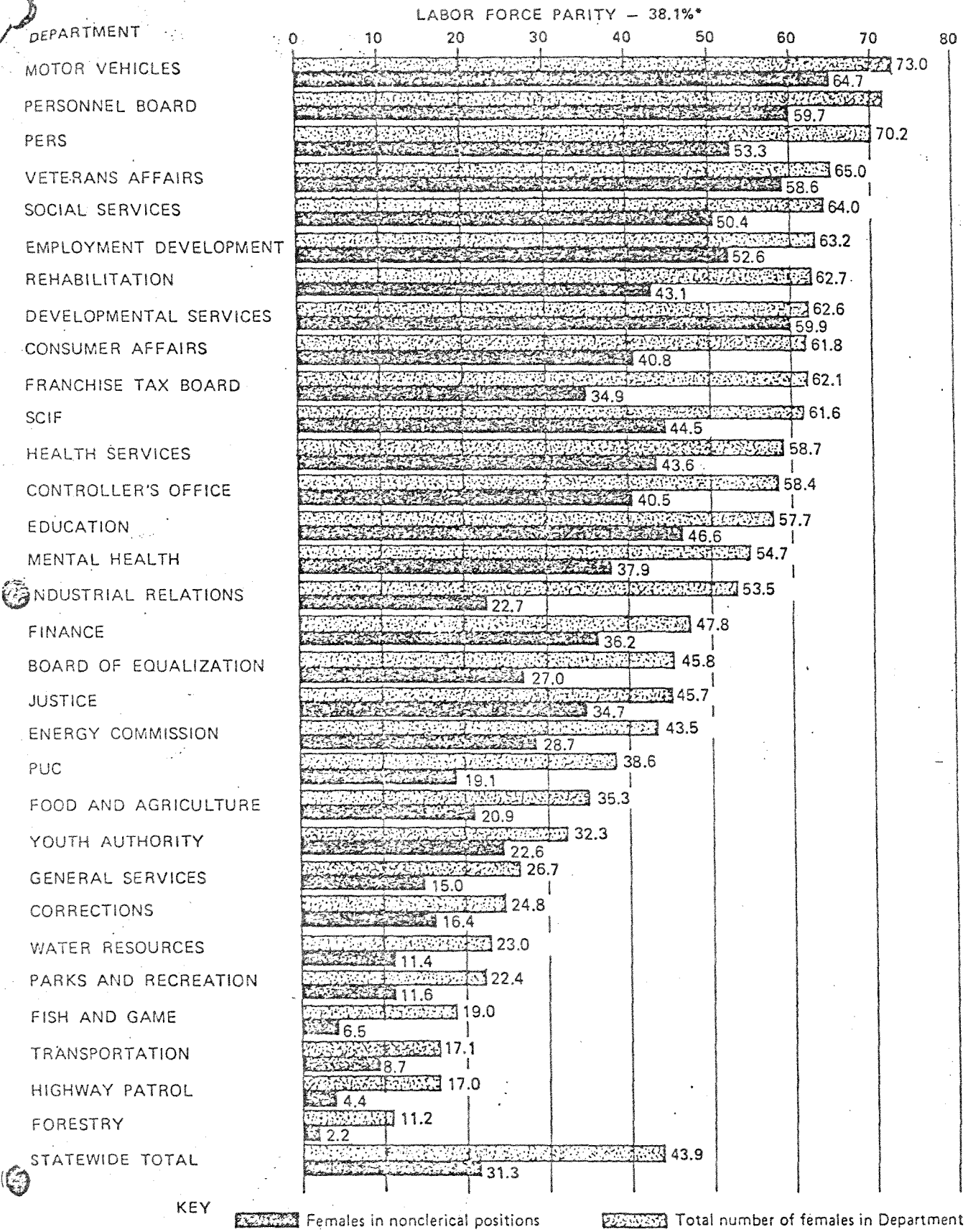


1/ REPRESENTS FEMALES IN NONCLERICAL CLASSES

KEY WORK FORCE REPRESENTATION
1970 LABOR FORCE PARITY

CHART 3
FEMALE REPRESENTATION OF STATE DEPARTMENT
Percentages in Rank Order
(Both overall and nonclerical positions)

(as of June 30, 1982)



*BASED ON 1970 LABOR FORCE PARITY.

TABLE 2
ETHNIC/SEX/DISABILITY INTAKE
APPOINTMENTS BY JOB CATEGORY

JOB CATEGORY	NUMBER INTAKE APPTS IN JOB CATEGORY	PERCENT WHITE	PERCENT BLACK	PERCENT HISPANIC	PERCENT ASIAN	PERCENT FILIPINO	PERCENT AMERICAN INDIAN	PERCENT OTHER	SEX M	SEX F	DISABLED
01 CLERICAL	3,786	58.4%	15.2%	13.8%	6.3%	4.2%	0.7%	1.5%	11.2%	88.8%	2.6%
02 SUPERVISING CLERICAL	253	66.4	12.3	14.2	3.2	0.8	2.0	1.2	12.3	87.7	2.8
03 SEMISKILLED	270	68.9	7.0	18.5	1.9	0.4	1.1	2.2	91.9	8.1	3.7
04 CRAFTS & TRADES	296	75.3	6.1	10.8	2.7	0.7	2.4	2.1	99.0	1.0	2.4
05 SUPERVISING CRAFTS & TRADES	114	81.6	5.3	13.2	0.0	0.0	0.0	0.0	94.7	5.3	5.3
06 PROFESSIONAL	1,982	66.3	8.2	8.8	9.2	4.4	0.4	2.7	52.4	47.6	3.3
07 SUPERVISING PROFESSIONAL	236	72.5	6.8	6.4	8.9	1.7	0.4	3.4	78.8	21.2	3.4
08 SUBPROFESSIONAL/ TECHNICAL	2,194	70.1	12.7	9.5	2.9	2.8	0.4	1.5	44.5	55.5	3.1
09 SUPERVISING SUBPROFESSIONAL/ TECHNICAL	75	72.0	4.0	6.7	8.0	4.0	0.0	5.3	48.0	52.0	2.7
10 LAW ENFORCEMENT	1,305	61.9	17.5	16.3	0.9	1.1	0.5	1.8	83.1	16.9	0.7
11 SUPERVISING LAW ENFORCEMENT	21	57.1	38.1	0.0	4.8	0.0	0.0	0.0	76.2	23.8	4.8
12 FIELD REPRESENTATIVE	262	60.7	9.2	20.6	5.3	1.9	0.4	1.9	68.7	31.3	3.8
13 SUPERVISING FIELD REPRESENTATIVE	20	65.0	10.0	20.0	5.0	0.0	0.0	0.0	75.0	25.0	0.0
14 NONSUPERVISING ADMINISTRATIVE STAFF	838	65.0	10.3	11.9	7.9	1.2	1.0	2.7	50.6	49.4	4.8
15 SUPERVISING ADMINISTRATIVE STAFF	183	67.2	8.2	13.1	4.9	1.6	1.1	3.8	68.9	31.1	3.8
16 ADMINISTRATIVE LINE (INCLUDING CEA)	34	61.8	11.8	23.5	0.0	2.9	0.0	0.0	76.5	23.5	8.8
17 JANITOR	406	34.0	35.5	20.0	2.7	5.2	1.0	1.7	74.9	25.1	3.9
18 SUPERVISING JANITOR	99	55.6	27.3	10.1	1.0	5.1	0.0	1.0	79.8	20.2	3.0
19 LABORER	52	57.7	9.6	23.1	5.8	3.8	0.0	0.0	90.4	9.6	7.7
20 COD	431	55.2	19.0	19.7	1.6	2.6	0.9	0.9	33.6	66.4	5.8
STATEWIDE TOTALS	12,858	63.0	13.5	12.8	5.1	3.1	0.7	1.8	45.0	55.0	3.0

(9/82)

TABLE 1
ETHNIC/SEX/DISABILITY COMPOSITION BY JOB CATEGORY
(AS OF JUNE 30, 1982)

JOB CATEGORY	TOTAL # IN JOB CATEGORY	PERCENT WHITE	PERCENT BLACK	PERCENT HISPANIC	PERCENT ASIAN	PERCENT AMERICAN INDIAN	PERCENT FILIPINO	PERCENT OTHER	SEX M	SEX F	DISABLED
PARITY	-	76.3%	6.3%	13.7%	2.3%	0.4%	0.7%	0.3%	61.9%	38.1%	6.3%
01 CLERICAL	21,145	62.5	12.2	12.3	7.0	0.8	3.8	1.3	10.5	89.5	4.4
02 SUPERVISING CLERICAL	4,527	76.3	7.1	7.2	6.4	0.7	1.5	0.8	16.7	83.3	3.7
03 SEMISKILLED	3,712	70.3	9.3	15.0	1.7	1.8	0.7	1.1	92.6	7.4	4.6
04 CRAFTS & TRADES	3,308	79.5	5.9	9.4	1.5	1.4	1.4	0.9	97.2	2.8	5.5
05 SUPERVISING CRAFTS & TRADES	4,465	85.8	3.9	7.3	1.0	1.3	0.3	0.3	99.1	0.9	5.2
06 PROFESSIONAL	18,152	72.4	7.2	7.3	7.8	0.4	2.5	2.5	66.1	33.9	5.2
07 SUPERVISING PROFESSIONAL	9,047	80.9	3.6	3.5	8.6	0.3	1.4	1.7	83.6	16.4	4.9
08 SUBPROFESSIONAL/ TECHNICAL	15,577	68.7	12.3	10.9	4.2	0.4	2.2	1.1	40.9	59.1	4.7
09 SUPERVISING SUBPROFESSIONAL/ TECHNICAL	3,318	81.0	7.1	5.9	4.6	0.5	0.5	0.5	60.1	39.9	6.2
10 LAW ENFORCEMENT	8,593	74.5	12.1	11.4	0.5	0.3	0.4	0.9	89.5	10.5	4.5
11 SUPERVISING LAW ENFORCEMENT	1,832	82.6	7.5	8.7	0.3	0.3	0.1	0.5	95.7	4.3	6.3
12 FIELD REPRESENTATIVE	2,552	71.4	8.3	12.5	4.1	0.5	1.8	1.3	64.3	35.7	4.5
13 SUPERVISING FIELD REPRESENTATIVE	1,893	84.9	5.1	5.5	3.2	0.3	0.5	0.5	84.6	15.4	4.7
14 NONSUPERVISING ADMINISTRATIVE STAFF	8,763	66.8	10.8	12.3	7.1	0.8	1.2	1.2	45.5	54.5	5.3
15 SUPERVISING ADMINISTRATIVE STAFF	4,329	76.0	7.6	9.0	5.6	0.6	0.5	0.7	69.9	30.1	4.9
16 ADMINISTRATIVE LINE (INCLUDING CEA)	1,354	84.3	6.3	5.5	2.5	0.3	0.1	1.0	89.4	10.6	4.2
17 JANITOR	3,373	41.0	32.1	19.1	1.8	0.7	4.0	1.3	61.5	38.5	5.7
18 SUPERVISING JANITOR	1,133	56.1	28.9	10.2	0.8	0.1	2.8	1.0	63.4	36.6	5.8
19 LABORER	629	55.8	15.6	21.3	3.7	1.4	1.4	0.8	94.1	5.9	6.4
20 COD	1,302	48.5	21.0	22.0	1.8	2.5	2.5	1.7	39.9	60.1	12.3
STATEWIDE TOTALS	119,004	70.8	10.1	10.0	5.2	0.6	1.9	1.3	56.1	43.9	5.0

NOTE: COMPOSITION INFORMATION IS AVAILABLE BY DEPARTMENT VIA STATE PERSONNEL BOARD REPORTS 3102 AND EM 3702A. CONTACT THE PUBLIC EMPLOYMENT AND AFFIRMATIVE ACTION DIVISION FOR MORE INFORMATION.

TABLE 3
ETHNIC/SEX/DISABILITY PROMOTIONAL
APPOINTMENTS BY JOB CATEGORY

JOB CATEGORY	TOTAL PROMOTIONS IN JOB CATEGORY	PERCENT WHITE	PERCENT BLACK	PERCENT HISPANIC	PERCENT ASIAN	PERCENT FILIPINO	PERCENT AMERICAN INDIAN	PERCENT OTHER	SEX M	SEX F	DISABLED
01 CLERICAL	1,755	60.5%	12.4%	13.8%	7.6%	3.9%	0.6%	1.2%	12.0%	88.0%	4.5%
02 SUPERVISING CLERICAL	730	73.3	7.7	9.9	4.7	3.0	0.1	1.4	14.5	85.5	2.6
03 SEMISKILLED	179	62.6	9.5	22.3	1.1	0.0	3.4	1.2	85.5	14.5	1.7
04 CRAFTS & TRADES	218	69.3	8.7	18.3	1.8	0.0	1.4	0.5	98.2	1.8	6.0
05 SUPERVISING CRAFTS & TRADES	335	80.0	5.1	12.2	1.2	0.0	1.5	0.0	97.9	2.1	3.3
06 PROFESSIONAL	1,478	69.8	7.0	7.3	9.8	2.7	0.2	3.2	61.5	38.5	3.0
07 SUPERVISING PROFESSIONAL	812	73.5	6.5	5.9	8.3	2.3	0.5	3.0	76.6	23.4	4.2
08 SUBPROFESSIONAL/ TECHNICAL	1,141	55.9	12.4	17.4	8.5	3.4	0.4	1.8	32.3	67.7	3.7
09 SUPERVISING SUBPROFESSIONAL/ TECHNICAL	449	75.1	11.6	7.6	4.7	0.2	0.4	0.4	51.7	48.3	6.2
10 LAW ENFORCEMENT	279	69.2	6.8	18.6	1.1	1.8	0.4	2.1	91.8	8.2	0.4
11 SUPERVISING LAW ENFORCEMENT	371	69.8	13.7	13.7	1.1	0.0	0.5	1.1	90.8	9.2	4.6
12 FIELD REPRESENTATIVE	336	67.3	12.8	12.8	4.5	1.5	0.0	1.2	41.4	58.6	3.3
13 SUPERVISING FIELD REPRESENTATIVE	305	75.1	8.5	10.8	3.9	1.3	0.3	0.0	68.9	31.1	5.2
14 NONSUPERVISING ADMINISTRATIVE STAFF	924	69.8	9.4	8.7	8.1	1.4	1.0	1.6	32.7	67.3	3.1
15 SUPERVISING ADMINISTRATIVE STAFF	549	75.6	4.9	10.0	6.6	1.5	0.7	0.8	63.6	36.4	3.1
16 ADMINISTRATIVE LINE (INCLUDING CEA)	209	77.5	10.0	8.1	3.3	0.0	0.5	0.5	85.6	14.4	5.7
17 JANITOR	52	65.4	13.5	13.5	0.0	3.8	0.0	3.8	50.0	50.0	7.7
18 SUPERVISING JANITOR	119	61.3	20.2	15.1	0.8	1.7	0.0	0.8	55.5	44.5	5.9
19 LABORER	51	56.9	9.8	27.5	2.0	0.0	2.0	2.0	84.3	15.7	5.9
20 COD	21	66.7	9.5	14.3	9.5	0.0	0.0	0.0	61.9	38.1	0.0
STATEWIDE TOTALS	10,313	68.0	9.6	11.6	6.4	2.2	0.6	1.7	49.1	50.9	3.8

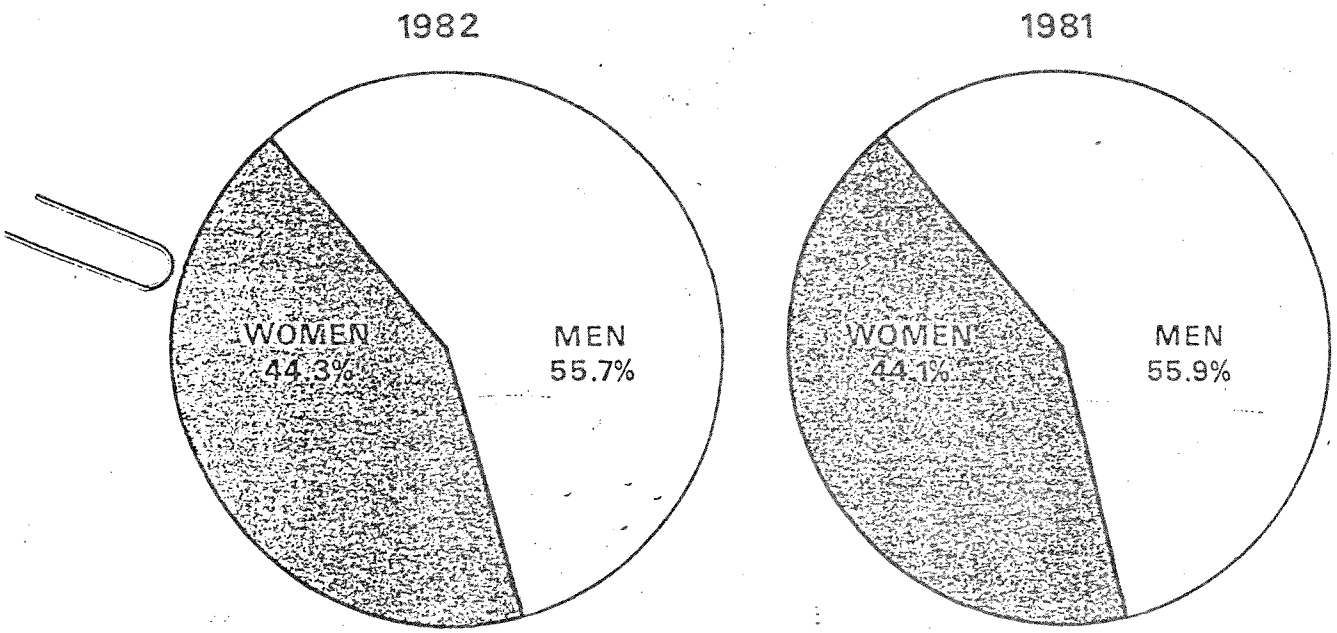
NOTE: PROMOTIONAL INFORMATION IS AVAILABLE BY DEPARTMENT VIA STATE PERSONNEL BOARD REPORTS 3111 AND 3311. CONTACT THE PUBLIC EMPLOYMENT AND AFFIRMATIVE ACTION DIVISION FOR MORE INFORMATION.

TABLE 4
ETHNIC/SEX/DISABILITY COMPOSITION IN SELECTED STATE DEPARTMENTS
(AS OF JUNE 30, 1982)

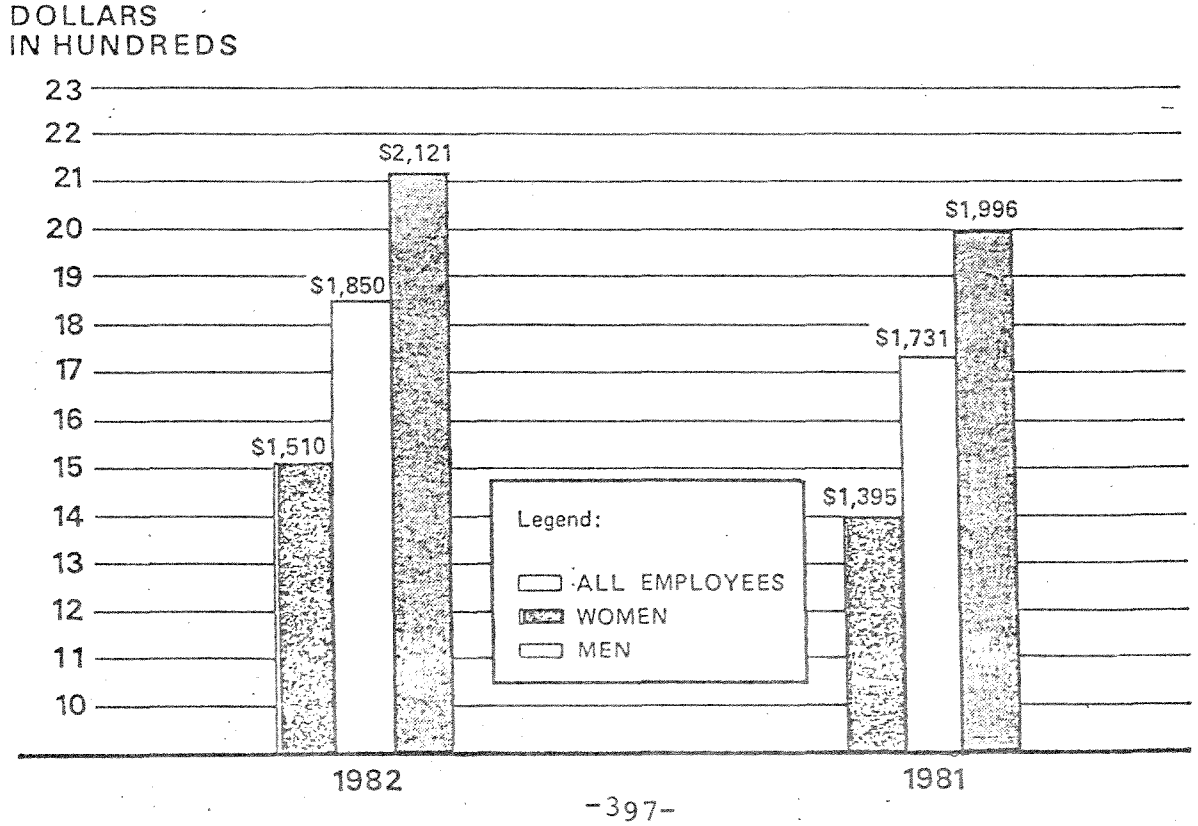
DEPARTMENT	TOTAL NUMBER EMPLS	TOTAL PERCENT MINORITY	PERCENT BLACK	PERCENT HISPANIC	PERCENT ASIAN	PERCENT AMERICAN INDIAN	PERCENT FILIPINO	PERCENT OTHER	PERCENT WOMEN IN NONCLERICAL POSITIONS	DISA
PARITY	-	23.7%	6.3%	13.7%	2.3%	0.4%	0.7%	0.3%	38.1%	6.3%
BOARD OF EQUALIZATION	2,493	25.6	6.1	8.3	8.7	0.1	1.5	0.9	27.0	4.1
CONSUMER AFFAIRS	1,216	25.7	7.8	10.0	3.9	1.0	1.9	1.1	34.9	3.9
CONTROLLER'S OFFICE	1,247	34.3	7.0	8.5	12.6	1.0	3.8	1.4	40.5	5.2
CORRECTIONS	9,230	33.4	16.4	13.5	1.2	0.5	0.8	1.0	16.4	4.1
DEVELOPMENTAL SERVICES	14,155	27.1	10.2	9.3	2.2	0.5	3.5	1.4	59.9	5.8
EDUCATION	2,206	31.4	15.3	9.2	4.3	0.5	1.4	0.7	44.6	6.1
EMPLOYMENT DEVELOPMENT	8,489	40.3	13.7	16.3	7.0	0.6	1.7	1.0	52.6	5.1
ENERGY COMMISSION	460	18.6	3.3	5.9	5.9	0.7	0.2	2.6	28.7	3.3
FINANCE	339	30.1	6.2	10.0	11.8	0.3	0.9	0.9	36.2	3.2
FISH & GAME	1,260	11.9	1.6	5.5	2.8	0.6	0.6	0.8	6.5	3.8
FOOD & AGRICULTURE	1,918	21.6	3.6	8.1	5.9	0.7	0.9	2.4	20.9	3.8
FORESTRY	2,993	9.7	1.0	5.5	1.3	1.2	0.2	0.5	2.2	3.3
FRANCHISE TAX BOARD	2,219	25.0	7.3	7.8	5.7	0.7	1.9	1.6	40.8	4.3
GENERAL SERVICES	3,782	38.3	17.8	10.7	5.1	1.0	1.8	1.9	15.0	4.6
HEALTH SERVICES	3,861	35.8	10.7	9.7	9.3	0.5	3.1	2.5	43.6	4.3
HIGHWAY PATROL	6,921	14.0	4.6	7.1	1.2	0.2	0.3	0.6	4.4	5.7
INDUSTRIAL RELATIONS	2,078	32.2	9.0	8.8	6.4	0.3	5.8	1.9	22.7	4.7
JUSTICE	2,835	25.3	7.0	7.4	7.7	0.3	2.4	0.5	34.7	3.6
MENTAL HEALTH	3,081	30.1	12.8	9.8	3.5	0.4	2.0	1.6	49.1	4.0
MOTOR VEHICLES	5,949	38.1	13.3	13.6	7.7	0.6	2.0	0.9	64.7	6.1
PARKS & RECREATION	1,762	15.8	2.9	7.0	3.1	1.4	0.8	0.6	11.6	3.6
PERSONNEL BOARD	456	36.9	11.2	16.9	5.9	0.9	1.3	0.7	59.7	8.6
PERS	630	26.3	6.5	8.7	7.8	1.1	1.4	0.8	53.3	4.1
PUC	880	35.5	6.7	5.2	13.4	0.0	5.8	4.4	19.1	3.5
REHABILITATION	1,717	32.1	11.0	14.2	4.5	0.3	1.4	0.7	43.1	14.5
SOCIAL SERVICES	3,202	36.4	15.0	9.2	7.3	0.4	3.3	1.2	50.4	5.4
SCIF	2,045	30.8	10.0	7.7	6.0	0.2	5.4	1.5	44.5	2.7
TRANSPORTATION	14,411	26.7	6.6	8.5	7.4	1.1	1.6	1.5	8.7	5.4
VETERANS AFFAIRS	1,117	24.7	10.7	8.7	2.5	0.4	1.3	1.1	58.6	5.9
WATER RESOURCES	2,534	23.8	4.7	7.9	6.3	1.5	1.0	2.4	11.4	5.6
YOUTH AUTHORITY	3,952	39.4	20.3	14.9	2.5	0.2	0.6	0.9	22.6	4.2
STATEWIDE TOTALS	100.0	29.1	10.1	10.0	5.2	0.6	1.9	1.3	31.3	5.0

CHART 5

WOMEN AS A PART OF THE FULL-TIME CIVIL SERVICE WORK FORCE



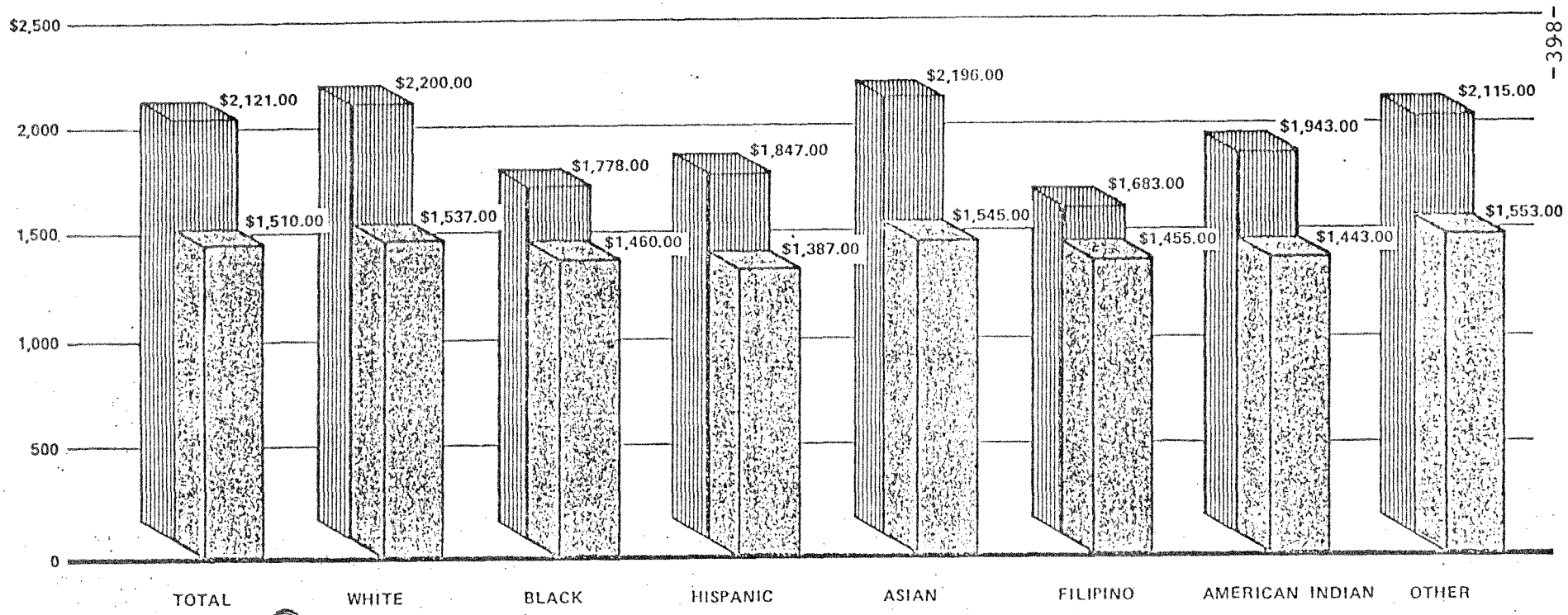
WEIGHTED AVERAGE SALARY FOR FULL-TIME EMPLOYEES



The average salary of State employees cannot be compared to the average salary of all employees in private

CHART 9

A COMPARISON OF MONTHLY SALARIES BY GENDER WITHIN EACH ETHNIC GROUP
(WOMEN ARE SHADED IN BLUE)



10

TABLE 1

TOTAL STATE CIVIL SERVICE WORK FORCE FOR MARCH 1981 AND MARCH 1982

The figures shown below represent the following: (Starting from the top left figure and moving clockwise.) (1) The total numerical figure for the ethnic group; (2) (underlined) the percentage the ethnic group represents of the total column at left; (3) (4) the percentage ethnic representation by gender; (5) the number of females in the group; (6) the number of males in the group. The underlined percentages total to 100% reading across the column.

MARCH 1982 WORK FORCE		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
FULL TIME		120,568	100.0	85,464	70.9	12,190	10.1	12,044	10.0	6,231	5.2	2,321	1.9	754	0.6	1,564	1.3
	M	67,103	55.7	49,594	41.1	5,602	4.6	6,432	5.3	3,190	2.6	930	0.8	388	0.3	967	0.8
	F	53,465	44.3	35,870	29.8	6,588	5.5	5,612	4.7	3,041	2.5	1,391	1.2	366	0.3	597	0.5
Office Support		26,340	100.0	17,202	65.3	2,972	11.3	2,977	11.3	1,798	6.8	869	3.3	192	0.7	330	1.3
	M	3,051	11.6	1,896	7.2	343	1.3	318	1.2	223	0.8	195	0.7	20	0.1	56	0.2
	F	23,289	88.4	15,306	58.1	2,629	10.0	2,659	10.1	1,575	6.0	674	2.6	172	0.7	274	1.0
Crafts and Trades		16,680	100.0	11,450	68.6	2,271	13.6	2,099	12.6	251	1.5	261	1.6	195	1.2	153	0.9
	M	14,490	86.9	10,201	61.2	1,773	10.6	1,785	10.7	211	1.3	223	1.3	172	1.0	125	0.7
	F	2,190	13.1	1,249	7.5	498	3.0	314	1.9	40	0.2	38	0.2	23	0.1	28	0.2
Professional and Technical		68,619	100.0	50,146	73.1	6,108	8.9	6,055	8.8	3,872	5.6	1,133	1.7	297	0.4	1,008	1.5
	M	43,024	62.7	32,370	47.2	3,030	4.4	3,702	5.4	2,549	3.7	490	0.7	153	0.2	730	1.1
	F	25,595	37.3	17,776	25.9	3,078	4.5	2,353	3.4	1,323	1.9	643	0.9	144	0.2	278	0.4
Administrative		7,621	100.0	6,044	79.3	555	7.3	622	8.2	284	3.7	25	0.3	38	0.5	53	0.7
	M	6,020	79.0	4,882	64.1	352	4.6	492	6.5	203	2.7	14	0.2	29	0.4	48	0.6
	F	1,601	21.0	1,162	15.2	203	2.7	130	1.7	81	1.1	11	0.1	9	0.1	5	0.1
COD Classes		1,308	100.0	622	47.6	284	21.7	291	22.2	26	2.0	33	2.5	32	2.4	20	1.5
	M	518	39.6	245	18.7	104	8.0	135	10.3	4	0.3	8	0.6	14	1.1	8	0.6
	F	790	60.4	377	28.8	180	13.8	156	11.9	22	1.7	25	1.9	18	1.4	12	0.9
*California Civilian Labor Force Representation (1970 U.S. Census)			100.0		76.3		6.3		13.7		2.3		0.7		0.4		0.3
	M		61.9		47.3		3.5		8.9		1.3		0.4		0.2		0.2
	F		38.1		29.0		2.8		4.8		1.0		0.3		0.2		0.1

*See Glossary for definition.

TOTAL STATE CIVIL SERVICE WORK FORCE FOR
MARCH 1981 AND MARCH 1982 - contd.
See page 11 for detailed description of statistical data format.

MARCH 1981 WORK FORCE		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
FULL TIME		119,208	100.0	86,270	72.4	11,476	9.6	11,252	9.4	5,971	5.0	2,131	1.8	669	0.6	1,439	1.2
	M	66,612	55.9	50,126	42.0	5,281	4.4	6,020	5.0	3,098	2.6	855	0.7	342	0.3	890	0.7
	F	52,596	44.1	36,144	30.3	6,195	5.2	5,232	4.4	2,873	2.4	1,276	1.1	327	0.3	549	0.5
Office Support		26,539	100.0	17,886	67.4	2,810	10.6	2,797	10.5	1,746	6.6	833	3.1	169	0.6	298	1.1
	M	3,060	11.5	1,974	7.4	319	1.2	291	1.1	219	0.8	193	0.7	13	0.0	51	0.2
	F	23,479	88.5	15,912	60.0	2,491	9.4	2,506	9.4	1,527	5.8	640	2.4	156	0.6	247	0.9
Crafts and Trades		16,447	100.0	11,512	70.0	2,225	13.5	1,964	11.9	218	1.3	243	1.5	165	1.0	120	0.7
	M	14,308	87.0	10,267	62.4	1,732	10.5	1,670	10.2	188	1.1	204	1.2	145	0.9	102	0.6
	F	2,139	13.0	1,245	7.6	493	3.0	294	1.8	30	0.2	39	0.2	20	0.1	18	0.1
Professional and Technical		67,235	100.0	50,144	74.6	5,595	8.3	5,567	8.3	3,704	5.5	1,000	1.5	270	0.4	955	1.4
	M	42,768	63.6	32,779	48.8	2,803	4.2	3,441	5.1	2,485	3.7	433	0.6	141	0.2	686	1.0
	F	24,467	36.4	17,365	25.8	2,792	4.2	2,126	3.2	1,219	1.8	567	0.8	129	0.2	269	0.4
Administrative		7,479	100.0	6,018	80.5	507	6.8	576	7.7	274	3.7	23	0.3	33	0.4	48	0.6
	M	5,903	78.9	4,860	65.0	313	4.2	446	6.0	197	2.6	16	0.2	28	0.4	43	0.6
	F	1,576	21.1	1,158	15.5	194	2.6	130	1.7	77	1.0	7	0.1	5	0.1	5	0.1
COD Classes		1,508	100.0	710	47.1	339	22.5	348	23.1	29	1.9	32	2.1	32	2.1	18	1.2
	M	573	38.0	246	16.3	114	7.6	172	11.4	9	0.6	9	0.6	15	1.0	8	0.5
	F	935	62.0	464	30.8	225	14.9	176	11.7	20	1.3	23	1.5	17	1.1	10	0.7
*California Civilian Labor Force Representation (1970 U.S. Census)			100.0		76.3		6.3		13.7		2.3		0.7		0.4		0.3
	M		61.9		47.3		3.5		8.9		1.3		0.4		0.2		0.2
	F		38.1		29.0		2.8		4.8		1.0		0.3		0.2		0.1

*See Glossary for definition.

TABLE 1A

CHANGE IN THE TOTAL STATE CIVIL SERVICE WORK FORCE FROM MARCH 1981 to MARCH 1982

The figures shown below represent the following: (Starting from the top left figure and moving clockwise.) (1) the number increase or decrease of incumbents; (2) (underlined) the percentage increase or decrease since March 1980; (3) the percentage of increase or decrease in male representation since March 1981; (4) the percentage of increase or decrease in female representation since March 1981; (5) the number increase or decrease in female representation; (6) the number increase or decrease in male representation.

WORK FORCE NET CHANGES		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
FULL TIME		+1,360	+1.1	-806	-1.5	+714	+0.5	+792	+0.6	+260	+0.2	+190	+0.1	+85	0.0	+125	+0.1
	M	+491	+0.4	-532	-0.9	+321	+0.2	+412	+0.3	+92	+0.1	+75	+0.1	+46	0.0	+77	+0.1
	F	+869	+0.7	-274	-0.6	+393	+0.3	+380	+0.3	+168	+0.1	+115	+0.1	+39	0.0	+48	0.0
Office Support		+199	+0.2	-684	-2.1	+162	+0.7	+180	+0.8	+52	+0.2	+36	+0.2	+23	+0.1	+32	+0.2
	M	+9	+0.1	-78	-0.2	+24	+0.1	+27	+0.1	+4	0.0	+2	0.0	+7	+0.1	+5	0.0
	F	+190	+0.7	-606	-1.9	+138	+0.6	+153	+0.7	+48	+0.2	+34	+0.2	+16	+0.1	+27	+0.1
Crafts and Trades		+233	+0.2	-62	-1.4	+46	+0.1	+135	+0.7	+33	+0.2	+18	+0.1	+30	+0.2	+33	+0.2
	M	+182	+1.1	-66	-1.2	+41	+0.1	+115	+0.5	+23	+0.2	+19	+0.1	+27	+0.1	+23	+0.1
	F	+51	+0.3	+4	-0.1	+5	0.0	+20	+0.1	+10	0.0	-1	0.0	+3	0.0	+10	+0.1
Professional and Technical		+1,384	+1.2	+2	-1.5	+513	+0.6	+488	+0.5	+168	+0.1	+133	+0.2	+27	0.0	+53	+0.1
	M	+256	+0.4	-409	-1.6	+227	+0.2	+261	+0.3	+64	0.0	+57	+0.1	+12	0.0	+44	+0.1
	F	+1,128	+1.6	+411	+0.1	+286	+0.3	+227	+0.2	+104	+0.1	+76	+0.1	+15	0.0	+9	0.0
Administrative		+142	+0.1	+26	-1.2	+48	+0.5	+46	+0.5	+10	0.0	+2	0.0	+5	+0.1	+5	+0.1
	M	+117	+1.6	+22	-0.9	+39	+0.4	+46	+0.5	+6	+0.1	-2	0.0	+1	0.0	+5	0.0
	F	+25	+0.3	+4	-0.3	+9	+0.1	0	0.0	+4	+0.1	+4	0.0	+4	0.0	0	0.0
COD Classes		-200	-0.2	-88	+0.5	-55	-0.8	-57	-0.9	-3	+0.1	1	-0.4	0	+0.3	+2	+0.3
	M	-55	+3.7	-1	+2.4	-10	+0.4	-37	-1.1	-5	-0.3	-1	0.0	-1	+0.1	0	+0.1
	F	-145	-9.6	-87	-2.0	-45	+1.1	-20	+0.2	+2	+0.4	+2	-0.4	+1	+0.3	+2	+0.2

JOB CATEGORIES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES BY ETHNIC GROUP AND SEX ON MARCH 31, 1982 TABLE 3

Statistical data format - each heading is followed by a series of boxes: each box contains five figures - starting with the percent figure in the upper left corner of the box and moving clockwise. (1) the percentage of that ethnic group who are in the job category; (2) the total incumbents of the ethnic group in the job category; (3) (underlined) the percent ethnic representation in the job category; (4) (5) the percentage representation by gender. The underlined percentage figure totals to 100% reading across the column. The percentage figure shown in the upper left corner of the box totals to 100% reading down the column.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Clerical		21,706	100.0	13,666	63.0	2,638	12.2	2,645	12.2	1,502	6.9	804	3.7	161	0.7	290	1.3
		18.0%		16.0%		21.6%		22.0%		24.1%		34.6%		21.4%		18.5%	
	M		10.5		6.1		1.2		1.2		0.9		0.8		0.1		0.2
	F		89.5		16.0		21.6		22.0		24.1		34.6		21.4		18.5
Supervising Clerical		4,634	100.0	3,536	76.3	334	7.2	332	7.2	296	6.4	65	1.4	31	0.7	40	0.9
		3.8%		4.1%		2.7%		2.8%		4.8%		2.8%		4.1%		2.6%	
	M		16.7		12.3		1.6		1.3		0.8		0.4		0.1		0.3
	F		83.3		4.1		2.7		2.8		4.8		2.8		4.1		2.6
Semiskilled		3,668	100.0	2,564	69.9	357	9.7	551	15.0	65	1.8	26	0.7	60	1.6	45	1.2
		3.0%		3.0%		2.9%		4.6%		1.0%		1.1%		8.0%		2.9%	
	M		92.2		64.9		8.9		13.8		1.7		0.7		1.3		0.9
	F		7.8		3.0		2.9		4.6		1.0		1.1		8.0		2.9
Crafts and Trades		3,342	100.0	2,657	79.5	190	5.7	323	9.7	51	1.5	45	1.3	44	1.3	32	1.0
		2.8%		3.1%		1.6%		2.7%		0.8%		1.9%		5.8%		2.0%	
	M		97.1		77.1		5.5		9.5		1.4		1.3		1.3		0.9
	F		2.9		3.1		1.6		2.7		0.8		1.9		5.8		2.0
Supervising Crafts and Trades		4,435	100.0	3,812	86.0	172	3.9	324	7.3	41	0.9	15	0.3	56	1.3	15	0.3
		3.7%		4.5%		1.4%		2.7%		0.7%		0.6%		7.4%		1.0%	
	M		99.3		85.5		3.8		7.2		0.9		0.3		1.3		0.3
	F		0.7		4.5		1.4		2.7		0.7		0.6		7.4		1.0
Professional		18,401	100.0	13,324	72.4	1,330	7.2	1,348	7.3	1,428	7.8	440	2.4	72	0.4	459	2.5
		15.3%		15.6%		10.9%		11.2%		22.9%		19.0%		9.5%		29.3%	
	M		65.8		48.5		3.7		4.9		5.6		1.0		0.2		1.9
	F		34.2		15.6		10.9		11.2		22.9		19.0		9.5		29.3
Supervising Professional		9,108	100.0	7,384	81.1	325	3.6	322	3.5	774	8.5	129	1.4	23	0.3	151	1.7
		7.6%		8.6%		2.7%		2.7%		12.4%		5.6%		3.1%		9.7%	
	M		83.4		68.7		2.1		2.8		7.2		0.9		0.2		1.4
	F		16.6		8.6		2.7		2.7		12.4		5.6		3.1		9.7

TABLE 3 JOB CATEGORIES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES BY ETHNIC GROUP AND SEX ON MARCH 31, 1982 - contd.
See page 143 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Subprofessional/ Technical		15,756	100.0	10,880	69.1	1,925	12.2	1,697	10.8	668	4.2	346	2.2	69	0.4	171	1.1
		13.1%		12.7%		15.8%		14.1%		10.7%		14.9%		9.2%		10.9%	
	M		40.8		27.9		4.6		4.9		1.9		0.7		0.2		0.6
	F		59.2		12.7		15.8		14.1		10.7		14.9		9.2		10.9
Supervising Subprofessional/ Technical		3,385	100.0	2,745	81.1	234	6.9	200	5.9	156	4.6	16	0.5	18	0.5	16	0.5
		2.8%		3.2%		1.9%		1.7%		2.5%		0.7%		2.4%		1.0%	
	M		59.8		48.3		3.5		4.2		3.1		0.3		0.2		0.3
	F		40.2		3.2		1.9		1.7		2.5		0.7		2.4		1.0
Law Enforcement		8,333	100.0	6,227	74.7	995	11.9	948	11.4	44	0.5	35	0.4	21	0.3	63	0.8
		6.9%		7.3%		8.2%		7.9%		0.7%		1.5%		2.8%		4.0%	
	M		89.6		69.2		8.7		10.0		0.5		0.4		0.2		0.7
	F		10.4		7.3		8.2		7.9		0.7		1.5		2.8		4.0
Supervising Law Enforcement		1,803	100.0	1,501	83.3	128	7.1	151	8.4	6	0.3	2	0.1	7	0.4	8	0.4
		1.5%		1.8%		1.1%		1.3%		0.1%		0.1%		0.9%		0.5%	
	M		95.9		81.0		6.0		7.7		0.3		0.1		0.3		0.4
	F		4.1		1.8		1.1		1.3		0.1		0.1		0.9		0.5
Field Representative		2,594	100.0	1,853	71.4	210	8.1	321	12.4	113	4.4	47	1.8	14	0.5	36	1.4
		2.2%		2.2%		1.7%		2.7%		1.8%		2.0%		1.9%		2.3%	
	M		64.8		46.5		4.6		8.0		3.1		1.2		0.3		1.0
	F		35.2		2.2		1.7		2.7		1.8		2.0		1.9		2.3
Supervising Field Representative		1,924	100.0	1,638	85.1	97	5.0	106	5.5	60	3.1	9	0.5	5	0.3	9	0.5
		1.6%		1.9%		0.8%		0.9%		1.0%		0.4%		0.7%		0.6%	
	M		84.7		73.1		3.6		4.3		2.7		0.4		0.2		0.4
	F		15.3		1.9		0.8		0.9		1.0		0.4		0.7		0.6
Administrative Staff - Nonsupervisory		9,118	100.0	6,095	66.8	992	10.9	1,113	12.2	629	6.9	111	1.2	75	0.8	103	1.1
		7.6%		7.1%		8.1%		9.2%		10.1%		4.8%		9.9%		6.6%	
	M		44.8		30.4		4.3		5.6		3.2		0.4		0.3		0.6
	F		55.2		7.1		8.1		9.2		10.1		4.8		9.9		6.6
Administrative Staff - Supervisory		4,447	100.0	3,386	76.1	340	7.6	396	8.9	224	5.5	22	0.5	27	0.6	32	0.7
		3.7%		4.0%		2.8%		3.3%		3.9%		0.9%		3.6%		2.0%	
	M		69.1		53.6		4.0		6.4		3.7		0.3		0.4		0.6
	F		30.9		4.0		2.8		3.3		3.9		0.9		3.6		2.0

JOB CATEGORIES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES BY ETHNIC GROUP AND SEX ON MARCH 31, 1982 - contd. TABLE 3

See page 143 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Administrative Line		1,371	100.0	1,157	84.4	87	6.3	75	5.5	34	2.5	1	0.1	4	0.3	13	0.9
		1.1%		1.4%		0.7%		0.6%		0.5%		0.0%		0.5%		0.8%	
	M		89.0		75.8		4.7		4.9		2.4		0.0		0.3		0.9
	F		11.0		1.4		0.7		0.6		0.5		0.0		0.5		0.8
Janitor/Custodian		3,444	100.0	1,418	41.2	1,115	32.4	644	18.7	63	1.8	135	3.9	24	0.7	45	1.3
		2.9%		1.7%		9.1%		5.3%		1.0%		5.8%		3.2%		2.9%	
	M		61.6		22.2		21.7		12.4		1.0		3.0		0.5		0.9
	F		38.4		1.7		9.1		5.3		1.0		5.8		3.2		2.9
Supervising Janitor/Custodian		1,150	100.0	641	55.7	337	29.3	119	10.3	9	0.8	31	2.7	2	0.2	11	1.0
		1.0%		0.8%		2.8%		1.0%		0.1%		1.3%		0.3%		0.7%	
	M		63.5		30.4		21.9		7.4		0.6		2.2		0.2		0.8
	F		36.5		0.8		2.8		1.0		0.1		1.3		0.3		0.7
Laborers		641	100.0	358	55.9	100	15.6	138	21.5	22	3.4	9	1.4	9	1.4	5	0.8
		0.5%		0.4%		0.8%		1.1%		0.4%		0.4%		1.2%		0.3%	
	M		94.7		52.4		15.3		20.4		3.3		1.4		1.1		0.8
	F		5.3		0.4		0.8		1.1		0.4		0.4		1.2		0.3
COD Classes		1,308	100.0	622	47.6	284	21.7	291	22.2	26	2.0	33	2.5	32	2.4	20	1.5
		1.1%		0.7%		2.3%		2.4%		0.4%		1.4%		4.2%		1.3%	
	M		39.6		18.7		8.0		10.3		0.3		0.6		1.1		0.6
	F		60.4		0.7		2.3		2.4		0.4		1.4		4.2		1.3
Total		120,568	100.0	85,464	70.9	12,190	10.1	12,044	10.0	6,231	5.2	2,321	1.9	754	0.6	1,564	1.3
		100.0%		100.0%		100.0%		100.0%		100.0%		100.0%		100.0%		100.0%	
	M		55.7		41.1		4.6		5.3		2.6		0.8		0.3		0.8
	F		44.3		29.8		5.5		4.7		2.5		1.2		0.3		0.5
C.E.A. Classes		565	100.0	452	80.0	47	8.3	45	8.0	17	3.0	1	0.2	2	0.4	1	0.2
		0.5%		0.5%		0.4%		0.4%		0.3%		0.0%		0.3%		0.1%	
	M		88.3		71.3		6.5		7.1		2.8		0.0		0.4		0.2
	F		11.7		8.7		1.8		0.9		0.2		0.2		0.0		0.0

TABLE 3 JOB CATEGORIES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES BY ETHNIC GROUP AND SEX ON MARCH 31, 1982 - contd.

See page 143 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Subprofessional/ Technical		15,756	100.0	10,880	69.1	1,925	12.2	1,697	10.8	668	4.2	346	2.2	69	0.4	171	1.1
		13.1%		12.7%		15.8%		14.1%		10.7%		14.9%		9.2%		10.9%	
	M		40.8		27.9		4.6		4.9		1.9		0.7		0.2		0.6
	F		59.2		12.7		15.8		14.1		10.7		14.9		9.2		10.9
Supervising Subprofessional/ Technical		3,385	100.0	2,745	81.1	234	6.9	200	5.9	156	4.6	16	0.5	18	0.5	16	0.5
		2.8%		3.2%		1.9%		1.7%		2.5%		0.7%		2.4%		1.0%	
	M		59.8		48.3		3.5		4.2		3.1		0.3		0.2		0.3
	F		40.2		3.2		1.9		1.7		2.5		0.7		2.4		1.0
Law Enforcement		8,333	100.0	6,227	74.7	995	11.9	948	11.4	44	0.5	35	0.4	21	0.3	63	0.8
		6.9%		7.3%		8.2%		7.9%		0.7%		1.5%		2.8%		4.0%	
	M		89.6		69.2		8.7		10.0		0.5		0.4		0.2		0.7
	F		10.4		7.3		8.2		7.9		0.7		1.5		2.8		4.0
Supervising Law Enforcement		1,803	100.0	1,501	83.3	128	7.1	151	8.4	6	0.3	2	0.1	7	0.4	8	0.4
		1.5%		1.8%		1.1%		1.3%		0.1%		0.1%		0.9%		0.5%	
	M		95.9		81.0		6.0		7.7		0.3		0.1		0.3		0.4
	F		4.1		1.8		1.1		1.3		0.1		0.1		0.9		0.5
Field Representative		2,594	100.0	1,853	71.4	210	8.1	321	12.4	113	4.4	47	1.8	14	0.5	36	1.4
		2.2%		2.2%		1.7%		2.7%		1.8%		2.0%		1.9%		2.3%	
	M		64.8		46.5		4.6		8.0		3.1		1.2		0.3		1.0
	F		35.2		2.2		1.7		2.7		1.8		2.0		1.9		2.3
Supervising Field Representative		1,924	100.0	1,638	85.1	97	5.0	106	5.5	60	3.1	9	0.5	5	0.3	9	0.5
		1.6%		1.9%		0.8%		0.9%		1.0%		0.4%		0.7%		0.6%	
	M		84.7		73.1		3.6		4.3		2.7		0.4		0.2		0.4
	F		15.3		1.9		0.8		0.9		1.0		0.4		0.7		0.6
Administrative Staff - Nonsupervisory		9,118	100.0	6,095	66.8	992	10.9	1,113	12.2	629	6.9	111	1.2	75	0.8	103	1.1
		7.6%		7.1%		8.1%		9.2%		10.1%		4.8%		9.9%		6.6%	
	M		44.8		30.4		4.3		5.6		3.2		0.4		0.3		0.6
	F		55.2		7.1		8.1		9.2		10.1		4.8		9.9		6.6
Administrative Staff - Supervisory		4,447	100.0	3,386	76.1	340	7.6	396	8.9	224	5.5	22	0.5	27	0.6	32	0.7
		3.7%		4.0%		2.8%		3.3%		3.9%		0.9%		3.6%		2.0%	
	M		69.1		53.6		4.0		6.4		3.7		0.3		0.4		0.6
	F		30.9		4.0		2.8		3.3		3.9		0.9		3.6		2.0

TABLE 4 DISTRIBUTION OF NEW HIRES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982

Statistical data format - each heading is followed by a series of boxes: Each box contains four figures - starting from the upper le corner and moving clockwise. (1) The total number of the ethnic group new hires into the occupation; (2) (underlined) the percentage new hires into the occupation who are in the ethnic group; (3) (4) the percentage ethnic representation by gender. The underlined pe centage figures total to 100% reading across the column.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Clerical		4,583	100.0	2,670	58.3	760	16.6	612	13.4	213	4.6	196	4.3	43	0.9	89	1
	M		9.8		5.3		1.8		1.0		0.5		0.8		0.1		0
	F		90.2		53.0		14.8		12.3		4.1		3.4		0.8		1
Supervising Clerical		249	100.0	189	75.9	18	7.2	22	8.8	9	3.6	4	1.6	3	1.2	4	1
	M		7.6		5.2		0.8		0.8		0.0		0.0		0.4		0.
	F		92.4		70.7		6.4		8.0		3.6		1.6		0.8		1.
Semiskilled		464	100.0	315	67.9	52	11.2	70	15.1	6	1.3	6	1.3	6	1.3	9	1.
	M		88.6		59.7		9.5		14.2		1.3		1.3		1.3		1.
	F		11.4		8.2		1.7		0.9		0.0		0.0		0.0		0.
Crafts and Trades		397	100.0	285	71.8	31	7.8	48	12.1	9	2.3	5	1.3	9	2.3	10	2.
	M		97.7		70.0		7.6		11.8		2.3		1.3		2.3		2.
	F		2.3		1.8		0.3		0.3		0.0		0.0		0.0		0.
Supervising Crafts and Trades		103	100.0	82	79.6	3	2.9	15	14.6	0	0.0	0	0.0	2	1.9	1	1.
	M		95.1		75.7		2.9		13.6		0.0		0.0		1.9		1.
	F		4.9		3.9		0.0		1.0		0.0		0.0		0.0		0.
Professional		2,490	100.0	1,693	68.0	216	8.7	195	7.8	212	8.5	88	3.5	10	0.4	76	3.1
	M		47.9		33.2		3.3		4.1		4.3		0.8		0.2		2.
	F		52.1		34.8		5.3		3.7		4.2		2.7		0.2		1.
Supervising Professional		233	100.0	187	80.3	8	3.4	12	5.2	13	5.6	4	1.7	0	0.0	9	3.9
	M		64.8		54.1		1.3		3.0		2.1		0.9		0.0		3.
	F		35.2		26.2		2.1		2.1		3.4		0.9		0.0		0.

Full-Time New Hires - Those appointees, who at the time of their appointment, were not currently employed by the State in a civil service or exempt (where salary is set by SPB) position.

DISTRIBUTION OF NEW HIRES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982 - contd.
See page 146 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Subprofessional/ Technical		3,118	100.0	2,142	68.7	451	14.5	306	9.8	89	2.9	74	2.4	17	0.5	39	1.3
	M		37.6		25.7		5.0		4.4		0.7		0.8		0.2		0.7
	F		62.4		43.0		9.4		5.5		2.1		1.6		0.3		0.5
Supervising Subprofessional/ Technical		105	100.0	84	80.0	7	6.7	9	8.6	4	3.8	0	0.0	0	0.0	1	1.0
	M		35.2		27.6		2.9		2.9		1.0		0.0		0.0		1.0
	F		64.8		52.4		3.8		5.7		2.9		0.0		0.0		0.0
Law Enforcement		1,405	100.0	861	61.3	271	19.3	218	15.5	18	1.3	15	1.1	6	0.4	16	1.1
	M		82.2		51.8		13.7		13.5		0.9		1.0		0.4		0.9
	F		17.8		9.5		5.6		2.1		0.4		0.1		0.1		0.2
Supervising Law Enforcement		14	100.0	10	71.4	2	14.3	2	14.3	0	0.0	0	0.0	0	0.0	0	0.0
	M		71.4		50.0		7.1		14.3		0.0		0.0		0.0		0.0
	F		28.6		21.4		7.1		0.0		0.0		0.0		0.0		0.0
Field Representative		303	100.0	177	58.4	33	10.9	68	22.4	9	3.0	4	1.3	4	1.3	8	2.6
	M		64.0		39.6		4.0		14.5		2.3		1.0		0.7		2.0
	F		36.0		18.8		6.9		7.9		0.7		0.3		0.7		0.7
Supervising Field Representative		24	100.0	20	83.3	2	8.3	1	4.2	0	0.0	1	4.2	0	0.0	0	0.0
	M		83.3		66.7		8.3		4.2		0.0		4.2		0.0		0.0
	F		16.7		16.7		0.0		0.0		0.0		0.0		0.0		0.0
Administrative Staff - Nonsupervisory		784	100.0	470	59.9	123	15.7	122	15.6	36	4.6	14	1.8	5	0.6	14	1.8
	M		34.8		23.1		4.2		4.1		1.4		0.6		0.3		1.1
	F		65.2		36.9		11.5		11.5		3.2		1.1		0.4		0.6

TABLE 4

DISTRIBUTION OF NEW HIRES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982 - contd.
See page 146 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Administrative Staff - Supervisory		139	100.0	109	78.4	12	8.6	11	7.9	4	2.9	1	0.7	1	0.7	1	0.7
	M		44.6		38.1		2.2		3.6		0.0		0.0		0.0		0.7
	F		55.4		40.3		6.5		4.3		2.9		0.7		0.7		0.0
Administrative Line		12	100.0	11	91.7	1	8.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	M		50.0		50.0		0.0		0.0		0.0		0.0		0.0		0.0
	F		50.0		41.7		8.3		0.0		0.0		0.0		0.0		0.0
Janitor/Custodian		814	100.0	303	37.2	293	36.0	157	19.3	17	2.1	26	3.2	5	0.7	12	1.5
	M		63.8		20.3		26.3		12.5		0.7		2.3		0.4		1.2
	F		36.2		17.0		9.7		6.8		1.4		0.9		0.4		0.2
Supervising Janitor/Custodian		126	100.0	68	54.0	33	26.2	14	11.1	1	0.8	7	5.6	0	0.0	3	2.4
	M		63.5		29.4		20.6		7.1		0.8		4.0		0.0		1.6
	F		36.5		24.6		5.6		4.0		0.0		1.6		0.0		0.8
Laborers		87	100.0	47	54.0	13	14.9	20	23.0	4	4.6	1	1.1	2	2.3	0	0.0
	M		90.8		48.3		13.8		21.8		4.6		1.1		1.1		0.0
	F		9.2		5.7		1.1		1.1		0.0		0.0		1.1		0.0
COD Classes		697	100.0	360	51.6	149	21.4	144	20.7	13	1.9	15	2.2	10	1.4	6	0.9
	M		36.7		18.2		7.2		9.2		0.9		0.4		0.9		0.0
	F		63.3		33.4		14.2		11.5		1.0		1.7		0.6		0.9
Total		16,147	100.0	10,083	62.4	2,478	15.3	2,046	12.7	657	4.1	461	2.9	124	0.8	298	1.8
	M		40.7		25.7		5.9		5.5		1.4		0.9		0.3		0.9
	F		59.3		36.7		9.5		7.1		2.7		1.9		0.4		0.9

DISTRIBUTION OF PROMOTIONS OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982 TABLE 5

Statistical data format - each heading is followed by a series of boxes: Each box contains four figures - starting from the upper left corner and moving clockwise. (1) The total number of the ethnic group who were promoted into the job category; (2) (underlined) the percentage of persons receiving promotions in each job category by ethnic group; (3) (4) the percentage ethnic representation by gender. The underlined percentage figures total to 100% reading across the column.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Clerical		2,274	100.0	1,391	61.2	268	11.8	317	13.9	167	7.3	86	3.8	15	0.7	30	1.3
	M		11.3		6.0		1.4		1.9		1.1		0.6		0.0		0.3
	F		88.7		55.1		10.4		12.0		6.2		3.2		0.6		1.1
Supervising Clerical		1,047	100.0	752	71.8	90	8.6	107	10.2	55	5.3	26	2.5	3	0.3	14	1.3
	M		13.6		9.2		1.4		1.1		0.9		0.5		0.1		0.4
	F		86.4		62.7		7.2		9.1		4.4		2.0		0.2		1.0
Semiskilled		254	100.0	160	63.0	24	9.4	56	22.0	3	1.2	1	0.4	7	2.8	3	1.2
	M		86.6		53.9		7.9		20.9		1.2		0.4		2.0		0.4
	F		13.4		9.1		1.6		1.2		0.0		0.0		0.8		0.8
Crafts and Trades		260	100.0	177	68.1	23	8.8	47	18.1	7	2.7	1	0.4	3	1.2	2	0.8
	M		97.7		66.5		8.5		18.1		2.7		0.4		1.2		0.4
	F		2.3		1.5		0.4		0.0		0.0		0.0		0.0		0.4
Supervising Crafts and Trades		417	100.0	334	80.1	21	5.0	49	11.8	5	1.2	0	0.0	8	1.9	0	0.0
	M		98.3		78.4		5.0		11.8		1.2		0.0		1.9		0.0
	F		1.7		1.7		0.0		0.0		0.0		0.0		0.0		0.0
Professional		1,897	100.0	1,318	69.5	131	6.9	159	8.4	181	9.5	51	2.7	3	0.2	54	2.8
	M		58.8		40.4		2.8		5.4		6.1		1.8		0.1		2.3
	F		41.2		29.1		4.1		3.0		3.4		0.9		0.1		0.5
Supervising Professional		1,038	100.0	771	74.3	68	6.6	57	5.5	91	8.8	25	2.4	3	0.3	23	2.2
	M		76.4		58.0		4.3		3.9		6.6		1.6		0.2		1.7
	F		23.6		16.3		2.2		1.5		2.2		0.8		0.1		0.5

TABLE 5

DISTRIBUTION OF NEW HIRES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982 - contd.
See page 149 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Subprofessional Technical		1,450	100.0	828	57.1	180	12.4	249	17.2	119	8.2	46	3.2	6	0.4	22	1.5
	M		31.4		17.3		3.0		4.6		4.2		1.7		0.0		0.8
	F		68.6		39.8		9.4		12.6		4.0		1.5		0.4		0.8
Supervising Subprofessional/ Technical		591	100.0	443	75.0	64	10.8	42	7.1	34	5.8	3	0.5	2	0.3	3	0.5
	M		52.5		38.7		4.7		5.1		3.4		0.2		0.2		0.2
	F		47.5		36.2		6.1		2.0		2.4		0.3		0.2		0.3
Law Enforcement		309	100.0	214	69.3	24	7.8	55	17.8	4	1.3	5	1.6	1	0.3	6	1.9
	M		90.6		63.8		5.8		16.5		1.3		1.6		0.3		1.3
	F		9.4		5.5		1.9		1.3		0.0		0.0		0.0		0.6
Supervising Law Enforcement		421	100.0	295	70.1	59	14.0	57	13.5	5	1.2	0	0.0	2	0.5	3	0.7
	M		90.5		64.8		12.4		11.6		0.7		0.0		0.2		0.7
	F		9.5		5.2		1.7		1.9		0.5		0.0		0.2		0.0
Field Representative		418	100.0	297	71.1	39	9.3	49	11.7	21	5.0	6	1.4	1	0.2	5	1.2
	M		43.5		28.5		5.0		5.5		3.1		0.7		0.2		0.5
	F		56.5		42.6		4.3		6.2		1.9		0.7		0.0		0.7
Supervising Field Representative		395	100.0	300	75.9	31	7.8	41	10.4	16	4.1	5	1.3	1	0.3	1	0.3
	M		70.6		54.9		4.1		7.3		3.0		1.0		0.3		0.0
	F		29.4		21.0		3.8		3.0		1.0		0.3		0.0		0.3
Administrative Staff - Nonsupervisory		1,209	100.0	846	70.0	100	8.3	116	9.6	97	8.0	18	1.5	16	1.3	16	1.3
	M		33.8		23.1		2.7		3.3		3.3		0.6		0.3		0.5
	F		66.2		46.9		5.5		6.3		4.7		0.9		1.0		0.8

DISTRIBUTION OF NEW HIRES OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES FROM APRIL 1, 1981, THROUGH MARCH 31, 1982 - contd.
See page 149 for detailed description of statistical data format.

Job Category		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
Administrative Staff - Supervisory		759	100.0	569	75.0	50	6.6	74	9.7	46	6.1	8	1.1	4	0.5	8	1.1
	M		61.8		45.7		3.3		7.5		3.7		0.5		0.3		0.8
	F		38.2		29.2		3.3		2.2		2.4		0.5		0.3		0.3
Administrative Line		250	100.0	197	78.8	23	9.2	21	8.4	7	2.8	1	0.4	1	0.4	0	0.0
	M		84.8		67.2		7.2		7.2		2.8		0.0		0.4		0.0
	F		15.2		11.6		2.0		1.2		0.0		0.4		0.0		0.0
Janitor/Custodian		63	100.0	40	63.5	8	12.7	11	17.5	0	0.0	2	3.2	0	0.0	2	3.2
	M		47.6		33.3		4.8		6.3		0.0		1.6		0.0		1.6
	F		52.4		30.2		7.9		11.1		0.0		1.6		0.0		1.6
Supervising Janitor/Custodian		177	100.0	106	59.9	37	20.9	25	14.1	1	0.6	4	2.3	0	0.0	4	2.3
	M		50.3		23.2		15.8		7.3		0.6		1.7		0.0		1.7
	F		49.7		36.7		5.1		6.8		0.0		0.6		0.0		0.6
Laborers		65	100.0	33	50.8	7	10.8	21	32.3	1	1.5	0	0.0	2	3.1	1	1.5
	M		84.6		41.5		10.8		27.7		1.5		0.0		1.5		1.5
	F		15.4		9.2		0.0		4.6		0.0		0.0		1.5		0.0
COD Classes		33	100.0	17	51.5	2	6.1	9	27.3	5	15.2	0	0.0	0	0.0	0	0.0
	M		54.5		27.3		6.1		21.2		0.0		0.0		0.0		0.0
	F		45.5		24.2		0.0		6.1		15.2		0.0		0.0		0.0
Total		13,327	100.0	9,088	68.2	1,249	9.4	1,562	11.7	865	6.5	288	2.2	78	0.6	197	1.5
	M		47.7		33.1		3.8		5.6		3.2		0.9		0.3		0.8
	F		52.3		35.1		5.6		6.1		3.3		1.2		0.3		0.6

DISTRIBUTION OF MONTHLY SALARY OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES ON MARCH 31, 1982

Statistical data format - each heading is followed by a series of boxes: each box contains five figures - starting with the percent figure in the upper left corner of the box and moving clockwise. (1) The percentage of the ethnic group in the salary category; (2) the total incumbents of the ethnic group in the salary category; (3) (underlined) the percentage of those in the salary category who are in the ethnic group; (4) (5) the percentage ethnic representation in the category by gender. The underlined percentage figures total to 100.0% reading across the column. The percentage figure shown in the upper left corner of the box totals to 100.0% reading down the column.

Salary		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
$ 000 - 799		48	100.0	29	60.4	11	22.9	4	8.3	1	2.1	2	4.2	0	0.0	1	2.1
		0.0%		0.0%		0.1%		0.0%		0.0%		0.1%		0.0%		0.0%	
	M		10.4		8.3		2.1		0.0		0.0		0.0		0.0		0.0
	F		89.6		52.1		20.8		8.3		2.1		4.2		0.0		2.1
$ 800 - 1099		8,315	100.0	4,193	50.4	1,611	19.4	1,499	18.0	385	4.6	375	4.5	96	1.2	156	1.9
		6.8%		4.9%		13.2%		12.4%		6.2%		16.2%		12.7%		10.0%	
	M		23.8		10.0		5.8		4.6		1.0		1.6		0.3		0.6
	F		76.2		40.4		13.6		13.4		3.6		3.0		0.9		1.3
$1100 - 1399		27,923	100.0	17,916	64.2	3,705	13.3	3,290	11.8	1,645	5.9	852	3.1	185	0.7	330	1.2
		23.2%		20.9%		30.4%		27.3%		26.4%		36.7%		24.5%		21.1%	
	M		20.0		10.9		3.7		3.0		1.0		0.8		0.2		0.3
	F		80.0		53.3		9.5		8.8		4.9		2.2		0.5		0.9
$1400 - 1699		21,128	100.0	14,708	69.6	2,375	11.2	2,428	11.5	842	4.0	387	1.8	138	0.7	250	1.2
		17.5%		17.2%		19.5%		20.2%		13.5%		16.8%		18.3%		16.0%	
	M		49.0		32.8		5.9		6.9		1.5		0.9		0.3		0.8
	F		51.0		36.9		5.4		4.6		2.5		0.9		0.3		0.4
$1700 - 1999		19,714	100.0	13,829	70.1	2,029	10.3	2,234	11.3	865	4.4	366	1.9	130	0.7	261	1.3
		16.4%		16.2%		16.6%		18.5%		13.9%		15.8%		17.2%		16.9%	
	M		68.3		49.0		6.2		8.2		2.6		0.8		0.5		1.0
	F		31.7		21.1		4.1		3.2		1.8		1.0		0.2		0.3
$2000 - 2299		19,059	100.0	14,873	78.0	1,218	6.4	1,430	7.5	1,049	5.5	164	0.9	97	0.5	228	1.2
		15.8%		17.4%		10.0%		11.9%		16.8%		7.1%		12.9%		30.2%	
	M		78.7		62.6		4.0		6.0		4.1		0.5		0.4		1.0
	F		21.3		15.4		2.4		1.5		1.4		0.4		0.2		0.2

TABLE 7

DISTRIBUTION OF MONTHLY SALARY OF FULL-TIME STATE CIVIL SERVICE EMPLOYEES ON MARCH 31, 1982 - contd.
See page 155 for detailed description of statistical data format.

Salary		Total #	Total %	White #	White %	Black #	Black %	Hispanic #	Hispanic %	Asian #	Asian %	Filipino #	Filipino %	American Indian #	American Indian %	Other #	Other %
$2300 - 2599		9,616	100.0	7,714	80.2	573	6.0	518	5.4	562	5.8	82	0.9	52	0.5	115	1.2
		8.0%		9.0%		4.7%		4.3%		9.0%		3.5%		7.0%		7.6%	
	M		81.4		66.4		4.0		4.5		4.5		0.6		0.4		0.9
	F		18.6		13.8		2.0		0.8		1.4		0.2		0.1		0.3
$2600 - 2899		6,811	100.0	5,494	80.7	333	4.9	328	4.8	497	7.3	35	0.5	27	0.4	97	1.4
		5.6%		6.4%		2.7%		2.7%		8.0%		1.5%		3.6%		6.2%	
	M		86.0		70.0		3.3		4.1		6.4		0.4		0.4		1.3
	F		14.0		10.6		1.5		0.7		0.9		0.1		0.0		0.2
$2900 - 3199		3,512	100.0	2,997	85.3	139	4.0	133	3.8	182	5.2	12	0.3	19	0.5	30	0.9
		2.9%		3.5%		1.1%		1.1%		2.9%		0.5%		2.5%		1.9%	
	M		88.7		76.2		2.9		3.4		4.8		0.2		0.4		0.8
	F		11.3		9.1		7.1		0.4		0.4		0.1		0.1		0.1
$3200 - 3499		1,529	100.0	1,248	81.6	93	6.1	98	6.4	61	4.0	5	0.3	3	0.2	21	1.4
		1.7%		1.5%		0.8%		0.8%		0.9%		0.2%		0.4%		1.3%	
	M		85.4		70.4		4.3		5.8		3.5		0.3		0.1		1.0
	F		14.6		11.2		1.8		0.7		0.5		0.0		0.1		0.3
Over $3500		2,913	100.0	2,463	84.6	103	3.5	82	2.8	142	4.9	41	1.4	7	0.2	75	2.6
		2.4%		2.9%		0.8%		0.7%		2.3%		1.8%		0.9%		5.0%	
	M		90.4		78.5		2.8		2.5		3.8		0.6		0.2		2.0
	F		9.6		6.0		0.8		0.3		1.1		0.8		0.0		0.6
Weighted Average	M	1,850		1,922		1,606		1,633		1,879		1,547		1,700		1,900	
	F	2,121		2,200		1,778		1,847		2,196		1,683		1,943		2,115	
		1,510		1,537		1,460		1,387		1,545		1,455		1,443		1,553	

EXHIBIT F

Sex Segregation and Wage Discrimination Among Los Angeles County Workers

Joseph K. Lyou

California State University, Northridge

Running Head: Sex Segregation and Wage Discrimination

Abstract

This study compared salaries of sex segregated jobs among Los Angeles County employees based on comparable worth. It was found that employees of female segregated jobs earn 71% of that of their counterparts in male segregated jobs for work of equal value. This is a discrepancy of $504.50 per month or $2.90 an hour for the average worker. It was concluded that there is a necessity for a more comprehensive study of this problem and that a committee representing employees, management, labor unions, the Los Angeles County Board of Supervisors, and interested community delagates conduct such a study with a guarantee of amendments of any pay discriminations found.

Sex Segregation and Wage Discrimination Among Los Angeles County Workers

The issue of comparable worth has recently become a key concept in the movement to eliminate pay discrimination in job situations. Comparable worth may be defined as the principle of equal pay for equal work and is based on the theory that job evaluations may be used to redesign salary schedules so that they reflect job value rather than some already existing pay bias.

Studies of comparable worth in sex segregated jobs have continually verified the reality of pay discrimination. In a study of non-management classes in the State of Washington, Willis and Associates (1974) concluded that, "at all evaluation levels . . . women's salaries tend to be less than men's salaries" (p. 19) and "the disparity is approximately 20 percent" (p. 20). A similar study in the City of San Jose by Hay (1980) found that "female dominated classes are paid 2-10% below the overall trend" while "male dominated classes are paid 8-15% above the overall trend" within the city (unnumbered). The Carlsbad Unified School District, Carlsbad, California, used their comparable worth findings to implement pay increases for their non-teaching employees (Wilson, 1975).

While the findings of comparable worth studies have consistently shown pay discrepancies on the basis of sex discrimination, the effects of these studies haven't always been so absolute. Implementation of comparable worth has not always followed findings of discrimination. For example, in Washington State, even after two studies (Willis, 1974; Willis, 1976), there has been no adjustment of the biased salaries (Taber and Remick, 1978). Part of the problem stems from the controversy surrounding the various job evaluation methods. Remick (1978) points out some of these problems in her paper on bias-free job evaluations.

This study investigates possible comparable worth pay discrimination in sex segregated jobs among Los Angeles County workers. It is hypothesized that when sex segregated jobs among Los Angeles County workers are compared by job worth, pay discrepancies will exist showing sex discrimination with employees in female segregated jobs earning less than employees in male segregated jobs.

Method

Subjects

Subjects consisted of 9,911 Los Angeles County employees in 20 different job classes. Each job class included 20 or more subjects and was sex segregated (70% or more female or male dominated). There were 2,856 subjects in male segregated job classes and 7,156 subjects in female segregated classes.

Materials

Sex segregation and the number of subjects in each job class was determined by analyzing Los Angeles County Sex/Ethnic Distribution of Permanant Employees, June, 1981. Salaries were obtained from Los Angeles County Code, Title 5, Personnel. Job grades were aquirred from City of San Jose Study of Non-Management Classes (Hay, 1981).

Procedure

A list of 388 sex segregated jobs was compiled from a list of all Los Angeles County jobs. Salaries corresponding to the sex segregated jobs were then assigned using the Los Angeles County Code. Similar or identical job classes from the San Jose study were then matched with Los Angeles County jobs. The job classes that differed from the San Jose study were Grounds Worker/Maintenance Worker I and Grounds Maintenance Worker I, Typist-Clerk II and Intermediate Typist-Clerk, Offset Press Operator and Offset Duplicator Operator, and Typist-Clerk I and Typist Clerk, with the first job listed representing the City of San Jose and

the second job listed representing Los Angeles County. Salaries of male and female dominated jobs within Los Angeles County were then compared when applicable.

Results

It was found that the 7,055 employees in female segregated jobs in this study are paid an estimated $504.50 less than employees of male segregated jobs per worker per month based on comparable work. This figure was obtained by averaging the salaries of jobs in job grades with more than one sex segregated job, adding these averages to the job grades represented by one job and comparing the sex segregated monthly salary averages by dividing this total by the number of job grades. An hourly discrepancy of $2.90 per employee of female segregated jobs was obtained by dividing the average monthly salaries for male and female segregated jobs by the number of work hours in a month and then comparing the differences.

The relative earning power of employees in female segregated jobs as compared to employees in male segregated jobs was determined to be 71% based on comparable work. This was calculated by dividing the average monthly salary of employees in female segregated jobs ($1,245.68) by the average monthly salary of employees in male segregated jobs ($1,750.18).

An estimated $1,013,732.73 loss per month for all employees of female segregated jobs was determined by multiplying the difference between male and female segregated jobs in each job grade by the number of employees in the female segregated job grade and then adding the losses per month per job grade. An annual estimated loss of $12,164,792.76 was then computed by multiplying this figure by 12.

When comparing these figures to the City of San Jose study, it was found that employees in male segregated jobs in Los Angeles County earn an average of

$206.47 more per month ($1,750.18 to $1,543.71) than their San Jose counterparts while the Los Angeles County employees from female segregated jobs earn relatively the same as their San Jose counterparts with Los Angeles County employees coming out slightly ahead ($1,245.68 to $1,213.14). The percentage of earnings based on comparable worth for the City of San Jose employees in female segregated jobs is 79% of employees in male dominated jobs as compared to 71% for Los Angeles County.

Insert Table 1 about here

Discussion

The findings of this study show support for the hypothesis that Los Angeles County employees in female segregated jobs are paid less than employees in male segregated jobs for comparable work. These results are consistent with other comparable worth studies conducted in the State of Washington (Willis, 1974; Willis, 1976), the City of San Jose (Hay, 1981) and Carlsbad Unified School District (Wilson, 1975). Specifically, this study agrees with the previous findings in Washington and San Jose that based on comparable work, employees in female segregated jobs earn 20-30% less than employees in male segregated jobs with Los Angeles County employees fairing slightly worse at 71% as compared to Washington and San Jose's findings of 80% and 71%, respectively.

There are some obvious shortcomings to research of this nature. It is conceivable that the job evaluations prepared for the City of San Jose do not apply to job classes in Los Angeles County. There does seem to be some discrepancy between pay for the male segregated jobs of Los Angeles County and the City of San Jose ($1,750.18 to $1,543.71 average per month salaries, respectively) but

relatively no difference in pay for the corresponding female segregated jobs ($1,245.68 for Los Angeles County to $1,213.14 for the City of San Jose). These comparisons are also compounded by the two year difference in salary comparison, 1980 for the City of San Jose to 1982 for Los Angeles County.

The likelihood of comparable worth pay discrimination in Los Angeles County is evident nevertheless from these findings even with its possible faults. It is recommended that a more comprehensive study based on these findings be conducted and that realistic means for implementation of amending biased salary schedules be evaluated and standardized before any such study is attempted. This would guarantee the avoidance of predicaments like those found in Washington State (Taber and Remick, 1978). It is further suggested that job evaluations in the advocated study be conducted by a committee representing employees, management, labor unions, the Board of Supervisors, and interested community delegates. These actions could serve as a preliminary conquest in the abolition of sex discrimination in the business world.

References

Hay & Associates. City of San Jose Study of Non-Management Classes. San Francisco, California, 1981.

Remick, H. Strategies for Creating Sound, Bias-Free Job Evaluation Plans. Paper presented at International Relations Counselors Colloquim, Atlanta, Georgia, September 1978.

Taber, G. & Remick, H. Beyond Equal Pay for Equal Work: Comparable Worth in the State of Washington. Paper presented at the Conference on Equal Pay and Equal Opportunity Policy for Women in Europe, Canada and the United States, Wellesley, Massachusetts: Center for Research on Women, Wellesley College, 1978.

Willis, N. D., and Associates. State of Washington Comparable Worth Study. Seattle: Norman D. Willis and Associates, 1974.

Willis, N. D., and Associates. State of Washington Comparable Worth Study Phase II. Seatfle: Norman D. Willis and Associates, 1976.

Wilson, R. Trustees Vote School Employee Pay According to Job Equality Formula. Carlsbad Journal, November 20, 1975, pp. 1.

SEX SEGREGATION AND WAGE DISCRIMINATION AMONG LOS ANGELES COUNTY WORKERS

- SUMMARY SHEET -

Job Grade	Job Title (dominant sex)	# of Employees	Hourly Wages (San Jose)	Monthly Salaries (San Jose)
10	Sr. Programmer Analyst (m)	64	$14.95 (12.68)	$2,598.36 (2,204.00)
	Civil Engineer I (m)	56	$15.47 (9.53)	$2,688.55 (1,656.00)
	Librarian (f)	167	$9.48 (8.63)	$1,647.91 (1,500.00)
8	Electrician (m)	256	$15.25 (11.65)	$2,650.57 (2,026.00)
	Accountant I (m)	31	$9.65 (9.02)	$1,677.18 (1,568.00)
	Library Assistant (f)	129	$7.11 (8.06)	$1,236.00 (1,402.00)
7	Carpenter (m)	158	$13.60 (10.85)	$2,364.88 (1,886.00)
	Plumber (m)	135	$15.51 (11.62)	$2,696.77 (2,020.00)
	Legal Secretary (f)	136	$8.22 (7.13)	$1,429.64 (1,240.00)
	Staff Aid (f)	66	$8.06 (6.93)	$1,401.27 (1,204.00)
5	Security Officer I (m)	129	$7.96 (7.94)	$1,383.55 (1,380.00)
	Sr. Typist-Clerk (f)	474	$7.15 (6.90)	$1,242.36 (1,200.00)
4	Grounds Maint. Worker I (m)	328	$7.11 (7.75)	$1,236.00 (1,348.00)
	Account Clerk II (f)	160	$6.95 (6.60)	$1,209.00 (1,148.00)
	Intermediate Typist-Clerk (f)	5,160	$6.32 (6.33)	$1,098.82 (1,100.00)
3	Offset Duplicator Operator (m)	21	$7.16 (7.06)	$1,245.55 (1,228.00)
	Account Clerk I (f)	237	$6.42 (5.96)	$1,115.45 (1,036.00)
	Telephone Operator (f)	254	$6.17 (6.17)	$1,071.73 (1,072.00)
1	Custodian (m)	1,678	$6.03 (6.73)	$1,048.00 (1,170.00)
	Typist Clerk (f)	272	$5.35 (5.69)	$930.55 (990.00)

Average Salaries by Job Grade and Sex and Estimated Loss Per Month

Job Grade	Male Dominated	-	Female Dominated	=	Est. Loss	X	# of Employees	=	Est. Loss/Month
10	$2,643.46		$1,647.91		$995.55		167		$166,256.85
8	$2,163.88		$1,236.00		$927.88		129		$119,696.52
7	$2,530.83		$1,415.46		$1,115.37		202		$225,304.74
5	$1,383.55		$1,242.36		$141.19		474		$66,924.06
4	$1,236.00		$1,153.91		$82.09		5,320		$436,718.80
3	$1,245.55		$1,093.59		$115.96		491		$74,612.13
1	$1,048.00		$930.00		$117.45		272		$31,946.40
Totals	$12,251.27		$8,719.78						$1,013,732.73

Estimated Pay Disparity Due to Discrimination (San Jose)

$1,750.18 (1,543.71) monthly average for male dominated jobs
- $1,245.68 (1,213.14) monthly average for female dominated jobs
$504.50 (330.57) monthly disparity due to discrimination

$10.07 (8.88) hourly average for male dominated jobs
- $7.17 (6.98) hourly average for female dominated jobs
$2.90 (1.90) hourly disparity due to discrimination

Percentage of Earnings Based on Comparable Worth (San Jose)

$$\frac{\text{female dominated jobs}}{\text{male dominated jobs}} = \frac{\$1,245.68\ (1,213.14)}{\$1,750.18\ (1,543.71)} = 71\%\ (79\%)$$

Employee Totals

2,856 employees in male dominated jobs in this study
+ 7,055 employees in female dominated jobs in this study
9,911 total number of employees in this study

39,047 male employees in Los Angeles County jobs
+ 42,966 female employees in Los Angeles County jobs
82,013 total number of employees in Los Angeles County jobs

Conclusions

- the 7,055 employees in female dominated jobs in this study are losing an estimated $1,013,732.73 in pay per month due to sex discrimination. This totals to $12,164,792.76 per year.
- the average monthly discrepancy for each employee is $504.50. The average hourly discrepancy is $2.90.
- employees in female dominated jobs in this study earn 71% of that made by employees in male dominated jobs for comparable work.

Notes

- job grades were taken from City of San Jose study of non-management classes
- sex segregated jobs were considered as equal to or greater than 70% male or female dominated with 20 or more employees in the job class
- the number of employees in each job class and the monthly salaries were obtained from the Los Angeles County Personnel Department
- hourly wages were computed from monthly salaries based on 173.84 work hours per month (21.73 working days per month times eight work hours per day)

EXHIBIT G

ATTACHMENT "A"

PROPOSED ADDITION TO SPB RULES

Article 25 - Resolving Allegations of Discrimination in State Employment

547. Scope. This article pertains to allegations of discrimination in State employment on the basis of age, sex, race, religious creed, color, national origin, ancestry, handicap, or marital status, in violation of State or Federal law. It implements the mandate imposed upon the State Personnel Board to insure that unlawful discrimination does not occur in the State civil service. To that end, it provides a process to correct the effects of such discrimination. All issues arising under these rules, may, if not resolved under the process prescribed hereunder, be appealed to the State Personnel Board.

547.1. Procedure for Resolving Discrimination Complaints. A complaint against an action, decision, policy or condition which is within the authority of the appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board. A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve, shall be filed with the Personnel Board as an appeal. The executive officer may first attempt to resolve such a complaint informally, or refer it to the Board for hearing. Complaints which do not allege discrimination as set forth in Rule 547 shall be dealt with through the grievance procedure, if applicable, or filed as an appeal to the Board.

Each complaint must be in writing and state clearly the facts upon which it is based, and the relief requested, in sufficient detail for the reviewing authority to understand the nature of the complaint and who is involved.

Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.

547.2. Standards. Each discrimination complaint procedure shall:

(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions must include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.

(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.

(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the Board or to file with the appropriate State or Federal agency or court having jurisdiction.

(d) A complaint which is not resolved by an appointing power within 180 days from the date of formal filing with the appointing power, may be referred to the Board as an appeal for remedial action.

Note: Authority cited: Section 18701 Government Code. Reference Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704, 19705 Government Code.

JK:A-1210/5-6

ATTACHMENT "B"

A PROPOSAL FOR A STANDARD DEPARTMENTAL PROCEDURE FOR RESOLVING COMPLAINTS OF DISCRIMINATION IN THE CALIFORNIA STATE SERVICE

A. Purpose

The purpose of a departmental discrimination complaint procedure is to provide all employees of the State of California with a uniform method for voicing allegations and complaints of discrimination and to assure that such allegations and complaints receive prompt and impartial consideration to bring about satisfactory resolution for all concerned.

B. Scope

A complaint of discrimination may be filed by any State employee who seeks redress from an action, decision, policy or condition which they believe discriminated against them by reason of their race, color, religion, national origin, ancestry, sex, age, handicap, or marital status.

Complaints which are within the authority of the appointing power to resolve shall be dealt with by the appointing power before referral to the Personnel Board. Complaints by applicants not employed by the State and those not within the jurisdiction of the appointing power to resolve will be forwarded directly to the State Personnel Board.

Complaints which do not allege discrimination based on one of the above factors will continue to be dealt with through the departmental grievance procedure or the appeal process, as applicable. (See Section H.)

C. Objectives

The objectives of a discrimination complaint procedure are threefold:

1. To provide a ready means for resolving individual or group problems of a sensitive nature, quickly, informally, and at the lowest possible level.

2. To decrease significantly formal complaints, which are expensive, time consuming, and detrimental to employee relations.

3. To make managers and supervisors more sensitive to the needs of individual employees or groups, and to improve their capability of handling problems before they become complaints.

D. Intent

The establishment of a discrimination complaint procedure is not intended to supplant regular grievance procedures or prohibit employees from filing a complaint with the Fair Employment Practices Commission (FEPC), Equal Employment Opportunity Commission (EEOC), or to file an action in court. The procedure is intended, and should be viewed, as a means of providing the special skills needed to promptly and fairly handle the sensitive issues involved in allegations of discrimination and to ensure full cooperation with Federal and State compliance agencies. Further, it is the intent of this system to resolve complaints in as informal a manner and at the lowest possible organizational level, while assuring that each complaint receives full consideration and appropriate remedy.

E. Basic Provisions of a Departmental Discrimination Complaint Procedure

1. Assurance of Complainant's Rights

All employees should be assured of the following rights with regard to complaints of discrimination:

a. The right to an informal, confidential presentation of their complaint to a competent counselor using a reasonable amount of State time.

b. The right to keep their complaint confidential until such time as they give the counselor permission to do otherwise in order to bring the complaint to the appropriate authority for remedy, or until such time as a formal complaint is filed.

c. The right to a full, impartial and prompt investigation by a trained investigator.

d. The right to all relevant information developed and discovered during the course of any investigation and inquiry into the matter.

e. The right to a timely decision from the appointing power, or authority designated by the appointing power after full consideration of all relevant facts and circumstances.

f. The right to be represented by a person of the complainant's choosing at each and all steps of the process.

g. The right to appeal the appointing power's decision to the State Personnel Board, or other appropriate State or Federal control agency, or to file a civil action in the appropriate court.

h. Freedom from influence to refrain from filing a complaint, and freedom from reprisal for filing a complaint.

2. Key Roles and Responsibilities

a. EEO Counselors

The discrimination complaint procedure places great emphasis on the EEO Counselor. The EEO Counselor's role is to provide an open and empathetic channel of communication through which applicants and employees may ask questions, express and discuss grievances, and get answers or resolutions to problems related to equal employment opportunity in confidence. However, it must be clear that total confidentiality cannot be guaranteed at the counseling (informal) stage of the process if the counselor is to bring the complaint to the attention of those who can resolve it. The counselor should apprise the complainant of this fact and must get the complainant's permission before breaking the confidentiality of the complaint.

The counselor should never assert a personal opinion as to the merits of the complaint. The counselor should:

(1) Hear the complaint completely;

(2) Make inquiries relevant to the complaint, without destroying the confidentiality;

(3) Present the results of the inquiry to the complainant;

(4) Advise the complainant of all rights;

(5) Allow the complainant to reach his or her own conclusion and decision; and

(6) With the complainant's permission, bring the issues to those in authority to resolve the problem.

The EEO Counselor is clearly the focal point of this process, and the effectiveness of the process will depend largely on the personal commitment and effectiveness of the EEO Counselors.

b. EEO Investigators

Formal investigations are not always necessary when a formal complaint is filed. The counselor may have obtained all the necessary information, or the relevant facts to the complaint may be clear. However, when an investigation is required, a trained investigator should be assigned and be responsible for conducting a thorough review of circumstances giving rise to the formal complaint and setting forth all relevant facts, including the opinions and hearsay of other relevant to the allegations. Opinion and hearsay should be clearly identified as such in the investigator's report. Investigators should never give their own opinion as to any facts or circumstances, including the merits of the allegation, to the complainant or anyone else verbally or in the report.

The EEO Investigator will report the findings directly to the Affirmative Action Manager, or other official assigned the responsibility for the complaint procedure.

c. Management

A person (e.g., Equal Employment Opportunity Manager, Affirmative Action Program Manager), in close reporting relationship to top management, should be assigned the responsibility of managing the discrimination complaint system. This responsibility would include review of the performance of the counselors and investigators; maintenance of schedules, records and appropriate publicity; periodic evaluation of the system; and introducing modifications, if necessary. The manager should also play a key role in the departmental adjudication of complaints.

3. Access to Records

Counselors and investigators, especially the latter, must be authorized by departmental management to have access to all departmental files and records which might contain evidence bearing on allegations of discrimination. The authorization should be in the form of an Executive memorandum or written policy. This is necessary since evidence relevant to the investigation could include comparisons of the education and experience of the complainant and others, supervisory ratings and reports of performance, disciplinary actions and other information normally held confidential. Obviously, the investigator will be responsible for preserving the confidentiality of all personal information. This is normally not difficult

since names need not be revealed. However, it should be made clear to the complainant and to responding supervisors and managers, that confidentiality cannot be guaranteed as to the identity of the principals involved once the complaint becomes formal.

4. Records and Evaluation

In order to properly manage and evaluate the effectiveness of the discrimination complaint system, the following information should be recorded:

a. Date of first counseling contact. (See Note after c.)

b. Basis of the complaint, e.g., race, age, sex, etc., plus the cause, i.e., the action or failure of action complained against, e.g., failure to promote, denial of sick leave, etc.

c. Results of the counseling contact(s). (Note: Counselor records that will identify the principals in a complaint are to be kept confidential unless and until the complaint is filed formally.)

d. Status of the complaint, i.e., where it is in the process.

e. Date formal complaint filed.

f. Date investigator assigned, if applicable.

g. Date complaint discussed with EEO officer.

h. Date(s) of departmental hearing(s) and decision.

i. Disposition of the complaint, i.e., specifically what decision was made after the complaint completed the process at the departmental level.

j. Whether or not the complainant was satisfied with the decision or merely acquiesced, or will appeal, if known.

k. Any other information, such as counseling, investigative and hearing hours, which would be useful in budgeting, managing and evaluating this part of the Affirmative Action Program.

Using the data suggested above, it should be possible to evaluate the discrimination complaint procedure in both quantitative and qualitative terms after sufficient experience, usually after one year. Depending on the amount of activity, a periodic monitoring process should be implemented.

It is expected that as a procedure for resolving complaints becomes widely publicized, it will be used and, therefore, will very quickly result in a cost not before noticed or ascertainable. Effective informal counseling and a sincere effort to resolve allegations before they become formal complaints or are appealed to higher authority should help keep costs down.

F. Principals Involved in a Departmental Discrimination Complaint Procedure

A departmental discrimination complaint procedure shall consist of:

- Equal employment opportunity counselors who attempt informal resolution of problems through precomplaint counseling;
- Equal employment opportunity investigators who conduct impartial investigations of formal complaints;
- The departmental affirmative action officer who provides further opportunity for informal resolution of problems throughout the process; and
- The departmental director who provides the authority for the procedure and the final review of formal complaints and issues the final departmental decision, subject to appeal to the State Personnel Board.

G. Steps:

1. Employees who believe that they have been discriminated against should first discuss the problem with the Equal Employment Opportunity Counselor designated to handle complaints in their work unit. This contact should be made within thirty (30) days of the alleged discriminatory action or decision affecting the employee, or within thirty (30) days of such action or decision having come to the attention of the employee.

2. The counselor will hear the employee's complaint and perform whatever inquiry is deemed necessary to provide the complainant with an informal analysis of the matter.

If the complainant chooses to formalize the complaint, the counselor will advise the complainant of all rights and procedures for filing a formal complaint. The counselor will not attempt to dissuade the complainant from filing a formal complaint.

The counselor must keep the complainant's name confidential if the complainant so desires, but should make it clear that in order to bring the complaint to the appropriate authority for remedy, confidentiality cannot be guaranteed. The counselor must present the complainant with a written statement of the results of inquiry and/or attempts to resolve the ~~matter for~~ the complainant, together with all alternatives and rights under the process, within fifteen (15) days from the date of first contact with the complainant.

3. The complainant who wishes to submit a formal complaint must, within fifteen (15) days of the final session with the counselor, file a formal written complaint with the departmental person responsible for the complaint process (hereafter referred to as EEO Officer).

4. The EEO Officer shall obtain a copy of the Counselor's report and, if he or she believes that an investigation is necessary, or if the complainant demands an investigation, the EEO Officer shall assign an impartial investigator from a unit other than that of the complainant's employment, within seven (7) days of receipt of the complaint.

5. If an investigation is conducted, the investigator will provide the EEO Officer with a written report ~~of findings of fact within~~ twenty (20) days of the assignment of the case.

6. The EEO Officer will provide the complainant and departmental management with a copy of the investigation report, the EEO Officer's recommendation and all relevant information within seven (7) days of receipt of the investigation report.

7. The departmental management will provide the complainant with an opportunity to discuss the complaint and all relevant information, recommendations and proposed decisions prior to making a final decision on the complaint. The department's final decision must be rendered in writing to the complainant within twenty (20) days of the EEO Officer's written recommendation.

8. If not satisfied with the department's decision, the complainant may forward the complaint within ten (10) days of the department's decision, to the Executive Officer, State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, for further consideration.

9. Within thirty (30) days, the Executive Officer, State Personnel Board, shall provide the complainant and the department with an analysis of the complaint and recommendations for resolution.

10. Upon receipt of the analysis and recommendations of the Executive Officer, SPB, the department must notify the complainant by written memorandum with a copy to the Personnel Board, of its intended action. This memorandum must be delivered to the complainant within ten (10) days of receipt of the memorandum from the Executive Officer, SPB, and must clearly specify the action to be taken and the time for completing the action.

11. If not satisfied with the recommendation of the Executive Officer, SPB, and/or the department's response, the complainant may file a formal appeal with the Personnel Board within thirty (30) days of the Executive Officer's recommendation or the department's response, whichever is later. The Board may refer the complaint to the Hearing Officer for further finding of fact, or hear the matter directly.

12. If the complainant is not satisfied with the decision of the State Personnel Board, he or she may file an appeal with the appropriate State or Federal agency or court having jurisdiction.

All references to time are intended as maximum elapsed calendar days, but with the provision that circumstances beyond the control of the person(s) responsible for an action will extend the time allowed for that particular action by an amount of time directly attributable to such circumstances.

Complainants may be represented at all times by a person of their choosing, and where the complainant is referred to, it is intended that the reference include the complainant's representative, if appropriate.

H. Typical Grievances and Complaints and Possible Remedies

As stated in Section B, grievances and complaints which are within the authority of the appointing power to resolve should be dealt with by the appointing power before referral to the State Personnel Board. Complaints and grievances which cannot be resolved by the appointing power either through lack of ability to reach agreement or lack of jurisdiction should be sent to the Personnel Board under the appeal procedure.

It should be remembered that some personnel actions are totally within the discretion of the appointing power and are appealable to the Board only on such grounds as discrimination or other improper application or violation of law or rule. Remedies for such violations and improper practices would then depend on the facts of each case and the strength of evidence supporting the complaint or grievance.

All grievances, complaints, and appeals should state clearly the specific cause and basis and the relief requested. The employee must state whether he or she is filing a complaint of discrimination or a grievance. Under the grievance procedure, the first contact should be with the employee's immediate supervisor. A complaint of discrimination should be taken up first with the EEO counselor. The employee should feel free to contact the Employer-Employee Relations Coordinator at the Personnel Board at any time for information, however.

CAUSE FOR COMPLAINT/GRIEVANCE	PROCEDURE FOR RESOLUTION	POSSIBLE REMEDIES
Recruitment practices, e.g., inadequacy of placement or duration of publicity or other efforts to contact appropriate groups as potential employees.	Contact the State Personnel Board unless the examination is delegated to a department, in which case the first contact should be with that department.	1. Improve Recruitment efforts. a. Extend filing/examination date. b. Improve or broaden focus of publicity and other contacts. Only under the most extreme circumstances: c. Cancel the examination. d. Revoke eligible lists. e. Rescind any appointments made. f. Reschedule the examination.

K:A-1210/11-19

EXHIBIT H

WOMEN'S PROGRAM PLAN

The State Women's Program seeks to achieve full representation of all women in all occupational groups and at all levels. During the course of the past year the Program has come to a greater understanding not only of priority areas, but especially of the ongoing nature and substantial time commitment of a large portion of our workload. Specifically, we estimate that roughly 75% of staff time available in Fiscal Year 1982-83 will be dedicated to ongoing efforts. The remaining 25% is available for special projects of which four have been identified as targeting major areas of concern. This work plan outlines the projected workload and project intent for the Program in Fiscal Year 1982-83.

I. ONGOING EFFORTS

A. MONTHLY WOMEN'S PROGRAM OFFICER (WPO) MEETINGS

1. Purpose: to maintain a forum wherein WPOs can meet, share information, identify mutual problem areas and provide support, assistance, and technical expertise.

2. Activities: coordinating meeting logistics, engaging speakers and facilitating discussion.

3. Time Commitment: 10 hours/month; 3.5% of total staff hours available.

B. CAREER/COMPLAINT ASSISTANCE

1. Purpose: to respond to contacts from individuals and departments, to assist in resolving complaints of discrimination or to identify appropriate contacts for career assistance.

2. Activities: meeting with individual complainants and departmental affirmative action, Women's Program, and personnel officers and other managers, researching applicable laws, rules and policies, and working with State Personnel Board staff in Departmental Services Division, Application Review, Appeals, etc.

3. Time Commitment: 40 hours/month; 12.5% of total staff hours available.

C. CONFERENCES, WORKSHOPS, COMMUNITY RELATIONS

1. Purpose: to establish Program visibility, to disseminate

information on Program activities and expertise, to gather input and feedback for Program priorities, and to identify community resources available to facilitate Program goals, i.e., recruitment resources and technical materials.

2. Activities: identifying key community resources, responding to requests from women's advocacy groups, attending workshops and conferences, and maintaining the Women's Program Advisory Committee.

3. Time Commitment: 30 hours/month; 10% of total staff hours available.

D. PHYSICAL ABILITY STANDARDS

1. Purpose: to monitor the development of physical ability standards particularly in law enforcement and resources classifications and ensure women's concerns are addressed with regard to potential adverse impact.

2. Activities: working with Test Validation and Construction and departmental staff to follow the development of standards, identifying areas of concern and communicating those concerns to staff involved and to interested women's groups.

3. Time Commitment: 10 hours/month; 3.5% of total staff hours available.

E. COLLECTIVE BARGAINING ISSUES

1. Purpose: to address issues of concern to the women's community which overlap into the area of collective bargaining.

2. Activities: identifying or responding to specific concerns raised, researching issues, working with DPA staff and other concerned parties to address concerns.

3. Time Commitment: 10 hours/month; 3.5% of total staff hours available.

F. SEXUAL ORIENTATION PROGRAM

1. Time Commitment: 45 hours/month; 15% of total staff hours available.

G. TRAINING, QAPs, SUPERVISION, AND SUSTAINING ACTIVITIES

1. Time Commitment: 32 hours/month; 10.5% of total staff hours available.

II. SPECIAL PROJECTS

A. TRADES AND CRAFTS ENTRY/SUBENTRY OPTIONS

1. Purpose: as an occupational group the trades area reflects the most significant underrepresentation of women in State service. The Fiscal Year 1981-82 study identified a number of problem areas among which is established entry pattern barriers. This project will explore the use of alternate entry modes which will facilitate the increased representation of women in trades.

2. Activites: identifying key classes to focus on; reviewing current entry pattern barriers; identifying recruitment pools and assessing what pattern changes such as apprenticeships, trainee, or COD subentry or MQ revision might best facilitate entry for women; and working with departmental WPOs, personnel and recruitment staff and DSD staff to determine feasibility and begin implementation.

3. Completion Date:

B. CAREER EXECUTIVE ASSIGNMENT REPRESENTATION

1. Purpose: to ensure representation is maintained and increased at the Career Executive Assignment levels after the change in administrations.

2. Activities: working with new administrators to ensure awareness of the need for representation; assisting them with the identification of candidate pools; working with advocacy groups to ensure opportunities are well advertised; and monitoring the hiring process.

3. Completion Date:

C. COMPARABLE WORK AND SPB SALARY BASED POLICIES

1. Purpose: add flexibility to SPB policies with regard to T&Ds and lateral transfers which will recognize salary inequities identified from a comparable worth perspective.

2. Activities: reviewing existing comparable worth studies to identify key classifications; identification of alternative criteria other than salary based; developing an issue memorandum which discusses problems and purposes options for consideration by PSD.

3. Complètion Date:

D. CLERICAL MANAGEMENT CLASSES

1. Purpose: identify upward mobility barriers and potential inequities in clerical management classes.

2. Activities: working with WPOs and personnel staff from Department of Motor Vehicles, Franchise Tax Board, and Department of Justice review the duties, responsibilities and mobility options of third and fourth line clerical supervisors, identify and compare with other management staff in those departments; and report findings and recommendations.

3. Completion Date:

LAH:X/U-805/4-7

STATE PERSONNEL BOARD GOAL FOR FISCAL YEAR 1982-83

PROGRAM STATEMENT	KEY ISSUE	BOARDWIDE GOAL
APPEALS DIVISION		
The Appeals Division investigates appeals to the State Personnel Board relating to complaints of discrimination; grievances; examinations; out-of-class claims; Medical Officer decisions; and actions of departmental and State Personnel Board staff. Provides recommendations on such cases and provides staff assistance to the State Personnel Board when such cases are appealed to the Board. The Appeals Division conducts hearings in accordance with the provisions of Section 11512 of the Government Code and recommends proposed decisions to the State Personnel Board in connection with appeals from punitive or disciplinary actions, etc., or other matters as assigned by the Executive Officer.	Grievance, Appeals Discrimination Complaints, Disciplinary Actions	1. Assure the fair and equitable resolution of employee appeals with a special sensitivity to all aspects of discrimination. 2. Continue to review and improve current State Personnel Board procedures relating to appeals and hearings resulting in an appeals program that facilitates employee access, provides consistent application of uniform standards in rule interpretation, and resolution of appeals, grievances and discrimination complaints. 3. Assist the Personnel Board to improve the administration of its judicial functions by recommending appropriate program changes to the activities of the Hearing Office and Appeals Unit.

APPEALS DIVISION
Key Objectives for Fiscal Year 1982-83

OBJECTIVES	COMPLETED BY	RELATED GOAL(S)
The Division will investigate and issue reports or propose recommendations within four months of receipt of an appeal for the following:		Appeals 1, 2, 3
Voided Appointments	July 1982	
Withhold from Certification	July 1982	
Rule 211	July 1982	
Petitions for Rehearing (other than Hearing Office)	July 1982	
Discrimination Complaints	October 1982[1/]	
Merit Issue Complaints	December 1982	
Medical Appeals	December 1982	
Group Examinations	December 1982	
Out-of-Class Claims	March 1983	
Miscellaneous Investigations	April 1983[2/]	
Individual Exam Appeals	November 1982[2/]	
By June 1983, assess the merit issue complaint and discrimination complaint systems and determine if the balance of resources and expertise between management and employees warrant systematic changes to ensure the objective and responsive conclusions are reached.	June 1983	Appeals 1, 2, 3
By the end of *, assess the impact of the court decision in the Fair Employment and Housing case on the Board's jurisdiction, authority and complaint resolution systems and propose appropriate actions to accommodate the decision.		Appeals 1, 2, 3

'dded June 14, 1982.

lay be modified, extent of backlog being reviewed.

ompletion date to be established when the case is decided.

APPEALS DIVISION
Key Objectives for Fiscal Year 1982-83

OBJECTIVES	COMPLETED BY	RELATED GOAL(S)
By the end of October 1982, develop in conjunction with the Department of Personnel Administration a method for early identification of appeals involving joint jurisdiction and on agreed-upon method of investigation and joint resolution of the appeal.	October 31, 1982	Appeals 1, 2, 3
By the end of August 1982, implement the comprehensive divisionwide training system in Division.	August 31, 1982	Appeals 1, 2, 3
By the end of June 1983, the Division will close the following cases:	June 30, 1983	Appeals 1, 2, 3
Petitions for Rehearing (Hearing Office) 80		
Petitions for Rehearing (Other than Hearing Office) 5		
Group Examination Appeals 30		
Individual Examination Appeals 550		
Miscellaneous Investigations 264		
Adverse Actions 1,085		
Discrimination Complaints 32		
Withhold Appeals 40		
Medical Appeals 120		
Merit Issue Complaints 90		
Out-of-Class Claims 180		
Voided Appointments 5		

Q-0630/25-26

EXHIBIT J

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1604

Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Amendment to Guidelines on Discrimination Because of Sex.

SUMMARY: On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.11, 45 FR 25024. This amendment will re-affirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: Karen Danart, Acting Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-7060.

SUPPLEMENTARY INFORMATION: During the 60-day public comment period which ended on June 10, 1980, the Commission received over 160 letters regarding the Guidelines on sexual harassment. These comments came from all sectors of the public, including employers, private individuals, women's groups, and local, state, and federal government agencies.

The greatest number of comments, including many from employers, were those commending the Commission for publishing guidelines on the issue of sexual harassment, as well as for the content of the guidelines.

The second highest number of comments specifically referred to § 1604.11(c) which defines employer liability with respect to acts of supervisors and agents. Many commentors, especially employers, expressed the view that the liability of employers under this section is too broad and unsupported by case law. However, the strict liability imposed in § 1604.11(c) is in keeping with the general standard of employer liability with respect to agents and supervisory employees. Similarly, the Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other mitigating factor. *Anderson* v. *Methodist Evangelical Hospital, Inc.*, [illegible] 1971), *aff'd* 464 F.2d 723 (5th Cir. 1972) (6th Cir. 1972); Commission Decision No. 71-969, CCH EEOC Decisions (1973) ¶6193; Commission Decision No. 71-1442, CCH EEOC Decisions (1973) ¶6216. Furthermore, a recent 9th Circuit case on sexual harassment imposed strict liability on the employer where a supervisor harassed an employee without the knowledge of the employer. *Miller* v. *Bank of America*, 600 F.2d 211, 20 EPD ¶30,066 (9th Cir. 1979). In keeping with this standard, the Commission, after full consideration of the comments and the accompanying concerns, will let § 1604.11(c) stand as it is now worded.

A number of people asked the Commission to clarify the use of the term "agent" in § 1604.11(c). "Agent" is used in the same way here as it is used in § 701(b) of Title VII where "agent" is included in the definition of "employer."

A large number of comments referred to § 1604.11(a) in which the Commission defines sexual harassment. These comments generally suggested that the section is too vague and needs more clarification. More specifically, the comments referred to subsection (3) of § 1604.11(a) as presenting the most troublesome definition of what constitutes sexual harassment. The Commission has considered these comments and has decided that subsection (3) is a necessary part of the definition of sexual harassment. The courts have found sexual harassment both in cases where there is concrete economic detriment to the plaintiff, *Heelan* v. *Johns-Manville Corp.*, 451 F.Supp. 1382, 16 EPD ¶8330 (D. Colo. 1978), *Barnes* v. *Costle*, 561 F.2d 983, 14 EPD ¶7755 (D.C. Cir. 1977), *Garber* v. *Saxon Business Products*, 552 F.2d 1032, 14 EPD ¶7587 (4th Cir. 1977), and where unlawful conduct results in creating an unproductive or an offensive working atmosphere. *Kyriazi* v. *Western Electric Co.*, 461 F.Supp. 894, 18 EPD ¶8700 (D.N.J. 1978). For analogous cases with respect to racial harassment see *Rogers* v. *EEOC*, 454 F.2d 234, 4 EPD ¶7597 (5th Cir. 1971); *EEOC* v. *Murphy Motor Freight Lines, Inc.*, 488 F.Supp. 381, 22 EPD ¶30,888 (D.C. Mn. 1980).

The word "substantially" in § 1604.11(a)(3) has been changed to "unreasonably." Many commentors raised questions as to the meaning of the word "substantially." The word "unreasonably" more accurately states the intent of the Commission and was therefore substituted to clarify that intent.

It should be emphasized that the appropriate course for further clarification and guidance on the meaning of § 604.11(a)(3) is through [illegible] sexual harassment allegations are reviewed on a case-by-case basis, any further questions will be answered through Commission decisions which will be fact specific.

A fair number of comments were received on § 1604.11(d) which defined employer liability with respect to acts of persons other than supervisors or agents. Again, as in § 1604.11(c), the traditional Title VII concept prevails regarding employer liability with respect to those people other than agents and supervisory employees. Many commentors asked the Commission to clarify the meaning of "others." As a result, § 1604.11(d) has been separated into two subsections. The new § 1604.11(d) refers to sexual harassment among fellow employees and the liability of an employer in such a situation.

The new § 1604.11(e) refers to the possible liability of employers for acts of non-employees towards employees. Such liability will be determined on a case-by-case basis, taking all facts into consideration, including whether the employer knew or should have known of the conduct, the extent of the employer's control and other legal responsibility with respect to such individuals.

A number of people also raised the question of what an "appropriate action" might be under § 1604.11(d). What is considered to be "appropriate" will be seen in the context of specific cases through Commission decisions.

Section 1604.11(e) of the Interim Guidelines, which sets out suggestions for programs to be developed by employers to prevent sexual harassment, now becomes § 1604.11(f). The Commission has received many comments which state that this section is not specific enough. The Commission has decided that the provisions of this section should illustrate several kinds of action which might be appropriate, depending on the employer's circumstances. The emphasis is on preventing sexual harassment, and § 1604.11(f) intends only to offer illustrative suggestions with respect to possible components of a prevention program. Since each workplace requires its own individualized program to prevent sexual harassment, the specific steps to be included in the program should be developed by each employer.

Several commentors raised the question of whether a third party who was denied an employment benefit would have a charge cognizable under Title VII where the benefit was received

by a person who was granting sexual favors to their mutual supervisor. Even though [illegible] harassment in the strict sense, the Commission does recognize it as a related issue which would be governed by general Title VII principles. Subsection (g) has been added to recognize this as a Title VII issue.

After carefully considering the numerous comments it received, the EEOC made the above changes to the Interim Guidelines and, at its meeting of September 23, 1980, adopted them as the Final Guidelines on sexual harassment, subject to formal interagency coordination. Formal interagency coordination has been completed, and none of the affected agencies had additional comments. Therefore, these Guidelines become final as adopted at the Commission meeting of September 23, 1980.

Signed at Washington, D.C., this 3rd day of November 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, 29 CFR Chapter XIV, Part 1604 is amended by adding § 1604.11 to read as follows:

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

§ 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

[Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.)]

[1] The principles involved here continue to apply to race, color, religion or national origin.

EXHIBIT K

CEB FORUM

Employment discrimination claims

Many disgruntled employees attribute their employment problems to discrimination

By Guy T. Saperstein and Gary R. Siniscalco

Until comparatively recently, a nonunion employee without a written contract of employment had little legal protection against either arbitrary or discriminatory employment practices. Indeed, Lab C §2922 still provides that "an employment, having no specified term, may be terminated at the will of either party."

Although this broad employer prerogative has been considerably restricted in recent years by statutory prohibitions against employment discrimination, and by the application of common law contract and tort concepts, an employer still retains a great deal of discretion in making employment decisions. Because of this discretion, and because of widespread knowledge of civil rights laws, many disgruntled employees and former employees tend to see their employment-related problems as discrimination problems. But employment litigation today is complex, expensive and often difficult to win, with the result that early evaluation of discrimination problems is essential for both potential plaintiffs and defendants.

In recent years, both federal and California law have been extended to protect specific groups of people from employment discrimination based on sex, race, color, religion, national origin, pregnancy, age and handicap. See Title VII of the Civil Rights Act of 1964, 42 USC §§2000e-1-2000e-15; Age Discrimination in Employment Act, 29 USC §§621-624; Civil Rights Act of 1866, 42 USC §§1981-1988; Vocational Rehabilitation Acts of 1973, 29 USC §§701-796; California Fair Employment and Housing Act, Govt C §§12900-12994. California law additionally prohibits discrimination based on medical condition and marital status. Govt C §12940. Both federal and state law require equal pay for equal work. Equal Pay Act of 1963, 29 USC §206(d), Lab C §1197.5. And all of these statutes prohibit the employer from retaliating against employees who assert their rights under these statutes.

Guy T. Saperstein is a member of Farnsworth, Saperstein & Brand, a professional corporation in Oakland. Gary R. Siniscalco is a partner with the San Francisco firm of Orrick, Herrington & Sutcliffe. Both specialize in labor and employment law.

Every EEO claim must now be viewed in light of potential contract or tort causes of action.

Once the protected class of the individual has been identified, the type of discriminatory conduct must be determined. Most federal and state discrimination statutes are extremely broad in scope. Thus, Title VII and California's fair employment statute prohibit discrimination in hiring, promotion, discharge, compensation, job assignments, and any other "terms, conditions or privileges of employment." 42 USC §2000e-1(a)(1); Govt C §12940(a). Additional protection prohibits employment agencies and unions from discrimination in job referrals, membership or classification of prospective and actual employees and prospective or actual union members. 42 USC §2000e-1(b),(c); Govt C §12940(b),(d).

Two additional types of discriminatory conduct must be considered. Federal and state law prohibit an employer from failing to accommodate reasonably religious beliefs and handicaps where possible. And under the rubric of "terms, conditions or privileges of employment," a host of novel and still developing theories of discrimination are emerging, including those covering sexual harrassment and comparable worth issues.

While an employee is protected by nearly every discrimination statute from retaliation for the good faith assertion of his statutory rights, there is no cause of action as such for "harrassment," perhaps the most common complaint of an unhappy employee. Similarly, since discrimination laws only restrict the employer's traditionally broad discretion, his actions – no matter how unfair – are not actionable under civil rights laws if they do not discriminate on a prohibited basis.

The employer's discretion is, of course, also limited by traditional tort, contract and criminal doctrines. Thus, liability could be imposed on an employer for fraud and misrepresentation, defamation, intentional or negligent infliction of emotional distress, and assault and battery. Similarly, since every employment relationship is contractual in nature, breach of a written, oral or implied in-fact contract is always a possibility. See *Pugh* v. *See's Candies, Inc.* (1981) 116 CA3d 311, 171 CR 917. Indeed, every equal employment opportunity claim must now be viewed by a plaintiff or defendant in light of potential contract or tort causes of action. See *Agarwal* v. *Johnson* (1979) 25 C3d 932, 160 CR 141.

These new approaches, called the wrongful discharge tort or breach of the implied covenant of good faith and fair dealing, do not rely on prohibited discrimination. Rather, they predicate liability for the discharge of an employee on fundamental law or public policy (*Tameny* v. *Atlantic Richfield Co.* (1980) 27 C3d 167, 164 CR 839) or on basic notions of good faith and fair dealing. *Cleary* v. *American Airlines, Inc.* (1980) 111 CA3d 443, 168 CR 722. Thus, an action for wrongful discharge would be considered when the employee is discharged for refusing to do an illegal or unethical act or for asserting statutory rights; when the discharge violates an employer's own procedural or personnel practices; when there are express or implied understandings between employer and employee that have been violated by the discharge; when no cause exists for the termination, or when the employee has worked for the employer for a particularly long time. Although a breach of contract claim is limited to contract damages,

wrongful discharge claims based on public policy or the implied covenant of good faith and fair dealing may expose an employer to compensatory and punitive damages.

Discriminatory treatment is, by definition, different treatment of similarly situated people of distinct race, sex, age or other protected and non-protected categories. Accordingly, the fundamental inquiry in any basic discrimination claim is whether the employee or potential employee was treated in the same way as the majority of employees or potential employees.

No claim or defense to a claim of discrimination can be assessed in a vacuum. In the EEO context, it does not matter how unfair or arbitrary an employer's actions are – if they have uniform application and effect on employees of both minority and majority classes. On the other hand, good cause for discharge is not good cause for discriminatory discharge. See e.g., *McDonald* v. *Santa Fe Trail Transportation Co.* (1976) 427 US 273 (theft of cargo), *McDonnell Douglas Corp.* v. *Green* (1973) 411 US 792, 804 (criminal conduct). The only time such comparative evidence is unnecessary is in the extremely rare "smoking gun" case where direct, unequivocal evidence of discriminatory intent is available. See e.g., *Wells* v. *Hutchinson* 26 FEP Cases 1619, 1629 n. 13 (E.D. Tex. 1980).

Two broad theories of discriminatory conduct have been developed by the U.S. Supreme Court: disparate treatment and disparate impact.

The most common cases involve disparate treatment, in which the employer treats some persons less favorably than others because of sex, race, color, religion or national origin. Proof of discriminatory motive is critical, although in some situations it can be inferred from the mere fact of differences in treatment.

Although elaborate rules and guidelines have been developed to define the *prima facie* case of disparate treatment, ultimately all that is necessary is evidence that raises an inference of discrimination – in other words, evidence that "it is more likely than not" that the employer's conduct is discriminatory. See *White* v. *City of San Diego* (9th Cir 1979) 605 F2d 455, 458. This usually requires only that a minority plaintiff eliminate the most common reasons for rejection, discharge or denial of promotion (e.g., lack of job opening or failure to meet minimal qualifications), or show that non-minority persons were not similarly treated.

Once the plaintiff establishes a *prima facie* case, the burden shifts to the employer to articulate a legitimate non-discriminatory reason for his conduct. The ultimate burden is then returned to the plaintiff to demonstrate that the employer's proffered reason is not believable or is merely a pretext for discrimination. See *Texas Dept of Community Affairs* v. *Burdine* (1981) 450 US 248.

Disparate impact cases involve employment practices that are "facially neutral" in their treatment of different groups but in fact fall more harshly on one group than another and cannot be justified by business necessity. Proof of intent is unnecessary under this theory. *Int'l. Brotherhood of Teamsters* v. *United States* (1977) 431 US 324. The theory of disparate impact would apply to an employer who establishes a non-job-related college degree requirement that in effect eliminates proportionately more women or minorities from the job even though the requirement applies to everyone. See *Teal* v. *State of Connecticut*, ____S Ct ____ (1982).

Class actions must be approved by the court and cannot be used merely to increase a plaintiff's settlement.

Disparate impact cases are usually statistical in nature. In order to establish a *prima facie* case, the plaintiff must show that a given "facially neutral" policy has a statistically significant disproportionate impact on persons of his sex, race or other protected classification. Once the plaintiff has met this burden, the employer must either show that the plaintiff's statistical analysis is flawed, or prove that the challenged policy is justified by business necessity. Even if the employer meets this burden, the plaintiff may still prevail if he proves that a less discriminatory alternative exists which meets the employer's business needs.

As a general rule, the more elaborate an employer's personnel policies, the more difficult it is to prove discrimination. Carefully documented hiring, promotion and discharge procedures encompassing objective standards and built-in review mechanisms discourage discriminatory conduct by making it difficult to conceal. Sometimes the objective standards themselves, however, may have a disproportionate impact on women and minorities and thus may expose an employer to liability. Testing systems, height and weight limitations and educational requirements may be subject to challenge if they have a disproportionate impact and are not demonstrably job-related.

Perhaps the most commonly challenged employer actions are those based on subjective or nonexistent standards. For example, an employer with no identifiable or objective standards for promotion or hiring other than "the best person available" may face liability if women or minorities are disproportionately excluded.

Closed recruitment or placement systems are also frequently vulnerable to challenge. In such instances instead of posting or advertising openings to solicit applications, the employer relies upon supervisory recommendations, word-of-mouth recruitment, or an inherently limited recruitment method (placing notices only in male locker rooms, for example). Where the supervisors are predominately white males, these systems have a built-in tendency to perpetuate a white male work force.

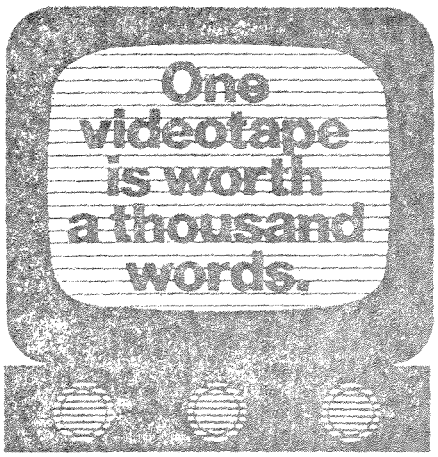
If differences in treatment are the *sine qua non* of discrimination, then the most obvious defense is similar treatment of minority and majority employees. Such treatment may be shown by statistics, examples of similarly situated employees similarly treated, and the like. A related defense is that the minority and majority employees were *not* similarly situated, so that any comparison lacks validity.

Less frequently raised, although more obvious, are defenses based on claims that there was no opening (and thus no hiring or promotion discrimination), that the plaintiff did not apply for an opening (and thus was not discriminatorily rejected) or that the plaintiff quit (and thus was not discriminatorily discharged).

By far the most insidious pitfalls for a would-be plaintiff are located in the administrative process. Most discrimination statutes require the complainant to file an administrative claim within a certain time period as a prerequisite to filing a lawsuit. Many also require that the complainant file a court action within a specified time after administrative action or inaction. Failure to meet either deadline usually rings a death knell for the case. Title VII requires the filing of an administrative complaint with the Equal Employment Opportunity Commission within 300 days after the discriminatory act occurred. 42 USC § 2000e-5(d). Government Code §12960 permits a complaint to be filed with the state up to one year from the date on which the discriminatory act occurred, but it should be filed within the 300-day period to prevent the loss of Title VII protections.

Even timely administrative filing does not ensure a safe harbor, however. Once the EEOC or the Department of Fair Employment and Housing has completed its investigation, or enough time has gone by, or the plaintiff requests it, a "right to sue" letter is sent to the plaintiff and a new clock begins to tick. For Title VII actions, the plaintiff has only 90 days from receipt of the letter to file a lawsuit. For DFEH actions, the plaintiff has one year. 42 USC §2000e-5(f)(1).

Continued on page 78



CEB Forum

Continued from page 31

Different rules apply to federal age discrimination and equal pay claims. A regular statute of limitations requires the filing of a lawsuit within two or three years of the challenged action (if a "willful violation"). When the challenged conduct is based on intentional race discrimination, a plaintiff has the option of forgoing the administrative process and filing a civil action for violation of the Civil Rights Act of 1866 (42 USC §§1981-1988). In these cases, California's three-year statute of limitations applies.

As a general rule, damages under federal civil rights laws pertaining to employment are limited to back pay (including benefits such as deferred pension rights), but in some cases, prospective loss of pay may be recovered ("front pay"). Thus, back pay for promotional discrimination would be the difference in compensation between the position denied the plaintiff and the position the plaintiff held. In federal age discrimination and equal pay cases, this back pay liability may be doubled as a form of liquidated damages. 29 USC §216(b). Under the Civil Rights Act of 1866 (42 USC §1981), however, plaintiffs in race discrimination cases may recover compensatory damages and, in appropriate cases, punitive damages. *Garner* v. *Giarrusso* (5th Cir 1978) 571 F2d 130 (compensatory).

Damages available under California's Fair Employment statute are at least as broad as those available under Title VII. The DFEH has taken the position that compensatory and punitive damages should also be available in appropriate cases. This issue is before the California Supreme Court in the case of *Commodore Home Systems, Inc.* v. *Superior Court* (Aug. 30, 1982) __C3d__, __CR__.

Injunctive relief, including orders of promotion or reinstatement (with retroactive seniority) and orders changing an employer's procedures or mandating hiring goals and timetables for women or minorities, is usually available if the plaintiff prevails. Under all basic statutes, prevailing plaintiffs are entitled to reasonable attorneys' fees and costs, including those incurred at the administrative stage. Such fee awards are not limited to the amount of back pay or damages recovered; the Ninth Circuit Court of Appeals recently affirmed an attorney's fee award of $243,343 in a civil rights case where the damage award was $33,350. See *Rivera* v. *City of Riverside* (9th Cir, filed June 15, 1982, No. 81-5362). Also, counsel for prevailing plaintiffs in EEO actions often are entitled to have their hourly rates multiplied to reflect contingent risk, quality of work and delay in payment. *Richardson* v. *Restaurant Marketing Associates, Inc.* 527 F Supp 690 (ND Cal 1981).

If a discrimination case falls within Fed R Civ P 23 and analogous California doctrines, it may be maintained as a class action. Such actions increase the potential recovery dramatically, but also raise the intensity of the litigation. Although the complex and developing rules of class actions are beyond the scope of this article, a few comments are in order. A plaintiff cannot usually use the device merely as a leverage to increase his settlement, because settlements in class actions must be approved by the court. The days of easily certified class actions are over. A plaintiff's interests and those of the class he represents must be similar and involve common questions of law or fact. See e.g., *General Tel. Co.* v. *Falcon* (June 12, 1982) 50 USLW 4638, __S Ct __, __L Ed 2d __. Finally, both the plaintiff and the plaintiff's attorney must be able to represent the class adequately.

Most traditional discrimination claims may be brought in state or federal courts. This choice is usually not affected by which fair employment agency the original charge was filed in; filing with either the EEOC or the DFEH is equivalent to filing with both. The potentially different federal and state damages, the jury pool, the unanimous jury rule in federal court, the attitudes of federal and state judges, and the respective case backlogs are all factors to consider in choosing the appropriate forum. If a state forum is selected by the plaintiff, the complaint should be carefully drafted to allege only state law claims, since employers normally make every attempt to remove discrimination cases to federal court. If a federal forum is chosen, the plaintiff generally may allege pending state claims such as wrongful discharge or breach of contract, in addition to violation of federal law.

Claims of employment discrimination often present difficult problems of proof and procedure. Damages and jury trial rights are usually limited to individual cases, although an employer's liability in wrongful discharge or class action cases often is substantial. It is therefore imperative that counsel for potential plaintiffs and defendants make an early assessment of the viability of such claims. □

Suggested Reading: Schlei and Grossman, *Employment Discrimination Law*, Bureau of National Affairs (1976), (the best single volume on the subject); Sullivan, Zimmer and Richards, *Federal Statutory Law of Employment Discrimination*, Bobbs-Merrill (1980); Connolly and Peterson, *Use of Statistics In Equal Employment Opportunity Litigation*, Law Journal Seminars Press (1980); *Advising California Employers*, chap 2, Cal CEB (1981).

California Lawyer welcomes articles on substantive law topics for the CEB Forum. Proposed outlines are greatly preferred, but completed manuscripts will be considered.

EXHIBIT L

Burdine: Sex Discrimination, Promotion, and Arbitration

By VERN E. HAUCK*

Vern Hauck is a Visiting Associate Professor of Industrial Relations and Management at Duquesne University Graduate School of Business and Administration.

THE PURPOSE of this article is to examine the implication of *Texas Department of Community Affairs v. Burdine*[1] for sex discrimination, the promotion of qualified applicants, and labor arbitration. Probably the most often cited Supreme Court interpretation of the law is *Griggs v. Duke Power Company*,[2] which hinders intentional and unintentional discrimination. The Supreme Court found a violation of the Civil Rights Act of 1964 when the employer excluded proportionately more blacks than whites by relying on tests and high school diplomas. This finding serves as a basis for the so-called disparate impact doctrine to be discussed. *Duke Power* also dealt with the promotion of unqualified applicants, a matter germane to both the disparate impact and the disparate treatment doctrines wherein the employer's motivational intent is a critical issue. The Supreme Court emphasized that Title VII does not command employers to give job opportunities to unqualified applicants simply because they are a legally protected class.[3]

Many labor agreements contain antidiscrimination provisions and some employees turn to the grievance process when they feel a promotion has been illegally denied because of sex.[4] One arbitrator believes that all arbitrators show an increased willingness to decide the legality of sex discrimination claims, particularly when federal law is applicable, when the contract includes antidiscrimination provisions, and when the parties agree that the arbitrator is competent.[5] In general, most arbitrators have some legal training and, at the parties' request, arbitrators might feel compelled to make contractual interpretations in light of the law.[6]

* The author wishes to thank Professor Irving Kovarsky, University of Iowa, Professor James Craft, University of Pittsburgh, and Mr. Tom Pearce, University of Washington, for their helpful comments.

[1] 101 SCt 1089 (US SCt, 1981), 25 EPD ¶ 31,544.

[2] 401 US 424 (US SCt, 1971), 3 EPD ¶ 8137.

[3] *Edmondson v. U. S. Steel Corp.* (DC Ala, 1979), 21 EPD ¶ 30,380, extends *Duke Power* criteria to sex discrimination matters.

[4] Staff, *Basic Patterns in Union Contracts* (Bureau of National Affairs, Inc.: Washington, D.C.), 1979, p. 111.

[5] *Mountain States Telephone and Telegraph*, 64 LA 316 (1974).

[6] *Basic Vegetable Products, Inc.*, 75 ARB ¶ 8239 (1975).

crimination,
Arbitration

CK*

essor of Industrial Rela-
versity Graduate School

examine the implication of
v. Burdine[1] for sex discrimi-
ants, and labor arbitration.
Court interpretation of the
hich hinders intentional and
ive. Court found a violation
employer excluded propor-
ing on tests and high school
for the so-called disparate
ver also dealt with the promo-
rmane to both the disparate
rines wherein the employer's
Supreme Court emphasized
s to give job opportunities to
a legally protected class.[3]

iscrimination provisions and
ess when they feel a promo-
ex.[4] One arbitrator believes
ingness to decide the legal-
ly when federal law is ap-
scrimination provisions, and
is competent.[5] In general,
and, at the parties' request,
contractual interpretations

g Kovarsky, University of Iowa,
and Mr. Tom Pearce, University

79), 21 EPD ¶ 30,380, extends

reau of National Affairs, Inc.:

A 316 (1974).
(1975).

ly, 1982 • Labor Law Journal

Discrimination claims stressing the disparate impact doctrine involve "employment practices that are facially neutral in their treatment of different groups but that, in fact, fall more harshly on one group than another and cannot be justified by business necessity."[7] This disparate impact standard, outlined in *Duke Power*, must be satisfied by employers as a first line of lawfulness.

An employer who does not intentionally discriminate may still violate Title VII if minority workers suffer from the discriminatory consequences of the employer's actions or policies. The courts may order women to be promoted over equally qualified men to remedy the effect of an employer's discrimination against women collectively. And, once disparate impact has been proven, employers who choose between equally qualified male and female applicants find the courts taking a dim view of subjective judgment and outdated methods of evaluation.[8] The employer's promotion criteria must objectively evaluate each applicant's tenure, job knowledge, and experience.[9] Proof of disparate impact is often decided on the basis of statistical evidence[10] and employers are exonerated if their percentage of minority employees is proportional to the geographical labor market[11] and labor force.[12]

In the case of sex discrimination and promotion, the court is likely to find a violation of the law, disparate impact, where past employment practices continue to exclude a disproportionate percentage of the same sex from promotion. The court may conclude that Title VII has been violated if: a disproportionate percentage of protected employees are kept from gaining the necessary experience for promotion[13]; the standards for promotion used by foremen are subjective[14]; or the employer manipulates work assignments detrimentally so that output figures inhibit the promotion of protected employees.[15]

Disparate Treatment

Disparate treatment arises when an employer has treated an individual less favorably than other employees simply because of race, color, religion, sex, or national origin.[16] Discriminatory intent with respect to individual employees must be proven in disparate treatment cases and can be inferred from the employer's different applications of the same employment policy.[17] Disparate treatment is determined through the allocation of burdens and

[7] *Teamsters v. United States*, 431 US 324 (US SCt, 1977), 14 EPD ¶ 7579; *American Tobacco Co. v. Patterson* (US SCt, 1982), 28 EPD ¶ 32,561. A seniority clause is illegal only when intentional discrimination is proved.

[8] *Albemarle Paper Company v. Moody*, 422 US 405 (US SCt, 1975), 9 EPD ¶ 10,230); Warren, William H., "*Albemarle v. Moody*: Where It All Began," Labor Law Journal, Vol. 37, No. 10 (October 1976), p. 609.

[9] *Rich v. Martin Marietta Corp.*, 533 F2d 333 (CA-10, 1975), 10 EPD ¶ 10,339.

[10] *Albemarle Paper Co. v. Moody*, cited at note 8; *Griggs v. Duke Power Company*, cited at note 2; *Sprogis v. United Air Lines*, 444 F2d 1194 (CA-7, 1971), 3 EPD ¶ 8239.

[11] *Hazelwood School District v. U. S.*, 433 US 299 (US SCt, 1977), 14 EPD ¶ 7633; *Vuyanich v. Republic National Bank*, 505 FSupp 224 (DC Tex, 1980), 24 EPD ¶ 31,480.

[12] *Rich v. Martin Marietta Corp.*, cited at note 9.

[13] *Klapac v. McCormick*, 640 F2d 1361 (CA DofC, 1977), 25 EPD ¶ 31,516.

[14] *Rowe v. General Motors Corp.*, 457 F2d 348 (CA-5, 1972), 4 EPD ¶ 7689.

[15] *Taylor v. Safeway Stores, Inc.*, 524 F2d 263 (CA-10, 1975), 10 EPD ¶ 10,410.

[16] *Furnco Construction Corporation v. Waters*, 438 US 567 (US SCt, 1978), 17 EPD ¶ 8401; *Wright v. National Archives and Records Service*, 609 F2d 702 (CA-4, 1979), 21 EPD ¶ 30,326.

[17] *Keene State College v. Sweeney*, 439 US 24 (US SCt, 1978), 18 EPD ¶ 8673.

order of presentation of proof enunciated in *McDonnell Douglas v. Green*.[18]

First, the applicant must prove a prima facie case of discrimination as judged against the preponderance of evidence standard. According to *McDonnell Douglas*, prima facie discrimination exists if: the applicant belongs to a minority group; the candidate applied and was qualified for the job for which the employer was seeking applicants; despite being qualified, the applicant was rejected; and, after the applicant's rejection, the position remained open and the employer continued seeking applicants.

Second, if prima facie discrimination is proven, the employer must articulate a legitimate nondiscriminatory reason for rejecting the candidate. As will be discussed shortly, the impact of *Burdine* may be felt largely through the application of this second criterion. Third, if the employer articulates a legitimate reason for rejection, the applicant must prove by a preponderance of evidence that the employer's rationale is merely a pretext for intentional discrimination.

Returning again to sex discrimination and promotion, the court is likely to find disparate treatment where the employer's rationale for rejecting a female applicant includes projected inconvenience, annoyance, or extra expense.[19] The court might conclude that Title VII has been violated if: the employer's decision to promote a male supervisor is based on the belief that employees will feel uncomfortable working with a woman supervisor[20]; the standards for making promotion recommendations used by foremen are subjective[21]; the employer uses an employee's unlawful act as an intentional pretext to discriminate against either sex when deciding promotions[22]; or the employer's failure to promote either sex can be statistically regarded as disparate treatment, even though no disparate impact occurs.[23]

Burdine

Burdine is the latest of a line of progeny beginning with the *McDonnell Douglas* criteria for proving disparate treatment in sex discrimination cases.[24] After reiterating that the litigant making a disparate treatment challenge retains the ultimate burden of persuasion at all times, *Burdine* reaffirms the levels of proof desirable within the context of the ultimate burden.

Listed in descending order of rigor, the common levels of proof are: proof beyond a reasonable doubt,[25] clear and convincing proof, preponderance of evidence proof, and burden of production.[26] The burden of production is not a proof in the same sense as the other three. Rather, it is operationally the same as the articulation standard placed on the employer by *McDonnell Douglas*: both standards are met when legitimate evidence is introduced even though it may not be convincing to the judiciary. Courts apply a preponderance of evidence proof to establish a Title VII violation.

[18] 411 US 792 (US SCt, 1973), 5 EPD ¶ 8607.

[19] *Duke Power*.

[20] *Hagan v. Andrus*, 651 F2d 622 (CA-9, 1981), 25 EPD ¶ 31,585.

[21] *Rowe v. General Motors Corp.*, cited at note 14.

[22] *McDonnell Douglas Corp. v. Green*, cited at note 18.

[23] *Furnco Construction Corp. v. Waters*, cited at note 16.

[24] *McDonnell Douglas Corp. v. Green*; *Furnco Construction Corp. v. Waters*; *Board of Trustees of Keene State College v. Sweeney*, cited at note 17; and *Texas Department of Community Affairs v. Burdine*, cited at note 1.

[25] Applies to criminal cases.

[26] Black, Henry C., *Black's Law Dictionary, Fifth Edition* (West Publishing Company: St. Paul, Minn., 1979), p. 178.

yees will feel uncomfortable work-
ith a woman supervisor[20]; the
rds for making promotion rec-
endations used by foremen are
ctive[21]; the employer uses an em-
's unlawful act as an intentional
rt to discriminate against either
hen deciding promotions[22]; or the
yer's failure to promote either sex
e statistically regarded as dis-
treatment, even though no dis-
e impact occurs.[23]

Burdine

dine is the latest of a line of
y beginning with the *McDonnell*
as criteria for proving disparate
ent in sex discrimination cases,[24]
reiterating that the litigant mak-
disparate treatment challenge
s the ultimate burden of persua-
all times. *Burdine* reaffirms the
of proof desirable within the
t of the ultimate burden.

ed in descending order of rigor,
mmon levels of proof are: proof
a reasonable doubt,[25] clear and
ing proof, preponderance of evi-
proof, and burden of production.[26]
rden of production is not a proof
same sense as the other three.
it is operationally the same
articulation standard placed on
ployer by *McDonnell Douglas*:
ndards are met when legitimate
e is introduced even though it
be convincing to the judiciary.
apply a preponderance of evi-
proof to establish a Title VII
ie.

onnell Douglas Corp. v. Green;
onstruction Corp. v. Waters; *Board*
es of Keene State College v. Swee-
at note 17; and *Texas Department*
unity Affairs v. Burdine, cited at

ies to criminal cases.
, Henry C., *Black's Law Dictionary*,
tion (West Publishing Company:
Minn., 1979), p. 178.

In *Burdine*, the applicant proved prima facie discrimination by a preponderance of the evidence. She was a qualified minority applicant who applied for the position and was rejected. The position remained open and a male subordinate was subsequently selected. Several careful readings of the case show that the district court, court of appeals, and Supreme Court agree that prima facie discrimination existed in *Burdine*. However, the legal standard for a prima facie case is flexible and is not the only consideration for finding a disparate treatment violation of Title VII.

Articulation

The Supreme Court then moved to the second *McDonnell Douglas* criterion for deciding disparate treatment. The Court decided between two vastly different interpretations of the burden of proof appropriate at this stage of legal inquiry. It reversed the court of appeals because the burden of proof required by the lower court was greater than the simple articulation (i.e., burden of production) standard established by *McDonnell Douglas*.

The appeals court found for the applicant, taking the position that, "if the employer need only articulate, not prove a legitimate non-discriminatory reason for his action, he may compose fictitious, but legitimate, reasons for his action."[27] Put another way, the possibility that a mere articulation would enable the employer to compose fictitious but legitimate barriers against promoting a qualified, or equally qualified, female applicant led the appeals court to impose on the employer an interim burden of proof similar to the preponderance of evidence. The Supreme Court reasoned that the result of the burden of proof proffered by the court of appeals is contrary to the wish of Congress since it obligated the employer to hire the plaintiff.[28]

The Supreme Court agreed with the district court's application of the second *McDonnell Douglas* criterion. According to the line of cases followed in *Burdine*, the interim burden of proof requires the employer to articulate rational legitimate reasons for not promoting the applicant. Again, articulation implies that the employer need not actually prove that the proffered rationale motivated the rejection. To be specific, the *McDonnell Douglas* standard for lawful articulation was achieved in *Burdine* because the employer testified that: the promotion decision was based on consultation with trusted advisors; a legitimate evaluation of the applicant's relative qualifications was made; the rejected acting project director did not work well with other employees; and work efficiency in the job environment would improve if the equally qualified male were made project director.

Burdine has not been extended to disparate impact cases.[29] Clearly, the degree of objectivity required of supervisory evaluations in situations of disparate impact is not applicable to the disparate treatment issue advanced in *Burdine*. That is, each of the proffered rationales for rejecting the female applicant in *Burdine* contains subjective judgment that might not be acceptable under the disparate impact doctrine.[30]

For example, the decision to reject the female hinged on opinions about her

[27] 608 F2d 563 (CA-5, 1979), 21 EPD ¶ 30,484.

[28] The appeals court and the district court agreed that it was not clear whether the promoted male was a better qualified applicant than the rejected female.

[29] *Johnson v. Uncle Ben's, Inc.*, 628 F2d 419 (CA-5, 1980), 24 EPD ¶ 31,368, vac'd and rem'd (US SCt, 1981), 25 EPD ¶ 31,724, rem'd (CA-5, 1981), 27 EPD ¶ 32,165.

[30] *Albemarle Paper Company v. Moody* and *Washington v. Davis*, 426 US 229 (US SCt, 1976), 11 EPD ¶ 10,958.

relative qualifications and beliefs that she did not work well with subordinates and that she caused inefficiency. Subjective judgment exists in most management decisions and normally leads to the promotion of clearly qualified applicants and the rejection of clearly unqualified applicants. But, when an applicant is borderline, seemingly equally or slightly more qualified, the possibility looms that unconvincing subjective opinion will lead to the rejection of a qualified worker. In sum, the articulation standard makes relatively subjective evidence a practical basis for refusing to promote an equally or maybe slightly more qualified applicant without violating the law.[31]

Arbitration: Burden of Proof

Turning to a speculative issue, whether arbitrators will be in concert with the Supreme Court regarding an employer's claim that an applicant is unqualified for promotion may be situational. Arbitrators apply a burden of persuasion proof to determine their awards, except in unusual circumstances. An arbitrator's assignment of the burden of proof normally has some similarity with the burden of proof set by the Court in disparate impact cases. It appears likely, then, that in disparate impact grievances arbitrators will reach conclusions similar to those of the Court, particularly when questionable evidence is used to substantiate the qualifications of a female applicant.

However, the level of proof usually followed at arbitration is more in tune with the court of appeals interpretation of *McDonnell Douglas* than with the district court position adopted by the Supreme Court in *Burdine*. In matters of disparate treatment, the greater danger may be that arbitrators, following their normal procedures, will assign a burden of proof upon the employer that is different than the law requires.

Twenty-seven published arbitration awards made since 1973 were reviewed to determine how labor arbitrators deal with sex discrimination and promotion.[32] Sixty-three percent of the awards contained specific reference by the parties to disparate impact,[33] disparate treatment,[34] or Title VII issues.[35]

Arbitrators who consider such issues have consistently denied promotions to women who are unqualified either physically and/or because of their

[31] *Gillespie v. Board of Education of North Little Rock* (DC Ark, 1981), 28 EPD ¶ 32,591; *Evans v. Baldrige* (DC DofC, 1981), 28 EPD ¶ 32,429.

[32] The question of arbitrators exceeding their authority under the contract, as specified in the *Steelworkers* trilogy, and the wisdom of arbitrators deciding Title VII issues, as discussed in *Alexander v. Gardner-Denver Co.* and *Strozier v. General Motors Corporation*, is not considered herein. See *Steelworkers Union v. Warrior & Gulf Nav. Co.*, 363 US 574 (US SCt, 1960), (1960), 40 LC ¶ 66,629; *Steelworkers Union v. Enterprise Wheel & Car Corp.*, 363 US 593 (US SCt, 1960), 40 LC ¶ 66,630; *Alexander v. Gardner-Denver Co.*, 415 US 36 (US SCt, 1974), 7 EPD ¶ 9148; and *Strozier v. General Motors Corporation* (CA-5, 1981), 25 EPD ¶ 31,555.

[33] *Southwestern Electric Power Co.*, 77 LA 553 (1981); *County of Santa Clara*, 71 LA 290 (1978); *AIRCO, Inc.*, 67 LA 453 (1976); *Braniff Airways, Inc.*, 76-1 ARB ¶ 8251 (1976); *Brown-Jordan Corp.*, 64 LA 972 (1975); and *Office of Economic Opportunity*, 74-1 ARB ¶ 8202 (1974).

[34] *WFMJ-Television*, 75 LA 400 (1980); *Missouri Utility Company*, 68 LA 379 (1977); and *Basic Vegetable Products, Inc.*, cited at note 6.

[35] *Stayton Canning Company*, 75 LA 2 (1980); *Adams County School District 14*, 76-1 ARB ¶ 8234 (1976); *WLS Stamping Company*, 66 LA 584 (1976); *U. S. Steel Corp.*, 66 LA 687 (1976), *Consolidated Natural Gas Service*, 64 LA 37 (1974); *Mountain States Telephone and Telegraph*, cited at note 5; and *Honeywell, Inc.*, 61 LA 1021 (1973).

It appears likely, then, that in ate impact grievances arbitra- ill reach conclusions similar to of the Court, particularly when onable evidence is used to sub- ate the qualifications of a female int.

ever, the level of proof usually d at arbitration is more in tune he court of appeals interpreta- *McDonnell Douglas* than with trict court position adopted by preme Court in *Burdine*. In mat- disparate treatment, the greater may be that arbitrators, fol- their normal procedures, will a burden of proof upon the em- that is different than the law re-

ty-seven published arbitration made since 1973 were reviewed mine how labor arbitrators deal discrimination and promotion.[32] ree percent of the awards con- pecific reference by the parties ate impact,[33] disparate treat- Title VII issues.[35]

ators who consider such issues nsistently denied promotions n who are unqualified either ly and/or because of their

western Electric Power Co., 77 LA); *County of Santa Clara*, 71 LA *AIRCO, Inc.*, 67 LA 453 (1976); ways, Inc., 76-1 ARB ¶8251 ion-Jordan Corp., 64 LA 972 *Office of Economic Opportunity*, 8202 (1974) -Television, 75 LA 400 (1980); ility Company, 68 LA 379 (1977); Vegetable Products Inc., cited at

Canning Company, 75 LA 2 ams County School District 14, 8234 (1976); *WLS Stamping* 6 LA 584 (1976); *U. S. Steel* 687 (1976), *Consolidated Nat-* rice, 64 LA 37 (1974); *Moun- Telephone and Telegraph*, cited nd *Honeywell, Inc.*, 61 LA 102

lack of experience or training.[36] In *WFMJ-Television*[37] and *Missouri Utilities Company*,[38] for example, the employers' promotion standards were found reasonable and the arbitrator agreed that an unqualified female could not gain a promotion solely because of her sex, despite the union's disparate treatment claim. Similarly, female employees have been denied promotion when: they are unqualified and statistical evidence does not support the claim of disparate impact[39]; the unqualified female applicant is argumentative[40]; and the sex discrimination grievance exists between two female applicants.[41]

Arbitrators have considered disparate impact charges and required the promotion of qualified women[42] and of women who are incorrectly declared unqualified by their employers.[43] Arbitrators have also required promotion of qualified females under Title VII when the employer's only evaluation consisted of a subjective interview.[44] The courts have ruled that too much reliance on subjective interviews may serve as the basis for both disparate impact and/or disparate treatment findings.

Seniority and Job-Posting Rights

Violation of contractual seniority rights[45] and job-posting requirements are by far the most common bases for challenging promotion decisions, occurring in nearly eighty percent of the awards.[46] As with Title VII issues, arbitrators consistently agree that unqualified female applicants need not be promoted[47] even if they have bona fide seniority rights.[48] Denial of a woman's seniority and job-posting rights has been upheld where the women lacked the physical strength to perform the job and when other females passed the job's contractual trial period.[49]

Seniority and job-posting rights are not accorded deference when physical qualifications are a social factor.[50] For example, both senior female and senior male employees have been denied promotions to janitorial or supervisory positions in locker rooms for the opposite sex. In one case, the arbitrator followed the court's business necessity

[36] *Southwestern Electric Power Co.*, cited at note 33; *WFMJ-Television*, cited at note 34; *Missouri Utilities Co.*, cited at note 34.

[37] Cited at note 34.

[38] Cited at note 34.

[39] *AIRCO, Inc.*, cited at note 33.

[40] *Stayton Canning Co.*, cited at note 35.

[41] *WLS Stamping Co.*, cited at note 35.

[42] *County of Santa Clara*, cited at note 33; *Consolidated Natural Gas Service*, cited at note 35.

[43] *Braniff Airways, Inc.*, cited at note 33.

[44] *Honeywell, Inc.*, cited at note 35.

[45] *Teamsters v. U. S.*, cited at note 7.

[46] *Southwestern Electric Power Co.; Stayton Canning Co.; Olin Corp.*, 79-2 ARB ¶8460 (1979); *FMC Corp.*, 78-1 ARB ¶8050 (1978); *Board of Education of Erie, Pa.*, 70 LA 567 (1978); *AIRCO, Inc.*, 40 LA 760 (1977); *Missouri Utilities Co.; Brown County Medical Health Center*, 68 LA 1363 (1977); *AIRCO, Inc.* (1976), cited at note 33; *County Sanitation Districts*, 67 LA 833 (1976); *Adams County School District 14*, cited at note 35; *Braniff Airways, Inc.; WLS Stamping Co.; U. S. Steel Corp.*, cited at note 35; *Reynolds Metals Co.*, 76-2 ARB ¶8454 (1976); *U. S. Steel Corp.*, 65 LA 626 (1975); *Consolidated Natural Gas Service; Mountain States Telephone and Telegraph; Brown-Jordan Corp.*, cited at note 33; and *Honeywell, Inc.*

[47] *Stayton Canning Co.; Missouri Utilities Co.; AIRCO, Inc.* (1976); *County Sanitation Districts*, cited at note 46; *Reynolds Metals Co.*, cited at note 46; *U.S. Steel Corp.*, (1975), cited at note 46; and *Brown-Jordan Corp.*, cited at note 33.

[48] *Stayton Canning Co.; County Sanitation Districts*; and *U. S. Steel Corp.* (1975), cited at note 46.

[49] *U. S. Steel Corp.* (1975), cited at note 46.

[50] Social factors have been considered significant by the Supreme Court, *Dothard v. Rawlinson*, 433 US 321 (US SCt, 1977), 14 EPD ¶7632.

exemption since securing the locker room was determined to have an adverse impact on company operations.[51] Correspondingly, a medically possible lead poisoning hazard justified the loss of job-posting rights for women of child-bearing age.[52]

Finally, arbitrators have ruled that experience and training requirements for promotion take priority over female employee seniority rights as long as the employer's standards are job related and reasonably applied to all employees.[53] One arbitrator's judgment paralleled *Duke Power*. This arbitrator upheld a selection rate that favors men for promotion because the selection rate was based on valid business necessity and backed by a lawful objective test.[54]

Inappropriate reasons for denying women their seniority and job-posting rights center on outdated stereotypes and employment practices that systematically exclude women. An employer cannot refuse to promote women based on an assumption that women are less capable of doing physical work, that customers prefer male or female employees, or that work has traditionally been performed by men.[55] Even before *Steelworkers v. Weber*,[56] arbitrators allowed employers to systematically exclude men and women from promotions in order to achieve a balanced nursing staff equal to male-female patient ratios.[57] But, where basic statistics show that all, or nearly all, otherwise qualified women have been denied access to promotional prerequisite experience and training opportunities, arbitrators have imitated the courts and required that the grievants be promoted or be given an extended trial period.[58]

"Equally Qualified"

Two awards involved the promotion of equally qualified female applicants, similar to *Burdine*. In *County of Santa Clara*,[59] the arbitrator agreed that it was proper for the employer to promote deputy sheriff matrons to deputy sheriff without promoting their equally qualified male counterparts. The employer's objective was to overcome a past practice of preferential treatment given to men. No violation of Title VII was found.

However, in *Consolidated Natural Gas Service*,[60] the arbitrator determined that the employer improperly promoted a male applicant over an equally qualified senior female applicant. The employer's position was based on a rigid definition of the term "equally qualified." Rejecting the employer's position, the arbitrator stated that the classic Shelley rule applied so that the female applicant need not be literally equal to her junior male. The appropriate Shelley standard for allowing seniority to prevail is that the senior applicant need be only roughly or approximately equal, whereas to get the promotion the junior applicant must be head-and-shoulders better qualified.

Conclusion

The disparate impact standard is the first line of lawfulness. And, in order to rectify the consequences of past

[51] *FMC Corp.*, cited at note 46; *Board of Education of Erie, Pa.*, cited at note 46; *AIRCO, Inc.* (1977), cited at note 46.

[52] *Olin Corp.*, cited at note 46.

[53] *Missouri Utilities Co.; County Sanitation Districts; and Reynolds Metals Co.*

[54] *Illinois Bell Telephone Co.*, 81-1 ARB ¶8223 (1981).

[55] *Brown-Jordan Corp.*

[56] *Steelworkers v. Weber*, 443 US 193 (US SCt, 1979), 20 EPD ¶30,026.

[57] *Brown County Medical Health Center*, cited at note 46.

[58] *Braniff Airways, Inc.; Basic Vegetable Products, Inc.;* and *Office of Economic Opportunity*, cited at note 33.

[59] Cited at note 33.

[60] Cited at note 35.

ce and training opportunities, ors have initated the courts and d that the grievants be promoted given an extended trial period.[58]

"Equally Qualified"

awards involved the promotion ly qualified female applicants, to *Burdine*. In *County of Santa* the arbitrator agreed that it roper for the employer to promote sheriff matrons to deputy sheriff promoting their equally qualified counterparts. The employer's ob- was to overcome a past prac- preferential treatment given . No violation of Title VII was

ever, in *Consolidated Natural Gas*,[60] the arbitrator determined that ployer improperly promoted a plicant over an equally qualified emale applicant. The employ- tion was based on a rigid defini- the term "equally qualified." ng the employer's position, the or stated that the classic Shelley plied so that the female applicant t be literally equal to her junior he appropriate Shelley standard ing seniority to prevail is that applicant need be only roughly ximately equal, whereas to get motion the junior applicant must and-shoulders better qualified.

Conclusion

parate impact standard is the of lawfulness. And, in order the consequences of past

orkers v. Weber*, 443 US 193 (US 20 EPD ¶ 30,026.

County Medical Health Center*, te 46.

Airways, Inc.*; *Basic Vegetable Inc.*; and *Office of Economic Op-* ited at note 33.

at note 33.

at note 35.

1982 Law Journal

discrimination against women as a group, the courts appear willing to require the promotion of women of equal or greater qualifications. But, the courts appear less willing to require the promotion of women of equal qualifications to rectify the consequences of disparate treatment, i.e. discrimination against women on an individual basis. The order of presentation and interim burdens of proof applied by the courts in disparate treatment cases are distinct from the order and burden followed to decide disparate impact.

The articulation requirement placed upon the employer in *Burdine* is likely to have little effect when the applicant for promotion is clearly qualified or unqualified. But, a simple articulation requirement is a questionable standard when applicants are equally qualified. It might be difficult to detect intentional discrimination against equally qualified applicants even if a preponderance of evidence proof were required. The danger of *Burdine* is that the employer may decide not to promote an equally or slightly more qualified man or woman because of sex, articulate a valid but perhaps nonconvincing reason, and not violate the disparate treatment doctrine. No interpretation of Title VII requires an employer to promote an unqualified applicant.

The arbitration awards reveal that arbitrators are in harmony with the courts by not requiring employers to promote any unqualified applicant. Arbitrators also follow current legal trends by ruling against employment promotion judgments that are too subjective. Some arbitrators have decided Title VII matters, but most arbitrators tend to leave Title VII challenges unresolved, deciding promotion and sex discrimination grievances on the basis of seniority or job-posting rights. Because the interim burden of proof applicable to disparate impact differs from disparate treatment, arbitrators who have not distinguished clearly between the two doctrines will need to do so whenever they consider sex discrimination grievances.

Social awareness of sex discrimination in promotion has been on the rise in recent decades. Nonetheless, for a qualified or equally qualified employee to be required to prove intentional discrimination as measured against a preponderance of evidence standard while the employer is being measured by a simple articulation standard smacks of unfairness. Against such potential inequity, it may be difficult for women to gain a fair proportion of promotions from private industry in the years ahead.

[The End]

POLICY ON LEAVE REINSTATEMENT IS FOUND TO BE BIASED

The company's general reinstatement policy following a period of disability leave guaranteed that employees would return to their former positions. However, there was a provision that employees returning from maternity leave would have to accept inferior positions if jobs equivalent to their old positions were not available. A federal trial court in North Carolina found this policy to be discriminatory (*EEOC v. Western Electric Co.*, 28 EPD ¶ 32,622).

Employees on maternity leave could accrue only six weeks of additional seniority after childbirth. Those on leave for other disabilities could accrue up to 52 weeks of seniority. The employer argued that the six week period was the actual period of disability. However, the employee on maternity leave could be covered by the longer accrual period of the general disability leave plan if they had medical complications resulting from the pregnancy. The court found this to be legal.

dhs factfinder

published by the office of labor relations

ISSUE VII SEPTEMBER 1980

MANAGERS, SUPERVISORS & CONFIDENTIAL EMPLOYEES

GRIEVANCE REVIEW

The following SPB rules define "grievance" and the responsibilities of management in relation to employee's rights.

SPB 540 "A *grievance* exists whenever an employee *believes* that he/she has in *any manner* been adversely affected in employment by any action or *failure of action* by the appointing power, a supervisor, or another employee."

- Supervisors and managers should not view grievances as personal attacks.
- Grievances may provide insight into underlying problems which may be detrimental to employee morale.
- They may identify a problem perceived by the employee, or may be based on issues not evident in the grievance.
- When approached with a positive attitude, most grievances can be resolved in an orderly and efficient manner with minimum interference to normal operations.

SPB 540.11 "Neither the appointing power nor any person under the appointing power shall directly or *indirectly* use or threaten to use any official authority or influence in *any manner* whatsoever which tends to discourage the use of the grievance procedure by employees. Any such action may be reviewed by the board and may be cause for punitive action pursuant to the Government Code Section 19572(q)."

The Department of Health Services' (DHS) grievance procedure and policy reiterate this SPB rule. Any allegation of reprisal, as defined above, may be reviewed without referral to prior levels. Perceived reprisal is serious in that it tends to deprive employees of their rights and can threaten the validity of the grievance procedure.

SPB 540.9 "Each employee shall have the right to be assisted by a representative of the employee's *own choosing* in preparing and presenting the grievance. The employee and the representative, if under the same appointing power, may use a *reasonable amount of work time* as determined by the appointing power in *preparing* and *presenting* the grievance."

- If the employee chooses an organization for representation, the organization may appoint a job steward who is also an employee of the department. The job steward is also protected from reprisal.
- "Reasonable time" varies with the complexity of the issues involved. Sufficient time should be allowed for thorough preparation and discussion of the issues. To be "reasonable," the time allowed should be determined by balancing the work load and the needs of the grievant, rather than some arbitrary, capricious, or discriminatory standard. If you are unsure of what is reasonable in a given case, contact OLR.

SPB 540.10 "An employee representative may initiate a grievance *without revealing the names* of the employee(s) concerned. Each level of review may either consider such a grievance or, if it determines that satisfactory consideration of the grievance cannot be given without knowledge of the names of the aggrieved employees, deny the grievance for this reason. Such a denial will be without prejudice to the employee's representative meeting and conferring with the appointing power under the provisions of Chapter 10, Division 4, Title 1 of Government Code (commencing with Section 3525)."

A grievant may request anonymous presentation of the case by a representative. In most (but not all) cases, it is possible to respond to the grievance without knowing the name(s) of the employee(s). If you have a question regarding response to the "anonymous" grievance, contact OLR. Organizations sometimes file grievances on their own behalf under this rule. Such grievances are valid and must be processed in the normal manner.

SCOPE OF BARGAINING

A resolution by the city council of Vernon prohibiting the use of city facilities for washing private vehicles on city time is invalid because the city failed to give prior notice to the affected employee organization and meet and confer before adopting the rule, a trial court ruled. The union filed suit against the city claiming that the rule was invalid because the city violated the meet and confer requirements of the Meyers-Milias-Brown Act (MMB). The court determined that the anti-car washing rule was a mandatory subject of bargaining, and determined that the resolution was void in its entirety since the city did not have the authority to unilaterally adopt such a resolution.

SOCIAL SECURITY TAX EXCLUSION

Beginning September 1, 1980 wages paid for sick leave used for self-sickness will not be subject to OASDI tax. Wages paid due to family death or illness will still be taxed. Holiday credits, vacation payments, compensating time off, and personal holiday, even if taken for sickness, will remain taxable. Deductions will continue to be made, as previously, each month including the OASDI tax on sick leave payments. Sick leave data will be reported to the State Controller's Office (SCO) every pay period. Refunds will be paid annually for the over-taxation and returned to the employee each January.

(OVER)

"ACCESS RIGHTS"

Shortly after passage of the State Employer-Employee Act (SERRA), the Department of Corrections discontinued an existing practice of providing employee organizations with office space, low cost inmate clerical assistance, and separate bulletin boards. The California Correctional Officer's Association (CCOA) filed an unfair labor practice (ULP) alleging denial of employee rights to join and participate in the affairs of employee organizations. "Under the Educational Employment Relations Act (EERA) Section 3542.1(b), employee organizations are expressly granted access at reasonable times, to work areas, institutional bulletin boards, and mailboxes for communication purposes. In addition, organizations have the right to use institutional facilities for meetings. No such express provision of rights is contained in SERRA. However, notwithstanding the absence of such a specific statutory right, the Board finds that a right of access is implicit in the purpose and intent of the SERRA," the PERB ruled.

This was the first case in which the three member board ruled on access to work locations.

The record shows that the Department faced a number of problems throughout the period during which employee organizations were granted use of institutional facilities. Conflict arose between competing organizations over the use of space, disputes over which organization should have the right to carry out particular programs, and complaints by organizations that competitors had better bulletin board locations or were assigned inmate clerks with better security clearances.

The Department clearly faced the dilemma of continuing to provide the substantial aid it had in the past without favoring one organization over another. To choose to accommodate only as many groups as it could would have been in violation of the law. The Department faced the problem of how to provide reasonable access without improperly aiding any organization.

> "In this case, the association was still permitted to distribute its literature through department mailboxes, use bulletin boards, and meet with employees regarding grievances, and thus had "reasonable alternatives" available by which to maintain communication with existing and potential members."

The Board acknowledges that some slight harm may have been done to employees' organizing rights by the withdrawal of office space, clerks, and separate bulletin boards.

This case is important in two respects:

(1) It expands the interpretation of SERRA to include rights of access as defined in EERA and; (2) it defines more clearly what access the PERB does or does not require in order to meet this expanded interpretation. We believe that the current DHS policy (see Labor Relations Policy No. 6-8020 Administrative Manual), provides guidelines for access which are consistant with the decision. Please review the Administrative Manual and assure conformance to avoid unfair practice charges.

ULP: *UPDATE*

In May we provided a brief summary of all the Unfair Labor Practices (ULP) filed under State Employer-Employee Act (SERRA) since July 1, 1978 (the effective date of the collective bargaining law). This updates the ULP cases filed up to September 1980.

- 21 employee organizations and 12 individuals have filed a total of 65 charges, an increase of 26 since May.
  - State Employees Trades Council (SETC) (12)
  - California State Employees Association (CSEA) (7)
  - Service Employees International Union, Local 411 (SEIU) (8)
  - Communications Workers of America (CWA) (3)
  - American Federation of State, County and Municipal Employees (AFSCME) (3)
  - Unrepresented Employees (12)
  - Other (15)
- 17 Departments have had Unfair Labor Practices filed against them; an increase of 5 since May.
  - Department of Developmental Services (DDS) (19)
  - Caltrans (12)
  - Department of Forestry (DF) (5)
  - Corrections (5)
  - Office of Employee Relations (OER) (4)
  - Agricultural Labor Relations Board (ALRB) (3)
  - Department of Mental Health (DMH) (3)
  - Department of General Services (DGS) (2)
  - Department of Water Resources (DWS) (2)
  - Youth Authority (2)
  - Employment Development Department (EDD) (2)
  - Franchise Tax Board, Department of Education, Social Services, Health and Welfare, Military Department, Department of Motor Vehicles. (1 each)

UNION HUMOR

This appeared in the Sacramento Bee recently.

> "America's pets are unionizing. The Detroit based United Pets of America, Local 738, provides animals with a contract that bans "Wildcat" strikes, grants a personal holiday after a year of membership and after two years, bans the feeding of dry food on consecutive days. So far there are seven rank-and-file members, all dogs. Membership costs $3.00, and members get a certificate and a copy of the union charter. The charter was drawn up in June at a founding convention in – is the world ready? – Paw Paw, Michigan."

HOME LOAN PLAN

The bill, AB 1342, introduced by Assemblyman Dave Elder, D-Long Beach was signed into existence establishing a home loan program available to 425,000 active public employees who are members of PERS.

The program will provide needed funds for housing in the state while earning a higher rate of return for the state retirement system. The loans could be made for up to 95 percent of the purchase price of the home for PERS members purchasing their first home.

Criteria for the program is being prepared presently. PERS hopes the program to be implemented around the first of the year.

COLLECTIVE BARGAINING TRAINING

Keep in mind: A collective bargaining session will be held in early December for you managers and confidential employees who have not attended this training. You will be notified of the exact date in November 1980.

LABOR RELATIONS

The staff is: Charlie Strong, Chief
Judith Clark, Analyst
Juanita Alonzo, Analyst
Marianne Sanchez-Brennan, Analyst
Angie Skierka, Secretary
Darryl Thoreby, Student Assistant
Suzanne Long, Graduate Student Assistant

EXHIBIT N

Big Fight Looms Over Gap in Pay For Similar 'Male,' 'Female' Jobs

9/14/82

By JOANN S. LUBLIN
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—"Comparable worth" is becoming an important new rallying cry for several major unions that represent a lot of women or want to represent more.

Labor groups are fighting to get women equal pay for jobs comparable but not necessarily identical to men's in importance, skill, responsibility and working conditions. The unions are demanding steps to help close the wide gap in wages between historically "women's" and "men's" jobs.

Since mid-1981, nurses and city workers in San Jose, Calif., school secretaries in Anoka, Minn., a Minneapolis suburb, and clerical workers in Allegheny County, Pa., have engaged in strikes over "pay equity," another name for the concept. About a dozen states and two cities have begun or completed job-evaluation studies of their civil-service systems, either as a result of legislation or labor negotiations. Other states and localities are considering similar moves.

Organized labor's efforts, concentrated largely in the public sector so far, could have a costly spillover effect on private businesses. Comparable worth "is going to be *the* compensation issue for the next decade," says Robert Brueckner, administrator of San Jose Hospital, one of four private hospitals struck last January by 1,500 nurses seeking large pay-equity raises. "I'm sure it will be the issue around which organizing efforts are made and around which strikes occur in existing bargaining units," he says.

Politicians Take Note

At the same time, comparable worth has become an attractive issue among Democratic politicians aiming at women voters. Three House subcommittees, all chaired by female Democrats, open the first congressional hearings on the subject today. Sens. Edward Kennedy and Gary Hart, considered contenders for the 1984 Democratic presidential nomination, lead off the three days of testimony by government officials, women's groups and labor organizations.

Motivating much of the union interest is a desire to enlist more women members. Only six million, or about 16% of the nation's 38 million women workers, belonged to labor organizations in 1980. Unions see a good opportunity to appeal to white-collar women, historically the least organized and perhaps the most frustrated over their concentration in low-paid fields.

Government figures show that a secretary, typically a woman, earns a median of $230 a week, only $11 more than the median wages of a janitor, usually a man, and $200 less than the median earned by architects, 95% of whom are male. A National Academy of Sciences study issued last fall attributed less than half of the 40% difference in men's and women's average earnings to men's greater skills and experience.

A Supreme Court decision also is fueling union activity over comparable worth. In June 1981, the court held that women could use the controversial theory to bring sex-bias suits under federal civil-rights law, even if the disputes didn't involve equal jobs. Since the ruling, the American Federation of State, County and Municipal Employees has filed suit or sex-bias charges against San Jose, Los Angeles and the states of Connecticut, Hawaii, Washington and Wisconsin. About 40% of its 986,000 members are women. The big public-employees union plans additional legal action, and "I expect others will do so within the next couple of months," predicts Winn Newman, AFSCME's special counsel.

One AFSCME local, representing 2,000 San Jose city workers, staged the biggest, most visible strike so far over comparable worth just weeks after the Supreme Court decision. Employees walked out for nine days in July 1981, contending city officials had refused to correct pay differences uncovered by a $500,000 city job-evaluation study. The study found predominantly women's jobs averaged 15% less pay than predominantly men's jobs of comparable value.

Some unions have taken up the fight over comparable worth, hoping to enlist more women members. They want to raise the pay for jobs that historically are women's to the level of comparable men's jobs.

The $4.5 million settlement gave all workers a 15.5% general wage increase over two years. But about 780 of them, including many librarians and accounting clerks, won raises totaling up to 30% because they received a "pay equity" bonus.

Emphasis on Bargaining

Most unions are putting greater emphasis on, and scoring some successes by, bargaining rather than striking over comparable worth. For instance, a 1981 accord between the state of Connecticut and a health-care workers union requires the state to set up a special "pay equity" fund equal to $1.07 million, or 1% of the payroll for these 6,800 employees.

Others are seeking a union role in comparable-worth studies and in promises by management to take any remedial action suggested by the studies. A Communications Workers of America official says the union will concentrate on that tactic when it negotiates a contract this fall for 34,000 state employees it represents in New Jersey. A majority are women.

The California State Employees Association, an independent union, made comparable worth a top demand in its first contract talks earlier this year. A poll of its 31,000 clerical members showed the issue was "their No. 1 priority," recalls association spokesman Keith Hearn. He says the contract, which took effect July 1, forces state officials to come up with a comparable-pay plan by Jan. 1.

An Organizing Issue

Unions also are raising the comparable-worth concept in organizing drives. It's an issue in the Service Employees International Union's campaign to organize clerical workers in several school districts and at Syracuse University, and in the communications workers' push to sign up Texas public employees. Eight unions and the Coalition of Labor Union Women, an activist group, worked together last June to organize more women in the Washington-Baltimore area. Initial drives at some universities and banks show pay equity is "one of the leading questions" raised by female workers, says the campaign's coordinator, Lillian Moss.

AFSCME's Mr. Newman claims the union's pending legal actions helped it win elections in Los Angeles and Connecticut last year by fewer than 100 votes apiece. The lawsuit plus the San Jose strike "told clericals in Connecticut that AFSCME was sincere" about the comparable-worth issue, recalls Silvia Tirrell, an administrative secretary at Fairfield Hills Hospital, a state mental facility in Newtown, Conn. She had fought for such a suit after realizing she earned $600 a year less than a hospital kitchen helper who sought her aid in completing forms because he couldn't read or write.

But championing comparable worth can be an uphill struggle for unions. They run into resistance from employers, who see the concept as posing enormous legal and financial problems. For 11 months, the Los Angeles school board has spurned six labor groups' entreaties to conduct a comparable-worth study. Several states, including Washington, have refused to revamp their civil-service pay structures even after such studies found sex-based pay gaps. And 12 years after it brought its first comparable-worth suit against an employer, the International Union of Electrical Workers still hasn't resolved five of its 50 cases. Most have been settled by raising pay scales for predominantly female assembly jobs.

Similar management resistance occurred in the San Jose nurses' strike, which lasted

Please Turn to Page 37, Column 3

Fight Looms Over Gap In Pay for Comparable 'Male,' 'Female' Jobs

Continued From Page 33

three months at three hospitals and still drags on at a fourth. The hospitals rejected demands for a 37% pay raise over 18 months, which nurses had sought to overcome a 33% pay gap between them and pharmacists, most of whom are men. The California Nurses Association settled for a more modest three-year pact, with increases of between 22.5% and 33%.

Unions also risk alienating male members if they appear to be pressing for wage gains at men's expense. It took three months of explanatory meetings this summer before the 360 men in one service-employees union school-district local would support the union's bargaining proposal for "pay equity" increases for jobs held largely by women.

"They were really concerned. They said, 'You're going to lower our wages,' " recalls Kathy Felch, business agent of the 2,400-member Local 22 in Sacramento. She says she won over the men, who are mostly skilled tradesmen, by promising to push for special but proportionately smaller raises for them, too.

Fear of a men's backlash probably has checked certain unions' interest in comparable worth. "Some unions see it as divisive," concedes Maxine Jenkins, a California Nurses Association labor representative. "But this issue will not go away," she adds. "I think it's the beginning, not the end, of the fight over comparable worth."

EXHIBIT O

CITY OF LOS ANGELES

CALIFORNIA

COMMISSION ON THE STATUS OF WOMEN

JAMAR MUENCH
EXECUTIVE DIRECTOR

ROOM 1701 CITY HALL
200 N. SPRING STREET
LOS ANGELES, CA 90012
485-6533

NOV 4 1982

TOM BRADLEY
MAYOR

November 2, 1982

Mr. Leo Youngblood
Ad Hoc Committee on Fair Employment
Practices
Room 821
1127 11th Street
Sacramento, CA 95814

Dear Leo:

This is in response to your request for a copy of "Appendix F, Numerical Progress 1973-1982" which depicts the changes in women's and minority employment in the City of Los Angeles. You will note that in 1973, women made up 16% of the City's workforce while in 1982 that number had risen to 20% even though there was a decrease of 3,924 positions in the City.

The Commission President, Lydia Baca, will be giving the testimony. If it is possible, she would like to be scheduled for the early afternoon, as she will be coming from out-of-town.

We look forward to providing the Committees with testimony which will be of use to them.

Sincerely,

Jamar Muench
Executive Director

Enclosure

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
City-Wide Totals	6-30-73	#	41,621	26,681	9,135	3,879	1,659	267	-	6,660	34,961
		%	100.0	64.1	21.9	9.3	4.0	0.6	-	16.0	83.9
	6-30-74	#	41,169	26,282	9,145	3,941	1,718	252	-	6,855	34,284
		%	100.0	63.8	22.2	9.5	4.1	0.6	-	16.7	83.2
	6-30-75	#	44,660	27,245	10,315	4,867	1,997	326	-	8,063	36,597
		%	100.0	61.0	23.1	10.9	4.4	0.7	-	18.1	81.9
	6-30-76	#	42,582	25,789	9,758	4,730	2,027	270	-	7,541	35,041
		%	100.0	60.5	22.9	11.1	4.7	0.6	-	17.7	82.3
	6-30-77	#	41,159	24,166	9,572	4,984	2,130	307	-	7,340	33,819
		%	100.0	58.7	23.2	12.1	5.2	0.7	-	17.8	82.2
	6-30-78	#	43,484	24,162	10,679	5,617	2,360	322	-	8,087	35,053
		%	100.0	55.5	24.5	12.9	5.4	0.7	-	18.5	80.6
	6-30-79	#	39,551	21,774	9,688	5,180	2,381	269	-	7,204	32,115
		%	100.0	55.0	24.5	13.0	6.0	0.6	-	18.2	81.1
	6-30-80	#	37,760	20,666	9,009	4,975	2,505	273	-	7,353	30,075
		%	100.0	54.7	23.8	13.1	6.6	0.7	-	19.5	79.6
	6-30-81	#	38,643	20,716	10,049	5,407	2,676	16	458	7,776	30,409
		%	100.0	53.6	24.2	14.0	6.9	.03	1.18	20.1	78.7
	6-30-82	#	37,956	20,185	9,232	5,490	2,770	20	259	7,611	30,086
		%	100.0	53.21	24.3	14.5	7.3	0.04	0.68	20.0	79.2

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Officials/ Administrators	6-30-73	#	229	217	3	6	3	0	-	7	222
		%	100.0	94.7	1.3	2.6	1.3	0.0	-	3.0	96.9
	6-30-74	#	242	234	2	3	3	0	-	6	236
		%	100.0	96.6	0.8	1.2	1.2	0.0	-	2.4	97.5
	6-30-75	#	333	307	6	8	12	0	-	9	324
		%	100.0	92.2	1.8	2.4	3.6	0.0	-	2.7	97.2
	6-30-76	#	337	297	13	10	16	0	-	15	322
		%	100.0	88.1	3.8	2.9	4.7	0.0	-	4.4	95.5
	6-30-77	#	328	287	13	10	18	0	-	15	313
		%	100.0	87.5	3.9	3.0	5.4	0.0	-	4.5	95.4
	6-30-78	#	341	298	14	9	19	1	-	20	321
		%	100.0	87.3	4.1	2.6	5.5	0.2	-	5.3	94.1
	6-30-79	#	331	290	14	9	17	1	-	15	316
		%	100.0	87.6	4.2	2.7	5.5	0.3	-	4.5	95.5
	6-30-80	#	466	408	33	24	21	5	-	27	439
		%	100.0	87.3	7.0	5.1	4.5	1.0	-	5.7	94.2
	6-30-81	#	569	478	33	27	25	0	6	37	526
		%	100.0	84.0	5.8	4.7	4.4	0.0	1.1	6.5	92.4
	6-30-82	#	552	450	39	32	27	0	4	33	515
		%	100.0	81.5	7.1	5.8	4.9	0.0	.7	6.0	93.3

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Professionals	6-30-73	#	5,754	4,682	292	265	462	53	-	687	5,067
		%	100.0	81.4	5.0	4.6	8.0	0.9	-	11.9	88.0
	6-30-74	#	5,948	4,797	329	270	500	54	-	744	5,204
		%	100.0	80.6	5.5	4.5	8.4	0.9	-	12.5	87.4
	6-30-75	#	5,922	4,606	390	333	538	41	-	958	4,950
		%	100.0	77.7	6.6	5.7	9.0	0.7	-	16.1	83.7
	6-30-76	#	5,963	4,554	405	356	580	57	-	1,005	4,947
		%	100.0	76.3	6.7	6.0	9.7	1.0	-	16.8	82.9
	6-30-77	#	5,865	4,372	416	394	600	63	-	1,008	4,837
		%	100.0	74.5	7.0	6.7	10.2	1.0	-	17.2	82.4
	6-30-78	#	6,177	4,443	478	440	722	63	-	1,177	4,969
		%	100.0	71.9	7.7	7.1	11.6	1.1	-	19.0	80.4
	6-30-79	#	5,760	4,060	457	413	738	63	-	1,138	4,573
		%	100.0	70.4	7.9	7.1	12.8	1.0	-	19.7	79.7
	6-30-80	#	5,931	4,014	520	454	797	55	-	1,255	4,632
		%	100.0	67.6	8.7	7.6	13.4	0.9	-	21.1	78.1
	6-30-81	#	5,994	4,006	558	471	883	2	74	1,300	4,620
		%	100.0	66.8	9.3	7.8	14.7	.03	1.2	21.7	77.1
	6-30-82	#	5,831	3,880	539	458	925	2	27	1,241	4,563
		%	100.0	66.5	9.2	7.8	15.8	0.03	0.5	21.3	78.2

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Technicians	6-30-73	#	4,996	3,960	389	320	290	28	-	464	4,432
		%	100.0	80.8	7.9	6.5	5.9	0.5	-	9.4	90.5
	6-30-74	#	4,305	3,396	330	290	262	27	-	424	3,881
		%	100.0	78.8	7.6	6.7	6.0	0.6	-	9.8	90.1
	6-30-75	#	5,322	4,247	396	343	300	38	-	480	4,844
		%	100.0	79.6	7.4	6.4	5.6	0.7	-	9.0	90.8
	6-30-76	#	5,623	4,456	433	377	300	50	-	487	5,129
		%	100.0	79.2	7.7	6.7	5.3	0.8	-	8.6	91.6
	6-30-77	#	5,429	4,285	389	385	305	54	-	440	4,978
		%	100.0	78.9	7.1	7.0	5.6	1.0	-	8.1	91.6
	6-30-78	#	5,409	4,219	398	409	323	51	-	494	4,906
		%	100.0	77.9	7.3	7.5	5.9	1.0	-	9.1	90.7
	6-30-79	#	5,083	3,963	381	384	308	42	-	447	4,631
		%	100.0	77.9	7.5	7.5	6.0	0.8	-	8.8	91.1
	6-30-80	#	4,883	3,686	395	416	326	48	-	452	4,419
		%	100.0	75.4	8.0	8.5	6.7	1.0	-	9.2	90.5
	6-30-81	#	4,988	3,685	431	428	380	2	62	423	4,503
		%	100.0	73.9	8.6	8.6	7.6	.04	1.2	8.5	90.3
	6-30-82	#	4,953	3,659	408	471	390	3	22	379	4,552
		%	100.0	73.8	8.2	9.5	7.9	0.06	0.4	7.6	91.8

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Protective Services	6-30-73	#	7,511	6,197	720	596	35	53	-	203	7,308
		%	100.0	82.5	9.6	7.9	0.5	0.7	-	2.7	97.3
	6-30-74	#	7,617	6,103	777	637	48	52	-	230	7,387
		%	100.0	80.1	10.4	8.4	0.6	0.7	-	3.0	96.9
	6-30-75	#	7,889	6,116	913	739	73	44	-	261	7,624
		%	100.0	77.5	11.5	9.3	0.9	0.5	-	3.3	96.6
	6-30-76	#	7,609	5,823	888	749	82	63	-	237	7,367
		%	100.0	76.5	11.6	9.8	1.0	0.8	-	3.0	96.8
	6-30-77	#	7,524	5,613	892	843	107	63	-	228	7,290
		%	100.0	76.5	11.8	11.2	1.2	0.8	-	3.0	96.9
	6-30-78	#	7,534	5,477	968	896	114	70	-	262	7,263
		%	100.0	72.6	12.8	11.8	1.5	1.0	-	3.4	96.4
	6.30-79	#	7,105	5,012	968	913	141	64	-	249	6,849
		%	100.0	70.5	13.6	12.8	1.9	0.9	-	3.4	96.3
	6-30-80	#	6,763	4,629	987	940	146	52	-	249	6,460
		%	100.0	68.4	14.6	13.9	2.1	0.7	-	4.3	95.5
	6-30-81	#	7,310	4,768	1,174	1,132	174	3	59	442	6,809
		%	100.0	65.2	16.1	15.5	2.4	.03	.80	6.0	93.1
	6-30-82	#	7,161	4,562	1,224	1,169	180	5	21	484	6.656
		%	100.0	63.7	17.1	16.3	2.5	0.06	0.29	6.7	92.9

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Paraprofes-sionals	6-30-73	#	209	120	52	30	6	1	-	66	143
		%	100.0	57.4	24.8	14.3	2.8	0.5	-	31.0	68.4
	6-30-74	#	243	121	63	44	14	1	-	73	170
		%	100.0	49.8	26.0	18.1	5.7	0.4	-	30.0	68.4
	6-30-75	#	524	235	179	70	26	3	-	231	282
		%	100.0	44.8	34.2	13.3	5.0	0.5	-	44.1	53.8
	6-30-76	#	416	163	153	74	22	2	-	206	208
		%	100.0	39.1	36.7	17.8	5.2	0.5	-	49.5	50.0
	6-30-77	#	463	198	149	69	37	2	-	205	250
		%	100.0	42.8	32.2	15.0	8.0	0.4	-	44.3	54.0
	6-30-78	#	662	299	204	95	44	2	-	297	365
		%	100.0	45.1	30.8	14.3	6.6	0.3	-	44.8	55.1
	6-30-79	#	495	191	168	82	52	0	-	242	241
		%	100.0	38.5	33.9	16.5	10.5	0.0	-	48.8	48.8
	6-30-80	#	463	235	100	78	39	1	-	221	232
		%	100.0	50.7	21.6	16.8	8.4	0.2	-	47.7	50.1
	6-30-81	#	535	266	143	76	39	0	11	374	150
		%	100.0	49.7	26.7	14.2	7.3	0	2.05	69.9	28.0
	6-30-82	#	628	353	148	82	35	1	9	409	210
		%	100.0	56.2	23.6	13.1	5.6	0.2	1.4	65.1	33.4

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Office/ Clerical	6-30-73	#	7,259	4,082	1,763	859	517	41	-	5,084	2,178
		%	100.0	56.2	24.2	11.8	7.1	0.5	-	70.0	30.0
	6-30-74	#	7,404	3,936	1,927	960	542	39	-	5,201	2,203
		%	100.0	53.1	26.0	12.9	7.3	0.5	-	70.2	29.7
	6-30-75	#	8,107	4,110	2,258	1,063	630	34	-	5,810	2,285
		%	100.0	50.6	27.8	13.1	7.7	0.4	-	71.6	28.1
	6-30-76	#	7,334	3,661	2,044	982	602	32	-	5,271	2,050
		%	100.0	49.9	27.8	13.2	8.2	0.4	-	71.9	27.9
	6-30-77	#	7,086	3,259	2,048	1,089	621	33	-	5,125	1,925
		%	100.0	46.0	28.9	15.3	8.7	0.4	-	72.3	27.1
	6-30-78	#	7,342	3,167	2,295	1,164	645	34	-	5,347	1,948
		%	100.0	43.1	31.2	15.8	8.7	0.4	-	72.9	26.5
	6-30-79	#	6,456	2,747	2,008	1,008	632	32	-	4,675	1,752
		%	100.0	42.5	31.1	15.6	9.7	0.4	-	72.9	27.1
	6-30-80	#	6,456	2,580	2,080	1,070	642	27	-	4,733	1,667
		%	100.0	39.9	32.2	16.5	9.9	0.4	-	73.3	25.8
	6-30-81	#	6,419	2,388	2,172	1,127	659	8	65	4,759	1,595
		%	100.0	37.2	33.8	17.6	10.2	.11	1.01	74.1	24.8
	6-30-82	#	6,239	2,213	2,186	1,120	669	6	45	4,642	1,552
		%	100.0	35.5	35.0	18.0	10.7	0.09	0.72	74.4	24.9

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Skilled Craft	6-30-73	#	9,489	5,990	2,299	905	237	54	-	4	9,485
		%	100.0	63.1	24.2	9.5	2.4	0.5	-	0.1	99.9
	6-30-74	#	9,571	6,068	2,308	902	240	53	-	5	8,566
		%	100.0	63.4	24.1	9.4	2.5	0.5	-	0.1	99.9
	6-30-75	#	8,221	5,641	1,439	849	244	44	-	34	8,183
		%	100.0	68.6	17.5	10.3	3.0	0.5	-	0.4	99.5
	6-30-76	#	7,484	5,007	1,328	828	254	49	-	29	7,437
		%	100.0	66.9	17.7	11.0	3.4	0.6	-	0.4	99.4
	6-30-77	#	7,155	4,554	1,333	880	299	67	-	30	7,093
		%	100.0	63.6	18.6	12.3	4.1	0.9	-	0.4	99.2
	6-30-78	#	7,318	4,482	1,440	960	325	73	-	51	7,229
		%	100.0	61.2	19.6	13.1	4.4	1.0	-	0.6	98.7
	6-30-79	#	6,987	4,131	1,446	964	342	68	-	52	6,899
		%	100.0	59.1	20.7	13.8	4.9	0.9	-	0.7	98.7
	6-30-80	#	6,939	3,999	1,445	1,007	359	63	-	63	6,810
		%	100.0	57.6	20.8	14.5	5.1	0.9	-	0.9	98.1
	6-30-81	#	7,145	4,052	1,535	1,091	387	1	79	73	6,993
		%	100.0	56.7	21.5	15.3	5.4	.01	1.10	1.0	97.8
	6-30-82	#	7,057	3,983	1,492	1,092	419	2	69	75	6,913
		%	100.0	56.4	21.1	15.5	5.9	0.02	0.97	1.0	97.9

APPENDIX F

NUMERICAL PROGRESS 1973 - 1982

Occupational Category	Date		Number of Employees	Caucasians	Blacks	Hispanics	Asian Americans	American Indians	Others	Women	Men
Service/ Maintenance	6-30-73	#	6,278	1,614	3,617	901	109	37	-	145	6,133
		%	100.0	25.7	57.6	14.3	1.7	0.6	-	2.3	97.6
	6-30-74	#	5,839	1,461	3,409	835	107	27	-	172	5,667
		%	100.0	25.0	58.4	14.3	1.8	0.5	-	2.9	97.0
	6-30-75	#	8,416	1,983	4,734	1,462	174	32	-	280	8,105
		%	100.0	23.5	56.2	17.3	2.1	0.4	-	3.3	96.3
	6-30-76	#	7,900	1,823	4,494	1,362	171	24	-	292	7,582
		%	100.0	23.1	56.8	17.2	2.1	0.3	-	3.7	96.0
	6-30-77	#	7,567	1,608	4,332	1,314	161	25	-	297	7,143
		%	100.0	21.2	57.2	17.3	2.1	0.3	-	4.0	94.4
	6-30-78	#	8,701	1,777	4,882	1,644	168	28	-	429	8,070
		%	100.0	20.4	56.1	18.8	1.9	0.3	-	4.9	92.7
	6-30-79	#	7,334	1,390	4,246	1,407	151	26	-	386	6,834
		%	100.0	18.9	57.8	19.1	2.0	0.3	-	5.2	93.1
	6-30-80	#	5,832	1,115	3,449	985	128	22	-	328	5,371
		%	100.0	19.1	59.1	16.8	2.1	0.3	-	5.6	92.1
	6-30-81	#	5,683	1,073	3,324	1,055	129	0	102	368	5,213
		%	100.0	18.9	58.5	18.6	2.3	0.0	1.8	6.6	91.7
	6-30-82	#	5,535	1,085	3,196	1,066	125	1	62	346	5,125
			100.0	19.6	57.7	19.6	2.2	0.01	1.12	6.3	92.6

EXHIBIT P

STATE OF CALIFORNIA STATE AND CONSUMER SERVICES AGENCY EDMUND G. BROWN JR., Governor

FAIR EMPLOYMENT AND HOUSING COMMISSION

[ ] 30 VAN NESS AVENUE, 3RD FLOOR
SAN FRANCISCO, CALIFORNIA 94102
(415) 557 2325

[ ] 701 TWELFTH STREET, SUITE 201
SACRAMENTO, CALIFORNIA 95814
(916) 323 7198

OUTLINE OF TESTIMONY OF
THE FAIR EMPLOYMENT AND
HOUSING COMMISSION ON
Tuesday, November 9, 1982

I. JURISDICTION OF THE FAIR EMPLOYMENT AND HOUSING COMMISSION

II. NATURE AND NUMBER OF SEX-BASED CASES OF DISCRIMINATION

III. OVERVIEW OF COMMISSION'S PROCEDURE AND ITS ADEQUACY

IV. LEGAL OR PROCEDURAL BARRIERS THAT UNIQUELY AFFECT COMPLAINTS BY WOMEN (Tentative)

V. METHODS TO INCREASE THE EFFECTIVENESS OF STATE AGENCIES IN HANDLING COMPLAINTS OF SEX DISCRIMINATION

VI. ADVANTAGES OR DISADVANTAGES OF FILING COMPLAINTS UNDER FEDERAL OR STATE LAW (Tentative)

VII. EFFECTIVENESS OF CURRENT METHODS OF DISSEMINATING INFORMATION ON EMPLOYEE RIGHTS AND ON THE CURRENT GRIEVANCE PROCEDURE UNDER THE FAIR EMPLOYMENT AND HOUSING ACT (GOV. CODE, §12900 et seq.)

AFFIRMATIVE ACTION AFFECTING WOMEN IN EMPLOYMENT:
Cases before the Fair Employment/Housing Commission

I. DISCRIMINATION IN HIRING, PROMOTION AND TERMINATION PRACTICES

A. L.A. County Probation Dept., October 5, 1978 (transfer denied)
B. Merced County Sheriff's Dept., December 6, 1979 (refusal to hire)
C. Sonoma County Office of Education, September 4, 1980 (refusal to promote/retaliation)
D. American Airlines, September 4, 1980 (refusal to rehire)
E. Lucky Stores, November 6, 1980 (promotion denied, unlawful termination)
F. Hubacher Cadillac (see IIB and IIIA), January 8, 1981 (unlawful termination, retaliation)
G. Trans World Airlines, February 5, 1981 (refusal to hire)
H. Napa Housing Authority (see IIC), June 4, 1981 (refusal to promote; discriminatory job classification; constructive discharge)
I. Alameda County Sheriff's Dept., July 2, 1981 (refusal to hire)
J. Bohemian Club, October 14, 1981 (refusal to hire)
K. Rayne Water Conditioning, January 7, 1982

II. DISCRIMINATION IN TERMS AND CONDITIONS OF EMPLOYMENT

A. Paramedicus, January 10, 1980 (dress code held nondiscriminato
B. Hubacher Cadillac, January 8, 1981 (disparate treatment)
C. Napa Housing Authority, June 4, 1981 (wage discrimination)

III. SEXUAL HARASSMENT

A. Hubacher Cadillac, January 8, 1981
B. Ambylou, February 4, 1982

In Re Los Angeles, County of, Probation Dept. (1978) FEHC Dec. No. 78-06
DATE OF DECISION: October 5, 1978
STATUS: Motion to Dismiss Appeal filed
BASIS: Sex
PRACTICE: Denial of transfer of female deputy to male section of jail

Defenses

1. BFOQ Defense
   a. Respondent claimed females could not be employed as prison guards without affecting privacy of male inmates
   b. Commission established a two-part standard (later expanded in Merced County Sheriff's Dept.) for demonstrating same sex BFOQ defense based on privacy.
   c. Applying this standard, Commission held Respondent's evidence insufficient to establish this defense because privacy concerns could be accomodated by 1) slight physical alterations to the facility and 2) scheduling changes.

ORDER
1. Affirmative Action
   a. cease and desist implementing policy against such transfer
   b. educate all employees as to policy change

2. Make Whole Relief
   a. Respondent ordered to pay Complainant to compensate hindered advancement through loss of work experience

In Re Merced County Sheriff's Dept. (1979) FEHC Dec. No. 79-06
DATE OF DECISION: December 6, 1979
STATUS: Decision reversed on first appeal for insufficient evidence to support Commission's finding that reasonable accomodation could be made by altering jail facilities (note: Commission decision requiring reasonable accomodation not affected as matter of law); pending second appeal, matter settled.
BASIS: Sex
PRACTICE: Failure to hire female applicant to work in male section of jail

Defenses

1. Otherwise Required by Law Defense
   a. Respondnt claimed that state Penal Code barred employment of females in male section of jails
   b. Held: Penal Code merely requires that female workers be accompanied by male worker, thus an affirmative defense exists only if Respondent shows inability to make reasonable accomodations for example, by scheduling changes.

2. BFOQ Defense
   a. Here, the Commission expanded the two-part standard established in L.A. County Probation Dept and held that reasonable accomodation could be made by scheduling changes and minimal alterations to the facility

ORDER: Respondent ordered to alter facility to accomodate female employees in men's section of jail

DFEH v. American Airlines (1980) FEHC Dec. No. 80-27
DATE OF DECISION: September 4, 1980
STATUS:
BASIS: Sex
PRACTICE: Refusal to rehire famale applicant for position of Fleet Service Clerk

ORDER

1. Affirmative Action
   a. Order to cease and desist discriminatory practice
   b. Institute program for hiring females in Fleet Service

2. Make Whole Relief
   a. back pay and back benefits
   b. Offer of reemployment with seniority

EXHIBIT Q
Leo

October 1, 1982

Ms. Brenda Shockley, President
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Shockley:

You have often welcomed suggestions for improvements of the Discrimination Complaint System administered by the State Personnel Board. We appreciate your openness and the opportunity to communicate our concerns directly to you.

We are extremely concerned about the current effectiveness of the State Personnel Board in ensuring a discrimination-free work environment for state employees. You will find attached a list of issues and possible solutions relating to this matter. This list is by no means exhaustive. Rather, we see it as a starting point for dialogue about improving the Discrimination Complaint System administered by the State Personnel Board.

We would appreciate the opportunity to meet with you, or your designated representative, at your earliest convenience to discuss these issues. We are most willing to work with you and your staff to bring about improvements in the State's Discrimination Complaint System.

On behalf of our memberships we would again like to express our appreciation for your receptivity to our concerns. Please contact Boyce Hinman at 3-5947 to arrange a meeting at your earliest convenience.

Sincerely,

Barbara Thompson
Vice President, Disabled in State Service

Maria Hernandez
President, Advocates for Gay & Lesbian State Employees

Sonny Reyes
President, Indian State Employees Association

Brenda Corpuz
President, Filipino-American State Employees Association

President, Asian State Employees Association

Ann Kahn
President, Coalition of Minorities, Women and the Disabled

Nancy Harrison
Vice President, Coalition for Women in State Service

Cathy S. Jones
President, Black Advocates in State Service

Christina Cervantes
President, CAPE

Attach

cc: Ron Kurtz, SPB
Allan Goldstein, DPA
All State Affiliated Labor Organizations

THE STATE DISCRIMINATION COMPLAINT PROCESS:

ISSUES AND RECOMMENDED ACTIONS

1. ISSUE: Departments receive inadequate guidance and supervision from the SPB concerning the development, implementation, and monitoring of their departmental discrimination complaint systems.

   PROPOSED SOLUTION: The SPB should provide Departments with concrete guidelines for establishing discrimination complaint processes and should monitor the Departments to ensure: 1) that the Departments establish written guidelines for handling discrimination complaints and within a reasonable period of time; and 2) the Departments comply with those guidelines.

2. ISSUE: State employees are not routinely made aware in detail of their right to work in a discrimination-free environment or of the remedies available to them when they do experience discrimination.

   PROPOSED SOLUTION: The SPB should design a package to communicate these facts and monitor the Departments to ensure that these packages are used properly.

3. ISSUE: Appropriate SPB and departmental staff are not trained adequately in prevention techniques, handling employment discrimination complaints or in handling issues that are unique to women minorities, the disabled, and persons for whom English is a second language.

   PROPOSED SOLUTION: Mandatory training should be developed and provided which includes training in basic procedures and in sensitivity to the unique issues faced by women, minorities and the disabled.

4. ISSUE: Many Departments have failed to comply with non-discrimination policies issued by the SPB and have failed to include those policies in their departmental manuals.

   PROPOSED SOLUTION: The SPB should closely monitor the Departments to ensure compliance.

5. ISSUE: Issues of personal privacy or conflict of interest sometimes make it inappropriate for the Department to process a discrimination complaint.

PROPOSED SOLUTION: The SPB should define circumstances permitting direct appeal to the SPB.

6. ISSUE: It generally takes a minimum of 6 months before SPB Appeals Division begins investigation of discrimination complaints.

PROPOSED SOLUTION: All investigations should begin within one month of receipt of a complaint and a decision should be rendered no later than six months after receipt of the complaint. Adequate staff should be provided to reach these goals.

7. ISSUE: The SPB Appeals Division staff have no standard procedural guidelines to use when conducting investigations of complaints of discrimination.

PROPOSED SOLUTION: The SPB should review and revise their procedures and create a procedural manual for staff involved in investigating complaints of discrimination.

8. ISSUE: Often employees who complain of discrimination experience reprisal.

PROPOSED SOLUTION: The SPB should define and publish a clear set of consequences of acts of reprisal and strictly enforce those consequences.

9. ISSUE: Appeals Division staff frequently waste time reinvestigating facts that are not contested by either the aggrieved or the Department.

PROPOSED SOLUTION: Appeals Division investigations should be limited to contested facts.

10. ISSUE: Current recommendations by the Appeals Division staff should be consistent with past SPB decisions on similar complaints and consistent with decisions made by other administrative bodies and the courts on related issues. However, the current filing system of the Appeals Division prevents retrieval of these materials.

PROPOSED SOLUTION: The Appeals Division Filing system should be reorganized to permit retrieval of precedent materials.

11. ISSUE: SPB Appeals Division staff lack knowledge of the laws, policies and court decisions which should guide their decision-making on discrimination complaints.

PROPOSED SOLUTION: Training on these subjects should be provided.

12. ISSUE: Discrimination against State employees often results in severe stress for those employees.

PROPOSED SOLUTION: The SPB should ensure that counseling services are provided for affected employees to deal with this stress.

13. ISSUE: Departments often delay implementation of or ignore SPB staff decisions with regard to discrimination complaints.

PROPOSED SOLUTION: SPB should routinely monitor and enforce implementation of its decisions, if necessary seeking a show cause order to obtain compliance from State Departments and agencies.

14. ISSUE: Transcripts of hearings by the SPB on discrimination complaints are often prohibitively expensive (e.g., $800.00 for 3 days of hearings in one recent case).

PROPOSED SOLUTION: SPB hearings should be recorded in a manner that will permit duplication of the record in the least expensive manner possible (e.g., cassette tape reproduction).

15. ISSUE: The SPB keeps no statistics of current or historical incidence of discrimination in State service making it impossible to monitor progress or regression in non-discrimination compliance by Departments.

PROPOSED SOLUTION: The SPB should develop a statistical reporting system for tracking departmental complaints and SPB appeals.

EXHIBIT R

TESTIMONY OF
MARY T. LEBRATO, PH. D.

ASSEMBLY SELECT COMMITTEE ON FAIR EMPLOYMENT PRACTICES

AND

ASSEMBLY COMMITTEE ON THE JUDICIARY

NOVEMBER 9, 1982
LOS ANGELES, CA

THANK YOU FOR THE INVITATION TO PRESENT INFORMATION AND TESTIMONY TO YOUR COMMITTEES ON THE ISSUE OF ELIMINATING SEXUAL DISCRIMINATION IN THE HIRING AND PROMOTION PRACTICES OF PUBLIC AND PRIVATE EMPLOYERS.

MY NAME IS MARY LEBRATO. I AM CURRENTLY AN EMPLOYEE OF THE DEPARTMENT OF HEALTH SERVICES. FOR THE PAST FOUR YEARS, I HAVE BEEN INVOLVED IN AN ATTEMPT TO RESOLVE THE EFFECTS OF AN INCIDENT OF SEXUAL HARASSMENT AND RETALIATORY SEX DISCRIMINATION BY MANAGEMENT OF THE DEPARTMENT OF DEVELOPMENTAL SERVICES. THROUGHOUT THE PAST FOUR YEARS, I HAVE WEATHERED MANY BATTLES IN PURSUING RELIEF THROUGH THE ADMINISTRATIVE PROCEDURES, AS WELL AS THROUGH CIVIL MEANS. I HOPE TODAY TO SHARE AS MUCH OF MY EXPERIENCE AND INSIGHTS WITH YOU AS POSSIBLE AND TO PERSONALLY OFFER AS MUCH ASSISTANCE IN OVERCOMING THE PROBLEMS OF THE CURRENT SYSTEM AS I AM ABLE TO PROVIDE.

I WOULD LIKE TO BEGIN BY PROVIDING YOU WITH SOME INFORMATION ON MY PARTICULAR INVOLVEMENT WITH THE SYSTEM AND THEN PROCEED WITH A DISCUSSION OF SOME OF THE PROBLEMS I HAVE ENCOUNTERED, BACKGROUND INFORMATION ON THE PROBLEMS AND SOME POSSIBLE SOLUTIONS.

I WAS FIRST EMPLOYED AS A PSYCHOLOGIST FOR THE DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS) IN 1975. IN 1978, WHILE MANAGING A LARGE PLANNING AND EVALUATION UNIT FOR DDS, LOCATED AT SONOMA STATE HOSPITAL, I WAS INVOLVED IN AN INCIDENT OF BLATANT SEXUAL HARASSMENT BY THE DEPUTY DIRECTOR INCLUDING A THREAT BY HIM THAT IF I DID NOT COMPLY THERE WOULD BE RETALIATION.

I IMMEDIATELY FILED A FORMAL COMPLAINT. AN INVESTIGATION OCCURRED SUBSTANTIATING THE ALLEGATIONS AND RECOMMENDING HIS DISMISSAL. AT THAT TIME THOSE OF US WHO WERE THE VICTIMS OF THE HARASSMENT WERE ASSURED THAT NO RETALIATION WOULD OCCUR AND THAT IF IT DID APPROPRIATE CORRECTIVE ACTION WOULD BE TAKEN. WITHIN ONE MONTH I WAS DENIED A PROMISED PROMOTION TO A POSITION IN WHICH I HAD BEEN WORKING OUT-OF-CLASS FOR THE PREVIOUS 20 MONTHS. I WAS NEITHER SCHEDULED FOR A FORMAL INTERVIEW, AS WERE ALL THE OTHER MALE CANDIDATES, NOR INFORMED I WAS BEING INTERVIEWED, NOR INFORMED OF THE RESULTS OF THE SO-CALLED INTERVIEW AS WERE ALL THE OTHER MALE CANDIDATES. THE OTHER CANDIDATES WERE CONTACTED INFORMALLY AND ALL OF THE USUAL RECRUITMENT, ADVERTISING, AND SELECTION PROCEDURES WERE ABANDONED. I BELIEVE THAT THESE EVENTS OCCURRED AS A RESULT OF MY REFUSAL TO COMPLY WITH THE DEPUTY DIRECTOR'S SEXUAL DEMANDS AND MY SUBSEQUENT COMPLAINT, HAVING BEEN HIGHLY RECOMMENDED FOR THE POSITION AND HAVING PLACED NUMBER 1 ON THE MANAGER II DEPARTMENTAL LIST.

UPON LEARNING THAT A CANDIDATE WITH LESS TRAINING AND EXPERIENCE IN THE AREA OF PROGRAM EVALUATION HAD BEEN SELECTED FOR THE POSITION, I FILED A SECOND COMPLAINT ALLEGING SEX DISCRIMINATION BY DEPARTMENTAL MANAGEMENT. FORTUNATELY AT THAT TIME, I WAS ABLE TO SECURE EMPLOYMENT WITH THE DEPARTMENT OF HEALTH SERVICES.

DDS CONDUCTED AN INVESTIGATION OVER THE NEXT THREE MONTHS THROUGH THE LABOR RELATIONS OFFICE INSTEAD OF THE CIVIL RIGHTS OFFICE. TIMELINES WERE EXTENDED WITHOUT MY WRITTEN APPROVAL. I WAS NOT

INFORMED OF MY RIGHTS DURING THE PROCESS NOR OF MY RIGHTS TO APPEAL. IN APRIL, 1979, DDS CONCLUDED THEIR REVIEW AND ALTHOUGH THE DEPARTMENT DIRECTOR VERIFIED, IN WRITING, THE INCIDENT OF SEXUAL HARASSMENT AND THE PARTICULAR PROCEDURES (OR LACK THEREOF) WHICH PREVENTED ME FROM RECEIVING THE PROMISED RECLASSIFICATION TO THE APPROPRIATE CLASS, HE DENIED THAT ANY DISCRIMINATION HAD OCCURRED AND DISMISSED THE COMPLAINT. I WAS INFOPMED BY DDS LABOR RELATIONS STAFF THAT THERE WAS NO LAW, RULE, ETC. WHICH REQUIRED THAT I BE INTERVIEWED. BEING NAIVE AT THE TIME AND STILL BELIEVING THAT THE SYSTEM WOULD PROVIDE JUSTICE, I RESIGNED MYSELF TO ACCEPTING SUCH A REASON AS THE TRUTH.

LATER, UPON DISCOVERING THAT THE AFFIRMATIVE ACTION PLAN REQUIRED THE INTERVIEWING OF ALL INTERESTED AND ELIGIBLE MINORITY AND WOMEN CANDIDATES, I CONTINUED TO PURSUE MY COMPLAINT WITH THE STATE PERSONNEL BOARD, AS AN APPEAL, AND ALSO FILED WITH THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

THE STATE PERSONNEL BOARD DETERMINED IN AN APRIL, 1980, STAFF REPORT THAT I WAS IN FACT THE VICTIM OF SEXUAL HARASSMENT AND SEX DISCRIMINATION IN RETALIATION FOR MY REFUSAL TO COMPLY WITH SEXUAL DEMANDS, AND FOR FILING MY COMPLAINT. BOARD STAFF RECOMMENDED REINSTATEMENT TO DDS AND RECLASSIFICATION TO THE SECTION CHIEF POSITION, APPROPRIATE CORRECTIVE ACTION, AN AWARD OF BACK PAY, AND OUT-OF-CLASS COMPENSATION. THE REPORT WAS AMENDED WITH MINIMAL CHANGES AND REISSUED IN SEPTEMBER, 1980.

AS PART OF THE REMEDY I HAD ALSO REQUESTED THE SPB TO DEVELOP A STATEWIDE POLICY PROHIBITING SEXUAL HARASSMENT IN STATE SERVICE AS WELL AS ASKING THEM TO ADOPT CLEARER PROCEDURES FOR DEALING WITH SEXUAL HARASSMENT COMPLAINTS AND FOR PROTECTING COMPLAINANTS FROM REPRISALS. WE HAVE WORKED WITH THE BOARD TO DEVELOP A POLICY WHICH WAS PROMULGATED IN APRIL OF 1981. AS FAR AS I AM AWARE, HOWEVER, THE PROCEDURES ARE IN LIMBO.

BECAUSE OF THE PENDING LITIGATION BETWEEN DFEH AND THE SPB, I RECEIVED NOTIFICATION IN JUNE OF 1980, FROM DFEH THAT MY CHARGE ON FILE WAS BEING CLOSED BASED ON JURISDICTION WAIVED TO ANOTHER AGENCY (EEOC). THEN IN JANUARY, 1981, I RECEIVED A RIGHT TO SUE LETTER FROM EEOC STATING THAT I HADN'T GIVEN DFEH 60 DAYS PRIOR TO THEIR 300-DAY DEADLINE (FROM TIME OF INCIDENT), AND THEREFORE, MY CHARGE WAS DISMISSED BECAUSE IT WAS NOT FILED TIMELY. THIS HAS RESULTED IN THE LACK OF ACCESS TO ADMINISTRATIVE AGENCIES SPECIFICALLY DESIGNED TO DEAL WITH VIOLATIONS OF CIVIL RIGHTS IN EMPLOYMENT. THE SPB IS THE ONLY MECHANISM AVAILABLE FOR THE RESOLUTION OF MY COMPLAINT, AND YET IT IS NOT A DESIGNATED 706 AGENCY. I HAVE NOT HAD ANY OF THE BENEFITS AVAILABLE THROUGH ACCESS TO A 706 AGENCY AND HAVE HAD TO CONTENT MYSELF WITH THE SPB'S VOLUNTARY COMPLIANCE POLICY.

I HAVE BEEN FORCED TO FILE CIVIL SUITS IN STATE AND FEDERAL COURT AND FORTUNATELY FOUND OUT ABOUT THE NECESSITY OF FILING A CLAIM WITHIN 100 DAYS WITH THE BOARD OF CONTROL TO PROTECT MY RIGHT TO FILE CIVIL LITIGATION.

ONE OF THE CRITICAL PROBLEMS WITH THE CURRENT SYSTEM IS THE FAILURE BY ANY AGENCY TO PUBLICIZE INFORMATION RELATED TO REQUIREMENTS FOR ALL PROCEDURES STARTING FROM INFORMAL RESOLUTION AT THE LOWEST LEVEL POSSIBLE TO CIVIL SUITS. I WAS LUCKY ENOUGH TO TALK TO THE RIGHT PEOPLE AT THE RIGHT TIME AND PUT THE PUZZLE TOGETHER WITHOUT LOSING TOO MUCH BY WAY OF PROCEDURAL OPTIONS THROUGHOUT THE PROCESS.

THERE A LOT OF WAYS IN WHICH I AM A FORTUNATE VICTIM. I HAD WITNESSES TO THE ACTUAL SEXUAL HARASSMENT INCIDENT, WITNESSES WHO WERE WILLING TO SPEAK OUT. I HAD THE MOBILITY TO BE ABLE TO LEAVE THE ENVIRONMENT WHICH WAS OPPRESSING ME AND GO TO A FRIENDLIER, MORE HELPFUL, FORTHRIGHT DEPARTMENT. I WAS NOT TIED TO THE JOB I HAD FOR ECONOMIC REASONS. I DID NOT HAVE A FAMILY AT HOME TO SUPPORT OR EMBARRASS. I HAD DOCUMENTATION REGARDING THE ENTIRE INCIDENT AND THE EVENTS WHICH WERE TO LEAD UP TO THE RECLASSIFICATION (A BCP HAD BEEN WRITTEN TO RECLASSIFY ALL OF OUR DIVERTED LEVEL OF CARE STATE HOSPITAL POSITIONS). I HAD MY OUT-OF-CLASS EXPERIENCE PERFORMING THE FUNCTIONS OF THE POSITION WHICH I WAS DENIED WELL DOCUMENTED. I HAVE THE EDUCATIONAL BACKGROUND AND EXPERIENCE WHICH ENABLES ME ACCESS TO RESOURCES AND INFORMATION CRITICAL TO ONE ATTEMPTING TO GET RELIEF. I HAVE THE STAMINA (ALTHOUGH SOMETIMES I WONDER) TO CONTINUE AT ENORMOUS EXPENSE. AND I HAVE A WELL DEVELOPED SUPPORT GROUP AND MANY, MANY PEOPLE TO PROVIDE ME WITH THEIR EXPERIENCE AND EXPERTISE BECAUSE OF THEIR DESIRE TO SEE THE SYSTEM CHANGE AND BECOME MORE THAN JUST A PAPER PROCEDURE.

I WORRY ABOUT THE INDIVIDUAL WHO IS NOT AS LUCKY AS I HAVE BEEN: THE PERSON WHO MUST CONTINUE WORKING IN THE SAME POLLUTED WORK ENVIRONMENT IN A NO-WIN SITUATION, RESPONSIBLE TO THE SAME PERSONS WHO DISCRIMINATED OR RETALIATED IN THE FIRST PLACE; I WORRY ABOUT THE MOTHER OF THE FAMILY WITH FOUR KIST WHO HAS LITTLE ENERGY TO ALLOW HERSELF TO BE EMOTIONALLY AND PHYSICALLY DRAINED BY THE PURSUIT OF REMEDY AND FINDS HERSELF RESIGNED TO GIVING UP ANY HOPE OF REAL JUSTICE AND MERELY HOPES THAT SOME DAY SHE CAN FIND A JOB IN A SAFER PLACE: I WORRY ABOUT THE INDIVIDUAL WHO HAS NO RESOURCES TO SECURE NEEDED AND ESSENTIAL CRISIS COUNSELING AND LEGAL ASSISTANCE; I WORRY ABOUT THE PERSON WHI IS INTIMIDATED BY THE SYSTEM FOR VARIOUS REASONS BECAUSE OF ITS COMPLEXITY, THE STALLS AND DELAYS, THE ISOLATION OF WADING THROUGH, THE PERCEPTION THAT THERE IS NO POINT IN FIGHTING A BATTLE WITH NO RESOURCES AGAINST A MONSTER WITH UNLIMITED RESOURCES.

I HAVE BEEN WORKING WITH VARIOUS ADVOCACY GROUPS TO DEVELOP A LIST OF ISSUES WITH RESPECT TO THE STATE DISCRIMINATION COMPLAINT PROCESS AS WELL AS POSSIBLE SOLUTIONS TO THE IDENTIFIED PROBLEMS. I HAVE PROVIDED THE LIST TO YOUR COMMITTEES AS WRITTEN TESTIMONY BUT WOULD LIKE TO SPEND A FEW MINUTES DISCUSSING SOME OF THE MORE CRITICAL ONES.

ISSUE

STATE EMPLOYEES ARE NOT ROUTINELY MADE AWARE IN DETAIL OF THEIR RIGHT TO WORK IN A DISCRIMINATION-FREE ENVIRONMENT OR OF THE REMEDIES AVAILABLE TO THEM WHEN THEY DO EXPERIENCE DISCRIMINATION.

PROPOSED SOLUTION

THE SPB SHOULD DESIGN A PACKAGE TO COMMUNICATE THESE FACTS AND MONITOR DEPARTMENTS TO ENSURE THAT THESE PACKAGES ARE USED PROPERLY.

BACKGROUND

THERE IS NO SINGLE STATE AGENCY TO WHICH AN EMPLOYEE CAN GO TO ACQUIRE THE INFORMATION NEEDED TO PURSUE THEIR RIGHTS AND REMEDIES IN THEIR PUBLIC EMPLOYMENT. MOST STATE AGENCIES WHICH HAVE A RESPONSIBILITY FOR A PORTION OF THE COMPLAINT MECHANISMS WILL ONLY INFORM EMPLOYEES CONCERNING THEIR ENFORCEMENT CAPABILITY. ON OCCASIONS WHEN AN ENFORCEMENT AGENCY (SPB, DFEH, DOL, EEOC) HAS BEEN CONTACTED, THE EMPLOYEE IS PROVIDED WITH ONLY CURSORY INFORMATION CONCERNING ALL OF THEIR RIGHTS AND REMEDIES AVAILABLE UNDER THE LAW.

THIS IS ESPECIALLY PROBLEMATIC FOR STATE EMPLOYEES WHO, BECAUSE OF A BATTLE FOR JURISDICTION BETWEEN THE SPB AND DFEH, ARE NOT ALLOWED ACCESS TO THE STATE AGENCY SPECIFICALLY CREATED TO PERFORM TITLE VII MONITORING AND COMPLAINT RECEIVING FUNCTIONS BASED ON THE STATE'S FAIR EMPLOYMENT PRACTICES STATUTES.

MOST INDIVIDUALS ARE UNAWARE OF THE NECESSITY OF PRESENTING A CLAIM TO THE BOARD OF CONTROL WITHIN 100 DAYS OF THE CAUSE OF ACTION IN ORDER TO PURSUE A COMPLAINT AGAINST THE STATE OF CALIFORNIA.

OFTEN TIMES THIS RESULTS IN A BAR TO RECOVERY FOR AN EMPLOYEE WHO IN GOOD FAITH IS PURSUING REMEDY THROUGH THE REQUIRED ADMINISTRATIVE CHANNELS -- APPOINTING AUTHORITY, SPB -- WHICH TAKES CONSIDERABLY LONGER THAN 100 DAYS AND WHO DOESN'T BECOME AWARE OF THE NECESSITY FOR A BOC CLAIM UNTIL PURSUING A CIVIL REMEDY AFTER THE ADMINISTRATIVE MECHANISMS HAVE FAILED TO RESPOND EQUITABLY. BY THEN, IT IS TOO LATE, HOWEVER, AND THE EMPLOYEE AS WELL AS THE SYSTEM HAS EXPENDED CONSIDERABLE RESOURCES ONLY TO BE THWARTED BECAUSE THE ADMINISTRATIVE AGENCIES DID NOT INFORM THE EMPLOYEE OF APPEAL REQUIREMENTS FOR THE ENTIRE REMEDY PROCESS AND ALL AVAILABLE OPTIONS.

THE LACK OF ACCESS TO THE DFEH SYSTEM FOR STATE EMPLOYEES POSES A FURTHER PROBLEM IN THAT LEGAL COUNSEL IS NOT PROVIDED (FOR EMPLOYEES WITH MERITORIOUS CASES) BY THE SPB. THUS, PUBLIC EMPLOYEES WHO DO NOT WORK FOR THE STATE AND PRIVATE EMPLOYEES ARE ABLE TO GET LEGAL ASSISTANCE THROUGH DFEH WHILE STATE EMPLOYEES ARE NOT. RECOGNIZING THAT EVEN GETTING A COMPLAINT THROUGH THE SPB WITH A RECOMMENDATION FAVORABLE TO THE EMPLOYEE CAN TAKE ENORMOUS EXPENDITURES FOR THE STATE EMPLOYEE (AN AVERAGE OF APPROXIMATELY $5,000.00) FOR SUCCESSFUL COMPLAINANTS, THIS RESULTS IN A PROHIBITIVELY EXPENSIVE SYSTEM OF REDRESS FOR THE LOWER PAID EMPLOYEES, THE MAJORITY OF WHICH ARE MINORITIES, WOMEN AND THE DISABLED.

CONSIDERING THE NUMBER OF CASES WHICH MUST BE PURSUED BEYOND THE

SPB, THE EMPLOYEE ENDS UP INCURRING LARGE DEBTS TO PURSUE WHAT SHOULD HAVE BEEN PROVIDED IN THE FIRST PLACE AS A MATTER OF LAW. THIS COUPLED WITH THE COSTS TO THE TAXPAYERS OF THE STATE OF CALIFORNIA, ADDS UP TO ENORMOUS EXPENDITURES FOR THE REDRESS OF MERITORIOUS CASES WHICH SHOULD HAVE BEEN SOLVED AT THE LOWEST LEVEL POSSIBLE AT MINIMAL COSTS.

ISSUE

ISSUES OF PERSONAL PRIVACY OR CONFLICT OF INTEREST SOMETIMES MAKE IT INAPPROPRIATE FOR THE APPOINTING AUTHORITY TO PROCESS A DISCRIMINATION COMPLAINT.

PROPOSED SOLUTION

THE SPB SHOULD DEFINE CIRCUMSTANCES PERMITTING DIRECT APPEAL TO THE SPB.

BACKGROUND

SPB RULE 547 ALLOWS THE BOARD'S EXECUTIVE OFFICER TO ATTEMPT INFORMAL RESOLUTION OF COMPLAINTS. IN CERTAIN INSTANCES, THE APPOINTING AUTHORITY CANNOT BE IMPARTIAL IN THE RESOLUTION OF COMPLAINTS. FOR EXAMPLE, IF THE COMPLAINT INVOLVES TOP DEPARTMENTAL MANAGEMENT (DIRECTOR, DEPUTY DIRECTOR LEVEL), IT IS HIGHLY UNLIKELY THAT A CONFLICT OF INTEREST SITUATION CAN BE PREVENTED. SIMILARLY, IF THE COMPLAINT IS AGAINST ONE ON A T&D ASSIGNMENT AND THE SUPERVISOR TO WHOM THE COMPLAINT IS BROUGHT IS THE PERSON RESPONSIBLE FOR THE T&D.

LIKEWISE, DEPARTMENTS WHICH HAVE A HISTORY OF DISCRIMINATORY ACTIONS, OR A HISTORY OF RETALIATION AND REPRISAL AGAINST COMPLAINANTS ARE NOT LIKELY TO FAIRLY INVESTIGATE AND RESOLVE A COMPLAINT. SIMILARLY, IF DEPARTMENTS HAVE A HISTORY OF DUE PROCESS VIOLATIONS OR INAPPROPRIATE HANDLING OF COMPLAINTS, A COMPLAINANT IS NOT LIKELY TO RECEIVE IMPARTIAL SERVICES.

FINALLY, WHERE PERSONAL PRIVACY ISSUES ARE INVOLVED SUCH AS A

SEXUAL HARASSMENT COMPLAINT OR A SITUATION OF SEXUAL ORIENTATION DISCRIMINATION, THE COMPLAINANT IS MUCH MORE LIKELY TO HAVE CONFIDENTIALITY RIGHTS PROTECTED BY FOREGOING THE ROUTE THROUGH THE APPOINTING AUTHORITIES SYSTEM.

IN THE ABOVE CASES, AS WELL AS OTHERS, THE COMPLAINANT AND THE SYSTEM ARE BETTER SERVED BY THE EXERCISE OF A DIRECT APPEAL TO THE SPB THROUGH THE AUTHORITY OF RULE 547.1.

THE SPB SHOULD BE DIRECTLY ACCESSIBLE TO EMPLOYEES IN SENSITIVE CIRCUMSTANCES WHICH IF HANDLED THROUGH THE DEPARTMENT WOULD NOT ALLOW JUSTICE TO BE ADEQUATELY SERVED.

IT COULD BE ARGUED THAT THE SPB AS THE AGENCY TO DETERMINE THE OUTCOME OF DISCRIMINATORY EMPLOYMENT PRACTICES IS SUSPECT FOR CONFLICT OF INTEREST REASONS. THE SPB IS, AFTER ALL, CHARGED WITH THE RESPONSIBILITY OF ESTABLISHING THE OVERALL CIVIL SERVICE SYSTEM HIRING, EMPLOYMENT, AND TERMINATION PROCEDURES. THIS IS, IN FACT, THE VERY REASON THE SPB HAS NOT BE DESIGNATED BY THE FEDERAL GOVERNMENT AS A "706" AGENCY FOR THE PROCESSING OF TITLE III COMPLAINTS OF EMPLOYMENT DISCRIMINATION.

ISSUE

OFTEN EMPLOYEES WHO COMPLAIN OF DISCRIMINATION EXPERIENCE REPRISAL.

PROPOSED SOLUTION

THE GOVERNMENT CODE PROHIBITS REPRISAL AGAINST AN EXMPLOYEE OR ANY PERSON WHO BRINGS ATTENTION TO A VIOLATION OF STATE OR FEDERAL LAW. HOWEVER, RETALIATION FOR COMPLAINTS OCCURS OFTEN ENOUGH TO WARRANT SERIOUS ATTENTION TO THE PROBLEM. MANY EMPLOYEES PERCEIVE THAT THEIR LEGITIMATE COMPLAINT WILL RESULT IN MINOR TO SEVERE EMPLOYMENT CONSEQUENCES RANGING FROM SUBTLE HARASSMENT TO POOR PERFORMANCE RATINGS OR TERMINATION OF PROBATIONARY STATUS WORK OR NEGATIVE JOB ASSIGNMENTS. EMPLOYEES MAY BE PASSED OVER IN PROMOTION BECAUSE THEY "ARE NOT A TEAM PLAYER". EMPLOYEES WHO DO COMPLAIN AND PERSIST ARE VIEWED AS TROUBLE-MAKERS AND ARE OFTEN BLACKLISTED.

WE ANTICIPATE THAT IF THE SPB DEVELOPED CLEAR CONSEQUENCES FOR SUBSTANTIATED REPRISAL AND RETALIATION AGAINST COMPLAINANTS AND THAT IF THESE CONSEQUENCES WERE ENFORCED (NOT MERELY BY REQUESTING THE DEPARTMENT TO "CONSIDER" THEIR IMPLEMENTATION) FEWER INCIDENTS WOULD OCCUR AND EMPLOYEES WOULD BE FREER TO PURSUE THEIR COMPLAINTS. IN THIS VEIN, WE ALSO URGE THE ADDITION OF A DISCRIMINATION AS WELL AS A RETALIATION OR REPRISAL PROHIBITION TO GOVERNMENT CODE SECTION 19572 AND 19680 TO STRENGTHEN THE SPB's AUTHORITY TO IMPOSE SANCTIONS. FURTHER, SECTION 19574 SHOULD BE CLARIFIED TO SPECIFY SPB AUTHORITY TO INITIATE PUNITIVE ACTIONS BASED UPON SUBSTANTIATED DISCRIMINATION AND/OR RETALIATION.

A RELATED ISSUE IS THE FACT THAT:

ISSUE

DISCRIMINATION AGAINST STATE EMPLOYEES OFTEN RESULTS IN SEVERE STRESS FOR THOSE EMPLOYEES.

PROPOSED SOLUTION

THE SPB SHOULD ENSURE THAT OUNSELING SERVICES ARE PROVIDED FOR AFFECTED EMPLOYEES TO DEAL WITH THIS STRESS.

BACKGROUND

DISCRIMINATION IN EMPLOYMENT HAS BEEN REPORTED ON MANY OCCASIONS TO BE EXTREMELY COSTLY TO ORGANIZATIONS IN THE AREAS OF LOWERED EMPLOYEE PRODUCTIVITY, MORALE, GREATER SICK LEAVE USAGE, ETC. THE RESULTS OF A DISCRIMINATORY ACTION AND THE STRESS OF SEEKING REMEDY CAN OFTEN BE DEBILITATING FOR EMPLOYEES WHO ARE VULNERABLE TO SUCH ACTIVITY IN THE FIRST PLACE. INCREASED JOB STRESSES CAN RESULT IN PHYSICAL AND EMOTIONAL TRAUMAS WHICH THE SYSTEM NEITHER ACKNOWLEDGES NOR PROVIDES SUPPORT AND ASSISTANCE TO OVERCOME. THE SYSTEM CAUSES THE PROBLEM BY ENGAGING IN DISCRIMINATORY ACTIONS AND, THEREFORE, SHOULD BE WILLING TO PROVIDE ASSISTANCE IN SOLVING THE PROBLEM WHICH IT CREATED. LACK OF FORMAL ASSISTANCE FURTHER EXACERBATES THE ISOLATION AND STRESS OF VICTIMIZED EMPLOYEES. IT SHOULD BE NOTED THAT A MECHANISM EXISTS FOR EMPLOYEE ASSISTANCE FOR PROBLEMS INVOLVING ALCOHOL AND DRUG ABUSE (WHICH ARE NOT GENERALLY CONSIDERED EMPLOYMENT RELATED), YET NO MECHANISM EXISTS FOR EMPLOYEE ASSISTANCE IN SITUATIONS RESULTING IN PHYSICAL AND EMOTIONAL STRESS CAUSED BY A DISCRIMINATORY AND POLLUTED WORK ENVIRONMENT. THE SPB SEXUAL HARASSMENT POLICY STATES THAT DEPARTMENTS ARE TO PROVIDE

FOUR COUNSELING OF SEXUAL HARASSMENT VICTIMS. THIS POLICY SHOULD BE EXTENDED TO ALL TYPES OF DISCRIMINATION VICTIMS.

A RELATED ISSUE (IN TERMS OF COST):

ISSUE

TRANSCRIPTS OF HEARINGS BY THE SPB ON DISCRIMINATION COMPLAINTS ARE OFTEN PROHIBITIVELY EXPENSIVE (E.G., $800.00 FOR THREE DAYS OF HEARINGS IN ONE RECENT CASE).

PROPOSED SOLUTION

SPB HEARINGS SHOULD BE RECORDED IN A MANNER THAT WILL PERMIT DUPLICATION OF THE RECORD IN THE LEAST EXPENSIVE MANNER POSSIBLE, (E.G., CASSETTE TAPE REPRODUCTION).

ISSUE

DEPARTMENTS RECEIVE INADEQUATE GUIDANCE AND SUPERVISION FROM THE SPB CONCERNING THE DEVELOPMENT, IMPLEMENTATION, AND MONITORING OF THEIR DEPARTMENTAL DISCRIMINATION COMPLAINT SYSTEMS.

PROPOSED SOLUTION

THE SPB SHOULD PROVIDE DEPARTMENTS WITH CONCRETE GUIDELINES FOR ESTABLISHING DISCRIMINATION COMPLAINT PROCESSES AND SHOULD MONITOR THE DEPARTMENTS TO ENSURE: 1) THAT THE DEPARTMENTS ESTABLISH WRITTEN GUIDELINES FOR HANDLING DISCRIMINATION COMPLAINTS WITHIN A REASONABLE PERIOD OF TIME: AND 2) THE DEPARTMENTS COMPLY WITH THOSE GUIDELINES.

BACKGOUND

RULE 547.2 OF THE STATE PERSONNEL BOARD LAWS AND RULES ESTABLISHES STANDARDS FOR THE ESTABLISHMENT OF DISCRIMINATION COMPLAINT PROCEDURES. THE STANDARDS REQUIRE THAT THE COMPLAINT PROCEDURE BE RESOLVED AT THE LOWEST LEVEL POSSIBLE, THAT THE AGGRIEVED EMPLOYEE BE PROVIDED WITH COUNSELING ON A CONFIDENTIAL BASIS BY A QUALIFIED EMPLOYEE, THAT NO REPRISAL SHALL OCCUR, THAT THE COMPLAINT WILL RECEIVE PREFERRED, TIMELY AND FULL CONSIDERATION, THAT THE INVESTIGATORS SHALL BE QUALIFIED AND IMPARTIAL, THAT THE EMPLOYEE WILL RECEIVE ALL DUE PROCESS CONSIDERATIONS, AND THAT AN EMPLOYEE HAS AN AUTOMATIC RIGHT TO APPEAL TO THE SPB IF THE APPOINTING POWER HAS NOT RESOLVED THE COMPLAINT WITHIN SIX MONTHS OF FORMAL FILING.

RULE 547.1 AUTHORIZES THE SPB'S EXECUTIVE OFFICER TO APPROVE WRITTEN PROCEDURES WHICH MAY BE ESTABLISHED BY EACH APPOINTING POWER THROUGH WHICH THE EMPLOYEE MAY OBTAIN CONSIDERATION OF A DISCRIMINATION COMPLAINT. UNTIL THE PROCEDURE IS APPROVED, THE APPOINTING POWER SHALL USE THE STANDARD PROCEDURE PRESCRIBED BY THE EXECUTIVE OFFICER.

AS THE ABOVE INDICATES, THE SPB, THROUGH ITS EXECUTIVE OFFICER, CLEARLY HAS BEEN GIVEN THE RESPONSIBILITY TO MONITOR AND OVERSEE THE DEPARTMENTAL PROCEDURES AS WELL AS ITS OWN INTERNAL APPEAL MECHANISM.

THE SPB HAS BEEN INCONSISTENT IN MONITORING DEPARTMENTAL COMPLIANCE. FOR EXAMPLE, WITH RESPECT TO SEXUAL ORIENTATION DISCRIMINATION, THE EXECUTIVE OFFICER HAS INDICATED IN A RECENT LETTER TO MR. TOM COLEMAN (DATED SEPTEMBER 30, 1982):

> "IN APPROXIMATELY APRIL 1980, THE STATE PERSONNEL BOARD INFORMED DEPARTMENTS OF THE PROHIBITION OF DISCRIMINATION BASED ON SEXUAL ORIENTATION AND REQUESTED THESE DEPARTMENTS TO INFORM THEIR EMPLOYEES OF THIS PROTECTION AND TO TAKE NECESSARY ACTION TO REVISE POLICIES, PROCEDURES, AND MANUALS TO REFLECT THIS PROHIBITION. IN MARCH, 1981, THE STATE PERSONNEL BOARD FOLLOWED UP WITH THE 37 LARGEST DEPARTMENTS TO DETERMINE IF THE DEPARTMENTS HAD COMPLIED WITH THE EARLIER REQUEST. AT THAT TIME, ONLY A FEW DEPARTMENTS HAD TOTALLY COMPLIED.

> BY THE END OF THIS FISCAL YEAR, THE STATE PERSONNEL BOARD WILL FOLLOW UP WITH ALL DEPARTMENTS TO DETERMINE IF THEY HAVE REVISED THEIR AFFIRMATIVE ACTION POLICY STATEMENT, INFORMED ALL EMPLOYEES BY NEWSLETTER OR MEMO, AND WHETHER THEY HAVE MODIFIED TRAINING AND OTHER RELATED ACTIVITIES REGARDING SEXUAL ORIENTATION DISCRIMINATION." (PAGE 1)

OUR OWN INFORMAL REVIEW HAS INDICATED THAT DEPARTMENTS HAVE INCONSISTENT AND SOMETIMES DISCRIMINATORY POLICIES WITH REGARD TO THE DISCRIMINATION COMPLAINT AND THE AFFIRMATIVE ACTION SYSTEM. DEPARTMENTS APPEAR TO HAVE INTERNAL HIDDEN AGENDAS IN THE CONDUCT OF THEIR HIRING AND PROMOTION PRACTICES. IT IS CERTAINLY NOT CONDUCIVE TO A GOOD PUBLIC IMAGE FOR A DEPARTMENT TO ADMIT TO DISCRIMINATORY PRACTICES. WHEN IN THE NECESSITY OF FAIRNESS AND EQUITY A COMPLAINANT SHOULD BE VINDICATED, A DEPARTMENT WILL OFTEN ATTEMPT TACTICS WHICH DISCOURAGE COMPLAINANTS DUE TO UNNECESSARILY LENGTHY DELAYS, UNNECESSARY REVIEWS, UNNECESSARY REINVESTIGATIONS, HARASSMENT TO CONCILIATE, HARASSMENT TO WITHDRAW, VIOLATIONS OF CONFIDENTIALITY, REPRISALS FOR COMPLAINING, UNWILLINGNESS TO IMPOSE SANCTIONS OR THE IMPOSITION OF MINOR PUNITIVE ACTION, AND THE AWARENESS OF ALL PARTIES THAT THE SPB WILL NOT ENFORCE PROHIBITIONS OR REMEDIES, NOR MONITOR COMPLIANCE WITH EITHER THE AFFIRMATIVE ACTION PROGRAM OR THE NON-DISCRIMINATION MANDATE.

THE SPB SHOULD EXERCISE THE AUTHORITY PROVIDED IN RULE 547 AND REVIEW THE EXISTING COMPLAINT SYSTEM TO IDENTIFY SPECIFIC DEFICIENCIES, ON A DEPARTMENTAL AND STATEWIDE BASIS. THE SPB SHOULD THEN IDENTIFY SOLUTIONS AND METHODS OF CORRECTING INADEQUACIES.

AT A MINIMUM THE SYSTEM SHOULD INCLUDE MECHANISMS FOR ENSURING EMPLOYEE RIGHTS AS SPECIFIED IN THE SPB SEXUAL HARASSMENT POLICY ISSUED IN APRIL OF 1981. THESE INCLUDE:

THE RIGHT TO A DISCRIMINATION-FREE WORK ENVIRONMENT.

THE RIGHT TO AN INFORMAL, CONFIDENTIAL PRESENTATION OF A COMPLAINT TO A COMPETENT COUNSELOR WITHIN THE 30-CALENDAR-DAY TIME LIMIT, USING A REASONABLE AMOUNT OF STATE TIME.

THE RIGHT TO KEEP THE COMPLAINT CONFIDENTIAL UNTIL SUCH TIME AS THE COUNSELOR IS GIVEN PERMISSION TO RELEASE INFORMATION IN ORDER TO BRING THE COMPLAINT TO THE APPROPRIATE AUTHORITY FOR REMEDY OR UNTIL SUCH TIME AS A FORMAL COMPLAINT IS FILED.

THE RIGHT TO A FULL, IMPARTIAL AND PROMPT INVESTIGATION BY A TRAINED DEPARTMENTAL INVESTIGATOR.

THE RIGHT TO REVIEW ALL RELEVANT INFORMATION DEVELOPED AND DISCOVERED DURING THE COURSE OF ANY INVESTIGATION AND INQUIRY INTO THE MATTER.

THE RIGHT TO A TIMELY DECISION FROM THE APPOINTING POWER, OR AUTHORITY DESIGNATED BY THE APPOINTING POWER AFTER FULL CONSIDERATION OF ALL RELEVANT FACTS AND CIRCUMSTANCES.

THE RIGHT TO BE REPRESENTED BY A PERSON OF THE COMPLAINANT'S CHOOSING AT EACH AND ALL STEPS OF THE PROCESS.

THE RIGHT TO APPEAL THE APPOINTING POWER'S DECISION WITHIN 180 DAYS TO THE STATE PERSONNEL BOARD, OR OTHER APPROPRIATE STATE OR FEDERAL AGENCIES.

THE SYSTEM MUST ALSO INCLUDE MECHANISMS TO MONITOR COMPLIANCE ON A ROUTINE BASIS TO CORRECT DISCOVERED DEFICIENCIES. WHEN THE SPB DISCOVERS A PATTERN IN A PARTICULAR DEPARTMENT (FOR EXAMPLE, DISCRIMINATION IN EXAMINATIONS, OUT-OF-CLASS EXPERIENCE, OR PUNITIVE ACTIONS AS WELL AS OTHER ADVERSE DISCRIMINATORY ACTIONS), THE SPB SHOULD INITIATE INVESTIGATIONS INTO DEPARTMENTAL PRACTICES IMMEDIATELY INSTEAD OF WAITING FOR A COMPLAINT TO TAKE ACTION.

FURTHER, THE SPB SHOULD BE GIVEN DIRECT AUTHORITY TO CONCILIATE ON A NO FAULT BASIS IF A DEPARTMENT IS WILLING TO SETTLE WITH A COMPLAINANT. WE UNDERSTAND THAT THE SPB HAS TAKEN A POSITION THAT EVEN IF A DEPARTMENT IS WILLING TO SETTLE, THE SPB MUST FIRST INVESTIGATE AND FIND FAULT. THIS DISCOURAGES DEPARTMENTS FROM ATTEMPTING EARLY RESOLUTION AND ENCOURAGES A DEFENSIVE POSTURE.

WITH RESPECT TO REMEDY, THE SPB HAS TAKEN A POSITION THAT ONLY THE APPOINTING AUTHORITY CAN IMPOSE SPECIFIC PUNITIVE ACTIONS AGAINST ITS EMPLOYEES. IF INDEED THE SPB HAS NO AUTHORITY TO INITIATE PUNITIVE ACTION AGAINST EMPLOYEES WHO DISCRIMINATE AND/OR RETALIATE AGAINST COMPLAINANTS, THE SPB SHOULD BE GIVEN SUCH AUTHORITY THROUGH A CHANGE IN THE GOVERNMENT CODE.

THE SPB SHOULD ALSO BE GIVEN THE AUTHORITY TO ORDER ADMINISTRATIVE CHANGES TO REMEDY A DISCRIMINATORY SITUATION. THIS SHOULD INCLUDE THE OPTION OF ORDERING THE APPOINTING AUTHORITY TO MOVE THE EMPLOYEE FOUND IN VIOLATION OF THE PROHIBITIONS AGAINST DISCRIMINATION.

ALSO RELATED IS:

ISSUE

MANY DEPARTMENTS HAVE FAILED TO COMPLY WITH NON-DISCRIMINATION POLICIES ISSUED BY THE SPB AND HAVE FAILED TO INCLUDE THOSE POLICIES IN THEIR DEPARTMENTAL MANUALS.

PROPOSED SOLUTION

THE SPB SHOULD CLOSELY MONITOR THE DEPARTMENTS TO ENSURE COMPLIANCE.

ISSUE

APPROPRIATE SPB AND DEPARTMENTAL STAFF ARE NOT TRAINED ADEQUATELY IN PREVENTION TECHNIQUES, HANDLING EMPLOYMENT DISCRIMINATION COMPLAINTS OR IN HANDLING ISSUES THAT ARE UNIQUE TO WOMEN, MINORITIES, THE DISABLED, AND PERSONS FOR WHOM ENGLISH IS A SECOND LANGUAGE IN THE RESOLUTION OF COMPLAINTS.

PROPOSED SOLUTION

MANDATORY TRAINING SHOULD BE DEVELOPED AND PROVIDED WHICH INCLUDES TRAINING IN BASIC PROCEDURES AND IN SENSITIVITY TO THE UNIQUE ISSUES FACED BY WOMEN, MINORITIES, THE DISABLED, AND PERSONS FOR WHOM ENGLISH IS A SECOND LANGUAGE. ALL MANAGEMENT AND SUPERVISORY EMPLOYEES SHOULD BE REQUIRED TO ATTEND.

BACKGROUND

WE ARE UNAWARE OF ANY TRAINING MANUALS OR COURSES WHICH ARE REQUIRED SESSIONS TO TRAIN MANAGERS AND SUPERVISORS IN THE ESTABLISHMENT OF A DISCRIMINATION-FREE WORK ENVIRONMENT. FURTHER, WE ARE NOT AWARE OF ANY SPB APPEALS ANALYST's OR DEPARTMENTAL TRAINING PROGRAMS WHICH PROVIDE SUCH STAFF WITH THE NECESSARY AND REQUISITE SKILLS ESSENTIAL TO THE SUCCESSFUL HANDLING AND RESOLUTION OF DISCRIMINATION COMPLAINTS. THE APPEALS UNIT STAFF HAVE NO PROCEDURE MANUAL NOR GUIDELINES FOR A STANDARDIZED INVESTIGATION AND APPEALS PROCESS.

THE SPB HAS ESTABLISHED RULES FOR INVESTIGATIONS AND HEARINGS CONDUCTED BY HEARING OFFICERS AND HAS BEEN PROVIDED WITH THE AUTHORITY TO HOLD HEARINGS AND MAKE INVESTIGATIONS TO ENFORCE NON-DISCRIMINATION. HOWEVER, TO THE BEST OF OUR KNOWLEDGE, THE SPB HAS NOT IMPLEMENTED

THIS PART FOR THE APPEALS UNIT STAFF AND THE ANALYSTS WHO INVESTIGATE COMPLAINTS. LIKEWISE, THE SPB HAS NOT PROVIDED THE DEPARTMENTS WITH PROCEDURAL GUIDELINES FOR INVESTIGATION. THERE IS NO REQUIREMENT THAT ANY PERSONNEL WORKING WITHIN THE COMPLAINT SYSTEM, AT THE DEPARTMENTAL LEVEL OR AT THE APPEAL LEVEL, ARE TRAINED IN THE AREA OF EMPLOYMENT DISCRIMINATION.

WHAT LIMITED TRAINING COURSES THAT ARE OFFERED IN THE AREA BY PDC AND DEPARTMENTS ARE NOT EVEN EVALUATED NOR MONITORED BY THE SPB TO ENSURE THEIR EFFECTIVENESS. PRESUMABLY, BECAUSE OF THE LACK OF ADEQUATE KNOWLEDGE AND TRAINING,COMPLAINT SYSTEM PERSONNEL OFTEN MISDIRECT POTETNTIAL COMPLAINANTS TO THE GRIEVANCE SYSTEM TO FILE EMPLOYMENT DISCRIMINATION COMPLAINTS.

COMPLAINT SYSTEM PERSONNEL ARE PERCEIVED AS NEEDING ADDITIONAL TRAINING REGARDING: THE NATURE, EXTENT, AND EFFECTS OF DISCRIMINATION: LAWS AND POLICIES RELATED TO NON-DISCRIMINATION AND TO CONSTITUTIONAL ASSURANCES OF PRIVACY AND DUE PROCESS: FORMALLY INVESTIGATING AND ACTING ON A COMPLAINT OF DISCRIMINATION: HOW TO RESEARCH AND USE PRECEDENT AND CASE LAW IN THE RESOLUTION OF COMPLAINTS: UNDERSTANDING AND RELATING EFFECTIVELY TO INDIVIDUALS WHO MAY COMPLAIN OF DISCRIMINATION, ESPECIALLY MINORITIES, WOMEN, THE DISABLED, AND PERSONS FOR WHOM ENGLISH IS A SECOND LANGUAGE: RESEARCH AND REPORT WRITING: RECORD KEEPING AND DOCUMENTATION.

THE SPB CLEARLY HAS THE AUTHORITY AND RESPONSIBILITY FOR DEVELOPING INVESTIGATORY, COMPLAINT, AND HEARING PROCEDURES WHICH SHOULD INCLUDE ALL DUE PROCESS CONSIDERATIONS. THE CURRENT PROCESS SHOULD

BE REVISED AND STANDARDIZED. THE PROCEDURES SHOULD BE STRENGTHENED AND PUBLISHED AND WIDELY DISTRIBUTED. STAFF DEALING WITH THE COMPLAINT SYSTEM SHOULD RECEIVE APPPOPRIATE TRAINING AND EXPERIENCE IN PARA-LEGAL AND TECHNICAL AREAS INCLUDING: WRITING POLICY: INVESTIGATIVE METHODS AND PROCEDURES: CREATING A DISCRIMINATION-FREE WORK ENVIRONMENT: PROPERLY NOTIFYING EMPLOYEES OF THEIR RIGHTS, AND THE PROCEDURES FOR SEEKING REMEDY: RELEVANT NON-DISCRIMINATION LAW, POLICIES,

EXECUTIVE ORDERS, ETC., THE RIGHTS AND RESPONSIBILITIES OF MANAGEMENT, SPB, ETC., IN THE COMPLAINT PROCESS; AND SENSITIVITY TRAINING IN DEALING WITH UNIQUE PROBLEMS PRESENT BY MINORITIES, WOMEN, THE DISABLED AND NON-ENGLISH SPEAKING EMPLOYEES.

AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY TRAINING SHOULD BE GIVEN AS PART OF THE MAINSTREAM MANAGEMENT AND SUPERVISORY TRAINING PACKAGES TO BETTER ENSURE THAT AA AND EEO RESPONSIBILITIES WILL BE PERCEIVED AS AN INTEGRAL ASPECT OF MANAGEMENT AND SUPERVISORIAL DUTIES.

ALSO RELATED IS THE FOLLOWING:

ISSUE

THE SPB APPEALS DIVISION STAFF HAVE NO STANDARD PROCEDURAL GUIDELINES TO USE WHEN CONDUCTING INVESTIGATIONS OF COMPLAINTS OF DISCRIMINATION.

PROPOSED SOLUTION

THE SPB SHOULD REVIEW AND REVISE THEIR PROCEDURES AND CREATE A PROCEDURAL MANUAL FOR STAFF INVOLVED IN INVESTIGATING COMPLAINTS OF DISCRIMINATION.

ADDITIONAL BACKGROUND

THE LACK OF A STANDARDIZED PROCEDURE ADDS TO THE LENGTH OF THE INVESTIGATION. ANALYSTS AND INVESTIGATORS HAVE NO GUIDELINES WITHIN WHICH TO CONDUCT THEIR INVESTIGATION OR WITHIN WHICH TO MAKE RECOMMENDATIONS. CONSEQUENTLY, THEIR REPORTS MAY BE IN CONFLICT WITH EXISTING LAW (STATUTORY AND CASE LAW). THE FINDINGS AND RECOMMENDATIONS MIGHT BE INCONSISTENT ACROSS INVESTIGATORS DEALING WITH SIMILAR FACTUAL SITUATIONS. BECAUSE OF POTENTIALLY INAPPROPRIATE RECOMMENDATIONS, MORE TIME MIGHT BE WASTED TO CORRECT REPORTS.

ALSO RELATED TO THE LACK OF A STANDARDIZED PROCESS ARE THE FOLLOWING:

ISSUE

APPEALS DIVISION STAFF FREQUENTLY WASTE TIME REINVESTIGATING FACTS THAT ARE NOT CONTESTED BY EITHER THE AGGRIEVED OR THE DEPARTMENT.

PROPOSED SOLUTION

APPEALS DIVISION INVESTIGATIONS SHOULD BE LIMITED TO CONTESTED FACTS.

ISSUE

CURRENT RECOMMENDATIONS BY THE APPEALS DIVISION STAFF SHOULD BE CONSISTENT WITH PAST SPB DECISIONS ON SIMILAR COMPLAINTS AND CONSISTENT WITH DECISIONS MADE BY OTHER ADMINISTRATIVE BODIES AND THE COURTS ON RELATED ISSUES. HOWEVER, THE CURRENT FILING SYSTEM OF THE APPEALS DIVISION PREVENTS RETRIEVAL OF THESE MATERIALS.

PROPOSED SOLUTION

THE APPEALS DIVISION FILING SYSTEM SHOULD BE REORGANIZED TO PERMIT ACCESS AND RETRIEVAL OF PRECEDENT MATERIALS.

ISSUE

SPB APPEALS DIVISION STAFF LACK KNOWLEDGE OF THE LAWS, POLICIES AND COURT DECISIONS WHICH SHOULD GUIDE THEIR DECISION-MAKING ON DISCRIMINATION COMPLAINTS.

PROPOSED SOLUTION

TRAINING ON THESE SUBJECTS SHOULD BE PROVIDED.

ISSUE

IT GENERALLY TAKES A MINIMUM OF 6 MONTHS BEFORE SPB APPEALS DIVISION BEGINS INVESTIGATION OF DISCRIMINATION COMPLAINTS.

PROPOSED SOLUTION

ALL INVESTIGATIONS SHOULD BEGIN WITHIN ONE MONTH OF RECEIPT OF A COMPLAINT AND A DECISION SHOULD BE RENDERED NO LATER THAN SIX MONTHS AFTER RECEIPT OF THE COMPLAINT. ADEQUATE STAFF SHOULD BE PROVIDED TO REACH THESE GOALS.

BACKGROUND

ACCORDING TO SECTION 1867L OF THE GOVERNMENT CODE, "WHENEVER A HEARING OR INVESTIGATION IS CONDUCTED BY THE BOARD OR ITS AUTHORIZED REPRESENTATIVE IN REGARD TO AN APPEAL BY AN EMPLOYEE, SUCH HEARING OR INVESTIGATION SHALL BE COMMENCED WITHIN A REASONABLE TIME AFTER THE FILING OF THE PETITION AND THE BOARD SHALL RENDER ITS DECISION WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF SUCH HEARING OR INVESTIGATION, EXCEPT THAT THE PERIOD FROM THE FILING OF THE PETITION TO THE DECISION OF THE BOARD SHALL NOT EXCEED SIX MONTHS AND EXCEPT THAT THE BOARD MAY EXTEND SUCH SIX-MONTH PERIOD UP TO 45 ADDITIONAL DAYS."

IN ONE RECENT CASE, THE BOARD STAFF SPENT THREE MONTHS JUST DECIDING WHETHER OR NOT TO TAKE JURISDICITION IN A DISCRIMINATION COMPLAINT AND SAID IT WOULD BE 6 MONTHS AFTER THAT DECISION WAS MADE BEFORE AN INVESTIGATION COULD BEGIN.

IN ANOTHER CASE, THE BOARD STAFF SPENT FIVE MONTHS AMENDING AN INITIAL STAFF REPORT ON A DISCRIMINATION APPEAL MAKING ONLY MINOR CHANGES.

IN A RECENT CASE, THE BOARD HAS NOT YET EVEN ACKNOWLEDGED THE RECEIPT OF A COMPLAINT WHICH WAS FILED THREE MONTHS AGO.

IN CASES WHERE THE DELAY IS LENGTHY AGGRIEVED EMPLOYEES MUST OFTEN CONTINUE TO WORK IN THE "POLLUTED ATMOSPHERE" SUBJECT TO CONTINUED HARRASSMENT AND DISCRIMINATION WHICH OFTEN RESULTS IN STRESS-RELATED LOWERED PRODUCTIVITY, PHYSICAL SYMPTOMS, POOR MORALE, ETC.

THE UNREASONABLY LENGTHY DELAY DOES NOT COMPLY WITH SPB RULES ON TIMELY REVIEW (547.2(c). IT ALSO DISCOURAGES COMPLAINTS AND PREVENTS WITNESSES FROM THE SHARP RECALL OF DETAILS ESSENTIAL TO THE CASE.

COUPLED WITH THE DELAY IS THE ROUTINE PROCESS OF REINVESTIGATION OF ALL INFORMATION FROM THE DEPARTMENTAL LEVEL PROCESS WHETHER OR NOT THE INFORMATION IS CONTESTED. THIS INCREASES THE PROCESS TIMEFRAME UNNECESSARILY. THIS IS AGAIN COMPOUNDED BY THE LACK OF TRAINING FOR INVESTIGATORS AND ANALYSTS WHICH RESULTS IN WASTED TIME DUE TO THEIR UNCERTAINTY AND UNFAMILIARITY WITH STANDARD PROCEDURES.

THE GOVERNMENT CODE SHOULD BE REVIEWED TO INCLUDE THE RESULT OF EXCEEDING THE SIX-MONTH PERIOD SUCH THAT EMPLOYEES ARE THEN PROVIDED WITH A "RIGHT-TO-SUE" LETTER OR MAY CONTINUE TO PURSUE THE ACTION WITH DFEH AT THEIR ELECTION.

A RELATED ISSUE: DEPARTMENTS OFTEN DELAY IN IMPLEMENTING SPB RECOMMENDATIONS RESULTING FROM DISCRIMINATION COMPLAINT INVESTIGATIONS.

THE SPB SHOULD SEEK AN ORDER TO SHOW CAUSE FROM SUPERIOR COURT WHEN A DEPARTMENT DELAYS FOR LONGER THAN 30 DAYS IN THE IMPLEMENTATION OF BOARD RECOMMENDATIONS.

A RELATED ISSUE:

ISSUE

DEPARTMENTS OFTEN DELAY IMPLEMENTATION OF OR IGNORE SPB DECISIONS WITH REGARD TO DISCRIMINATION COMPLAINTS.

PROPOSED SOLUTION

SPB SHOULD ROUTINELY MONITOR AND ENFORCE IMPLEMENTATION OF ITS DECISIONS, IF NECESSARY SEEKING LEGAL RECOURSE TO OBTAIN COMPLIANCE FROM STATE DEPARTMENTS AND AGENCIES.

ISSUE

THE SPB KEEPS NO STATISITCS OF CURRENT OR HISTORICAL INCIDENCE OF DISCRIMINATION IN STATE SERVICE MAKING IT IMPOSSIBLE TO MONITOR PROGRESS OR REGRESSION IN NON-DISCRIMINATION COMPLIANCE BY DEPARTMENTS.

PROPOSED SOLUTION

THE SPB SHOULD DEVELOP A STATISITICAL REPORTING SYSTEM FOR TRACKING DEPARTMENTAL COMPLAINTS AND SPB APPEALS.

BACKGROUND

THE SPB IS AUTHORIZED TO INSURE THAT UNLAWFUL DISCRIMINATION DOES NOT OCCUR IN STATE CIVIL SERVICE. THE SPB CURRENTLY HAS NO MECHANISM, HOWEVER, TO MONITOR THE SYSTEM. WE ARE AWARE OF NO MONITORING OR REPORTING SYSTEM TO MEET THE MANDATE.

FURTHER, THE SPB DOES NOT EVEN KEEP TRACK OF DISCRIMINATION INCIDENTS INVOLVING PUNITIVE ACTIONS, EXAM APPEALS, AND OUT-OF-CLASS SITUATION DIRECTED TO THE SPB WHICH ARE NOT HANDLED THROUGH THE DISCRIMINATION COMPLAINT SYSTEM. THIS COMPOUNDS THE PROBLEM OF THE LACK OF APPROPRIATE STATISTICS. THE SPB CLAIMS THAT ONLY ABOUT 50 DISCRIMINATION COMPLAINT APPEALS ARE HANDLED YEARLY, HOWEVER, THIS DOES NOT INCLUDE COMPLAINTS ALLEGING DISCRIMINATION IN THE EXAM PROCESS, IN OUT-OF-CLASS CLAIMS, AND IN PUNITIVE ACTIONS WHICH SHOULD BE HANDLED THROUGH THE DISCRIMINATION APPEALS PROCESS.

GUIDELINES HAVE BEEN ESTABLISHED TO COLLECT INFORMATION ON THE STATE'S AFFIRMATIVE ACTION PROGRAM IN ORDER THAT DEPARTMENTS AND SPB CAN BETTER MONITOR BOTH THEIR PROGRAMS AND THE PERSONNEL SELECTION PROCESS OUTCOMES. A SIMILAR REPORTING SYSTEM COULD BE ESTABLISHED TO MONITOR THE NATURE AND EXTENT OF DISCRIMINATION TO ASSIST THE SPB IN MEETING THE MANDATE OF ARTICLE 25 OF TITLE 2.

THE SPB SHOULD PUBLISH STATISTICAL INFORMATION ON A REGULAR BASIS INCLUDING THE TYPES AND NUMBER OF DISCRIMINATION COMPLAINTS RECEIVED BY THE SPB AND EACH OF THE APPOINTING AUTHORITIES FROM WHICH THE COMPLAINTS ORIGINATED AS WELL AS INFORMATION ON THE SEX, ETHNICITY AND CLASSIFICATION OF THE COMPLAINANTS.

SUMMARY

SYSTEM CHANGES NEED TO OCCUR IN ORDER TO:

1. BETTER FOCUS ON PREVENTION OF DISCRIMINATORY WORK ENVIRONMENTS AND PREVENTION OF RETALIATORY ACTIONS AGAINST COMPLAINANTS;

2. FULLY INFORM EXPLOYEES OF THEIR RIGHTS AND RESPONSIBILITIES AND THE VARIOUS REMEDIES AVAILABLE TO THEM REGARDING DISCRIMINATION IN EMPLOYMENT:

3. FORMALLY RECOGNIZE THE DEBILITATING EFFECTS OF DISCRIMINATION ON EMPLOYEES BY THE PROVISION OF ASSISTANCE PROGRAMS:

4. REVIEW, REVISE, AND PUBLISH THE CURRENT DISCRIMINATION COMPLAINT AND APPEAL SYSTEM PROVIDING FOR DIRECT ACCESS TO AN INDEPENDENT AGENCY BY COMPLAINANTS;

5. BETTER TRAIN INVESTIGATIVE STAFF AT ALL LEVELS AND ENSURE THE AVAILABILITY OF STANDARDIZED PROCEDURE MANUALS AND PRECEDENTIAL MATERIAL;

6. GUIDE AND MONITOR DEPARTMENTAL COMPLIANCE WITH POLICY AND PROCEDURE;

7. DECREASE THE AMOUNT OF TIME FOR RESOLUTION OF COMPLAINTS;

8. ENLARGE THE FOCUS ON NO-FAULT CONCILIATION; AND

9. DOCUMENT THE INCIDENCE AND NATURE OF DISCRIMINATION ON A

SYSTEMWIDE BASIS.

NOT ONLY WILL SUCH CHANGES IMPROVE SYSTEM ACCESS AND RESPONSIVENESS FROM THE VICTIMS PERSPECTIVE, BUT THEY WILL ALSO RESULT IN LOWERED COSTS AND IMPROVED GOVERNMENT EFFICIENCY.

DEPARTMENT OF DEVELOPMENTAL SERVICES

September 12, 1979

Mary T. Lebrato, Ph.D.
Chief, Evaluation Unit
Oakland Perinatal Health Project

Dear Ms. Lebrato:

In answer to your letter dated June 5, 1979 where you requested that I respond to several items you brought to my attention, and as a follow-up to our telephone conversation, I am providing the following:

The Division has upgraded its interviewing and selection policy and is now in effect.

In regards to your question pertaining to your complaint of employment discrimination an investigation was conducted and the decision was made that discrimination was not evident in the interviewing and selection process, therefore this office can take no further action in this matter and we are closing this case.

The 1975 Department of Health Civil Rights/Affirmative Action Plan that you reviewed and quoted is obsolete as several changes have been made and is no longer applicable.

I hope that the above information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,

Frank Tavela

Frank F Vela
Civil Rights Officer

FFV

June 6, 1979

Frank Favela
Department of Developmental
Services
Civil Rights Officer
744 P Street
Sacramento, CA 95814

Dear Mr. Favela:

I have recently become aware of a policy contained in the 1975 Department of Health Affirmative Action Program, requiring interviewing of all interested and eligible candidates, and affirmative action approval in order that potential affirmative action candidates may be identified/selected.

Page 76 of the 1975 Department of Health Civil Rights Plan states: "When there is lack of sex or ethnic balance in the work force of a supervisor and an available women or minority person, is not selected from the certified employment list the supervisor shall submit the reasons to the Affirmative Action Coordinator. Such memos shall be approved by the Civil Rights Officer before appointment is made."

Appendix C of the 1975 Civil Rights Plan also states: "If the vacancy cannot be filled from the career development roster by a candidate who would help achieve affirmative action employment goals all reachable candidates certified eligible from the employment list shall be interviewed."

As you are aware it is my contention that I was not interviewed for the position as Chief of the Evaluation Section, Planning and Evaluation Division and as a result of that fact and the Division Christmas Luncheon, I filed a grievance. The investigation determined that although the other candidates were formally scheduled for and engaged in interviews my alleged interview occurred on the spur of the moment when I was in Sacramento for another purpose. It was also substantiated that I did not receive notice of the results of the selection, although the other candidates did.

Although, these facts were "undisputed" my grievance was denied. However, a letter was sent to the Division acknowledging the mismanagement of the interview/selection process.

June 6, 1979

In light of discovering the interview policy, and the fact that I was treated differently than the other candidates I would appreciate it if you could inform me how this policy might affect my case. I strongly feel discrimination. Further, as you are aware, the Division has sent a letter dated April 10, 1979, from the Director's office requiring action in terms of upgrading the interview/selection process. I would appreciate it if you could follow-up on this request to determine if the appropriate steps are being taken in the Division as ordered by the Director's office. If you need additional information regarding the results of the Director's level grievance you have my permission to freely access my grievance case files.

Sincerely,

Mary Iebrato, Ph.D.
Chief, Evaluation Unit
Oakland Perinatal Health Project

cc: Linda Stephenson, Labor Relations

Appendix A

SELECTION AND APPOINTMENT PROCESS

DEPARTMENT OF [illegible]
AFFIRMATIVE ACTION PROGRAM

September 1975

Background

The Affirmative Action Work Force Assessment Report shows the number of minorities and women employed and their distribution by occupational group. In those divisions where there is a lack of ethnic or sex balance, the manager has established employment goals to achieve work force parity with the population of the recruitment area.

Purpose

The affirmative action selection and appointment process has been designed to assist Department managers to achieve their affirmative action employment goals; it applies to sections that do not have an adequate sex and ethnic distribution. It will enable the Department to better deploy the minorities and women eligible for appointment to functions most lacking in minority or female representation.

Responsibility

Responsibility for supervision of the local affirmative action selection and appointment process is assigned to the Affirmative Action Coordinators who shall work under the supervision of Affirmative Action Officers. Affirmative Action Coordinators are responsible for assisting branch managers to achieve their affirmative action employment goals.

Operations

Whenever an appointing authority who has a lack of ethnic or sex balance in the work force has a vacancy, the Affirmative Action Coordinator or Assistant Coordinator shall be notified. The feasibility of filling the vacancy by such techniques as transfer, promotion, or special assignment of an employee enrolled in the Career Development Program shall be considered by the appointing authority and the Coordinator. If the vacancy cannot be filled from the Career Development Roster by a candidate who would help achieve affirmative action employment goals, all reachable candidates certified eligible from the employment list shall be interviewed. If this proves unproductive, consideration will be given to the feasibility of underfilling the position with a woman or minority candidate from the Career Development Roster. If the appointing authority does not select an available candidate who would help achieve affirmative action goals or fails after consulting the above procedures described above, the Affirmative Action Coordinator shall be notified.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

• SAN FRANCISCO, CALIFORNIA 94102 •

CERTIFIED MAIL NOS. 2293137 and 2293138

Charge No. 091800301

Mary Lebrato
71 46th Street
Sacramento, California 95819 — Charging Party

State of California
Department of Developmental Services
714 P Street, Room 1592
Sacramento, California 95819 — Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination dismissing the charge because it was untimely filed.

A charge of discrimination such as this must be filed within two hundred and forty days after the alleged violation. I dismiss the charge because it was untimely filed. Thus I make no determination as to whether or not Respondent actually engaged in unlawful conduct under Title VII as alleged in the charge. Such determination may be made by the Commission only with respect to charges filed within the time limitation set in Title VII.

This dismissal concludes the Commission's processing of this charge. Should you as the Charging Party wish to pursue this matter further, you may do so by filing a private action in Federal District Court against the Respondent named above within 90 days of your receipt of the attached Notice of Right to Sue, and by taking the other steps set out in that Notice of Right to Sue.

On Behalf of the Commission:

January 27, 1981
Date

Frank A. Quinn, District Director

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Dismissal)

TO:	FROM:
Mary Lebrato 71 46th Street Sacramento, California 95819	Equal Employment Opportunity Comm San Francisco District Office 1390 Market Street San Francisco, California 94102

CHARGE NUMBER	EEOC REPRESENTATIVE	TELEPHONE NUMBER
091800301	Janet Argevitch	(415) 556-4302

(See Section 706(f)(1) and (f)(3) of the Civil Rights Act of 1964 on reverse of this form.)

This is your NOTICE OF RIGHT TO SUE. It is issued because the Commission has dismissed your charge. Your charge was dismissed for the following reason:

[X] No jurisdiction, therefore the Commission has no authority to process your charge further.

[ ] No reasonable cause was found to believe that the allegations made in your charge are true, as indicated in the attached determination.

[ ] You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.

[ ] The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.

[ ] The respondent has made a written settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.

The issuance of this NOTICE OF RIGHT TO SUE terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) permits the U. S. District Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request appointment of a lawyer to represent you, you must make this request of the U. S. District Court in the form and manner it requires. Your request to the U. S. District Court should be made well in advance of the end of the 90-day period mentioned above.

You may contact the EEOC representative named above if you have any questions about your legal rights including advice on which U. S. District Court has jurisdiction to hear your case or if you need to inspect and copy information contained in the Commission's case file.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission

January 27, 1981
(Date)

Robert C. Wrenshall
(Typed Name and Title of EEOC Official)
FRANK A. QUINN, District Director

cc: State of California
Dept. Fair Employment

Section 706(f) (1) and (f) (3) of the Civil Rights Act of 1964, as amended, states:

(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(f) (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

IMPORTANT NOTICE CONCERNING DISCLOSURE

OF INFORMATION IN CHARGE FILES

The Commission's normal practice of giving charging parties access to information in case files when they are in contemplation of litigation has been narrowed in certain circumstances because of recent court decisions. The cases are: Sears, Roebuck Co., v. EEOC, ___ F. 2d ___, 17 FEP Cases 897, 16 EPD ¶8348 (D.C. Cir. 1978); EEOC v. Associated Dry Goods, ___ F. Supp. ___, 17 FEP Cases 1219, 16 EPD ¶ ___ (E.D. Va. 1978); and Burlington Northern Inc. v. EEOC, ___ F. 2d ___, 17 FEP Cases 1358 No. 78-1486 (7th Cir., decided August 15, 1978).

The Commission hopes to have the disclosure issues raised in these cases clarified by further judicial action. Meanwhile, because of these decisions, the Commission will not make available, without a court order, any files in charges which are like or related to an individual's own charge.

STATE OF CALIFORNIA — STATE AND CONSUMER SERVICES AGENCY — EDMUND G. BROWN JR., Governor
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
2222 SIERRA BLVD., SACRAMENTO, CA 95825
(916) 445-9918

June 2, 1980

Ms. Mary T. Lebrato
71 46th Street
Sacramento, CA 95819

FEP 79-80 E6-0248sE
LEBRATO/CA State of; Department
of Developmental Services

Dear Ms. Lebrato:

As District Administrator of the Department of Fair Employment and Housing office where you have filed a complaint of discrimination against the above named respondent, I have received from the consultant assigned to your case a recommendation to close it. I have reviewed your case and have approved the assigned consultant's recommendation. Your case has been closed, effective the date of this letter, on the basis of: Processing Waived to Another Agency.

Since the Department will not be issuing an accusation in your case, you have the right to pursue the matter in a California Superior Court. If you previously received a letter informing you of your right to sue, you have one year from the date of that letter to file suit. If you did not receive that letter you have one year from the date of this letter to file suit. (If you wish to file suit, and you filed an employment complaint, please refer to Section 1422.2(b) of the California Labor Code. If you filed a housing complaint, please refer to Section 35731(d) of the California Health and Safety Code.)

In the event a settlement agreement was signed, you may have waived your right to pursue the complaint in Superior Court.

Sincerely,

Earl E. Sullaway

Earl E. Sullaway
District Administrator

cc: Mr. Frank Favela
Civil Rights Officer
Department of Developmental Services
714/744 P Street
Sacramento, CA 95814

FFS:cm

N O T I C E

A question has been raised as to whether the Department of Fair Employment and Housing has jurisdiction over state civil service employees. This matter is pending in the courts. Until the issue is resolved, DFEH cannot pursue complaints against the State Personnel Board or any state agency. For this reason, the charge you have on file is being closed.

If your complaint was also filed with the Equal Employment Opportunity Commission, that agency will conduct the investigation. DFEH will close your case based on "Jurisdiction Waived to Another Agency." In the event EEOC does not have your complaint, DFEH will close your case based on "Administrative Dismissal" with no determination on the merit.

We regret we have been unable to be of assistance.

71 - 46th Street
Sacramento, CA 95819
February 25, 1980
322-2950

Ms. Irene Tovar
President
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Tovar:

I am writing to request your assistance in the establishment and adoption of a statewide policy regarding sexual harassment of state employees. Further, there are specific efforts which could be directed toward this problem and I hope that you will actively encourage such activities.

Examples of such specific actions which can be taken by the State Personnel Board to impact upon the problem include:

- Enlargement of the State Personnel Board Task Force on the problems of sexual discrimination in three State Departments (CHP, Justice - Law Enforcement, and General Services) to include review of such problems in all State Departments and to include sexual harassment.

- A more concerted focus of attention by the Board (especially on the part of Board Hearing Officers and Appeals Unit personnel) to the closer scrutiny of sexual harassment allegations through specialized training programs.

- Expansion of the Appeals Unit to include an ongoing section especially designed to deal with specific problems of sexual harassment staffed with personnel sensitive to the subtle and yet pervasive issues involved. Such a unit could be used as the foundation to document and publicize the extent of sexual harassment and the employment consequences of such behaviors.

- Establishment by the Board of a committee to make recommendations for a SPB policy on sexual harassment which would include an easy and expeditious avenue of recourse for affected employees; strong prohibition of reprisal for issuing a complaint; and timely, clearly delineated consequences for policy violations.

- Recommendations from the Board to all State Departments to establish a sexual harassment policy as part of the current affirmative action/civil rights programs with coordination of these policies through the SPB to ensure at least minimal compliance and maximum enforcement capabilities.

As you are probably aware, sexual harassment affects many people. Estimates from recent surveys suggest as many as 50-90% of a typical female working force have encountered some form of sexual harassment. Given the more recent court rulings which maintain the position that sexual harassment does constitute sex discrimination these statistics are quite alarming and deserving of immediate attention.

> The argument proceeds first by locating sexual harassment empirically in the context of women's work, showing that the structure of the work world women occupy makes them systematically vulnerable to this form of abuse. Sexual harassment is seen to be one dynamic which reinforces and expresses women's traditional and inferior role in the labor force. (MacKinnon, 1979, p.4)

MacKinnon further clearly makes the point that:

> Work is critical to women's survival and independence. Sexual disadvantage exemplifies and promotes employment practices which disadvantage women in work (especially occupational segregation) and sexual practices which intimately degrade and objectify women. In this broader perspective, sexual harassment at work undercuts woman's potential for social equality in two interpenetrated ways: by using her employment position to coerce her sexually, while using her sexual position to coerce her economically. (p.7)

Unfortunately, my interest in this issue has resulted from my involvement in a discrimination event which occurred during December and January 1978-1979. I was sexually harassed by Robert Carrillo, Deputy Director of the Department of Developmental Services, at a Departmental Christmas luncheon which occurred December 14, 1978. Subsequently, in spite of assurances that there would be no reprisals for my complaint, I was denied classification to a position in which I had been working out-of-class for nearly two years, having been given every reason to believe that the out-of-class situation was to be remedied. This case is currently being appealed to your agency. I have for your information enclosed a few documents relating to the case. I am convinced that the facts speak for themselves. Additional information can be obtained from Mr. John Worcester of your staff appeals division.

This past year has been an incredible personal struggle which has resulted in a strong commitment to help ensure that other persons are less likely to be subjected to such degradation, humiliation, loss of professional and economic stability, and emotional disharmony. I would deeply appreciate your personal involvement in efforts to improve the situation of working women of all classes, races, and persuasions, in order that we may be allowed the dignity and respect of a healthy work environment which fosters our productivity and creativity.

Sincerely,

Mary T. Lebrato, PhD

Encl

cc: Ms. Brenda Y. Shockley, Vice President
Mr. William R. Gianelli, Member
Ms. Marilyn Hallisey, Member
Frank M. Woods, Member
Ronad M. Kurtz, Executive Officer

MRL:htt

EXHIBIT S

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

	DO NOT WRITE IN THIS SPACE
INSTRUCTIONS: File an original and three (3) copies of this charge in the appropriate regional office of the Public Employment Relations Board. If more space is needed for any item, attach additional sheets and number items accordingly.	Case Name:
	Case No: S-CE-129-S
	Date Filed:

1. CHARGING PARTY: EMPLOYEE ( ) EMPLOYEE ORGANIZATION (X) EMPLOYER ( )

a. Full name: California Correctional Officers' Association (CCOA)

b. Mailing address: 510 Bercut Drive, Suite V, Sacramento CA 95814

c. Telephone number: (916) 447-8565
area code

d. Name, title and telephone number of person filing charge: Ron Yank & Lynn C. Rossman, Neyhart, Anderson, Nussbaum, Reilly & Freitas Attorneys for CCOA; (415) 986-1980

2. CHARGE FILED AGAINST: EMPLOYEE ORGANIZATION ( ) EMPLOYER (X)

a. Full name: Department of Personnel Administration

b. Mailing address: 1115 11th St., Sacramento, CA 95814

c. Telephone number: (916) 324-0501
area code

d. Name, title and telephone number of agent to contact: Alan Goldstein

State Personnel Board

Joined as "Necessary Party" and/or "Real Party in Interest"

801 Capitol Mall
Sacramento, CA 95814
Ron Kurtz-Agent
(916) 322-2530

NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization)

Full name:

Mailing address:

APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code Section 18524)

Full name: Department of Corrections

Mailing address: Seventh & K Streets, Sacramento, CA 95814

Agent: Teena Farmon

GRIEVANCE PROCEDURE

Has any grievance procedure been invoked in relation to the subject matter of this charge? (circle answer) Yes (No)

If "yes," when?

CHARGE

party hereby alleges that the above-named respondent has engaged in or is an unfair practice within the meaning of: (check one)

tional Employment Relations Act (Govt. Code sections 3543.5 or 3543.6)

e Employer-Employee Relations Act (Govt. Code sections 3519 or 3519.5)

er Education Employer-Employee Relations Act (Govt. Code sections 3571 or 3571.1)

ection(s) (and subsection(s) where appropriate), of the above-cited sections, e been violated is/are: Gov. Code §3519(c)

ection(s) (and subsection(s) where appropriate), if any, other than the tions, alleged to have been violated is/are: _____

ear and concise statement of the conduct alleged to constitute practice, including, where known, the time and place of each respondent's conduct, and the name and capacity of each person This must be a statement of the facts that support your claim clusions of law. (Use and attach additional sheets of paper ary to adequately set forth the supporting factual allegations.)

On March 9, 1982, CCOA submitted proposals the Department of Personnel Administration in preparation for meet and confer sessions regarding a Memorandum understanding. Included in these proposals was a suggestion regarding a procedure for processing disciplinary grievances up to and including binding arbitration. Also made a similar proposal for processing discrimination grievances up to and including binding arbitration. The State Employer responded in writing on April 20, 1982 that State Personnel Board has jurisdiction over such matters and subsequently, at various meet and confer sessions, totally refused to discuss at any time, negotiate or bargain over these proposals.

DECLARATION

perjury that I have read the above charge and that the statements to the best of my knowledge and belief and that this declaration 4-82 at San Francisco, California.

Ronald Yank /sr
(Signature)

(Title)

CCOA
, Ste. 2600, San Francisco, CA 94104

-524-

California Association of School Business Officials

April 1, 1982

Dear Participant:

RE: Comparable Worth Project

We thank you for your participation in the "Comparable Worth" project. We were disappointed in the number of returns. From a distribution of over 200, fifty-six questionnaires were returned. Due to poor instructions, some of the questionnaires were not properly completed.

The data gathered has been assimilated and was used in a graduate paper by Nancy Kast. The data will be used in our continuing study with the California Association of School Business Officials, Personnel-Employer/Employee Relations Research Committee.

Much valuable information has been collected as a result of the research done by Nancy Kast, and CASBO will be publishing a report on "Comparable Worth" in May or June.

Thanks again for your assistance. A summary of the project is enclosed.

Sincerely,

JAMES A. KELLEY
Assistant to the Chancellor

JAK/ep

Enclosure

METHODOLOGY

Survey Instrument: In order to gather the data in a standardized form, a questionnaire was developed. The jobs on which to gather data were determined in consultation with an expert in the area of school district classification and compensation. An effort was made to select "benchmark" positions common to both types of school districts and that would include both traditionally single sex incumbents and those that have been neither all male nor all female. The jobs selected were:

Intermediate Typist Clerk
Staff Secretary
Custodian
Skilled Maintenance Worker
Cook/Baker
Duplicating Equipment Operator
Payroll Technician
Instructional Aide
School Bus Driver

The compensable factors identified for this purpose were a larger and more detailed list than that suggested by the Equal Pay Act. The following is a list of the factors and their definitions:

Education/Academic: Education sufficient to perform assigned tasks. Formal education by grade level. Professional Knowledge.

Training/Experience: Type of knowledge necessary to perform at a broader scope. First-hand, practical, real-life situations.

Intellectual Effort: Decision making. Difficulty of learning job specifics. Design and development. Interpretation and creativity. Difficulty and originality involved in performing work. Exchange of information. Use of persuasion. Assimilate data. Analyze data.

Physical Effort: Operating equipment, forklifts, carts, automobiles, busses, mowers, edgers, duplicating, electronic equipment repair. Lifting heavy objects.

Scope of Responsibility/Impact: Purpose of work. People affected. Agencies affected. The impact of the work or service.

Accountability/Supervision Received: Consequence of Error. Authority. Nature of assignment. How work is assigned. Employee's responsibility for carrying out the work. How work is reviewed.

Working Conditions/Weather Elements: Exposure to elements. Change in exposures. Use of or working with restricted chemicals.

Psychological Conditions: Public contacts. Level of authority. Deadlines, stress, varied workload without choice. Uncontrolled workload. Frequent changes in assignment without choice. Fears, threats. Difficulty in identifying what needs to be done.

The demographic information requested was in some cases not useable due to the small number of respondents. For example, only 3 individuals indicated their ethnicity as other than white. The two items in this section that were used in the data analysis were sex of the respondent and sex of the job incumbent.

The respondent was then asked to rank the jobs. This requested response confused some individuals in that they wanted the questionnaire to state the basis for this ranking; and it failed, purposely, to do so.

Population

The population identified consisted of California Kindergarten through 12th grade (K-12) school district and community college district personnel professionals. The sample drawn was not random. It was composed of all community college personnel offices and those K-12 school district personnel people who attended two comparable worth conferences. The latter group indicated their willingness to participate in the research in return for a copy of the final report.

Limitations and Bias

Those individuals in the sample population attending one of the conferences may have been biased in their responses due to an increased awareness and interest in the subject matter. There was no attempt made to identify the sample population's interest or expertise in the subject matter.

As indicated above, the sample drawn was not random. Although this does not alter the results, it certainly alters the interpretation. Chiefly, for the purpose of this research, it means the results may not be projected onto the entire population, but only the sample itself.

The questionnaire was lengthy and required more time to pre-test than was originally anticipated, which caused delays in sending it out to the sample identified. The letter accompanying the questionnaire asked for it to be returned within eight days. This made it difficult for many; and they simply elected not to participate. A larger return rate may have been possible had more time been available. However, this may also have boosted the return rate by forcing busy people to decide either to act immediately as there was no time for procrastination.

Several efforts were made to reduce bias. There were two versions of the questionnaire sent out in equal numbers. They vary only in the order of the sections. Since the intent was not for the respondent to calculate the ranking they had given in the section on attributes to determine the overall rank, the author sought to place those sections separately. In one version, the demographics section appears first, in the other it was last.

The order of the nine jobs was rotated in the attribute section in order to reduce possible bias due to the order of the jobs rated.

FINDINGS

There were 56 questionnaires returned in time to be included in the data analysis. Of those returned, the demographics are:

Age: 25-35 10 36-45 15 46-55 12 over 55 13
Sex: Males 36 Females 20
Ethnicity: White 52 Hispanic 1 Asian/ Pacific Islander 2
Personnel Experience: Less than 1 year 2 1-3 years 4 4-7 years 12
7-12 years 6 More than 10 years 32
Districts: K-12 33 Community College 17
Exclusive Bargaining Representative: None 9 SEIU 1 CSEA 38 Unaffiliated 7
Number of classified employees: Under 50 5 51-100 8 101-200 17 Over 200 25
Comparable Worth has been brought into negotiations:
Yes, by management 3
Yes, by union 12
No 41

Sex of Respondent Impact on Rank: The question prompting this statistical manipulation of the data is: Do males and females rank jobs differently?

The data was pulled out by selecting those questionnaires in which it had been indicated under demographics the respondent was male and listing the rank of each job. The same was then done using questionnaires from females.

The data as reflected in Table 1 shows the rankings by males and females to be very close. The only job that merits mention would be the Instructional Aide where the ranking by all females clusters around the mean of 5.286 with a standard deviation of 1.38. However, the mean of the ranking by all males is 5.31 which is very close to that of females. The males' ranking did not cluster around the mean as closely, as is shown in the standard deviation of 2.173.

Traditional Sex of Imcumbent Impact on Rank: The following question was asked in the demographics section: In your experience, please state whether job incumbents have been either male, female, or no definite trend.

The data from this response was matched to the data from the ranking to determine if the respondent's impression of the position based on the incumbent's sex had an impact on the rank assigned.

The data as shown in Table 2 reflects the results that comparable worth advocates claim: in all cases when the job is viewed as having male incumbents, the ranking is higher than if the incumbents were perceived as being female.

This indicates a need for more objectivity as sex seems a determining variable which is strictly forbidden by the Equal Pay Act and Title VII.

Relationship between stated Rank and Calculated Rank: The responses given in the "attribute section" were used to calculate the rank by attribute/factor score (given on a 1 to 5 scale) multiplied by the importance of that attribute/factor assigned to the job (given on a 1 to 9 scale) added to the next attribute/factor and its importance for the same job and so on until all 8 factors have been included. The maximum score possible would be 360 (8 factors multiplied by the largest possible attribute/factor score of 5 multiplied by the largest importance score of 9). This was done for all 56 questionnaires and then related to the rank each respondent stated for the same job.

The results as shown in Table 3 indicate no significant relationship between the attributes and their importance in each job and the stated overall rank. This is yet another indicator that the individuals used factors other than those indicated to determine the ranking.

CONCLUSIONS: The data would certainly seem to support the position of comparable worth advocates; that is that women are paid less for positions requiring similar knowledge, skill, and effort, and performed under similar working conditions because they are women. While this may be the case, one should avoid conclusions with such broad consequences when based on possibly circumstantial evidence. It is fair at this point to conclude the attributes/factors identified for this research did not satisfactorily explain the variance between the stated ranking of the jobs. It is not appropriate to thereby conclude the variance is due to the sex of the job holders.

One factor noticeably absent from this research is that of labor market supply. To discover how many qualified applicants there are for the different jobs is necessary to determine value. Just as rare minerals are greatly valued as compared with their common counterparts, so it is with job applicants/incumbents.

There are other factors that may aid in explaining the 43 cent wage gap between males and females: "Much of the difference between average female and average male wages can be attributed to a complex array of other, nondiscriminatory factors such as late workforce entry, interruptions in employment, and more frequent job changes than men, and the selection by free choice, of occupations that are simply valued lower in the marketplace. It is clearly illegal for employers to deny women access to non-traditional career opportunities. However, job segregation without regard to employee abilities and desires must be distinguished from job separation resulting from the free choice of the employee.

It is important to determine the factors used in setting wage and salary rates prior to making accusations of unlawful discrimination.

Research conducted by:

Nancy L. Kast
1525 E. Weldon
Fresno, CA 93704

Phone: (209)226-0720

TABLE 1

Rank of	MEAN Male	MEAN Female	STANDARD DEVIATION Male	STANDARD DEVIATION Female	MINIMUM RANK Male	MINIMUM RANK Female	MAXIMUM RANK Male	MAXIMUM RANK Female
Duplicating Equipment Oper.	6.400	6.150	2.239	2.346	1.0	2.0	9.0	9.0
Payroll Technician	3.882	4.100	2.143	2.614	1.0	1.0	9.0	9.0
Instructional Aide	5.310	5.286	2.173	1.380	1.0	3.0	9.0	7.0
School Bus Driver	4.206	4.450	1.997	2.395	1.0	1.0	9.0	9.0
Skilled Maintenance Worker	3.171	4.000	2.695	2.810	1.0	1.0	9.0	9.0
Custodian	5.714	5.450	2.492	2.762	1.0	1.0	9.0	9.0
Staff Secretary	3.400	3.800	2.476	2.858	1.0	1.0	9.0	9.0
Intermediate Typist Clerk	6.086	6.150	1.541	1.785	3.0	3.0	9.0	9.0
Cook/Baker	6.500	6.100	2.352	2.426	1.0	1.0	9.0	9.0

TABLE 2

Rank of	MEAN Incumbents are M	F	NT	STANDARD DEVIATION Incumbents are M	F	NT	MINIMUM RANKING Incum.are M	F	NT	MAXIMUM RANKING Incum.are M	F	NT	CASES Incumbents ar M	F	NT	MS
Dup.Eq.Opr.	6.667	6.735	5.000	1.528	2.050	2.449	5.0	2.0	1.0	8.0	9.0	9.0	3	34	15	1
Pay.Tech.	1.5	4.085	4.667	.707	2.330	2.082	1.0	1.0	3.0	2.0	9.0	7.0	2	47	3	2
Inst.Aide	--	5.231	4.444	--	2.241	1.590	--	1.0	2.0	--	9.0	6.0	--	39	9	8
Sch.Bus Dr.	3.889	4.125	4.538	1.641	2.532	2.177	1.0	1.0	1.0	6.0	8.0	9.0	18	8	26	2
Skl.Mt.Wkr.	3.490	--	3.333	2.817	--	2.082	1.0	--	1.0	9.0	--	5.0	51	--	3	1
Custodian	5.674	7.333	5.0	2.749	1.528	1.512	1.0	6.0	3.0	9.0	9.0	6.0	43	3	8	1
Staff Sec.	2.500	3.635	1.0	.707	2.642	0	2.0	1.0	1.0	3.0	9.0	1.0	2	52	1	1
Int.Typ.Clk.	5.000	6.180	5.667	0	1.662	1.155	5.0	3.0	5.0	5.0	9.0	7.0	2	50	3	1
Cook/Baker	7.000	6.341	6.125	1.000	2.446	2.416	6.0	1.0	2.0	5.0	9.0	7.0	3	41	8	2

-531-

M = Male
F = Female
NT = No Trend
MS = Missing

TABLE 3

Job	Correlation	R^2	Significance	Standard Error of Estimate
Intermediate Typist Clerk	.09220	.00850	.25158	1.62611
Staff Secretary	.05186	.00269	.35344	2.62302
Custodian	.05379	.00289	.34827	2.59153
Skilled Maintenance Worker	.09221	.00850	.25156	2.75496
Cook/Baker	-.25488	.06496	.03144	2.30828
Duplicating Equipment Opr.	-.18800	.03534	.08464	2.24028
Payroll Technician	.17429	.03038	.10375	2.29281
Instructional Aide	-.30169	.09102	.01858	2.06438
School Bus Driver	.10044	.01009	.23495	2.14308

CUNY, sex discrimination and the law

by Gaye Tuchman

Are universities subject to federal laws forbidding sex discrimination in the same ways as are other employers? To hear the City University of New York's Board of Higher Education tell it, the answer is no. The BHE (recently renamed the Board of Trustees) claims that universities are special, because the processes used to determine professors' rank, salary and tenure cannot be compared to those applied to other university employees or to those in other university work settings. CUNY is the latest in a string of universities to take this position.

The occasion for BHE's argument was a mid-June trial on salary inequality within CUNY filed December 23, 1973, by twenty-three named plaintiffs on behalf of all professional women on the university's teaching and non-teaching instructional staff. The latter group includes administrators, librarians, financial counselors for students, laboratory technicians, research assistants and associates—in short, the entire panoply of non-classroom personnel who populate contemporary educational institutions. All these women and those on the teaching faculty were certified as a class by Judge Lee P. Gagliardi of United States Federal Court, Southern District of New York, who has presided over the case since its inception.

The case was brought under a 1972 amendment to Title VII of the 1964 Civil Rights Act which permits suits against universities and colleges. It covers all aspects of university employment, including promotion, tenure, maternity leave, and retirement benefits. The trial itself concerned only the relatively narrow issue of salary inequality through an agreement reached by labor lawyer Judith P. Vladeck of Vladeck, Elias, Vladeck, and Englehardt, and attorney Norma Kerlin of the Office of the Corporation Counsel, respectively representing the plaintiffs and the defendant, after meetings with a court magistrate.

How federal laws about discrimination apply to higher education is rapidly becoming a major social, legal, and political issue. But the CUNY case, *Melani et al. versus the Board of Higher Education*, is more than just another example of the increasingly heated debate. BHE witnesses insistently claimed that professors are "the core of the university," selected, promoted, and tenured through peer review—committees of professors who assess their academic merit—and have different functions from nonclassroom personnel. The validity of that claim became a central issue in the trial.

This issue raised other critical issues: the professional ethics of social researchers and the quality of the studies of salaries presented in court by the plaintiffs and the defense. Quantitative social science research was the crux of the trial, because the relevant statutes provide that the plaintiffs must present *prima facie* evidence of salary inequality. In court, Judge Gagliardi heard social science battle social science in the persons of plaintiffs' expert, economist Mark R. Killingworth of Rutgers University, and defendant's expert, sociological methodologist Edgar F. Borgatta of the Graduate School and University Center of the City University of New York.

Melani v. BHE may also be a legal landmark by sheer dint of the numbers involved. The certified class contains at least 6,000 women who, since 1968, have either worked at CUNY, been hired by CUNY, or sought a job with CUNY. The judgment sought is approximately $32,000,000. Past cash settlements in cases of this kind have hovered well below the $500,000 mark.

The class is so large, because the eighteen community colleges, senior colleges, and graduate school of CUNY constitute, as its Deputy Chancellor Egon Brenner proudly told the court, the third largest university in the world. In raw numbers, CUNY may employ more women as professionals than the mammoth State University of New York. At the moment, CUNY has on salary approximately 10,000 full time professionals, at least one-third of them women.

The issue of the "specialness" of universities as professional employees in the exact same way we would study the salaries of workers at any firm. BHE lawyer Kerlin and her witnesses were to argue that use of those same procedures is inextricably wrong.

For his studies, Dr. Killingsworth ran a series of multiple regression analyses comparing the qualifications and salaries of the women and men who have passed through CUNY since 1972. Multiple regression techniques involve a series of statistical operations, performed by a computer, that enter into an equation a series of varying factors—or variables—so as to disclose patterns. By entering every man's and woman's salary in the left-hand side of the equation and recording in the right-hand side their sex and qualifications for their jobs, the economist could state the average salary differential between women and men by taking into account differences in all their measured qualifications. Dr. Killingsworth did not include the variable "rank" as a qualification. Qualifications must be considered, because if the men are more qualified than the women, the men are entitled to higher pay. Multiple regression techniques enabled Dr. Killingsworth to say that an average salary inequality of $1,750 favors the men.

In essence, Dr. Killingsworth's analyses considered all the CUNY professionals as employees, rather than as members of discrete occupations, whether or not they taught. Justifications for that track include the fact that each person's salary was supposedly based on the same formal qualifications: the sort of degree held, years of prior work-experience, years within the CUNY system, the quality of the school from which each had received his or her highest degree.

There is another rationale for the plaintiffs' study: namely, permeability of the boundaries between some academic jobs. Professors become deans; and deans, professors. Research associates and research assistants (people hired on "soft money" generated by research grants and contracts) become professors; and while retaining their tenure, some professors leave teaching to engage in research exclusively. Some non-teaching members of the instructional staff may also switch from one formal job classification to another. In practice, academic occupations are not always discrete.

Legally, Dr. Killingsworth and attorney Judith Vladeck seem to be on firm ground. As *Science*, the journal of the American Association for the Advancement of Science, recently explained to its readers: some circuit courts are now ruling that employment practices at universities are to be judged just as those of any other employer. To do otherwise, the courts declare, may leave universities too much room to discriminate. Nevertheless, Defense Counsel Norma Kerlin, expert witness Edgar Borgatta, and a series of administrators seemed to maintain that universities cannot be analyzed with the research designs recently applied to firms. In essence, the defense challenged both recent court rulings and the certification of the women as a class.

Here's the defense's argument: Professors are not "mere" employees, because they have the contractual right of peer review at the points of hire, promotion, and tenure. Under the provisions of peer review, professors, or committees of professors whom they elect, judge the quality of a candidate's research and publications, teaching, professional service, and community service. To be sure, peer review is problematic: professors may revel in their qualifications and protest when the merit of their publications, teaching, and reputations is underrated. But peer review makes the [illegible]

M-80 file. Third, the faculty receiving the questionnaire were all employed by CUNY in 1978. Accordingly, any faculty member who had not been renewed between 1973 and 1978 was omitted from the analysis: if a disproportionate number of women had been fired, this fact might have potentially biased the team's results.

Using the M-80 file and other personnel records, these researchers constructed "matches" of individual men to individual women. For each woman of a given rank and salary, they located to include in their ultimate analysis a male respondent of the same rank and roughly the same salary. This procedure yielded 279 pairs or 558 cases. Then the researchers performed a multiple regression analysis—technically a "reverse regression"—to reveal whether women had to be more qualified than men to receive the same salary. Supposedly, the team could estimate the salary differential if women and men had been equally qualified. For instance, if women had been teaching longer than men of their rank and salary, the "reverse regression" would have announced this fact. Dr. Borgatta testified that there was no significant pay differential and so no salary discrimination.

The plaintiffs attacked the sample for being truncated and for being a "non-representative cross-section" of the faculty in the four ranks. They attacked the response rate. They attacked the use of rank to select the men. They established that the rank-distributions of women and of men who received the questionnaire were significantly different from the distributions of the women and men in the four relevant ranks. Ms. Vladeck's cross-examination seemed designed to establish that rank could not be used in an analysis of CUNY's civil-service type of salaries, and therefore the Borgatta study was irrelevant to the trial.

Viewing the case as a legal and political battle and knowing that in the mid-1970's Dr. Borgatta had severely criticized a fellowship program as preferential treatment for racial minorities, the feminists became all the more convinced that the case concerned politics, not scholarly disagreement. And so, writing a letter to the editor of *The New York Times* last June, eight feminist faculty from CUNY's John Jay College of Criminal Justice disregarded a professional norm: Thou shalt not attack thy colleagues in the public newspapers, but should instead let disagreements about ethics be settled within academic forums. They complained about what they saw as the lack of professional ethics in two cover-letters accompanying two successive mailings of the questionnaire used in the defense study. They claimed these two letters had misled recipients. One had not fully informed potential respondents that the data would be used against the women as members of the court-certified class. The other had included the sentence, "This study is designed to get objective information about what is going on at CUNY and no other purpose is intended."

Through *The New York Times*, the head of the research center whose facilities were used for the study and the three graduate students responded: They had not intended to mislead anyone. They practiced the highest ethical standards of research. Two of the fifteen sentences in the first cover-letter mentioned the case, advising recipients that Judge Gagliardi had approved the questionnaire to gather information "relevant to *Melani* v. *BHE*" and that "the data acquired by means of this questionnaire will be used in a study by CUNY and will be made available to the plaintiffs' attorney." Intent on being open with the sample, the researchers noted, they had included the original cover-letter with the tended" had been meant to assure the sample of confidentiality: no one was to know how an individual had answered the questions.

However, many women claim that they did not understand that the data were being collected primarily for the defense. Some respondents, they continue, did not even know about the existence of the class-action suit and so could not grasp the significance of the brief reference to "*Melani* v. *BHE*." Defenders of the CUNY researchers countered: then these professors can't read and they should have asked the researchers; we're all colleagues. Proponents of the eight John Jay feminists argue that the researchers might have obeyed the letter of professional ethics about fully informing respondents about the consequences of participating in the study, but they had violated the spirit. According to them, a letter not understood by recipients is necessarily flawed. Still, defenders of the CUNY researchers note in office conversations: one should not attack colleagues through the pages of a newspaper.

That insistence cuts to the heart of university debate about the law and women in universities. Again there are roughly two positions. One, held mostly by men, claims that the CUNY sociologists saw themselves as doing objective social research. They viewed the sample as colleagues and addressed letters to "Dear Colleague." They saw themselves as being "funded," not "hired," by the Board of Higher Education and had specified they would conscientiously report any findings proving inequality.

The other stand, held mostly by women, sees the case as part of the women's movement, part of a vast political struggle at the moment being played out in the courts. For them, the CUNY sociologists' faith in objective research is irrelevant: Agreeing to do a study "funded" by the BHE, Dr. Borgatta and his students had abrogated any claim to collegiality. So too, they noted among themselves, Deputy Chancellor Brenner seemed to view the study as political, not scholarly. Without consulting the sociologists, he wrote to all faculty urging members of the sample to return the questionnaire. He did not mention the law suit in that letter. For a funding agency to contact members of a sample is simply unheard of.

Feminists schooled in the late 1960's, past participants in the anti-war movement, recalled the battles within universities about whether it is possible to do "objective research" with funds from the Department of Defense. They recalled Project Camelot and Michigan State University's studies of Vietman for the DOD. Defenders of the BHE-funded sociologists, including some who had once attacked contract research for the DOD, felt the analogy to be overdrawn.

These battles about professional ethics, research design, equality for women, and affirmative action will continue to haunt the CUNY faculty. So too debates about the "specialness of universities" will arise in other colleges as women increasingly turn to the courts to obtain their rights. The women of the instructional staff of the State University of New York at Stony Brook have been certified as a class by the courts. The women of the University of Michigan are seeking certification. Eleven women denied tenure by Cornell University have just filed a federal suit. And these women are hopeful. As *Science* recently advised its readers, mainly professors: "A few federal courts have reversed their hands-off policy toward higher education and are ruling on the employment rights of women."

Maybe universities are not so special after all.

Gaye Tuchman is associate professor of sociology at

Needless to say, the defense did not mention the potential for discrimination built into the system of peer review. That possibility has been raised in other cases, such as *Rajender v. University of Minnesota* settled earlier this summer. There, commenting on the weaknesses of Shyamala Rajender to hold a faculty position in the department of chemistry, Dr. Edward Leete of that department had written on an assessment form, "I have to state that she would have problems because she is a woman. I guess I am a male chauvinist pig."

Instead, the defense invoked "specialness" by citing the professors' chance to receive tenure and the right of peer review, as well as the different functions of the many occupations at the university. It argued that salary was a matter of rights and functions and that professors are the "heart of the university." Furthermore, it claimed: not only must professors be considered separately from everyone else; but the other members of the non-instructional staff serve such different functions that they cannot be compared to one another in a dispute about salary inequality. And, suggested Associate Dean Marilyn Magner, whose responsibilities include checking the qualifications of the non-teaching instructional staff for personnel decisions, one cannot always compare people holding the same formal title: some people performing the same job hold different titles; some holding the same title do different jobs. Therefore, any aggregation is improper.

Finally, Deputy Chancellor Brenner, in charge of the daily operations of the university, sought to disaggregate the teaching faculty by function. He maintained that the teaching faculty holding the four supposedly core titles of instructor, assistant professor, associate professor, and professor are significantly different from lecturers who cannot hold tenure and are not required to do research. And there is little, if any, operative unity within the four "core" ranks. According to Dr. Brenner, there are actually three sorts of faculty at CUNY: people at the community colleges who teach a trade, such as secretarial skills; those at the senior college campuses who teach remediation, the three R's; and located primarily at the senior colleges and the graduate school, the research-oriented professors.

If one accepts this argument, certification of all the women as a class was conceptually incorrect; and the Killingsworth study which combined all professional workers in one common equation was sloppy and invalid: rotten science. Can rotten science make good law? the defense asked.

The central social science study presented by the defense analyzed only the "heart of the university"—faculty in one of the four main teaching ranks. It captured a professorial view, for sociologist Borgatta and his three staff members, all doctoral students in the sociology program, stress that their research design was not influenced by the lawyers or by the BHE administrators. When these sociologists agreed to study CUNY salary inequality, the BHE agreed that the team would independently determine the research design and the BHE would have to live with the results—whatever they were. (Dr. Killingsworth set similar conditions for the plaintiffs.) But, like the BHE administrators who testified, the sociologists see university personnel as people in functionally different occupations.

Similarly, the defense study implicitly emphasized the importance of peer review, for it introduced into the analysis of faculty salaries the rank held by women and men in one of the four "core" ranks; and this matter is set by peer review.

However, the plaintiffs introduced evidence demonstrating that at CUNY salary discrimination mainly operates through discrimination in the assignment of rank and the award of promotion. To first understand the faculty pay-scales, which resemble those of a civil service system. Each academic rank is divided into a series of grades or steps, and together rank and step set salary. Each year, everyone moves up a step within his or her rank, unless already at the highest step for that rank or approved for promotion. Unlike more "perfect" civil service systems applied to faculty, like that at the University of California, in CUNY there is some overlap between the steps of the various ranks. For instance, a high-step associate professor may earn the same salary as a low-step full professor.

The feminists observing the trial felt strongly that the sociologists had committed a serious technical error by using rank in their analysis. According to them, rank mucks up the analysis, for one form of discrimination—the assignment of rank—will wipe out much or all of the other sort—the pay differential. Indeed, these feminists accused Dr. Borgatta of using one of the few research designs capable of finding no salary inequality. The fact that a man and a woman of equal rank and seniority receive equal compensation may conceal the more cogent fact that through the operation of sex discrimination in the peer review system the woman has been denied promotion to a higher rank (and salary) in spite of superior qualifications. Or, when initially hired, the woman may have been assigned a lower rank than an equally qualified man.

According to the defense, the data provided Dr. Killingsworth by the university—Instructional Staff Profile (ISP) computer tapes maintained by the Board of Higher Education—were unsound. From 1975 through 1977, both Dr. Borgatta and Barry Kaufman, Associate Dean for Instructional Research, maintained: the Board of Higher Education had systematically omitted from the ISP tapes several key variables used in the Killingsworth study. Accordingly, because Killingsworth's instructions to the computer ordered it to delete from the statistical operations each person for whom there were not complete data, the economist had inadvertently omitted from his study all persons hired after 1974. Similarly, Dr. Kaufman testified, there were some serious errors in the 1974 ISP tapes.

This charge was accepted and rebutted: during a weekend break, Dr. Killingsworth analyzed the inadvertently omitted "new hires," several hundred people, with such data as was on the ISP tapes. He reported to the court that their salaries displayed much the same inequities, "give or take a few hundred dollars," that characterize the salaries of other CUNY professional workers.

Flaws in the ISP tapes, expert Borgatta told the court, were the reason he had not used them in his analysis and had instead collected new data through a specially designed questionnaire. The plaintiffs attacked that data set.

Here's how: First, selecting men to receive the questionnaire, Borgatta and his staff had used rank as a variable. They had sampled all the women, but had chosen men through a "stratified random sample." This means that although women tend to be concentrated in the lower ranks and men in the higher ranks, the researchers had mailed the questionnaire to an equal number of women and men in each rank. Simply put, they had sampled as though there were no differences between the distribution of women and men across ranks. Second, only forty-eight percent of the faculty to whom the questionnaire had been mailed had answered it. An admittedly mediocre "response rate," it was poor for the type of operations to be performed in subsequent steps of the research. Accordingly, the team requested personnel data from all of the colleges to learn about the faculty who had received but not answered the questionnaire, as well as those who

Women in Politics
Employment Task Force
P.O. Box 223, Sacramento, CA 95801

PAY COMPARABILITY IN CALIFORNIA STATE SERVICE

California Position	Willis Points for Analogous Washington State Position*	California Salary (Monthly)
Office Assistant I	94	836 - 977
Truck Driver I	97	1352 - 1626
Office Assistant II (Typing)	110	904 - 1060
Fish Habitat Assistant	111	1322 - 1590
Laundry Worker	114	986 - 1161
Executive Secretary I	159	1225 - 1471
Correctional Officer	173	1518 - 1743
Park Ranger I	181	1483 - 1626
Licensed Vocational Nurse	187	1063 - 1267
Legal Secretary	187	1283 - 1539
State Traffic Officer (CHP)	284	1821 - 2081
Registered Nurse I	289	1416 - 1702
Parole Agent I	304	1913 - 2306
Office Services Supervisor III	305	1372 - 1650
Occupational Therapist	330	1352 - 1625

*Total points given to Washington State positions as a measure of job worth based on knowledge and skills, mental demands, accountability, and working conditions ("State of Washington Comparable Worth Study, Phase II," Norman D. Willis & Associates, December 1976). California positions were selected as approximately analogous to the Washington positions, with salaries given for fiscal year 1980-81.

GH TAYLOR, President

THOMAS P. COLEMAN, Secretary-Treasurer

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL #22, AFL-CIO
[illegible] 30th STREET • SACRAMENTO, CALIFORNIA 95816 • TELEPHONE 441-3771

COMPARABLE WORTH STUDY

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT:

A Proposal

Attached is a proposal for the completion of a comparable worth study of classifications within bargaining units represented by SACEE/SEIU Local 22, AFL-CIO, at the Sacramento City Unified School District.

The goals of this study are three-fold: to eradicate sex and race discrimination in salary setting practices; to achieve internal equity in the pay structure; and, to guarantee external competitiveness in the labor market.

This proposal has been drafted in compliance with the National Academy of Sciences Proposed Guidelines for Job Evaluation Plans.

Prior to the commencement of a comparable worth study, SACEE/SEIU Local 22 requests agreement to the following:

1. Neither SACEE/SEIU Local 22 nor the Sacramento City Unified School District will issue any statements, orally or in writing, which shall have the effect of setting female employees and male employees against each other in competition for salary increases or any other benefit to be derived from their employment with the Sacramento City Unified School District.

2. No salary assigned to any classification shall be frozen or lowered as a result of this study.

KF/ms
seiu22
afl-cio
flacl
8/25/81

TABLE OF CONTENTS

I. STUDY TO BE DONE IN-HOUSE

Advantages

*inexpensive
*more thorough , accurate and reliable
*faster
*lessens turmoil among employees

Disadvantages

*perceived need of "expert" service not met

Other agencies studied in this manner

*Eureka Unified School District
*Chico Unified School District

NOTE: ADA of other school districts not critical factor in comparing experiences of other school districts in doing comparable worth study. Critical factor is number of classifications to be studied. SCUSD has 97 classifications in classified bargaining units.

II. USE OF OUTSIDE CONSULTANTS

Advantages

*perceived need for "experts" met

Disadvantages

*expensive
*slow
*yields inaccurate evaluation of jobs
*encourages dissension among employees
*possibility of adverse reaction of community groups
*possibility of other employee organization dissension

NOTE: For this type of study, actual knowledge of day-to-day job duties and responsibilities is the most important factor. Employees performing these jobs are the experts here. "Expertise" provided by consultants is not adequate for a comparable worth study: consultants in this field invariably lack experience as laborers, crafts or trades people, office workers, paraprofessional classroom employees, or food preparation personnel. Consultant "expertise" is not only inadequate but can actually be disadvantageous. Unfamiliarity with job duties and responsibilities can result in improper job factor assessment.

Other agencies studied in this manner

*City of San Jose
*Fremont Unified School District
*State of Washington

RECOMMENDATION: Selected use of technical assistance as outlined below.

III. METHODOLOGY OF SCUSD COMPARABLE WORTH STUDY

A. Establish working committee

1. Composition

a. One classified employee representative from each of four bargaining units.

i. Unit A Security Officers Unit
ii. Unit B: Aides-Paraprofessional Unit
iii. Unit C: Operations-Support Services Unit
iv. Unit D: Office-Technical Unit

b. Subcommittee of each bargaining unit to meet with bargaining unit representative.

c. Equal number of SCUSD administration representatives.

i. Director, Classified Personnel Services
ii. Personnel Analyst, Classified Personnel Services
iii. Title IX Compliance Project Manager
iv. Associate Superintendent, SCUSD

NOTE: This committee is selected to achieve an equal balance of male and female members, and of administration and bargaining unit representatives. Ethnic composition of the committee is 62.5% White, 25% Black and 12.5% Hispanic. Total District classified ethnicity is 61.2% White, 15.5% Black, 13.9% Hispanic; 7.1% Asian; 2.3% American Indian.

B. Establish subcommittees of working committee

Each representative of a bargaining unit will, in turn, work with a subcommittee composed of representatives from each classification or, if applicable, each grouping of classifications.

1. Unit A: Security Officers Unit

No subcommittee necessary. Unit comprised solely of one classification -- security officers.

NOTE: See Unit C. Job factor assessment in this unit should be considered in conjunction with classification of Night Watchperson.

2. Unit B: Aides-Paraprofessional Unit

Subcommittee to be composed of one representative from each of the following classifications, or groups of classifications:

a. Hall Monitor
Walking Attendant

b. School Community Worker
Youth Employment Services Technician
Vocational Education Technician

c. Instructional Aide
Instructional Assistant I
Instructional Assistant II
Program Tutoring Assistant
Teacher Assistant (Bilingual)
Teacher Associate

3. Unit C: Operations-Support Services

Subcommittee to be composed of one representative from each of the following classifications, or groups of classifications:

a. Bus Attendant
Bus Driver I
Bus Driver II
Transportation Specialist

b. Cook, Children's Center
Food Service Assistant I
Food Service Assistant II

c. Custodian
Floor Maintenance Worker
Swimming Pool Custodian

d. Pest Control Technician
Groundsworker/Mover
Laborer
Laborer, Assistant Foreman
Laborer-Gardener
Laborer-Gardener, Assistant Foreman

e. Delivery Worker
Utility Worker
Warehouse Worker
Toolroom Attendant

(See Unit A) f. Night Watchperson
Watchperson, Weekends and Holidays

g. Piano Technician
Electronics Technician
Electronics Technician, Assistant Foreman

h. Automotive Service Attendant
Transportation Mechanic
Transportation Shop Foreman

i. Carpenter
Carpenter, Assistant Foreman
Construction Inspector
Electrician
Engineer
Floor, Tile and Shade Repairman
Glazier
Lead Construction Inspector
Painter, Brush
Painter, Spray
Plumber
Plumber, Assistant Foreman
Plumber, Apprentice
Roofer
Welder

4. Unit D: Office-Technical

Subcommittee to be composed of one representative from each of the following classifications, or groups of classifications:

a. Account Clerk I
Account Clerk II
Accounting Technician
Budget Technician I
Budget Technician II

b. Controller, Senior High
School Bookkeeper
Statistical Clerk

c. Administrative Secretary
Elementary School Secretary
School Secretary I
School Secretary II
School Secretary III
Secretary I
Secretary II

d. Buyer I
Buyer II

e. Clerical Specialist
Clerk I
Clerk II
Clerk III
Clerk, Children's Center
Library Clerk
Maintenance and Operations Clerk
Warehouse Records Clerk

f. Personnel Tehcnician I
Personnel Tehcnician II
Pupil Personnel Records Tehcnician
Registrar I
Registrar II

g. Computer Operator I
Computer Operator II
Senior Programmer Analyst

h. Key Entry Operator I
Key Entry Operator II
Word Processing Technician I
Word Processing Technician II

i. Telephone Operator

j. Braille Transcriber

C. Review by Committees of Official Classification Specifications

1. Meetings with Subcommittee Representatives to insure accuracy and currency of Classification Specifications.

2. Comparison of individual job descriptions to Classification Specifications to insure accuracy and currency of job descriptions.

D. Development of Study Criteria

1. Determination of job factors to be weighed.

a. Review of other studies

b. Selection of applicable job factors

c. Addition of job factors unique to SCUSD

2. Development of frequency/difficulty grid.

3. Assignment of points to each job factor and to each gradation in frequency/difficulty grid.

NOTE: The development of study criteria must be done internally by or for each employer. Criteria from one employer cannot be automatically transferred to another. Internal study experience has been that most time of the study is expended in this part of the study.

E. Application of Criteria to Classification Specifications

1. Analysis of Classification Specifications by job factors

2. Assignment of points for job factors determined for each Classification Specification and placement on frequency/difficulty grid.

3. Ranking of Classification Specifications by total number of points assigned.

F. Placement on Salary Schedule

1. Use existing salary schedule, modified by any collective bargaining agreement reached prior to or during the course of this study.

2. Determine method of correlation between internal job ranking and salary schedule.

i. Use of highest-ranked, male-dominated job as benchmark position.

Advantages

*Does not arbitrarily preclude possibility of salary increase for all positions.

*No conflict between prevailing wage rate and non-discriminatory wage rate.

*More equitable method.

*Advocated by SACEE/SEIU Local 22.

Disadvantages

*Higher total salary cost.

ii. Use of lowest-ranked, male-dominated job as benchmark position.

Advantages

*Lower total salary cost.

Disadvantages

*May result in depression of salary of higher paid, male-dominated positions.

*Creates conflict between prevailing wage rate and non-discriminatory wage rate.

*Less equitable method.

*May perpetuate race discrimination in male-dominated classifications.

*Opposed by SACEE/SEIU Local 22.

iii. Some amalgamation of i and ii above.

IV. Development of Implementation Plan

1. Cost analysis.

2. Multi-year, phase-in of all classifications in line with study recommendations.

3. Gradual phase-in by classification in line with study recommendations.

4. Possible combination of #2 and #3 above.

V. Data Required for Study

1. Classification Specifications

2. Job Descriptions

3. Salary Schedule

4. Male-Female ratio of each classification

5. Ethnic Analysis of each classification

6. Salary Cost for each classification

a. Should not include benefit costs

b. Table of employer costs fixed by salary, such as UI and OASDI

7. Hourly salary cost for members of working committee

VI. Time Frame Projection of Comparable Worth Study

Based on experience of other internal studies, SCUSD would require approximately one month FTE for the working committee.

VII. Expenditure of Allocated $38,000

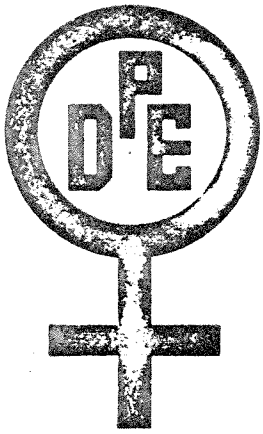
1. Substitute costs for employees performing study.
2. Materials
    a. Photocopying
    b. Miscellaneous supplies
3. Technical Assistance
    a. To be provided only on an as-needed basis
    b. Recommended consultation:
        i. Comparable Worth Project
        488 41st Street
        Oakland, CA 94609
        ii. Hilda Ranton, Pay Equity Consultant
        Eureka Unified School District
        Eureka, CA
        iii. SEIU Research Department
        240 Golden Gate Avenue
        San Francisco, CA 94102
        iv. Sacramento Working Women
        2431 G Street
        Sacramento, CA 95816
4. Surplus to be applied to implementation costs.

VIII. Reference Materials

1. Various consultant studies
2. Internal studies
3. Miscellaneous additional studies
4. Law journal articles and other professional articles on comparable worth studies
5. Comparable Worth Project Newsletter

NOTE: SACEE/SEIU Local 22 has an extensive library of comparable worth materials, including most studies which have been completed nationally to date. These will be made available to the committee for the cost of photocopying.

The Women's Project



PAY EQUITY

January, 1981 Issue Paper No. 1

Committee on Salaried and Professional Women

Department for Professional Employees, AFL-CIO
815 16th Street, N.W., Washington, D.C. 20006

WHAT IS PAY EQUITY ALL ABOUT?

The issue of PAY EQUITY is concerned with the differential which exists between wages for jobs held predominately by women and the wages for jobs held predominately by men which require comparable education, skills, effort and responsibility. Supporters of PAY EQUITY contend that the lower wages for jobs in which women are segregated, in schools, hospitals, factories and offices, are a result of sex discrimination based on the undervaluation of the education, skills and experience required to perform them.

Until recently, sex discrimination in employment has been seen as caused by either wage discrimination or job segregation. Generally, remedies for wage discrimination have focused on "equal pay for equal work", where men and women perform the same or similar jobs. The question of how wages are determined for jobs in which one sex is concentrated has not previously been explored. Consequently, remedies for job segregation have consisted primarily of efforts to encourage and enable women to move into traditional "men's" jobs. But to completely eliminate occupational segregation, men will have to move into traditional women's jobs, a step that is unlikely until women's jobs offer better pay and promotional opportunities.

PAY EQUITY addresses the question of how wages are determined for the jobs women now hold, so that women no longer will have to leave their jobs to receive adequate compensation and women's jobs will be more attractive to men. PAY EQUITY refers to efforts to 1) establish that discrimination contributes to the setting of wage rates for these jobs, and 2)determine ways to achieve equal pay for jobs which are comparable with regard to education, skill, responsibility and effort, but different in terms of the actual work performed.

WHY IS PAY EQUITY AN ISSUE NOW?

The tremendous influx of women into the workforce, particularly into the expanding white collar occupations, has made the impact of low wages very pronounced. Although affirmative action programs under Executive Order 11246 and Title VII of the Civil Rights Act have moved women into higher paying jobs, and the Equal Pay Act ensures that women will be paid equally for doing the same jobs as men, the basic ratios of women's to men's earnings have not changed much over the years. In 1967, median earnings of $4,150 for women who worked year round, full time in the experienced labor force were 57.8 percent of the median earnings for men. The most recent statistics available show median earnings for women have risen to $9,350 but are still only 59.4 percent of the $15,730 earnings of men.

WHAT CAUSES THIS FARNINGS GAP?

One of the major factors in sustaining the earnings gap is the concentration of women in relatively low-paying white collar occupations. In spite of affirmative action efforts, most women continue to be employed in those few number of low-paying occupations in which they have traditionally worked. In fact, in 1979, over one-half of all women workers were employed in twenty occupations, just five more than in the year 1900. Unfortunately, the educational and counseling system which tends to steer women into traditional female jobs, has contributed to this occupational concentration.

The second major factor in sustaining the earnings gap results when women cluster at or near entry level jobs where they receive entry-level pay. Because so many more women are just entering the workforce or returning after childrearing, the effects of their lower pay on the earnings gap is significant.

Because women have the primary responsibility for home and family they often cannot put in overtime hours, and this limitation on their paycheck is another contributor to the earnings gap. However, even after taking this and the above factors into consideration, there is still a gap for which no explanation but sex discrimination can be made.

WHAT ABOUT THE PROFESSIONALS?

Although the wage gap is less for such occupations, it still exists. Full-time professional and technical women workers earn 65 percent of the median earnings of men within this occupational group. The existence of this wage gap once again raises the question of the contribution discrimination makes - in terms of job assignments, promotion opportunities, and wages.

THE IMPACT OF UNIONIZATION

Organized women workers make a full 30 percent more than those women who do not have the advantage of unionization. The earnings gap is even less for professional and technical women workers in part because it is the occupational group with the highest percentage of women organized relative to men - 35.8 percent to 25.1 respectively.

There is little doubt that the impact of unionization on bridging the earnings gap would be greater if more women participated in unions and collective bargaining. Today, less than 15 percent of working women are in unions.

WHAT DOES THE LAW SAY?

Several federal laws address discrimination in wages and compensation.

* The Equal Pay Act of 1963 prohibits an employer from paying women less than men for doing equal work, except when the pay differential is based upon merit, seniority, or the quality or quantity of production. This law pertains only to cases where men and women are doing the same or similar jobs.

* Title VII of the Civil Rights Act of 1964 prohibits employment discrimination, including discrimination in compensation based on the sex of a worker. However, a section of Title VII, the Bennett Amendment, provides that any differential authorized by the Equal Pay Act is not unlawful under Title VII.

* Executive Order 11246 prohibits wage discrimination on the basis of sex by federal contractors or subcontractors doing more than $10,000 in federal work. The Bennett Amendment is not applicable to the Executive Order.

In addition, twelve states have equal pay laws which authorize comparable worth payment - the goal of Pay Equity. These states are Alaska, Idaho, Kentucky, Maine, Maryland, Massachusetts, Oklahoma, Oregon, South Dakota, Tennessee, and West Virginia.

WHAT DO THE COURTS SAY?

The question being litigated today is whether wage differentials based on sex violate any existing federal law in cases other than where substantially similar jobs are performed. Is Title VII broad enough to include the "comparable worth" concept or does the Bennett Amendment prevent such an application? The results of cases brought under Title VII have been mixed:

* in Lemons v. City and County of Denver, the court upheld a $100 a month wage advantage of tree trimmers over nurses, deciding that the laws of supply and demand determine wage rates. The issue of comparable worth, it said, is "pregnant with the possibility of disrupting the entire economic system of the United States of America".

* in Gunther v. County of Washington (Oregon), the appeals court held that although the jobs of female "matrons" and male "guards" were not "equal", the matrons should be permitted to prove that some of the pay differential is attributable to sex bias. The Supreme Court will soon hear this case, making it the first time the highest court will look at the comparable worth issue.

* in International Union of Electrical Workers v. Westinghouse, the District Court found that with regard to sex discrimination in wages and benefits, Title VII's coverage was no broader than the Equal Pay Act. But when appealed, a landmark decision was awarded to IUE, entitling it to prove Westinghouse deliberately discriminated against women employees by paying them less than men doing comparable jobs. Westinghouse has since failed to obtain a rehearing in the district court. The IUE has petitioned the Supreme Court for review, hoping that this case will be heard with the Gunther case.

WHAT ARE THE ARGUMENTS AGAINST PAY EQUITY?

Opponents to the concept of equal pay for jobs which are of comparable value, including the Business Roundtable and the National Public Employers Labor Relations Association, contend 1) that Congress, in enacting Title VII meant to limit sex-based wage discrimination to cases in which men and women hold the same job; 2) that employers would have the unfair burden of proving that their wage rates were not set discriminatorily; 3) that if they were forced to reset wage rates, the cost would be prohibitive, and the process tantamount to a restructuring of the entire economy, 4) that acceptance of the concept of pay equity, and the resulting wage increases, would cause a rise in unemployment among women, and 5) that neither the Equal Employment Opportunity Commission nor any other government agency has the authority or the expertise to intervene where market forces should play the determining role.

WHAT ARE UNIONS DOING?

In its testimony to the Equal Employment Opportunity Commission during hearings on job segregation and wage discrimination, the AFL-CIO stated,

> "Experience demonstrates that the system for setting wages, and establishing other terms and conditions of employment that best meets workers' needs is collective bargaining. No single step is more likely to bring greater equity to the wage setting process..."

Unions have found various strategies useful in their efforts to achieve pay equity for their members, and eliminate wage differences based on sex. These strategies are all part of the collective bargaining process, and include studies of job classifications and wage rates to determine discrimination, negotiated upgrading of "women's" jobs, the use of grievance and arbitration procedures, and court suits. For example:

* The Communications Workers of America(CWA) formed the Clerical Structure Review Committee in 1975 which found in interviewing CWA clericals employed by the Bell System nationwide that they were classified under 300 job titles with job duties and pay varying from town to town. In 1977, the union negotiated a comparable worth reclassification, compressing those 300 titles to seven pay bands under three major categories: entry, semi-skilled, and skilled. In their 1980 contract with Bell, CWA negotiated a job evaluation plan which included the concept of equal pay for jobs of comparable worth in establishing uniform measurements for all jobs.

* The International Union of Electrical, Radio and Machine Workers(IUE) has successfully utilized the grievance and arbitration process and the courts to settle wage rate and job classification disputes for women workers it represents. These have resulted in the upgrading of jobs and substantial back pay orders.

* In 1972, the American Federation of Teachers(AFT), representing University of California librarians, bargained for a 2.5 percent "inequity" increase, after a study done the year before found librarians' salaries far below comparable academic, non-teaching jobs.

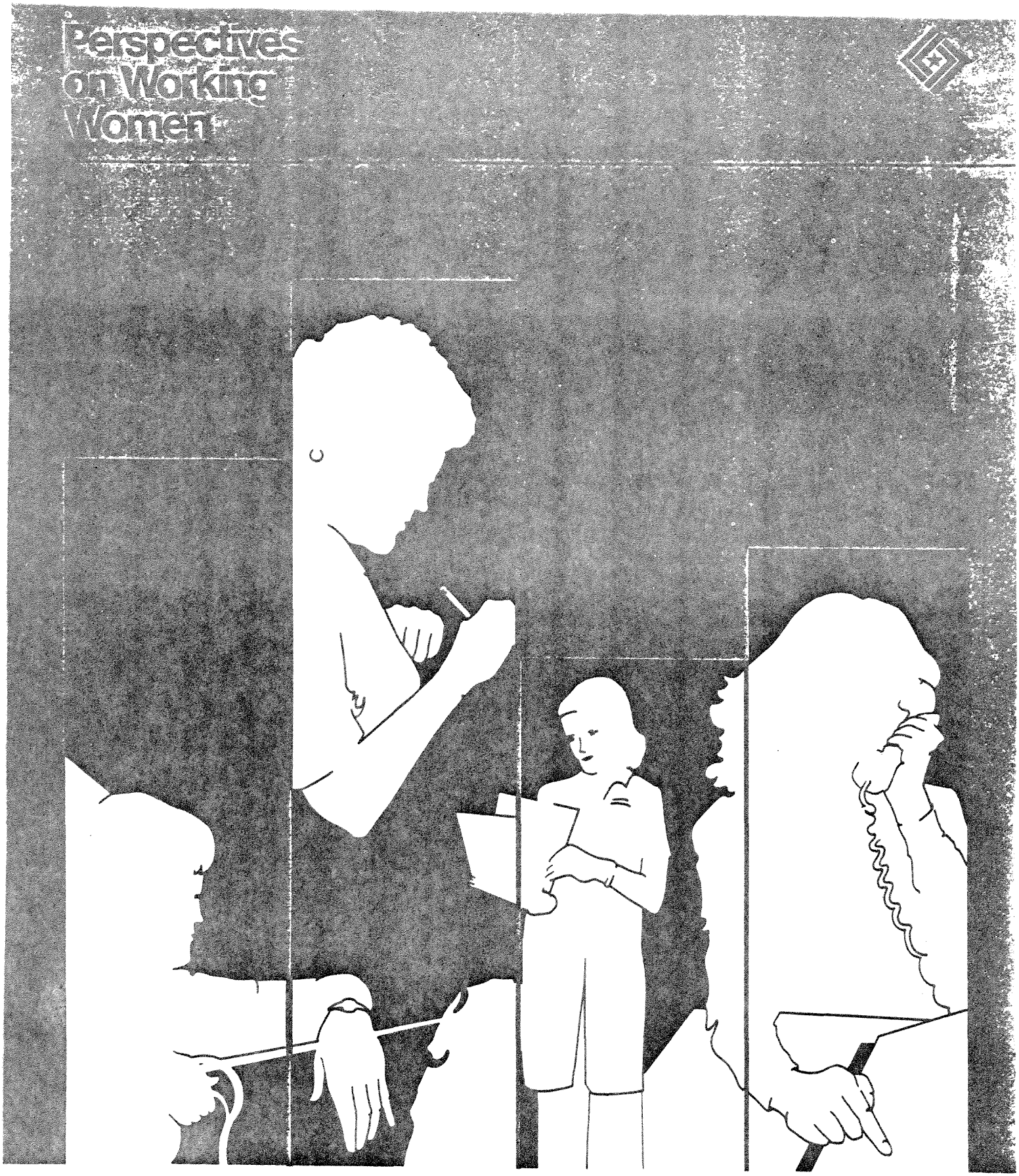
* In Washington State, the American Federation of State, County and Municipal Workers(AFSCME) has commissioned special comparable worth studies that will evaluate all aspects of various men's and women's jobs to determine if bias exists.

* In a California AFSCME local, state university and college clericals won an additional 2.5 percent wage hike above the increase enjoyed by the rest of the workforce after evidence they presented "proved to the management that women were victimized by discriminatory pay standards".

Unions have also negotiated across-the-board dollar raises rather than percentage hikes to narrow wage gaps between men and lower paid women, made sure that wage rate inequities are covered by grievance and arbitration clauses, and have formed joint employer-union committees to conduct pay studies or review the job evaluation systems in use. Internally, union meetings and conventions have adopted policy resolutions supporting pay equity efforts, and have authorized education programs and materials for union members and staff.

> "It is further the creed of the labor movement that equal amounts of work should bring the same price, whether performed by man or woman. In other words, that the value to the purchaser, not the necessity of the seller, should fix the standard of a day's wages".
>
> - Federation of Trades and Labor Unions of the United States and Canada 1883

Perspectives on Working Women



Perspectives on Working Women

During the 1970's, dramatic changes took place in women's participation in the labor market. At the beginning of the decade, about 31 million women, or 43 percent of all U.S. women 16 years old and over, were in the labor force. By 1979, 43 million, or more than half of all women, were working or looking for work. This 12-million increase in the number of working women accounted for 60 percent of the growth of the entire U.S. labor force over the decade. Even though a large proportion of these women remained in the so-called "typical women's occupations," women were also doctors, lawyers, engineers, bus and truck drivers, construction workers, and members of the Armed Forces.

This revolution in the role of women in the labor market is documented in *Perspectives on Working Women: A Databook*, to be published later this year by the Bureau of Labor Statistics. The *Databook* is a comprehensive survey of the large body of information on women in the labor force that the Bureau has developed over many years. Following are some highlights from the *Databook:*

Young women were in the forefront of labor force growth in the 1970's. By 1979, 64 percent of all women 25 to 34 years old were working or looking for work, including 54 percent of the mothers in this age group, who had to juggle the responsibilities of home and child care with those of a job.

The number of wives in the labor force has more than tripled over the last few decades. By March 1979, practically 50 percent of all wives were working or looking for work compared with 41 percent in 1970 and only 22 percent in 1950. Contributing strongly to this trend was the growth in labor force participation of mothers with preschool children; the participation rate of wives with children under age 6 advanced from 30 percent in March 1970 to 43 percent 9 years later.

In recent years, more and more women have been postponing marriage, and marital breakups have become more widespread. The number of never-married women in the labor force grew from about 7 million in 1970 to a little over 11 million in 1979, and the number of divorcees working or looking for work more than doubled.

During the 1970's, the labor force participation rate for white women grew at a more accelerated pace than for black women, so that by the close of the decade there was little difference between their overall labor force participation rates. Although Hispanic women were not as likely as either black or white women to be in the labor force, their participation rate also advanced, reaching 47 percent in March 1979.

As a result of the phenomenal increase in the number of working wives, the number of married-couple families in which both husband and wife were earners rose dramatically. By March 1979, husbands and wives were earners in 51 percent of all married-couple families. In fact, 57 percent of the families where there were children were dual-earner families. As might be expected, dual-earner families had higher median incomes than single-earner families—$23,000 compared with $17,000 where only the husband had earnings.

Working wives provide a significant source of income for their families. In 1978, the earnings of wives accounted for about 26 percent (on average) of their families' incomes. If wives worked all year, full time, their contribution averaged 38 percent of family income; if they worked part time or less than half a year full time, their contribution fell to only about 11 percent.

These are highlights of the information that can be found in over 90 tables included in the *Databook* under the following headings:

I. Labor Force, Employment, and Unemployment
II. Work Experience
III. Marital and Family Status
IV. School Enrollment and Education
V. Earnings and Income
VI. Race and Hispanic Origin
VII. Additional Characteristics (absence, moonlighting, occupational mobility, etc.)
VIII. The 1980's

Contact the BLS regional office nearest you (see back cover) for price and ordering information for Bulletin 2080, *Perspectives on Working Women: A Databook.*

Table 1. Women in the labor force, annual averages, selected years, 1950-80

(Numbers in thousands)

Year	Labor force		
	Total, both sexes	Women	
		Number	Percent of total
1950	62,208	18,389	29.6
1955	65,023	20,548	31.6
1960	69628	23,240	33.4
1965	74,455	26,200	35.2
1970	82,715	31,520	38.1
1975	92,613	36,998	39.9
1979	102,908	43,391	42.1
1980:			
1st quarter (seasonally adjusted)	104,194	44,216	42.4

Table 2. Labor force participation rates of women and men, annual averages, selected years, 1950-80

Year	Participation rate (percent of population in labor force)	
	Women	Men
1950	33.9	86.4
1960	37.7	83.3
1970	43.3	79.7
1971	43.3	79.1
1972	43.9	79.0
1973	44.7	78.8
1974	45.6	78.7
1975	46.3	77.9
1976	47.3	77.5
1977	48.4	77.7
1978	50.0	77.9
1979	51.0	77.9
1980:		
1st quarter (seasonally adjusted)	51.4	77.6

Table 3. Employment of women in selected occupations, selected years, 1950-79

(Numbers in thousands)

Occupation	Number				Women as percent of all workers in occupation			
	1950	1960	1970	1979	1950	1960	1970	1979
Professional and technical	1,946	2,746	4,576	6,519	40.1	38.0	40.0	43.3
Accountants	56	77	180	344	14.9	16.4	25.3	32.9
Lawyers and judges	7	7	13	62	4.1	3.3	4.7	12.4
Physicians and osteopaths	12	16	25	46	6.5	6.8	8.9	10.7
Teachers, except college and university	837	1,196	1,937	2,207	74.5	71.6	70.4	70.8
Teachers, college and university[1]	28	36	139	172	22.8	21.3	28.3	31.6
Managerial and administrative, except farm	672	780	1,061	2,586	13.8	14.4	16.6	24.6
Bank officials and financial managers	13	28	55	196	11.7	12.4	17.6	31.6
Buyers and purchasing agents	6	61	75	136	9.4	17.7	20.8	30.2
Clerical	4,273	6,263	10,150	14,152	62.3	67.5	73.6	80.3
Bank tellers	28	88	216	458	45.2	69.3	86.1	92.9
Secretaries and typists	1,494	1,917	3,686	4,681	94.6	96.7	96.6	98.6

[1] Includes college and university presidents in 1950.

Table 4. Labor force participation rates of women by age, annual averages, selected years, 1950-79

Age	Participation rate (percent of population in labor force)			
	1950	1960	1970	1979
Total, 16 years and over	33.9	37.7	43.3	51.0
16 and 17	30.1	29.1	34.9	45.8
18 and 19	51.3	50.9	53.6	62.9
20 to 24	46.0	46.1	57.7	69.1
25 to 34	34.0	36.0	45.0	63.8
35 to 44	39.1	43.4	51.1	63.6
45 to 54	37.9	49.8	54.4	58.4
55 to 64	27.0	37.2	43.0	41.9
65 and over	9.0	10.8	9.7	8.3

Table 5. Women by labor force and marital status, selected years, 1950-79

Item	April 1950	March 1960	March 1970	March 1979
POPULATION (thousands)				
Total, 16 years and over	54,988	61,911	73,261	84,686
Never married	9,305	9,603	13,141	17,564
Married, husband present	35,574	40,176	45,055	48,239
Married, husband absent	2,001	2,362	2,730	3,075
Divorced	1,373	1,707	2,695	5,359
Widowed	6,735	8,063	9,640	10,450
LABOR FORCE (thousands)				
Total	15,560	21,329	31,233	42,971
Never married	4,304	4,233	6,965	11,006
Married, husband present	7,682	12,244	18,377	23,832
Married, husband absent	933	1,224	1,422	1,808
Divorced	2,641	1,222	1,927	3,967
Widowed		2,406	2,542	2,358
PERCENT OF POPULATION IN LABOR FORCE				
Total	28.3	34.5	42.6	50.7
Never married	46.3	44.1	53.0	62.7
Married, husband present	21.6	30.5	40.8	49.4
Married, husband absent	46.6	51.8	52.1	58.8
Divorced	32.6	71.6	71.5	74.0
Widowed		29.8	26.4	22.6

Table 6. Labor force participation rates of married women, husband present, by presence and age of own children, selected years, 1950-79

Year [1]	Participation rate (percent of population in labor force)				
	Total	With no children under age 18	With children under age 18		
			Total	6 to 17, none younger	Under 6
1950	23.8	30.3	18.4	28.3	11.9
1955	27.7	32.7	24.0	34.7	16.2
1960	30.5	34.7	27.6	39.0	18.6
1965	34.7	38.3	32.2	42.7	23.3
1970	40.8	42.2	39.7	49.2	30.3
1971	40.8	42.1	39.7	49.4	29.6
1972	41.5	42.7	40.5	50.2	30.1
1973	42.2	42.8	41.7	50.1	32.7
1974	43.0	43.0	43.1	51.2	34.4
1975	44.4	43.9	44.9	52.3	36.6
1976	45.0	43.8	46.1	53.7	37.4
1977	46.6	44.9	48.2	55.6	39.3
1978	47.6	44.7	50.2	57.2	41.6
1979	49.4	46.7	51.9	59.1	43.2

1 Data were collected in April of 1951-55 and March of all other years.

NOTE: Children are defined as "own" children of the women and include never-married sons and daughters, stepchildren, and adopted children. Excluded are other related children such as grandchildren, nieces, nephews, and cousins, and unrelated children.

Table 7. Civilian labor force status of white, black, and Hispanic women 16 years and over by marital status, March 1979

(Numbers in thousands)

Marital status	White		Black		Hispanic	
	Number	Labor force participation rate	Number	Labor force participation rate	Number	Labor force participation rate
Women, total	37,210	50.4	4,899	52.6	1,859	47.4
Never married	9,296	65.2	1,502	50.7	502	56.0
Married, husband present	21,391	48.5	1,920	59.7	1,028	46.3
Other ever married	6,523	42.2	1,477	47.0	330	40.8
Married, husband absent	1,136	58.9	632	58.9	117	40.4
Widowed	1,988	22.0	322	25.0	58	22.2
Divorced	3,400	75.3	523	66.8	154	60.2

NOTE: Due to rounding, sums of individual items may not equal totals.

Table 8. Number of earners in previous year and median family income of married-couple families, and number of own children under 18, March 1979

(Numbers in thousands)

Number of earners	Total families	Families with no children under age 18	Families with children under age 18[1]				Median family income, 1978[2]
			1 child	2 children	3 children	4 children or more	
Married-couple families, total	47,689	23,178	9,202	9,136	4,067	2,107	$19,400
No earners	5,102	4,708	163	119	54	59	7,900
One earner	14,179	6,344	2,369	3,178	1,513	775	16,400
Husband only	12,201	4,770	2,171	3,075	1,452	734	17,200
Wife only	1,476	1,183	141	79	48	25	11,200
Other relative only	502	391	57	24	14	16	13,200
Two earners	21,528	9,551	4,831	4,565	1,796	784	21,200
Husband and wife only	18,669	8,122	4,165	4,186	1,571	625	20,900
Husband and other relative, only	2,414	1,128	579	348	207	152	23,900
Husband is nonearner	445	301	87	31	18	8	17,700
Three earners or more	6,881	2,575	1,839	1,274	705	488	30,000
Husband and wife earners	5,573	2,136	1,460	1,038	576	363	29,900
Husband an earner, wife nonearner	1,172	363	352	217	125	115	30,600
Husband is nonearner	135	76	28	19	4	9	27,400

[1] Children are defined as "own" children of the family and include never-married sons and daughters, stepchildren, and adopted children. Excluded are other related children such as grandchildren, nieces, and nephews, and cousins, and unrelated children.

[2] Income rounded to nearest $100.

NOTE: Due to rounding, sums of individual items may not equal totals.

COMPARABLE WORTH:
"A JOB INEQUITY BY ANY OTHER NAME. . ."

Winn Newman*
General Counsel, International
Union of Electrical, Radio and
Machine Workers, AFL-CIO-CLC
and
Coalition of Labor Union Women

to

University of Wisconsin Law School
Center for Equal Employment and
Affirmative Action

November 30, 1979

I. Background

Just as no one had heard of the Duchy of Grand Fenwick in the popular film "The Mouse That Roared" 1/ until it declared war on the United States, despite its existence for years, the "comparable worth" issue, which is now being hailed as "the issue of the 80's" and as a "sleeping giant", has been around for a long time. Title VII of the 1964 Civil Rights Act and Executive Order 11246 have always proscribed discrimination in the wages paid for work performed. The march of "comparable worth" to the Front Line

1/ Roger MacDougall and Stanley Mann, screenplay "The Mouse That Roared", 1959, based on the novel "Wrath of Grapes" by Leonard Wibberly.

* Co-authored with Carole W. Wilson, Associate General Counsel, International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC

of major civil rights issues results from the late realization of the significance of the issue to women, namely that the failure to pay women equal pay for work of equal value may be the most important reason why men earn nearly twice (175%) the earnings of women.

"Comparable worth" is not a "new frontier". The issue of correcting job inequities is old hat to the industrial relations scene. Unions have regularly grieved and arbitrated the proper rate for a job and arbitrators have been called upon to resolve disputes over these rates and to establish the rate the employer must pay. An arbitrator might determine whether the rate set by the employer was proper or should be changed on the basis of testimony and/or her personal observation of the job. Contrary to much of the current thinking, formal job evaluation has never been held to be essential to an arbitrator's determination of the relative worth of a job.

On the other hand, the male-dominated world of industrial relations and arbitration[2/] appeared to wear blinders when the job inequity resulted from a comparison of sex-segregated jobs. Whether this resulted from basic prejudices, a fear that men's wages would be reduced, the enactment of state protective laws, which unfortunately had the effect of creating a sex-segregated job structure wherever women were hired, or a combination thereof, is no longer relevant.

2/ In 1947, when the National Academy of Arbitrators was established, it had one female member (Jean McKelvey) and no Black members. Even now the women and Black members each constitute only 2% of the membership.

Nor is the issue of job inequities as they relate to sex-segregated jobs newly discovered, e.g., the War Labor Board, in 1945, relying on data submitted by the General Electric Company and Westinghouse noted that most women's jobs were improperly paid less than janitors and other common labor men's jobs and that the job evaluation point value at General Electric was reduced by 1/3 for women's jobs, and that the wage rate for comparable jobs at Westinghouse was reduced by 20%.[3/] The WLB concluded that at the plants of both companies there were "substantial differentials between rates for women's jobs and men's jobs which cannot be justified on the basis of comparable job content."[4/]

And private parties have filed "job inequity" or "comparable worth" lawsuits for at least a decade. IUE, for example, has been filing and successfully settling "comparable worth" lawsuits on behalf of women it represents since at least 1969. Indeed, a year ago, Assistant Secretary of Labor Don Elisburg, in a speech before the Coalition of Labor Union Women, stated that the Department of Labor would require equal compensation for women's and men's jobs whenever the jobs "which may be different in content * * * required the same skill, effort and responsibility." As stated by Elisburg, "The concept sounds so simple, one can only wonder what has taken it so long to catch hold".

3/ 28 War Labor Reports, 666, 678-682.

4/ 28 War Labor Reports, 666, 689.

CLUW thereupon resolved to make the issue of "job inequities" or "comparable worth" a top priority item and testified before a Congressional Committee[5/] that the failure to pay women equal wages for work of equal value was the "most significant consistently neglected aspect of Title VII enforcement".[6/] Thereafter, EEOC began to participate actively in "comparable worth" litigation and made a significant contribution as amicus curiae in the key "comparable worth" case, IUE v. Westinghouse. It recently announced that it would hold hearings on "comparable worth" in January and it has joined with the Department of Labor in making job rate inequities the "issue of the 80's".

II. The Social and/or Economic Consequences on Society of Correcting Discriminatory Wage Rates is Not Relevant to a Determination of the Meaning of Existing Laws.

The business community is attempting to defeat "comparable worth" by arguing that the concept would wreck havoc with long established and accepted business and economic principles. On the other hand, the women's movement has argued that such changes are necessary if women are to achieve their rightful place in the economic world. But neither position is relevant to the issue of whether existing laws prohibit discrimination

5/ Statement of Winn Newman before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, 11/29/78.

6/ At its Convention a few weeks ago, the AFL-CIO called for treating "job inequities resulting from sex and race discrimination like all other inequities which must be corrected" on the basis of "equal pay for work of comparable value".

in compensation based on sex or race where the jobs, although different in content, require the same or greater skill, effort and responsibility. That issue was resolved by the Congress and the President when the Civil Rights Act and the Executive Order were enacted. Congress determined in 1964 that discrimination was wrong and cannot be justified on the basis of the cost to correct it. To the extent, therefore, that a soon-to-be released study by the National Academy of Sciences may emphasize these economic concerns or the supposed difficulty of determining what a job is worth, this too is not relevant to the issue of whether or not the law bars discrimination in compensation.

The first issue to be determined is whether wages established on the basis of sex or race violate Title VII and/or the Executive Order. If so, then a myriad of remedies may be available, and an argument that a court should consider the economic effect of any remedy it may impose would then be timely. Conceivably, the NAS study, which does not appear to have concerned itself with what is required by existing laws, may be useful in suggesting appropriate remedies. Unfortunately, however, early preliminary reports of this heavily employer-dominated committee state that if its study shows "the development of unbiased procedures" is "feasible", it would then determine "whether such procedures would be desirable in light of their economic and political consequences". In these circumstances, we must assume

that the NAS study will be essentially worthless and irrelevant to the basic issues of (1) what the law means and (2) how to determine whether discrimination exists.

III. The Basic Legal Issues

A. The Relationship of Title VII and the Equal Pay Act -- The Bennett Amendment Issue.

Section 6(d) of the Fair Labor Standards Act, commonly referred to as the Equal Pay Act (EPA), mandates equal pay for both sexes for jobs which require substantially equal skill, effort and responsibility. The EPA also makes clear that no violation of the Equal Pay Act will occur if the difference in pay results from seniority, merit, the quantity or quality of production or some other basis not related to sex.[7/] On the other hand, Section 703(a)(1) of Title VII and the Executive Order expressly prohibit discrimination in compensation because

7/ Section 6(d) of the Fair Labor Standards Act states:

> "No employer . . . shall discriminate. . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except, where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex . . ."

of race or sex.[8/]

Although neither EEOC nor OFCCP have litigated cases in court involving discrimination in compensation, both agencies have consistently taken the position that paying women or minorities less than men or white employees who perform jobs which are different in content but of comparable skill, effort and responsibility is illegal. EEOC has regularly issued reasonable cause findings where the jobs being compared did not fall within the ambit of the Equal Pay Act; OFCCP has actively pursued the issue and has recently concluded a hearing before an Administrative Law Judge[9/] which will affect the entire glass industry.

8/ Section 703(a) of Title VII provides that:

> "It shall be an unlawful employment practice for any employer
>
> (1). . .to discriminate against any individual with respect to his compensation . . . because of such individual's sex. . ." (42 U.S.C. §2000e-2(a)).

Section 202(1) of E.O. 11246 states:

> "The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation..."

9/ U.S. Department of Labor and U.S. Department of Energy v. Kerr Glass, 77-OFCCP-4.

However, the "issue of the 80's" is whether Title VII's ban on discrimination in compensation extends beyond the reach of those wage issues which are encompassed by the EPA, i.e., to jobs which are different in content but require the same skill, effort and responsibility and are performed under similar working conditions for the same employer. In other words, can an employer say to a woman, "I would pay you more for the work you are doing if you were a man", and not be guilty of sex discrimination under Title VII unless there happens to be a man performing the same job for higher pay?

The answer to this question revolves around the last sentence of Section 703(h) -- commonly known as the Bennett Amendment -- which arguably excludes from the reach of Title VII those wage disparities which do not violate the EPA. The courts are in dispute and the issue may be headed for the Supreme Court. In the remaining time, I would like to discuss the pending litigation and my view that the Bennett Amendment does not affect the Executive Order's ban on discrimination in compensation.

Section 703(h) of Title VII contains two sentences. The first sentence provides that it is not an unlawful employment practice for an employer to have different standards of compensation for employees where the differences result from a bona fide seniority or merit system or from the quantity or quality of production, provided such differences do not result from an intention to discriminate on the basis of race, sex, color, religion or national origin.

The second sentence -- the Bennett Amendment -- states that a difference in pay based upon sex is not an unlawful employment practice if such difference is "authorized" by the EPA.[10/] Some courts have stated, in most cases as dicta, that any conduct that is not prohibited by the Equal Pay Act is "authorized" by the Act, and thus that no claim of discrimination in compensation violates Title VII unless it also violates the Equal Pay Act.[11/] However, as the Ninth Circuit Court of Appeals

10/ Section 703(h) provides:

> "Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d))."

11/ e.g., Orr v. Frank R. MacNeill & Sons, 511 F.2d 166, 171 (5th Cir. 1975), cert. den. 423 U.S. 865 (1975), and Ammons v. Zia Co., 448 F.2d 117 (10th Cir. 1971).

stated in Gunther v. The County of Washington,[12] discussed hereafter, those cases, with the exception of IUE v. Westinghouse,[13] also discussed later, which is on appeal to the Third Circuit, "did not consider the issue whether Title VII prohibits conduct outside the scope of the Equal Pay Act. . ." These cases seem to have involved only "equal work" claims. Hence, the "comparable worth" issue may never have been consciously decided by those courts.

Certainly, it defies plain English usage to conclude that everything that is not prohibited by a statute is authorized by it. Webster defines "authorized" as meaning "sanctioned or approved authority".[14] If Congress had desired this result, it could simply have used the phrase "not covered" in place of the word "authorized" so that the Bennett Amendment would protect from a Title VII challenge any sex-based wage differentials "not covered by the provisions" of the Equal Pay Act.

A much more natural reading, and one that does not do violence to the purpose of the statute, is that the Bennett Amendment refers to the four stated exceptions in the Equal Pay Act as "authorizing" certain practices that Congress did not regard

12/ 602 F.2d 882 (9th Cir. 1979), pet. reh'g pending.

13/ 19 FEP Cases 450 (1979).

14/ Webster's New International Dictionary, Second Edition (1952).

as discriminatory, i.e., that a violation of the EPA or Title VII does not occur where the wage differential is based upon seniority, merit or the quality or quantity of production. This is the conclusion recently adopted by the Court of Appeals for the Ninth Circuit in Gunther v. County of Washington.

B. The Gunther Case

Gunther was a Title VII action brought by four jail matrons, alleging discrimination in their compensation. The Court of Appeals held that the jobs of the female "matrons" and the male "guards" were not "equal" under the Equal Pay Act, but went on to sustain the sufficiency under Title VII of plaintiffs' claim that "the discrepancy in wages was due to sex discrimination". The court held that "Title VII is broader in scope than the Equal Pay Act".

> ". . .[W]e hold that, although decisions interpreting the Equal Pay Act were authoritative where plaintiffs suing under Title VII raise a claim of equal pay, plaintiffs are not precluded from suing under Title VII to protest other discriminatory compensatory practices unless the practices are authorized by one of the four affirmative defenses contained in the Equal Pay Act and incorporated into Title VII by Section 703(h)."

In addition, there are some differences in wording between the exceptions in the EPA and the exceptions contained in the first sentence of Section 703(h),[15/] and one of the defenses

15/ Section 703(h) refers to "bona fide" seniority systems while the Equal Pay Act simply refers to seniority system.

available under the Equal Pay Act -- for "a differential based on any other factor other than sex" -- is not included in Section 703(h). Differences in interpretation could arise under the two statutes, which are not worded identically and have different legislative histories. It thus seems clear that the Bennett Amendment serves the important purpose of ensuring that the interpretations issued judicially or administratively under the Equal Pay Act would apply to "equal work" claims under Title VII.

A contrary interpretation would virtually nullify Section 703(a)(1)'s broad ban on sex discrimination in pay rates. Most Equal Pay Act remedies for prohibited conduct are superior to those under Title VII, e.g., double back pay, a longer period of limitations for willful violations, and a specific prohibition on equalizing wages by lowering the wages of male employees. Hence, limiting the substantive reach of Section 703(a)(1)'s ban on sex discrimination in pay rates by the "equal work" requirement would have left little reason to use Title VII.

The Bennett Amendment was not part of the Civil Rights Bill when it first passed the House and was sent to the Senate. The Amendment was added on the floor of the Senate, after cloture was adopted. The colloquy preceding the adoption of the amendment consumed two minutes at best. A year later

on the Senate floor, Senator Bennett stated that the Bennett Amendment had been proposed and adopted in an atmosphere of complete chaos. . ." and this "resulted in action by the Senate without the creation of any legislative history."[16/]

Senator Bennett's observations only underscore the obvious -- that the meager colloquy accompanying his amendment cannot support the exemption of major discriminatory compensation practices from the reach of Title VII. To the contrary, in Gunther, the Ninth Circuit concluded that the legislative history supports the conclusion that the Bennett Amendment merely incorporated these 4 Equal Pay Act exemptions into Title VII and that the broad remedial policy behind Title VII "should not be limited further in the absence of a clear Congressional directive".

The Gunther court made clear that the women's jobs required less responsibility because the male guards were "typically responsible for 12 times as many prisoners as a matron", and "the matrons did substantially more clerical work than the male guards". However, it remanded the case for trial in order to allow the plaintiffs to offer evidence that a portion of the discrepancy between their salaries and those of the male guards could only be ascribed to sex discrimination, and thus that the disparate pay rates were in part due to sex discrimination. Presumably, the court's reasoning would appear to require that the women's rates should be raised to somewhere between the present female and male rates.

16/ 111 Cong. Rec. 13359 (June 11, 1965)

Recently, in two cases, courts have found against the plaintiffs because they feared the economic consequences and were concerned that any other decision would abrogate the laws of supply and demand. In Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977), the court stated that the plaintiffs' theory "ignores economic realities" and "the laws of supply and demand or other economic principles that determine wage rates for various kinds of work", and that Congress did not require "an employer to ignore the market in setting wage rates for genuinely different work classifications."[17/]

It would appear that these courts failed to recognize that such determinations are for Congress, and that Congress has indeed frequently enacted regulatory legislation, such as the Equal Pay Act, the antitrust laws, the CAB Act, the ICC Act, etc., which does indeed upset the law of supply and demand.

In any event, the Supreme Court has already flatly rejected the concept that labor market and supply and demand considerations may justify discrimination. In Corning Glass,[18/] the Court stated:

> "The differential arose simply because men would not work at the low rates paid women inspectors, and it reflected a job market in which Corning could pay women less than men for the same work. That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work."

17/ See also, Lemons v. City and County of Denver, 17 FEP Cases 906 (D. Colo. 1978)

18/ Corning Glass Works v. Brennan, 417 U.S. 188 (1974)

> "The whole purpose of the Act was to require that these depressed wages be raised, in part as a matter of simple justice to the employees themselves, but also as a matter of market economics, since Congress recognized as well that discrimination in wages on the basis of sex 'constitutes an unfair method of competition'."

Although Corning Glass involved the EPA, the Court's conclusion that Congress determined that market economics could not justify sex discrimination is equally applicable to "comparable worth". Market conditions and supply and demand arguments are clearly irrelevant where an employer pays disparate wages because of sex to workers who apply for employment at the same personnel office and are employed on traditionally female and male jobs within the same bargaining unit, even though the jobs involve the same skill, effort and responsibility.

C. Intentional Discrimination - IUE v. Westinghouse

Finally, even assuming, arguendo, that Gunther was wrongly decided, there remains the question of whether a specific intent to discriminate in the payment of wages violates Title VII.

A violation of the Equal Pay Act may occur in the absence of any intent to discriminate. On the other hand, the first sentence of 703(h) makes clear that the four exceptions do not apply where the differences in wage rates result from "an intention to discriminate". This issue is involved in the key "comparable worth" case now pending in the Third Circuit, IUE v. Westinghouse.

The facts in that case show that the wage structure was established with an express purpose of discriminating against women. To provide a picture of the admitted deliberate discrimination by Westinghouse in establishing the wage rates, it may be useful to spell out briefly some of the undenied facts.

In establishing a rate structure, the Westinghouse Wage Administration Manual instructed plant officials to proceed in three distinct steps. The first step was the "Point-Rating" of all jobs. The Manual specified the factors to be taken into account in the point-rating, specifically "Knowledge and Training Required", "Specific Demands of the Job" and "Responsibilities Involved". The second step was assigning each job a "labor grade" in accordance with its point rating. The third step was the development of "key sheets", which set forth the hourly wage for jobs at each labor grade.

The Manual instructed plant officials to compensate women's jobs at a lower wage rate than men's jobs which had received the same point rating. Under a heading labelled "Wage Rates for Women", the Manual explained:

> The gradient of the women's wage curve . . . is not the same for women as for men because of the more transient character of the service of the former, the relative shortness of their activity in industry, the differences in environment required, the extra services that must be provided, overtime limitations, extra help needed for the occasional heavy work, and the general sociological factors not requiring discussion herein.
>
> The rate or range for Labor Grades do not coincide with the values on the men's scale.

Basically then, we have another wage curve or Key Sheet for women below and not parallel with the men's curve.

A 1956 "Key Sheet" illustrates the process:

KEY SHEFT TRENTON PLANT - MARCH 20, 1956

FEMALE		MALE	
1W	$1.525	1M	$1.66
2W	1.555	2M	1.695
3W	1.585	3M	1.73
4W	1.62	4M	1.77
5W	1.65	5M	1.85
		6M	1.92
		7M	2.00
		8M	2.13
		9M	2.305

The "W" jobs were rated by the company, according to factors selected by the company, as having the same worth as the corresponding "M" job, but the jobs were paid less because they were performed by women. In fact, the highest women's rate was lower than the lowest male rate.[19/]

19/ The War Labor Board's decision includes the following "typical wage rate schedule for one of the Westinghouse plants", which graphically illustrates the operation of the Westinghouse job rating system:

Fairmont

Labor Grade	Men's Jobs Day Work (1)	(2)	(3)	Point Evaluation	Women's Jobs Day Work (1)	(2)	(3)
1	$.755	$.755	$.765	0 - 49	$.54	$.57	$.60
2	.755	.765	.785	50 - 62	.57	.60	.63
3	.765	.785	.815	63 - 78	.60	.63	.66
4	.785	.815	.855	79 - 98	.63	.66	.69
5	.815	.855	.905	99 -123	.66	.69	.72
6	.955	.905	.955	124 -154			
7	.905	.955	1.025	155 -192			
8	.955	1.025	1.095	193 -239			
9	1.025	1.095	1.165	240 -299			

The Board went out of existence before a remedy could be formulated.

In 1965, as a result of the passage of the Civil Rights Act, the separate key sheets were finally merged into a unitary key sheet in which the labor grades had no sexual designation. But rather than simply combining the five women's labor grades with the five corresponding men's labor grades, Westinghouse expanded the number of labor grades from nine to thirteen and generally accorded women's jobs labor grades in the new scale below those of male jobs that had been at the corresponding labor grade level before the merger.

Although the actual wage rates have, of course, increased in the past forty years since they were originally set in 1939, the general across-the-board increases applicable to all jobs have left the discriminatory pattern basically unchanged for those years. There have also been some changes in job content over the years, and some rate adjustments effected as a result of litigation initiated by IUE, but the changes have not eradicated the wage inequities, and women at the Trenton plant are still compensated under a rate structure that embodies the deliberate discrimination involved in its formation.

Moreover, although Westinghouse has abandoned the formal sex segregation of jobs, women employees at the Trenton plant are still clustered in the traditional women's jobs. The following Table shows employee assignments at the Trenton plant as of November 30, 1975:

Westinghouse - Trenton Plant

	Male	Female
LG1	0	6
LG2	0	33
LG3	1	125
LG4	0	18
LG5	21	16
LG6	4	14
LG7	3	0
LG8	2	0
LG9	3	1
LG10	4	0
LG11	0	0
LG12	19	0
LG13	19	0
	76	213

This table shows that with a single exception the 183 employees working at Labor Grades 1 through 4 were women. These are the grades into which the women's jobs were placed in 1965. Eighty-five percent of the female and 1% of the male employees are assigned to these jobs.

An interpretation of the Bennett Amendment to permit such deliberate and intentional discrimination is offensive to the essential purpose of Title VII -- the elimination of invidious discrimination in the workplace. It requires the conclusion that Congress intended to "authorize" such blatantly discriminatory employment practices.

The Ninth Circuit in Gunther illustrated the absurdity of relying on the Bennett Amendment to justify deliberate discrimination with the following examples:

> "Assume, for example, that an employer tells a female worker, not employed at a position that is substantially equal

> to that performed by a male, that he would pay her $30 a week more if she was male. For want of a male counterpart performing equal work, such blatant discrimination would not be prohibited by the Equal Pay Act. We find no indication, however, that the Bennett Amendment was intended to legalize such practices under Title VII. Likewise, in a situation where primarily women are employed in a type of job that is comparable but not substantially equal to that performed by men, an employer is free under the Equal Pay Act to decrease the wages of the women solely because of their sex. Such a practice is prohibited by the plain language of §703 and will continue to be under our interpretation of the Bennett Amendment.

In finding that Title VII was no broader than the Equal Pay Act in IUE v. Westinghouse, Judge Barlow acknowledged that:

> "[G]iven this Court's decision, an employer could isolate a job category which was traditionally all female, arbitrarily cut the wages of that job class in half for the sole reason that its holders were female, and yet not run afoul of the broad remedial provisions of Title VII."

Judge Barlow's conclusion that Congress fully intended to sanction such blatant discrimination against women flies squarely in the face of the United Steelworkers of America v. Weber case,[20] where the Supreme Court, a year later, held that Congress' overall intent was to prohibit invidious discrimination against minorities and women.[21]

20/ 99 S. Ct. 2721 (1979).

21/ The view that the Bennett Amendment does not legalize such discriminatory practices under Title VII gains added force from the Supreme Court's decision in Teamsters v. United States, 431 U.S. 324 (1977). Construing the "bona fide seniority system" proviso to Title VII, which, like the Bennett Amendment, is part of Section 703(h), the Court found that the proviso was intended to protect certain practices which are not deliberately discriminatory and which serve valid ends, while leaving unprotected any practice which is deliberately discriminatory.

D. Subsequent Congressional Actions With Respect to the Bennett Amendment

The post-Act legislative history further supports the theory that Congress did not intend to sanction blatant wage rate discrimination. The following statement from the Report of the Senate Committee on Human Resources to accompany the 1978 Pregnancy Amendments to Title VII is of great significance:

> "[T]he Bennett Amendment . . . provides that if a practice is authorized by the Equal Pay Act, 29 U.S.C. §206(d) - that is, if it is within one of the four enumerated exceptions to the Equal Pay Act - then it is not unlawful under Title VII.
>
> * * * * * *
>
> It is the Committee's opinion that any application of the Bennett Amendment which assumes that the provision insulates from Title VII all compensation and fringe benefit programs which do not also violate the Equal Pay Act is not correct . . ." [22]

Further support for the view that Congress did not reject the "comparable worth" theory by the passage of the Bennett Amendment, is found in the passage of the Civil Service Reform Act, which states as a "Merit System Principle" that

> "Equal pay should be provided for work of equal value."
>
> Section 2301(b)(3), Public Law 95-454, October 13, 1978

[22] S. Rep. No. 95-331, 95th Cong. 1st Sess. 3, 4 (1977)

In summary, we submit that the Gunther application of Bennett will be sustained. In any event, the Bennett Amendment should be read consistently with the balance of Section 703(h) and held inapplicable to discrimination in compensation that is the result of an intention to discriminate on the basis of sex.

Any other interpretation would also result in different interpretations of Section 703(a)(1) for different protected groups, inasmuch as the Equal Pay Act applies only to sex-based wage differentials. Surely Congress could not have intended that society would tolerate women getting less pay for comparable work while forbiding such discrimination with respect to minorities. Indeed, the Supreme Court in Los Angeles County Department of Water and Power v. Manhart, 435 U.S. 709 (1978), stated that:

> "Congress has decided that classifications based on sex, like those based on national origin or race, are unlawful."

E. The Future of "Comparable Worth" Under Executive Order 11246

Although the Fifth Circuit[23/] and a D.C. Federal District Court judge[24/] have held that a bona fide seniority system which complies with Section 703(h) may not be held in violation of the Executive Order, it is not clear how this issue will ultimately be decided. Even assuming, however, that the reasoning of these lower courts should prevail, it would appear to have no impact on the "comparable worth" issue. This is because the so-called "authorizati

23/ U.S. v. East Texas Motor Freight System, 16 FEP Cases 163 (5th Cir. 1977)

24/ U.S. v. Trucking Management, Inc., 20 FEP Cases 342 (D.C. District 1979)

sanctioned by the Bennett Amendment relates only to unlawful employment practices "under this title . . .". The limiting language "under this title" is not contained in the first sentence of §703(h) which was relied on by the Fifth Circuit and the D.C. Federal District Court in the East Texas and Trucking Management cases.[25/] Accordingly, notwithstanding the ultimate resolution of the effect of the Bennett Amendment on Title VII, it appears that the Bennett Amendment clearly will have no effect on the Executive Order, and that sex discrimination in compensation is therefore prohibited by the Executive Order whether the discrimination involves substantially equivalent jobs or jobs of "comparable value".

CONCLUSION

It is obvious that the statutory prohibition on discrimination in compensation has traveled a rocky road. The Gunther decision, however, portends a smoother road ahead, and the upcoming Third Circuit IUE decision should tell us more. In any event, regardless of the eventual resolution of the Bennett Amendment issue, the elimination of discrimination in compensation can to a large extent be achieved through the Executive Order.

25/ §703(h) quoted in fn. 5, supra.

LABOR CENTER REPORTER

Number 31
March 1981

BERKELEY, CA 94720
(415) 642-0323

UNIVERSITY OF CALIFORNIA, BERKELEY
CENTER FOR LABOR RESEARCH AND EDUCATION
INSTITUTE OF INDUSTRIAL RELATIONS

CLOSING THE WAGE GAP: WOMEN WORK FOR PAY EQUITY

"Equal pay for comparable work!" This challenge by women workers was echoed in public hearings January 28-30 in San Francisco. Sponsored by the California Commission on the Status of Women, the Department of Industrial Relations, and the Department of Fair Employment and Housing, these hearings were another step toward legislation and regulations sought by women's unions and organizations to combat pay inequity.

The demand by women for pay equity has arisen from the limitations of "equal pay for equal work," the sex discrimination doctrine of the 1963 Equal Pay Act. Women are segregated in occuaptional ghettoes, such as clerical, hospital, library and domestic work. Jobs in these ghettoes pay lower wages than other jobs filled by men with similar education, skills, and job experience. So women are calling for equal pay for work of comparable value, even if the jobs are quite different in nature, to raise wage rates in female-dominated occupations. This is the demand for pay equity, or equal pay for comparable worth.

Evidence of job segregation is overwhelming. Across the country, women make up 45% of the labor force, but are 95% or more of secretaries, household workers, dressmakers, and sewing machine operators. In San Francisco a 1978 study of 20,000 city workers--almost half women--found dramatic sex segregation. Men worked in 88% of over 1,000 job classifications, while women were crowded into only 31%. The survey, by local members of the Women Library Workers, found an overall 74% higher average salary in jobs filled predominantly by men compared to those filled by women. Even in comparisons of workers with equal education and experience in their occupations, it turned out that male clerk typists were 64% ahead of female clerk typists.

Legal and Legislative Battles

The struggle for pay equity is being fought on several fronts. Working women's organizations are backing lawsuits by unions and workers to extend the coverage of Title VII of the 1964 Civil Rights Act. One case to be decided this Spring by the U.S. Supreme Court claims discrimination because female jail matrons are paid less than male jail guards. In another case which may go to the Supreme Court, the International Union of Electrical Workers successfully used Westinghouse records, showing lower pay for equally-rated women's jobs, to win their case at the circuit court level.

Government agencies such as the Equal Employment Opportunity Commission (EEOC) are supporting efforts by unions and women's organizations to push changes in company policies. This process includes threats of lawsuits and use of Executive Order 11246 forbidding discrimination by federal contractors. The EEOC has commissioned a study by the National Academy of Sciences on the feasibility of unbiased job evaluations systems, to be published soon. Pending state legislation co-sponsored by the California State Employees Association and others (AB 129) would require the State Personnel Board to consider comparable worth when deciding salaries for female-dominated jobs.

Unions Organize, Bargain for Pay Equity

Comparable worth appeals are part of new union organizing drives and are used increasingly in collective bargaining. In addition to endorsements of the pay equity struggle from individuals, unions and the AFL-CIO, many locals have brought up comparable worth payment in negotiations. Clericals in the California state college system won an additional 2-1/2% wage hike when Local 909 of the American Federation of State, County and Municipal Employees (AFSCME) demonstrated their past victiminzation by discriminatory pay standards. AFSCME Local 101 is currently bargaining for extension of a comparable worth system of compensation now used for city employees in San Jose, following a two-year study funded by the city. In 1977, the Communications Workers of America used results from its Job Analysis Committee to win compression of over 300 clerical job titles to seven. The United Electrical Workers recently won special wage increases and upgrading for women workers' classifications in local settlements.

An especially promising organizing drive began at Stanford University when over half of 2,000 clericals petitioned to join the Office Staff Organizing Committee (OSOC). The impetus for this drive was the realization in 1979 by members of one small women's group that their three year wage increase had been 5.3%, while technicians received 21% and the largely male labor pool--requiring just a driver's license for employment--received 19%. This drive by women clericals is now in representation hearings before the NLRB.

The Stanford clericals are working with United Stanford Employees, Local 715 of the Service Employees International Union, which is composed mostly of male technical, maintenance and service workers. "It is extremely important to explain to other union members who are male that this issue will not take anything away from them," commented Joyce Tipp-Coats, chairperson of OSOC. She is very hopeful about the union drive, noting that sudden across-the-board wage increases to clericals of 10% in 1980, and 12% promised for 1981, have only fueled the women's efforts to unionize.

Issues for the Future

Pay equity raises some special problems for unions. Foremost is the need to keep men and women workers united and fighting for a bigger pie to divide. Asking higher-paid male workers to take lower wage increases so women can "catch up" simply plays into the employers' hands and risks splitting union forces at the bargaining table. It also forces workers to pay now for management's history of pay discrimination.

Pay equity can also be a complicated issue, requiring careful use of job evaluation systems to determine "unbiased" wage differentials with point-factor measurements. Organizers must work to explain these systems so all workers remain actively involved in the struggle.

While measuring the worth of jobs can demonstrate past pay discrimination, it can also be used by management to weaken the union's side in bargaining. If detailed job evaluations are accepted as the rule for wage setting, this may lead toward more use of time and motion and "productivity" data, and toward less reliance on the kind of bargaining patterns that originate where labor is strong (and mostly male), and then spread with a blanket effect to other units (mostly female). Many unionists therefore advocate using comparable worth as only one tool in the broader

struggle for higher wages for women workers. Ultimately, any measurement system is only as strong as the movement to implement its findings. And the power of unionization is apparent in today's pattern of 20 to 46% higher wages for unionized compared to non-unionized women workers.

Some women agree with anti-pay equity business groups on one apparent contradiction: while pay equity would be a victory, it would leave women largely in their traditional occupations. Working women's organizations insist that women must continue to gain access to more "non-traditional" jobs. But the problem of lower pay for jobs that are traditionally women's must also be addressed. This is the goal of the comparable worth struggle.

- Deborah Armida

RESOURCES

In addition to the many union pamphlets, position papers, and continuing newspaper coverage of pay equity, here are some outstanding general resources:

Comparable Worth Project, 488 41st St., #5, Oakland, CA 94609, 415/658-1808. Newsletter published beginning January 1981. --$16 institutions, $8 regular, $4 low income, per year.

Manual on Pay Equity, published by the Committee on Pay Equity Conference on Alternative State and Local Policies, 2000 Florida Ave., NW, Washington, DC 20009. -- $9.95 + .75 postage by mail; 25% on ten or more copies.

Bargaining for Equality, by Women's Labor Project, National Lawyers Guild, PO Box 6250, San Francisco, CA 94101. --$4.50 + .50 or $1.50 postage (book rate or first class); 40% discount on ten or more copies. Covers collective bargaining over issues affecting women including pay equity.

COMPARABLE WORTH IN THE PUBLIC SECTOR

Women Workers on Rise

The percentage of women over 16 years old who work outside the home has increased steadily since World War II—from 37% to 50% of all adult women. However, the wages of women have not kept pace. In 1977 women who worked a year-round, full-time job earned only 59 cents for every dollar earned by men.

Analysts at the Women's Bureau of the U.S. Department of Labor have identified two main factors which maintain the earnings gap between men and women workers. Women are concentrated in traditionally "female" jobs. Moreover, the majority of women workers lack seniority; they are employed mostly in entry-level positions. However, taking these two factors into consideration, much of the difference in earnings between men and women remains to be explained.

Many people contend that employers have taken advantage of the concentration of women in typically "female" professions by setting lower wages for these jobs than for fields dominated by men even though the work performed by both groups is of "comparable" value to the organization or to society as a whole.

Advocates of comparable worth contend that two dissimilar jobs of comparable value should receive equal pay. They argue that many women in female-dominated professions are paid less than men holding male-dominated jobs even though both positions may have similar worth to the organization. Four hundred city employees in San Jose, California, recently walked off their jobs to demand equal pay for jobs of comparable worth.

Equal Work v. Comparable Work

It must be emphasized that equal work and work of comparable worth are two very different standards on which to base pay. Two jobs of equal work have similar content requiring similar work behaviors and tasks performed under similar working conditions. Employees doing equal work have similar responsibilities, degree of effort, and abilities. Workers can sue under the Equal Pay Act of 1963 only if they can show that they are receiving less pay than another worker performing a job equal to their own.

Two jobs of comparable worth, on the other hand, may have dissimilar content, different work behaviors and tasks. The jobs may be performed under different working conditions. For instance, in an evaluation of jobs in the City of San Jose, senior chemists were rated of equal value to senior librarians in terms of know-how, problem-solving, and accountability. In order for two jobs to be considered of comparable worth or value, they must require similar responsibility, effort, and ability.

Many persons are now demanding equal pay for jobs of comparable worth. This issue of the **Midwest Monitor** examines the controversy surrounding such demands. The controversy is intimately related to the long history of sex discrimination in the workplace and the place occupied by the "female" professions. The conflict pits federal laws on sex discrimination against the long practiced, traditional workings of the marketplace.

The **Monitor** explains federal laws against sex discrimination and reviews pertinent court decisions including the recent Supreme Court decision in *Gunther v. County of Washington*. The issue discusses the difficulty of objectively assessing comparable jobs and describes methods by which employers can evaluate jobs of comparable worth.

It appears that the controversy over equal pay for jobs of comparable worth will be hammered out in the courts over the next several years. Since the June 1981 *Gunther* decision, women workers seeking higher wages because they perform work comparable to that performed by men may sue for sex discrimination under Title VII of the 1964 Civil Rights Act.

At a seminar on the subject in September of 1981, Daniel Leach, Vice Chair of the Equal Employment Opportunity Council, said that he doesn't expect the government to take a position on the issue. Leach said the issue of comparable worth will be spelled out in the courts.

Pertains to Public Sector

The controversy over comparable worth is pertinent to the public sector because jurisdictions often base their wage scales on the wages paid for similar jobs in the local labor market. Thus, any sex discrimination operating in the private sector is perpetuated in the public sector.

In many jurisdictions the American Federation of State, County, and Municipal Employees (AFSCME) has been fighting for equal pay for jobs of comparable worth. Members, including more than 400,000 women, have pursued their goal through collective bargaining, the courts, and state legislatures.

A number of states, including Connecticut, New Jersey, Georgia, and Oklahoma, are considering pay equity legislation. The state of Idaho has already enacted a law that requires a public employee's pay

grievances regarding pay inequities are less likely to occur. Job evaluation must be continually updated by periodic reviews and re-evaluation of job content. Job evaluation is most successful when employees are asked to participate and have free access to the results of the analysis.

Washington Conducts Study

The State of Washington ordered a job evaluation in 1973 for the specific purpose of comparing wage rates of jobs traditionally held by men with the wage rates of jobs of comparable worth traditionally held by women.

The results showed that pay rates for female-dominated jobs averaged about 80% of pay rates for male-dominated jobs even though the jobs had the same number of job evaluation points.

Evaluators chose 121 positions which qualified as female-dominated or male-dominated jobs. Fifty-nine of these job fields were dominated by men; i.e., 70% of the jobholders were men. The evaluators analyzed 62 positions which were female-dominated; i.e., held by 70% females or more.

Jobholders answered classification questionnaires on their positions, and job descriptions were obtained from these results. A committee of 13 persons from state agencies, private industry, and labor, who were all trained by the job evaluation consultants, then evaluated the jobs based on the point-factor system. They chose four factors—knowledge and skills, mental demands, accountability, and, for non-managerial jobs, working conditions.

Women Strike in San Jose

The City of San Jose conducted a job evaluation during its 1979 bargaining session with Local 101 of the American Federation of State, County, and Municipal Employees. The independently conducted evaluation showed that jobs dominated by women are paid from 2% to 10% less than the overall average pay trend for the City which includes both male and female employees.

Disagreement over how these results should be acted upon led to the first recorded strike on the issue of comparable worth.

On July 5, 1981, approximately 400 city employees, mainly female librarians, recreation and parks workers, and clerical employees, walked off their jobs claiming that the City was intentionally discriminating against them because of their gender. The strike began when the workers' old contract expired. Demands focused on the results of the job evaluation study.

A special committee of 10 city employees who worked with the Hay Associates Consulting Firm conducted the study. They analyzed 288 city job classifications, both management and non-management, according to three criteria: know-how, the amount of knowledge required to do the job, not the education and training of the incumbent; problem-solving; and accountability.

The job classifications were then grouped into 15 divisions, each division consisting of jobs determined to be of equal value. These divisions were compared to the existing salary schedules. The committee then identified whether the jobs were dominated by men or women.

The results confirmed that types of jobs predominantly held by women were paid less than those predominantly held by men. The wages in female-dominated jobs were 2% to 10% below the pay trend for the City, and the wages in male-dominated classes were 8% to 15% above the overall trend.

This disparity occurred even though the study established that many female-dominated jobs had the same number of evaluation points as male-dominated jobs.

For example, senior chemists and senior librarians were rated the same yet the salary of a senior chemist working in this predominantly male field is $442 a month higher than the female-dominated field of librarians. A plant shift supervisor (a predominantly male field) was rated lower than a senior librarian yet received $432 more per month.

Telephone operators, a female-dominated job, were rated higher than water meter readers, a male-dominated job, but were paid $188 less per month.

The City did not dispute the validity of the study. It did disagree with the union about how the results should be interpreted and how much the City could afford to pay to correct the disparities.

The City charged that the union was interpreting the results of the study too strictly. City officials said that the union was going too far in asking the City to grant equal pay for jobs of comparable worth without any regard for market conditions.

The strike lasted nine days. On July 15, AFSCME members overwhelmingly ratified a $5.4 million, two-year contract that narrowed the pay gap between men and women workers. The agreement included $4 million for general pay increases as well as $1.4 million over the next two years to raise the pay in 62 female-dominated fields to within 10% of comparable job categories that are dominated by men.

Conclusion

While the Supreme Court did not rule specifically on the question of comparable worth in the 1981 *Gunther* decision, the door has been opened for women to sue for wage discrimination even though they do not perform the same job as a man receiving higher pay. How these wage discrimination suits will be resolved remains to be seen. No accepted working definition of comparable worth exists nor are there procedures to measure job "worth" with any legal certainty. Many state and local governments are conducting formal job studies to determine male and female wage discrepancies. Hopefully, these inequities can be corrected without resorting to lengthy and costly suits or public employee strikes.

The worth of the job to the organization is then determined by ranking it with other jobs in a hierarchy. Finally, wage or salary rates are assigned to each job based on the results of the evaluation. The evaluation alone may determine the wages as it does with the U.S. Civil Service System. Or the evaluation may be only one factor among many used to set a wage.

Four Methods Used

The four conventional methods of job evaluation are the *point method, ranking, classification,* and *factor comparison.*

The most widely used method of job evaluation is the *point method.* A set of factors, for example, skill, responsibility, and effort, is chosen. A scale is devised for each factor which represents increasing levels of worth. Each level corresponds to a given number of points. The range of possible points is constant across all jobs. A job is rated on each factor separately, and is assigned the corresponding number of points. Points are totaled to yield a job worth score.

Ranking is typically used by small firms. Jobs are ranked from top to bottom in the organization according to their worth. Unfortunately, the criterion of worth is rarely defined. Ranked jobs are usually grouped into categories, each category earning a different pay level. Under this method, the worth of the whole job is determined.

Classification makes use of a predetermined idealized hierarchy with job categories based on the degree of skill and responsibility required to perform that job. Each actual job is then fit into this predetermined structure by comparing its characteristics with the idealized levels.

The best example is the General Schedule (GS) classification used in federal government employment. Eighteen grades are defined on the basis of eight factors.

If a new job is established, it is assigned a GS level with a specific pay range. One drawback of classification is the difficulty in pigeonholing a job into a single category if its various skills and responsibilities fit into widely discrepant levels in the GS hierarchy.

The *factor comparison* method is the most cumbersome method of job evaluation to use. It is generally agreed that the results are highly subjective and it is difficult for employees to understand.

Using this method, a set of factors, usually called compensable factors, is chosen and the evaluation is based on them. It is desirable to keep the number of factors low; four to seven factors are ideal.

A set of jobs is chosen and ranked according to their worth. Because these jobs will serve as a benchmark for evaluation of all the other jobs, there should be a consensus on their worth to the organization.

Each one of these benchmark jobs is then evaluated according to the value of each factor. For example, a secretary who makes $200 a week might have compensable factors valued at $100 for skill, $70 for responsibility, and $30 for effort ($100 + $70 + $30 = $200).

Once the benchmark jobs have been evaluated, and discrepancies taken care of, the remaining jobs are [illegible] factor by factor and assigned a score. This score, often a dollar amount, is determined by placing the evaluation on a scale of values for each factor. To arrive at the final job evaluation, the scores for all of the factors are added to give a total score, value, or wage for each job.

Wage Adjustments Results

A complete job evaluation specifies the ideal relationship between job worth scores and wages. Current wage rates are compared to the ideal level of compensation. If wage rates fall below this ideal, increases are usually granted. If current wage rates are higher than the ideal, wage increases may be withheld. This is called "red circling."

Organizations often allow wages to deviate from the ideal by an established percentage. Only wage rates which fall above or below the allowable deviation are changed.

Negotiators in San Jose, California, had a hard time getting union officials and city representatives to agree on how much deviation from the ideal should be allowed. Union officials wanted the deviation to be as small as possible while city representatives wanted a larger deviation to be allowed.

Difficulties Arise

Job evaluation is more complicated in actual practice than any mere description can convey. Those factors which truly determine a job's worth must be identified. The content of the job must be weighed for each factor. Of special concern is the amount of sex discrimination inherent in the process of evaluating jobs itself.

Obviously, evaluators will make some subjective judgments. Studies have shown that there can be substantial disagreement on the appropriate ordering of jobs when two or more persons do the ordering.

Of primary importance, however, is whether or not job evaluators can truly measure the worth of a job. This is a difficult question to answer since "worth" has never been adequately defined nor is there a consensus about the meaning of worth.

A recent report by the National Research Council of the National Science Foundation stated that all measures of the worth of a job are subjective and that job evaluation techniques may not provide a better gauge of worth than the traditional market value wage.

Evaluation Offers Side Benefits

An organization may undergo job evaluation for other reasons besides setting wages. Such analysis puts wages and salaries in an order and usually makes it easier for employees to understand the pay system.

Job evaluation is an effective tool in a large organization since

The district court had originally found for the plaintiff arguing that the vice president violated Title VII when he stated he would not pay the plaintiff as much as a male.

The Fifth Circuit Court reversed the lower court decision because the "equal work" standard had not been met by the plaintiff. The Fifth Circuit Court explained that the Equal Pay Act and Title VII must be construed harmoniously: to establish a case under Title VII the plaintiff must prove that a wage differential was based upon sex and that equal work was performed for unequal compensation (511 F.2d at 166).

Similarly, the Tenth Circuit Court in 1971 rejected a female plaintiff's claim that she merited the same pay as jobs performed by men although her job had a different content. She alleged she was denied higher compensation because of her sex, in violation of Title VII. The Court stated that "to establish a case of discrimination under Title VII, one must prove a differential in pay based on sex for performing 'equal work'. . ." (448 F.2d at 117). This interpretation was reaffirmed in *Lemon v. City and County of Denver:*

> The equal pay for "comparable work" concept had been rejected by Congress in favor of "equal work" in 1962. The Bennett Amendment is generally considered to have the equal pay/equal work concept apply to Title VII in the same way as it applies in the Equal Pay Act (620 F.2d 228).

Two decisions involving Westinghouse-Electric in 1977 and 1979 deal with plaintiffs who argued that the employer was intentionally paying lower wages for allegedly female-dominated jobs than for jobs predominantly held by men. The jobs in question did not have the same content but the plaintiffs indicated they would show that the jobs had been evaluated as comparable.

In both cases the district courts construed the Bennett Amendment as showing that Congress intended to apply the equal work standard to cases involving sex discrimination in compensation.

The legislative histories of both Title VII and the Equal Pay Act were read together as evidence that Congress intended to limit the scope of judicial intervention into the business place and prevent businesses from being "subjected to massive job re-evaluation which would be costly and allow for varied interpretations as to what jobs are comparable" (17 FEP Cases at 16 and 19 FEP Cases at 450).

Courts Refuse to Disrupt Market

In earlier decisions the courts also tended to reject claims of equal pay for jobs of comparable worth on the grounds that the current wage system was sound. These judges refused to tamper with the marketplace law of supply and demand.

In *Christensen v. State of Iowa* in 1977, plaintiffs contended that Title VII of the Civil Rights Act of 1964 was violated because the employer paid clerical workers, who were exclusively female, less than it paid physical plant workers, who were mostly male, for jobs that were of allegedly equal value to the state university.

The university determined its wage scales for nonprofessional jobs by referring to wages paid for similar work in the local labor market. It then modified the results of a job evaluation when it was determined that the local market paid higher wages for physical plant jobs.

In its decision supporting the university's action, the Eighth Circuit Court refused to tamper with the current market value of women workers and adhered to the laws of supply and demand. The Court stated:

> The value of the job to the employer represents but one factor affecting wages. Other factors may include the supply of workers willing to do the job and the ability of the workers to band together to bargain collectively for higher wages . . . we find nothing in the text and history of Title VII suggesting that Congress intended to abrogate the laws of supply and demand or other economic principles that determine wage rates for various kinds of work. We do not interpret Title VII as requiring an employer to ignore the market in setting wage rates for genuinely different work classifications.

Fears of disrupting the "entire economic system" prompted a similar decision in *Lemon v. City and County of Denver* in 1978. In this case, nurses hired by the city alleged that the City's practice of paying jobs at the prevailing wage in the Denver area violated Title VII on the grounds that society had placed an improperly low market value on nursing work because the jobs were held by women.

The Judge noted that such a theory was "pregnant with the possibility of *disrupting the entire economic system* of the United States . . . and there isn't a judge in the United States, especially this Judge, qualified to set everybody else's pay" (17 FEP Cases 906).

Evaluating Jobs Difficult

One of the primary objections raised by critics of comparable worth is the difficulty of objectively assessing whether two dissimilar jobs are of equal value. These critics favor the traditional wage system shaped by the law of supply and demand as the index of worker value.

However, rather than rely on the marketplace value of a job, proponents of comparable worth advocate the use of formal job evaluation programs to establish a job's worth and pay.

Job evaluation has received special attention in the debate over equal work and jobs of comparable worth. Job evaluation is a formal procedure for ranking a set of jobs or positions according to their value or worth to an organization, usually for the purpose of setting wages. The use of job evaluation is widespread in both the public and private sectors.

Jobs are evaluated by carefully describing the duties, tasks, requirements, and working conditions based on direct observation, interviews, and questionnaires sent to jobholders and supervisors.

scale for female guards, but not for male guards, at a lesser level than its own survey of outside markets and the worth of the jobs warranted.

Justices White, Marshall, Blackmun, and Stevens joined with Justice Brennan in holding that Title VII's prohibition of sex-based wage discrimination is not limited to claims of equal pay for equal work.

Chief Justice Burger and Justices Steward and Powell joined in a dissent with Justice Rehnquist who stated that the "Court today holds that a plaintiff may state a claim of sex-based wage discrimination without even establishing that she has performed equal or substantially equal work to that of males as defined in the Equal Pay Act."

Controversy Arises Over Amendment

These justices based their dissent on a controversial section of Title VII called the Bennett Amendment. The Bennett Amendment exempts compensation claims from Title VII coverage if the employer's compensation system is authorized by the Equal Pay Act. Specifically, the Bennett Amendment states:

> It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of wages or compensations paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206 (d)) (i.e., the Equal Pay Act).

Ever since it became part of Title VII, the Bennett Amendment has aroused a great deal of discussion over its meaning.

Was the amendment intended to incorporate into Title VII the substantive "equal work" standard of the Equal Pay Act and thus limit cases of sex-based compensation discrimination to instances where the "equal work" standard was violated?

Or was it merely intended to incorporate into Title VII the four affirmative defenses of the Equal Pay Act which permit employers to pay a different wage if there is a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a wage differential based on any other factor besides sex?

The first interpretation made it impossible to receive relief under Title VII for compensation discrimination where jobs are determined to be of comparable value since the Equal Pay Act is violated only when jobs are for *equal* work that requires *equal* skill, responsibility, effort, and working conditions. The amount of legal recourse plaintiffs have in compensation disputes based on comparable worth hinged on how the Bennett Amendment was interpreted.

The dissenting justices in *Gunther* interpreted the Bennett Amendment to mean that there can be no Title VII claim of sex-based wage discrimination without proof of equal work. The employer in this case Pay Act's equal work formula into Title VII. That is, a plaintiff cannot prove a violation unless the Equal Pay Act is also violated.

Whereas, the majority of the Supreme Court held that the Amendment simply incorporated into Title VII the Equal Pay Act's four affirmative defenses but not its equal work standard. The Supreme Court found that the employer's interpretation of the Bennett Amendment left several types of discrimination without any remedy.

The dissenting justices acknowledged that the language of the Bennett Amendment was ambiguous but concluded that their interpretation was most plausible and consistent with the Equal Employment Opportunity Commission's initial interpretation of the statute. They further argued that the adoption of a comparable worth doctrine would ignore the economic realities of supply and demand and would involve both government agencies and courts in the impossible tasks of ascertaining the worth of comparable work.

Bennett Amendment Origins

When the Civil Rights Act was first proposed in the early 1960s, House debates on Title VII showed little consideration of what constituted sex discrimination and no attention was paid to equal pay issues.

Some senators were concerned, however, that the anti-discrimination provisions of the bill not only duplicated the coverage of the Equal Pay Act but extended far beyond its scope. They objected to the fact that there was no limitation in the bill which required that the equal work standard be applied, thus the anti-discrimination provisions cut across different jobs.

Consequently, Senator Bennett introduced an amendment for the stated purpose of providing "that in the event of conflicts (with Title VII) the provisions of the Equal Pay Act shall not be nullified." The Bennett Amendment has been the center of controversy regarding comparable worth ever since.

Lower Courts Interpret Acts

Before the 1981 *Gunther* decision, the courts had generally rejected employee claims of equal pay for jobs of comparable worth.

A widely accepted rule developed that the wage discrimination requirements of the Equal Pay Act and Title VII must be read in harmony "in pari materia," and that a person charging wage discrimination based upon sex had the same burden of proof under either statute. Thus, an equal pay violation under Title VII could be shown only if the males' and females' jobs were "substantially equal"—the same standard as that of the Equal Pay Act. In *Orr v. Frank R. MacNeill & Son, Inc.*, in 1975, a Title VII salary discrimination claim was dismissed where the plaintiff asserted that her job as a department head was "just as important" as that of the male department heads even though the work content of the job was different.

- a merit system;
- a system which measures earnings by quantity or quality of production; or
- a differential based on any other factor besides sex.

The employer has the burden of proving if any of these exceptions apply. To establish liability, the Equal Employment Opportunity Commission must show that the jobs are equal under all four of the factors: skill, effort, responsibility, and working conditions.

The Courts have generally found that to prove a violation it is not necessary to prove the jobs to be absolutely equal or identical; it is sufficient that they be substantially equal.

This prevents employers from creating artificial job classifications which are not substantially different but which may be used as a way to escape the requirements of the Equal Pay Act. Job duties and not job titles are relevant. The skills needed to perform the given job are considered, not the skills an employee may have.

When the Equal Pay Act was first proposed, it prohibited employers from paying different wages for work of "comparable character on jobs the performance of which required comparable skills." The Kennedy Administration, women's groups, and unions all supported this concept of comparable worth.

In House debate, however, the bill was amended to reject the notion of comparable worth. An amendment was introduced to provide for equal pay for equal work. Legislators argued that this change was necessary to foster equality. Too many problems would develop using the comparable worth approach, these legislators argued. Moreover, the arbitrators of disputes would have too much latitude in determining which jobs were of comparable worth.

A primary concern was that the U.S. Secretary of Labor not be put in the position of having to second-guess job evaluations that already existed. Since most jobs had been evaluated on the basis of equal skill, effort, responsibility, and similar working conditions, these words were also incorporated into the Equal Pay Act.

Title VII Covers More

Title VII of the Civil Rights Act is a much broader statute than the Equal Pay Act in terms of prohibiting various types of employment discrimination. Title VII prevents employers from discriminating on the basis of race, color, religion, sex, or national origin. It covers many types of employment situations such as hiring, work assignment, transfers, promotions, layoffs, and discharges, as well as compensation.

Title VII has several exempted employment practices. Section 703(h) states that it shall not be unlawful for an employer to apply different standards of compensation or different terms, conditions or privileges of employment where the differences are part of:

- a merit system; or
- a system which measures earnings by quantity or quality of production.

More importantly, Title VII can provide relief for women workers who seek equal pay for jobs that are of comparable worth but dissimilar to higher paying men's jobs.

The Gunther Decision

In the 1981 *Gunther* decision, Justice Brennan, writing for the majority, stated that Title VII's prohibition of sex-based wage discrimination is not limited to claims of equal pay for equal work. If it was limited to this situation "a woman who is discriminatorily underpaid could obtain no relief—no matter how egregious the discrimination might be—unless her employer also employed a man in an equal job in the same establishment at a higher rate of pay."

In *Gunther*, the Court held by a narrow 5-4 margin that a group of women guards at a county jail in Oregon had the right to sue for sex discrimination because they were paid disproportionately less than male guards, even though their jobs were not identical.

The four former matrons of the Washington County jail claimed that their employer evaluated the worth of their jobs and determined that they should be paid at about 95% of the rate paid male correctional officers.

The women further claimed that the County ignored its own job evaluation study and paid them only about 70% as much as the men received. At the same time, the County paid the men the full evaluated worth of their jobs.

They further contended that the County's failure to set their pay at the evaluated worth of the matron's job was the result of intentional sex discrimination.

Proponents Hail Decision

Although the Court did not rule specifically on the issue of comparable worth because the case was more narrowly drawn, proponents of comparable worth have hailed the decision.

Justice Brennan, however, specified that the Court was not embracing the idea of equal pay for jobs of comparable value. Writing for the Court Brennan declared:

> [The employees'] claim is not based on the controversial concept of comparable worth, under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community. Rather, [they] seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination, consisting of setting the wage

to be based on points relating to skill and responsibility. As a result of this law, the pay of more than 2,000 clerical workers has been raised by 16%.

The California state legislature has enacted a policy of setting salaries for female-dominated jobs on the basis of comparability. The Act defines comparability as "the value of the work performed by an employee, or group of employees, within a class or salary range, in relation to the value of the work of another employee, or group of employees, to any class or salary range within state service."

Comparable Worth: Pro and Con

The major disagreement over jobs of comparable worth centers on whether the current market value of various employees is just. Those who argue for equal pay for jobs of comparable worth say that:

- women have historically been "crowded" into certain occupations through discriminatory practices in society;
- the labor market reflects this concentration of women into low paying occupations; and
- if the labor market is discriminatory, so too are the pay systems based on it.

These advocates of comparable worth contend that present market wages should not be used to assess the value of a job because these wages reflect years of sex discrimination. They argue that employers throughout history have paid lower wages for jobs predominantly held by women even though their work was of as much value as work performed by men.

Opponents of comparable worth argue instead for the status quo. They say that current wage rates should be based on the market value of the jobs in question. Thus, they argue that the current wage rates should be maintained regardless of whether they reflect a history of sex discrimination.

Current wage rates are affected by a variety of factors, they contend, which are not accounted for by simply determining jobs of comparable worth. The wage rate is also determined by the availability of persons to perform a given job, the organization's need for persons to perform a given job, and the existence of collective bargaining.

Moreover, opponents contend that it is impossible to assess whether two dissimilar jobs are comparable and thus deserving of equal pay. They say that no method exists whereby the value of dissimilar jobs can be compared with any legal certainty.

If market values are ignored in an attempt to reverse sex discrimination, these critics say, the new wage rates will wreak havoc with the economy. They predict that:

- unemployment will increase, especially among female employees new to the labor force;
- the rate of inflation will rise along with the wage level;
- labor strife will increase as groups that did not receive wage increases demand more money; and
- a federal agency will have to be created to serve as the final arbiter of wage disputes.

Critics proclaim that the revamped wage system would inevitably lead to overwhelming amounts of controversy and litigation.

They predict that organizations and jurisdictions will be swamped with sex-related wage disputes as soon as comparable worth is applied across the nation. Furthermore, organizations and jurisdictions will be unable to resolve disputes because there are no judicial standards for determining which jobs are of comparable worth.

Federal Laws Address Issue

The two major pieces of federal legislation which prohibit job-related sex discrimination in wages are the Equal Pay Act of 1964 and Title VII of the 1964 Civil Rights Act.

The Equal Pay Act was the first piece of federal legislation dealing with sex-based discrimination in wage compensation. Although the Equal Pay Act has had an incredible impact in the marketplace and has provided millions of dollars in back pay to women, it has serious limitations.

The Act provides for equal pay for "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Thus, women may sue only if they can show they are paid less for doing a job that is equal to a man's. If no man performs a similar job, which is often the case in female-dominated fields, then women cannot sue. Thus, the Equal Pay Act does not provide wage protection to the majority of working women.

The Equal Pay Act specifies what the government must show to prove a violation. The government, acting through the Equal Employment Opportunity Commission, must establish that the employer pays differing wages to employees of the opposite sex:

- within the same establishment;
- for equal work on jobs the performance of which requires equal skill, effort, and responsibility; and
- for jobs that are performed under similar working conditions.

If the jobs are not "equal" under all of these standards, no violation will be found.

Exceptions to Equal Pay

The Equal Pay Act includes four affirmative defenses which may permit pay differences. These include situations where unequal payments are made pursuant to:

- a seniority system;

Bibliography

"Comparable Worth Issue Debated at Personnel Management Seminar," *Government Employee Relations Report*, No. 931, September 28, 1981, pp. 27-8.

"Comparable Worth Legislation Moving," *League of California Cities Employee Relations Service Newsletter*, Vol. VI, No. 2, July 1981, pp. 11-2.

"'Comparable Worth' Strike Ends in San Jose," *NLC-SPEER Newsletter*, Vol. IV, No. 6, July 1981, pp. 1&7.

Doherty, Mary Helen and Ann Harriman. "Comparable Worth: The Equal Employment Issue of the 1980s," *Review of Public Personnel Administration*, Vol. 1, No. 3, Summer 1981, pp. 11-31.

"High Court Allows Sex Bias Title VII Suits But Shuns 'Comparable Worth,'" *Government Employee Relations Report*, No. 917, June 15, 1981, pp. 25-8.

Hildebrand, George. "The Market System," in *Comparable Worth Issues and Alternatives*. Washington, D.C.: Equal Employment Advisory Council, 1980, pp. 79-106.

Labor-Management Relations Service Newsletter, U.S. Conference of Mayors, Vol. 12, No. 7, July 1981, pp. 1&3.

Livernash, E. Robert, ed. *Comparable Worth Issues and Alternatives*. Washington, D.C.: Equal Employment Advisory Council, 1980.

Manual on Pay Equity: Raising Wages for Women's Work. Washington, D.C.: Committee on Pay Equity, Conference on Alternative State and Local Policies, May 1980.

Milkovich, George T. "The Emerging Debate," in *Comparable Worth Issues and Alternatives*. Washington, D.C.: Equal Employment Advisory Council, 1980, pp. 23-47.

Northrup, Herbert R. "Wage Setting and Collective Bargaining," in *Comparable Worth Issues and Alternatives*. Washington, D.C.: Equal Employment Advisory Council, 1980, pp. 107-36.

Schwab, Donald P. "Job Evaluation and Pay Setting: Concepts and Practices," in *Comparable Worth: Issues and Alternatives*, Washington, D.C.: Equal Employment Advisory Council, 1980, pp. 49-78.

"Text of Decision of U.S. Supreme Court in *County of Washington v. Gunther*," *Government Employee Relations Report*, No. 917, June 15, 1981, pp. 47-57.

Williams, Robert E. and Douglas S. McDowell. "The Legal Framework," in *Comparable Worth Issues and Alternatives*, Washington, D.C.: Equal Employment Advisory Council, 1980, pp. 197-249.

"'Women's Issues of the '80's,'" *Newsweek*, June 22, 1981, pp. 58-9.