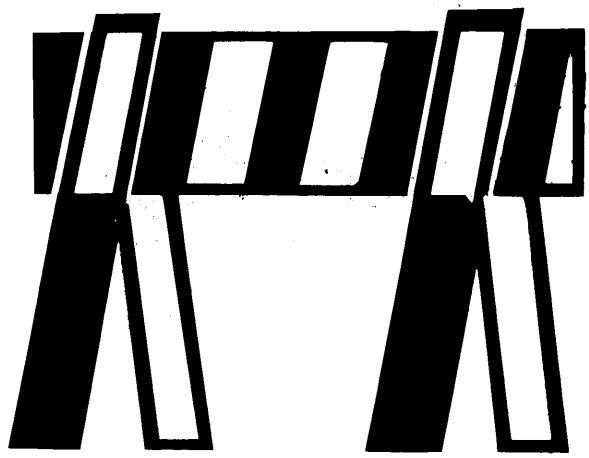
THE CHALLENGE AHEAD

Equal Opportunity in Referral Unions

A Report of the United States Commission on Civil Rights May 1976



U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

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LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
May 1976

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

The report examines the policies and practices of referral unions, which constitute a large segment of organized labor in the United States. The report also assesses the Federal Government's efforts to secure compliance of referral unions and associated employers with laws and Executive orders designed to provide equal employment opportunity.

We have found that referral unions still maintain discriminatory practices that have an adverse effect on the employment opportunities of minorities and women. We have found further that Federal programs to provide equal employment opportunity in the affected industries largely have been ineffective.

We urge that Executive Order No. 11246 be amended to cover labor unions with which Federal construction contractors have collective-bargaining agreements. We also recommend that Federal agencies charged with securing equal opportunity in union membership and training take specific new initiatives, in order to discharge effectively their responsibilities under existing laws and Executive orders. For example, the Office of Federal Contract Compliance Programs should require unions which have collective-bargaining agreements with Federal construction contractors to set goals and timetables for the admission of minorities and women to union membership. Further, the Interstate Commerce Commission should require affirmative action plans of companies it regulates, including trucking companies, so as to provide equal employment opportunity in the unionized sector of the trucking industry.

We ask for your leadership in ending the discriminatory employment practices documented in this report.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

THE CHALLENGE AHEAD:
EQUAL OPPORTUNITY IN REFERRAL UNIONS

A Report of the United States
Commission on Civil Rights
May 1976

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The report was prepared under the overall supervision of John Hope III, Assistant Staff Director, Office of Program and Policy Review.

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1. INTRODUCTION

In several major American industries, certain labor unions play an important role--sometimes the critical role--in deciding who will obtain jobs and who will receive training. These unions are known as referral unions, since one of their functions is to refer workers for employment. Their practices--including their membership, training, referral, and other job-allocation practices--deserve the most careful examination, since they affect the employment opportunities of minorities and women. The subject of this study is the discriminatory practices of unions which engage in referral.

The U.S. Commission on Civil Rights is aware of the commitment of prominent union leaders to the principle of equal opportunity for all Americans. The constitution which resulted from the 1955 merger of the American Federation of Labor and the Congress of Industrial Organizations declared that one of the new organization's objectives was "to encourage all workers without regard to race, creed, color, national origin or ancestry to share equally in the full benefits of union organization."[1] The constitution also provided for a Civil Rights Committee to help implement the principle of nondiscrimination. George Meany, President of the AFL-CIO, has urged that the effort to root out racial injustice in American life begin with the elimination of such injustice in the labor movement itself,[2] while officers of building trades international unions have urged their locals to comply with Federal regulations concerning equal opportunity in apprenticeship and otherwise encourage

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1. American Federation of Labor and Congress of Industrial Organizations Constitution, Art. II, sec. 4. For statistics on union membership, including the AFL-CIO membership, see note 1, p. 5.

2. AFL-CIO, "Equal Rights for All--the AFL-CIO Program," May 1971, p. 1.

minority participation in union membership.[3] After some initial hesitation, the AFL-CIO endorsed in 1973 the Equal Rights Amendment.[4]

A major example of the valuable collaboration between the national civil rights movement and unions is the enactment of Title VII of the Civil Rights Act of 1964,[5] which was strongly supported by the AFL-CIO.[6] Many specialists consider Title VII the most effective legal remedy available for minorities and women who suffer employment discrimination, regardless of whether the discrimination is at the hands of private businesses, governments, or unions themselves.

The Commission hopes that this study will be useful to those who are concerned about the effectiveness of Federal programs to stop discrimination in employment, including those union leaders who are attempting to improve their unions' roles in eliminating discrimination.

The research methods of this report were shaped in large part by the widely-accepted belief that until the early 1960's discrimination by referral unions was widespread.[7] The goals of the study are to show: (1) the extent to which union discrimination has continued, (2) the most common forms of this discrimination, and (3) the success of current Federal Government programs designed to deal with employment discrimination and to implement affirmative action to reduce the effects of past discrimination.

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3. See, for example, S, Frank Raftery, General President, International Brotherhood of Painters and Allied Trades, Special Bulletin to All Local Unions and District Councils in the U.S., March 1, 1972. See also, AFL-CIO, "Civil Rights," Resolution adopted by the 8th AFL-CIO Convention, Oct. 1969.

4. Carolyn J. Jacobson, "ERA: Ratifying Equality," The American Federationist (Jan. 1975). See also AFL-CIO, "Women Workers," Resolution adopted by 11th Constitutional Convention, Oct. 1975.

5. 42 U.S.C. §§2000e, et. seq. (Supp. II, 1972), amending 42 U.S.C. §§2000e, et. seq. (1970).

6. Derek C. Bok and John T. Dunlop, Labor and the American Community (New York: Simon and Schuster, 1970), p. 124.

7. See, for example, Ray Marshall, The Negro Worker (New York: Random House, 1967), chaps. 3, 4, and 5.

Chapters 2 and 3 examine statistics on the racial, ethnic, and sex composition of some of the largest referral unions. One of the most widely disputed issues between the civil rights and union movements is whether, since 1964, there has been a significant increase in minority membership in the building trades unions. Chapters 2 and 3 are designed to settle this question by a detailed examination of national statistics on minority membership in such unions.

Chapter 4 analyzes discriminatory practices of major referral unions, with special attention to union practices which, though apparently neutral with regard to employment opportunities of different racial, ethnic and sex groups, actually have a discriminatory impact on minorities and women.

The effectiveness of the Apprenticeship and Journeyman Outreach Programs--on which the Department of Labor has spent over $70 million--is examined in chapter 5. The next two chapters review two additional programs sponsored by the Department of Labor: (1) the imposed construction compliance plans and (2) the voluntary hometown plans. Chapter 8 scrutinizes the past and potential effectiveness of court-designed remedies for discrimination by referral unions.

The major conclusions of this report are that construction and trucking unions continue to restrict the employment opportunities of minorities and women; that this result is less frequently caused by clear intent than it was a decade ago and more by apparently neutral, but still discriminatory, institutional practices; and that no Federal affirmative action program is currently making major changes in this situation. Relatively minor progress has occurred, but it has not affected most of the labor markets concerned. The sources of this minor progress, moreover, are not securely based in the unions themselves.

The study concludes with the Commission's recommendations for improvements in Federal equal employment opportunity programs. These improvements are required if discriminatory practices, which hamper the efforts of many minorities and women to obtain meaningful employment,

are to be altered in this generation. The need for these improvements is particularly critical under the existing circumstances of high unemployment, since the burden of discrimination on minorities and women has become even greater.

The study obtained much more information on referral union practices relating to the employment opportunities of minority men than of minority and white women, despite special efforts to secure information relating to women. There is little information available on the impact of referral union practices on women.

This report focuses on access to the job. A subsequent study by the U.S. Commission on Civil Rights will examine the effect of union policies on advancement of minorities and women in a firm or an occupation after employment commences. This second study will focus on industrial unions and include an examination of seniority rules, job security, initial job assignments within firms, occupational lines of progression, training opportunities, and related matters embodied in collective-bargaining contracts, as well as representation of minorities and women in union leadership positions.

2. MEMBERSHIP OF MINORITIES AND WOMEN IN UNIONS

This chapter first examines the nature and extent of minority and female union membership, the numbers of minority and female unionists in the more highly-paid occupations and their earnings compared to those of white male unionists. It then moves to an analysis of minorities' and women's representation in referral unions, particularly those that have won high wages for their members. Next, the memberships of building trades unions, referral unions whose members are especially well-paid, are examined to demonstrate the link between minority percentage of a union's membership and the wages paid its members and the continuing existence of many union locals with no minority or female members. Finally, the chapter examines minority and female participation in union leadership.

UNIONS OVERALL

Membership of Women and Minorities

Total union membership in the United States in 1970 was 17.2 million[1] (table 1), or 20.4 percent of the national work force. Of all male workers,

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1. U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972), p. 6 (hereafter cited as BLS Union Members). This publication is based on a survey done in March 1971 by the Bureau of the Census. (The results of a similar census survey in 1972 have not been published.) A second publication of the Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1971 (1972) (hereafter cited as BLS Directory 1971), give (p. 71) a total union membership in the United States of 19.2 million as of 1970. These totals may be more accurate than those of the first BLS publication, which was based on a sample survey of 50,000 households. However, the second source does not give a breakdown of union membership by race.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) had a membership of 16.0 million in 1970, while international unions not affiliated to the AFL-CIO had a membership of 4.8 million. (The sum of these figures exceeds the U.S. membership of 19.2 million due to members outside the U.S.) The two largest unaffiliated international unions were the International Brotherhood of Teamsters and the United Auto Workers, with 1.8 and 1.5 million members respectively. Professional associations had a membership of 1.9 million. BLS Directory 1971, pp. 70, 75. The total civilian labor force in 1970 was 82.7 million. U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings, vol. 19 (Jan. 1973), p. 24.

Table 1. WAGE AND SALARY WORKERS IN LABOR UNIONS AND MEMBERSHIP RATES, BY OCCUPATION, SEX, AND RACE, 1970
(All workers, including part-time and seasonal employees)

Occupation of longest job held in 1970	All races	Male		Female	
		White	Black, Asian American, and Native American[d]	White	Black, Asian American, and Native American[d]
	Number in labor unions (thousands)				
All occupations[a]	17,192	12,009	1,496	3,053	634
Professional, technical, and kindred workers	1,032	586	43	351	53
Managers, officials, and proprietors, except farm	514	440	23	43	8
Clerical and kindred workers	2,058	930	131	845	152
Salesworkers	261	145	8	101	8
Craft and kindred workers, blue-collar worker supervisors[b]	4,328	3,996	243	79	11
Operatives and kindred workers	6,093	4,007	592	1,246	248
Nonfarm laborers	1,471	1,122	285	47	17
Service workers, including private household	1,409	769	167	337	137
	Percent in labor unions				
All occupations[a]	20.4	27.6	29.0	9.8	13.8
Professional, technical, and kindred workers	9.0	9.6	12.0	7.7	12.2
Managers, officials, and proprietors, except farm	7.5	8.1	15.8	3.6	--[c]
Clerical and kindred workers	13.1	28.7	32.8	7.6	16.1
Salesworkers	4.9	5.4	9.6	4.1	6.6
Craft and kindred workers, blue-collar worker supervisors[b]	42.7	44.0	40.2	19.0	--[c]
Operatives and kindred workers	40.4	47.2	41.8	28.5	31.6
Nonfarm laborers	28.9	30.1	27.6	17.1	--[c]
Service workers, including private household	10.9	20.2	19.9	5.3	6.9

a. Includes farm workers not shown separately.
b. The title in the source publication is "craftsmen, foremen, and kindred workers." However, the Bureau of Census occupational classification system has been changed to eliminate sex-stereotyped classifications. The term craftsmen has been replaced by craftworkers; foremen, by blue-collar worker supervisors. See U.S. Office of Management and Budget, Statistical Reporter, October 1973, pp. 67-68 for other new occupational titles.
c. Base less than 75,000.
d. The caption in the source publication is "Negro and other." However, the U.S. Commission on Civil Rights uses the term black instead of Negro and the others are Native Americans and Asian Americans. This publication does not present separate statistics for persons of Spanish origin; such persons are included among whites.

Table 1 (Continued)

Note: Because of rounding, sums of individual items may not equal totals.

Source: U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972).

27.8 percent belonged to unions; of all female workers, 10.3 percent. Of all white male workers, 27.6 percent were members of unions; 29.0 percent of all black, Asian American, and Native American (American Indian) male workers were union members. Of all white female workers, 9.8 percent were in unions; 13.8 percent of all black, Asian American, and Native American female workers were union members.[2] (Accurate information on overall union membership of persons of Spanish origin is not available.)[3]

The Highly-paid Jobs

In unions, as in the market place generally, minorities and women hold the least desirable jobs. Of eight major occupational categories, the one in which the median annual earnings of labor union members was highest was managers and officials, with earnings of $11,545 (table 2). The next two highest categories were professional workers ($10,559) and craftworkers ($10,034).

The proportion of all white male union members in 1970 who were professionals was 4.9 percent; managers, 3.7 percent; and craftworkers, 33.3 percent (table 1). But the proportions of black, Asian American, and Native American males in the same three categories were 2.9, 1.5, and 16.2 percent, respectively. In every case, the proportion of black, Asian American, and Native American male union members who were in these three highest salary categories was roughly half of the proportion of white males.

The percentages of white women union members in these three categories were professionals, 11.5 percent; managers, 1.4 percent; and

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2. BLS Union Members, p. 6.

3. BLS Union Members does not present statistics on persons of Spanish origin, nor is accurate information available from any other source. The Equal Employment Opportunity Commission gives the percentage of Spanish origin persons in those locals of referral unions that submitted EEO-3 reports in 1970 as 8.0 percent.

Table 2. EARNINGS DISTRIBUTION OF YEAR-ROUND, FULL-TIME WAGE AND SALARY WORKERS, BY OCCUPATION, LABOR UNION MEMBERSHIP, SEX, AND RACE, 1970.

Occupation of longest job held in 1970, sex, and race	Total		Median earnings		Ratio: median earnings of union to nonunion workers
	Number with earnings (thousands)	Percent in labor unions	In labor unions	Not in labor unions	
Both sexes and all races					
All occupations[a]	46,716	25.0%	$8,609	$7,452	1.16
Professional, technical, and kindred workers	7,935	10.5	10,559	9,932	1.06
Managers, officials, and proprietors, except farm	5,745	7.6	11,545	11,686	0.99
Clerical and kindred workers	8,420	17.5	7,798	5,989	1.30
Salesworkers	2,483	6.6	7,863	8,342	0.94
Craft and kindred workers, blue-collar worker supervisors[b]	7,077	43.2	10,034	8,558	1.17
Operatives and kindred workers	8,212	47.8	7,912	5,707	1.39
Nonfarm laborers	1,906	43.7	7,821	5,182	1.51
Service workers, including private household	4,551	21.4	7,026	4,630	1.52

Table 2 (Continued)

Occupation of longest job held in 1970, sex, and race	Total Number with earnings (thousand)	Percent in labor unions	Median earnings In labor unions	Median earnings Not in labor unions	Ratio: median earnings of union to nonunion workers
White males					
All occupations[a]	28,785	29.8%	$9,285	$9,478	0.98
Professional, technical, and kindred workers	4,887	10.3	11,786	12,142	0.97
Managers, officials, and proprietors, except farm	4,771	7.8	12,057	12,722	0.95
Clerical and kindred workers	2,158	34.5	8,886	8,657	1.03
Salesworkers	1,822	5.9	9,175	9,897	0.93
Craft and kindred workers, blue-collar worker supervisors[b]	6,473	43.9	10,245	8,820	1.16
Operatives and kindred workers	5,170	53.7	8,663	6,865	1.26
Nonfarm laborers	1,295	47.7	8,048	5,627	1.43
Service workers, including private household	1,921	30.9	8,682	6,929	1.25
Black, Asian American, and Native American males[c]					
All occupations[a]	3,050	34.7	7,732	5,906	1.31
Clerical and kindred workers	284	40.1	8,715	7,137	1.22
Craft and kindred workers, blue-collar worker supervisors[b]	388	42.8	8,874	6,702	1.32
Operatives and kindred workers	873	46.0	7,512	5,493	1.37
Nonfarm laborers	497	35.6	7,192	4,690	1.53
Service workers, including private household	478	27.6	6,335	5,319	1.19

Table 2 (continued)

Occupation of longest job held in 1970, sex, and race	Total		Median earnings		Ratio: median earnings of union to nonunion workers
	Number with earnings (thousand)	Percent in labor unions	In Labor unions In labor unions	Not in labor unions	
White females					
All occupations[a]	12,953	13.0%	$5,890	$5,467	1.08
Professional, technical, and kindred workers	2,475	10.2	8,935	7,937	1.13
Managers, officials, and proprietors, except farm	804	3.9	--[d]	6,761	--[f]
Clerical and kindred workers	5,504	9.1	6,218	5,572	1.12
Salesworkers	565	7.8	--[d]	4,253	--[f]
Craft and kindred workers, blue-collar worker supervisors[b]	205	22.0	--[d]	4,636	--[f]
Operatives and kindred workers	1,836	33.8	5,011	4,310	1.16
Nonfarm laborers	89	32.6	--[d]	--[d]	--[f]
Service workers, including private household	1,462	11.0	4,888	3,797	1.29
Black, Asian American and Native American females[e]					
All occupations[a]	1,927	19.9	5,363	4,496	1.19
Clerical and kindred workers	474	23.2	5,973	5,531	1.08
Operatives and kindred workers	333	36.9	4,350	4,087	1.06
Service workers, including private household	690	12.8	4,930	3,366	1.47

a. Includes farmworkers not shown separately.
b. See table 1, note b
c. Only those occupational groups with a total of 75,000 or more minority male labor union members are shown separately. The caption in the source publication is "Negro and other male." See table 1, note d.
d. Base less than 75,000.
e. Only those occupational groups with a total of 75,000 or more minority female labor union members are shown separately. The caption in the source publication is "Negro and other female." See table 1, note d.
f. Not applicable.

Source: U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972).

Note: Owing to rounding, sums of individual items may not equal totals.

craftworkers, 2.6 percent. The percentages of black, Asian American, and Native American women union members in the three categories, respectively, were 8.4, 1.3, and 1.7 percent. With one exception, the professional category, these percentages of women union members in these highly-paid categories were well below the same percentages for white men. Chart 1 shows the high percentage of white male union members who were craftworkers and the much lower percentages of minority and female union members.

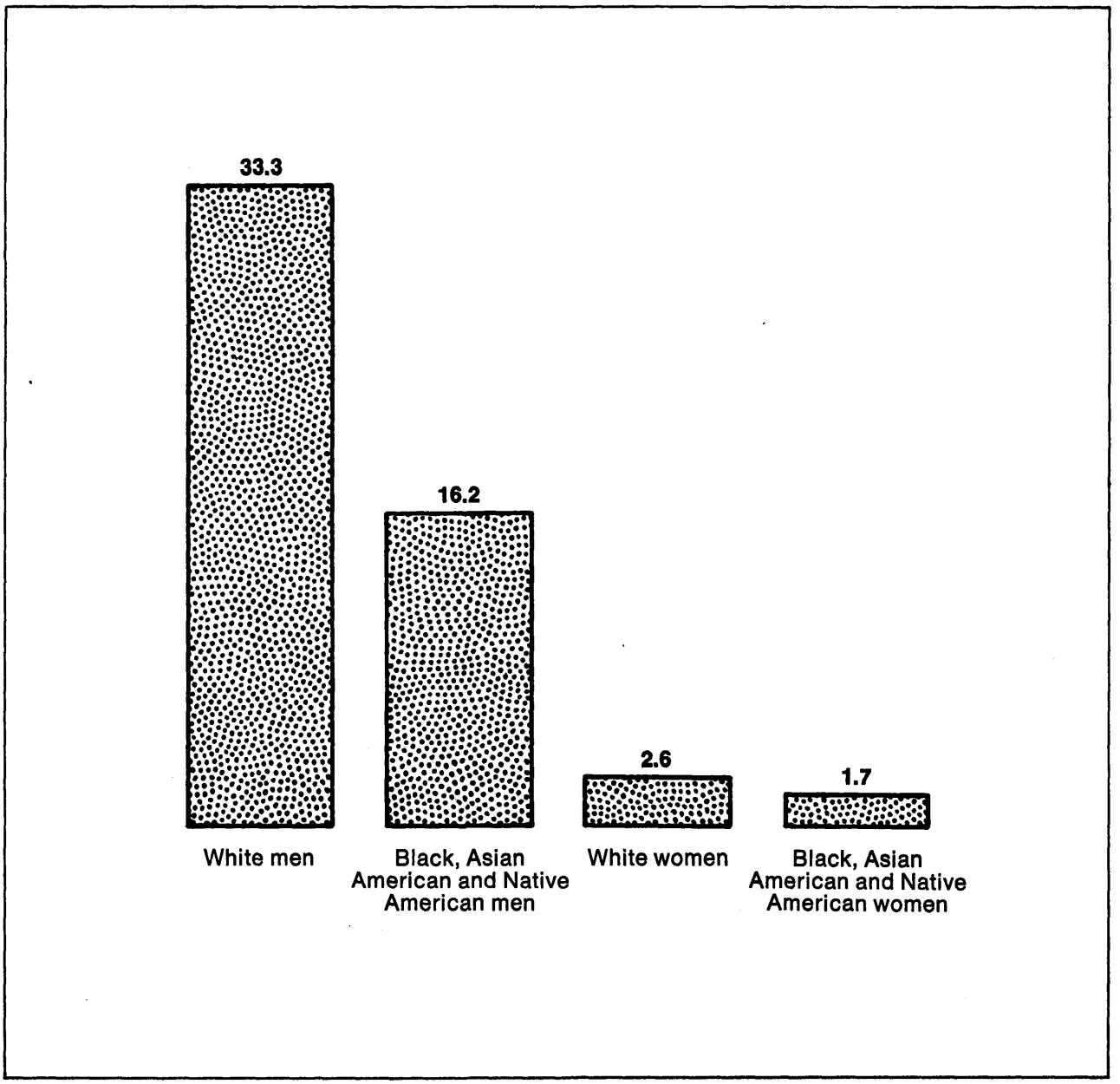
Earnings of Minority and Female Members

The median earnings of white male labor union members were $9,285 in 1970, but for minority male union members they were $7,732; for white women, $5,890; and for minority women, $5,363. (See table 2 and chart 2.) For all occupational groups for which comparisons were possible, white male union members enjoyed higher median earnings than the other groups. For example, among blue-collar workers, minority males' median earnings were 85 percent of white males' median earnings, while minority women and white women had median earnings which were 48 percent and 56 percent of white males' earnings.

These differences in median earnings among the union-member groups are indeed considerable. But minority and female union members, nevertheless, earned more than minorities and women who were not union members. Black, Asian American, and Native American men in unions had median earnings 31 percent higher than nonmembers; and black, Asian American, and Native American women in unions had median earnings 19 percent higher than nonmembers. (See table 2.) White women who were union members had median earnings 8 percent higher than nonmembers. Only for white males overall did unionization not make a significant difference in earnings; median earnings of union members were 98 percent of earnings of nonmembers. Thus, even though women and minorities in unions were generally in the less-well-paid occupations and even though their earnings in every occupational group where data are available were less than earnings of white men in the same groups, they still fared better than their nonunionized counterparts.

Chart 1

Percentage of All Union Members of Each Race-Sex Group Who Were Craft-Workers,[a] 1970



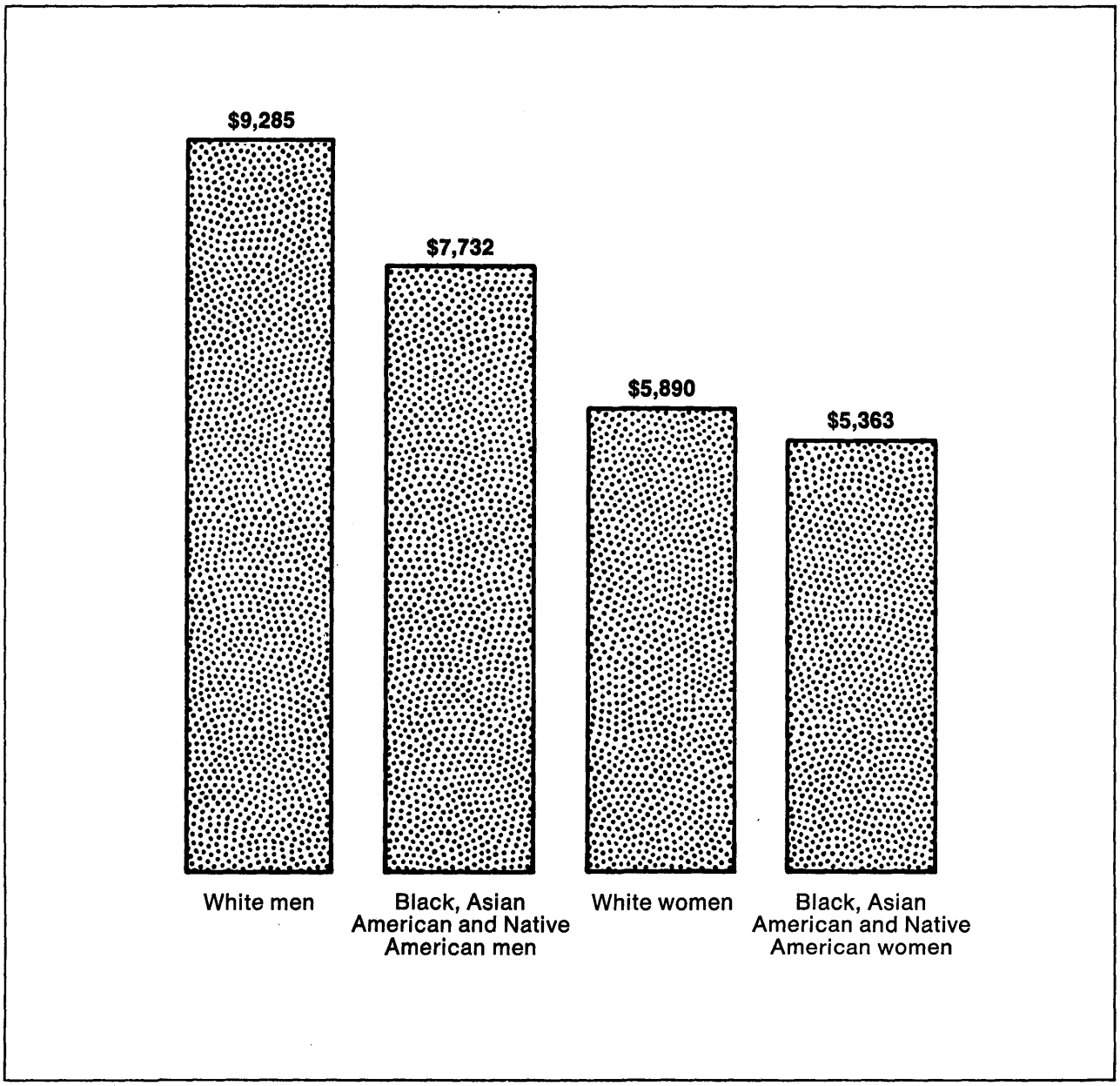
[a] The full occupational title is craft and kindred workers and blue-collar worker supervisors. See Table 1, note b.

Source: Table 1.

Chart 2

Median Earnings of Union Members, by Sex and Race, 1970

(Year-round, full-time wage and salary workers)



Source: Table 2.

REFERRAL UNIONS

Employment Opportunities

Many unions play no formal role in the hiring of personnel, although they can influence employers' personnel policies in a variety of informal and indirect ways.[4] Referral unions, however, do directly influence entry into a job or trade. As their name implies, referral unions serve as employment channels through which workers obtain jobs. By referring individuals to employers for hiring and by selecting individuals for apprenticeship and membership, many referral unions directly determine the size of the labor force, the qualifications required of workers, and the selection of workers. This gives referral unions the chance to discriminate, intentionally or unintentionally, against women and minority groups, as far as entry into a trade or job is concerned.

Several major industries depend on referral unions for obtaining their work force. Building trades unions[5] had a total membership of 3.97 million in 1970; a large proportion obtained their jobs through referral processes. Unions in several branches of the transportation industry (including the International Brotherhood of Teamsters, the largest),[6] also operate hiring halls and engage in similar job-allocation procedures. Major referral unions operate in the printing and

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4. Leonard Rapping discusses ways industrial unions, which lack any direct control over entry to the job, can nonetheless influence the racial composition of a work force. See his "Union-Induced Racial Entry Barriers," Journal of Human Resources, vol. 4 (Fall 1970), pp. 443-74, especially pp. 453-56.

5. Building trades unions include the Asbestos Workers, Boilermakers, Bricklayers, Carpenters, Electrical Workers, Elevator Constructors, Granite Cutters, Iron Workers, Laborers, Lathers, Marble Polishers, Operating Engineers, Painters, Plasterers, Plumbers, Roofers, and Sheet Metal Workers.

6. Other major transportation unions are the International Longshoremens Association, the International Longshoremens and Warehousemens Union, and the Seafarers' International Union. Referral is also performed by some unions in the railroad industry.

publishing industry,[7] in food and kindred products,[8] in apparel,[9] and in retail trade and other industries.[10] In 1970 the total membership (referral and nonreferral) of the major international unions in these industries was 8.8 million.[11] In many of these unions the referral membership is likely to be less than half of the total membership.[12]

Earnings

Referral unions vary widely in their ability to obtain high earnings for their members. Those that have organized unskilled workers have frequently had less success than those that have organized skilled workers.[13] The power that referral unions can bring to bear on wage negotiations depends on such factors as their degree of control of local labor markets, whether they can bargain on a national level, and how much control they have over the numbers trained in certain skills.

Union members in the craft and kindred workers occupational classification had median earnings of $10,034 in 1970 and ranked immediately behind professional and managerial workers, two white-collar classifications that commonly require college-level training. (See table 2.) Within the craftworker classification, "carpenters" and

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7. The Graphic Arts Union and the Printing and Graphic Communications Union.

8. Bakery and Confectionery Workers and Distillery Workers.

9. Amalgamated Clothing Workers, International Ladies' Garment Workers, and Hatters.

10. Retail Clerks, Hotel and Restaurant Employees, Meat Cutters, and Laundry Workers.

11. This figure includes the membership of all the internationals listed in the six preceding footnotes; it does not include any railway unions.

12. According to EEOC statistics. For an analysis of EEOC statistics on referral union membership, including the apparent underreporting of referral membership, see chap. 3.

13. See H.G. Lewis, Unionism and Relative Wages in the United States (Chicago: Univ. of Chicago Press, 1963), chap. 3, 5, and 6. See also column 6 of table 3 below.

"construction craftsmen except carpenters" (groups corresponding roughly to the skilled building trades unions) had median earnings of $10,235 and $11,212, respectively.[14] Both figures are higher than the $10,034 earnings for craft and kindred workers generally (compare tables 2 and 3). While drivers and delivery workers, organized predominantly by the Teamsters, and workers in the printing and publishing industry, organized by several referral unions, had median earnings below the figure for craft and kindred workers, their median earnings were still well above $8,609, the median earnings of all union members.

Workers in all of these job classifications, and especially those in the building trades, were among the highest paid of all American workers. All benefited from a high degree of union influence in labor markets. Most, but not all, of the workers involved were highly skilled. (Some members of building trades unions and most drivers and delivery workers either are semiskilled or have skills that require modest amounts of training.)

The market power of these referral unions is illustrated by the ratio of the median earnings of union to nonunion workers in these fields. The ratio was 1.16 to 1.0 for all union members. (See table 3 and chart 3.) But among construction craftworkers, drivers and delivery workers, and workers in printing and publishing, the ratio was between 1.28 to 1.0 and 1.48 to 1.0. Referral unions in these fields clearly obtained especially high wages for their members.

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14. The union membership in the two craft categories is slightly over 1.5 million (according to the source for table 3), well below the 3.97 million cited above. The discrepancy may be explained as follows. The latter figure includes (1) some Canadian and a few other foreign national members of U.S.-based internationals; (2) members of the Laborers Union, who numbered 580,000 in 1970; (3) helpers, tenders, and other unskilled building trades union members who, like laborers, are not classified as craftworkers by the Census Bureau; and (4) union members who are not in the construction industry, even though they are in locals affiliated with building trades internationals--for further discussion of such members, see chap. 3.

Table 3. UNION MEMBERSHIP AND MEDIAN EARNINGS IN SELECTED OCCUPATIONS, 1970

(1)	(2)	(3)	(4)			(5)		(6)
			Percent of union membership that is:			Median earnings of year-round, full-time wage and salary workers		
Occupation	Number in labor unions (thousands)	Percent of all workers in labor unions	Black, Asian American and Native American male	White Female	Black, Asian American and Native American female	In unions	Not in unions	Ratio: median earnings of union to nonunion workers
All occupations	17,192	20.4	8.7	17.8	3.7	$8,609	$7,452	1.16
Carpenters	391	45.4	3.6	0.3	--c	10,235	6,897	1.48
Construction craftworkers except carpenters	1,115	54.7	5.7	0.4	--c	11,212	7,826	1.43
Drivers and delivery workers[a]	1,024	37.9	10.3	1.2	0.4	9,323	6,507	1.42
Printing and publishing[b]	306	22.4	4.6	15.0	2.9	9,893	7,704	1.28

a. The title in the source publication is "drivers and deliverymen," but deliverymen has been replaced by delivery workers in the Bureau of the Census occupational classification system. See table 1, note b.

b. "Printing and publishing" is not an occupation, but an industry. In table 2 of the source publication it is listed simply as "printing" while in table 7 it is listed as "printing and publishing."

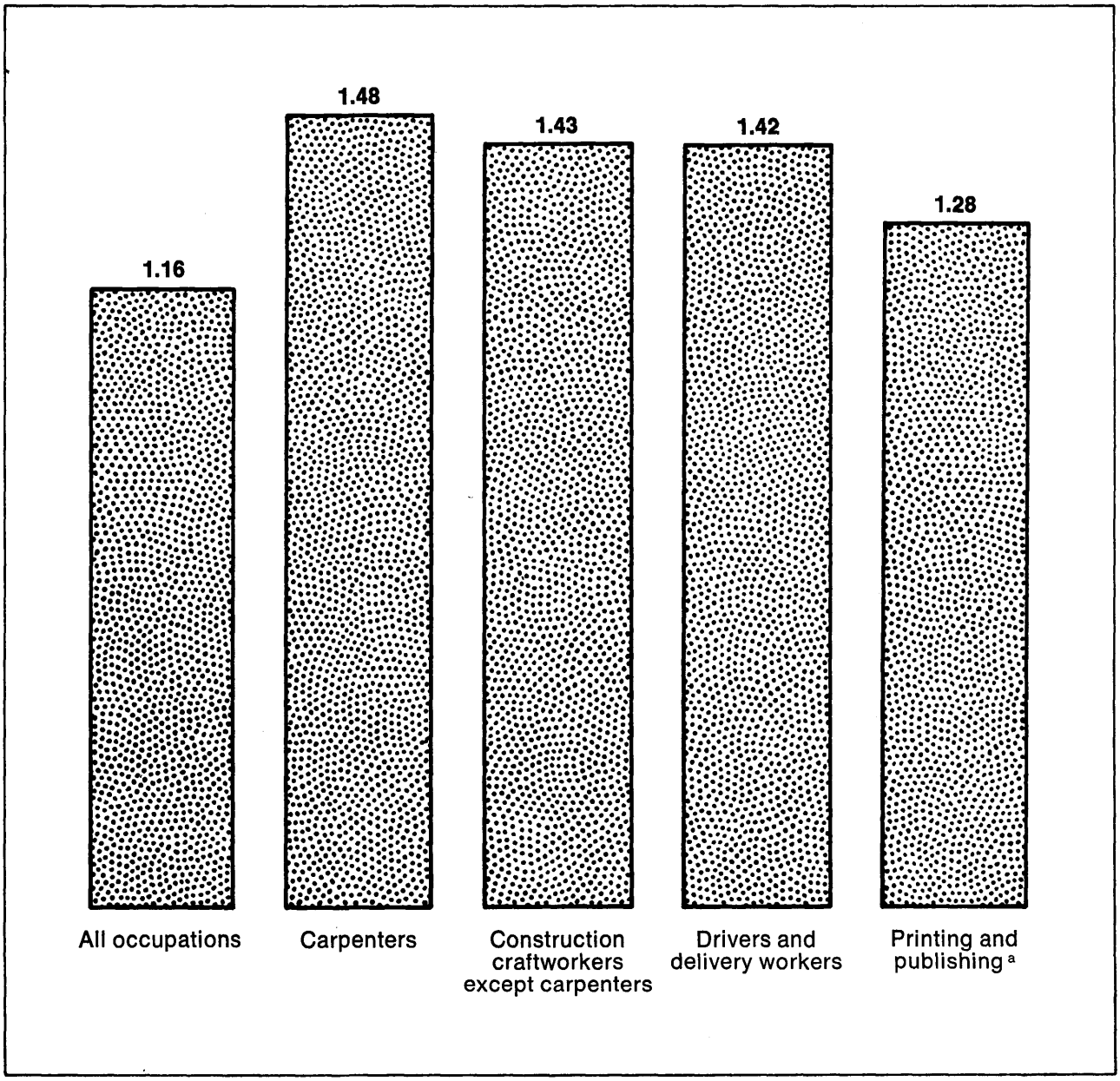
c. Less than 0.05 percent

Note: Columns 5 and 6 (based on tables 6 and 7 in the source publication) report on earnings only of year-round, full-time workers, of whom there were 46,716 thousand, including 11,694 thousand in unions. Columns 2, 3, and 4 (based on tables 1 and 2 in the source publication) relate to all workers, including part-time and seasonal workers.

Source: U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972), tables 1, 2, 6, and 7.

Chart 3

Median Earnings of Union Workers Divided by Median Earnings of Nonunion Workers; All Occupations Together and Four Selected Occupations, 1970



[a] Printing and publishing is not an occupation, but an industry. See notes in Table 3.

Source: Table 3.

Potential for Employment Growth

Of the major categories listed in table 3, all except the printing and publishing industry have considerable potential for growth. In printing and publishing, the labor force is smaller than in the other categories and is expected to grow quite slowly, owing mainly to labor-saving technological changes in the printing industry.[15] Union members in this industry are actually having difficulty retaining their jobs. In the building trades and the trucking industry, the long-range employment outlook is good and the capacity to absorb new workers is high.[16] Further, wages in these two categories are as high as or higher than in other industries where referral unions are dominant.

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15. U.S., Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook 1974-75 Edition (1974), pp. 40-48, 727.

16. Ibid., pp. 18, 20, 245-83, 321-23, 639, 760.

For these reasons and others, this study devotes special attention to the building trades unions and the Teamsters.[17]

Minorities and Women in Referral Unions with High Earnings

What is the membership of minorities and women in those referral unions with unusually high earnings and market power? In 1970 minority

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17. The Equal Employment Opportunity Commission (EEOC), reacting to this comment, states that an examination of EEO-3 data relating to the Teamsters "indicated that the bulk of the Teamster referral unions were engaged in specialty trucking, construction, and warehousing--not contract trucking. Therefore, it may be inappropriate to discuss the issue of over the road versus local driving in the context of referral unions." EEOC comments on this publication in draft, incorporated in a letter from Peter C. Robertson, Director, Office of Federal Liaison, EEOC, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (USCCR), Oct. 15, 1975 (hereafter referred to as EEOC Comments).

USCCR notes that the EEOC's examination of EEO-3 data did not make the relevant comparison: instead of comparing the number of Teamster referral locals engaged in contract trucking to those engaged in other types of trucking and warehousing, it would have been more relevant to determine the proportion of contract trucking locals which engage in referral compared to those which do not. Subsequent chapters of this report examine the question whether the Teamsters discriminate against minorities and women by limiting their access to contract trucking and especially to over-the-road driving jobs. If it were correct that a low proportion of contract trucking locals engage in referral, then it would be inappropriate to examine such discrimination in the context of referral unions.

However, a high proportion of Teamsters contract trucking locals engage in referral. According to R. Leone, "except in the South, the Teamsters maintain hiring halls in the larger cities having a concentration of terminals." Richard D. Leone, The Negro in the Trucking Industry (Philadelphia: University of Pennsylvania, 1970), p. 52. Further, Teamsters locals engage in referral outside the hiring hall context, through referral of drivers by Teamsters officials directly to employers (Leone, pp. 50-51, 74, 82, 88). Further, the Teamsters National Master Freight Agreement, Art. 3, sec. 1 (c) covering over-the-road drivers as well as other drivers in contract trucking, requires that employers must give Teamsters locals the right to refer employees, though employers are not required to hire those referred by locals (a qualification also present in contracts between building trades locals and employers). Hence, all Teamsters contract trucking locals must be given at least an opportunity to engage in referral. For further discussion of the reasons for devoting special attention to the Teamsters in this study, see app. A.

males--including blacks, Asian Americans, and Native Americans[18]--made up 3.6 percent of union carpenters, 5.7 percent of construction craftworkers except carpenters, 4.6 percent of workers in the printing industry, and 10.3 percent of drivers and deliveryworkers. (See table 3.) By contrast, males of these minority groups constituted 8.7 percent of all union members. With the exception of drivers and delivery workers,[19] the proportions of minority males in these highly-paid occupations were markedly below their proportion of all union members.

Black, Asian American, and Native American women constituted 3.7 percent of all union members. Their proportions of the total union membership in the four categories listed in table 3 were without exception below this percentage, varying from less than 0.05 percent for construction craft workers to 2.9 percent for printing and publishing. White women constituted 17.8 percent of all union members, but their proportions of union membership in these four well-paid categories were below this percentage.[20] While white women constituted 15.0 percent of union members in printing and publishing, they constituted only 0.3 percent of unionized carpenters. The small proportion of women in these referral unions is reflected in statistics on apprenticeship: in 1973, out of roughly a quarter-million apprentices, only 0.6 percent were women, and

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18. Comparable statistics are not given in the source publication for table 3 for persons of Spanish origin. See table 1, note d.

19. Among drivers, the percentage of minority males in the highest-paid category, over-the-road drivers, is markedly below the percentage of minority males among all drivers. See chap. 3.

20. The EEOC calls attention to these statistics and similar statistics in the draft and suggests that some employment practices have been operating to exclude women from participation in construction craft unions. The EEOC also suggests that the Commission explore further whether these practices are discriminatory. EEOC Comments. USCCR notes that major efforts were made to examine the possible discriminatory impact on women of unions' institutional practices. The analyses presented in several major passages in this report, but especially in chapters 4 and 5, show the results of these efforts.

some female apprentices were not in the skilled building trades.[21]

Since relatively few minority-group members and women are in these unions with high earnings, disproportionately large numbers must be in unions with low earnings. The apparel industry offers an unusually clear and dramatic example of this general condition. Median earnings of union members in the apparel industry, in 1970, were reported as merely $4,500, or slightly less than the median earnings of nonunionized apparel workers ($4,600). Women made up 84 percent of the 513,000 union members in this industry, and 16 percent of the women were black, Asian American, and Native American women.[22] Many others are women of Spanish origin, although the Census Bureau survey did not obtain separate figures for persons of Spanish origin.

BUILDING TRADES UNIONS

Membership of Minorities and Women

The only source of statistics on the membership of minorities and women in the different unions representing construction workers[23] is the Local Union Reports, EEO-3, submitted annually to the Equal Employment

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21. U.S., Department of Labor, Employment and Training Administration, "State and National Apprenticeship System (SNAPS) Race/Ethnic Report-Data as of June 30, 1973," distributed as an enclosure in a circular memorandum, Oct. 7, 1974, from Hugh C. Murphy, Associate Manpower Administrator, Bureau of Apprenticeship and Training. Total apprentices (including apprentices in construction as well as nonconstruction trades) are given as 254,998. A breakdown into males and females was available for only 229,037 of this total. Of this latter figure, 1,379 or 0.6 percent were women.

22. BLS Union Members, pp. 7, 16.

23. There are 17 internationals in the Building and Construction Trades Department of the AFL-CIO. One of these, the Laborers' International, is excluded in most of the analysis that follows, for reasons indicated in the text. A second, the Granite Cutters International, is excluded in the following analysis as well as in EEOC statistics; it had only 3,000 members in 1972.

Opportunity Commission (EEOC).[24] EEOC releases the statistics from these reports in summary form. Although these statistics are not highly reliable (they appear to exaggerate minority membership),[25] certain major characteristics of union membership stand out.

In 1972, according to the EEO-3 statistics, minorities (blacks, persons of Spanish origin, Asian Americans, and Native Americans) constituted 15.6 percent of all members of reporting building trades locals; 15.4 percent were minority men and 0.3 percent were minority women.[26] White women constituted 0.5 percent of all members.

For purposes of analyzing equal employment opportunities in the construction industry, membership in all unions other than the Laborers International Union should be considered. Members of the Laborers Union, by and large, do not perform skilled work and have median earnings $2,000 per year below median earnings among craftworkers other than carpenters.[27] Minority males (blacks, persons of Spanish origin, Asian Americans, and Native Americans) comprised 42.9 percent of the membership of the Laborers' International Union in 1972. (See table 4.) Minority women and white women each comprised 0.5 percent of

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24. These reports are supposedly submitted by all union locals of 100 or more members. However, unless a local performs a referral function, it is not required to fill out a schedule on the sex and race, ethnicity, or national origin of its members. See Bureau of National Affairs, Labor Relations Reporter: Fair Employment Practices Manual (Washington, D.C.: 1974), sec. 441:401.

25. See chap. 3 for a rough indication of the degree of exaggeration.

26. U.S., Equal Employment Opportunity Commission, News Release, June 30, 1974. (Hereafter cited as EEOC Release, June 30, 1974.) The two percentages, 15.4 and 0.3, do not equal the total percentage, 15.6, owing to rounding.

27. According to BLS Union Members (p. 13), union members who were construction laborers had median earnings of $8,700, compared with earnings of $10,200 and $11,200 for carpenters and construction craftworkers other than carpenters, respectively.

Table 4. MINORITIES AND WOMEN IN BUILDING TRADES UNIONS AND AVERAGE WAGE RATES, 1972

International union	Male minority membership, percent*	Female nonminority membership, percent*	Female minority membership, percent*	Average wage rate of a trade represented by union**
Asbestos Workers	3.7	0	0	$8.83
Plumbers and Pipefitters	4.4	--a	--a	9.67
Elevator Constructors	5.6	0	0	8.87
Operating Engineers	6.1	0.5	--a	Not available
Electrical Workers (IBEW)	6.5	1.4	0.9	9.07
Sheet Metal Workers	6.7	0.1	0.3	9.07
Iron Workers	9.3	--a	--a	8.98
Carpenters	11.2	0.5	--a	8.61
Boilermakers	11.3	0.2	--a	9.02
Bricklayers	13.1	--a	0	9.12
Lathers	14.2	0	0	8.47
Painters and Decorators	14.7	0.5	0.1	7.85
Marble Polishers	15.2	0	0	8.11
Roofers	23.4	--a	0	8.13
Plasterers and Cement Masons	32.5	--a	0	8.39
Laborers	42.9	0.5	0.5	6.55

a. Less than 0.05 percent.

b. Wages include employer contributions to insurance and pension funds and vacation payments. The wage rates refer to specific trades, while several international unions represent two or more trades. For example, the wage of $8.13 listed for roofers is the wage of composition roofers, while slate and tile roofers earned $7.97.

Sources:* U.S., Equal Employment Opportunity Commission, News Release, June 30, 1974; based on Local Union EEO-3 Reports for 1972.
**U.S., Department of Labor, Bureau of Labor Statistics, Union Wages and Hours: Building Trades, July 1, 1972, Bulletin 1807 (1974), p. 10.

Note: Minorities include blacks, persons of Spanish origin, Asian Americans, and Native Americans.

the Laborers' membership. After excluding membership in the Laborers, the proportion of minority men in the building trades unions drops from 15.4 percent to 9.1 percent, the proportion of minority women drops from 0.3 percent to 0.2 percent and the proportion of white women remains constant at 0.5 percent.[28] Hence the proportion of minorities, both men and women, in the skilled building trades, was 9.3 percent in 1972 and the proportion of women, both white and minority, was 0.7 percent.

Minority Membership and Earnings

In trades where minority membership is especially low, earnings are especially high. This relationship--seen earlier in the wages of the stronger unions--is pronounced in the building trades.

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28. EEOC Release, June 30, 1974. The total number of members in the 15 international unions listed in table 4, including the Laborers, was 1,604,451. Excluding the Laborers, it was 1,308,888, of whom 119,625 were minority men, 2,734 were minority women, and 6,362 were non-minority women.

Table 4 presents the 1972 referral membership of 16 building trades internationals.[29] The highest paid of all the building trades unions in 1972 was the Plumbers and Pipefitters, with a wage of $9.67 an hour. (See table 4.) Minority men constituted only 4.4 percent of the membership of this union in 1972, making it second lowest proportionately in terms of minority membership.

The 10 unions with the 10 lowest percentages of male minority workers (the first 11 unions listed in table 4 with the exception of the Operating Engineers) were in the top 10 places as far as average wage rates were concerned. The five unions with the highest percentages

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29. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) states that this report does not take into account "the effect of the recession on work opportunities in the Building Trades." AFL-CIO comments on this publication in draft, incorporated in a letter from William E. Pollard, Director, Department of Civil Rights, AFL-CIO to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (USCCR), Jan. 2, 1976 (hereafter referred to as AFL-CIO Comments).

USCCR responds that the most current data available have been used in the research for this report. With few exceptions, these data cover the period prior to the 1974-1975 recession. Further, pre-recession statistics on minority and female employment and membership in referral unions are likely to show equal employment opportunities in the best possible light, since members of these groups tend to be the last hired in times of prosperity and the first laid off in recessions. See, in chap. 8, the analysis of statistics, made available by special court-appointed monitors, on minority employment and union membership during 1974 and 1975 in selected Seattle and San Francisco building trades. See also note 13, p. 182, below.

The AFL-CIO also states that "a report of this type, in the midst of a major recession, cannot improve the work opportunity for those it purports to help." AFL-CIO Comments.

USCCR, on the contrary, believes that periods of recession place a special responsibility on it to provide analyses concerning equal employment opportunity. Further, beginning with the marked increase in the nation's output in the third quarter of 1975, there have been increasing signs that the economy has entered the recovery phase of the business cycle. Hence, the Commission believes that the present is an excellent time to implement recommendations for eliminating long-standing deficiencies in the Federal Government's programs for equal employment opportunity.

of male minority workers were in the five lowest positions as far as wages were concerned. These were the Painters and Decorators, the Marble Polishers, the Roofers, the Plasterers and Cement Masons, and the Laborers.

In other words, all unions with a male minority membership of 14.2 percent or less had wage rates of $8.47 per hour or more. All of the unions with minority memberships of over 14.2 percent had lower wage rates. The union with the lowest wage rates was the Laborers at $6.65 per hour and that union had the highest percentage of minorities.

The statistics on average membership of minority men in building trades locals--9.1 percent in 1972 excluding the Laborers Union--do not suggest the extreme variations that occur. In 1972 minority membership was as low as 3.7 percent for the Asbestos Workers, while membership of black men was as low as 0.9 percent for the Sheet Metal Workers.[30]

The proportions of minority and white women in the building trades were 0.3 percent and 0.5 percent, respectively. These percentages are so low that there is scarcely scope for meaningful variation among unions. The Electrical Workers had the highest percentages of white and minority women and the trade is one of the best paid, at $9.07 per hour in 1972. But the "highest" percentages were 1.4 percent for white women and 0.9 percent for minority women.[31] In 1972, there were no women in any reporting locals of four internationals--the Elevator

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30. EEOC Release, June 30, 1974.

31. There were 3,305 nonminority women and 2,256 minority women out of a total of 237,719 members. EEOC Release, June 30, 1974. However, EEOC collects details of race, ethnicity, and sex only from locals that actually engage in referral. Including nonreferral as well as referral locals, the Electrical Workers had 287,000 women out of a total membership of 957,000 in 1972; hence women constituted 30 percent of the total membership. U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1973 (1974), pp. 111, 113 (hereafter cited as Directory of National Unions, 1973). For a more complete discussion of the coverage of EEOC statistics, see chap. 3.

Constructors, Lathers, Marble Polishers, and Asbestos Workers--and one woman in all reporting locals of two internationals, the Bricklayers and the Roofers.[32] Seven internationals reported no minority women: the six just listed and the Plasterers.

Locals with No Black or Spanish Origin Members

A study has been made of the minority memberships of all individual building trades locals that reported to EEOC in 1969.[33] In the "mechanical" trades (boilermakers, electrical workers, elevator constructors, iron workers, plumbers and pipefitters, and sheetmetal workers), 58 percent of all the locals that reported on EEO-3 forms had no members of Spanish origin, while members of Spanish origin constituted less than 1 percent of the membership of another 19 percent of all locals in the mechanical trades. In other words, persons of Spanish origin constituted less than 1 percent of the membership of 77 percent of all reporting locals in the mechanical trades.

One possible explanation for the virtual absence of persons of Spanish origin from so many locals might be that very few persons of Spanish origin lived in localities of the reporting locals. If this were the major explanation, it would affect locals of all building trades equally. But, among the laborers, roofers, bricklayers, and plasterers, only 38 percent--instead of 58 percent--of all locals had no members of Spanish origin, and only 16 percent--instead of 19 percent--of all reporting locals had less than 1 percent of their membership composed of persons of Spanish origin.[34]

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32. EEOC Release, June 30, 1974. Directory of National Unions, 1973 (p. 113) reports no women in the Elevator Constructors, Lathers, Marble Polishers, Asbestos Workers, Bricklayers, and Roofers.

33. Herbert Hammerman, "Minority Workers in Construction Referral Unions," Monthly Labor Review, May 1972, p. 21. No study with comparable details has been made for more recent years.

34. Ibid.

Even stronger comparisons emerge in the case of black membership. Among the six mechanical trades unions, 58 percent had no black members.[35] Again, a geographical explanation of this absence of members is not valid in view of the wide distribution of blacks throughout the country, and because only 16 percent of reporting locals from the bricklayers, laborers, plasterers, and roofers had no black members. In addition to the 58 percent of mechanical trades locals who had no black members, a further 28 percent of all mechanical trades locals reported a black membership of less than 1 percent. In comparison with this 28 percent figure, only 8 percent of the locals from the bricklayers, laborers, plasterers, and roofers had a black membership of less than 1 percent.[36]

Of the four international unions in which only 16 percent of the locals had no black members (Laborers, Plasterers, Bricklayers, and Roofers) only the Bricklayers was not among the group of five internationals with the lowest wages.

Summary

In summary, if statistics derived from EEO-3 reports are taken at face value: (1) Minority men constituted only 9.1 percent of the membership of 15 building trades internationals in 1972, a proportion well below the minority proportion of the relevant labor force.[37] (2) This average disguises wide variation among internationals and among locals, with minority men constituting a very low proportion of the membership of some trades and apparently being excluded completely from a substantial proportion of the locals in the mechanical trades. (3) The trades with a male minority proportion of over 14.2 percent in 1971

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35. Hammerman reports that 1971 statistics show that "this proportion had declined to less than half." "Minorities in Construction Referral Unions--Revisited," Monthly Labor Review, May 1973, p. 43. He does not report comparable 1971 statistics for persons of Spanish origin.

36. Ibid.

37. See chap. 3 and app. D for discussions of the relevant labor force statistics and population.

were also the lowest-paid trades. (4) Minority women and nonminority women constituted only 0.2 percent and 0.5 percent of the membership of 15 building trades internationals in 1972. (5) There were no women in any reporting locals of four internationals in 1972 and no minority women in any reporting locals of three additional internationals.

LEADERSHIP POSITIONS

Women and Minorities in Leadership Roles

Many minority and female union members believe that unions are not giving sufficient attention to issues of special importance to them, such as elimination of race and sex discrimination within unions and on the work site, provision of child-care facilities and training in the skilled trades for minorities and women.

Female and minority trade unionists who believe that their special interests are not receiving sufficient attention argue that this is partly because of their underrepresentation within the leadership ranks of national and local unions. At the leadership level decisions are made and priorities are established and unless minorities and women are represented there, adequate presentation of their special interests is not assured, The consequences of the inadequate number of women, for example, in policymaking positions have been bluntly put: "Union policy is hammered out at the bargaining table and in private sessions among the union's top officials. It cannot be overemphasized that unless women unionists are in these top positions, the interests of women unionists will not be fully represented."[38]

The same consequences ensue for other groups that have, historically, been relegated to a second-class status, especially blacks, persons of Spanish origin, Asian Americans, and Native Americans.

Many national unions have large numbers of minority-group and female members, yet with few exceptions there are no minority or female

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38. Mark Goldstein, "Blue Collar Women and American Labor Unions," Industrial and Labor Relations Forum, vol. 7, no. 1 (August 1971), p. 22.

leaders in the highest councils of these unions. Many other national unions--particularly the more powerful referral unions--have very few minority or female members. With such a small membership of minorities and women, there is virtually no possibility of electing minorities or women to high leadership positions. Yet without representation of women or minorities in the leadership, there is little possibility of changing those union policies that have resulted in exclusion of women and minorities from membership and from union-controlled training programs.[39]

Of 177 national unions,[40] only five have minority males as presidents[41] and only two have women as presidents.[42] The governing body of the AFL-CIO, its executive council, currently has 35 members. None of the 35 are women and only two are minority males; both are black.

Minorities and women are also poorly represented in the ranks of national officers other than president and on the executive boards of national unions. A recent study showed that only 6 women were among 187 national officers and appointed officials reported by the 24 unions with at least 50,000 women members. Only 18 women were among the 556 members of executive boards in these same 24 unions.[43]

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39. For an analysis of these policies, see chap. 4.

40. Directory of National Unions, 1973, p. 68. Of the 177 national unions, 64 are not affiliated with the AFL-CIO.

41. The United Farmworkers, the National Alliance of Postal and Federal Employees, the Associated Actors and Artistes of America, the Brotherhood of Sleeping Car Porters, and the Distributive Workers of America.

42. The Stewards and Stewardesses Division of the Air Line Pilots Association and the National Association of Veterinarians.

43. Virginia Berquist, "Women's Participation in Labor Organizations," Monthly Labor Review (October 1974), p. 7. This study is based on 1972 statistics published in Directory of National Unions, 1973, pp. 113-14, 115-19.

The representation of minorities and women in the leadership of national unions and of the AFL-CIO is slight in view of the fact that more than 9 percent of union members are minority men and 21 percent are women.[44]

The Building Trades and the Teamsters

The building trades unions and the Teamsters have especially small representations of minorities and women among their national office-holders, which is hardly surprising in view of the low membership of minorities and women in these unions. For example, in the Teamsters and in the 16 national building trades unions discussed earlier, there were no women among 77 national officers and officials and no women among 178 members of governing boards.[45]

A survey by staff of the Commission on Civil Rights indicates that proportionately more minority group members hold leadership positions in referral unions at the local union level than at the national level. But the survey also indicates that minorities are still poorly represented at this level as well. Of 13 locals of Painters, Sheet Metal Workers, and Teamsters interviewed,[46] 7 had minority group men in official positions. (See table 5.) However, no women held offices in any of the 13 locals.

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44. Table 1 shows that in 1970, black, Asian American and Native American men constituted 1,496,000 union members out of a total of 17,192,000 while women of all races constituted 3,687,000 members.

45. Directory of National Unions, 1973, pp. 115-18.

46. Officials of more than 13 locals of these three national unions were interviewed; the results were not all tabulated, either because interviews were not completed, or answers to critical questions were quite vague. The interviews dealt with many matters other than union officials. And locals from internationals other than the three listed were interviewed. For a discussion of the methodology of the field surveys conducted by Commission staff in three cities, see app. A.

Table 5. MINORITIES AND WOMEN IN ELECTIVE AND APPOINTIVE POSITIONS IN THIRTEEN LOCAL UNIONS, 1973 AND 1974

Type of local	Total membership[a]	Male minority membership (percent)[b]	Female membership (percent)[c]	Total number of officeholders[d]	Total number of male minority officeholders	Total number of female officeholders
Teamsters	2,506	35.0	13.2	11	1	0
Teamsters	10,000	4.5	5.0	15	0	0
Teamsters	5,000	--[e]	0	16	1	0
Teamsters	1,054	7.4	0.3	8	0	0
Painters	116	0.9	0	14	0	0
Painters	471	15.1	0	38	1	0
Painters	2,769	15.6[f]	0.4	15	0	0
Painters	1,288	43.7	0.2	7	3	0
Painters	401	23.7	0	8	1	0
Sheet Metal Workers	547	0.9	0	14	0	0
Sheet Metal Workers	518	14.4	0	12	0	0
Sheet Metal Workers	1,326	10.3	0	17	3	0
Sheet Metal Workers	949	11.2	0	18	1	0

Table 5 (Continued)

a. Union membership figures in Painters and Sheet Metal Workers locals include apprentices and journeymen.

b. Several "Don't know" answers were ignored. For example, no members of Spanish origin were included in the case of the Teamsters local of 10,000 members because the respondent stated he could not make a reasonable estimate of such members.

c. Most union officials were unable to give a breakdown of female members into minority and nonminority women.

d. In two instances, interviews were held with the heads of district councils rather than with the locals. In one case the titles, race, sex, and national origin of officers of all locals in the district council were given. In the other case, the race, sex, and national origin of officers of the district council itself were given.

e. Respondent replied "Don't know."

f. Figures includes only minority journeymen; respondent did not know the number of minority apprentices.

Source: Interviews by Commission staff in Jersey City, Miami, and San Francisco SMSA's, December 1973-February 1974. Commission staff were usually unable to verify the accuracy of figures provided. The last 3 columns of the table are based on the responses to two questions: "Please list the titles of all officers and staff--both elected and appointed--of your local," and "Which of the above (by title, not by name) are minorities or women? For both men and women, indicate the specific minority group and indicate any women from the majority group." In asking the first question, interviewers gave union respondents the following examples of types of officials: president, vice president, secretary-treasurer, business agent, bargaining agent, bargaining committee members, board members.

One Painters local with minority membership of 43.7 percent had minority-group persons in key elective positions: president, vice president, and financial secretary. One Teamsters local had one minority person serving as business agent and recording secretary. The positions held by minorities in the remaining five locals with minority officholders were less prestigious (e.g., trustee, board member, delegate to the district council, and warden).

The Painters local with a 43.7-percent minority membership also had the highest percentage of minority officeholders--42.8 percent. The Teamsters local with a 37.4-percent minority membership and no minority officeholders is proof that numerical strength is no guarantee that minorities will hold key elective positions.

The participation of minorities and women in union leadership roles is generally minimal. The reactions of minority unionists to this situation is reflected in a statement by officials of the Coalition of Black Trade Unionists: "As black trade unionists, it is our challenge to make the labor movement more relevant to the needs and aspirations of black and poor workers. The CBTU will insist that black union officials become full partners in the leadership and decision making of the American labor movement."[47]

Similar beliefs on the part of union women are reflected in the statement of purpose of the Coalition of Labor Union Women:

> It is imperative that within the framework of the union movement we take aggressive steps to more effectively address ourselves to the critical needs

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47. "The Need for a Coalition of Black Trade Unionists," May 1974. Aside from the Coalition of Black Trade Unionists, the following national organizations of minority unionists are active: the Labor Council for Latin American Advancement, the A. Philip Randolph Institute, and the Negro-American Labor Council.

of 30 million unorganized sisters and to make our unions more responsive to the needs of all women, especially the needs of minority women who have traditionally been singled out for particularly blatant oppression.[48]

48. "Statement of Purpose; Structure and Guidelines," adopted by Coalition of Labor Union Women, Founding Conference, Mar. 23-24, 1974, Chicago, Ill., p. 3.

3. MEMBERSHIP IN REFERRAL UNIONS: PROBING THE STATISTICS

The picture drawn in chapter 2 of the position of minorities and women in referral unions rests on official statistics, primarily those collected by the Equal Employment Opportunity Commission (EEOC). Yet these statistics have several serious deficiencies, which tend to exaggerate substantially the percentages of minorities and perhaps of women in the higher-paid categories of union membership.

This chapter begins with an examination of the weaknesses of the EEOC statistics on building trades unions' membership. The weaknesses include: unions' failure to report; unions' overestimation of minority membership; lumping nonconstruction and semiskilled workers together with construction journeymen; lumping apprentices with journeymen; and inadequate reporting of actual referral opportunities. At least three of the deficiencies appear to cause overstatements of minority journeymen working in construction, so a rough estimate is made of the impact of these deficiencies on the reported EEOC statistics. The resulting membership estimates are then compared to figures on the potential availability of minority and female construction workers to indicate the gap between potential availability and present union membership. Finally, the EEOC statistics on minorities and women in trucking are examined.

DEFICIENCIES IN STATISTICS ON CONSTRUCTION UNIONS

Nonreporting by Locals

Many referral unions do not report on EEO-3 forms. EEOC does not have a monitoring mechanism adequate to the task of securing responses from frequently unwilling union officials; the size of the EEOC staff performing this monitoring function is the major handicap. When a local fails to return an EEO-3 form, EEOC sends reminders but does not pursue the matter further.[1]

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1. Herbert Hammerman, former chief, Employment Survey Division, Office of Research, EEOC, interview in Washington, D.C., Sept. 11, 1973, and telephone interview, July 21, 1975. The EEOC states "we have in the planning stage a program of legal action to deal with labor unions which fail to file EEO-3 reports." EEOC Comments.

During Commission staff visits to Jersey City, New Jersey, Miami, Florida, and the San Francisco, California area, interviews were successfully completed with officials of 31 locals.[2] In a few instances, interviews begun were not completed or Commission staff regarded the results as unreliable or too vague for tabulation. More frequently, officials were not available for interviews, because of other business or unwillingness.

Of the 31 locals, 27 were building trades locals and 4 were Teamsters locals.[3] Only 20 of the 31 had filed EEO-3 forms in 1971. At least 6 of the 11 remaining locals should have reported. A narrow interpretation of "referral system" as defined by EEOC might have excluded the referral practices and, thus, the reporting obligation, of the other five locals. Since there is probably a positive relationship between willingness to be interviewed by Commission staff and willingness to

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2. See app. A for a description of methods used in choosing the cities and local unions studied on field trips.

3. Of the 27 building trades locals, 9 were either Painters or Sheet Metal Workers; 6, San Francisco-based locals of other trades; and 12, Miami-based locals of other trades.

The AFL-CIO states that "it is difficult for any governmental agency to make an objective report on such a large portion of the labor movement on the basis of the extremely limited sampling used for this report." AFL-CIO Comments.

USCCR notes that the analysis in this report rests only in a minor way on statistics collected from the sample of unions contacted on field trips. The report instead is based mainly on data collected nationally, particularly data which EEOC requires of all referral unions with 100 or more members (chaps. 2 and 3), data from the 1970 Census of Population, and data from a nationwide Census Bureau survey of about 50,000 households (BLS Union Members) (chap. 2). The analysis of discriminatory practices of referral unions also rests on a detailed examination of union admission, apprenticeship, and referral practices, as revealed primarily by Federal court decisions, and also by government publications describing these practices (chap. 4). The role of the statistics collected by USCCR staff from a sample of unions is primarily to indicate that deficiencies exist in the official data-collection procedures and to suggest the general order of magnitude by which these deficiencies might cause the national statistics to err.

file EEO-3 forms, it is likely that an even smaller proportion of the locals whose officials were unwilling or unable to see Commission staff filed EEO-3 forms.

Exaggeration of Minority Membership

Union officials themselves fill in the EEO-3 forms and EEOC has not established a systematic means of verifying the accuracy of the statistics submitted. Commission staff discovered that union officials often made impressionistic estimates of the numbers of members who were minorities and women, without reference to any internal records.

During interviews with Commission staff, officials of 11 unions reported statistics already on EEO-3 forms and either represented these figures as accurate or gave alternative estimates. A comparison of the EEO-3 statistics and the officials' alternative estimates shows that: (1) The impressionistic method used by officials in estimating the number of female and minority members is unreliable. (2) An analysis of statistics relating to this group of 11 unions suggests that the figures reported on EEO-3 forms might exceed the number of minority union members that would result from more careful calculations by about 5.0 percent to 13.9 percent. The higher percentage is probably the better estimate of the actual discrepancy (see appendix B).

Nonconstruction and Semiskilled Workers

The EEO-3 statistics include, along with journeymen doing skilled construction work, several other categories of union members who perform less-skilled or nonconstruction work and who generally earn substantially less than construction journeymen. These other categories are: (1) apprentices; (2) union members--sometimes journeymen--who do not work in the construction industry; (3) other workers, with titles such as helpers and tenders, who are neither apprentices nor journeymen. (A journeyman is a skilled craftworker who has mastered a specific trade or craft. Apprentices go through a specified period of training designed to lead to journeyman status. They are trained on the job and in classes in

the practical and theoretical aspects of a trade. Helpers and tenders assist journeymen. Generally, they are semiskilled or unskilled and are not in programs that lead to becoming journeymen.)[4] Since workers in all of these three categories generally receive lower pay than construction journeymen and, with some exceptions, do less skilled work, they need to be separated out from construction journeymen to determine the proportion of minorities and women in the highest-skilled, best-paid, and most numerous category.

Most of the building trades internationals have many members who do not work in construction. Members of the International Brotherhood of Electrical Workers, for example, are employed in power plants and in plants that manufacture electrical machinery, while members of the Carpenters work in furniture factories. If a specific local representing such workers does not do referral, it is not required to report the number of minorities and women among its membership to the EEOC. Also, if a local has two or more distinct units, some of which do referral while others do not, the local is not required to report such a breakdown of membership statistics for its nonreferral units.[5]

Frequently, locals that do engage in referral represent both construction workers and nonconstruction workers (sometimes called "shop" workers). Some locals report their nonconstruction workers together with their construction workers to the EEOC. For example, an official of one building trades local, which has roughly 100 out of its 500-odd members working in shops, gave Commission staff a recent copy of the local's EEO-3 form. The form listed the entire membership in the blank

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4. These definitions are based in part on Harold S. Roberts, Roberts' Dictionary of Industrial Relations (Washington, D.C.: Bureau of National Affairs, 1971). No connotation of gender is intended by the use of journeymen, a term of art in building trades.

5. See Instruction No. 12, Local Union Report EEO-3, reprinted in Bureau of National Affairs, Fair Employment Practices Manual (Washington, D.C.), sec. 441:413-14.

entitled "Membership in Referral Bargaining Units Only." The official stated that the shop workers were paid much less than the construction workers.

Helpers and tenders are often members of locals affiliated with building trades internationals other than the Laborers. Including them in the EEO-3 reports means that the statistics compiled from the reports are a composite of very-highly-paid and not-very-highly-paid workers. The average hourly wage rate plus employer contributions, for all building trades, as of July 1, 1972, was $8.34. Among journeymen, the plumbers had the highest, $9.67, and the paperhangers the lowest, $7.74. The highest wage rate plus employer contributions for any trade in the "helper-laborer" classification was $6.98 (for terrazzo workers' helpers) and the lowest was $5.06 (for composition roofers' helpers).[6]

No national statistics are available on the numbers of helpers, tenders, and nonconstruction workers in building trades unions' membership. However, in Miami, Commission staff collected information from most of the major building trades locals. When compared with 1971 statistics obtained by the Department of Labor's Office of Federal Contract Compliance (OFCC),[7] the Miami information illustrates

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6. See U.S., Department of Labor, Bureau of Labor Statistics, Union Wages and Hours: Building Trades, July 1, 1972 (1974), p. 10.

7. For a discussion of OFCC's functions, see chap. 6. On August 31, 1975, a reorganization in the Department of Labor resulted in the merger of three equal employment opportunity programs relating to minorities and women, the handicapped, and veterans. U.S., Department of Labor, Press Release, "Labor Department Merges Affirmative Action Programs," June 17, 1975. The merger resulted in the replacement of OFCC by a new office, the Office of Federal Contract Compliance Programs (OFCCP). The term OFCC is used in this study, rather than OFCCP, since most of the research on which this report is based was completed before the merger.

the adjustment required. The statistics obtained by OFCC, like the EEO-3 statistics, were based exclusively on numbers reported by union officials.[8]

The elimination of two locals consisting entirely of helpers and tenders and the elimination of nonconstruction workers in the membership of the Carpenters' District Council results in a decrease in the percentage of minorities in the Miami building trades locals from 25.4 percent to 18.2 percent, a reduction of 7.2 percentage points (see appendix C). This constitutes a 28.3-percent decrease.[9] The degree of adjustment required in the Miami case to determine the proportion of minorities among journeymen in the construction industry suggests the degree of exaggeration possible in nationwide EEO-3 statistics.

The Carpenters' District Council in Miami had 75 women among its journeyman members, more than any local interviewed on the field studies; almost all of the 75 were minority women.[10] But all 75 were employed in shop work and none in construction.

Apprentices

The EEO-3 statistics should also be adjusted to account separately for apprentices, since apprentices also receive less pay than journeymen and generally do less-skilled work. (The adjustment of union membership statistics made for helpers, tenders, etc. and members in nonconstruction work does not account for the proportion of construction union members who are apprentices.)

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8. EEO-3 statistics were not used for this analysis since only eight locals of skilled construction workers and two locals of unskilled construction workers reported to EEOC in 1971. OFCC obtained figures on 16 locals, including 13 locals of skilled workers.

9. $\frac{25.4 - 18.2}{25.4} = 0.283$

10. The respondent was unable to give the precise number of white and minority women.

The Federal Bureau of Apprenticeship and Training records national statistics on the number of minority and white registered apprentices. There were 109,162 registered apprentices as of December 1972, of whom 16,524 or 15.1 percent were members of minority groups.[11]

However, it would be a mistake simply to compare these figures of minority and white building trades union members to the totals of minority and white building trades union members derived from EEO-3 reports: Some unions do not report to the EEOC at all, while the majority of their apprentices are registered with the Bureau of Apprenticeship and Training; and, secondly, some unions do not count apprentices as members and might not report them as members to the EEOC.

The EEO-3 reporting forms do not specifically state whether apprentices are to be reported as union members, and the instruction for the form says the statistics on race, national origin, and sex are to be given for "union members."[12] Generally, unions will probably report apprentices among their membership if their constitutions define apprentices as members but otherwise will tend not to report apprentices as among the membership.[13] There is no EEOC check on this practice.

Statistics on apprentices should be separate from statistics on journeymen engaged in construction work, not only because they earn lower wages than journeymen and do less skilled work: the majority of minority apprentices enrolled under the apprenticeship outreach program probably never reach journeyman status.[14]

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11. See table 16 in chap. 5. These figures relate to the "Federally Serviced Workload" only.

12. BNA, Fair Employment Practices Manual, sec. 441:414.

13. Herbert Hammerman, EEOC, interview in Washington, D.C., Sept. 11, 1973.

14. See chaps. 5 and 7.

Since EEO-3 forms do not show the number of apprentices among locals' members, it is relevant to arrive at some indication of their number. Statistics provided by union officials during interviews with Commission staff suggest that roughly 52 percent of registered apprentices might be reported on EEO-3 forms.[15] If there is no difference in the reporting of minority and nonminority apprentices, the number of minority apprentices reported as union members on EEO-3 forms would be 8,592 and of nonminorities, 48,172.[16]

Referral Opportunities of Minorities

Even if accurate statistics were available on the proportion of minorities among journeymen employed in construction, substantial questions would remain about the pay received by minority journeymen and how frequently they were referred to jobs.

In many locals, craftworkers are divided into classes, frequently designated A, B, and C, that determine their priority in the referral system. Minorities usually constitute a smaller proportion of the

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15. Out of 31 unions interviewed by Commission staff during the field studies, only 20 (65 percent) had filed EEO-3 forms in 1971. Assume that 65 percent of all referral membership is reported to the EEOC. In Miami, staff interviewed officials of 13 local building trades unions. Three had no apprentices; of the 10 that did, 8, or 80 percent, considered their apprentices to be members. If 80 percent of all locals with apprentices consider them members and the same percentage actually reports them as members on EEO-3 forms, multiplication of 65 percent by 80 percent gives 52 percent. This procedure is admittedly crude.

16. The total number of minority apprentices, 16,524, multiplied by 52 percent is 8,592. The total of nonminority apprentices, 92,638 (109,162 minus 16,524), multiplied by 52 percent is 48,172.

higher classes than of the lower.[17] Statistics reported by an official of a voluntary plan for equal employment opportunity in the San Francisco Bay area showed the following: the average number of hours worked by minority members of one building trades local during the first 11 months of 1973 was 1,019, while whites (other than persons of Spanish origin) worked an average of 1,205 hours.[18] Hence minorities had 186 fewer hours of work--the equivalent of a month of work--than whites.

STATISTICAL SUMMARY OF BUILDING TRADES UNIONS' MEMBERSHIP

There is no reason to think that the actual percentage of women in the skilled building trades unions is higher than the 0.7-percent figure for female membership in 1972 derived from EEO-3 returns.[19] Indeed,

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17. See chap. 4. The EEO-3 forms do contain blanks in which the number of referrals of a given local is to be recorded by race and sex. However, these statistics are largely uninformative. A high frequency of referrals of minority group members or women may or may not mean that they are receiving less-desirable short-term jobs while white males are receiving long-term jobs and, therefore, are referred less frequently. Similarly, a low frequency of referrals of minority group members and women may or may not mean that they are "sitting on the bench" longer periods of time than their fellow union members who are white males. Further, on the field trips, Commission staff received indications that officials of local unions did not understand how this section of the EEO-3 form was to be filled out. An official of one local of 778 members stated that the applicants for referral in a 2-month period were 365 and that the number of referrals was zero. Another local gave identical figures for the number of black members, the number of black applicants for union membership in the past year, and the number of black referrals in a given 2-month period and inserted another figure for all three items as they related to persons of Spanish origin. Still another local reported only two applicants for referral in a 2-month period, but 416 referrals.

18. The official reported that officials of the local gave him free access to the local's pension fund records. The records showed the total number of hours worked by each member. The official was a staff member of one of the voluntary plans, stimulated by the U.S. Department of Labor, for equal employment opportunity in the construction industry. See chap. 6 for a description of these plans.

19. See chap. 2.

the fact that all 75 female journeymen in the Carpenters' District Council in Miami are shop employees indicates that even this low percentage might overstate the proportion of women among journeymen working in the highly-paid construction sector.[20]

Table 6 lists in summary form the five deficiencies in the EEOC statistics on minority membership and job referral in 15 building trades unions. The numerical adjustments listed for three of the deficiencies must be considered as suggestive of the general order of magnitude of the three deficiencies in question. The size of the sample of unions used to arrive at these new estimates is too small to permit the adjustments to be viewed as definitive.

Impact of the Deficiencies

Nonetheless, the direction of impact of these three numerical estimates seems quite clear: Each deficiency tends to cause an overestimation of the proportion of minority journeyman union members working in the construction industry. Furthermore, the estimates may well be of the correct general order of magnitude. There is point, therefore, in using these estimates to obtain a revised figure for the percentage of minorities among journeyman union members working in construction. This revised figure may be understood as suggestive of the percentage that might be found if the various data-collecting agencies were to revise their reporting procedures.

The 1972 EEOC membership statistics indicated that minorities were 9.3 percent of the membership of 15 building trades international unions; minorities constituted 122,359 out of a total membership of 1,308,888. Adjustment for the three factors yields two alternative estimates: 5.5 percent and 6.2 percent, instead of the 9.3 percent reported on EEO-3

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20. The Carpenters' District Council was the only union in Miami to provide Commission staff with a breakdown of its female journeymen into construction and nonconstruction work. This single observation is inadequate to permit an estimate of the overall percentage of female journeymen in construction as compared to nonconstruction work.

Table 6. DEFICIENCIES IN EEOC STATISTICS ON MINORITY MEMBERSHIP IN FIFTEEN BUILDING TRADES UNIONS

Deficiency	Magnitude of adjustment	Comment
Nonreporting by locals	Not available	Of 31 locals interviewed, only 20 had filed EEO-3 reports. No firm indication of race or sex membership of those that filed compared to those that did not.
Exaggeration of number of minorities in union membership	5.0 percent to 13.9 percent	The 13.9-percent adjustment is based on the more plausible assumptions. Both estimates mistakenly assume complete accuracy in statistics reported during interview.

Table 6 (continued)

Deficiency	Magnitude of Adjustment	Comment
Inclusion of helpers, tenders, etc., and non-construction workers in union membership statistics	28.3 percent	This percentage almost certainly underestimates the adjustment called for in Miami
Inclusion of apprentices in union membership statistics	8,592 minority apprentices and 48,172 non-minority apprentices	None
Referral opportunities of minorities	Not available	Information from one local constitutes an inadequate basis for adjustment, even for illustrative purposes.

forms.[21] These revised estimates suggest that among 15 major building trades unions, minorities constituted 5.5 percent (or 6.2 percent) of the journeymen working in the construction industry in 1972. The lower estimate, 5.5 percent, is based on the more plausible assumption

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21. To produce the lower estimate, the minority membership of 122,359 was multiplied by 13.9 percent, to adjust for exaggeration of the number of minorities in the membership. The resulting figure, 17,007 was subtracted from the minority membership and added to the white membership. From the resulting revised estimate of minority members (105,352), the estimated number of minority apprentices, 8,592, was subtracted; the revised figure for white membership was also reduced by the estimated number of white apprentices, 48,172. Finally, the resulting percentage of minority membership, 7.73 percent, was multiplied by the factor (1.000 minus 0.283) to adjust for the inclusion of helpers, tenders, and nonconstruction workers in the membership. The result was the estimate of 5.5-percent minority membership. The high estimate was obtained in an identical fashion, with the exception that the published number of minority members, 122,359, was initially reduced by 5.0 percent, rather than 13.9 percent, to adjust for exaggeration of the number of minorities among the membership.

These calculations are based on the EEOC's 9.3-percent figure relating to minority men and minority women together, rather than separate figures for minority men, minority women, and white women for the following reasons. The unadjusted data for membership in Miami locals lumped minority men and women together (see app. C). Similarly, in one of the three locals (Local C) that showed discrepancies in estimates of minority membership, minority men and women were lumped together. Finally, the apprenticeship statistics from the Department of Labor's Bureau of Apprenticeship and Training lumped minority men and minority women together.

regarding incorrect reporting of minority membership by union officials.[22]

Potential Availability of Minority and Female Workers

The estimated percentage of minority and female journeymen in the construction industry should be compared to a population and to a labor force base. Appendix D of this report contains estimates of the minority population (table D-1) and statistics on the number of female and minority workers in the census categories "craft and kindred workers" and "operatives except transport" (table D-2). The population estimates are unofficial (the official estimates are known to be too low) but appropriate for present purposes.[23]

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22. The more plausible assumption is set forth in the discussion of all locals that reported EEO-3 membership statistics to Commission staff interviewers. See app. B.

BLS Union Members presents data that permit the following computations: In the two categories "carpenters" and "construction craftsmen other than carpenters," the total number of union members was 1.506 million. Of this total 77,000 or 5.1 percent were black, Asian American, and Native American craftworkers; the number of female black, Asian American, and Native American craftworkers was apparently less than 1,000. The number of white female craftworkers in these two categories was 5,000 or 0.3 percent. There are a number of problems associated with these statistics: The minority statistics do not include persons of Spanish origin; racial identifications were made by interviewers, on the basis of their own observations during interviews that were commonly held with just one family member, rather than on the basis of direct questions; the craftworker category includes apprentices; and occupational classifications were frequently made on the basis of information supplied by relatives of workers, who happened to be at home during the interview hours, rather than by workers themselves. (These comments are based on interviews in Washington, D.C., with Paul Flaim, Office of Current Employment Analysis, and Sheldon Kline, Labor Economist, Office of Wages and Industrial Relations, Bureau of Labor Statistics, Nov. 8, 1974.) Further, workers and their relatives probably tended to exaggerate workers' occupational status, thereby resulting in the likely classification of some laborers and helpers as craftworkers. For these reasons, the proportions of minorities and women reported in this publication cannot be taken as highly reliable.

23. See app. D for explanations of why the adjustments were made and of the procedures used in the adjustments.

The minority percentage of the national population is estimated at 17.8 percent on the basis of a conservative adjustment of official census figures.[24] The minority percentage of journeymen in the construction industry may be in the neighborhood of 5.5 to 6.2 percent. Hence, the minority proportion of union journeymen working in construction may be about a third of their proportion in the population.

The percentages of women and minorities in the total population provide some indication of the numbers of potential workers who could be trained to do skilled work in the construction industry. But the percentages of minorities and women in craft and operative occupations indicate roughly the base of skilled and semiskilled people who could be trained for skilled construction rather quickly.

Table D-2 (appendix D) shows that minorities constitute 15.5 percent of the workers in the classification "craft and kindred workers" and "operatives except transport." The 5.5-percent to 6.2-percent estimate of minorities among journeymen in the construction industry is well below this 15.5-percent figure. Male minorities among construction craftworkers in the building trades unions may be estimated at about 5.3 to 6.0 percent of the total membership.[25] These percentages are roughly half of the 10.9 percent figure for male minorities among the craft and operative work force. (See table D-2.)

Female minority journeymen may be 0.2 percent, or less, of the unionized journeymen in the construction industry and female whites may be roughly 0.5 percent or less.[26] Both proportions are small fractions of the proportions of minority and nonminority women in the

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24. There are reasons to believe it is higher. (See app. D.) The order of magnitude of underestimation might be a percentage point.

25. EEO-3 reports show minority women in the 15 building trades internationals at 0.2 percent of total membership (chap. 2.) The 5.3-percent and 6.0-percent estimates result from subtracting 0.2 percent from the earlier 5.5- and 6.2-percent estimates for all minorities in the construction journeyman category.

26. Chap. 2. Both percentages may well be overestimates.

whole population and of the 4.5-percent and 17.7-percent figures for minority and white women, respectively, in the craft and operative classifications. (See table D-2.)

In summary, the percentages of minorities and women among journeymen in the construction industry are extremely low, whether compared with population or relevant labor force statistics.[27]

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27. The Department of Labor, in comments on this publication in draft form, states that "while the Department does not dispute the report's contention of continued existence of discriminatory union practices, this study does not present any comprehensive or reliable data on the extent of discrimination.... Specifically, the study uses 1970 data to compare the employment and earnings of minorities and women in selected occupations with white males. This data is used to form the basis of the conclusion that despite the Civil Rights Act of 1964, minorities and women are still excluded from journeyman status in the skilled trades. In order to determine the impact of the Civil Rights Act on employment of minorities and women in the skilled trades, particularly building trades, data more recent than 1970 is needed. The use of 1970 data ignores the realities of the training and employment situation in the building trades. Even if one were to assume that minorities and women were excluded from this industry prior to 1964, it is unrealistic to assume that a significant change would have occurred by 1970 since entry into this industry normally requires the completion of a 4 or 5 year apprenticeship program." Department of Labor comments on this publication in draft, forwarded with a letter from John T. Dunlop, Secretary of Labor, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (USCCR), on Oct. 1, 1975 (hereafter referred to as Department of Labor Comments).

USCCR agrees that this study uses 1970 data to compare the employment and earnings of minorities, women, and white males in selected occupations (chap. 2). However, the analysis of union membership practices does not rest mainly on this data, contrary to the Department of Labor's assertion. The statistics on which this analysis rests are mainly EEO-3 data on 1972 union membership released by EEOC in June 1974. This data is used exclusively in chaps. 2 and 3. USCCR also notes that the 1972 data relate to union membership eight years after the passage of the Civil Rights Act of 1964, while most apprenticeship programs are actually two to four years (U.S., Department of Labor, Manpower Administration, The National Apprenticeship Program (1972), pp. 10-25.) The analysis of discriminatory practices of referral unions also rests on a detailed examination of union admission, apprenticeship, and referral practices, as revealed mainly by Federal court decisions reached in the 1970's (chap. 4). These decisions found that union discrimination in referral and apprenticeship, as well as in admission to membership and journeyman status, continued into the 1970's. As of January 7, 1976, EEOC had not completed its tabulations of 1973 EEO-3 data.

MEMBERSHIP IN THE TEAMSTERS

The membership of minorities and women in the International Brotherhood of Teamsters, the dominant union in the trucking industry and the largest union in the country, is of special concern. Unionized drivers and delivery workers have median earnings higher than the national average for all union members and 42 percent higher than the median earnings of nonmember drivers and delivery workers. (See table 3.)

Statistics derived from the EEO-3 reports give a poor indication of the numbers of female and minority Teamsters who are road drivers--the long-distance drivers who earn the highest pay--and of the number of female Teamsters who are drivers of all types.

Only 370,913 Teamsters were reported by locals filing EEO-3 reports in 1972 to be members of referral units.[28] This is a surprisingly low proportion of the Teamsters' total membership--some 1,855,000 in 1972[29]--in view of the fact that many locals of drivers as well as locals of various types of nondrivers, including dock workers, engage in referral. This low proportion might result partly from nonreporting by locals, which could well be as serious a problem among the Teamsters as among building trades unions.[30]

According to the EEO-3 compilation, 10.3 percent of the Teamsters members in referral units were black, Asian American, and Native American men; 1.2 percent were black, Asian American, and Native American women; and 9.9 percent were white women.

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28. Statistics supplied by EEOC from Local Union Report EEO-3, 1972.

29. U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1973 (1974), p. 54.

30. See discussion above of nonreporting. On the field studies, Commission staff were able to complete fairly frank interviews with officials of four Teamsters locals. Of those four, one had not filed an EEO-3 form in 1971; it had over 100 members and operated a referral system (a hiring hall, in fact) and therefore should have submitted an EEO-3 form.

The Bureau of Labor Statistics (BLS), in reporting on a Bureau of the Census survey,[31] used the category "drivers and deliverymen." Unlike the EEO-3 figures, this category excludes Teamsters members who are not drivers and, therefore, is a better source than EEO-3 reports for the composition of Teamsters drivers by sex, race, and ethnicity. The report stated that, of 1,024,000 union members who were drivers and delivery workers,[32] 1.2 percent were white women and 0.4 percent were black, Asian American, and Native American women. These figures are far below the percentages derived from the EEO-3 statistics. For minority men, the Bureau of Labor Statistics' percentage for drivers and delivery workers is 10.3 percent of union members, a figure that agrees exactly with the EEO-3 percentage.

There are two likely explanations for the fact that the EEO-3 percentages for women are so much higher than the BLS figures: (1) Female members of the Teamsters are probably disproportionately in categories other than drivers and delivery workers, categories less well paid than drivers and delivery workers. (2) The discrepancies could also be the result of a failure of many Teamsters locals to submit reports to EEOC.

Commission staff met officials from eight Teamsters locals.[33] Of these eight, no tabulations of membership statistics were made regarding four, owing to noncompletion of the interview or to extremely vague responses to important questions, such as the composition of their membership, by race, sex, and ethnicity. Of the remaining four, one could not provide the number of minority members of his local, and one of the locals had no road drivers among its members.

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31. BLS Union Members, table 1. This source did not give separate figures for persons of Spanish origin.

32. Some drivers and delivery workers who were union members were undoubtedly members of unions other than the Teamsters. This number would certainly have represented a small proportion of the total, however, since the Teamsters represents by far the largest number of truck drivers.

33. Attempts were made to meet with a substantially larger number, but officials were not available for interviews.

The remaining two locals told Commission staff that they had 227 road drivers, 5,079 other drivers, and 7,200 members who were not drivers in a total membership of 12,506. Neither of the two locals had any Asian American or Native American members. The total black male membership of the two locals was 1,118, or 8.9 percent, which corresponds roughly with the percentage for all reporting Teamsters locals compiled by EEOC. But black male road drivers numbered only 8, or 3.5 percent, of road drivers, while black men constituted 11.0 percent of the local drivers and 7.6 percent of the nondrivers.

The two locals had 831 female members, 6.6 percent of the total. One of the women was a local driver, the rest were nondrivers. One of the locals could not estimate the number of members of Spanish origin. Of 213 persons of Spanish origin in the other local, none was a road driver. From examination of EEO-3 reports it is apparent that, as recently as 1971, there were locals with thousands of members, in areas with large numbers of minorities, that reported to the EEOC that they had no minorities and no women among their members.[34] Lawsuits have been filed against other locals which have had between zero and 1-percent minority representation among their road drivers.[35]

The available information, then, shows that the proportion of minorities and women who hold jobs as road drivers is extremely low. EEOC statistics, which lump road drivers together with other Teamsters members, do not shed light on this matter.

CONCLUSION

The EEOC statistics on referral union membership are deficient in major respects. The numbers of minority and female union members in certain highly-paid job categories--especially journeymen working in

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34. The U.S. Commission on Civil Rights, under the terms of the release of data on individual locals by the EEOC, is not permitted to reveal statistics for or identity of individual locals.

35. The court cases in which these statistics were revealed are discussed in chap. 4.

construction and road drivers--appear to be even lower than these statistics suggest. The numbers of minority and female union members in these job categories are also quite low compared to population and labor force statistics indicating the potential availability of minorities and women for such jobs.

An examination of the historical record on blacks and women in unions[36] indicates that (1) there was minimal progress in black admission to the skilled building trades unions between 1900 and 1972; (2) in recent years, the percentage of female workers who are union members has actually declined, while the percentage of male workers who are union members has increased; and (3) there is still considerable sex segregation among union members: women make up more than half of the total membership of several large unions, while they are almost totally absent in unions representing workers in a variety of industries in addition to construction and trucking.

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36. App. E. The record on minority unionists other than blacks is very incomplete for years prior to the late 1960's.

4. THE DISCRIMINATORY EFFECTS OF REFERRAL UNION PRACTICES

By serving as employment channels through which workers obtain jobs, referral unions have considerable power in determining access to jobs. Their powers are greatly enhanced when they also control employment through their membership admission standards and their apprenticeship programs. The exercise of these powers can--and in practice generally does--have a discriminatory impact on the employment opportunities of minorities and women.

In brief, this chapter examines institutional practices of referral unions in the building trades that have an adverse effect on minority men; intentional discrimination, still common in some construction referral unions; discriminatory practices of the major referral union in the trucking industry--the Teamsters; and, finally, barriers to entry of women into apprenticeship programs and road-driving jobs.

This chapter places special emphasis on institutional discrimination. Institutional discrimination occurs when policies and practices used in selecting apprentices and applicants for membership and employment have an adverse impact on minorities and women, even when these policies and practices are not intentionally applied in a discriminatory manner. The adverse effect these policies and practices have on minority groups and women may have been caused by the past intentional discriminatory policies of a union or by economic, educational, and social disparities in the society. Whatever the cause, the effect is exclusion from employment.

The facts and analyses used in the following discussion rely heavily on Federal court cases brought under Title VII of the 1964

Civil Rights Act (as amended in 1972).[1] Section 703(c) of the Act reads:

> 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 to 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.[2]

Section 703(d) of the Act also forbids discrimination in apprenticeship or other training by an employer, labor organization, or by a joint labor-management committee.[3]

The court cases and EEOC decisions discussed place much emphasis on the decision of the Supreme Court of the United States in Griggs v. Duke Power Co.,[4] or on the EEOC's "Guidelines on Employee Selection Procedures."[5]

The Griggs decision, going beyond finding that intentional discriminatory practices are unlawful, held that even seemingly neutral practices may be discriminatory if they have an adverse impact on minorities and if they are not justified by business necessity. The Supreme Court stated:

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1. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §§2000e, et seq. (1972), amending 42 U.S.C. §§2000e, et seq. (1970).

2. 42 U.S.C. §2000e-2(c) (1970).

3. 42 U.S.C. §2000e-2(d) (1970).

4. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

5. Guidelines on Employee Selection Procedures, 29 C.F.R. §1607 (1974).

> The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.[6]

The EEOC guidelines establish general standards providing that any test that adversely affects the employment opportunities of groups protected by Title VII constitutes discrimination unless (a) the test has been validated according to prescribed procedures and is highly useful in employee selection, and (b) it can be demonstrated that no other suitable selection procedures are avail-

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6. 401 U.S. 431. The EEOC comments that the Griggs decision and subsequent appeals court decisions have emphasized the consequences of employment practices, as distinct from the motivations of those engaging in the practices, and have also defined carefully and strictly the business necessity concept. EEOC further considers that the Commission's report should reflect an adequate "technical perception" of these and other principles which have developed following Griggs, and that consequently the report should be restructured to reflect these principles, EEOC Comments. USCCR notes that the purpose of this report is not to develop the legal interpretation of employment discrimination as it applies to unions, but, among other matters, to assess the extent to which minorities and women have actually succeeded in entering certain referral unions in substantial numbers, to examine the accuracy of available statistics on minority and female membership in these unions, and to examine means by which a variety of union practices have had the effect of excluding minorities and women. These analytical problems, which are relevant to the general effort to assess the extent and nature of union discrimination and the effectiveness of present public policies designed to combat it, could not be resolved by relying mainly on legal tools. However, USCCR notes a close parallel between this study's treatment of these problems and the pattern of evidence required to prove employment discrimination under Griggs principles, as described in the EEOC comments and elsewhere: this report first establishes the extent of underrepresentation of minorities and women in many referral unions (chaps. 2 and 3) and subsequently examines the union practices which largely account for this exclusion (this chap.). Further, the study quotes court decisions which have found, in specific cases, that these practices have violated Title VII of the Civil Rights Act of 1964 and other statutes (also in this chap.).

able.[7] The guidelines define tests broadly, to cover a wide variety of selection standards--e.g., written tests, work history requirements, educational requirements, and scored interviews.

MINORITIES IN BUILDING TRADES UNIONS

Local building trades unions exercise a high degree of control over employment and training in the construction industry. The major channels through which they control employment and training are (1) the formal apprenticeship program or the informal on-the-job training system, (2) the hiring hall or work referral system, and (3) union membership.

Building trades unions seek to control employment in their respective trades because of the fluctuating pattern of employment in the construction industry. The volume of construction work at any given time is greatly influenced by seasonal and economic changes (e.g., monetary policies, recessions). As a result of these factors, employment in the industry fluctuates, with ensuing job insecurity. By controlling certain critical employment channels, building trades unions can restrict the number of journeymen entering the trade and thereby increase job security and ensure high wages for their members.

This rationale for union control over employment and training in the construction industry does not explain the reason for the gross underrepresentation of minorities in certain building trades unions. (See chapter 2.) Even considering the restrictive membership policies of these unions, it would seem logical to assume that union membership as well as apprenticeship programs would reflect a significant representation of persons from all racial and national origin groups. However, this is not the case. In fact, underrepresentation of minorities in building trades unions is caused, in large part, by the discriminatory referral, apprenticeship, and membership practices of some of these unions.

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7. 29 C.F.R. §1607.3 (1974).

Union Membership

The membership admission standards of building trades unions vary by trade. In most instances, locals of the same trade follow the membership standards established by the national or international parent body. However, membership standards vary even among locals of the same trade.

A study of the admissions policies of the 17 national building trades unions belonging to the AFL-CIO's Building and Construction Trades Department[8] revealed that the most frequently used admissions criteria are proof of experience or competence in the trade, passage of an examination, approval by the local membership, good moral character, and nomination or endorsement by present members.[9] (See table 7.) Which standards are used depends upon the way union membership is attained. Membership is usually attained through apprenticeship, direct admission, organizing a nonunion contractor, or transfer from a sister local. (Sister locals are affiliated with the same international union but cover different jurisdictions.)

In many locals, apprentices automatically become union members upon completion of their apprenticeship period. All nine of the Painters and Sheet Metal Workers locals queried during field studies stated that this was so in their locals.[10] On the other hand, journeymen seeking direct admission into the union usually have to fulfill such requirements as proof of work experience, passing an examination, and approval by the membership.

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8. U.S., Department of Labor, Labor-Management Services Administration, Admission and Apprenticeship in the Building Trades Unions (1971), p. 20 (hereafter cited as Admission and Apprenticeship).

9. At least nine of the unions had these criteria. (See table 7.)

10. The question asked was "If an applicant has fulfilled all apprenticeship requirements, including passing any exam that is required, does he automatically become a journeyman and a member of your local?" Commission staff interviewed over 100 persons in three cities between December 1973 and February 1974. Detailed questions about membership, referral, and apprenticeship practices were asked only of selected Painters, Sheet Metal Workers, and Teamsters locals. Nine Painters and Sheet Metal Workers locals were interviewed. For an account of the field studies, see app. A.

Table 7. QUALIFICATIONS FOR ADMISSION AS JOURNEYMAN IN NATIONAL CONSTITUTIONS

National union	Work experience or competence	Approval by membership	Examination (written or oral)	Good moral character	Nomination or endorsement by members	Citizenship	Age	Education	Other
Total	15	13	12	10	9	7	3	1	3
Carpenters	X	X	X	X	X	X	X	-	-
Asbestos Workers	X	X	X	X	-	X	-	-	X
Bricklayers	X	X	X	-	X	X	-	-	-
Electrical Workers-IBEW	X	X	X	X	-	-	X	-	-
Iron Workers	X	X	X	X	X	-	-	-	-
Marble Polishers	X	X	-	X	X	X	-	-	-
Painters	X	X	X	X	X	-	-	-	-
Sheet Metal Workers	X	X	X	X	X	-	-	-	-
Engineers, Operating	X	X	X	X	-	-	-	-	-
Plumbers	X	X	X	X	-	-	-	-	-
Roofers	X	-	X	X	-	X	-	-	-
Stone Cutters	X	X	-	-	X	X	-	-	-
Elevator Constructors	-	-	-	-	-	-	X	X	X
Granite Cutters	-	X	-	-	X	-	-	-	X
Lathers	X	-	X	-	-	X	-	-	-
Plasterers	X	X	X	-	-	-	-	-	-
Boilermakers	X	-	-	-	X	-	-	-	-

Source: U.S., Department of Labor, Labor-Management Services Administration, Admission and Apprenticeship in Building Trades Unions (1971), p. 20.

At least until the late 1950's, and probably until the early 1960's, a number of referral unions had constitutional provisions excluding minorities from membership. Officials of some unions personally informed minority applicants that they did not accept minorities as union members. While such obviously intentional discrimination is less common now, the case of United States v. Local 638, Steamfitters illustrates one type of intentional discriminatory practice that is still common: disparate admissions standards for minorities and whites.[11]

In 1972, Local 638's total membership in the A branch (construction) was 4,198, of whom 129 were black and 62 were persons of Spanish origin. Most of these minorities were admitted in 1972: 154 were admitted as a result of a Federal court order in January 1972, and six were admitted as a result of an agreement between the U.S. Department of Justice and Local 638.[12] No other minorities were admitted in 1972. In contrast, 156 whites were admitted to the A branch after January 1972 without taking a written or practical exam. Thirty-two whites were also admitted through the apprenticeship program. The district court stated, "This practice of admitting whites by informal standards and without reference to the apprenticeship program while denying such admission to nonwhites is discriminatory and unlawful."[13] In conjunction with other evidence, the court found that the local discriminated against blacks and persons of Spanish origin.

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11. United States v. Local 638, Steamfitters, 360 F. Supp. 979 (S.D.N.Y. 1973), aff'd sub nom. Rios v. Local 638, Steamfitters, 501 F.2d 622 (2nd Cir. 1974). Other cases involving overt discrimination by building trades unions include: United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F. 2d 544 (9th Cir. 1971); United States v. Local 357, IBEW, 356 F. Supp. 104 (D. Nev. 1972); and United States v. Local 1, Bricklayers, 5 FEP Cases 863 (W.D. Tenn. Nov. 29, 1972), aff'd as mod sub nom. United States v. Masonry Contractors Ass'n of Memphis, Inc., 497 F.2d 871 (6th Cir. 1974).

12. 360 F. Supp. at 989.

13. Ibid.

The use of an apprenticeship program as the sole means of minority entry into a union discriminates against those minorities whose experience qualifies them to enter the union directly as journeymen. If a union has virtually complete control over employment in its trade, experienced minority journeymen will be unable to obtain employment in the trade. The union may allow minority persons to use its hiring hall, but this means of employment does not provide as much job security as union membership.

Requiring all experienced minority journeymen to join a union through the apprenticeship program is contrary to the EEOC's Guidelines on Employee Selection Procedures[14] and is probably violative of Title VII of the 1964 Civil Rights Act under well-established legal principles.[15]

Four common institutional practices of building trades unions adversely affect the opportunities of minorities to become members of unions: (1) approval by the membership and nomination and endorsement by members, (2) restrictions on the size of the membership, (3) methods of recruitment, and (4) examinations. (The last two affect membership, referral, and apprenticeship practices in a similar manner and are examined later in this chapter.)

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14. 29 C.F.R. 1607.3(b).

15. See, for example, Griggs v. Duke Power Co., 401 U.S. 474 (1971); Robinson v. Lorillard, 44 F.2d 791 (4th Cir. 1971); and Moody v. Albermarle Paper Co., 422 U.S. 405 (1975). These cases have established the principle that an employment practice which has an adverse impact on minorities or women violates Title VII unless it is required, in a strict sense, by business necessity and there is no alternative policy which will accomplish the same business purpose with a lesser adverse impact.

Approval by membership and nomination and endorsement by members.--Some national constitutions require that applicants for membership be nominated or endorsed by a present union member and/or be approved by the membership before they become union members. It is obvious that such subjective requirements could easily result in intentional exclusion of minorities, especially if the union has a history of engaging in discriminatory practices: "(L)eaving such discretionary power in the hands of a union which is otherwise engaged in a pattern or practice of discrimination places too much reliance on the good faith of a union which is already discriminating."[16]

Even when a union has not had a history of discrimination, requirements of sponsorship or endorsement by a present member can still result in discrimination. For example, if union members sponsor persons for membership, they will sponsor persons within their social realm. In a predominantly white union, this almost invariably means that white members will sponsor other whites.

In Vogler v. McCarthy, Inc.,[17] a 1967 Louisiana case, the defendant union, Asbestos Workers Local 53, required applicants for membership to be sponsored by three members, to receive approval by a majority of the members, and to be related to a present member.[18] It had been established that the local had intentionally discriminated

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16. Comment, "Title VII of the Civil Rights Act of 1964 and Minority Group Entry into Building Trades Unions," 37 U. CHI. L.R. 328, 346 (1970).

17. Vogler v. McCarthy, Inc., 294 F. Supp. 368 (E.D. La. 1967), aff'd sub nom. Local 53, Asbestos Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969).

18. Ibid. at 370.

against blacks and Mexican-Americans. The district court discontinued use of all three requirements, saying:

> In a traditionally all white union such as Local 53, each of the requirements for membership... effectively denies to Negroes the opportunity to join the union without regard to race. Since there are no Mexican-Americans in Local 53, these requirements, equally effectively, deny to Mexican-Americans the opportunity to join the union without regard to national origin.[19]

The district court in United States v. Local 357, IBEW recognized the deterrent effect of a membership approval requirement on the willingness of minority persons even to seek union membership. Because of the intentional discriminatory practices the local had engaged in, the court said that the membership approval requirement "has further discouraged qualified Negro electricians from seeking membership."[20]

Restrictions on membership size.-- Unions deliberately restrict the size of their membership to ensure employment and high wages for their members. When minorities have been excluded in the past, this policy has a disproportionate impact on their employment opportunities, and so must be justified by business necessity.[21] "Union size restrictions meet the court's description precisely--they are practices, neutral on their face, which freeze the status quo of prior discrimination."[22]

In Vogler v. McCarthy the union membership (Asbestos Workers Local 53) was so small that the union had to use members of other asbestos workers locals and nonmembers working on permit to meet the demands of contractors.[23] At the time of the discrimination suit, the membership of the local was only 282. However, 1,200 men worked within the jurisdiction of Local 52. None was a minority person. The district court stated,

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19. Ibid. at 371.

20. United States v. Local 357, IBEW, 356 F. Supp. 104, 113 (D. Nev. 1972).

21. See Griggs v. Duke Power Co., 401 U.S. 424. (1971).

22. Yeager, "Litigation Under Title VII of the Civil Rights Act of 1964, the Construction Industry and the Problem of the 'Unqualified Minority,'" 59 GEO. L.J. 1265, 1291 (1971) (hereafter cited as Yeager).

23. 294 F. Supp. at 371.

"Notwithstanding a critical labor shortage in the insulation industry, the defendant Local 53 has intentionally limited its membership to such an extent that its membership is less than one-fourth what the industry requires."[24]

The district court's temporary injunction against Local 53 included the stipulation that the local adjust its membership size to current and future labor requirements of the insulation industry.[25]

In another case, in the Second Circuit the court found that a local's restrictions on the use of permits[26] had an adverse effect on minorities. The defendant union, Lathers Local 46, had admittedly discriminated against blacks in its work referral system--a system many nonmembers used in obtaining employment in a type of lathing work that requires little training.[27] The local had signed a consent decree that provided for an administrator to study the work permit system and to recommend changes, if needed. The local disagreed with the administrator's decision and appealed.

Part of the settlement required the local to establish objective criteria for referral and "to implement fair and equal hiring hall procedures."[28] While plans for an objective and fair referral system were being developed, the union, "for the first time in its history, ceased issuing work permits."[29] As a result, the number of nonwhite permitholders decreased from 170 to 72. The administrator,

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24. Ibid. at 371. See also United States v. Local 357, IBEW, 356 F. Supp. 104 (D. Nev. 1972).

25. See Local 53, Asbestos Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969).

26. A permit book allows nonmembers of unions and union members from locals in the same trade to work within a particular local's jurisdiction for a specified period of time.

27. United States v. Local 46, Lathers, 471 F.2d 408 (2nd Cir. 1973), cert. denied, 412 U.S. 939 (1973).

28. Ibid. at 411.

29. Ibid.

upon the Federal Government's request, ordered the union to issue 100 permits to nonwhites and to allow previous permitholders to renew their permits without having to pay back dues. Additionally, after a study of the industry, the administrator determined that the union should issue at least 250 permits annually, through 1975.

The appeals court upheld the administrator's decision, stating: "(L)ocal 46, by ceasing to issue permits, can effectively close the area of work to the vast majority of nonwhite laborers, without engaging in any overt discrimination."[30] Thus, restrictions on the use of permits can be just as detrimental for minorities as control over the size of the membership. Both practices severely affect job opportunities for minorities.

Referral

Another way a union can control employment in its trade is through the use of the union hiring hall or work referral system. A work referral system or union hiring hall is "an arrangement under which an agency or institution which has control of or access to a particular labor pool agrees to supply workers to an employer upon request."[31]

A referral union may be exclusive or nonexclusive. It is exclusive if the employer is contractually obligated to obtain all or most of its labor force from the union.[32] It is nonexclusive if the agreement does not require the contractor to use the union as the primary or only source of labor, but does require the contractor to notify the union of job openings and to give the union equal opportunity with other employment sources to refer workers.

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30. Ibid. at 414

31. U.S., Department of Labor, Labor-Management Services Administration, Exclusive Union Work Referral Systems in the Building Trades (1970), p. 6 (hereafter cited as Exclusive Referral Systems).

32. There are some exceptions to this general rule. For example, some contracts stipulate that, if the union cannot supply workers within a specified time period, the contractor may obtain workers from other sources.

The EEOC's definition of a referral union states:

> A Referral Union is a local union which itself, or through an agent: (a) operates a hiring hall or hiring office, or (b) has an arrangement under which one or more employers are required to hire or consider for employment persons referred by the union or any agent of the union, or (c) has 10 percent or more of its members employed by employers which customarily and regularly look to the union, or any agent of the union, for employees to be hired on a casual or temporary basis, for a specified period of time or for the duration of a specified job.[33]

This definition covers informal, exclusive work referral systems as well as exclusive and nonexclusive referral systems. The informal, exclusive referral union supplies or approves all or most employees the contractor hires, but the referral arrangement is not embodied in the collective-bargaining agreement.

The work-referral system helps to reduce job insecurity by keeping workers abreast of available jobs and referring them to openings. From the contractor's point of view the work-referral system is desirable because the contractor can rely on the union to supply workers when they are needed.

One of the amendments to the National Labor Relations Act--the Landrum-Griffin amendment (1959)--legalized the work-referral system. The relevant portion of the Act now reads:

> It shall not be an unfair labor practice...for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members. ...because...(3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such

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33. Equal Employment Opportunity, Local Union Report EEO-3 (1971) in Bureau of National Affairs, Labor Relations Reports: Fair Employ-Practices Manual (Washington, D.C. 1974), sec. 441:401.

> labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area....[34]

The union must not discriminate on the basis of union membership in making referrals. Nonunion persons working on permit are to be given equal consideration in being referred if they have met other criteria for referral.

In actual practice, the criteria used in referring workers to jobs usually favor union members. Even when the criteria do not favor union members over nonmembers, union members usually receive first preference in referrals: "...(I)n theory referral procedures do not favor members over nonmemembers. In practice, however, unions usually give preference to members regardless of the terms of the collective-bargaining agreement, and contractors acquiesce in order to avoid trouble with the unions."[35]

During Commission field studies some union officials, in describing their referral procedures, divided applicants for referral into two groups, members and nonmembers. Five of the nine locals stated that they did not use referral categories. The other four locals registered only members on their top priority referral list,

Table 8. FACTORS DETERMINING REGISTRATION ON UNIONS' TOP PRIORITY REFERRAL LIST

Factor	Number of locals
All members in good standing	2
All members of at least 1 year's seniority	1
Members who have worked in the bargaining unit any time in the last 2 years	1

34. National Labor Relations Act, 29 U.S.C. §158f (1970).

35. Ray Marshall, William S. Franklin, and Robert W. Glover, A Comparison of Union Construction Workers Who Have Achieved Journeyman Status Through Apprenticeship and Other Means (Austin, Tex.: University of Texas, 1974), p. 32.

or "A" list. (See table 8.)[36]

After it is determined that applicants are eligible for referral they are placed on a referral list. A study by the Labor-Management Services Administration revealed that most workers are referred on the basis of their date of registration on the out-of-work list,[37] that is, according to the general principle of first in, first out. Responses from field studies also revealed that this method of referral is common. (The details are given in table 9.)

Table 9. SEQUENCE OF REFERRAL

Principle determining sequence of referral	Number of locals
A. General principle:	
1. First in, first out	All 9 locals
B. Additional limiting conditions:	
1. Specialties of the workers, as claimed by the workers	6
2. Employers can request workers by name	2
3. Seniority and continuity of seniority	1
4. Members can also look for own jobs	2

Note: The question asked was, "What procedure does your local use in referring workers to jobs?" The numbers of locals given for "additional limiting conditions" should be regarded as minimum numbers, since the count is based on information volunteered by respondents, not specific questions asked by interviewers.

Some referral unions further divide referral applicants into priority groups. Persons are then referred on the basis of their date

36. The question asked was, "What factors determine the category a person is placed in? Give details."

37. Exclusive Referral Systems, pp. 55-64.

of registration and on the basis of their priority group. The criteria used in determining the priority group a referral applicant is placed in include experience in the trade, residence in the union's jurisdiction, and work for a union contractor.

As in the case of membership practices, some unions continue to discriminate intentionally against minority applicants for referral. Some unions have intentionally failed to inform or have misinformed minority applicants about the correct eligibility requirements for referral.

In a Seattle, Washington case, United States v. Local 86, Ironworkers, one of the defendant unions--Plumbers and Pipefitters Local 32--had a policy of questioning nonmember applicants for referral about their experience.[38] The local also required applicants for referral to apply for membership before they were placed on an out-of-work list. On two separate occasions, two minority applicants for referral (a pipe welder and a plumber and pipefitter) were not questioned about their experience. Nor were they told about the membership application procedures. Both were simply told no work was available.

Subsequent testimony revealed that work was available in each of the applicants' respective trades. The district court said the local's treatment of the minority applicants was discriminatory. Specifically, the court stated, Local 32 had discriminated against blacks "by failing to inform them of the union's procedures for referral and membership... and by providing them with false or misleading information on work conditions in the trade."[39]

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38. United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970) aff'd, 443 F.2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971).

39. 315 F. Supp. at 1220-1221. Other cases involving overt discrimination against minority applicants for referral include: Dobbins v. Local 212, IBEW, 292 F. Supp. 413 (S.D. Ohio 1968); and United States v. Local 357, IBEW, 356 F. Supp. 104 (D. Nev. 1972).

Three common, institutionalized, referral practices have an adverse impact on minority employment in construction: (1) use of experience in the trade and/or under the collective-bargaining agreement as a criterion for referral, (2) methods of recruitment, and (3) testing. (Discussion of the last two follows the end of this section.)

Experience.-- Experience in the trade and under the collective-bargaining agreement is the most frequently used criterion in determining eligibility for referral and in determining where persons are placed in priority groups if they are eligible for referral. This criterion is also one of the most difficult barriers that minorities face in their attempts to obtain referral. If a union has virtually complete control over employment in a trade, the amount of experience a referral applicant will have had in the trade and under the collective-bargaining agreement will depend on how much the union has allowed the applicant to work in its jurisdiction.

Minority workers may obtain experience by working for a nonunion contractor where a union is not strong enough to control the trade, or they may have gained experience by working on permit in another area. But those who have not had such occasions to work will have gained little or no experience if a union local has engaged in discriminatory practices that excluded minorities from employment. Because of their lack of experience, some minority applicants for referral are precluded from even signing the eligibility list. Those with limited experience will be placed in the lowest priority group, since those with experience under the collective-bargaining agreement will be given the highest priority.

The specific discriminatory effect of the experience requirement was illustrated in a case involving IBEW Local 1.[40] The local had four

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40. United States v. Local 36, Sheet Metal Workers, 416 F. 2d 123 (5th Cir. 1969).

priority categories:

> To be eligible for Groups I or II an applicant must be a resident of the area, have five or more years experience in the electrical construction industry, pass a written journeyman's examination administered by an IBEW Local and have been employed at least one of the last four years (Group I) or last three years (Group II) under a collective bargaining agreement between the union and NCEA /National Electrical Contractors Association/. . . . To be eligible for Group III, an applicant must have five or more years of experience in the electrical construction industry and have been employed for at least six months in the last three years under a collective bargaining agreement between the parties. All applicants with one year's experience in the electrical construction industry are eligible for Group IV.[41]

Evidence revealed that before 1966 minorities were not allowed to use the hiring hall, take a journeyman's examination, or join the local. The Court of Appeals for the Fifth Circuit found that these discriminatory policies prevented minorities from gaining experience under the collective-bargaining agreement.

The local argued that it had begun accepting minorities for membership and referral and allowing them to take the journeyman's examination. At the time of the trial the local had admitted two minority persons to membership, and two other minority workers had used the union's hiring hall. Nevertheless, the court stated:

> Even if it is assumed that Negroes have been permitted since the passage of the /Civil Rights/ Act /of 1964/ to take a journeyman's examination to join the Local and to use the hiring hall, the highest priority group in which a Negro can expect to be placed if he takes and passes a journeyman's examination and joins the Local is Group IV. ...Negroes qualified to do the work customarily performed by a journeyman electrician are deprived of an opportunity to be placed in a priority group in which they would have a reasonable opportunity to make a living. And they are so deprived because they were denied the opportunity to gain experience under the collective bargaining agreement or in the industry before the Act was passed.[42]

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41. Ibid. at 130.

42. Ibid. at 131.

It is evident that any criterion for referral that is based on some relationship with the union (e.g., previous experience in the industry, work for a union contractor) will tend to have a discriminatory impact if the union in the past has engaged in discriminatory practices.[43]

Apprenticeship

Apprenticeship programs are designed to train individuals to become journeymen in a particular trade. The programs usually consist of a combination of on-the-job training and related classroom instruction. While the length and content of the programs vary according to the trade and the local, most take from 2 to 5 years, with content being similar for all locals affiliated with the same international union.

Most apprenticeship programs are administered locally by a joint apprenticeship and training committee comprised of representatives from labor and management. Some minimum standards or guidelines are usually established by the national union (e.g., apprentice-journeyman ratios, age limitations, and length of programs), as well as by the Federal Bureau of Apprenticeship and Training and State apprenticeship councils. However, local apprenticeship committees still exercise a high degree of control over their apprenticeship programs by managing the day-to-day operations, including the final selection of apprenticeship applicants.

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43. See United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F.2d 544 (9th Cir. 1971) cert. denied, 404 U.S. 984 (1971); Dobbins v. Local 212, IBEW, 292 F. Supp. 413 (S.D. Ohio 1968); United States v. Local 10, Ironworkers, 6 FEP Cases 59. (W.D. Mo. June 15, 1973); and United States v. Local 10, Sheet Metal Workers, 6 FEP Cases 1036 (D.N.J. Apr. 2, 1973).

Commission field studies found that the most commonly used criteria for selecting apprentices are an oral interview, an oral or written examination, education, and age. (See table 10 for details.) In most instances, each criterion is assigned a certain number of points and the applicant's total score is the sum of the number of points received for each criterion.

Overt and clearly intentional discrimination is still practiced in apprenticeship programs. In United States v. Local 86, Ironworkers (Seattle, Washington), one of the defendant apprenticeship committees--Sheet Metal Workers Local 99 JATC--failed to give application forms to minority applicants for apprenticeship, even though one applicant had visited the union office four times.[44] Even when some minority applicants were given application forms, the apprenticeship coordinator made remarks that discouraged them. For example, some applicants were told that there was a long waiting list; in fact, there was no waiting list. The court found that the apprenticeship committee discriminated against black applicants for apprenticeship.

Six common institutional practices relating to apprenticeship which adversely affect minorities are: age limitations, educational requirements, oral interview, experience, recruitment methods, and written examinations. (Discussion of the last two practices will be deferred.)

Age Limitations.-- The negative impact of age restrictions on minorities is a direct result of the intentional discriminatory practices of some building trades unions. A minority person who applied for an apprenticeship program when a local's intentional discriminatory policies were in effect may be over the maximum age when the discriminatory policies cease and, thus, unable to reapply. If the union apprenticeship program is practically the only means of learning the trade, the minority person's opportunity to learn the trade is severely limited, if not extinct.

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44. 315 F. Supp. at 1217.

Table 10. PAINTERS AND SHEET METAL WORKERS LOCALS: FACTORS USED IN DECIDING WHETHER TO ENROLL AN APPRENTICE

Factors	Yes	No	Don't know or not applicable	Breakdown Details	Number
Age limit[a]	8	1	0	Don't know particular age limits	1
				Maximum of 27 years or more	2
				Maximum of 26 years or less	5
Education[a]	5	4	0	High school or GED[d]	3
				High school only	2
Test[a]	5	4	0		
Experience[a]	6	2	1		
Interview[a]	8	1	0		
Interviewed by a person or a committee	--[c]	--[c]	1	A Committee	5
				A person	2
				A person, then a committee	1
Title of interviewer or makeup of committee, including titles[a]	--[c]	--[c]	1	Joint Apprenticeship Committee (JAC)	5
				Administrator of apprenticeship program	1
				Any one of several individuals	1
				Business Representative, then executive board	1
Elected or appointed committee members[a]	--[c]	--[c]	1	Appointed	6
				Elected	1
				Part elected, part appointed	1

Table 10. (continued)

Factors	Yes	No	Don't know or not applicable	Breakdown	
				Details	Number
Character[a]	3	5	1		
Reference[a]	3	6	0		
Personal appearance[a]	2	7	0		
Sponsorship[a]	0	9	0		
Standard form for grading applicant[b]	4	5	0		

a. Answers were details supplied by officials in response to question, "Which of the following factors are used in deciding whether to enroll an apprentice?"

b. Answers supplied by officials in response to question, "Does this JAC use a standard form for grading an applicant to an Apprenticeship Program?"

c. No responses are recorded in these spaces, since the question concerns the breakdown of the responses of the eight locals which give interviews to apprenticeship applicants.

d. Success on the General Educational Development Test (GED) is equivalent to a high school diploma.

Source: Responses of officials of five Painters locals and four Sheet Metal Workers locals in interviews with staff of U.S. Commission on Civil Rights, December 1973 to February 1974.

A second group of persons may also be affected by age restrictions-- "those who did not exceed apprenticeable age until after the termination of discriminatory policies, but who continued to avoid the programs because of the unions' discriminatory reputation."[45]

It is difficult to estimate the number of persons who fit into this category, since they did not even apply for the programs. However, the discriminatory reputation of a union, coupled with its intentional discriminatory practices, does affect a significant number of minorities who are interested in becoming apprentices.

In a case involving a painters local, EEOC found reasonable cause to believe that the apprenticeship committee's upper age limit (28 years) for apprenticeship applicants was not justified by business necessity and that it perpetuated the effects of past discrimination.[46] The age limit prevented access to the program by those minorities who were over the age limit but who had previously been unable to apply because of the local's discriminatory practices at that time.

In United States v. Local 638, Steamfitters, the district court addressed this problem.[47] Even though the court was not presented with any evidence that proved the age restrictions were discriminatory, it recognized the potential exclusionary impact of the age restriction on persons who had wanted to become apprentices in the past but who were excluded because of their race or national origin. The court ordered specific procedures for the union to follow in order to grant membership status to persons who had experience in the trade but who had become too old to apply for the apprenticeship program.

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45. Yeager at 1284.

46. EEOC Decision No. 71-1670, 4 FEP Cases 476, April 12, 1971.

47. 360 F. Supp. 979 (S.D.N.Y. 1973).

Educational requirements.-- A study prepared by the Labor-Management Services Administration showed that 9 of the 15 local apprenticeship committees studied in the District of Columbia required apprenticeship applicants to possess a high school diploma or a GED (General Educational Development) certificate.[48] Three of the nine locals interviewed during Commission field studies required a high school diploma or a GED while two others would accept only a high school diploma. (See table 10.) Even when apprenticeship programs do not require applicants to possess a high school diploma, some degree of educational attainment is sometimes still required.

While technical knowledge is required for apprenticeship in some trades, a high school diploma does not always mean that a person has such knowledge. On the whole, more minority-group members drop out of high school; for example, in October 1973, of youths aged 18 to 21, 28 percent of blacks and 14 percent of whites were neither enrolled in school nor high school graduates.[49] Thus, the requirement of a high school diploma (or any other level of education) can adversely affect minority entry into apprenticeship programs. Therefore, it is necessary to ensure that educational requirements are reasonably related to job performance.

One discussion of the impact of educational requirements on minority persons noted:

> Evaluating applicants, as many unions do, by overall high school grades and performance in certain specific courses, like algebra, trigonometry, and physics, is almost certain to exclude more blacks than whites because of the general lack of equal educational opportunity in black communities. Since class rank, a high school diploma, or knowledge of specific subjects like algebra and trigonometry seems to be indicative of the

48. Admission and Apprenticeship, p. 43.

49. U.S. Department of Commerce, Bureau of the Census, School Enrollment in the United States; October 1973 (advance report, 1974), p. 1.

> actual skills needed only in a few trades, evaluation of these educational criteria should be eliminated except in those trades where knowledge of specific subjects is necessary for performance of the job involved.[50]

In an interview with officials of a hometown plan committee, the head of the committee said that one of the most difficult barriers he faced in recruiting minority applicants was the educational barrier. This particularly applied to younger persons.

In United States v. Local 10, Ironworkers, the court concluded that the requirement that apprenticeship applicants have a high school diploma was not job-related and had a disproportionate effect on minority applicants.[51] The court stated:

> (T)he evidence totally fails to show what courses, or what aspect of high school education or its equivalent (G.E.D.) is related to ironwork job performance. There is an absence of any showing that those who do not complete high school or its equivalent are not equally as competent to do ironwork as those who posses such education. Rather, the skills the record indicates are inherent in ironworking appear more to require special training rather than a high school diploma or its equivalent. While school-type education is a generally desirable thing for a person to have, it cannot rise to the status of being a prohibitive condition to job opportunity where its direct effect is to penalize minorities and it is not job related nor reasonably pertinent to and related to job performance. 52

In United States v. Local 1, Bricklayers[53] the court also noted that a high school diploma or GED were not necessary requirements for the bricklaying and tilesetting apprenticeship program. The court further observed that many of the foremen and skilled bricklayers testifying in the case were not high school graduates.

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50. "Title VII and Minority Group Entry," p. 347-48.

51. United States v. Local 10, Ironworkers, 6 FEP Cases 59 (W.D. Mo. June 15, 1973).

52. Ibid. at 68.

53. 5 FEP Cases 863 (W.D. Tenn. Nov. 29, 1972).

In the landmark case Griggs v. Duke Power Co., the Supreme Court also found that the high school diploma was not job-related. The company required persons transferring to certain departments to have a high school diploma. The Supreme Court stated that "employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used."[54]

Oral interviews.--As table 11 shows, interviews are commonly used by apprenticeship committees in selecting apprentices. The interviewers will rate applicants either on the basis of predetermined categories (e.g., personality, interest) or, simply, on the basis of a general impression of the applicants.

Regardless of the standards used for rating applicants, oral interviews provide a convenient means for discriminating (consciously or unconsiciously), since interviews are necessarily evaluated by officials in the most subjective terms. "By exploiting the subjective and nonreviewable nature of the oral interview, the local union is able to disqualify black candidates."[55]

Several court cases have resulted in the elimination or modification of the oral interview. In one case, the court eliminated the oral interview because it, along with other selection standards (e.g., experience and references), was based on "subjective nonreviewable determinations."[56] The oral interview accounted for 30 percent of the 100 points an apprentice applicant could receive.

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54. 401 U.S. at 431-432. See also United States v. Local 24, Plumbers, 364 F. Supp. 808 (D.N.J. 1973); and United States v. Local 10, Sheet Metal Workers, 6 FEP Cases 1036 (D.N.J. Apr. 2, 1973).

55. Benjamin Wolkinson, Blacks, EEOC and Labor (Lexington, Mass.: D.C. Heath, 1973), p. 14.

56. United States v. Local 86, Ironworkers, 315 F. Supp. at 1210.

In United States v. Local 24, Plumbers,[57] one of the defendant apprenticeship committees--the electrical workers--interviewed and rated applicants in ten categories. A passing score on the interview was 70. In 1970, white applicants averaged 70 on the interview; minority applicants, 64.9. The court said that "the defendants introduced no evidence to show that a validation study to determine the relation between performance on the entire rating system and job performance was ever conducted."[58] The court concluded that the rating system was unlawful.

Experience.-- Giving apprenticeship applicants extra points for experience also has an adverse effect on minorities. The discriminatory effect of this requirement occurs in two ways: by giving only white youths an opportunity to gain work-related experience and by the subjective determination of the quality of the experience reported by minority youths.

Some locals allow young persons to work as helpers in their trade. Such work is frequently limited to friends and relatives of union members. When helpers apply for apprenticeship programs, their experience is counted toward their qualifications as apprentices. In a predominantly white union, virtually all of the friends and relatives of members will be white. Therefore, minority applicants for apprenticeship will not have the same experience advantage as many of the white applicants.

In United States v. Local 24, Plumbers,[59] the electricians' apprenticeship committee gave higher ratings to apprenticeship applicants with experience than to those without experience. Working as a summer helper was one way of gaining experience in the trade. Summer helpers were usually friends and relatives of members of Local 52, IBEW. In the summer of 1971, only 3 of the 41 helpers

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57. 364 F. Supp. 808 (D.N.J. 1973).

58. Ibid. at 822. See United States v. Local 10, Sheet Metal Workers, 6 FEP Cases 1036 (D.N.J. Apr. 2, 1973); and United States v. Local 357, IBEW, 356 F. Supp. 104 (D. Nev. 1972).

59. 364 F. Supp. 808 (D.N.J. 1973).

were black. The court stated that the preference given to friends and relatives of union members violated Title VII.

Other avenues to gaining experience are through trade school or by working in a trade different from the one in which apprenticeship is sought. Yet, even if minority youths gain experience in these ways, they may still find that their chances of becoming apprentices are little improved. The apprenticeship committee determines the quality of the experience and how much credit the applicant should be given for it. Because these determination are subjective, some minority applicants have been allowed little or no credit for their experience.

In one case, United States v. Local 1, Bricklayers,[60] experience counted for 15 of 100 points an apprenticeship applicant could receive. Experience in bricklaying was defined as working for a masonry contractor as a laborer, hod carrier, or truck driver. Until 1971, credit was not given for experience received in high school bricklaying courses, where many minorities gained their experience. In 1971, one black applicant received credit for his high school bricklaying course.

Since the contractors and unions generally excluded minorities from working as commercial bricklayers (and tilesetters),[61] minorities could not gain the requisite type of experience. In fact, with one exception, no black applicant for apprenticeship as a bricklayer (or tilesetter) received any points for experience in the industry. The court retained the experience requirement but broadened it formally to include high school or trade school courses in bricklaying.

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60. 5 FEP Cases 863 (W.D. Tenn. Nov. 29, 1972).

61. The union also represented tilesetters and had a separate apprenticeship program for this trade.

Recruitment Methods and Written Examinations

Two discriminatory practices that occur within all three union-controlled employment channels are recruitment methods and written examinations.

Recruitment methods.-- A witness before the Massachusetts State Advisory Committee to the United States Commission on Civil Rights stated that "there has been a long tradition in the craft unions of not asking anyone to become a member or join a union."[62] Recruitment of new members and apprentices is usually confined to informing friends and relatives about job opportunities in a trade. In a union with no minorities or a low percentage of minorities, the consequence of not advertising job opportunities is that minorities do not know that the opportunities are there.

Some apprenticeship programs still have a strong nepotistic policy in selecting apprentices. In a predominantly white union, such a policy automatically results in the predominance of white apprentices.

In United States v. Local 73, Plumbers, (Indianapolis, Indiana), testimony revealed that relatives and friends of union members and contractors received preferential treatment in selection as apprentices.[63] The district court made the following observation:

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62. Vernon Briggs, statement before the Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights, in "Contract Compliance and Equal Employment Opportunity in the Construction Industry" (transcript of open meeting before the Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights, Boston, Mass., June 25-26, 1969).

63. United States v. Local 73, Plumbers, 314 F. Supp. 160 (S.D. Ind. 1969).

> In each year from 1960 through 1967, relatives of union members have fared significantly better in gaining acceptance by JAC /Joint Apprenticeship Committee/ than those without such connections: Prior to 1965 virtually all apprentices were recommended either by a relative or a union contractor; in 1965, 1966, and 1967 approximately 80% of all related applicants were accepted, but only approximately 50% of those without relationship. Some of the discrepancy may be justified by the test scores, lower motivation of non-related applicants, and the like, but on the whole it is fair to say that nepotism has consistently played a part in the selection of apprentices. 64

The court concluded that the nepotistic policies of the apprenticeship committee coupled with the committee's history of discrimination restricted apprenticeship opportunities for black applicants.[65]

Word-of-mouth recruitment also keeps minorities from learning about job openings in the skilled construction trades. In a building trades union, information on work opportunities in a trade will usually come from the union member or from the contractor. Each member "becomes a potential recruiter in his own circle of friends and acquaintances."[66] In most instances the circle of

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64. Ibid. at 162-163.

65. See also United States v. Local 24, Plumbers, 364 F. Supp. 808 (D.N.J. 1973); United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F.2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971); United States v. Local 36, Sheet Metal Workers, 416 F. 2d 123 (5th Cir. 1969); and, United States v. Local 10, Sheet Metal Workers, 6 FEP Cases 1036 (D.N. J. Apr. 2, 1973).

66. Alfred Blumrosen, Black Employment and the Law (New Jersey: Rutgers University Press, 1971), p. 232.

friends of whites will be other whites. "Since, in most places, these circles of friendship and residence are segregated by race, the employees will refer whites because they know them or know of them."[67]

In United States v. Local 638, Steamfitters, evidence revealed that information on employment opportunities in the steamfitting trade was disseminated through word-of-mouth.[68] The local did not operate a hiring hall. Instead, job information was transmitted by union members, foremen, superintendents, and business agents. With few exceptions, these persons were white.

Evidence also showed that at least 11 percent of the members of the A branch (construction branch) were relatives of other members of the union. Referring to the predominance of whites in the industry, the court concluded:

> While there is no evidence that either Local 638 or MCA /Mechanical Contractors' Association/ has engaged in purposeful discrimination against nonwhites, the conditions of the industry set forth above /word-of-mouth recruitment and nepotism/, in combination with the history of discrimination in admissions to the A Branch of Local 638, give whites advantages in obtaining employment. The result is the preservation of the effects of past discrimination.[69]

Accordingly, the court ordered the local to change its method of disseminating information on employment opportunities in the trade.

The adverse effects on minorities of relying solely on word-of-mouth recruitment was also illustrated in United States v. Local 357, IBEW.[70] The defendant apprenticeship committee relied on word-of-mouth dissemination up to 1966 and did not advertise its

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67. Ibid.

68. 360 F. Supp. 979 (S.D.N.Y. 1973).

69. Ibid. at 990.

70. 356 F. Supp. 104.

apprenticeship program through the press until 1968. In 1968, the committee advertised its apprenticeship program in a newspaper directed to the black community as well as in newspapers of general circulation; in 1969 it terminated this practice. The number of black applicants fell from 25 in 1968 to 10 in 1969, and the number of white applicants remained stable. The court stated that the apprenticeship committee's reliance on word-of-mouth recruitment was unlawful.

Equally important in restricting the chances for minorities to learn of employment opportunities in skilled construction is the discriminatory reputation of a local in the minority community. Because of a discriminatory reputation, minority applicants will be discouraged from seeking employment or apprenticeship training even if the local has ceased intentional discriminatory practices. For this reason, some courts have ordered unions to take affirmative steps to encourage minority applicants to seek employment and training through the local. In doing so, the courts have placed upon the apprenticeship official "the burden of showing that the absence of minority applicants is not due to his reputation for discrimination."[71]

In United States v. Local 10, Sheet Metal Workers, the district court cited the deterrent effect that the local's discriminatory reputation had on minority applicants for employment:[72] "The Newark area building trade unions have the reputation in the black community of discriminating against minorities with respect to color or national origin in employment opportunities . . . . The court finds that this reputation has adversely affected the number of minority applicants who have sought employment in the sheet metal trade."[73] As part of

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71. Mansfield, "The Recruitment of Job Applicants Under Title VII of the Civil Rights Act of 1964," 9 COL. J.L. and SOC. PROB. 131, 142 (1972-73).

72. United States v. Local 10, Sheet Metal Workers, 6 FEP Cases 1036 (D.N.J. Apr. 2, 1973).

73. Ibid. at 1040.

its remedial order, the court ordered the local to give a brief description of its membership, referral, and apprenticeship procedures to local high schools and to State and minority employment agencies.[74]

Written examinations.-- Many apprenticeship programs require applicants to pass a written examination. The examinations are designed to test an applicant's aptitude in areas where special skills are required (e.g., spatial relations, mathematical reasoning). Similarly, some unions require applicants for membership or referral to take an examination. The purpose is to ensure that the applicant has the ability to perform adequately in the trade.

Because social and economic disparities in the American society have resulted in unequal educational opportunities, minority persons generally do not perform as well on written tests as whites. One observer points out:

> Perhaps ill-advised reliance on tests could be ignored if the economic, educational and social gap between black and white were being closed rapidly or employers and unions were convinced that fair employment must be achieved quickly. The little progress made in narrowing the economic disparity between white and black has taken considerable time and effort.[75]

For some union-administered tests, minorities do, in fact, have a lower passing rate than whites. Thus, tests that have a disproportionate impact on minorities must be proved to be job related. Otherwise, they will impede minority entry into apprenticeship programs or union membership.

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74. See also United States v. Local 73, Plumbers, 314 F. Supp. 160 (S.D. Ind. 1969); and United States v. Local 357, IBEW, 356 F. Supp. 104 (D. Nev. 1972).

75. Irving Kovarsky and William Albrecht, Black Employment (Ames, Iowa: Iowa State University Press, 1970), p. 87.

The "EEOC Guidelines on Employee Selection Procedures" stipulate that:

> The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility...and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are available for his use.[76]

The guidelines also state that empirical data should be used that demonstrate "that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated."[77]

Some court cases involving building trades unions have showed that the tests used in selecting apprentices had not been validated at all. In fact, one union official admitted that he was not familiar with the EEOC testing guidelines.[78]

In other cases, the tests utilized were found not to be predictive of job performance or justified by business necessity. In United States v. Local 638, Steamfitters,[79] the local, from 1964 to 1971, used a test in which the passage rates for whites, blacks, and Spanish origin applicants were 41.37, 10.37, and 11.11 percent, respectively. The union introduced testimony showing that the tests were "widely used and professionally designed"[80] and that they were

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76. EEOC Guidelines on Employee Selection Procedures, 29 C.F.R. §1607.3 (1970).

77. Ibid. at 1607.4(c).

78. United States v. Local 24, Plumbers, 364 F. Supp. 808, 818 (D.N.J. 1973); See also United States v. Local 86, Ironworkers, 315 F. Supp. 1202, aff'd, 443 F.2d 544 (9th Cir. 1971), cert denied, 404 U.S. 984 (1971).

79. 360 F. Supp. 979 (S.D.N.Y. 1973).

80. Ibid. at 992.

"reasonably related to measuring the aptitudes they were designed to measure...."[81] The court concluded that the union had still not proved the validity of the test. It stated: "...(W)hile there was some evidence of construct validity, there was no evidence of criterion-related validity nor that a criterion-related study had been completed or planned."[82] The court decided that the use of the test violated Title VII of the Civil Rights Act.[83]

Conclusion

The total picture that emerges from this evidence is that locals may be grouped in three major categories regarding discriminatory practices. At one extreme, overt and intentional discrimination is still practiced. Such discrimination is probably not as widespread as it once was, but it is far from uncommon. Locals that still engage in intentional discriminatory practices have admitted a very small number of minorities--less than 1 percent of their membership, for example--but attempt to keep additional minorities out without breaking the law in an obvious way.

A second group consists of locals that have made entry for minorities a relatively routine matter. While they may not have initially welcomed minorities, a number of such locals now have substantial minority memberships. For example, a painters local in San Francisco has a large minority membership and several minority officials. In Alameda County, California, a plumbers local and a sheet metal workers local, though reluctant initially, have taken a generally constructive attitude toward the Alameda County Plan.[84]

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81. Ibid.

82. Ibid.

83. See also United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F. 2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971) ; United States v. Local 36, Sheet Metal Workers, 416 F.2d 123 (5th Cir. 1969); and Sims v. Local 65, Sheet Metal Workers, 6 FEP Cases 1141 (6th Cir. Dec. 19, 1973).

84. The Alameda County Plan is a voluntary, areawide, construction compliance plan. These plans are described in chap. 6.

Most other locals in Alameda County have been distinctly uncooperative.[85]

Such progressive locals are the exception. Their actions have not had a major impact on the numbers of minority journeymen in construction work, with the possible exception of a few of the less-skilled and less well-paid trades.

A third type of local, and probably the most common, remains predominantly white Anglo and male because of its institutional practices. These institutional practices--such as restrictions on membership size and recruitment and testing practices--are neutral on their face, but have an adverse impact on the employment and membership opportunities of minorities and women. Officials of the locals may or may not have adopted these seemingly neutral practices with the intention of using them to exclude minorities and women. But the officials could hardly be unaware that these practices do exclude members of these two groups. Most of these locals have probably not validated their selection standards or other practices or determined if they are justified by business necessity.

The direct adverse effects of these seemingly neutral practices usually have one of two origins. One origin is past intentional exclusion, which has continuing effects in the present. Admission to a union after nomination or endorsement by present members and eligibility for referral on the basis of past experience in the trade are two major examples of how past exclusion of a particular

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85. These conclusions are based on conversations with a number of officials of the Alameda County Plan, union officials in Alameda County, and representatives of community organizations in the County.

group can result in continued exclusion. Since practices of this general type are common, unequal employment opportunity continues into the present as a result of past intentional exclusion, combined with certain seemingly neutral practices.

The second origin of the direct adverse effects of seemingly neutral practices is the discrimination suffered by minorities in such areas as education, housing, and access to government institutions, in the past as well as the present. The discriminatory impact of testing procedures is one major example.

University-based economists have studied the effects of referral union practices on the economic status of minorities and women. Commission staff found three studies that use empirical data to examine whether referral union discrimination exists. All three studies provide evidence of discrimination. For example, one concludes that the relatively low membership of white women in all unions and of black men in construction unions have caused decreased earnings of 2 percent and 5 percent for these two groups, respectively, relative to earnings of white men. These studies are discussed in appendix F.

In summary, the effect of intentional and direct employment discrimination in the building trades continues to be severe. The proportion of unions that neither discriminate directly nor intentionally or that do not continue to use widely practiced institutional mechanisms that adversely affect the employment opportunities of minorities and women is unfortunately quite small.[86]

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86. This section discusses only those discriminatory union practices that are common to most building trades unions and that courts have frequently found to be discriminatory. Many other practices adversely affect minorities, but they are used by only a few locals or have been found discriminatory in only a few instances. Examples of such practices are: apprentice, journeyman ratios, membership initiation fees, length of apprenticeship programs, and residency requirements for apprenticeship. These practices should be given further examination.

UNION DISCRIMINATION IN THE TRUCKING INDUSTRY

The exclusionary practices of trucking companies that handle local and long distance freight are responsible for much of the employment discrimination in the trucking industry.[87] Minorities and women have been excluded from occupations at all levels of company operations, from managerial to semiskilled positions.

While the courts have placed much of the responsibility for employment discrimination in the trucking industry on the employers, they have also cited union responsibility. This is especially so in discrimination against trucking employees in blue-collar occupations. One major occupational category in the trucking industry, road drivers (known also as line drivers and over-the-road drivers), has been especially difficult for minorities to enter.

Road driving is one of the highest-paying, blue-collar occupations in the trucking industry. The average annual earnings of road drivers employed by large common carriers of general freight were estimated to be $15,800 in 1972.[88] There is also a high degree of discrimination against minorities in road driving.

The International Brotherhood of Teamsters

The Teamsters Union, with a total membership of 1.8 million,[89] is the dominant union in the trucking industry, especially in its

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87. Franks v. Bowman Transp. Co., 495 F. 2d 398 (5th Cir. 1974), aff'd 44 U.S.L.W. 4356 (U.S. Mar. 24, 1976); Thornton v. East Texas Motor Freight, Inc., 6 FEP Cases 1002 (W.D. Tenn. July 13, 1972), aff'd in part, rev'd in part, rem'd in part 497 F. 2d 416 (6th Cir. 1974); United States v. Pilot Freight, Inc., 6 FEP Cases 280 (M.D.N.C. July 30, 1973); and Bing v. Roadway Express, Inc., 444 F. 2d 687 (5th Cir. 1971).

88. U.S., Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook 1974-75 (1974), p, 323.

89. U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations 1973 (1974), p. 54.

representation of blue-collar workers. The trade division within the union that covers road and city drivers--The National Over-the-Road and Local Cartage Trade Division--is the most prestigious division within the Teamsters. It "dominates the union."[90]

Teamsters' participation in the exclusion of minorities from road driving positions occurs in three ways:

> The negotiation of seniority or transfer provisions that prevent or inhibit minorities from applying for road-driving positions.
>
> Refusal of white road drivers to ride with minority road drivers.
>
> Refusal of white road drivers to refer minorities to road-driving positions.

Senority and transfer.--Seniority systems that perpetuate past discriminatory practices have been a major problem in the trucking industry. J. Stanley Pottinger, Assistant Attorney General for the Civil Rights Division of the Department of Justice, has commented that the seniority system "is the nut that has to be cracked."[91] Because seniority systems are negotiated between trucking employers and the Teamsters, the responsibility for discriminatory seniority systems is shared by both parties.

Many trucking companies do not allow employees to transfer between job classifications covered by different collective-bargaining agreements. In some cases, employees are not allowed to transfer among job classifications covered by the same agreement. When transfers are permitted, contract provisions do not provide for the retention of seniority accrued in a previous classification for bidding and layoff purposes; seniority is retained for fringe benefit purposes only. During field studies, Commission staff interviewed officials from three

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90. T.R. Arnold, The Teamsters Union as a Determinant of the Structure of the Trucking Industry (Ann Arbor, Mich.: University Microfilms, 1970), p. 94.

91. Washington Post, Nov. 14, 1973.

Teamsters locals with road drivers among their membership. All three officials said that local drivers lose their seniority for bidding and layoff purposes if they transfer to road-driving positions.[92]

In United States v. Pilot Freight Carriers, Inc., a 1973 case in North Carolina, the defendants had negotiated two major agreements--the National Master Freight Agreement and its supplement (covering road and city drivers) and the Automotive Maintenance Agreement (covering maintenance employees).[93] Other supplemental agreements were also negotiated. All of the black employees were covered by the Automotive Maintenance Agreement or a supplemental agreement.

Employees did not have the contractual right to transfer to any classification covered by another agreement. Transfer took place only at the employer's discretion. If the employer permitted an employee to transfer, the collective-bargaining agreement did not provide for seniority carryover. Thus, a person who transferred lost his or her accrued seniority rights except for fringe benefit purposes.

The court stated that the seniority policy had a discriminatory effect, since it perpetuated past discriminatory hiring policies admitted to by Pilot Freight Carriers. The company, for instance, acknowledged that before December 1970 it had not hired blacks as road drivers, mechanics, or mechanic's helpers. The district court said:

> By not providing for seniority carryover for black incumbent employees who were excluded because of their race from positions as road driver, mechanic, and mechanic's helper prior to December 1, 1970, the collective bargaining agreements...perpetuate Pilot's discriminatory hiring and transfer policies.
>
> Some of the black incumbent employees of Pilot may be interested in obtaining a road driving job with Pilot if they were allowed seniority carryover.[94]

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92. The question was, "if a local driver, or any other union member, becomes a road driver, does he lose all seniority after he transfers?"

93. United States v. Pilot Freight Carriers, Inc., 6 FEP Cases 280 (M.D. N.C. July 30, 1973). See also United States v. Navajo Freight Lines, Inc., 6 FEP Cases 274. (C.D. Cal. June 6, 1973).

94. Ibid. at 282.

The defendant company had agreed to implement seniority carryover, but the Teamsters stated that the action would be "in contravention of existing collective bargaining agreements."[95] The court, however, ordered seniority carryover for the affected class of black employees.[96]

In some instances, the Teamsters Union has been cited for contributing to a discriminatory company policy. In United States v. Lee Way Motor Freight, Inc., a 1973 case in Oklahoma, company policy forbade employees to transfer between jobs covered by different collective-bargaining agreements.[97] The court found that this policy was partially motivated by racial purposes and, in fact, had been declared discriminatory in a previous suit.[98] Even though the no-transfer policy was a company policy, the district court stated that the Teamsters "encouraged and endorsed this policy because it preserved the seniority rights of its dues paying members."[99]

In some instances an employee must resign from his or her current job before applying for employment as road driver. This was the policy for city drivers in Rodriquez v. East Texas Motor Freight.[100] City drivers who resigned to apply for road-driver positions lost all seniority and received no experience credit for working as a city driver. The contract covering city drivers did not provide for seniority retention if transfer was permitted. There was also no guarantee of rehiring city drivers who resigned to become road drivers.

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95. Ibid.

96. The affected class included all black employees of Pilot who were employees as of Dec. 1970 and were initially assigned to the positions of city driver, combination driver, dock worker, checker, and garage worker. Ibid.

97. United States v. Lee Way Motor Freight, Inc., 7 FEP Cases 710 (W.D. Okla. Dec. 27, 1973).

98. Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (10th Cir. 1970), cert. denied, 401 U.S. 954(1971).

99. United States v. Lee Way Motor Freight, Inc., 7 FEP Cases at 715.

100. 505 F. 2d 40 (5th Cir. 1974). See also Sagers v. Yellow Freight System, Inc., 6 FEP Cases 1215 (N.D. Ga. Sept. 28, 1973).

The Fifth Circuit Court ruled that the company's no-transfer and seniority policies had the effect of perpetuating past discrimination and were not justified by business necessity. The court also ruled that the union was liable in perpetuating past discrimination, because it negotiated the seniority provisions jointly with the company.

Refusal to ride with minority drivers. -- The paucity of minorities in road-driving positions is also caused by the refusal of white road drivers to ride with them. "Nearly everyone concerned with the issue conceded it has arisen because most of the 250,000 or so white over-the-road drivers refuse to share a cab with a Negro."[101] Statements by two Teamsters officials support this viewpoint. One Teamsters official asked, "Would you like to climb in a bunk bed that a nigger just got out of?"[102] Another official said, "To my knowledge no law has been written yet that says a white man has to bed down with Negroes."[103]

While these statements were made in 1966, more recent events reflect the same attitude. In United States v. Lee Way Motor Freight, Inc. (1973) the executive vice president of the company held a series of meetings to orient the white road drivers (represented by the Teamsters) toward accepting blacks as road drivers.[104] The vice president testified that some of the white drivers walked out of the meetings. As a result of the drivers' negative reactions, the company decided to hire two "well-qualified" blacks who would ride together.

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101. "Bias in the Cab," Wall Street Journal, Mar. 31, 1966, pp. 1, 6.

102. Ibid.

103. Ibid.

104. United States v. Lee Way Motor Freight, Inc., 7 FEP Cases 710, 729 (W.D. Okla. Dec. 27, 1973).

In the same case, testimony revealed that some white road drivers blatantly refused to ride with black drivers. The vice president testified that he had sent out 23 warning letters and 4 discharge letters to white road drivers who had refused to ride with blacks. Even though those who were discharged filed grievances, their grievances were based on issues other than race -- e.g., their own illness, driving record of minority person, and cleanliness of minority person. The grievances filed by the union were upheld in favor of the employees.[105]

The district court questioned the credibility of the grievances as they were presented to the grievance committee. It concluded that the Teamsters "(have) done little, if anything at all, to punish its white members who refuse to work alongside blacks."[106] The court also stated that the "Union equivocated as to whether it would defend a union member discharged for refusing to ride with a black,"[107] because the union said that the discharge could be based upon the "uncleanliness of the fellow driver rather than the pigmentation of his skin."[108]

Union referrals. -- In most instances permanent road drivers are hired directly by trucking companies. Drivers are referred from several sources, including the union. The Teamsters' National Master Freight Agreement provides for a nonexclusive work-referral system: "When the employer needs additional men he shall give the Local Union equal opportunity with all other sources to provide suitable applicants, but the employer shall not be required to hire those

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105. Ibid. Transcript of Trial at 2616-18, 2621, 2623.

106. 7 FEP Cases at 745.

107. 7 FEP Cases at 729.

108. Ibid.

referred by the Local Union.[109] Some Teamsters locals have negotiated exclusive hiring hall arrangements, but the hiring hall is used mainly in referring casual (temporary) employees.[110]

Local Teamsters unions in some areas are powerful enough to demand that the employer hire permanent road drivers through the union. "It is probably true...that some employers, having been harassed and unrelentingly badgered by the IBT /International Brotherhood of Teamsters/, usually ask the shop steward or business agent if any union member is looking for employment."[111]

When unions refer workers for permanent road-driving jobs, it is usually done informally rather than through some formal referral process. The business manager of a Teamsters local interviewed by Commission staff said that, "in filling employer requests for road drivers," he just "sends guys I know are qualified."

In a union where there is a belief that road-driving jobs are for whites only, reliance on union referrals means that only whites are road drivers. For example, many small firms in the West, according to one study, had just as few black employees as did the larger firms. In other regions (especially in the South), the smaller firms usually had a higher percentage of minority-group employees than the larger firms. In the West the "smaller firms seemed to be more dependent upon the union for new drivers than were companies of similar size in other parts of the country."[112]

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109. National Master Freight Agreement, art. 3, sec. I(c).

110. Richard Leone, The Negro in the Trucking Industry (Philadelphia: University of Pennsylvania Press, 1970), p. 52.

111. Ibid., p. 50.

112. Leone, The Negro in the Trucking Industry, p. 88.

Even when the employer relies upon rank and file union members rather than the business agents, this recruitment method still results in no minorities in road-driving positions. The union members would be expected to circulate information on job openings to persons within their social group--other whites. Indeed, employer reliance on referrals from current employees is just as effective in excluding minorities as relying upon the union leadership. "Placing heavy reliance upon referrals is one of the prominent characteristics of the trucking industry's hiring patterns which result in a primarily closed system."[113]

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113. Jack Nelson, Equal Employment Opportunity in Trucking: An Industry at the Crossroads, prepared under EEOC Contract No. EEO 72001 (Washington, D.C., 1971), p. 39.

The Teamsters are not the only referral union outside the construction industry which has practiced institutional and overt discrimination. The discriminatory practices of other referral unions include: segregating locals by race or sex; refusing to admit minorities or women into the union; and refusing to refer minorities and women to jobs.

Courts have held that longshore unions and hiring halls which are segregated by race deprive or tend to deprive minorities of equal employment opportunities. /See United States v. Locals 829 and 858, Int'l Longshoreman's Ass'n., 319 F. Supp. 737 (D. Md. 1970), aff'd, 460 F.2d 497 (4th Cir. 1972); and Equal Employment Opportunity Commission v. Int'l Longshorman's Ass'n, 511 F.2d 273 (5th Cir. 1975.)/

Unions in the food service industry have also been charged with race and sex discrimination. In Gray v. Local 52, Bartender's Int'l Union /10 FEP Cases 497 (N.D. Cal. Nov. 8, 1974)/, the court found that the union discriminated against black bartenders by refusing to accept them as members and by refusing to refer them to jobs. The local, which operated an exclusive hiring hall, repeatedly told black applicants for membership and referral that no jobs were available. Evidence showed that whites were being admitted to the union and were being referred to jobs.

A union in the motion picture industry was found to have engaged in sex discrimination by refusing to admit a woman into its membership and by using a seniority roster designed to exclude "females from union membership and a status of availability for employment in this craft." Kaplan v. Int'l Alliance of Threatrical Stage Employees and Moving Picture Operators, 7 FEP Cases 894, 897 (C.D. Cal. Mar. 19, 1973), aff'd, 11 FEP Cases 872 (9th Cir. Nov. 5, 1975).

In 1973, the U.S. Department of Justice filed a suit alleging racial and national origin discrimination by Trucking Employers, Inc., 350 trucking companies, the IBT, and the International Association of Machinists.[114] As a result of this suit, a partial consent decree was entered into by the defendant employers on March 20, 1974. Neither the defendant unions nor Trucking Employers, Inc. were signatories to this agreement and a final consent decree has not yet been prepared.[115]

The decree contains provisions relating to the following issues: hiring goals for minorities in several blue-collar and office and clerical positions, including the position of road driver; job standards and testing procedures; the recruitment and training of minority employees; transfer to road-driving positions; and back pay for the affected class of minority employees.[116]

The issue of retention of seniority for bidding, lay-off, and work scheduling purposes upon transfer from positions as city drivers or shop workers to road driver positions was not resolved by this decree. As noted in this chapter, lack of seniority retention upon transfer to a different job classification is one of the major practices in the trucking industry that has an adverse impact on employment opportunities for minorities. Many of the local Teamsters agreements do not provide for seniority retention upon transfer to a different job classification, or to a different bargaining unit.

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114. United States v. Trucking Employers, Inc., Civil No. 74-453 (D.D.C., filed Mar. 20, 1974) (complaint).

115. United States v. Trucking Employers, Inc., Civil No. 74-453 (D.D.C. Mar. 20, 1974) (consent decree).

116. Ibid. About 220 employers have agreed to stipulate to the terms of the decree. Lorna Grenadier, Research Analyst, Civil Rights Division, U.S. Department of Justice, interview on March 11, 1976.

The consent decree stipulates that seniority rights upon transfer for the affected class of minority employees "will be determined by subsequent order of this court entered pursuant to agreement of the parties or after contested litigation."[117] The Department of Justice and EEOC are still negotiating with the Teamsters and Trucking Employers, Inc. over this issue.[118]

WOMEN'S ENTRY INTO BUILDING TRADES UNIONS

Membership of women in skilled building trades internationals is even lower than minority male membership. While EEOC figures show that minority men are 9.1 percent of total membership, women are only 0.7 percent (chap. 2). No Federal court cases or EEOC decisions have been decided that relate to sex discrimination by building trades unions. Analysis of the problem, therefore, is based on interviews by Commission staff and the general literature.

The issue of women in building trades unions is primarily related to the problem of female entry into apprenticeship programs, rather than to direct entry without apprenticeship training, since few women can qualify for direct admission. Relatively few women are in the two nonapprenticeship sources from which many union journeymen come: the unionized construction sector and construction related occupations.

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117. Trucking Employers, Inc., at 27 (consent decree).

118. Mr. Lubomyr M. Jacknycky, Attorney, Civil Rights Division, U.S. Department of Justice, telephone interview, Feb. 17, 1976.

Barriers

Lack of affirmative recruitment by apprenticeship committees, maximum age restrictions on entry into apprenticeship programs, the oral interview, and experience requirements are major barriers to women's becoming apprentices.

Recruitment methods.--Most women do not receive vocational guidance and training for employment in the construction trades, since such work is not generally considered an appropriate feminine interest. As a result, many women are unaware of job opportunities in construction, while others who have an interest often do not know how to apply for apprenticeship programs.

Despite increasing interest by women in the skilled trades, apprenticeship committees still do not actively recruit women. (See chap. 5.) Some apprenticeship committees now recruit minority men through outreach programs and minority news media. However, such recruitment efforts are hardly ever undertaken for minority or white women. The administrators of two apprenticeship outreach programs for women reported that the unions send their outreach programs apprenticeship information only when they request it; the unions never volunteer to send the information.[119]

The Twentieth Century Fund's task force on women and employment addressed the issue of recruiting women for apprenticeship programs:

> The Task Force urges unions, in conjunction with employers, to publicize the fact that sex segregation in admission to apprenticeship programs is illegal. We further recommend that where applicants of the formerly

119. Sandy Carruthers and Dorothy Haskins, Director and Director of Placement, respectively, for Better Jobs for Women, (Denver, Colorado), telephone interview on May 1, 1974. See also chap. 5.

> excluded sex are scarce, apprenticeship committees conduct recruiting campaigns to ensure the participation of both sexes in these programs.[120]

The participation of women in apprenticeship will not be markedly increased without active recruitment efforts. Yet unions and apprenticeship programs have not made even minimal recruitment effort.[121]

Age restrictions.--Upper age limitations on entry into apprenticeship programs prevent some women from becoming apprentices. Most apprenticeship programs do not accept applicants beyond the age of 28. Yet some women who learn of employment opportunities in the skilled construction trades are beyond this age.

The median age of female apprentices in Wisconsin, for example, is 31 years.[122] However, the maximum age for entry into the higher paying traditionally male apprenticeship program with the most liberal upper age limit in Wisconsin is 27 years.[123]

The tendency for women to become interested in apprenticeship when they are beyond apprenticeship age results from the fact that most women learn of apprenticeship opportunities later than men.

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120. Exploitation from 9 to 5-Report of the Twentieth Century Fund Task Force on Women and Employment (Lexington, Mass., D.C. Heath, 1975), p. 18.

121. See chap. 5 for further discussion of the failure of unions to recruit women and for discussion of the failure of the Federal Government to require or to stimulate adequately such recruitment.

122. Wisconsin Department of Industry, Labor & Human Relations, Division of Apprenticeship and Training, Women in Apprenticeship-Why Not? p. 51 and 105.

123. Ibid. The apprenticeship programs in which women predominated (cosmetology, barber, day care teacher, health aide and cook) had more flexible age restrictions than the programs which were predominantly male (e.g., carpentry, painting).

> Females are not only less likely than males to be told of apprenticeship when in school, to explore and practice skills leading to apprenticeable trades (in shop courses), and to be steered to industries where apprenticeship is non-existent or a rarity, but almost all miss the one major direct apprenticeship informational and promotional mailing list that a high proportion of young men receive in their early twenties. Every young man leaving military service in Wisconsin--just when he is wondering what he will settle on or train for--is told about apprenticeship and on-the-job training agreements, and informed that he is eligible for monthly educational benefits if he registers in an approved program, in addition to his trainee wages.[124]

Few women are enrolled in trade and industrial vocational courses, and vocational counselors do not encourage women to take courses that could lead to jobs in skilled construction.[125] In addition there are far fewer women than men in the armed forces, where information on apprenticeship is given to those leaving.

As the Wisconsin study notes, age is an especially significant barrier for women with children.[126] Many mothers who do not wish to work until their children are in school are too old to apply for apprenticeship programs once they enter the labor force. Other mothers who want to work during their children's preschool years are hindered because of the lack of adequate child-care facilities. When their children reach school age, the mothers are too old to qualify for apprenticeship programs. The negative effect of age restrictions and lack of child-care facilities is especially significant for mothers receiving AFDC (Aid to Families with Dependent Children) and also for other female heads of households with poverty-level income.

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124. Ibid., p. 106.

125. Ibid., p. 69.

126. Ibid., p. 106.

Oral interviews. --Although some joint apprenticeship committees have accepted women into apprenticeship programs, many male unionists and contractors still feel strongly that construction work is men's work. One union official interviewed during Commission field studies said, "This is no job for women. It's strictly a man's job." One observer states: "Inertia of male-dominated unions and employer attitudes, along with largely negative assessments of what most women are capable of doing seem responsible for keeping women out."[127]

The negative attitudes of union officials and contractors are reflected during oral interviews. As noted above, the oral inverview is a subjective selection standard that provides a convenient means of consciously or unconsciously discriminating against minorities. It has the same adverse effect on women.

During oral interviews, women are frequently asked questions that are not job related and that are often insulting. These have included questions relating to: a woman's reaction to foul language, why a woman wants to enter a man's job, if the woman knows what she's getting into, and if the woman likes boys since her hair is so short.[128] Such questions obviously do not relate to job performance and are used to harass women and disqualify them from apprenticeship programs. The heads of two apprenticeship outreach programs for women said that they make a special effort to prepare women for the oral interview because of the discriminatory and insulting questions asked by some of the interviewers.[129]

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127. "Manpower Shortages May Push Women Into Construction Work," Engineering News-Record, May 9, 1974, p. 25.

128. Carruthers Interview, May 1, 1974.

129. Carruthers Interview; also Dorothea Hernandez, Director of Women-in-Apprenticeship, San Francisco, Calif., telephone interview, July 29, 1975.

Experience. -- Experience requirements adversely affect female apprenticeship applicants even more than they affect minority men.

While some minority men may have obtained experience by working in nonunion construction occupations or by taking trade-related courses, women have, historically, been unable to work in any sector of the construction industry. They either were discouraged from applying for construction jobs because such jobs were considered male jobs or they were prohibited by school policies or State protective legislation from taking certain trade courses or entering construction occupations.

Women will always be at a competitive disadvantage, according to the director of Better Jobs for Women, if unions continue to give apprenticeship applicants extra points for experience.[130] A charge has been filed with EEOC alleging that one apprenticeship committee's use of experience as an apprenticeship selection standard is discriminatory.[131]

If more women file discrimination suits against building trades unions and joint apprenticeship committees, other employment practices that have an adverse impact on women may be identified. Selection standards such as written tests and possessing a high school diploma may adversely affect employment opportunities for women as they do for minority males. For this reason, unions and joint apprenticeship committees should examine their selection standards to determine if they adversely affect the entry of women in the construction trades.

Title VII and Sex Discrimination

Title VII of the 1964 Civil Rights Act stipulates that women can only be denied employment on the basis of sex if sex can be proved to be a bona fide occupational qualification.[132] This qualification has been interpreted narrowly. The EEOC's "Guidelines on Discrimination Because of Sex" state:

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130. Sandy Carruthers, telephone interview, July 31, 1975.

131. Ibid.

132. 42 U.S.C. §2000e-2(e) (1970).

> The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels--"Men's jobs" and "Women's jobs"--tend to deny employment opportunities unnecessarily to one sex or the other.
>
> ...the following situations do not warrant the application of the bona fide occupational qualification exception:
>
> > (i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. . . .
> >
> > (ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. . . .
> >
> > (iii) The refusal to hire an individual because of the preferences of co-workers, the employer, clients, or customers . . . .[133]

In addition, the sex discrimination guidelines stipulate that State laws that affect the employment status of females (e.g., weight-lifting restrictions) "will not be considered a defense to an otherwise established unlawful employment practice."[134]

Federal court and EEOC decisions on sex discrimination by employers in nonconstruction occupations bear on what constitutes sex discrimination in the construction industry. Especially significant are decisions on State protective laws and company policies on weight-lifting restrictions and overtime.[135]

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133. EEOC Guidelines on Discrimination Because of Sex, 29 C.F.R. §1604. 2(a) (1974).

134. 29 C.F.R. §1604. 2(b)(1)(1974).

135. Significant sex discrimination cases include: Bowe v. Colgate, 416 F.2d 711 (7th Cir. 1969), unrpt. order aff'd in part and rem'd in part 489 F.2d 896 (7th Cir. 1973); Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir. 1971); and Weeks v. Southern Bell Telephone and Telegraph Co., 408 F.2d 228 (5th Cir. 1969).

One important EEOC decision involved an apprenticeship program in the printing trades.[136] The printing union involved attempted to exclude a woman from apprenticeship because of the lifting requirements of the trade. The employer favored admission of the woman. The union contended that "women as a class are physically unequalified for the position because of the required lifting and because Ohio State law prohibits females from lifting weights of over 25 pounds, if it is frequent or repeated."[137]

The EEOC did not accept the union's argument. The Commission found that the respondent union did not prove that sex was a bona fide occupational qualification. In addition, the EEOC stated that the union could not defend its exclusion of women on the basis of State protective laws, since the EEOC guidelines stipulate that such laws "which prohibit or limit the employment of females...do not take into account the capacities, preferences and abilities of individual females and tend to discriminate rather than protect and thus conflict with Title VII."[138] The EEOC found reasonable cause to believe that the union was guilty of sex discrimination.

One court[139] ruled that neither a State's weight-lifting restrictions nor its restrictions on the number of hours women may work could serve as the basis for making sex a bona fide occupational qualification. The court stated that, "state labor laws inconsistent with the general objectives of the /Civil Rights/ Act must be disregarded."[140]

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136. EEOC Decision No. 70676, 2 FEP Cases 605, April 3, 1970.

137. Ibid.

138. Ibid. at 606

139. Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir. 1971).

140. Ibid. at 1226.

EMPLOYMENT OF WOMEN AS ROAD DRIVERS

Like construction work, truck driving is considered a male occupation and women are discouraged from entering it. Because of this lack of encouragement, very few women have entered truck driving, and those who are interested in such a career frequently do not know how to obtain truck-driving licenses.

Unlike the building trades, where training is primarily controlled by unions and contractors, training for truck driving can be acquired through several sources: private driving schools, labor-management driving programs, through a friend or relative, and employer training programs. Consequently, unions do not bear as much responsibility for preventing women from receiving training that would enable them to be truck drivers.

Whether union or nonunion, most drivers' training programs that reach beyond the traditional white male orientation are geared to minority males. They neither recruit women nor assist those who seek to become road drivers.

Few organizations specifically train or recruit women to become road or local drivers. One that does is the American Association of Women Truck Drivers in Charter Oak, California.[141] Unlike apprenticeship outreach programs for women that prepare women to qualify for apprenticeship programs, the American Association of Women Truck Drivers actually trains women to become truck drivers. The organization does recruiting, counseling, and referral, functions also characteristic of apprenticeship outreach programs for women.

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141. Christy Cook, Director, American Association of Women Truck Drivers, telephone interview, Nov. 11, 1974.

One obstacle facing women who wish to become road drivers has been company provisions forbidding women to ride with male drivers other than their husbands. In one case, which went to EEOC, a female truck driver was driving with her husband until marital difficulties resulted in their separation.[142] After the husband left the company, the woman was given only single-driver runs and was not permitted to ride with male drivers. The company argued that its action was justified "by the complaints from the wives of other drivers who do not want their husbands to share driver assignments with Charging Party."[143] The EEOC stated that this justification did not indicate any business necessity and that it is "in law, without merit since it presumes that employees' (or their wives') preferences may be accommodated at the price of rendering nugatory the will of Congress."[144]

The existence of laws prohibiting sex discrimination in employment is obviously no guarantee against discrimination. While such laws have lowered some barriers to the employment of women in many occupations, they have also caused some employers and unions to use more subtle and covert discriminatory practices. Female employment in the skilled construction trades, in truck driving, and in other, traditionally-male jobs will increase more rapidly only when there is a strong commitment by the Federal Government to take positive steps to enable women to enter construction and trucking jobs.

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142. EEOC Decision No. 72-0528, Dec. 17, 1971, CCH Employment Practice Decisions, par. 6315.

143. Ibid.

144. Ibid.

5. THE OUTREACH APPROACH

The apprenticeship outreach approach was started in 1964 by the Workers Defense League in New York City. The project was small, received no Federal funds, and operated with a staff of three. The basic approach involved recruiting minority youth, helping them meet the requirements for application to apprenticeship, and tutoring them in the skills necessary to pass apprenticeship entrance examinations. Positive results were produced, and several other groups became interested in the approach.

In 1967 the Department of Labor's Manpower Administration[1] initiated its involvement in the outreach concept by funding 17 apprenticeship outreach programs in major cities throughout the country.[2] These programs were operated by the Joint Apprenticeship Program (jointly sponsored by the Workers Defense League and the A. Philip Randolph Educational Fund) and by the National Urban League.

The need for increased minority participation in the construction trades was obvious, not only in New York City, but in virtually every other city in the country. In 1967 only 6.9 percent of apprentices in the building trades were nonwhite.[3]

The apprenticeship outreach approach seemed a viable way to increase minority participation in the construction trades, as it worked within the established apprenticeship system and appeared to ensure that more well-trained, minority journeymen would be available within several years. However, because of certain limitations on entry into apprenticeship, such as age,[4] another approach had to be developed

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1. In November 1975 the name of the Manpower Administration was changed to Employment and Training Administration.

2. Information from the files of the Office of National Programs, Department of Labor; provided by Patricia Wilkinson, Manpower Development Specialist, Office of National Programs, May 23, 1974.

3. U.S., Department of Labor, Bureau of Apprenticeship and Training, "Ethnic Composition of Registered Apprentices in Training by Major Industry; Fiscal Years 1967-72."

4. Of 13 building trades unions for which apprenticeship standards were studied each specified an age limit for entering apprentices averaging around 25 years of age. U.S., Department of Labor, Labor Management Services Administration, Admission and Apprenticeship in the Building Trades Unions (1971), p. 41.

for older minority individuals and skilled nonunion craftworkers. Thus, the journeyman outreach and training program was designed in 1969 to recruit three groups of minority trainees: nonunion journeymen (skilled, nonunion, minority craftworkers needing no additional training to become union-recognized journeymen); advanced trainees (nonunion minority workers with several years' experience in the trades but needing some additional training before becoming eligible for union journeyman status); and trainees (minority individuals with little or no experience in construction work but older than the maximum apprenticeable age).

The Apprenticeship Outreach Program (AOP) and the Journeyman Outreach and Training Program (JOTP) were to become the primary voluntary affirmative action programs designed to provide trained minority individuals for the construction trades. The AFL-CIO's Civil Rights Department encouraged the development of this approach in its earliest days and has supported Federal funding of the programs and issued statements favoring them.[5] The AFL-CIO's Human Resources Development Institute has become a major prime sponsor of outreach programs.[6]

Two serious shortcomings of the outreach approach were not evident to most observers in the early years. First, the programs did nothing to correct the discriminatory procedure (described below) under which some white males entered unions directly as journeymen, without going through apprenticeship or special programs such as journeyman outreach programs, while minority males and women could not enter unions directly.

Second, neither AOP nor JOTP emphasized the training of women for union journeyman positions until 1974, when women's components were

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5. C.J. Haggerty, President, AFL-CIO Building and Construction Trades Department, Feb. 1, 1968 letter to W. Willard Wirtz, Secretary of Labor. AFL-CIO, "Civil Rights," Resolution adopted by the 8th AFL-CIO Convention, Oct. 1969. AFL-CIO, "Equal Rights for All--The AFL-CIO Program" (May 1971), pp. 12-16. AFL-CIO, "Civil Rights," Resolution adopted by the 11th Constitutional Convention, Oct. 1975.

6. Tables 11 and 12, pp. 119-20.

added to 13 outreach programs. Although two women's outreach programs were established prior to 1974 and a few women were trained through other AOP programs before 1974, no systematic record of women trained was maintained. But it is evident from the results of Commission field surveys (discussed below) that very few women were trained.

GROWTH OF THE PROGRAMS

Since 1967 apprenticeship outreach programs have increased in number and scope. As of February 1975, the Department of Labor reported apprenticeship outreach programs in 105 locations throughout the country.[7] Most were operated by the four major groups listed in table 11.

The number of journeyman outreach and training programs has also grown. As of February 1975, 73 programs were doing journeyman outreach either exclusively or on a part-time basis.[8] The programs were sponsored by the groups[9] listed in table 12.

COST OF THE PROGRAMS

Until June 30, 1974, apprenticeship and journeyman outreach programs were funded by the Department of Labor under the Manpower Development and Training Act, Title II.[10] Complete data on the cost are not available. The Department of Labor's Office of National

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7. U.S., Department of Labor, Office of National Programs, "Apprenticeship Outreach Program--Cumulative Total by Program Sponsor; February 1975 Summary."

8. Of 100 programs reporting JOTP placements in December 1973, less than half were actually under JOTP contract. Most were AOP's that had placed several individuals yearly in construction unions as trainees, advanced trainees, or journeymen. Of the 100 programs, 58 made 30 or more JOTP placements each and only 28 made 100 or more JOTP placements apiece.

9. U.S., Department of Labor, Office of National Programs, "Journeyman Outreach and Training Program--Cumulative Total by Program Sponsor; February 1975 Summary."

10. Manpower Development and Training Act, Title II, Public Law 87-415, Mar. 15, 1962, 76 Stat. 23. Effective July 1, 1974, the outreach programs were funded under the Comprehensive Employment and Training Act (CETA) of 1973.

Table 11. NUMBER OF APPRENTICESHIP OUTREACH PROGRAMS, FEBRUARY 1975

Program sponsor	Number of programs
Urban League (LEAP) [a]	37
Recruitment and Training Program (RTP) [b]	26
Human Resources Development Institute (HRDI) [c]	22
Building trades councils [d]	7
Other sponsors [e]	13
All sponsors	105

a. The National Urban League (NUL) has sponsored apprenticeship outreach programs since 1967. Urban League AOP's operate under the name of LEAP (Labor Education Advancement Program). One contract is negotiated through NUL's central office in New York for all 37 AOP-LEAP projects. NUL subcontracts AOP-LEAP to local Urban League affiliates throughout the country.

b. The Recruitment and Training Program (RTP) is the former Joint Apprenticeship Program of the Workers Defense League and A. Philip Randolph Educational Fund, earlier known as the Workers Defense League Outreach Program. All RTP programs come under one main contract with RTP offices set up in various cities as they are included in new contracts.

c. The Human Resources Development Institute (HRDI) was created by the AFL-CIO in 1968 to function in the area of manpower training and job placement, with special emphasis on minorities and the disadvantaged. HRDI began sponsoring AOP's on a large scale in mid-1973. The number of programs sponsored by HRDI continues to increase as those programs formerly sponsored by individual building trades councils are incorporated under HRDI. The Department of Labor negotiates one contract for all HRDI projects, and HRDI, in turn, subcontracts to its local affiliates or building trades councils.

d. AOP's of building trades councils are negotiated and operated by individual local councils. Such individually-negotiated building trades council programs are being incorporated under the Human Resources Development Institute.

e. Other sponsors include various State departments of labor, local trade union leadership councils, and locally organized civic or minority groups.

Table 12. NUMBER OF JOURNEYMAN OUTREACH AND TRAINING PROGRAMS, FEBRUARY 1975

Program sponsor	Number of programs
Urban League	29
Recruitment and Training Program (RTP)	26
Human Resources Development Institute (HRDI)	3
Building trades councils	5
Other sponsors	10
All sponsors	73

Programs (ONP) provided cost information for fiscal years 1970-74 but could not produce AOP information for 1967 through 1969.[11] Furthermore, cost figures supplied by ONP did not include administrative costs incurred by the Department of Labor in review and monitoring of the programs.

The available data show that contracts totaling $45.88 million were let for the operation of apprenticeship outreach programs during the 5 fiscal years from 1970 through 1974.[12] Contracts with a total value of $22.806 million were let for journeyman outreach and training.[13] Funding for each of these programs has increased every year.

Since July 1, 1974, programs funded under the Manpower Development and Training Act have been funded under the Comprehensive Employment and Training Act (CETA) of 1973.[14] Under CETA, primary responsibility

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11. William Kaczvinsky, Deputy Director, ONP, said that cost information was not compiled in the early years of apprenticeship outreach. Interview in Washington, D.C., Apr. 11, 1974.

12. Computed by adding dollar amounts of all individual contracts, as shown on the Office of National Programs Contract Register, 1969-1974.

13. Computed by adding dollar amounts of all individual contracts, as shown on the Office of National Programs Contract Register, 1969-1974. Most JOTP cost figures for the Urban League and RTP programs are included in AOP cost figures, as contract totals with few exceptions reflect costs for AOP's and JOTP's combined.

14. Comprehensive Employment and Training Act, 18 U.S.C. §665 (Supp. IV, 1974) and 29 U.S.C. §801 et. seq. (Supp. III, 1970).

for planning and administering most manpower programs and funds has been decentralized to State and local governments.[15] The apprenticeship and journeyman outreach programs, however, remain under the Department of Labor's administration and funding.[16]

DESIGN AND REVIEW

The Department of Labor office designated to oversee the general operation of AOP and JOTP is the Office of National Programs in the Employment and Training Administration. ONP negotiates all contracts with sponsors, specifying general areas of responsibility and providing funding for staff and other resources required for the functioning of the projects. Though contracts vary somewhat for each program sponsor, many of the basic points in all the contracts are similar. First, the apprenticeship outreach contract is negotiated between the Department of Labor and the sponsoring agent only.[17] Unions are not bound by the contractual agreement and, thus, their cooperation in the program is informal and at their discretion. Even where building trades councils are the sponsors, there is no contractual agreement between the Department of Labor and individual unions or the entire group of building trades unions.

The contracts generally provide for three to five staff persons per office. A five-person office would include a project director, field representative, recruiter-counselor, full-time tutor, and a secretary-bookkeeper. The contracts also specify the numbers of minority individuals who are to be placed in building trades apprenticeship programs. Most medium-sized AOP's have been required to place between 30 and 35 apprentices per year.[18]

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15. "Paving the Way For Local Control," Manpower, April 1974, p. 2.

16. The outreach programs are funded under §301 of CETA, 29 U.S.C. §871 (Supp. III, 1970).

17. Arch Moore, Manpower Development Specialist, Department of Labor, interview in Washington, D.C., Oct. 26, 1973.

18. Moore Interview.

Program operations are monitored by the Office of National Programs and the Bureau of Apprenticeship and Training (BAT). The Bureau is responsible for monthly reviews of the individual programs and for progress reports outlining the number of trainees in the program, the number of new indentures, and other pertinent information. This monitoring involves receipt and review of forms filled out by AOP staff showing the number of individuals being tutored, those who have dropped out, and those who have been indentured.[19]

The journeyman outreach and training programs are generally operated in conjunction with an apprenticeship outreach program, and occasionally (until 1973) in conjunction with Department of Labor hometown plans.[20] Contracts with AOP sponsors have been expanded to include goals for journeyman trainees to be placed under JOTP, and funding for the additional staff necessary to operate the program. Contracts with programs affiliated with hometown plans were generally negotiated and signed by the plans' administrative committees. Placement goals are set for journeyman outreach and training programs; and, though there are wide variations, goals are frequently to place between 40 and 50 people a year. Monitoring is carried out by the Bureau of Apprenticeship and Training, but review of JOTP is much more informal and less detailed than of AOP.[21]

PROGRAM OPERATION

The primary functions of the apprenticeship outreach and journeyman outreach training programs are recruitment, tutoring and counseling, application for apprenticeship, and indentures and followup.

19. "OJT Progress and Compliance Report," OJT Form-4 Rev. (11-67), MT-4 of the Bureau of Apprenticeship and Training. An indenture is a formal agreement setting forth the terms of an apprenticeship arrangement; an apprentice who signs such an agreement is said to have been indentured.

20. Rodger Coyne, Manpower Development Specialist Supervisory, Office of National Programs, Department of Labor, interview in Washington, D.C., Feb. 27, 1976.

21. Rodger Coyne, interview in Washington, D.C., Oct. 26, 1973.

AOP Recruitment

Recruitment is a basic function of apprenticeship outreach programs. The lack of information about entry to the construction trades coupled with the impression that construction jobs are closed to minorities have made dissemination of information critical. Apprenticeship outreach programs attempt to get information out through agencies, community groups, schools, minority job referral centers, churches, organizations that minorities belong to, and so on. In general AOP has had to recruit 10 individuals to produce one indentured apprentice.[22]

JOTP Recruitment

Recruitment for JOTP must be geared to reach not only individuals with no construction experience and older than the maximum age of apprentices, but also experienced workers and nonunion craftworkers already employed in construction. Recruitment of advanced trainees and nonunion journeymen is to include visits to nonunion construction sites, often in residential areas; contacts with minority contractors whose work forces may often include nonunion workers; and State employment agencies and minority job referral centers, both of which often have listings of veterans and others with construction experience.

AOP Tutoring and Counseling

The apprenticeship outreach program is designed only to help young minority individuals gain admittance to regular union apprenticeship programs. Thus, no formal training program for learning a trade is operated by AOP. Rather, a tutoring and counseling service is provided to familiarize minority individuals with specifics about the construction industry and, most importantly, to provide the individual the skills necessary to gain entry to apprenticeship.

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22. Moore Interview.

Tutoring and counseling programs usually last for 4 to 10 weeks.[23] Sessions are held twice weekly for several hours in the evening, thus allowing employed individuals to keep their jobs. Most programs focus initially on explaining the skills involved and jobs performed in the various building trades and wage rates for apprentices and journeymen. Length of apprenticeship and employment conditions in each of the trades are also described.

Another important aspect of training is discussion of work habits and employee relationships in construction trade apprenticeship. Many trainees may never have had a permanent job with its consequent working and learning responsibilities; the program describes these responsibilities. Furthermore, as one Department of Labor staff member commented:

> The construction trade is an especially difficult one to break into and learn for any apprentice. For some minority apprentices it may be even more difficult because of the presence of some journeymen and supervisors who may not want to help a minority apprentice stay in the program. I expect that our A.O.P. sponsors will let their trainees know what they may be in for and how to deal with it.[24]

Thus, an AOP should present a realistic picture of the difficulty an apprentice may encounter in working with a supervisor or other journeyman.

The final training element is tutoring to help trainees pass a written examination and a personal interview. The written examination varies by trade and locality but generally includes four areas: mathematical problem solving, spatial relations, mechanical reasoning, and verbal comprehension. AOP sponsors have developed curriculum packages to teach basic skills in these four areas. Some programs have also developed curricula that help trainees master test-taking techniques.

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23. Ibid.

24. Coyne Interview, Apr. 23, 1974.

A prerequisite for entrance into many unions is a successful personal interview conducted by a union official. These can often be a source of anxiety for a young minority individual, and such anxiety may produce poor results. Apprenticeship outreach programs prepare a trainee to deal with various types of questions and approaches in interviewing and often hold mock interviews to give the trainee a dry run.

JOTP Tutoring and Counseling

Most JOTP trainees have a very good understanding of the construction industry but often need information about building trades unions. The first effort must be expended on outlining positive aspects of union membership, such as higher wages, an opportunity for more specialized work on a wide range of projects, or a more systematic method of job referral.

The JOTP tutoring is geared to the needs of each individual recruited. Entrance into a trade under JOTP requires that each trainee be evaluated for skills and experience in the particular trade. If an exam must be taken before formal evaluation is made, the program arranges for tutoring. JOTP trainees are evaluated by a union representative from the appropriate craft and a representative of the trainee, generally a JOTP staff member.[25] These two individuals negotiate until they agree on an experience and wage level at which an individual may enter the trade--as a journeyman, advanced trainee, or trainee having to go through a full apprenticeship program. (JOTP trainees and advanced trainees, once in a union training program, are not registered apprentices, although the training they receive is the same as apprentices' training.)

Indentures and Followup

The apprenticeship outreach program continues to provide services to successful minority applicants for apprenticeship after they become

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25. Jan Gulledge, Manpower Development Specialist, Office of National Programs, Department of Labor, interview in Washington, D.C., Feb. 18, 1976.

apprentices.[26] AOP staff help the new apprentice obtain loans for apprenticeship fees, work clothes, tools, and so on; adjust to the new work situation; and arrange for transportation to and from work and evening classes.

Followup is generally done only through the first 6 months of the apprenticeship program.[27] Often this is informally done when the AOP office is not engaged in other pressing work. As one Department of Labor employee put it, "We just don't know where the people indentured through apprenticeship outreach are now. They may still be apprentices, or they may have dropped out. We just don't know for sure."[28] Research undertaken by Brandeis University indicated that inadequate followup was a major weakness of outreach programs.[29]

AOP OUTCOMES FOR MINORITY MEN

The AOP's have been functioning as large-scale, federally-funded projects for 8 years. They have had successes; they also have critical limitations.

Indentures

One measure of the effectiveness of the AOP's is their ability to place minority persons in construction apprenticeship programs. Since 1967 AOP has assisted in indenturing 25,815 minority individuals. (See table 13.) The cost per indenture under AOP has been approximately $1,900.[30]

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26. Napoleon Johnson, National Director, Labor Education Advancement Program (LEAP), National Urban League, interview in New York, N.Y., Oct. 29, 1973; and Ernest Green, Executive Director, Recruitment and Training Program, interview in New York, N.Y., Oct. 29, 1973.

27. Moore Interview. However, another Department of Labor staff member stated that ONP places no formal limitations on followup and urges AOP sponsors to provide as much followup as possible. Coyne Interview, Feb. 27, 1976. The National Urban League's 1975-76 contract with the Department of Labor specifies that followup services are to be provided for "at least six months" (p. 4) while RTP's 1975-76 contract specifies no time period for followup.

28. Moore Interview.

29. Robert Kasen, "Minority Apprentices: Focusing on Retention," Manpower, vol. 6 (April 1974), pp. 27-28.

30. Total cost ($45,880,000 in the 5 fiscal years 1970-1974) divided by total number of indentures (23,632 in the 5 calendar years 1969-1973).

Table 13. NEW APPRENTICES INDENTURED THROUGH THE APPRENTICESHIP OUTREACH PROGRAMS BY YEAR, 1967-1973

Year	Apprenticeship outreach program indentures [a]	No. of programs funded [b]
1967/68 [c]	2,183	49
1969	3,026	63
1970	2,917	80
1971	4,450	102
1972	6,615	116
1973	6,624	120
Total	25,815	

a. Yearly totals produced by adding monthly indentures for all construction crafts from "Apprenticeship Outreach Program Cumulative Total Indentures by Program Sponsors" reports from Jan. 1969 through Dec. 1973, U.S. Department of Labor, Office of National Programs.

This total number of AOP indentures is not adjusted to exclude dropouts, Because little emphasis has been placed upon followup of indentures, the DOL figures on dropouts are incomplete. Such dropout figures were kept until 1972; however, these are incomplete as well. As of the end of 1971, Office of National Programs reported 2,170 dropouts of 14,216 reported indentures (including mechanics and miscellaneous apprentices). Since 1972, reporting of dropouts of AOP indentures has been spotty, with many offices reporting no dropouts at all over periods of many months.

b. Information from U.S., Department of Labor, "Apprenticeship Outreach Program--Cumulative Total by Program Sponsors" Reports, dated December 1968, 1969, 1970, 1971, 1972, 1973.

c. The Office of National Programs, U.S. Department of Labor, had no separate data available on number of indentures for 1967 and 1968. Thus, the cumulative total as of December 1968 is used for both years.

Note: Cumulative total AOP indentures by craft and by year from DOL monthly reports (cited above) were not used because (1) cumulative totals include indentures in machinist and other miscellaneous trades (many of the apprentices in the miscellaneous category are in relatively unskilled trades, such as laborers), and (2) cumulative totals of all indentures, by crafts, appear to be in error, as they

Cont'd from table 13.

indicate figures larger than those produced by adding monthly indentures by craft from inception of program (e.g., the cumulative total of all apprentices indentured through AOP as carpenters as of December 1973 is 6,363 as reflected on DOL's monthly indenture report and 6,169 from adding individual monthly totals since inception of program).

Note: ONP kept no record of women trained through AOP or JOTP before 1974. Hence this table and tables 12-14, 20 and 21 could not show statistics for women. But, on field studies, Commission staff asked for the number of women in these programs and the results are given in the text.

Source: U.S., Department of Labor, Office of National Programs, "Apprenticeship Outreach Program--Cumulative Total Indentures by Program Sponsors." Monthly reports produced since January 1969, with cumulative total indenture figures available for the 1967-68 period.

Figures on AOP indentures by race, ethnicity, and sex were unavailable from the Office of National Programs[31] but some data on these matters were collected from directors of four AOP programs interviewed by Commission staff.[32] The staff found that blacks were indentured at a somewhat higher rate than the black proportion of the total minority population of the areas concerned. The reverse was found for persons of Spanish origin. Only one woman was indentured in the four apprenticeship outreach programs visited during the field studies.[33] Comments of program directors to Commission staff reflected an unwillingness to accept responsibility for assisting women to enter apprenticeship programs.

Detailed figures on AOP apprentices by trade are unavailable for 1967 and 1968, but they are available for subsequent years. (See table 14.) Comparison of the number of apprentices indentured through AOP and the total number of apprentices in 12 selected construction

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31. Kaczvinsky Interview. Kaczvinsky said that such breakdowns of indentures were not compiled by the Office of National Programs.

32. See app. A for methodology of selection of cities and unions for Commission field study.

33. Of 2,364 male minority indentures reported to Commission staff in four offices, in Jersey City, Miami, San Francisco, and San Francisco Bay counties, 57 percent of the AOP indentures were black, while 43 percent of the minority population was black; 30 percent of the AOP indentures were persons of Spanish origin, and 14 percent were members of other minority groups, while 44 percent of the minority population in the four areas were persons of Spanish origin and 13 percent were members of other minority groups. (The interviews were held from December 1973 to February 1974; population figures are from the 1970 census.) The difference between the 2,364 indentures given above and the 2,452 in table 17 is because (1) the racial-ethnic composition of apprentices in Jersey City was obtained only for 45 apprentices listed in Federal BAT records, not for all 126 indentures; (2) the Miami figure of 277, in table 17, includes 6 white Anglos; and (3) the single female apprentice.

Table 14. NEW APPRENTICES INDENTURED THROUGH THE APPRENTICESHIP OUTREACH PROGRAMS BY CRAFT AND YEAR, 1969-1973

Craft	1969	1970	1971	1972	1973	Total
Asbestos Workers	20	43	56	91	79	289
Bricklayers	154	155	225	355	383	1,272
Carpenters	674	763	1,226	1,568	1,485	5,716
Cement Masons	166	196	223	194	345	1,124
Electricians	307	299	459	1,154	1,082	3,301
Elevator Constructors	37	81	90	136	83	427
Glaziers	61	27	40	35	45	208
Ironworkers	212	190	322	446	390	1,560
Lathers	28	74	77	66	85	330
Operating Engineers	203	204	311	640	613	1,971
Painters	324	248	475	518	418	1,983
Pipe Trades	298	311	428	796	872	2,705
Plasterers	59	41	106	32	71	309
Roofers	218	122	176	200	266	982
Sheet Metal Workers	237	154	204	347	378	1,320
Tile Setters	28	9	32	37	29	135
Total	3,026	2,917	4,450	6,615	6,624	23,632

Source: Yearly totals produced by adding monthly indentures for all construction crafts from "Apprenticeship Outreach Program Cumulative Total Indentures by Program Sponsor," reports from January 1969 through December 1973. (The total numbers of indentures are not adjusted to exclude dropouts.) U.S., Department of Labor, Office of National Programs.

trades shows that AOP may have played a significant role in preparing minority individuals for apprenticeship. (See table 15.) AOP indentures comprised 87 percent of minority indentures in the 12 trades. However, this percentage exaggerates AOP's role because of the incorrect (but unavoidable) assumption that there were no dropouts and because overall numbers of minority apprentices are somewhat low (see note c to table 15.)

In the 4 years from 1969-1972 the overall number of apprentices remained stable, but the number of minority apprentices rose continuously. (See table 16.) As the number of AOP indentures rose, so did the number of minority apprentices. Almost certainly, AOP is a major explanation of the rise in minority apprentices.

Achievement of Journeyman Status

Another critical measure of the effectiveness of the apprenticeship outreach program is the number of AOP indentures who have completed their union training program and have achieved journeyman status. Though the most clearly defined goal of AOP is to place minorities in apprenticeship programs,[34] people in the Department of Labor and in various AOP offices appear to believe that such placement eventually should and will result in journeyman status. Indeed if most minority apprentices recruited under AOP do not achieve union journeyman status, the program should not be considered a success.

Followup services after indenture are necessary both for giving trainees counseling when needed and for keeping accurate records of the end results of AOP indentures. Several factors affect the ability of AOP's to provide followup.

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34. For example, the 1973-74 contract between RTP, Inc., and the Department of Labor states that "major emphasis will be placed on apprenticeship training."

Table 15. APPRENTICES, MINORITY APPRENTICES, AND AOP INDENTURES IN SELECTED BUILDING TRADES, DECEMBER 1972

Craft	(1) Total apprentices [a]	(2) Minority apprentices [a]	(3) AOP-recruited apprentices [b]	(4) AOP-recruited apprentices as percentage of all minority apprentices [c]
Brick, Stone and Tile	5,886	1,020	813	80%
Carpenters	23,237	3,953	4,231	107
Cement Masons	2,021	849	613	72
Electricians	20,214	2,203	2,219	101
Glaziers	671	112	102	91
Iron Workers	6,586	1,002	768	77
Lathers	918	225	143	64
Painters	4,326	994	1,241	125
Plasterers	678	200	179	90
Plumbers/ Pipefitters	22,464	2,592	1,833	71
Roofers	1,951	618	376	61
Sheet Metal Workers	9,739	1,347	705	52
Subtotal	98,691	15,115	13,223	87
Other building trades (not listed separately)	10,471	1,409	1,709	121
Total	109,162	16,524	14,932	90

a. Total number of apprentices and minority apprentices from U.S., Department of Labor, Bureau of Apprenticeship and Training, "Ethnic Composition of Registered Apprentices in Training by Major Industry; Fiscal Years 1967___ (Federally Serviced Workload Only)." Figures are the total number registered in the building trades on Dec. 31, 1972. The figures on the "federally serviced workload" cover only a portion of the apprentices registered in 29 States, the District of Columbia, Puerto Rico, and the Virgin Islands; the figures are complete for 21 States and Guam. Complete statistics on all apprentices registered in the building trades on Dec. 31, 1972, showed a total of 155,198 /Department of Labor, Manpower Administration, and Department of Health, Education, and Welfare, Office of Education, 1974 Manpower Report of the President, p. 370/, a figure substantially larger than the total of 109,162 for the "federally serviced workload only." No minority breakdown of the larger figure is available for 1972, but under a new reporting system, the Department of Labor is producing a minority breakdown of complete apprenticeship statistics for all states for 1973 and subsequent years.

Cont'd from table 15

b. Number of AOP-recruited apprentices by trade compiled on the basis of the length of each apprenticeship program, as noted in The National Apprenticeship Program, a pamphlet published by the U.S. Department of Labor, Manpower Administration, 1972 (Rev.). Thus, as the Carpenters' Apprenticeship program lasts 4 years, the number of AOP-recruited carpenters' apprentices given in the table includes AOP indentures from January 1969 through December 1972. Where The National Apprenticeship Program listed an apprenticeship program as lasting between a pair of years, such as 3-4 or 4-5, the lower number was used. The "other trades (not listed separately)" include apprentices and AOP-recruited apprentices for the Asbestos Workers, Elevator Constructors, and Operating Engineers. No formal apprenticeship program existed for Elevator Constructors in 1972; to compute a figure for AOP recruits in Elevator Constructors' programs for 1972, a 4-year training period was assumed.

c. These percentages are misleadingly high for two reasons. First, the procedures used assume no dropouts of AOP-recruited apprentices over the years before December 1972, while the dropout rate was undoubtedly substantial. (See discussion of dropouts in this chapter, below, and in chap. 7.) Second, the number of minority apprentices (col. 2) is undoubtedly somewhat higher, for all trades, than the figures given here. (See note a of this table.) The fact that the percentages are misleadingly high is dramatized by several figures over 100 percent.

Table 16. TOTAL BUILDING TRADES APPRENTICES, MINORITY APPRENTICES, AND AOP-RECRUITED APPRENTICES, 1967-1972

Year	Total apprentices[a]	Total minority[a]		AOP-recruited apprentices[b]
		Number	Percentage	
1967	78,119	5,369	6.9	
1968	91,177	6,603	7.2	
1969	107,592	9,259	8.6	5,209
1970	112,890	11,543	10.2	7,689
1971	110,592	13,372	12.1	10,393
1972	109,162	16,524	15.1	13,982

a. Total number of apprentices and minority apprentices reported as of the last day of the year. Apprentices in programs not serviced by the Department of Labor are not included. U.S., Department of Labor, Bureau of Apprenticeship and Training, "Ethnic Composition of Registered Apprentices in Training by Major Industry; Fiscal Years 1967___ (Federally Serviced Workload Only)."

b. Number of AOP-recruited apprentices by year compiled on the basis of an average 3-year apprenticeship program. Thus, the first year reflecting a figure for AOP-recruited apprentices is 1969, and includes AOP indentures for 1967, 1968, and 1969. The figure for 1970 includes 1970 and 1969 indentures and a percentage of the total indentures for 1967-68. The AOP indentures for 1967-68 are cumulative and not reported separately for each year; approximately three-fourths of the projects for those 2 years operated only in 1968; hence, 1,746 or 80 percent of the indentures for those 2 years were attributed to 1968. AOP-recruited apprentices are presented in table 11. Note that these figures for AOP indentures are not adjusted to exclude dropouts.

Note: A comparison of total apprentices and minority apprentices with AOP-recruited apprentices exaggerates the role played by AOP, for the reasons stated in note c to table 13.

Apprenticeship outreach programs, since they began, have operated on limited budgets. Local offices have often had to perform all the functions required by their contracts with only two full-time, professional staff members. These two individuals must spend most of their time disseminating information about apprenticeship and AOP, recruiting minority youth for the program, meeting with union officials, and taking all other steps required to ensure indenture of AOP trainees. These activities leave little time for systematic followup, which would include visits to job sites, discussions with apprenticeship program directors about specific individuals, counseling individuals experiencing severe difficulties, and maintaining periodic contact, by mail or in person, with each AOP apprentice. In many cases the staff essential for followup is unavailable, suggesting that the Department of Labor has failed to emphasize this critical area.

AOP contracts set goals for the number of minority youth to be indentured into the construction crafts, but contracts do not state the number or percentage of those indentures who are expected to complete the programs. Without followup, many of the new minority apprentices may drop out or be dismissed before completing the program. The Department of Labor does not collect data on the number of journeymen in construction trades who were indentured through AOP. Thus, ONP is unable to assess the real results of its program or to pinpoint problems minority individuals face once they become construction apprentices.

Information on the number of AOP indentures completing apprenticeship, unavailable through the Office of National Programs,[35] was collected during the Commission's field studies.[36] Project directors of the apprenticeship outreach programs included in the field study were

35. Kaczvinsky Interview. Kaczvinsky said that such information was not kept by the Office of National Programs. BAT publishes statistics on all apprentices, including those indentured through AOP, who complete their training. However, until July 1975, when the analysis on which this report is based was largely complete, no race, ethnicity, or sex breakdown of these statistics was available. In July 1975 such a breakdown was made available for the 1973 calendar year.

36. See app. A for a description of methods used to select cities for the Commission labor union field study.

asked to provide the total number of indentures, dropouts, indentures still in apprenticeship programs, and journeymen produced through the programs. Figures on indentures and completions were obtained for three programs; they show that only 78 completions were recorded for the 1,108 AOP trainees indentured, or 7 percent.[37] (See table 17.) Of total indentures in the San Francisco program, three-sevenths

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37. This percentage underestimates the actual completion rate because some of the 1,108 indentures were still in training programs at the time of the Commission interviews. For the San Francisco and Miami programs, it is possible to relate the number of apprentices who completed their programs to the number of indentures 3 years and 4 years before the Commission interviews (January 1974 and February 1974 for Miami and San Francisco, respectively). If 3 years is accepted as the average training period, the completion rate for the two programs was 23 percent; if 4 years is accepted, the completion rate was 45 percent. Information on indentures from "Apprenticeship Outreach Program Cumulative Total Indentures by Program Sponsor" for December 1969, January 1970, December 1970, and January 1971.

The EEOC comments, "your draft report makes repeated reference to a supposedly high dropout rate for minorities in apprenticeships, probably based on observations obtained in the Apprenticeship Outreach Program. This is not confirmed by EEO-2 data which show a dropout rate not much higher than the dropout rate of white males and which indicates an increasing proportion of minorities actually graduate from apprenticeship programs." EEOC Comments. USCCR notes that according to EEO-2 data, the percentage of blacks among dropouts from building trades apprenticeships in 1971 was 12.2 percent, while the percentage of blacks among apprentices was only 7.6 percent. Herbert Hammerman, "Minorities in Construction Referral Unions--Revisited," Monthly Labor Review (May 1973), p. 45. Hence, according to available EEO-2 data (as of Jan. 7, 1976, EEOC had not yet published comparable 1972 EEO-2 data) the black percentage among dropouts is 61 percent higher than the black percentage of members. $\frac{12.2-7.6}{7.6} = 0.61$. The percentage of persons of Spanish origin among dropouts (4.2 percent) is only slightly higher than the percentage of such persons among apprentices (4.1 percent), according to the same source. But this fact is not sufficient to support a statement that the dropout rate for minorities generally is not much higher than for whites.

Table 17. APPRENTICESHIP OUTREACH PROGRAM: INDENTURES, DROPOUTS, AND COMPLETIONS IN FIELD STUDY CITIES, 1973-1974

City	Indentures	Dismissals or dropouts	Still in programs	Completions
Jersey City[a]	126	--[b]	--[b]	0
Miami	277	27	212	28
San Francisco	705[c]	305[b]	350[b]	50[b]
Oakland	1,344	--[b]	--[b]	--[b]
Total	2,452[c]	--[b]	--[b]	--[b]

a. Information on Jersey City indentures from "Apprenticeship Outreach Program Cumulative Total Indentures by Program Sponsor; December 1973 Summary." Because of difficulties in obtaining this information from the program sponsor, the specific numbers of individuals still in apprenticeship and those who have dropped out are unknown. However, it is known that none of the AOP indentures had become journeymen because: (1) the Jersey City AOP contract was not signed until January 1971, as shown in the June, 1971 "Summary Report on Apprenticeship Outreach Programs"; (2) the first AOP indentures were not made until April 1971, and apprentices in the shortest apprenticeship programs, 2 years, could not have completed apprenticeship until April 1973; (3) William Driscoll, a staff member of the Regional Bureau of Apprenticeship and Training Office in Newark, N.J., stated on Dec. 11, 1973, that no minorities had completed any construction apprenticeship program in the Jersey City area during all of 1973.

b. Not available.

c. Includes one woman.

(Continued on next page)

(Continued from Table 17)

Note: The following questions were asked of project directors in field study cities: "What is the present status of people who have become apprentices through your Outreach Program? Please give totals in each of the following categories: a. Have become journeymen _____; b. Are still apprentices _____; c. Have dropped out, failed intermediate or final examinations, or been removed from the program by the J.A.C. _____; d. Total _____."

Source: Based mainly on estimates given by project directors of field study cities: Miami LEAP program, Calvin Jennings; San Francisco Apprenticeship Opportunities Foundation, Acklin Thibeaux; Bay Area Construction Opportunities Program (includes eight counties in San Francisco Bay area: Alameda, Contra Costa, San Mateo, Marin, Santa Clara, Solano, Napa, and Sonoma), Dennis Lockett. Paul Hayes, Jersey City Apprenticeship Outreach Program Director, and Joseph Driscoll, New Jersey State AOP Coordinator, refused to answer most statistical questions when staff visited Jersey City, and though they agreed to provide the information from Driscoll's Trenton office, their general attitude led Commission staff to follow other channels for obtaining the information. Repeated requests from Lockett and other staff in his office for statistics regarding completions by apprentices recruited through the Bay Area Construction Opportunities Program have been to no avail.

had been dismissed or had dropped out. Because this pattern holds true for other AOP's,[38] it casts severe doubts on the ultimate value of the program and calls for the provision of services necessary for the retention of minorities already in union apprenticeship programs.[39]

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38. For further information on this question, see chap. 7. See also Herbert Hill, "Labor Union Control of Job Training: A Critical Analysis of Apprenticeship Outreach Programs and the Hometown Plans," Howard University Institute for Urban Affairs and Research, Occasional Paper, vol. 2, no. 1 (1974); (see especially pp. 7-65.)

39. The EEOC notes that, according to H. Hammerman's article "Minorities in Construction Referral Unions--Revisited," Monthly Labor Review (May 1973), there were "substantial increases from 1969 to 1971, in the proportion of black apprenticeships--not only those in the first year class but in the second and third and over as well ...." Further, "1972 data indicates an increase from 5.6% to 7.8% in the (previously exclusive) mechanical trades.... In addition, first year black apprentices in mechanical trades were almost 13% of the total in 1972. All of these statistics are derived from the EEO-2 reporting system on joint apprenticeship committees maintained by the Equal Employment Opportunity Commission. We find no mention of any EEO-2 statistics in your draft report which makes most of your references to apprenticeship open to serious questions." EEOC Comments.

USCCR considers that these EEO-2 statistics are fully consistent with the analysis above. An increasing percentage of all apprentices are minorities due to the Outreach program. But there is no firm evidence as to the effect of the program on the proportion of journeymen who are minorities. USCCR notes in particular that EEO-2 reports show that the percentage of blacks and persons of Spanish origin among first year building trades apprentices in 1969 was 11.0 percent, while in 1971 the percentage of the same two groups who were first year apprentices was 17.4 percent. Hammerman, "Minorities in Construction--Revisited," p. 45. This increase is fully consistent with the figures on 1969 and 1971 minority apprentices presented earlier in table 14. However, it is more relevant to note that in 1971, the percentage of the same two groups in the third year (or over) of apprenticeship was only 8.2 percent. Hammerman, "Minorities in Construction--Revisited," p. 45. Apprentices in their third year in 1971 would have been in their first year in 1969, so the percentage of these two groups dropped from 11.0 in the first year classes of 1969 to approximately 8.2 percent by 1971. This decline is fully consistent with this study's argument that the dropout rate for minority apprentices is unusually high; that Outreach followup services are inadequate; and that there is no presumption that the minority proportion of new journeymen has risen substantially.

Continued

APPRENTICESHIP OUTREACH FOR WOMEN

The apprenticeship outreach concept has only recently been extended to include women. There are now two apprenticeship outreach programs for women: Better Jobs for Women in Denver, Colorado, and Women-in-Apprenticeship in San Francisco, California. (See table 18.) Thirteen of the traditional outreach programs--those with a minority male orientation--established women's components in 1974. (See table 19.) In addition, contracts between the Employment and Training Administration and sponsors of traditional outreach programs now stipulate that women must be given fair and equal consideration when they apply for outreach staff positions or nontraditional, skilled jobs, including apprenticeship.

(Footnote 39 continued)

(Preliminary unpublished figures from 1972 EEO-2's, made available to USCCR in late October 1975, show that the black percentage of graduate apprentices in the mechanical trades rose to 3.1 percent from 1.5 percent in 1971. USCCR regards this rise as suggestive of some change; but an increase over one or two years does not establish a trend.)

USCCR considers that it was justified in basing its analysis of apprenticeship mainly on statistics produced by the Department of Labor's Bureau of Apprenticeship and Training (BAT) and by the Outreach Program rather than on EEO-2 statistics, for the following reasons: (1) As the preceding paragraph indicates, an analysis using EEO-2 figures leads to the same conclusions as an analysis based on BAT and Outreach statistics. (2) The EEO-2 statistics are filed under procedures similar to those of the EEO-3's, the reliability of which is questioned in chap. 3 and app. B. The EEOC does not have staff resources comparable to those of the Department of Labor which assigns staff to monitor the work of apprenticeship and Outreach officials who submit data to the Department of Labor. (3) As of October 1975, only part of the 1972 EEO-2 data was available, while 1971 EEO-2 data were the latest available in complete form. BAT and Outreach data for 1972, and even later for some series, were available to Commission staff as of mid-1974.

Table 18. APPRENTICESHIP OUTREACH PROGRAMS FOR WOMEN

Name of Program	Program Sponsor	Date Program Started
Better Jobs for Women (Denver, Colo.)	YWCA of Metropolitan Denver	March 1971
Women-in-Apprenticeship (San Francisco, Calif.)	Advocates for Women	December 1973

Source: U.S., Department of Labor, Employment and Training Administration, Office of National Programs.

Table 19. APPRENTICESHIP OUTREACH PROGRAMS WITH WOMEN'S COMPONENTS

Program Sponsor	Location
Urban League (Labor Education Advancement Program (LEAP))	Akron Atlanta Baltimore Chicago Columbia, S.C. Kansas City, Mo. Los Angeles St. Paul Tacoma
RTP, Inc.	Boston New York Cleveland
Mexican American Opportunity Foundation	Los Angeles

Note: All of the women's components were funded in 1974.

Source: U.S., Department of Labor, Employment and Training Administration, Office of National Programs.

Placement Objectives

Unlike the traditional outreach programs that are confined to placing minority men as construction apprentices, the outreach programs for women emphasize placement in construction and nonconstruction apprenticeship and on-the-job training programs. The contract with Better Jobs for Women states, "The prime occupational focus for placement will be into skilled job classifications under the four general trade categories of building and construction, industrial, mechanical/technical, and moving vehicle."[40] Similar language is in the contract with Women-in-Apprenticeship.[41]

The outreach programs for women include numerical goals for placing women in apprenticeable occupations, in construction and other industries. The contracts, however, do not specify placement goals by industry, such as construction.

The traditional outreach programs also have numerical goals for placing minorities in apprenticeship programs. Since they are designed to increase employment opportunities for minorities in construction, the numerical goals apply specifically to placement in construction apprenticeship programs.[42]

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40. Contract between Employment and Training Administration, Office of National Programs, Department of Labor, and the YWCA of Metropolitan Denver (Better Jobs for Women), June 30, 1975, p. 3.

41. Contract between Employment and Training Administration, Office of National Programs, Department of Labor, and Advocates for Women (Women-in-Apprenticeship), Dec. 4, 1974, pp. 4-5.

42. See, for example, contract between Employment and Training Administration, Department of Labor, and Community Affirmative Action Program, Pasco, Wash., Aug. 4, 1972, p. 3. Because of the depressed employment conditions in construction in 1975, the Director of the Office of National Programs, Robert J. McConnon, directed the sponsors of the traditional outreach programs to look for placements in high-paying jobs in other industries such as manufacturing. Robert J. McConnon, Director, Office of National Programs, letter to Napoleon B. Johnson II, Director, National Urban League, LEAP, Mar. 23, 1975. (This was one of several letters sent to all outreach sponsors.)

Recruitment, Tutoring, and Counseling

The outreach programs for women also do recruitment, tutoring, and counseling, but the methods they use are not always the same as those of traditional outreach programs. For example, the outreach programs for women use recruitment sources with a primarily female clientele, in addition to sources normally used by both men and women.

During counseling, the outreach programs for women place special emphasis on preparing women for the harassment they may receive from male workers opposed to women entering their trades. Also, many women have considered construction as men's work, and counseling is sometimes needed to convince women to consider construction as an occupational choice. "Orientation and exposure to the 'reality' of the chosen occupational direction help the women to overcome their own insecurity about attempting a new untraditional job.... Every attempt is made to help the recruit to be as occupationally and psychologically ready to enter the new field as possible."[43]

43. Better Jobs for Women, Change-Choice-Challenge for Women (undated).

Outcomes

The outreach programs for women have produced modest results in placing women in construction apprenticeship programs. Both programs have placed only 27 women as construction apprentices. (See table 20.) One of the programs--Better Jobs for Women--has placed only 5 women in construction apprenticeship programs since its inception in 1971. It must be emphasized, however, that both programs place women in construction and nonconstruction apprenticeship programs.

Women's Components

In 1974, the Department of Labor provided funds for establishment of women's components in 13 traditional outreach programs. The only organizational change resulting from the formation of these women's components was the addition of a recruiter-counselor with the sole responsibility of recruiting and counseling women for placement as construction and nonconstruction apprentices.[44]

The success of the women's components cannot be determined, since they were so recently established. Statistics on the women's components of LEAP do indicate that some progress has been made. (See table 21.) One program--Columbia, South Carolina--appears to have had significant success.

Explanation of Outcomes

The low proportion of women placed in construction apprenticeship programs is due, in part, to the exclusionary practices of many joint apprenticeship committees (see chapter 4), to the lack of cooperation by some joint apprenticeship committees, and to the absence of Federal regulations requiring unions to establish goals and timetables for the recruitment of women.

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44. Jan Gulledge, Manpower Development Specialist, Office of National Programs, Department of Labor, interview, July 23, 1975.

Table 20. APPRENTICESHIP PLACEMENTS BY TWO WOMEN'S OUTREACH OFFICES

	Better Jobs for Women[a] (cumulative through 5/75)	Women-in-Apprenticeship (cumulative through 1/75)
Carpenters	1	9
Electricians	0	4
Lathers	1	0
Operating Engineers	1	0
Painters	0	5
Pipe Trades	1	0
Roofers	1	1
Sheet Metal Workers	0	1
Tapers	0	2
Total	5	22

a. Better Jobs for Women also placed 32 women as trainees in several trades in the unionized and nonunionized sectors of the construction industry. In addition, the program placed two women in apprenticeship as mill cabinet workers, a skilled nonconstruction trade.

Sources: U.S., Department of Labor, Employment and Training Administration, Office of National Programs; Dosh Worth, Job Developer, Women-in-Apprenticeship, San Francisco, Calif.; and Sandy Carruthers, Director, Better Jobs for Women, Denver, Colo.

Table 21. WOMEN PLACED IN APPRENTICESHIP BY LEAP PROGRAMS WITH WOMEN'S COMPONENTS (cumulative through June 1975)

	Atlanta	Columbia	Kansas City	St. Paul	Tacoma	Total
Carpenter	2	0	1	2	0	5
Electrician	0	0	0	0	1	1
Operating Engineer	0	3	0	0	0	3
Painter	0	8	0	0	0	8
Total	2	11	1	2	1	17

Note: In addition to the apprenticeship placements listed above, 6 women were placed in nonconstruction apprenticeship programs.

Note: The LEAP women's components in four cities--Akron, Baltimore, Los Angeles, and Chicago--did not place any women in construction apprenticeship programs. One woman in Chicago was placed in a nonconstruction apprenticeship program. Other LEAP programs without a women's component placed four women in construction apprenticeship programs. The trades and number of women placed were: bricklayer-1; ironworker-1; painter-1; and roofer-1. In addition, 12 women were placed in nonconstruction apprenticeship programs.

Note: It was announced late in 1975 that six additional LEAP women's components will be established. BNA, Construction Labor Report (Dec. 17, 1975), p. A-3.

Source: U.S., Department of Labor, Employment and Training Administration, Office of National Programs, "Apprenticeship Outreach Programs Women in Construction, Cumulative through June 1975."

Because many male unionists and contractors do not want women to enter the construction trades, they do not cooperate with the women's outreach programs. In fact, the negative attitudes of some union officials and contractors have interfered with the effective functioning of these programs. One contractor told the director of Better Jobs for Women that he would not give women "pick and shovel jobs." He would only hire them as "flag girls."[45] The heads of both women's outreach programs reported that some union officials refused to give them information they requested on apprenticeship application procedures.[46]

The failure of women's outreach programs to place more women in construction apprenticeships is also owing to the failure of the Bureau of Apprenticeship and Training (BAT) to expand its regulations governing equal opportunity in apprenticeship[47] to require apprenticeship committees to establish goals and timetables for the recruitment of women. The regulations prohibit apprenticeship committees from discriminating on the basis of sex as well as on the basis of race, color, religion, and national origin.[48] However, the regulations do not require establishment of goals and timetables for women as they do for minorities.[49] Yet, in the absence of goals and timetables for women, apprenticeship committees feel no strong obligation to use the outreach programs as recruitment sources.

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45. Sandy Carruthers, Director, Better Jobs for Women (Denver, Colo.), telephone interview, May 1, 1974.

46. Ibid. Also Dorothea Hernandez, Director, Women-in-Apprenticeship (San Francisco, Calif.), interview, Feb. 15, 1974.

47. 29 C.F.R. §30 (1974).

48. 29 C.F.R. §30.3(a)(1) (1974).

49. 29 C.F.R. §§30.4 (f) and 30.5(b)(1)(vi)(1974).

JOTP OUTCOMES

In five years of operation, JOTP has assisted in placing 6,928 minorities in the various construction trades. (See table 22.) Placements by trade are shown in table 23. The cost per placement is approximately $3,300.[50]

As in the case of AOP, the journeyman outreach and training program cannot be considered as a means of providing equal employment opportunities for minorities unless it increases the number of fully trained and qualified minority union journeymen.[51] An assessment of JOTP's value must rest largely on the number of minorities who have been accepted into construction unions as journeymen. However, ONP has not compiled data on the number of placements who are journeymen and those who are trainees and advanced trainees.[52] For example, ONP does not know whether most of the 2,394 placements reported for 1973 (table 22) were placed as trainees or whether most were placed as journeymen.[53]

Furthermore, ONP has not computed the average training time that trainees, advanced or otherwise, must go through prior to becoming union journeymen. Because each individual's length of training must be negotiated, there is no set minimum amount of training that can be required of trainees or advanced trainees; the maximum is the length of

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50. Total costs ($22.8 million, 5 fiscal years 1970-1974) divided by total number of JOTP placements (6,928 up to December 1973).

51. The RTP, Inc., contract with the Department of Labor for 1973-74 specifies that RTP will attempt to recruit minorities "for direct referrals and placement with union membership." p. 21. The National Urban League contract for 1975-76 states that "the contractor shall place at least 317 journeymen and/or advanced trainees and trainees." p. 3.

52. Coyne Interview, Feb. 27, 1976.

53. Some JOTP sponsors have compiled such data for their own programs for some years. For example, the National Urban League reported that of its 492 JOTP placements (excluding machinists and miscellaneous placements) in the 12 months ending Oct. 31, 1975, 253 were trainees, 39 advanced trainees, and 200 journeymen. Source: U.S., Department of Labor, Office of National Programs, "Apprenticeship Outreach Programs, Cumulative through October 1975."

Table 22. JOURNEYMAN OUTREACH AND TRAINING PROGRAM PLACEMENTS BY YEAR, 1969-73

Year	Total placements during period[a]	No. of programs at end of period
Cumulative to 6/72	2,233	75
7/72 - 12/72	2,301	76
1/73 - 12/73	2,394	100
Total	6,928	

a. Cumulative total JOTP placements by craft and year from DOL monthly reports cited above were not used because cumulative totals include placements in machinist and other miscellaneous trades. These figures are not adjusted to exclude dropouts.

Source: U.S., Department of Labor, Office of National Programs, "Journeyman Outreach and Training Program--Cumulative Total Placements by Program Sponsors." Monthly reports produced since July 1972, with cumulative total placements available from inception of program in 1969 through July 1972.

Table 23. JOURNEYMAN OUTREACH AND TRAINING PROGRAM PLACEMENTS BY TRADE, 1969-1973

Craft	Cumulative through June 1972	July 1972 through December 1972	January 1973 through December 1973	Total
Asbestos Workers	17	19	22	58
Bricklayers	126	135	101	362
Carpenters	402	492	507	1,401
Cement Masons	123	106	116	345
Electricians	234	276	313	823
Elevator Constructors	26	67	48	141
Glaziers	19	26	12	57
Iron Workers	249	158	144	551
Lathers	19	14	50	83
Operating Engineers	198	325	325	848
Painters	155	126	124	405
Pipe Trades	380	265	354	999
Plasterers	31	13	17	61
Roofers	186	130	119	435
Sheet Metal Workers	46	133	121	300
Tile Setters	22	16	21	59
Total	2,233	2,301	2,394	6,928

Source: Yearly totals produced by adding monthly placements for all construction crafts from "Journeyman Outreach and Training Program--Cumulative Total by Program Sponsor," reports from June 1972 through Dec. 1973, U.S., Department of Labor, Office of National Programs. Cumulative figures from 1969 to June 1972 are taken from the June 1972 cumulative figures. These figures are not adjusted to exclude dropouts.

time required for a regular apprenticeship program.[54] It is conceivable, therefore, that trainees and advanced trainees may comprise a large portion of the 6,900 JOTP placements. It is also possible that most trainees may be required to go through a full apprenticeship training program before becoming union journeymen. Further, ONP does not require program sponsors to submit data on the number of trainees and advanced trainees who eventually become journeymen. Since these data are unavailable, ONP, as well as outside observers, are ill-equipped to assess the merits of JOTP as a training alternative to apprenticeship in construction unions.

JOTP focuses even less than AOP on followup.[55] This may be so because of a belief that the JOTP placements are generally older individuals who have had some work experience and may be able to handle problems with no outside help. This approach ignores the need of older minority trainees for assistance and counseling in adjusting to their new roles as trainees in the unfamiliar union structure.

INHERENT LIMITATIONS OF THE OUTREACH APPROACH

The fact that many white males are admitted directly to unions (often as journeymen) without ever serving apprenticeships constitutes an inherent limitation to the potential of the outreach approach as a means of providing equal employment opportunity in the construction industry. As recently as the mid-1960's, both apprenticeship and direct admission were effectively closed to minorities. Currently, minorities are admitted to apprenticeship programs much more readily than before--though the dropout rate is probably quite high and passage to journeyman status the exception rather than the rule. But direct admission to

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54. Coyne Interview, Apr. 23, 1974.

55. Ibid.

journeyman status remains effectively closed to minorities and to women. Meanwhile, direct admission remains open to white males.[56]

A high proportion--probably more than one-half--of new journeymen in the building trades are admitted directly by unions without serving apprenticeships.[57] These workers learned their trades in various ways, including through training in nonunion shops and in military and other training programs and training by relatives and friends.

The availability of direct admission to white males carries an important implication: The outreach approach alone cannot provide equal employment opportunity in construction unions. Assume that outreach programs begin to function much more effectively than they now do. Also assume that the minority percentage of new indentures remains high; that the dropout rate of minority apprentices falls drastically; that journeyman outreach and training programs recruit more trainees, who in turn become journeymen in shorter periods of time than do apprentices; and that outreach programs recruit and counsel women much more effectively than they now do. Even in such circumstances, the proportion of minorities and women among journeymen would remain low, owing to direct admission of white males

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56. This practice was admitted by an official of a Painters local in an interview with Commission staff. Courts have also found that unions have admitted white males directly. United States v. Local 86, Ironworkers, 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F.2d 544 (9th Cir. 1971), cert. denied 404 U.S. 984 (1971).

57. See Howard G. Foster, "Nonapprenticeship Sources of Training in Construction," Monthly Labor Review, vol. 93, no. 2 (February 1970), pp. 21-26; Ray Marshall, William S. Franklin, and Robert W. Glover, A Comparison of Union Construction Workers Who Have Achieved Journeyman Status Through Apprenticeship and Other Means (Austin, Tex.: University of Texas, 1974), p. 3; Herbert Hammerman, "Minority Workers in Construction Referral Unions," Monthly Labor Review, vol. 95, no. 5 (May 1972), pp. 17-26; and "The Search is on For Better Apprenticeship," Engineering News-Record, Aug. 1, 1974, p. 45. The last source quotes former Secretary of Labor Peter Brennan as stating that "apprenticeship, which develops the most qualified skilled craftsmen, today accounts for less than 20% of all entrants to journeyman status."

as journeymen. Most important, employment opportunities would not be equal: A significant proportion of white Anglo males--but, for all practical purposes, no minorities or women--would become journeymen without spending periods of time as less-well-paid apprentices or trainees.[58]

58. The Department of Labor comments, in reference to this chapter: "If the report is published in its present form, it will run counter to views of the minority organizations and their national leaders who have consistently administered and supported the program as a sustained effort of particular value in the overall civil rights struggle. . . . The report reflects lack of understanding of the nature of the Outreach Program, or the framework within which it operates, and how it is fundamentally important as a newly developed "means" for making possible significant entry of minorities into skilled careers in the Building and Construction Industries." Department of Labor Comments.

USCCR notes that these comments do not question the accuracy of any specific section of chap. 5. USCCR considers that its report does not reflect lack of understanding of the Outreach Program and that it reflects the contributions of that program and its limitations. The recommendations, which follow the main body and the findings of this report, suggests ways in which the limitations of the program can be overcome, by building on its strengths.

6. FEDERAL COMPLIANCE PROGRAMS FOR THE CONSTRUCTION AND TRUCKING INDUSTRIES

The Federal Government's areawide affirmative action programs, funded and administered independently of the outreach programs, are a second major effort to provide equal employment opportunity in construction. Voluntary plans (also known as "hometown plans") and imposed plans are the two types of areawide affirmative programs. The general objective of the plans is to increase minority employment in the building trades, thereby eventually increasing minority membership in building trades unions. Increased minority membership in unions is essential for the achievement of equal employment opportunity, since, for all practical purposes, unions substantially control most of the better-paying jobs in the construction industry. The goals of the areawide plans are confined to minority participation in the construction industry; increased female participation in the construction industry is not a goal of these plans at present.[1]

Part of the Federal Government's equal employment opportunity task is mandated by Executive Order No. 11246.[2] The Secretary of Labor is assigned responsibility for ensuring nondiscrimination in employment by Federal Government contractors. Each Federal contracting agency is directed to assist the Department of Labor in ensuring compliance with the Executive order, subject to the rules and regulations of the Secretary

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1. Because of this limitation, this chapter and chap. 7 deal primarily with minority employment opportunities. The recommendations section sets forth program changes needed to provide equal employment opportunity for women in construction.

2. Exec. Order No. 11246, 3 C.F.R. 339 (Comp. 1964-65), as amended by Exec. Order No. 11357, 3 C.F.R. 320 (Comp. 1966-70), 42 U.S.C. §2000e (1970). Executive Order No. 11246 is the most recent of a series of Executive orders relating to Federal Government contracting, going back to President Franklin Roosevelt's Exec. Order No. 8802, 3 C.F.R. 957 (Comp. 1938-43).

of Labor. The Office of Federal Contract Compliance (OFCC)[3] serves as the principal arm of the Department of Labor in this regard.

THE LEGAL FOUNDATION

Executive Order No. 11246, as amended, requires that the Federal Government and Federal or federally-assisted contractors and subcontractors[4] provide equal employment opportunity on the basis of merit and without regard to race, color, religion, sex, or national origin. The imposition of this obligation on Federal and federally-assisted contractors is premised on the Federal Government's right and responsibility to set the terms and conditions on which it will contract with the private sector for procurement of services and supplies and construction of buildings. In addition to prohibiting discrimination, the order requires affirmative action by contractors.

The Executive order requires that a "nondiscrimination clause" be included in every Federal or federally-assisted contract.[5] This clause generally obligates the contractors and subcontractors to provide everything from affirmative action to compliance reports. Additionally, a contractor who fails to comply with the nondiscrimination provisions

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3. On August 31, 1975, a reorganization in the Department of Labor resulted in the merger of three equal employment opportunity programs relating to minorities and women, the handicapped, and veterans. U.S., Department of Labor, Press Release, "Labor Department Merges Affirmative Action Programs," June 17, 1975. The merger resulted in the replacement of OFCC by a new office, the Office of Federal Contract Compliance Programs (OFCCP). The term OFCC is used in this study, rather than OFCCP, since most of the research on which this report is based was completed before the merger.

4. The Executive order covers all contracts and subcontracts, construction as well as nonconstruction, let directly by a Federal agency. But it covers federally-assisted contracts and subcontracts only if construction is involved. A federally-assisted contract is one which--though not let directly by a Federal agency--is paid for in whole or in part with Federal Government funds or with funds borrowed through the Federal Government or which is undertaken pursuant to a Federal program that involves Federal funds or guarantees. Executive Order No. 11246, sec. 301.

5. Executive Order No. 11246, sec. 202.

shall have its contract canceled, terminated, or suspended. The contractor may also be debarred from future Federal contracting. However, the order does not impose any equal employment opportunity obligations on unions. Hence, the order does not provide a basis for areawide plans to impose affirmative action obligations on unions, a serious limitation in light of the critical role of referral unions in the construction industry.

VOLUNTARY (HOMETOWN) PLANS

The imposed Philadelphia Plan was the first areawide construction compliance plan. It was put into effect on November 30, 1967, by the Philadelphia Federal Executive Board.[6]

On February 9, 1970, the Secretary of Labor, George P. Schultz, announced a voluntary national program for equal employment opportunity in federally-funded construction.[7] Under the new program OFCC would assist unions, contractors, and minorities in 19 cities to initiate voluntary, areawide affirmative action programs.[8] Cities were selected on the basis of: labor shortages, availability of minority craftworkers, volume of Federal construction, minority representation in critical

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6. U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1971), pp. 54-55. The Philadelphia Plan has been modified several times. See Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, DOL, Memorandum to Heads of All Agencies, June 27, 1969; Arthur A. Fletcher, Order to Heads of All Agencies, Sept. 23, 1969; James D. Hodgson, Secretary of Labor, Order to Heads of All Agencies, Feb. 13, 1971; Peter J. Brennan, Secretary of Labor, Order to Heads of All Agencies, Dec. 27, 1973. The constitutionality of affirmative action plans containing goals for minority hiring was upheld in Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 311 F. Supp. 1002 (E.D. Pa. 1970), aff'd, 442 F.2d 159 (3rd Cir.), cert. denied, 404 U.S. 854 (1971).

7. U.S., Department of Labor, News Release, Feb. 9, 1970.

8. Ibid.

trades, labor market location, total population of the area, proportion of minorities in relation to the total population, and cohesion of minority organizations.[9] (Cities selected were Atlanta, Boston, Buffalo, Cincinnati, Denver, Detroit, Houston, Indianapolis, Kansas City, Los Angeles, Miami, Milwaukee, Newark, New Orleans, New York, Pittsburgh, San Francisco, Seattle, and St. Louis.) OFCC also took the position that, where voluntary plans were not developed, it would consider imposing a Philadelphia-like plan.[10]

Despite subsequent designation of additional affirmative action target areas, which totaled approximately 103 as of 1975, only 64 voluntary (hometown) and 6 imposed plans were in operation as of March 1975.[11] (These figures also include several plans for areas that were not among the designated target areas.)

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9. Ibid.

10. Ibid.

11. The 64 voluntary and 6 imposed plans were: Massachusetts: Boston, New Bedford; Rhode Island (State plan); New York: Auburn, Buffalo, Elmira (southern tier), Nassau-Suffolk (Long Island), New York City, Rochester, Syracuse, Westchester County; Pennsylvania: Philadelphia (imposed), Pittsburgh; Washington, D.C. (imposed); Delaware (State plan); Georgia: Atlanta (imposed); Connecticut: New Haven; Ohio: Akron, Canton, Cincinnati, Cleveland, Dayton, Toledo, Youngstown; Illinois: Chicago, Peoria, Rockford; Indiana: Indianapolis, South Bend, Evansville, Fort Wayne; Texas: El Paso; Oklahoma: Tulsa, Lawton; Arkansas: Little Rock; Louisiana: New Orleans; Kansas: Kansas City (and Missouri), Topeka; Florida: Miami, Jacksonville; Tennessee: Nashville; Michigan: Detroit; New Jersey: Camden (imposed), Trenton; Colorado: Denver; Nevada: Las Vegas; California: Alameda, Contra Costa, Fresno, Los Angeles, Monterey County, North Bay (multiplan), Sacramento, San Diego, San Francisco (imposed), San Mateo, Santa Clara, Santa Cruz County; Alabama: Birmingham; North Carolina: Charlotte; Kentucky: Louisville; Arizona (State plan); Alaska (State plan); Oregon: Portland; Missouri: St. Louis (imposed); Nebraska: Omaha; Washington: Seattle (King County), Spokane, Tacoma, Pasco.

(Sources: Glen Reed, Equal Opportunity Specialist, OFCC, telephone interview, Aug. 15, 1974, and William Raymond, Associate Director, OFCC telephone interview, Mar. 27, 1975.)

The OFCC issued a model areawide plan agreement to guide communities and cities in developing their affirmative action programs.[12] As the model plan is not compulsory, there are important differences among the existing hometown plans.

The model areawide plan provides for a formal tripartite agreement among representatives of contractors, unions, and minority interests, who are responsible for developing and implementing voluntary plans. (The agreement must be approved by the OFCC.) The model plan also provides that all construction work done by the signatory contractors and members of signatory contractor associations be covered by the plan, with the additional stipulation that coverage not be restricted to Federal or federally-assisted construction. This latter stipulation is important, since it brings all the construction activity of a signatory under the plan, even if there is no financing, contracting, or subcontracting with the Federal Government.

As an indication of the diversity in plans, the Alameda County (California) Plan specifically provides that State and local government-assisted construction and all other public and private construction are covered,[13] while the Lawton (Oklahoma) Plan only stipulates that "all construction" within the plan area is subject to its provisions.[14] However, coverage under most voluntary plans is usually quite comprehensive.

The area covered by a plan may be as small as a county or as large as a State. The Rhode Island and Delaware Plans, for instance, cover whole States.

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12. U.S., Department of Labor, News Release, Feb. 9, 1970.

13. Alameda County Affirmative Action Plan (Calif.), Nov. 15, 1971.

14. Lawton Plan (Commanche County, Okla.), June 28, 1972.

A typical voluntary plan provides for committees to administer and execute the plan agreement. The system--usually consisting of an administrative committee and several craft (or operations) committees for each participating craft--generally provides for adequate representation of unions, contractors, and minority interests, and sets forth procedural rules such as quorum requirements. The main function of the administrative committee is overall administration and implementation of the plan, including the specific programs submitted by the individual crafts. It advises the craft committees on proposed programs and has the discretion of approving or rejecting them. The administrative committee may also process grievances.[15] The principal function of the craft committees is to institute programs that will result in minority entry opportunities at all levels.[16]

Other significant provisions include goals and timetables for employment, training, or union membership of minority workers and a grievance procedure. The goals consist of commitments to minority participation in the crafts, either by specific numbers or by percentages. The Rochester Plan, for example, has goals for minorities employed and in training to become journeymen of 100 for the first year and 125, 150, 150, and 150 in the succeeding 4 years.[17] The Tulsa Plan, on the other hand, sets minority percentage goals of total union membership for each of 11 trades over 6 years.[18] The Rochester Plan suffers from two weaknesses compared to the Tulsa Plan: the Rochester Plan does not provide specific goals for individual unions, so their relative success

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15. Alameda County Plan.

16. For example, see the Akron (Ohio) Area Construction Industry Equal Employment Opportunity Plan, 1971.

17. Rochester, New York Area Construction Industry, Memorandum of Understanding Regarding Equal Employment Opportunity.

18. Affirmative Action Agreement for the Employment of Minorities in the Construction Industry of Northeastern Oklahoma ("Tulsa Plan"), 1972. See esp. exhibit A.

cannot be assessed, and its goals are not set in terms of union membership for minority workers. While the life of a plan varies, the goals are usually based on yearly projections. The grievance procedure is to be used when there is disagreement over the interpretation or application of the voluntary plan agreement.[19]

Problems have surfaced during the practical application of voluntary plans. For one thing, the minority representatives appear to be at a disadvantage under the committee system. This was the case under the Miami and Alameda County Plans, which were studied by the Commission staff. Contractors' associations and unions, which have well-defined concepts of self-interest developed over the years, have often reached a level of organizational sophistication that is not usually matched by minority representatives, who were often first brought together in a working relationship to negotiate the voluntary plan agreement.

Failure to take the voluntary plans seriously and ignorance of their existence are also problems. In Miami, for example, a union official told the Commission staff that he was not on the administrative committee of the Miami Plan, though he had attended one meeting by special invitation. The next day, an official of the Miami Plan said the union official was on the administrative committee and produced a list of members that included this person's name.[20]

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19. U.S., Department of Labor, News Release, Feb. 9, 1970.

20. Commission staff interviews in Miami, Fla., Jan. 16 and 17, 1974. James L. Woodall, Recording Secretary for the Miami Plan, stated that some of the problems of the Miami Plan can be attributed to inadequate funding. (Commission staff interview, Nov. 28, 1973.)

Another problem concerns the enforceability of voluntary plans. This is a crucial matter in light of the infrequent application of existing sanctions by the U.S. Department of Labor (see discussion below). While some plan agreements are written in very general language that may preclude their enforcement, the contractual language found in other plan agreements might be judicially held as legally binding.[21]

The formal obligations undertaken by bidders, contractors, and subcontractors on Federal and federally-assisted projects in a voluntary plan are more clearly defined than those applicable to non-Federal projects.[22] OFCC will not approve a plan that does not have: (1) goals and timetables for minorities, (2) background data on all trades, (3) specific commitments by the trades, (4) description of the local committees, and (5) a list of all signatory parties.[23]

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21. Criticisms of voluntary and imposed plans have led some States and cities to develop their own plans, frequently with stricter requirements for minority participation. This has occurred with respect to plans for Boston, New York City, San Francisco, and the State of Illinois among others. The U.S. Department of Labor issued regulations in January 1974 stipulating that local requirements would have to be submitted for approval to OFCC but that they would be deemed applicable to federally-assisted contractors unless the Department of Labor concluded that the local supplemental requirements were inconsistent with the Executive order or incompatible with the hometown or imposed plans. A Federal district court ruled in July 1974 that these regulations were void because they were not listed in accordance with the Administrative Procedure Act. [City of New York v. Diamond, 379 F. Supp. 503 (S.D. N.Y. 1974).] The Department of Labor rescinded the regulations in March 1975 while also issuing for comment proposed new regulations. (40 Fed. Reg. 14083, 14091 (1975).)

22. For additional detail see, U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975), pp. 345-51. (Hereafter cited as To Eliminate Employment Discrimination.)

23. See, Philip J. Davis, Acting Director, OFCC, Memorandum to ESA Regional Administrators and OFCC Regional Area Directors, May 1, 1973.

When a voluntary plan has been approved, OFCC issues to all Federal agencies "bid conditions" that must be included in the invitations the agency issues to bidders on construction projects in the hometown plan area.[24] Bidders must comply with the bid conditions to be eligible for award of Federal or federally-assisted construction contracts.

Bid conditions are divided into two principal parts.[25] Part I applies to bidders who are signatories to the voluntary plan and who have collective-bargaining agreements with labor organizations that are also parties to the plan. Under Part I, a bidder is not required to adopt specific goals for placing minorities on the project as long as all unions used by the bidder are signatories to the voluntary plan and have adopted goals for referrals of minority workers.

In contrast, Part II of the bid conditions requires the bidder to make specific commitments to abide by goals for utilizing minorities on all of its construction projects. Part II requirements are imposed on: (1) bidders which are not signatories to the voluntary plan; (2) bidders which are signatories to the plan but have collective-bargaining agreements with unions which are not signatories; or (3) bidders which agreed to the plan and subsequently failed to meet its objectives. Signatory bidders must abide by Part II requirements only for trades whose unions do not participate in the plan or are in noncompliance with the plan.[26] Nonunion contractors participating in hometown plans must also make specific commitments to goals and timetables. (Nonunion contractors were not permitted to participate in hometown plans until 1972, when OFCC issued special criteria for such contractors.)

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24. Philip J. Davis, Acting Director, OFCC, Memorandum to Heads of All Agencies, Apr. 10, 1973.

25. Philip J. Davis, Acting Director, OFCC, Memorandum to Heads of All Agencies, Oct. 12, 1972 (hereafter cited as Model Bid Conditions). Bid conditions for specific voluntary plans are issued by memorandum to heads of all agencies from the Secretary of Labor.

26. Model Bid Conditions.

Part II contractors are only held to a standard of "good faith effort." The contractor may satisfy this standard by demonstrating it has taken specific affirmative action steps that include recruiting minorities, participating in minority training programs, and validating employee selection standards.[27]

Despite the practical and theoretical problems associated with hometown plans, in some areas the minority community has used them as a means of expressing their concerns regarding equal employment opportunity and, to the extent possible, of implementing programs to increase employment opportunities for minorities. Some minority coalitions have assumed more than a passive role in the operation of hometown plans. They are actively involved in the negotiation and administration of the plans.

Rowan and Rubin attribute much of the success in negotiating the Indianapolis Hometown Plan to the strength of the minority coalition.

> Early negotiations of the Plan were dominated by Coalition members, who because they sat on all operations committees were the constants in an otherwise variable area. The administrative committees exercised little supervision over the early negotiations, thus allowing the coalition a certain amount of freedom at the bargaining table. . . .
>
> Without the Coalition, negotiations of supplemental agreements could have been forever entangled over terminology, intent, expectations, and irrelevant details.[28]

The minority Coalition members were not only strong and active participants in the Indianapolis Plan; unions, contractors, and government officials also relied on them for their expertise.

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27. Model Bid Conditions.

28. Richard Rowan and Lester Rubin, Opening the Skilled Construction Trades to Blacks: A Study of the Washington and Indianapolis Plans for Minority Employment (Philadelphia: University of Pennsylvania Press, 1972) p. 140.

IMPOSED PLANS

OFCC's initial intention was to impose Federal construction compliance plans only where voluntary plan agreements had failed to materialize. But this intention has not been fulfilled: many designated target areas do not have voluntary plans, yet there are only six imposed plans.[29] A major factor contributing to the relatively small number of plans is that, regardless of the need, the limited OFCC staff can only handle a small number of such plans.

Unlike voluntary plans, imposed plans are actually formulated and monitored by Federal agencies. The Department of Labor imposes them and provides guidance to the Federal agencies assigned to monitor individual projects. The responsibility for increasing minority participation in the construction industry falls directly on the contractor and subcontractor. Thus, referral unions, which effectively control employment in the best-paying sectors of the construction industry, are not liable for meeting the goals and timetables of an imposed plan.

In imposed-plan areas, contractors are subject to plan requirements only if they have contracts on Federal or federally-assisted projects exceeding $500,000 in overall cost.[30] Basically, the prospective Federal contractor must include in the bid a commitment to adopt specific goals for minority employment by trade, goals that at a minimum fall within the ranges set forth in the plan for the applicable year. For example, under the San Francisco imposed plan, the range for plumbers, pipefitters, and steamfitters for the year 1974-75 was from 12 to 14 percent.[31]

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29. As of Oct. 1975 there were imposed plans in Washington, D.C., Philadelphia, Atlanta, San Francisco, St. Louis, and Camden, N.J.

30. Subcontractors with contracts of less than $500,000 are subject to the plan if cost of the main project exceeds $500,000. /For example, see the San Francisco Plan, 41 C.F.R. §60-6.2 (1974)./

31. 41 C.F.R. § 60-6.21(c)(1974).

Not all trades in the covered area are subjected to goals and timetables. Only trades designated as "critical" by OFCC must increase minority participation. The critical classification is based on relative minority participation. Under the San Francisco Plan, for example, the carpenters, elevator constructors, lathers, glaziers, and operating engineers, which had minority representation between 13 and 17.5 percent, were not classified as "critical." The exclusion of these crafts from the critical list is difficult to understand, since, according to the San Francisco Plan document, 30 percent of the San Francisco population is minority.[32]

Monitoring of compliance with imposed plans is done in several ways. A "Monthly Manpower Utilization Report," also known as "Optional Form 66," must be submitted by Federal and federally-assisted contractors to the Federal compliance agencies, which then send copies to OFCC.[33] Another monitoring method consists of occasional "compliance checks," conducted onsite by a team drawn from several Federal compliance agencies under the direction of the OFCC. Finally, onsite compliance reviews are done by the Federal contracting agencies assigned to monitor specific projects.

Of course, the objective of monitoring is to determine whether the participating contractors are complying with the utilization goals.[34] Upon a finding of "noncompliance," the contractor is sent a "show-cause notice," which compels it to demonstrate that it has made a "good faith" attempt to implement plan goals and why sanctions should not be imposed.[35]

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32. 41 C.F.R. 60-6.11(a)(b)(1974).

33. Optional Form 66 is also used for reporting employment covered by Part II's of voluntary plans.

34. A contractor not meeting the minority utilization goals of an imposed plan may nonetheless be deemed in compliance if it is a member of a construction contractors' association that promotes the expanded utilization of minority construction workers and where the total minority participation rate on all projects of all association members falls within the range of the imposed plan. Compliance also exists when the unions from which the contractor or subcontractor receives more than 80 percent of its workers include a proportion of minorities that falls within the plan goals in their referrals to all construction projects in the plan area. /See, for example, the San Francisco Plan, 41 C.F.R. § 60-6.21 (c) (2) (1974).7

35. 41 C.F.R. §60- 1.28, and §60-6.21(e) (1974).

Failure to demonstrate good faith may eventually result in application of the sanctions available under Executive Order No. 11246.

STRENGTHS AND WEAKNESSES OF THE PLANS

Compared to imposed plans, the voluntary plans have one major advantage: They generally provide for coverage of all construction performed by signatory contractors, regardless of Federal relatedness. Under imposed plans, contractors which do not have at least one federally-related project are not covered.

This apparent advantage, however, is largely illusory; the sanctions actually available are rather ineffective. (See discussion later in this chapter and in chapter 7.)

Theoretically, imposed plans have two basic strengths. One is that accountability is narrow: Federal agencies implement the plans, under the guidance and ultimate authority of the Department of Labor (acting through OFCC), which also formulates and imposes the plans. The other strength is that all projects of all covered Federal and federally-assisted contractors in the imposed plan area are required to meet specific goal commitments by trade and the commitments are not voluntary. (In this sense, Federal contractors covered by Part II of the voluntary plans also have nonvoluntary commitments.) However, a contractor is not covered by a plan unless it has a contract or subcontract on a Federal or federally-assisted project costing over $500,000.

The few strengths of areawide affirmative action plans are overshadowed by numerous deficiencies, in concept as well as application. The most critical test of the voluntary plans is the impact they have had on minority employment in the skilled construction trades; this matter is examined in chapter 7. But failures in this regard are partly owing to deficiencies in concept and structure.

When a particular trade is under Part I of the bid conditions in a given voluntary plan area, all employers of the trade which have subscribed to the plan--regardless of whether they hold a Federal or federally-assisted contract--are covered by the plan's goals and timetables. No particular employer is responsible for meeting particular goals and timetables. In

principle, the employers as a group must meet the plan's goals and timetables, though they may be held in compliance even if they have not met the goals if OFCC determines that they have made a "good faith" effort.

If a particular trade is held not in compliance with the voluntary plan, contractors employing the trade must comply with Part II of the bid conditions. However, only contractors for Federal and federally-assisted projects are placed under Part II, since the Executive order does not provide authority for the Federal Government to place affirmative action requirements on other contractors. Hence, a non-Federal contractor who had subscribed to the plan and contributed to the noncompliance suffers no sanction at all. Further, Federal and federally-assisted contractors also suffer no sanction for noncompliance with voluntary plans; however, these contractors may become subject to the requirements of Part II instead of those of Part I.[36]

If a trade is placed under Part II, the Federal and federally-assisted contractors employing workers in that trade are obligated to meet specific employment goals and timetables, similar to those of the imposed plans.

These requirements, however, are of dubious force, for three reasons. (1) The bid conditions may not be very onerous in some cases. In Alameda County, for example, where the voluntary plan is relatively demanding and rather well monitored, several individuals told Commission staff that it was more onerous for unions and contractors to be under Part I than Part II. So unions might prefer to be declared in noncompliance. (2) Though OFCC declared in letters of October and November 1973 that 335 trades had not met their voluntary plan goals, none of these were actually placed under Part II until July 1974, and then only 100 of the 335 were placed under Part II.[37] (3) There is no reason to believe that Part II of the bid conditions of voluntary plans will be any more effectively enforced than imposed plans; the same monitoring system covers both (see discussion below and in chapter 7).

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36. However, a contractor which discriminates may be issued a show-cause letter and subjected to the sanctions, including debarment, specified by Executive Order No. 11246. Further, a contractor which violates the equal opportunity clause of the order may be sued. These provisions are applicable to Federal contractors independently of the existence of voluntary plans.

37. Philip J. Davis, Director, OFCC, Memorandum to Heads of All Agencies, July 2, 1974. For a detailed analysis of this action, see To Eliminate Employment Discrimination, pp. 375-99.

Imposed plans are little better than voluntary plans. Sanctions are rarely applied. Moreover, imposed plans suffer the additional malady of limited effective coverage: a very small percentage of the total unionized construction labor force--less than 10 percent for several trades in some cities and less than 1 percent in at least one instance--is actually monitored in the imposed plan areas.[38]

Finally, an underlying weakness of both types of plans is their critically inadequate data-collection system. For example, Optional Form 66 reports reflect total and minority personhours but do not provide data on female participation. The form also fails to require the names or social security numbers and union status of the employees on the project. Consequently, accurate onsite verification is not possible. Further, the data-collection and storage system is manual, which makes it slow and in some instances has completely inhibited the flow of information. This in turn disrupts OFCC's coordination activities with the Federal contracting agencies. Other weaknesses of areawide affirmative action plans include a general failure to address effectively the utilization of women in the construction industry, to provide affirmative action for nonplan areas, and to relate the plan goals and timetables to such factors as job opportunities and minority availability within the plan area.

On June 30, 1975, the Department of Labor announced proposed new plans for New York City and Philadelphia.[39] The plans, which were still not in force eight months after this announcement,[40] contain three innovations: Virtually all building trades--not just "critical" trades--are covered; percentage goals for minority employment are based on a careful calculation of the minority percentage in the relevant labor force; and all Federal and federally-assisted contracts above $10,000--instead of $500,000--are covered. While the first two innovations constitute major steps in the direction of more effective plans, the proposed new plans will be fundamentally deficient: Workers employed by contractors with no Federal or federally-assisted contracts are not covered; no obligations

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38. See chap. 7.

39. 40 Fed. Reg. 28472-76 (Proposed New York City Plan) and 28477-80 (proposed Philadelphia Plan) (1975).

40. William Raymond, Associate Director of OFCC, telephone interview, March 15, 1976.

are imposed on unions; the data-collection system has not been improved (see above; see also chap. 7); and the capability of OFCC to administer the plans effectively has not been improved (see below).

OFFC'S TASK

The ability of OFCC to monitor effectively the compliance of the construction industry with Executive Order No. 11246 depends on its structure and resources compared to the nature of the task. The task is complex and huge by virtue of the character of the voluntary and imposed plans themselves and by virtue of the nature of employment markets in the construction industry. The structure of OFCC, on the other hand, is not well adapted to this undertaking, and the size of the staff is quite small compared to the complexity of the task.

In March 1975, 70 plans were functioning. While the imposed plans are relatively uniform, the voluntary plans differ considerably. Enforcement of the six imposed plans is carried out in large part by the Federal agencies assigned to monitor them, but an essential coordinating function must be performed by OFCC, particularly in data collection and processing. For the 64 voluntary plans, the enforcement efforts of OFCC must be tailored to each plan. Furthermore, the nature and magnitude of the required OFCC staff attention change; new plans are developed and declared periodically. In other words, the administrative requirements of the entire program are large, varied, and changing.

The way labor markets in construction function greatly hampers the monitoring efforts of OFCC and other Federal monitoring agencies. Decisions about training, apprenticeship, union membership, and referral are numerous and partially informal. The decisions are made in hundreds of offices and job sites in voluntary- and imposed-plan areas by hundreds of people, including dispatchers, other union officials, and personnel officers of contracting companies. These conditions render exceptionally difficult OFCC's task of keeping in touch with the reality of compliance.

For this enormous job of administering the construction compliance program, the U.S. Department of Labor provides a moderately-staffed office, consisting in August 1974 of about 30 professionals and 16 support staff persons; this staff was smaller than it had been in 1972.[41] Of this total

41. Glen Reed, Equal Opportunity Specialist, OFCC, telephone interview, Aug. 14, 1974.

staff only five professionals and two support persons, exclusively assigned to the construction compliance program, were based in Washington, D.C.[42] The remaining 25 professionals and 14 support persons were located in 14 cities throughout the country. These field personnel, with other duties relating to service and supply contracts, may be assigned to several voluntary plans at one time. For example, as of August 1974, the New York City office had three professionals and two support persons. They monitored 10 plans in New Jersey and New York State. Furthermore, the heads of OFCC offices in the 10 standard Federal regions are directly responsible to the Assistant Regional Director for the Employment Standards Administration. This means that the OFCC field staff is not even under the immediate supervision of OFCC, which obviously precludes a smooth administrative relationship.

Moreover, mission, morale, and leadership of OFCC and its construction compliance staff have been disrupted. For example, the current director of OFCC was only acting director in his first 12 months in the position. In addition, for 18 months ending in May 1974, the national construction program was headed by an acting chief; in May 1974 he was replaced. Between May and November 1974, there were two different acting chiefs, and a third, permanent chief. Finally, in November 1974, a fourth person became chief, on a permanent basis.

In the light of the great task it faces and its meager staff, it is not surprising that OFCC's information system is inadequate.[43] The voluminous "Monthly Manpower Utilization Reports" from imposed-plan areas are periodically forwarded by the Federal monitoring agencies to OFCC. In 1973, statistics from these reports were all summed up by computer for each imposed plan, up to May 1973. But later reports were not summarized because, according to OFCC officials, budgetary considerations prevented continuation of the computer operation. As of June 1974 these reports were simply filed in folders. An OFCC official estimated that it would require one person several weeks to update statistics for just one of the

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42. As of March 24, 1976, this number stood at eight professionals and two support persons. William Raymond, Associate Director of OFCC, telephone interview, March 24, 1976.

43. It is also not surprising that some persons believe that union officials do not always respect OFCC requirements. In the San Francisco SMSA, Commission staff were told that some union officials simply ignore correspondence from OFCC.

imposed plans.[44] Similarly, OFCC officials assigned to regional offices do not have time to add figures from reports submitted by a single contractor to several different Federal agencies for different projects. But unless such a summation is made, compliance officials cannot know whether a specific contractor is meeting its goals under the imposed plan.[45]

Given the demands placed on OFCC personnel, it is not surprising that the OFCC's sanctions are rarely applied. Time-consuming procedural steps must be followed before the Department of Labor may apply its most severe sanctions--debarment of a Federal contractor from entering into Federal contracts and cancellation or termination of existing contracts.[46] By July 1975 only six construction contractors had been debarred or had agreed to consent decrees following the commencement of debarment proceedings. All six were specialty contractors and none was a particularly large firm. Five were in the Philadelphia area; one in Denver. All but one of the six debarments had been lifted as of August 1974, and no debarments of construction contractors occurred between May 1974 and July 1975.[47]

44. Glen Reed, Equal Opportunity Specialist, OFCC, telephone interview, June 5, 1974.

45. Details of this problem are described in a letter from Russell W. Galloway, Jr., Alameda County Legal Aid Society, to Philip J. Davis, Director, OFCC, Feb. 1974.

Inadequate recordkeeping and poor communication between the OFCC and the other Federal compliance agencies have been cited by the General Accounting Office as major deficiencies in the nonconstruction compliance program. Gregory J. Ahart, Director, Manpower and Welfare Division, General Accounting Office, Statement before the Subcommittee on Fiscal Policy, Joint Economic Committee, on the Administration of the Department of Labor's Non-Construction Federal Contract Compliance Program (mimeographed, Sept. 11, 1974).

46. First, a "show-cause notice" (also known as a "30 day notice") must be sent to the contractor by the Federal agency assigned to monitor the specific contract. Then a meeting is held at which an attempt is made at conciliation. If the conciliation attempt proves ineffective, the Federal agency then presents the case to OFCC; it is within the discretion of the Director of OFCC to call a formal hearing. If the Director decides against a formal hearing of the charges against the contractor, the matter must be dropped. Before the formal hearing, a 14-day notice is sent to the contractor. After the hearing, if the hearing officer decides to recommend debarment of the contractor or the cancellation or termination of a contract, the approval of both the Secretary of Labor and the Secretary of the Federal agency originally assigned to monitor the contract is required before the sanction may be applied. /See 41 C.F.R. § 60-1.26 (1974)./

47. Reed interview, Aug. 14, 1974. Also, George Travers, Associate Director, Plans, Policies and Programs, OFCC, telephone interview, July 24, 1975. See also, B.N.A., Construction Labor Report, Aug. 6, 1975, p. A-5.

Hence, there is a major discrepancy between the enormous construction compliance task confronting the OFCC and its relatively small staff and resources. It appears that the U.S. Department of Labor has either grossly underestimated the nature and size of OFCC's enforcement task or has relegated the construction contract compliance program to a low position on the list of departmental priorities.

THE TRUCKING INDUSTRY

The trucking industry is covered under Executive Order No. 11246 because bills of lading are used in its dealings with the Federal Government.[48] OFCC has designated the U.S. Postal Service as the contract compliance agency for the surface transportation industry, including trucking. (OFCC administers this program, as all other compliance programs for services and supplies, in a fashion quite distinct from its construction industry programs.) Compliance examiners from the postal system check reports and do onsite reviews to ensure that trucking companies are not discriminating against women and minorities. When noncompliance is found, the officers attempt to obtain voluntary compliance.

The statistical record on employment of minorities and women in the trucking industry, as well as the number of court cases alleging discrimination by trucking companies, indicates that the compliance examiners have failed to obtain voluntary compliance. (See chapters 3 and 4.)

The Postal Service does not require companies in the surface transportation industry to comply with OFCC's Revised Order No. 4, which places considerable obligations on contractors, including: a written affirmative action plan, analysis of utilization of minorities and women, goals and timetables where underutilization is found, and compilation of relevant data on the work force.[49] Revised Order No. 4 applies to all nonconstruction Government contractors and subcontractors with 50 or more employees and

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48. A bill of lading is a written acknowledgement of goods received for transportation. See U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1971), p. 63.

49. See Revised Order No. 4, 41 C.F.R. §§60-60.1, et seq. (1974).

with contracts of $50,000 or more. But the Postal Service considers that Revised Order No. 4 cannot be applied to trucking: Although many firms receive in excess of $50,000 in Government bills of lading cumulated over a year, individual bills of lading almost never exceed $50,000. The Postal Service has urged OFCC to amend Revised Order No. 4 specifically to cover trucking firms. The Director of OFCC has drafted regulations that would make the order applicable to bills of lading less than $50,000. However, the Secretary of Labor has not approved these proposed regulations.[50]

The Interstate Commerce Commission (ICC) is the major regulatory agency for the surface transportation industry. The ICC grants the right to operate in interstate and foreign commerce to trucking companies, railroads, bus lines, freight forwarders, water carriers, and transportation brokers. It also approves mergers and rate changes.

That trucking firms are highly responsive to the ICC is reflected in a report by a Postal Service compliance examiner. The compliance examiner summarized the views of one recalcitrant employer as follows:

> There is only one report that is submitted to the government; the report submitted to the ICC. This report is made, he stated, only because the life of the company depended on ICC regulations. It was further stated that if /the Postal Service/ got a report on. . . Transport Company we would get it from the ICC.[51]

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50. The Postal Service has been brought into court in an amended complaint originally filed against the U.S. Department of Agriculture, as reported in Legal Aid Society of Alameda County v. Brennan, 381 F. Supp. 125, 128 and n. 5 (N.D. Cal. 1974). The case now continues against the Postal Service. For more details concerning Legal Aid Society's position, see Legal Aid Society of Alameda County v. Secretary of Labor, Civil No. C-73-0282 AJZ. (N.D. Cal., filed Aug. 14, 1974).

51. Jack Nelson, Equal Employment Opportunity in Trucking: An Industry at the Crossroads (Washington, D.C.: EEOC, Contract No. EE072001, 1971).

On a number of occasions, beginning in 1970, the Commission on Civil Rights has recommended that the ICC assume responsibilities in equal employment opportunity.[52] Most recently the Commission recommended that the ICC "adopt rules which require companies they regulate to eliminate discrimination and take affirmative action to increase minority and female employment."[53] The Commission also recommended that the "affirmative action procedures required of regulatees should be those set forth in Revised Order No. 4."[54]

In 1971 the ICC began a proposed rulemaking to determine if it had jurisdiction over the employment practices of motor carriers. Public comment on the rulemaking was concluded in 1972. Yet no decision has been reached on the proposed rules, a delay that has been termed "inordinate" by the Commission on Civil Rights, especially in the light of support for the rules by EEOC and the Department of Justice.[55]

CONCLUSION

The OFCC-sponsored, areawide, construction compliance plans suffer from serious weaknesses. The voluntary plans have inadequate enforcement provisions. The imposed plans suffer from limited coverage. Data collection and compilation for both plans are generally inadequate and nonautomated.

Staffing of OFCC itself is not adequate to its task, a situation that reflects, in part, the low position it occupies in the priorities of the Department of Labor.

The U.S. Postal Service is attempting to obtain the compliance of trucking companies with Executive Order No. 11246 on a voluntary basis. The Secretary of Labor has not yet issued regulations to place the industry under the more stringent requirements of Revised Order No. 4.

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52. U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort--1974, vol. 1, To Regulate in the Public Interest (1974), pp. 233-35. See also Federal Civil Rights Enforcement Effort (1971), p. 361.

53. Federal Civil Rights Enforcement Effort-1974, vol. 1, p. 233.

54. Ibid., p. 233.

55. Ibid., pp. 109-111.

7. IMPACT OF THE VOLUNTARY AND IMPOSED PLANS

What is the actual effect of the voluntary and imposed plans on employment opportunities and access to union membership of excluded groups of workers? The Office of Federal Contract Compliance (OFCC) has collected statistics relating to the employment of minorities resulting from the voluntary plans. The critical question is: What reliable indication of increased minority employment and union membership is provided by these statistics?

The imposed and voluntary plans do not include programs to increase the employment opportunities of women in construction. The statistics collected by OFCC on these plans do not cover women in construction; the following analysis must, therefore, deal largely with minority male employment and union membership.

VOLUNTARY (HOMETOWN) PLANS

In 1973 OFCC conducted its first comprehensive audit of voluntary plans. It attempted to audit 44 plans, but results are available for only 40 audits (table 24). Nothing has been released for later audits.[1] After adjusting audit results to eliminate inappropriate figures,[2] the

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1. William Raymond, Associate Director of OFCC, telephone interview, Mar. 24, 1976. Mr. Raymond stated that, due to insufficient staff, his office does not have a policy of preparing audit results for release.

2. OFCC included in its count of goals and of minorities placed: (1) some persons in "exempt" crafts, which already had large percentages of minorities and for which no goals were set under the plans; (2) other crafts for which no goals were set but for which minority placements were counted; (3) locals already "100-percent minority," for which goals were set; and (4) one craft in one city that had not signed the plan but for which one minority placement was credited. Adjustments for these inappropriate inclusions and exclusions lead to a net decrease in goals of 20 and a net decrease in placements of 51.

audits showed that "placement credits" (OFCC's term for placements of minority workers) totaled 3,243, compared with total goals for the 40 plans of 6,573. Placement credits, therefore, were slightly less than 50 percent of the goals. Only 4 out of the 40 plans attained or exceeded their total goals; and, in 2 of these 4 cases, at least half of the individual participating trades failed to meet their goals.

Table 24. VOLUNTARY PLANS AUDITED BY OFCC
May-September 1973

Akron	Nashville
Alameda County, Calif.	New Haven
Alaska*	New Orleans
Boston	New York City***
Buffalo	Omaha
Charlotte, N.C.	Pasco, Wash.
Chicago**	Peoria
Cincinnati	Pittsburgh
Cleveland	Portland, Ore.
Dayton	Rhode Island
Delaware	Rochester, N.Y.
Denver*	Rockford, Ill.
Detroit	Sacramento
El Paso	Santa Clara, Calif.
Evansville, Ind.	South Bend
Fresno	Spokane
Indinapolis	Syracuse
Kansas City	Tacoma*
Las Vegas	Topeka
Little Rock	Trenton
Miami	Tulsa
Monterey	Westchester County, N.Y.

*Not successfully completed.

**Only partial results completed but available. (Construction Labor Report, Oct. 24, 1973).

***Results not officially released.

The four plans for which audit results are unavailable or incomplete (see table 24) had total goals of 1,603--about 19.6 percent of all goals for the 44 plans. Lack of this information is a major hindrance in assessing effectiveness of the voluntary plans.

Purposes of the Voluntary Plans

The OFCC's model areawide agreement, published on February 9, 1970,[3] is a good indication of the original OFCC purposes for the voluntary plans. Two elements of the model agreement stand out: (1) The plans were intended by OFCC to increase minority employment in the construction industry, including minority members who had never before worked in the construction industry,[4] but (2) the plans were also intended to get minority persons admitted to unions, as a result of their employment in the construction industry.[5] The pertinent question is whether the OFCC-sponsored audits of 1973 were designed to demonstrate the degree of achivement of these two purposes.

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3. U.S., Department of Labor, Press Release, "Model Areawide Agreement," Feb. 9, 1970.

4. The "Model Areawide Agreement" states, under "goals": "The plan should include specific numerical or percentage goals for new minority employment in the construction industry in the area for the coming year, and estimates of increases in future years."

5. The model agreement also states, under "Statement of Purpose": "The purpose of this Agreement is to increase minority employment and consequent union membership in the construction industry in this area." There are indications, however, that some of the new minority union members were expected to be experienced construction workers who had been unable to join unions, rather than minority workers new to the construction industry.

Some areawide plans gave most imperfect expression to these goals. For example, the Miami Plan sets this goal: "to achieve over a period of not more than five (5) years a level of increased manpower, including minorities, equal to twenty (20) percent...." /Italics not in original./

The audits were generally carried out by a team from several Federal agencies operating under OFCC direction. Before the team arrived, the administrative committees of the voluntary plans were required to provide the names, crafts, and employers of all minority individuals placed during the first year of the plan. Auditors were then to interview these minority persons to determine their race or ethnicity and to verify their placement and length of period of work. A person was counted as a "placement credit" toward the goals of a hometown plan: (1) if the person had worked for at least 30 days (but, if the work had begun more than 90 days before the approval of a plan, the person did not count as a placement credit); (2) regardless of whether the minority person was a journeyman, apprentice, advanced trainee, trainee, or worked in some other relevant category; (3) regardless of whether the minority worker was a union member or not; and (4) regardless of whether he or she was currently working, had resigned, been transferred, or been laid off.

In one major respect, the count of placement credits was well designed to determine whether OFCC objectives for the hometown plans were being achieved. The placement credit was a person <u>new</u> to the <u>unionized</u> sector of the construction industry. (This does <u>not</u> mean that the person is a new union <u>member</u>. Nonunion construction workers may obtain work in the union sector by receiving work permits from union offices.) Another extremely important element was the fact that auditors directly interviewed and otherwise verified the status of the minority persons whose names were on the lists provided by administrative committees.

In other critical respects, however, the placement credit concept was completely inadequate for assessing the achievement of hometown plan goals:

1. Many of the 3,243 placement credits may have worked only 30 days or slightly longer. Since such workers can hardly be considered permanent additions to the industry, this

figure is probably a serious exaggeration of the number of potentially permanent, new construction workers.

2. The audits were intended primarily to discover the number of placement credits over the course of a year. But the audit instructions included the proviso that people placed 90 days or less prior to the approval of a plan could be counted as placement credits, which effectively enlarged to 15 months the period of time during which people placed could be credited toward goals set for 12 months.
3. No record was kept of one group of minorities: those who had become union members more than 90 days before the commencement of the plan but who dropped out of the union before the audit. Because this information was omitted, placement credits indicate neither net additions to union membership nor net additions to the unionized sector of the construction industry (including nonunion workers who obtained jobs through union referral). A substantial number of placement credits could have been recorded for a given craft in a given city although minority membership in the dominant union in the craft might have declined, for two reasons: (a) not all placement credits are union members, and (b) no deduction is made, as part of the OFCC auditing process, of minority union members who die, resign, transfer, or are removed from the union.
4. The audits did not record whether a given placement was a worker new to the construction industry or was a nonunion craftworker who was obtaining employment or training for the first time in the unionized sector of the construction industry. If all those called placement credits in a given craft were previously employed by nonunion construction contractors, a substantial number of

placement credits in a given trade in a given area is compatible with a zero increase in minority employment.[6]

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6. The Department of Labor comments: "Nonunion contractors who hold federally involved (federal and federally assisted) construction contracts are covered by Part II of the applicable bid conditions in a voluntary plan area. Therefore, for the Commission's statement to be accurate, all placement would have to come from construction employment which is neither unionized or federally-involved; even if all the placements came from this area, minority employment could remain unchanged only if all minority construction workers who shifted from nonunion and non-federally-involved work were replaced solely by majority workers. And even if all this were true and minority employment did not increase, minority wages would increase as minority workers moved to higher paying unionized jobs." Department of Labor Comments.

USCCR notes that though nonunion contractors who hold federally-involved contracts are indeed covered by Part II of the plans, minority employees of such contractors are not counted as placement credits and are not contacted during OFCC-sponsored audits, according to OFCC staff. Helen Shambly, Equal Opportunity Specialist, OFCC, telephone interview, Oct. 23, 1975. Further, the OFCC's instructions to OFCC staff and to chairpersons of administrative committees contain no reference to contacting such employees or counting them as placement credits. See, inter alia, Philip J. Davis, Acting Director, OFCC, Memorandum to OFCC Regional/Area Directors, Feb. 2, 1973, relating to use of Master Control Sheet on Hometown Plan Audits and sample letter from OFCC regional directors to chairmen of voluntary plan administrative committees, Feb. 2, 1973.

USCCR also notes that if minority employees of nonunion contractors were to be counted as placement credits, this would give rise to anomalous enforcement procedures: some crafts might have avoided being placed under Part II, even though the unions involved might have made no good faith efforts to comply with the plan.

USCCR also notes that the work forces of minority contractors are typically "neither unionized or federally-involved," so that the conditions necessary "for the Commission's statement to be accurate" are common conditions.

USCCR further notes that it is plausible that "minority construction workers who shifted from nonunion and non-federally-involved work" would be replaced mainly by majority workers. If minority contractors lose workers because of a voluntary plan, they might well also lose business to majority contractors employing majority workers. USCCR does not dispute the observation that minority workers would earn higher wages on unionized jobs; but this observation is not relevant to an analysis of the adequacy of OFCC's audits.

5. No record was kept of minority construction workers who were, before commencement of a plan, (a) outside the union sector completely or (b) nonunion workers who were working on union permits but who--during the course of the plan--died, moved, voluntarily left the industry, or were terminated.

Because of factors 3, 4, and 5 above, a substanital number of placement credits for a given hometown plan is logically compatible with both of the following situations: a decline in minority employment in the construction industry in a given area and a decline in minority membership in unions in a given area.[7] In other words, a substantial number of placement credits for a given plan is logically compatible with a failure to achieve either of the original OFCC goals.

Because of these five statistical deficiencies, the OFCC audits do not reliably indicate the achievements, if any, of the voluntary plans. The audit results almost certainly exaggerate the achievement of the plans. However, because the precise impact of these statistical deficiencies is not known, it is impossible to say whether the figure of 3,243 placement credits exaggerates the actual achievements of the voluntary plans by as little as 10 percent or as much as 80 percent.

The audits have also been too infrequent to permit an ongoing assessment of the results of the voluntary plans. Although audits are intended to be conducted once a year,[8] between November 1973 and

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7. Though the audits did require the collection of data on union membership of minority construction workers, these data have not been released. Release of these data could not solve the logical problem discussed here, however.

8. William Raymond, Associate Director of OFCC and Chief, Construction Division, telephone interview, Mar. 27, 1975.

March 1975, only 31 of the 64 plans were audited.[9] Whatever the deficiencies of the voluntary plan audits themselves, OFCC has not been allocated resources sufficient to undertake them annually.

Accuracy of the Miami Audit

Commission staff studied the Miami, Florida, voluntary plan to assess the progress made and the adequacy of the OFCC audit.

The Miami audit included crafts that need not have been covered and excluded crafts that should have been covered. Fifteen building trades locals and district councils should have been audited, but only 10 were.[10] The five not included in the audit were: Boilermakers Local 433, Electricians Local 349, Ironworkers Local 272, Marble Polishers Local 121, and Bricklayers Local 7. The omission of these locals from the audit is an unfortunate commentary on the auditing procedures, particularly since the letter reporting on the audit does not even mention the omissions in four of the five cases.[11]

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9. Philip J. Davis, Director, OFCC, in a Mar. 20, 1975, letter to Edwin R. Dean, Office of Program and Policy Review, U.S. Commission on Civil Rights. The same letter indicated that only two of the six imposed plans had been audited during the same period.

10. Nineteen union representatives are listed in the appendix to the Miami Plan (final draft, dated Apr. 1971). One of these, the Miami Building and Construction Trades Council, does not directly influence hiring or training. Three other signatories, Laborers Local 478, Plasterers' Tenders Local 635, and Roofers' Kettlemen and Helpers Local 316 have largely unskilled workers; a large minority membership in these locals would not signify greater access of minorities to the highly paid skilled trades. Excluding the Building Trades Council and these three locals, 15 skilled craft locals and district councils were listed. (The audit results are reported in a letter to Mr. James L. Woodall, Executive Manager, Associated General Contractors, Miami, dated Oct. 30, 1973, and signed by Philip J. Davis, Director of OFCC.) Two of the omitted locals, the Electricians and Ironworkers, were not listed as signatories to the plan in an OFCC letter which granted final approval to the plan. /John L. Wilks, Director of OFCC, letter to James L. Woodall, Recording Secretary, Miami Plan, Jan. 17, 1972. (Mr. John L. Wilks was Director of OFCC in 1972. Mr. Philip J. Davis was Director in 1973. Mr. Davis resigned from this position 1975)/. However, both unions are listed in the appendex to the Miami Plan itself dated Apr. 1971.

11. The audit report notes the omission of three trades--bricklayers, cement masons and plasterers--all represented by Bricklayers Local 7.

On the other hand, the audit letter does mention two locals of unskilled workers (Plasterers' Tenders and Roofers' Kettlemen and Helpers) that were 100-percent and 89-percent minority unions, respectively, even before the plan, as having attained or exceeded goals set forth in the plan. Inclusion of these trades was meaningless to greater minority access to the skilled trades.

The OFCC audit letter lists a majority of the Miami crafts under the category of crafts that had attained or exceeded their goals. The results reported in the audit letter would have been altered by the exclusion of the Plasterers' Tenders and Roofers' Kettlemen and Helpers from this category. The results would have been further altered if the audit letter had indicated that the Electricians, Ironworkers, Boilermakers, and Marble Polishers had not been audited. Had these sensible procedures been followed, the audit letter would have shown that less than half of the crafts had actually demonstrated that they had attained their goals.

None of the Miami crafts were placed under Part II of the bid conditions, despite these results. With regard to the three trades represented by Bricklayers Local 7, and to five other locals that performed poorly, the audit letter raised the possibility that the trades would be placed under Part II of the hometown plan bid conditions. On July 3, 1974, OFCC announced that a number of trades, in 21 localities, were being placed under Part II.[12] But Miami was not one of these localities, so no Miami locals were placed under Part II.

The count of placement credits for crafts actually audited by OFCC in Miami was probably rather accurate. Commission staff interviewed officials of 13 locals and other informed parties in Miami in January 1974. In several instances, the OFCC audit showed lower numbers of minority workers than did the Commission staff interviews. The main

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12. U.S., Department of Labor, News Release, July 3, 1974. For an analysis of OFCC procedures in placing trades under Part II, see U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort-1974, vol. 5, To Eliminate Employment Discrimination (1975), pp. 375-99.

explanation of the difference is probably that, during the OFCC audit, investigators were able to check workers' social security numbers and to interview minority workers in person.

Voluntary Plans: Conclusion

Audits of the voluntary plans are flawed in fundamental ways. The way placement credits have been defined makes them unsuited to an assessment of whether the original OFCC goals are being fulfilled by the plans. For a variety of reasons, including the fact that a worker who has worked only the reporting minimum of 30 days is included as a placement credit, placement credits exaggerate the degree of progress toward admitting minority workers to building trades unions.

The Commission staff study of the Miami audit found that recalcitrant unions in that area were excluded from the plan itself or were not audited, while relatively cooperative unions and unions made up largely of unskilled minority workers were included in the audit results.

The audits do not serve as a basis for assessing the degree of progress under the plans, and they probably exaggerate substantially the number of minority workers who have benefited from the plans. This element of exaggeration aside, the 1973 audits of 40 plans show unsatisfactory results: placement credits amounted to less than 50 percent of the total goals.[13]

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13. The AFL-CIO comments that this report does not take into account "the limitation of work opportunity within a given community based on construction under way". AFL-CIO Comments.

USCCR notes that local variations in work opportunities need be considered only in the assessment of individual plans, not in an assessment of the national impact of affirmative action plans. The statistics presented here summarize the results of all voluntary plans for which 1973 audit figures were released by OFCC; hence localities where work opportunities were relatively plentiful in 1973 would offset the impact of localities where opportunities were severely limited. It should also be noted that when these audits were undertaken--May through September 1973--the impact of the 1974-75 recession had not yet been felt. The national unemployment rate was under 5.0 percent in most months of 1973 and did not begin its rapid rise until the third quarter of 1974. Similarly, though unemployment in the construction industry has been generally higher than in most other industries, in 1973 it averaged 8.8 percent, less than the averages for any of the years 1971, 1972, and 1974. Monthly Labor Review, Jan. 1974, Jan. 1975, and Dec. 1975.

Generally, then, the voluntary plans have made little difference to the employment opportunities of minorities and women who have been excluded from the construction industry and from unions.

IMPOSED CONSTRUCTION COMPLIANCE PLANS

The plans imposed in Philadelphia, Atlanta, San Francisco, Washington, D.C., and St. Louis have all been in effect for several years, and OFCC has collected statistics designed to assess the results of these plans. The sixth imposed plan, the Camden plan, has been in effect only since August 1973 and too little information is available to assess its effects.

Statistics for Assessing the Imposed Plans

The OFCC monitoring system collects two types of statistics related to the imposed plans: (1) The number of "manhours" worked by minority and nominority workers under the imposed plans[14] and (2) A count, made onsite on a specific day, of the number of minority workers and of all workers on all Federal and federally-assisted projects[15] in the imposed plan areas. The first set of statistics is reported in the form of monthly totals by the contractor to the Federal agency charged with monitoring a specific project and then sent by the agency to OFCC. The second set of statistics is obtained by a team's visits to project sites; OFCC refers to these visits as "compliance checks."

Serious deficiencies are present in both information collecting systems. The personhour statistics that are reported by contractors to Federal agencies on "Optional Form 66" do not identify workers by sex and do not show whether a worker is a union member. The contractor's honesty and accuracy are relied on. Moreover, the personhour statistics are not systematically compiled by OFCC so as to give totals for all

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14. In principle, the "manhours" statistics include work on all projects that are not federally related but are undertaken by contractors who have at least one federally-related project. Although the term "manhour" is used in these OFCC reports, hereafter, the term "personhour" is used.

15. Federal and federally-assisted projects are frequently referred to jointly as federally-related projects in what follows.

projects covered under a particluar imposed plan; therefore, they cannot be used to give a current statistical picture. Although the personhours were compiled by computer up to May 1973, budgetary considerations have ended this program.[16]

A compliance check team is staffed by representatives of the Federal agencies that monitor construction projects for compliance with Federal equal employment opportunity regulations. The team works in one city for approximately a week, visiting construction sites and collecting data on individual construction workers. The compliance checks are unannounced and are done similarly to the voluntary plan audits discussed above.

One major shortcoming of this procedure is that compliance checks obtain information relating only to the employment situation on the given day that a specific site is visited. If a minority worker has been employed for that day only, he or she is counted. The employment needs of a specific trade on a given day may, therefore, produce atypical results. This problem is compounded by the fact that the compliance checks apparently do not really surprise the contractors; OFCC staff stated that, at a particular construction site, a contractor's representative greeted the Federal officials with the comment that they had been expected.[17]

Optional Form 66 and the compliance checks share one serious shortcoming: They fail to include employment statistics regarding construction carried out by contractors who do not have at least one Federal or federally-assisted contract, since such contractors are not covered by the imposed plans. The personhour statistics are, at least in principle, reported for the non-Federal projects of contractors who are also engaged in at least one federally-related project; the compliance checks are not done for such non-Federal projects.

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16. Glen Reed, Equal Opportunity Specialist, OFCC, telephone interview, July 12, 1974.

17. William Dacus, OFCC staff, interview, Jan. 23, 1974.

Testing Progress

The progress of the imposed plans cannot be assessed by comparing the percentage of minority workers identified during the compliance checks to the percentage goals of the imposed plans; the overwhelming majority of workers in an imposed plan area is never contacted during compliance checks.

This problem is illustrated in the case of the Plumbers and Pipefitters in Philadelphia. A September 1973 compliance check reported that 16 of 127 plumbers and pifefitters on checked job sites belonged to minority groups.[18] This works out to a minority share of 13 percent, substantially below the Philadelphia Plan's minority employment goal of 20 to 24 percent for 1973. But more than 2,000 plumbers and pipefitters were available for work on Philadelphia Plan projects in the five counties covered by the plan not a mere 127 workers.[19] The 16 minority workers identified on the compliance check represented less than 1 percent of the number of workers available.[20] Neither compliance checks nor personhour statistics (see appendix G) show how many of the 2,000 available workers were minority workers.

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18. U.S., Department of Labor, Press Release, "Labor Department Extends Philadelphia Plan," Dec. 28, 1973.

19. As of 1969, unionized plumbers and pipefitters available for work on plan projects numbered 2,335. Arthur A. Fletcher, Assistant Secretary for Wage and Labor Standards, Order to Heads of All Agencies, Sept. 23, 1969.

20. The Department of Labor states: "This is not a relevant comparison since imposed plans do not, per se, require union membership. It is more reasonable to assume that the compliance check represents a sample of the proportion of workers who were minority on Federally-assisted construction projects. In fact, it is reasonable to assume that this is a minimum estimate since compliance checks tend to be focused on those contractors who, through experience, are known as relatively poor risks in the area of EEO." Department of Labor Comments.

USCCR considers that the comparison made in the text is relevant to the question of the effectiveness of the imposed plans. The question of these plans' effectiveness can be posed in the following way: do the plans place any requirements on contractors or unions to lower their barriers to minority workers and to increase the numbers of minorities working in the trades? In light of the comparison made in the text and the analysis of tables 27 and 28 following, available data indicate that the answer to this question is negative for most trades. The analysis shows that for at least 32 of the 48 covered trades, the number of minorities observed on the job sites during compliance

This problem is not peculiar to the Philadelphia Plan. For all five imposed plans covered by the 1973 compliance checks, the number of all workers identified (minority and nonminority) was less than 10 percent of

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Footnote 20 continued

checks falls short of the number in the union before the plans began. Hence, the numbers of minority workers already in the unions before the plans began were adequate to provide the numbers (both union and nonunion workers) observed on the compliance checks. Hence, these figures are consistent with the hypotheses that the plans placed no pressure on the contractors to hire minority workers not in the trades before the plans began and that they also placed no pressure on unions to admit minority workers. The small numbers of workers covered on the compliance checks, compared to the numbers of available workers, clearly contributes to this situation.

USCCR agrees that the "imposed plans do not, per se, require union membership," but notes also that this fact contributes to the apparent failure of the plans to achieve their overall goals, which include the goal of an increase in the proportion of minority employment approaching the proportion of available minority workers. See, e.g., San Francisco Plan, 41 C.F.R. §60-6: §§60-6.15 and 60-6.21(c).

USCCR notes that a compliance check does not represent "a sample of the porportion of workers who were minority on Federally-assisted construction projects" and that compliance checks do not "tend to be focused on those contractors . . . known as relatively poor risks in the area of EEO." These statements are incorrect because compliance checks do not take samples and they are not focused on any group of contractors: they are designed to cover all Federal and federally-assisted projects in an imposed plan area. This is clearly indicated in the instructions circulated by OFCC regarding the conduct of compliance checks. One memorandum, for example, states that the "definition" of a compliance check is "a survey designed to determine the number of minority craftsmen working on Federal and/or Federally-assisted construction projects in an imposed plan area." Philip J. Davis, Acting Director, OFCC, Memorandum to ESA Regional Administrators and OFCC Regional/Area Directors, "Instructions for Conducting an Imposed Plan Compliance Check," Feb. 2, 1973.

the total membership of the covered unions when the plans began.[21] This percentage even overestimates the coverage of the compliance checks, since membership figures for 9 of the 48 covered crafts are not available and the figure for workers identified on the compliance checks includes some nonunion workers.

A fairly simple and precise test can be used to assess the contribution of the imposed plans to increasing access of minority workers to jobs in unionized construction: If the number of minorities observed on the job sites during the 1973 compliance check exceeds the number in a union before the plan, the difference between the two numbers is evidence of

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21. The sum of the available membership figures is 49,618. The total number of workers identified on the compliance checks is 4,778 or 9.6 percent of the membership figure. The 1973 compliance checks covered the Philadelphia, St. Louis, Atlanta, San Francisco, and Washington, D.C. Plans. Figures from the 1973 compliance checks are used because no more recent figures are available. Compliance checks of the Philadelphia and Camden plans have been done since 1973, but the results have not been released. Philip J. Davis, Director, OFCC, letter to Edwin R. Dean, Office of Program and Policy Review, U.S. Commission on Civil Rights, Mar. 20, 1975. Sources for these figures are: 1) Arthur A. Fletcher, Assitant Secretary for Wage and Labor Standards, Order to Heads of All Agencies, Sept. 23, 1969. 2) U.S., Department of Labor, Press Release, "Labor Department Extends Philadelphia Plan," Dec. 28, 1973, p. 2. 3) The St. Louis, Atlanta, and San Francisco plans, 41 C.F.R. 60-7 (1971), 41 C.F.R. 60-8 (1971), and 41 C.F.R. 60-6 (1974). 4) U.S., Department of Labor, Office of Federal Contract Compliance, "Imposed Plan Compliance Check Report: Summary Sheet," Form OCCO-204. 5) U.S., Department of Labor, Transcript of Proceedings, Public Hearing in Atlanta, Ga., March 31, 1971, p. 147. 6) U.S., Department of Labor, Press Release, "OFCC Plan Boosts Minority Employment in Construction in Atlanta," Apr. 29, 1974. 7) U.S., Department of Labor, Transcript of Proceedings, Hearings on Implementation of Executive Order 11246 in the San Francisco Area, Dec. 15, 1970, pp. 26-28. 8) Washington Post, Dec. 11, 1973. 9) Richard Rowan and Lester Rubin, Opening the Skilled Construction Trades to Blacks: A Study of the Washington and Indianapolis Plans for Minority Employment (Philadelphia: University of Pennsylvania Press, 1973), p. 70. 10) U.S., Department of Labor, Transcript of Proceedings, Hearings on Equal Job Opportunity in Construction, Washington, D.C. Area, Apr. 13, 1970, pp. 34 and 132.

increased minority employment in unionized construction. But if the number of minorities observed on the job sites during the 1973 compliance check falls short of the number in the union before the plan started, there is no evidence of change.[22] In the latter case, the Department of Labor's statistics do not show whether or not change has occurred.

The use of this test may be illustrated by applying it to one of the five plans covered by the 1973 compliance checks. Table 25 indicates that for this plan two minority asbestos workers were identified on construction sites in 1973, while there were seven minority asbestos workers in the union in 1971, when the plan began. The compliance check, therefore, provides no evidence of increased employment of minority asbestos workers. In total, 13 of the 16 crafts covered by this plan had either fewer minorities on the job in 1973 than in their membership in 1971 or no minorities on the job in 1973 and an unknown number of minorities in their membership in 1971. Two of the remaining three crafts, the sheet metal workers and the lathers and plasterers, had more minorities on the job during the compliance check in 1973 than among their membership in 1971. The total number of minorities identified on the sites in 1973 for these two crafts was only 12, while the 1971 minority membership of the two unions concerned was 7, a difference of 5 workers.

In summary, the application of this test of the extent of progress in the 16 critical crafts of this plan indicates no firm evidence of any progress in 13 of the crafts and a trivial increase--5 workers--in two of the remaining three crafts. Progress may have been greater, but the compliance checks do not provide evidence of it.

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22. This test is subject to one deficiency, since a few minorities who were not union members before the plans started might have worked as permitholders on federally-related construction projects. These people would not have been included in union membership figures; increases in minority access to work on unionized projects found by compliance checks would then be larger than they really were. But this is a relatively minor problem because very few, if any, minorities worked as permitholders before the plans got underway.

Table 25. TOTAL MINORITIES IDENTIFIED BY COMPLIANCE CHECK OF PLAN A

Trade	Total union membership, 1971*	Total minority membership, 1971*	Minorities identified by compliance check, Aug. 27-31, 1973**
Asbestos Workers	258	7	2
Boilermakers	--[a]	--[a]	0
Bricklayers	1,652	76	5
Carpenters	--[a]	--[a]	33
Cement and Concrete Finishers	825	15	3
Electricians	1,857	17	13
Elevator Constructors	--[a]	--[a]	0
Glaziers	--[a]	--[a]	0
Ironworkers	1,325	26	4
Lathers and Plasterers	347	6	7
Operating Engineers	4,493	33	9
Painters and Paper Hangers	1,800	50	8
Plumbers and Pipefitters	2,668	47	12
Roofers and Slaters	301	11	1
Sheet Metal Workers	1,159	1	5
Tile Setters and Terrazzo Workers	--[a]	--[a]	0

a. Not available.

Sources: *41 C.F.R. 60-7 (1971).

**U.S., Department of Labor, Office of Federal Contract Compliance, "Imposed Plan Compliance Check Report: Summary Sheet," Form OCCO-204.

Indeed, progress may have been even less than these figures indicate. The figures on minority workers identified during compliance checks include not only union members, but also nonunion workers using permits supplied by a union; and they also include apprentices, helpers, and trainees as well as journeymen.[23]

Put in other words, the implications of this test are: If unions had decided to help contractors comply with this plan by simply referring minority members already in their locals before the plan began to federally-related sites, in how many cases could they have produced the number of minority group workers identified during the compliance checks? The answer is that in 13 of the 16 critical crafts covered by this plan, the minority workers identified during the compliance checks could have all been referred from union membership rolls as they existed before the plan began.[24]

Such selective referral of minority workers could faciliate paper compliance with an imposed plan. Resort to "mortorcycling"--sending a minority worker on a motorcycle from job site to job site, one step ahead of Federal compliance officers--is unnecessary. Unions can simply refer a small and possibly constant number of minority workers to federally-related sites, a relatively small proportion of total construction sites in most cities. ("Checker-boarding"--the assignment of minority workers to sites about to be visited by a Federal or other official--is equally unnecessary.)

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23. Information was made available to Commission staff in San Francisco showing substantial use of apprentices on federally-related projects. During December 1973, for example, on all HUD-monitored projects in San Francisco, minority journeyman electricians worked 1,306 hours, minority apprentice electricians worked 935 hours; minority journeymen among the plumbers, pipefitters, and steamfitters worked 859 hours; and minority apprentices worked 382 hours. This information is contained in Optional Form 66 reports received by the HUD office in San Francisco.

24. This statement assumes that none of the minority workers initially in the unions died, retired, or resigned.

Out of 48 "critical trades" in the five areas, the number of minorities identified on the compliance checks could have been produced from the initial minority membership of the unions in 32 of the cases. (See table 26.) In 13 other trades, the number of minority workers who could not have been placed on the sites from the initial minority membership of the unions was 263 persons.[25] This is an insignificant number when compared to construction union membership of over 50,000 in these five cities.[26]

This test, as noted earlier, does not demonstrate that there was no progress in minority union membership in 32 of 48 crafts, nor does it demonstrate that only 263 new minority persons found work in 13 other crafts. Rather, the test demonstrates that the compliance checks conducted by the Department of Labor in 1973 do not provide any evidence for progress beyond these limited bounds. The picture shown by the compliance checks of most covered crafts could have resulted from selective referral of minorities to federally-related projects.

The test results have further significance, relating to the question of the plans'effectiveness. The plans' effectiveness can be judged as follows: do the plans place any requirements on contractors or unions to lower their barriers to minority workers and to increase the numbers of minorities working in the trades? The test results indicate that the answer to this question is negative for most trades.

For at least 32 of the 48 covered trades, the number of minorities observed on the job sites during compliance checks falls short of the number in the union before the plans began. Hence the numbers of minority workers already in the unions before the plans began were adequate to provide the numbers (both union and nonunion workers) observed on the

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25. Compiled from sources listed in note 21, p. 187 supra. The 263 figure is obtained by subtracting preplan minority membership from minorities identified by the compliance check in every case where the former is smaller than the latter.

26. The sum of the available membership figures is 49,618. But figures are not available for 9 of the 48 crafts, so actual membership must be well over 50,000.

Table 26. COMPARISON OF MINORITY UNION MEMBERSHIP AT START OF PLAN PERIOD AND MINORITIES IDENTIFIED BY COMPLIANCE CHECKS, 1973

	Number of "critical trades" in which initial minority membership exceeded or equaled number of minorities identified in 1973 compliance check	Number of "critical trades" in which initial minority membership was less than number of minorities identified on 1973 compliance check	Insufficient information	Total number of "critical trades"
Plan A	13	2	1	16
Plan B	2	4	0	6
Plan C	8	2	0	10
Plan D	5	0	0	5
Plan E	4	5	2	11
Total	32	13	3	48

Note: Where initial minority membership is "not available," but no minorities were identified on the compliance check, the comparison falls in the far left column.

Sources: See note 21, p. 187 supra.

compliance checks. Hence, these figures are consistent with the hypotheses that the plans placed no pressure on the contractors to hire minority workers not in the trades before the plans began and that they also placed no pressure on unions to admit minority workers.

The Washington, D.C. Plan

Further evidence of the weakness of the imposed plan concept comes from a detailed case study of the Washington, D.C. Plan.[27]

Several successes seemed to mark the early years of the Washington Plan. The percentage of minority personhours worked on monitored Washington Plan projects during the months of August and September 1971 was above the lower limit of the ranges established for the year 1971-1972 in 5 out of 12 cases. (The Plan became effective June 1, 1970.) For example, among electricians, minorities worked 24 percent of all personhours in August and September 1971, compared with a requirement for the year of 16 to 22 percent.[28] In addition, the number of black applicants for apprenticeship who were accepted for employment by apprenticeship sponsors rose from 41 in the 12 months ending May 1970 to 142 in the 12 months ending May 1971, the first year of the Washington Plan. Blacks constituted 14.8 percent of all applicants accepted for employment by sponsors in the first year, but 21.4 percent in the second year.[29]

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27. Richard Rowan and Lester Rubin, Opening the Skilled Construction Trades to Blacks: A Study of the Washington and Indianapolis Plans for Minority Employment (Philadelphia: University of Pennsylvania Press, 1972).

28. Ibid., p. 71.

29. Ibid., pp. 56-57.

Much of this progress, however, was illusory. The percentages of personhours worked by minorities were consistently higher than the percentages of minorities in the locals' membership.[30] The average percentage of the unions' membership that was minority was 6.3 percent, while the average of the minority personhours worked in August and September 1971 was 18.4 percent.[31] Although minorities worked about 18 percent of all personhours in these two months of 1971, there was apparently little or no effect on minority membership in the unions: Minorities were only 6 percent of union members. Hence, compliance with OFCC personhours goals may produce little or no change in minority membership in unions.[32]

A second reason for concluding that little progress, if any, was made under the Washington Plan stems from the results of the OFCC compliance check in August 1973. The compliance check identified 460 minority workers on the inspected sites, or 21 percent of the total of 2,186 workers identified.[33] Total 1971 union membership of all of the Washington Plan's critical trades was 7,764, of which 513 or 6.6 percent

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30. Rowan and Rubin used percentages of minority membership in unions that were based on interviews with union officials. In most instances, these percentages were higher than those given in the Washington Plan. Compare Washington Plan, 41 C.F.R. 60-5.11(b) and Rowan and Rubin, Opening the Skilled Construction Trades, p. 70. Comparisons here between personhours worked and union membership use Rowan and Rubin's union membership percentages.

31. These averages are for 11 unions. Rowan and Rubin treat the Plumbers and Pipefitters separately from the Steamfitters, for a total of 12 unions as compared with the Washington Plan's 11. But the Boilermakers apparently did no work in August and September 1971, which brings the total back to 11.

32. The imposed plans do not have the formal purpose of increasing the number of minorities among the union membership; see the pertinent sections in the Washington and San Francisco Plans: 41 C.F.R. 60-5.1 (1974), and 41 C.F.R. 60-6.1 (1974), respectively.

33. Washington Post, Dec. 11, 1973.

were minorities.[34] If the 513 union members had been referred exclusively to the Federal job sites, this could have come fairly close to providing the 460 minority persons identified on the sites in 1973 compliance checks.[35] (The 513 union members could not have provided all of those identified because of the way they were distributed among the trades.)

In other words, unions could have come close to meeting the requirements of the Washington Plan by careful referral of the initial 6.6 percent minority membership to federally-related job sites and by referring only white Anglo members to nonfederally-related sites. They could have provided all of the 460 minority workers identified on the job sites by a combination of referral of old members and by granting work permits to an additional 203 to 229 workers.[36]

Were a small number of minority union members and permitholders actually allocated to projects so as to fulfill some of the goals of the Washington Plan? The case study reports:

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34. Rowan and Rubin, Opening the Skilled Construction Trades, p. 70. Rowan and Rubin indicate a number of qualifications to the accuracy of their statistics. For example, their minority membership statistics include some permitholders who were not actually union members. In every case for which the authors show minority apprentices and journeymen separately, the minority percentage of apprentices is at least double the minority percentage of journeymen. (The 6.6 percentage differs from the 6.3 percentage used above for the following reason: the 6.3 percentage was an average of 11 percentages while the 6.6 percent figure is based on dividing 513 by 7,764. Further, the Boilermakers were excluded in the calculation of the 6.3 percentage.)

35. U.S., Department of Labor, OFCC, "Imposed Plan Compliance Check Report: Summary Sheet," Form OCCO-204 and Washington Post, Dec. 11, 1973.

36. The 229 figure is a sum of all minority Lathers and Tile and Terrazzo Workers observed on the site (26) in 1973 plus the difference between the number observed on the site and the 1970 membership of five other trades (203). See U.S., Department of Labor, Transcript of Proceedings, Hearings on Equal Job Opportunity in Construction, Washington, D.C. Area, Apr. 13, 1970, pp. 34 and 132. The 229 figure assumes that there were no minorities in the Lathers and the Tile and Terrazzo Workers in 1970; the source does not give membership figures for these two locals.

> Minorities are not being left on the bench when contractors need them for compliance purposes.[37]

> Despite unemployment in some unions, minorities in the unions are rarely unemployed...We offer the possibility that relatively few minorities are being used to meet man-hour goals, and that permit holders--not new union members--are being used to meet the requirements of the Plan.[38]

> In fact, one contractor clearly admitted satisfying a show cause order for lack of compliance by shifting minority employees to the Federal site in question.[39]

Commission staff supplemented this case study of the Washington Plan by looking at the apprenticeship outreach program for Washington, known as "Project Build." Analysis of statistics from the program[40] sheds great doubt on the significance of the fairly favorable movement in apprenticeship statistics during the first year of the Washington Plan and also suggests that minority apprentices might have played an even greater role than permitholders in achievement of some of the Washington Plan's personhours goals.

Project Build had claimed a total of 659 trainees in apprenticeship or similar programs as of November 1972. The registration could be

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37. Rowan and Rubin, Opening the Skilled Construction Trades, p. 68.

38. Ibid., p. 75.

39. Ibid., p. 74.

40. The statistics are unpublished results of a study by officials of the District of Columbia Manpower Administration, who examined various records, including all District of Columbia apprenticeship registers from February 1968 through November 1972. Oscar Waldon, District of Columbia Manpower Administration, interview, Nov. 23, 1973.

confirmed for only 382 of these 659.[41] Only 13 of the 382 had completed the program.[42] Of the 369 who had not completed the program, only 174 were still in it. Apparently, the jump in minority indentures during the first year of the Washington Plan was followed by many cancellations or withdrawals from apprenticeship in subsequent years.

The OFCC statistics on compliance checks were designed to include all minority workers--including apprentices--identified on Federal projects. It was concluded above that about 203 to 229 of the 460 minorities identified on the 1973 compliance check of the Washington Plan could not have been accounted for by minorities who were already union members in 1970. Some of these 203 to 229 minority workers could have been apprentices who will never finish apprenticeship, given the high, observed, cancellation rate of apprentices indentured through Project Build. Clearly, apprentices indentured through apprenticeship outreach programs can account for some of the minority workers observed on federally-related job sites who could not be accounted for by the initial minority memberships of the covered unions. Just as clearly, many of these apprentices will never become journeymen.

The San Francisco Plan

In February 1974 Commission staff attempted to interview union officials of the critical crafts covered by the San Francisco Plan.[43]

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41. All 659 trainees and apprentices should have been registered with the District of Columbia Manpower Administration or identified through other records examined in that agency's study, with two exceptions: unionized electricians register some of their apprentices outside the District and some of the nonunion apprentices might also have registered some of their apprentices outside the District. Oscar Waldon, District of Columbia Manpower Administration, telephone interview, Oct. 22, 1975.

42. In assessing the significance of the 13 completions, it should be noted that, as of November 1972, Project Build had functioned for less than 5 years, while some apprenticeship outreach programs last 4 years or more.

43. See app. A for explanations of the choice of cities for field studies.

Staff were successful in arranging interviews with officers of four locals: Plumbers, Pipefitters, and Steamfitters (all organized in Plumbers Local 38); Asbestos Workers; Sheet Metal Workers; and Iron workers.[44]

Among the information sought from union officials was: the most recent and the June 1971 figures on the number of dues-paying journeymen in the local and of minority dues-paying journeymen in the local, with a breakdown into male and female journeymen for both dates. Figures were requested for June 1971 because it was the starting date of the San Francisco Plan.

The number of minority journeymen in three of the four locals[45] seemingly increased from 303 to 360, while total membership declined from 4,116 to 3,326.[46] Hence, minority journeyman membership seemingly increased by 57. However, the figures include apprentices for one of

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44. On October 23, 1975, the U. S. Commission on Civil Rights, pursuant to a provision of the Statute, Rules and Regulations of the Commission (42 U.S.C. §1975a(e) (1970)), sent letters to the business managers of the four locals. The letters enclosed those portions of this report that deal with the locals' membership statistics and noted that any comments received from the locals would be published as an appendix to the report. No replies were received from the locals.

45. One of the four locals, the Ironworkers, is excluded from these calculations. This local was sued by the Department of Justice for alleged violations of Title VII of the Civil Rights Act of 1964. In 1971 it signed a consent decree, which required it to take affirmative action. United States v. Local 377, Ironworkers, Civil Action No. C-51592 SAW (N.D. Cal.), consent decree in partial settlement Sept. 10, 1971, supplemental consent decree in final settlement Nov. 5, 1971. Since changes in the minority membership of this local were presumably influenced largely by the court action, they were not considered in the analysis of the effects of the San Francisco Plan. The local reported to Commission staff that minority journeyman membership increased from 25 in December 1971 to 139 in December 1973.

46. Locals generally could not supply Commission staff with membership statistics for the precise months of June 1971 and February 1974. The figures given by the Plumbers were for December 1971 and February 1974, by the Asbestos Workers, for November 1970 and November 1972. The Sheet Metal Workers could not supply Commission staff with a racial breakdown of their membership for a date more recent than November 1972.

the three locals.[47] (This local had 75 minority apprentices in February 1974.) So part of the increase of 57 could have been in apprentices rather than in journeymen.

If minority journeyman members did increase by as much as 57, that increase would have been less than 2 percent of the 1974 membership of the three locals.[48]

There were no female journeymen in any of the four unions, either in 1971 or in early 1974, when all four unions had 4,546 journeyman members. Perhaps this is because the San Francisco Plan had no definite affirmative action provisions related to women and because no outreach program for women existed in the San Francisco area until December 1973.

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47. For this local, apprentices could not be given separately from journeymen for 1971. To retain consistency, apprentices were included for both dates for that local.

48. Two of the three locals--the Asbestos Workers and the Plumbers--covered jurisdictions substantially larger than San Francisco County, which is the only county covered by the San Francisco Plan. See San Francisco Building and Construction Trades Council, San Francisco Building and Construction Trades Council Wage Rates and Statistics 1973, pp. 9, 45, 47. (Hereafter referred to as San Francisco Building Trades Statistics 1973.) Hence, while some of the increase in minority membership could have been outside San Francisco, it is also possible that any increase in San Francisco minority membership could have been somewhat more than 2 percent of total San Francisco membership.

The EEOC has noted that the increase in minority membership of these three locals should be viewed in the light of a decline in white membership. (It is noted in the text that total membership declined from 4,116 to 3,326.) EEOC further states that under these circumstances, "it might have been appropriate to have mentioned the background of declining activity and membership to set an appropriate framework for the statistics as presented." EEOC Comments.

USCCR notes that the EEOC's comment on the background of declining activity and membership is not relevant to the Commission's main conclusions, reached in the following paragraphs, concerning the inadequacy of the OFCC monitoring mechanism and the discrepancy between minority percentages of union membership and minority percentages of workers identified on compliance checks.

The minority percentages of the membership of three San Francisco locals were lower than the minority percentages of the workers identified on the 1973 compliance check of the San Francisco Plan (table 27). In two of the three cases--the Plumbers and the Sheet Metal Workers--the minority membership percentages were less than half of the compliance check percentages.

There are several possible explanations for the fact that the minority membership percentages are so much lower than the minority compliance check percentages. First, the Plumbers and Ironworkers locals include several counties other than San Francisco County in their jurisdictions, so the minority membership percentages in San Francisco County alone might have been larger than the percentages shown in table 27.[49] However, the jurisdiction of the Sheet Metal Workers is San Francisco County alone. Second, the locals could have deliberately referred a disproportionately large number of minority members and nonmembers to federally-monitored sites to assist contractors in meeting the goals of the Plan. Third, chance could have played a role in the referral of a high proportion of minority workers to federally-monitored sites.

The OFCC monitoring mechanism fails to show whether the San Francisco Plan has diminished the barriers to minority entrance to union membership. No OFCC monitoring procedures--neither the compliance checks nor the Optional Form 66 reports--provide any information on the number of minorities in unions. Even when information on minority union membership is obtained independently--as Commission staff did

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49. However, the Plumbers local covered only San Francisco, Marin, Sonoma, and Mendocino Counties. San Francisco Building Trades Statistics 1973, p. 45. The combined population of the latter three counties was only 462,000 in 1970, or 39 percent of the population of all four counties, which was 1,178,000. U.S., Department of Commerce, Bureau of the Census, Characteristics of the Population, 1970 Census of Population, vol. 1, pt. 6 (Calif.), sec. 1, p. 25. The Ironworkers local covers a larger jurisdiction than the Plumbers. San Francisco Building Trades Statistics 1973, p. 50.

Table 27. MINORITY WORKERS IDENTIFIED ON COMPLIANCE CHECK OF SAN FRANCISCO PLAN AND MINORITY MEMBERS IN FOUR SAN FRANCISCO LOCALS

	Compliance Check, Sept. 1973. Minorities as Percentage of Workforce	Minorities as Percentage of Locals' Membership, February, 1974[a]
Plumbers	24.4%	11.2%
Sheet Metal Workers	22.7	11.2
Ironworkers	19.1	13.9
Asbestos Workers	No workers identified	11.6

a. Several locals could not give figures for the month of February, 1974, so figures were reported for the nearest date for which data were available. "Membership" figures include apprentices, even though none of the Sheet Metal Workers' apprentices and only some of the Ironworkers' apprentices were members of the respective locals.

Sources: Compliance check: U.S., Department of Labor, Office of Federal Contract Compliance, "San Francisco Imposed Plan Compliance Check Report: Summary Sheet," Form OCCO-204. Locals' membership: Commission staff interviews with union officials.

in San Francisco--the OFCC monitoring procedures fail to indicate whether the large discrepancies between the minority membership percentages and the minority compliance check percentages are accounted for by selective referral of a small minority membership to monitored sites or by other factors. Further, the San Francisco compliance check provided no information at all about asbestos workers, since no asbestos workers happened to be working on the monitored sites when the check was made.

The OFCC monitoring procedures also fail to show whether the San Francisco Plan has promoted minority or female entrance to the various trades as nonmembers of unions. The compliance checks and the Optional Form 66 reports both fail to indicate the percentage of nonunion craftworkers in San Francisco County who are minorities or women.

Hence, the OFCC monitoring mechanism does not shed light on whether the San Francisco Plan has diminished the barriers to minority entrance either to the building trades generally or to the unions. Since the monitoring mechanism is the same for all imposed plans, the deficiencies described apply to all imposed plans.

The vigor of monitoring by most Federal agencies in San Francisco is apparently not great. All seven Federal agencies were asked how many show-cause orders they had issued in 1973 to contractors on federally-related projects in San Francisco County, the area covered by the San Francisco Plan. Six agencies had not issued any. The seventh had sent out 29 show-cause orders. The official interviewed stressed the assistance his office received from the vigorous monitoring efforts of a San Francisco City agency. Otherwise, he said, his office has far too few compliance officers to meet the task at hand.

The lack of rigorous compliance efforts is illustrated in a letter sent by the Defense Contract Administration Services Region[50] to a San Francisco electrical contractor on September 15, 1972. Written to rescind a show-cause order sent earlier in 1972, the letter states: "Based on the fact that you have transferred two minorities to Hunters Point from other assignments and added two additional minorities to your total work force, coupled with a minimum 13.6 percent commitment for minority man-hour utilization, the show cause letter is withdrawn." One of the purposes of the compliance effort, of course, is to avoid the sort of paper compliance attained by transferring minorities "from other assignments" to federally-monitored projects.

Imposed Plans: Conclusion

Most available statistics showing compliance with imposed plans can be explained on the basis of union referral of a small and constant minority membership to federally-related construction.[51] Other information

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50. The Defense Contract Administration is a division of the Department of Defense.

51. The Department of Labor comments: "This statement is inaccurate. Primary responsibility for conducting compliance reviews of Federal and federally assisted construction contracts in imposed plan areas rests with Federal contracting agencies rather than OFCC. The only purpose of the OFCC compliance check conducted in imposed plan areas is to estimate the overall effect of the plan in the last year; it is not intended to serve as a compliance review possibly leading to sanctions. The reporting covers the contractors' entire workforce, including both federally-involved and private construction. Reporting helps OFCC and the compliance agencies to insure that utilization of minorities is occurring throughout the employer's entire work force, and guard against 'motorcycling' minorities to Federal projects." Department of Labor Comments.

USCCR finds that its original statement is accurate, despite the Department of Labor's statement to the contrary. Neither the results of the compliance reviews nor the personhours statistics reported on Optional Form 66 are available to the public or the other Federal agencies in a format that permits their use in analysis of the imposed plans. While most (though not all) of the statistics from the compliance checks have been released by the Department of Labor, it is precisely these statistics which "can be explained on the basis of union referral of a small and constant minority membership to federally-related construction."

from secondary sources and Commission staff studies indicates that such referral practices occurred and that unions also issued temporary work permits to nonmembers to facilitate compliance with personhour goals. The Department of Labor, in imposing these construction compliance plans, did not set the objective of raising the percentage of minority membership in the unions to the proportion of the minority percentage of the surrounding population, but it did expect that its plans would result in a very large increase in minority employment in construction and that the proportion of minority employment in an area would approach the proportion

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Footnote 51 cont'd.

USCCR also notes that even if information from the compliance reviews and the Optional Form 66 reports were compiled and made available, the reporting formats would not permit an assessment of whether minorities and women were entering unions or increasing their proportions for the local workforces. As noted earlier, Optional Form 66 does not ask for a breakdown of personhours worked according to membership or nonmembership in unions. Further, the statistics reported on Optional Form 66 relate to a small proportion of an area's workforce, sometimes as small as 1 percent (see app. E), thereby presenting opportunities for "motorcycling." The compliance reviews are undertaken by the various federal agencies using various formats, and without benefit of guidance, supervision, or review by OFCC (U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975), p. 370.) The reviews are designed to determine whether individual contractors are complying with Executive Order 11246 and other relevant regulations rather than whether imposed plans are leading to increased employment of minorities and women in the various workforces or in unions. Further, the results of the compliance reviews of the various monitoring agencies are not centrally compiled or placed into a uniform statistical format.

Finally, USCCR notes that compliance checks, unlike reports submitted on Optional Form 66, are not designed to "cover the contractors' entire work force, including both federally-involved and private construction." These checks cover only federally-involved projects. Philip J. Davis, Acting Director, OFCC, Memorandum to ESA Regional Administrators and OFCC Regional/Area Directors, "Instructions for Conducting an Imposed Plan Compliance Check," Feb. 2, 1973.

of minorities in the areas' population.[52]

Four major conclusions may be drawn: First, the Department of Labor did not achieve its broad expectations for the imposed plans, primarily because it monitored only small portions of the unionized construction labor projects in the imposed-plan areas.

Second, the minority workers observed during the compliance checks could have been produced by selective referral of minorities to federally-related projects in 32 out of 48 "critical trades" in the five imposed-plan areas where compliance checks took place in 1973.

Third, there is evidence of evasion of the compliance mechanism and of failure to achieve permanent results. The evidence includes Government-approved "checker-boarding" in San Francisco; an admission by a contractor of "checker-boarding" in Washington; an increase of only 57 (or even fewer) minority journeyman members in three of the five critical crafts in San Francisco; a very high dropout rate of minority apprentices in Washington's apprenticeship outreach program, which trained minority apprentices who worked on Washington Plan Projects.

Fourth, the exclusion of increased minority membership in unions from the explicit purposes of the voluntary and imposed plans is a serious, and questionable, omission. Permitholders and apprentices had an important role in the achievement of the Washington Plan's 1971 goals for a few crafts but were not permanent union members. "If

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52. Contrast the formal "purpose" of the plans with the expectation that a very large increase in minority participation in the trades would occur and the requirement that all of a Federal contractor's work force, in the critical crafts, would be covered by the plans. For example, contrast these three sections of the San Francisco Plan 41 C.F.R. 60-6: 60-6.1; 60-6.15(c); and 60-6.21(a)(1)(1974). But note also 60-6.21(a)(2).

a change in Washington Plan requirements is not made, we fear that those minorities who have gained employment because of the Plan will vanish from the job sites at the Plan's termination."[53]

In general, then, the imposed plans, like the voluntary plans, have not materially improved the employment opportunities of minority and female construction workers who have been excluded from unions.[54]

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53. Rowan and Rubin, Opening the Skilled Construction Trades, p. 88.

54. The AFL-CIO states that this report does not take into account "the responsibility of employers to engage in affirmative action." AFL-CIO Comments.

USCCR notes that the particular subject chosen for this report was union responsibility for affirmative action. This choice was appropriate since a number of USCCR publications have examined the enforcement of equal opportunity statutes by Federal agencies, including the EEOC and the OFCC, while the major thrust of these agencies' enforcement efforts is directed toward employers. See, e.g., Federal Civil Rights Enforcement Effort (1971) and Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975).

USCCR notes further that this chapter and chap. 4 show how referral unions typically control essential aspects of the employment process and prevent employers from exercising sole authority over employment matters. Hence referral unions can take actions which have the effect of frustrating affirmative action programs directed solely to employers.

8. JUDICIAL REMEDIES FOR DISCRIMINATORY UNION PRACTICES

Lawsuits are an alternative to the programs analyzed in chapters 5, 6, and 7. Litigation offers diverse types of relief to individuals who believe they have been victims of discrimination. And courts have recently fashioned comprehensive remedial measures for affording relief to victims of discrimination.

Numerous Federal, State, and local statutes address employment discrimination. Here the focus is on Title VII of the 1964 Civil Rights Act, probably the most widely used statute;[1] the role of the National Labor Relations Board;[2] and Executive Order No. 11246.

THE JUDICIAL PROCESS UNDER TITLE VII

Obstacles to Litigation

Two factors serve as obstacles to the attempt to obtain judicial relief. First, individual initiative is generally required to activate the judicial machinery. Secondly, under Title VII, a prospective litigant is required to file a charge with the Equal Employment Opportunity

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1. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §§2000e, et seq. (Supp. II, 1972), amending 42 U.S.C. §§2000e, et seq. (1970).

2. The NLRB implements the National Labor Relations Act (Wagner Act) 29 U.S.C. §151, et seq. (1970) (hereafter cited as NLRA). Other Federal statutes pertaining to employment discrimination include the Railway Labor Act, 45 U.S.C. §151, et seq. (1970), which governs labor relations in the rail industry; 42 U.S.C. §1981 (1970), which generally provides that all persons shall have equal rights to enter into and enforce contracts (since employment relationships are recognized to be of a contractual nature, they fall within the ambit of §1981); and 42 U.S.C. §1983 (1970), which is a codification of a section under the Civil Rights Act of 1871.

Commission (EEOC) prior to filing a court complaint,[3] a two-stage process that might seem formidable to persons who believe they have been discriminated against.

Filing a charge with the EEOC does not necessarily mean that it will be litigated. In fact, only a small proportion of these charges are litigated. From March 1972 to June 1974, some 100,000 charges were filed with the EEOC. Over the same period, approximately 202 civil actions (includes interventions) were brought by the EEOC.[4]

Having filed a timely charge with the EEOC and upon contemplating litigation, the complainant is confronted with another obstacle. The expense involved in bringing a civil action to a successful conclusion can be very substantial. An attorney whose Title VII client does not prevail may be unable to collect legal fees; on this basis, many Title VII cases are not very appealing.[5]

A study of racially discriminatory union practices indicated that in 14 of 19 nonlitigated Title VII cases studied, the main concern of

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3. Under §706(e), [42 U.S.C. §2000e-5(e) (1970)], a charge must be filed with the EEOC within 180 days of the alleged unlawful employment practice unless the jurisdiction in which a case arises has a State or local fair employment practice law and an agency to which the EEOC defers. In the latter situation the limitation period is 300 days or within 30 days from the time the State or local agency notifies the EEOC that it has terminated its proceeding, whichever is later. The EEOC is authorized to sue after 30 days from the filing of the charge. The individual complainant retains the right to seek relief in the Federal courts should the EEOC dismiss the charge or fail to file a civil action within 180 days. The rationale of this mandatory route is to give the EEOC an opportunity to resolve the dispute through a conciliation agreement before the complainant or the EEOC resorts to litigation.

4. Information acquired from the Office of Public Affairs, EEOC, July 12, 1974.

5. Juan Rocha, former Associate Counsel for the Mexican American Legal Defense and Educational Fund, telephone interview, July 2, 1974.

the complainant was cost.[6] Title VII litigation is more costly than many other types of litigation because numerous hours are required for trial preparation, including the need to determine whether the case qualifies as a class action, and the difficult procedural issues that often have to be resolved before there is a trial on the merits of the case itself.[7]

Lengthy Court Proceedings

Court cases take a long time to settle, a critical shortcoming of litigation. Of 103 employment practices suits filed by the Department of Justice during the years 1966 through 1973, only 61 were settled within 24 months. Twenty-eight of the remaining 42 had not been settled within 35 months.[8]

According to the EEOC, the average length of time that transpires from filing an EEOC charge until its final disposition by the agency is approximately 24 months.[9] And, of course, some complainants receive no relief, even after a lengthy wait.

A court may award temporary relief early in a case by issuing a preliminary injunction. This restrains a defendant from initiating or continuing an act, such as laying off or terminating an employee. However, some courts are reluctant to grant preliminary injunctions. Moreover, to avoid hearing a case twice, the court may shorten the attorney's preparation time by moving up the date of the trial on the merits and denying the request for a preliminary injunction.

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6. Benjamin W. Wolkinson, Blacks, Unions and the EEOC (Lexington, Mass.: D.C. Heath, 1973),pp. 129-31.

7. Dennis R. Yeager, attorney with Tufo, Johnston and Allegaert, New York City, telephone interview, June 17, 1975.

8. Lorna Grenadier, Research Analyst, Civil Rights Division, U.S. Department of Justice, interview, March 11, 1976.

9. William J. Monahan, Public Information Specialist, Office of Public Affairs, EEOC, interview, Washington, D.C., July 12, 1974.

The consent decree--a contract or agreement entered into by the parties under the sanction of the court--is an alternative that saves time and may provide a wider basis for relief. A trial on the merits, which might prove costly and time consuming, may be avoided by pursuing this type of decree.

However, the salient point is that months or perhaps years may go by before the complainant receives any substantial relief by suing.

Scope of the Suit

Another aspect of litigation that warrants consideration is the number of parties directly affected by court decrees. The plaintiffs may be an individual, groups of individuals with similar grievances, or the Federal Government. The defendants may be labor-management apprenticeship committees, union locals or internationals, employers, or a combination of these.

A civil action brought by a person on behalf of other persons similarly situated--a class action--is a useful method of providing relief to a large group of persons.[10] In practice, however, not every suit is a class action, nor does every suit involve numerous parties. In the referral union context, as a rule, only a specific defendant local union or two or three local unions and their agents are ordered to comply with the court decree. For example, international unions are generally not subject to court decrees addressed to defendant locals. Further, a court decree may directly benefit only one or two individual plaintiffs.

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10. FED. R. CIV. P. 23.

Judicial Remedies

Judicial remedies under Title VII and other statutes range from quite limited--though sometimes effective--preliminary injunctions to decrees awarding comprehensive affirmative relief. A number of recent court decisions embody constructive and imaginative remedies to referral union discrimination. They contain elements that, though adapted to meet the particular circumstances of a given locality, also suggest measures that could be used in the nationwide approach to affirmative action. But court remedies have some inherent deficiencies and their implementation has encountered major obstacles.

Two cases that illustrate the comprehensiveness and potential effect of court-ordered remedies are United States v. Local 86, Ironworkers,[11] which involved five Seattle locals, and United States v. Local 3, Operating Engineers,[12] which involved a 35,000-member local based in San Francisco.[13]

The relief provided by the court order in United States v. Local 86, Ironworkers has been described as "more comprehensive and

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11. 315 F. Supp. 1202 (W.D. Wash. 1970), aff'd, 443 F.2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971).

12. 4 FEP Cases 1088 (N.D. Cal. July 18, 1972).

13. Local 86, Ironworkers and Local 3, Operating Engineers both involve discrimination against minority males. None of the recent suits that led to comprehensive, court-ordered remedies involved discrimination against women. This analysis of the nature and effect of recent innovative court orders, therefore, could not draw on a case involving women. However, principles established by these race discrimination cases can be applied to sex discrimination; hence, the remedies can serve as precedents for sex discrimination cases.

detailed than that set forth by any other judge in any employment discrimination case in the United States," at the time of its issuance.[14]

In December 1969, the U.S. Department of Justice sued five building trades unions and several joint apprenticeship committees in the Seattle, Washington area.[15] This suit resulted from a series of determined efforts led by a local black contractor, Tyree Scott, and supported by a black construction contractors' organization and other organizations, to end the exclusion of blacks from local construction projects. (Table 28 presents statistics on the black participation in four of the defendant unions, as disclosed by litigation.)[16] Construction projects had been shut down, demonstrators arrested, and injunctions issued, all without providing a final solution.[17] Finally, the 1969 suit led to a comprehensive court order issued in June 1970.

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14. Gould, "The Seattle Building Trades Order: The First Comprehensive Relief against Employment Discrimination in the Construction Industry," 26 STAN. L. REV. 773, 785 (1974). A second law review article has referred to the Local 86 decree as the "model of effective judicial remedies." Comment, "Federal Remedies for Employment Discrimination in the Construction Industry," 60 CAL. L. REV. 1196, 1224 (1972).

15. The five defendant locals were: Local 86, International Association of Bridge, Structural, and Ornamental Ironworkers; Local 46, International Brotherhood of Electrical Workers; Local 32, United Association of the Plumbing and Pipefitting Industry; Local 99, International Sheet Metal Workers Association; and Local 502, International Union of Operating Engineers. There were three defendant joint apprenticeship committees: the Ironworkers, Plumbers and Pipefitters, and Sheet Metal Workers.

16. Local 502, Operating Engineers, the fifth union, entered into a consent decree before trial.

17. Gould, supra at 781-84.

Table 28. APPRENTICES AND UNION MEMBERS WORKING IN CONSTRUCTION, TOTAL NUMBER AND NUMBER OF BLACKS, IN FOUR SEATTLE LOCALS, 1970

	Apprentices		Union members working in construction	
Local	Total	Black	Total	Black
Local 86, Ironworkers	49	2	920	1
Local 99, Sheet Metal Workers	100	7	900	1
Local 32, Plumbers and Pipefitters[a]	104	0	1,900	1
Local 46, International Brotherhood of Electrical Workers	___[b]	___[b]	1,750	2

a. The Plumbers local had 93 black members but virtually all worked in the nonconstruction trades, where wages were significantly lower than in construction. Gould, p. 787.

b. Apprenticeship information is not available because the Electricians' Joint Apprenticeship Committee was not sued.

Source: 315 F. Supp. at 1204, 1209, 1212, 1215, 1219, 1224, 1228.

The U.S. district court found that the defendant unions and their apprenticeship committees had committed numerous acts of discrimination. They had withheld information from blacks, about union membership, which was readily available to whites. They had misinformed blacks on procedures for union membership, job referrals, and apprenticeship training programs. Higher admission standards were imposed on blacks than on whites by the defendant unions. The court found that, in the Ironworkers apprenticeship program, the sons and relatives of union members--almost all of whom were white--had an automatic preference for acceptance.

The court order actually consisted of two decrees. One dealt with procedures and standards relating to membership as journeymen and to referral. The other decree covered apprenticeship and training. The order provided that the unions' referral systems were to be based on residence and job-related criteria and that job applications and referrals--and denials of referral--were to be well documented. The defendant unions were to inform the black community of their new employment policy. The section of the order applying to the apprenticeship committees provided for admission requirements and a minimum percentage of minority participation in the apprenticeship programs.

The court also ordered that an advisory committee be established. This committee was comprised of representatives of the unions, the contractors, the minority community, and local and State governments. Its duties included informing the minority communities of the provisions of the court's decrees and the progress of their implementation and assisting the apprenticeship committees, unions, and contractors' associations in creating apprenticeship programs.

In summary, this decree contained several affirmative action features that set important precedents. The judicial remedy came to grips with discriminatory practices from the preapprenticeship to the postunion membership state. It not only required that blacks be admitted to the apprenticeship programs, but also specified the

percentage of blacks to be admitted. It articulated specific standards for journeyman membership and referral in each local. Finally, an advisory committee including representatives of the minority communities was established.

In United States v. Local 3, Operating Engineers,[18] the U.S. Department of Justice sued a union local, two apprenticeship committees, and some contractors' associations.[19] The complaint alleged that the defendants had unlawfully denied Mexican Americans and blacks equal employment opportunities. The parties entered into a consent decree that affected approximately 17,000 union members employed through referral halls located in 46 counties in northern California.[20]

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18. 4 FEP Cases 1088 (N.D. Cal. July 18, 1972).

19. The defendants included: Local 3, Operating Engineers, Operators' Joint Apprenticeship Committee, Surveyors' Joint Apprenticeship Committee, and Associated General Contractors and other contractor associations. The choice of United States v. Local 3 as the second court remedy for detailed research--the need for detailed examination of the implementation of decrees and limitations of time and resources required that only two examples be examined--was indicated by several criteria: The remedy had to be comprehensive; the remedy had to include the appointment of a monitor who was assigned the task of accumulating information on implementation of the decree; the decree had to have been issued no later than 1972, so as to permit observation of its implementation. The Local 3 case was one of the few that met all of these criteria. The final decision was indicated by the desirability of interviewing and examining records in the field. San Francisco, where Local 3 has its headquarters, had been chosen for a field study, partly because a major court remedy for a discriminatory construction union had been issued there. (For explanation of methods used in choosing cities for field studies, see app. A.)

20. Local 3 also has jurisdiction over parts of central California, northern Nevada, northern Utah, Hawaii, Guam, and several mid-Pacific islands. Its membership in the whole jurisdiction was approximately 35,000, of which 0.9 percent were black.

Plaintiff presented statistics showing an ethnic and racial imbalance in the union's membership in northern California. Of about 17,000 union members, only 1.2 percent were black. Approximately three-fifths of the white union members were Class A journeymen, while only one-fifth of the black members and two-fifths of the members of other minority groups were Class A journeymen. Moreover, of a total of 1,200 union members in training but not in the apprenticeship program, only 3 were black. Blacks constituted 7 percent of the northern California population.[21]

The remedy ordered by the court generally provided that the ethnic and racial imbalance be eliminated. The order required that specific percentages of minority operating engineers be employed or registered for employment in the apprenticeship program within 5 years. The defendant Operators' Joint Apprenticeship Committee was ordered to indenture and dispatch minority applicants according to specific percentages. The order also provided for a paid minority staff with the duty of administering the apprentice program. A compliance monitor was to be appointed whose duty would be to submit 6-month reports on the progress of the defendants' compliance with the order. A supplemental injunction provided for award of $396,000 in compensatory relief, to be disbursed among some 300 minority persons.[22] Finally

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21. 4 FEP cases at 1090.

22. United States v. Local 3, Operating Engineers, Civil Action No. 71-1277 RFP (N.D. Cal. June 27, 1973) (order for supplemental injunction).

the judge retained jurisdiction of the case. Hence, the plaintiff could request supplemental decrees from the court.[23]

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23. Two other examples where the courts have fashioned innovative remedies are United States v. Local 130, Electrical Workers, Civil No. 71-1779 (D.C. La. June 12, 1972) and Vogler v. McCarthy, 294 F. Supp. 368 (E.D. La. 1968), aff'd sub nom. Local 53, Asbestos Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969).

In United States v. Local 130, Electrical Workers, the affirmative relief provided, regarding the apprenticeship program of one of the three defendant locals, that 2 blacks be indentured for every white, with a minimum of 50 blacks within a year. Blacks whose apprenticeship terminated within 3 months or less would not be counted toward the fulfillment of the requirements. Further, minimum minority working hours were required for the various trades. Moreover, collective bargaining agreement provisions were not to interfere with the requirements of the court decree. The U.S. district court retained jurisdiction of the case and the decree was to remain in effect until blacks constituted 30 percent of the total of journeymen and apprentice members of each local.

In Vogler v. McCarthy, a 1967 Louisiana case, a U.S. district court preliminarily enjoined the defendant, Local 53, Asbestos Workers, from maintaining a pattern and practice of discrimination in violation of Title VII. The district court ordered the immediate membership of three blacks and one Mexican American who had previously applied for admission in Local 53 but had been rejected. The district court also required the development of objective membership criteria and suspended the admission of new members until such objective criteria were developed.

Postremedy Considerations

One deficiency judicial remedies share with administrative remedies is lack of enforcement. If the remedy fashioned by the court is adequate, the next problem is compliance. What direct impact do judicial remedies have on the membership, referral, and apprenticeship practices of referral unions?

The Decree in Local 86, Ironworkers.--The intended thrust of the June 1970 Local 86, Ironworkers order was to guarantee a substantial number of black workers the benefits of journeyman status. "Special" and regular apprenticeship programs were one of the principal means provided by the court decree for increasing the number of black journeymen. The special programs were intended for blacks with no previous experience who were too old to qualify for the regular apprenticeship programs and for blacks who had experience but did not qualify as journeymen.

As of 1973, the progress made in indenturing and graduating blacks from apprenticeship programs in the four defendant trades fell short of the goals set for all trades except for Electricians. Between the middle of 1970 and December 1973, the number of indentures and apprenticeship program graduates required by the court order was 96 for the Plumbers and Pipefitters, but the number actually produced was 47, or 49 percent of the goal. The Ironworkers and Sheet Metal Workers reached 62 percent and 68 percent of their goals, while the Electricians reached 104 percent.[24] Meanwhile, white apprentices were being indentured in larger numbers. For example, in 1973 the Sheet Metal Workers indentured 27 whites and 4 blacks into their regular apprenticeship program, while the special program for blacks enrolled only 3 apprentices.[25]

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24. Gould, supra at 802.

25. Ibid. at 805.

By June 1975, the situation had not improved greatly. The Plumbers and Pipefitters had enrolled or graduated 74 apprentices, or 77 percent of their goal of 96. The Ironworkers and Sheet Metal Workers had reached 77 percent and 78 percent of their goals, which were unchanged from 1973.[26] While the Electricians continued to indenture enough apprentices to meet their goal, the attrition of first-year apprentices was 29 percent and the court-appointed monitor did not expect the Electricians to reach their goal until 1979.[27]

In light of the inhibiting effect of a sharp decline in construction activity in the Seattle area beginning in 1971,[28] the effect of the court-ordered plan may be described as substantial. Yet the goals for minority apprentices were not being attained, despite clear court orders, continuous pressure by the minority community, and detailed monitoring of the program by the EEOC.

The Operating Engineers Decree.--The injunctive order in the case of Local 3, Operating Engineers was intended to correct the racial imbalance in the local within 5 years by producing an active membership composed as follows: 7.0 percent black, 11.1 percent Spanish surnamed, 3.7 percent Asian American, 0.4 percent Native American, and 0.7 percent other minorities. The order also required that the following percentages of minorities be indentured: 30 percent black, 30 percent Mexican American and 10 percent Asian American and other minorities. The order also established a minimum goal of 375 minority indentures from January through October 1972.[29]

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26. U.S. Equal Employment Opportunity Commission, Quarterly Report to the Court on Apprentice Programs, July 1975, p. 2.

27. Ibid., pp. 6, 27.

28. Gould, supra at 802.

29. 4 FEP Cases 1100, 1101 (N.D. Cal. 1972).

A report submitted by the compliance monitor in 1975 indicated that only 357 minority apprentices had been indentured in the 22 months ending December 31, 1974.[30] Although the minority percentages specified in the court order were attained,[31] this number of minority indentures was less than the order specified for the first 10 months of the decree. Memoranda filed by attorneys for the plaintiffs indicate that the number of minority apprentices declined during the period August 1973 through December 1974, since the losses from the program (due partly to graduation of apprentices, but mostly to cancellations and other causes) exceeded the new indentures.[32] Attorneys for the plaintiffs have also cited figures showing that the minority percentage of members in the construction and oilers' divisions of Local 3 actually fell from 5.3 percent in 1970 to 5.0 percent in 1974.[33]

The failure to make progress toward the court order's membership goals and the failure to increase the number of minority apprentices is owing partly to the fact that minority apprentices are receiving

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30. Roger E. Winston, EEOC Compliance Monitor, "Report to the Honorable Judge Robert F. Peckham Regarding Compliance Reference Civil Case No. C-71-1277 RFP, Northern District, California," June 1975, p. 14. (Hereafter cited as Report of Compliance Monitor, June 1975.)

31. Ibid. at 14.

32. Memorandum in Support of Plaintiffs' Motion Concerning the Utilization of Rancho Murieta, May 12, 1975, p. 4, Equal Employment Opportunity Commission v. Local 3, Operating Engineers, Civil No. C-71-1277 RFP (N.D. Cal., filed July 2, 1971). (Hereafter cited as Plaintiffs' Memorandum.) The statistics supporting these statements were compiled by counsel for plaintiffs on the basis of reports submitted to the Department of Justice by defendants.

33. Ibid. at 7.

little employment and training.[34] Unemployed or underemployed apprentices cannot support themselves in their chosen field and cannot accumulate the experience they need to qualify as journeymen, so they tend to drop out. Apprentices--most of whom were minorities--averaged only 48 hours of work for the month of January 1975, while journeymen--predominantly white--averaged 67 hours.[35]

The court also awarded compensatory relief in the form of back pay amounting to $396,000. Local 3, Operating Engineers, was ordered to pay only $96,000. The $300,000 balance was to be paid by the defendant Affirmative Action Trust.[36]

The Affirmative Action Trust fund contained over $1 million at the time it was ordered to pay the $300,000.[37] The $96,000 to be paid by the union was borne by the total membership of approximately 35,000, not just the 17,000 members of northern California, and the local's yearly income from membership dues was, at a minimum, $2.3 million.[38] The $96,000 that Local 3, Operating Engineers, was ordered to pay constituted 4 percent, or less, of the union's yearly income from only one of its sources.[39]

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34. Report of Compliance Monitor, at 13-14, and Plaintiffs' Memorandum at 19.

35. Plaintiffs' Memorandum at 5.

36. The trust was created in 1962 by a provision of the collective-bargaining agreement between Local 3 and the employers. Larry Miller, counsel for Local 3, Operating Engineers, San Francisco, Calif., telephone interview, Aug. 2, 1974.

37. Miller interview.

38. Monthly union membership dues range from $6 to $14, while membership (which fluctuates during the year) is in the range of 33,000 to 35,000. Miller interview. The lower ends of the two ranges are $6 and 33,000 and the product of these two figures indicates a monthly income of $198,000 or a yearly income of $2.376 million.

39. Membership initiation fees, another known source of income, were not included in this computation.

In view of these resources, the $396,000 paid as compensatory relief could not have had a substantial impact on the funds of Local 3 nor a substantial deterrent effect on its discriminatory practices.

The remedies fashioned by the judges in Local 86, Ironworkers and Local 3, Operating Engineers were atypical: they ordered changes in the locals' established practices regarding recruitment of apprentices, indentures, membership, and referral. Hence, they ordered changes in critical institutional functions that had a discriminatory impact.[40] Yet, clearly, the major goals of both decrees were not being attained.

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40. Since this study examined the implementation of only two court decrees, attorneys experienced in the litigation of similar cases were asked whether the major goals of court decrees against building trades unions were generally not attained. Robert Moore, of the U.S. Department of Justice, stated that despite the partial success of implementation of the decrees in Local 86, Ironworkers and Local 3, Operating Engineers, these two were actually among the better performers so far as Justice Department cases were concerned. The fact that some success was achieved was due largely to the Justice Department's commitment of unusually large amounts of resources, including staff time, to implementation in these two cases. Robert Moore, Deputy Head, Employment Section, Civil Rights Division, U.S. Department of Justice, telephone interview, Sept. 17, 1975. Barry Goldstein, of the NAACP Legal Defense and Educational Fund, stated that enforcement of court decrees has been a major problem in the building trades union cases in which his organization has been involved. He also stated that it is necessary to commit major staff resources to ensuring that the provisions of court decrees are actually enforced. Barry Goldstein, Associate Counsel, NAACP Legal Defense and Educational Fund, telephone interview, Sept. 18, 1975. William L. Robinson, Equal Employment Opportunity Commission, stated that generally court decrees against unions have not been adequately enforced. In part, the reasons for nonenforcement in these two mammoth cases Local 86, Ironworkers and Local 3, Operating Engineers were the same as the reasons for poor enforcement in smaller cases, but special factors--the sizes of the unions, the complexity of the decrees and of the enforcement mechanism--led to a more massive lack of compliance. Beginning about 1971, plaintiffs' attorneys began to recognize that cases against unions could not be regarded as settled when they were won and they began to ask courts for automatic triggering devices in the enforcement of goals, detailed monitoring by special monitors including periodic reports to plaintiffs' attorneys and to courts, and for some devolution of the courts' monitoring authority. The new types of decrees that have resulted from these efforts are too recent to permit an assessment of their effectiveness. William L. Robinson, Associate General Counsel, Litigation Division, Equal Employment Opportunity Commission, telephone interview, Sept. 16, 1975.

The deterrent effect on discriminators or potential discriminators outside the scope of a particular suit remains to be considered. Imposition of sanctions against a substantial number of referral unions across the country might deter other referral unions from continuing exclusionary practices. However difficult it may be to examine the indirect deterrent effects, it is conceivable that the effects have been great. But these remedies, even when combined with the effects of the OFCC areawide plans, have not been adequate to provide relief to the aggrieved parties. Union discrimination continues in the areas with court-ordered remedies as well as elsewhere.

THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Act (NLRA) established the right of workers to organize and set the procedures for collective bargaining between employers and unions. The National Labor Relations Board (NLRB) implements the Act. Court decisions have established the principle that unions must represent all members fairly without regard to racial or other arbitrary discrimination; this principle is referred to as the "duty of fair representation." The landmark case in this regard is Steele v. Louisville and Nashville R.R. Co.[41]

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41. 323 U.S. 192 (1944).

Steele held that a union which gains statutory prerogatives has a statutory duty to represent minority union and nonunion employees without hostile discrimination. One privilege that a union acquires through certification by the NLRB is to represent all employees in a bargaining unit. The "fair representation" principle enunciated in the Steele suit, which was brought under the Railway Labor Act, has been applied to the NLRA.[42] The opportunities presented by this principle for redressing discriminatory union practices have not been realized in the practices of the NLRB.

The sanctions at the disposal of the NLRB offer potentially effective remedies for victims of discrimination. These include issuance of cease-and-desist orders with affirmative action requirements that can be judicially enforced[43] and denial to unions of the NLRB certification needed for exclusive representation of a bargaining unit.[44] Furthermore, the NLRB is an effective, well-organized agency with a high complaint-disposition rate; it resolves, without formal litigation, 90 percent of an approximate yearly intake of

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42. Larus and Brothers Co., Inc., 62 NLRB 1075 (1945); Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); and Syres v. Local 23, Oil Workers, 350 U.S. 892 (1955), rev'g. per curiam, 223 F.2d 739 (5th Cir. 1955).

Subsequent to the Steele decision, a number of legal questions have arisen regarding the applicability of the NLRA to discrimination on grounds of race, sex, and national origin, and other arbitrary categories. Eighteen years after Steele the NLRB held that a union's breach of the duty of fair representation also constitutes an unfair labor practice in violation of 29 U.S.C. §158(b)(1)(A) and §158(b)(2). Miranda Fuel Co., Inc. 140 NLRB 181 (1962), enforcement denied, 326 F.2d 172 (2nd Cir. 1963). Although enforcement was denied in Miranda, the Board has adhered to this interpretation. E.g., Local No. 1, Metal Workers, 147 N.L.R.B. 1573 (1964). It has been held, however, that the Board's assumption of jurisdiction over such practices does not preempt the jurisdiction of the courts in suits for judicial relief. Vaca v. Sipes, 386 U.S. 171, 176-83 (1967). Further, the NLRB's determination of discrimination issues does not conflict with the EEOC's jurisdiction under Title VII of the 1964 Civil Rights Act. Local 12, Rubber Workers v. NLRB, 368 F. 2d 12 (5th Cir. 1966), cert. denied, 389 U.S. 837 (1967). Remedial machinery of the NLRA cannot be available to a union that is unwilling to correct past practices of racial discrimination. NLRB v. Mansion House, 473 F.2d 471 (8th Cir. 1973).

43. National Labor Relations Act, 29 U.S.C. §160(c)(1970).

44. Ibid. §159(c)(1970).

40,000 cases.[45]

However, NLRB rarely applies these sanctions in cases of sex, race, or national origin discrimination. Indeed, the Board has failed to develop systematic procedures for ensuring that unions fulfill their duty of fair representation and for the application of sanctions against unions that violate this duty. The NLRB's restraint in the application of sanctions and its failure to clarify basic procedures are illustrated in two recent, critical cases, Bekins Moving and Storage Co., Inc.[46] and Bell and Howell Co.[47]

In Bekins the employer requested that the union be disqualified from seeking a representation election as certified bargaining agent on grounds that the union discriminated on the basis of sex and against persons who were Spanish surnamed. By a vote of 3 to 2, the Board decided that the representation election should take place but that, if the union were to win and the accusations of discrimination were substantiated, the Board would refuse to certify the union.

The two dissenting Board members argued that the Board has no power to withhold certification of a union that has won a fairly conducted representation election.[48] The dissenting members would

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45. DeSio and Higgins, "The Management and Control of Case Handling, Office of the General Counsel, NLRB," 2 BUREAUCRAT 385, 386 (1974).

46. Bekins Moving and Storage Co., Inc. 211 N.L.R.B. No. 7 (1974).

47. Bell and Howell Co., 213 N.L.R.B. No. 79 (1974).

48. 211 N.L.R.B. No. 7 at 30 (1974). The NLRB, in comments on a draft of this report, further amplifies the position of Members Fanning and Penello. The comments present the argument that Section 9(c) of the National Labor Relations Act, which requires the Board to conduct elections when it finds there is a question concerning representation, also requires the Board to certify the union that has won the election if there are no overriding constitutional considerations. There is no constitutional bar to certification because certification cannot be considered as governmental ratification or approval of any discriminatory practices engaged in by the union winning an election. Rather, certifying the union places a statutory responsibility on the union to represent all employees fairly and, thus, is the first step in eliminating discrimination. NLRB comments on this publication in draft, forwarded under cover of a letter from John C. Truesdale, Executive Secretary, National Labor Relations Board, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (USCCR), on September 23, 1975 (hereafter cited as NLRB Comments).

be willing to decertify a union that had already been certified, if it were shown to have discriminated.[49]

One of the three Board members who voted with the majority in Bekins was Chairman Edward Miller, whose term expired December 1974.[50] A second of the three was former Member Ralph Kennedy, who wrote a separate concurring opinion, stating the view that the Board is constitutionally obligated to withhold certification from a union that discriminates on the basis of race, alienage, and national origin, but that sex discrimination is not adequate ground for the denial of certification.[51]

The narrow vote of the Board in Bekins demonstrated the existence of a narrow and possibly temporary majority in favor of an effective remedy against unions in cases of discrimination on grounds of national origin, race, and alienage, but the absence of a majority in cases of sex discrimination.

In Bell and Howell[52] the employer filed a motion to disqualify the union from certification because it engaged in sex discrimination. The Board voted 3 to 2 against the motion. Board member Kennedy voted with the two members who had dissented in Bekins, repeating his view that classifications based on sex are not inherently suspect.[53]

The NLRB's position in these questions can best be understood in the light of the traditions of the Board and the beliefs of its current members. Former Chairman Miller was disappointed that the Board must be involved in discrimination cases, which divert it from its "usual functions."

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49. 211 N.L.R.B. No. 7 at 32 (1974).

50. Betty Southard Murphy, the first woman NLRB member, became Chairman of the NLRB in February 1975.

51. 211 N.L.R.B. No. 7 at 21 (1974). Member Kennedy, who retired from the NLRB in July 1975, cited the U.S. Supreme Court's decision regarding classifications according to sex in Kahn v. Shevin, 416 U.S. 351 (1974). The court refused to find that sex is an inherently suspect classification, requiring strict judicial scrutiny. This Commission is on record as favoring the passage of the Equal Rights Amendment to the Constitution, the need for which is illustrated by this situation. U.S. Commission on Civil Rights, "Statement of U.S. Commission on Civil Rights on the Equal Rights Amendment, June 1973" (July 1973).

52. 213 N.L.R.B. No. 79 (1974).

53. 213 N.L.R.B. No. 79 at 6 (1974).

> It would have been much easier for this Board if the Congress, when it enacted and when it amended Title 7, had vested in one public prosecutor and in one single judiciary the exclusive jurisdiction to remedy discriminatory actions by both unions and employers. We could then have proceeded with our usual functions, and have administered our Act without permitting such issues to be raised before us, safe in the knowledge they could and would be raised by an expert public prosecutor and settled in an expert forum. Not only did that not occur, but there is not even available to us, as a practical matter, the option of temporarily deferring such issues to an agency with greater expertise than we.[54]

Member Howard Jenkins has noted that the NLRB has never "volunteered" an answer to race and sex discrimination questions and has been forced to consider such questions when they have arisen in the context of an unfair labor practice.[55] These comments are especially revealing in view of the fact that Miller and Jenkins were the only two members to oppose issuing certification, under certain circumstances, in both the Bekins and Bell and Howell cases.[56]

In 1974, in their Bekins opinion, Miller and Jenkins raised the question whether the Board should engage in substantive and procedural rulemaking on issues of race, national origin, and sex discrimination. In answering this question negatively, they stated that Board members have insufficient experience in "this newly developing area of the law."[57]

As of 1974, however, Title VII of the 1964 Civil Rights Act was 10 years old, and the NLRB itself had been involved in cases concerning the duty of fair representation for almost 30 years.[58] Miller and Jenkins have both noted that in 1967, the Supreme Court

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54. Address by Edward Miller, April 11, 1974, Kansas City Bar Association Seminar, in BNA Construction Labor Report, No. 967, F-5 (Apr. 24, 1974).

55. Bureau of National Affairs, Fair Employment Practices (Nov. 28, 1974), p. 4.

56. NLRB Comments states that the Board has granted broader remedies in addition to the usual cease and desist order when it has found a violation based on racial discrimination.

57. 211 N.L.R.B. No. 7 at 11 (1974).

58. Larus and Brothers Co., Inc., 62 N.L.R.B. 1075 (1945).

of the United States "made reference to the 'NLRB's tardy assumption of jurisdiction in these /duty of fair representation/cases.'"[59]

When the law has such a long history, it is difficult to accept an argument against rulemaking that rests on inexperience in "this newly developing area of the law."[60]

JUDICIAL ENFORCEMENT OF EXECUTIVE ORDER NO. 11246

In a 1974 California Federal district court case, Legal Aid Society of Alameda County v. Brennan,[61] plaintiffs obtained the judicial enforcement of Executive Order No. 11246. The Legal Aid Society and the National Association for the Advancement of Colored People, representing women and minorities, brought suit to compel the Federal Government to enforce the affirmative and nondiscrimination requirements imposed on Federal contractors by the Executive order.

Plaintiffs alleged that the Secretaries of Labor and Agriculture had approved 29 affirmative action plans (AAP's) for Federal contractors in Alameda County, California, that did not comply with the applicable Federal regulations. Plaintiffs prevailed and the court ordered the Secretary of Agriculture and his subordinates to rescind the approval of the AAP's found to be deficient. Additionally, the court ordered the Secretary of Agriculture to submit copies and supporting data of all new AAP's approved for Alameda County.

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59. See Miller Address, Apr. 11, 1974, Kansas City Bar Association Seminar, in BNA Construction Labor Report (April 24, 1974), p. F-5; and Jenkins' dissent in The Emporium, 192 N.L.R.B. 177 (1971). The Supreme Court quote is from Vaca v. Sipes, 386 U.S. 171.

60. The NLRB states that Chairman Miller and Member Jenkins consider that rulemaking, if appropriate, should be engaged in only after the Board, with the support of the courts, has committed itself to finding many or all forms of discrimination to violate the Act. Further, until the Board has gained experience in understanding the "types, the scope and the effects of discrimination," rulemaking would probably be ineffective. NLRB Comments. USCCR maintains, nonetheless, that the NLRB has had sufficient time to examine this "newly developing area of law."

61. Legal Aid Society of Alameda County v. Brennan, 381 F. Supp. 125 (N.D. Cal. 1974).

Although Legal Aid Society of Alameda County v. Brennan did not involve construction contractors, a similar approach has been taken in a recent suit brought under Executive Order No. 11246 and other statutes involving the New York City voluntary plan.[62] These developments may mean that enforcement of the Executive order will not be left to the whim of the Federal Government and that an effective judicial basis for relief has been established.

CONCLUSION

Courts have recently fashioned imaginative judicial remedies for discrimination by referral unions. These remedies have addressed all vital aspects of union activity, from recruitment of apprentices through membership to referral. The remedies have ordered changes in the discriminatory institutional practices of referral unions; they have not been confined to superficial matters.

Yet two of the most comprehensive of these remedies, Local 86, Ironworkers and Local 3, Operating Engineers, have produced results that fall short of the goals of the court orders. Furthermore, none of these recent comprehensive remedies has addressed the absence of women in referral unions.

The plight of individual victims of discrimination is not resolved by quasijudicial or judicial proceedings. The EEOC has not devised means of dealing with its large backlog of cases, while the NLRB--which does handle its caseload effectively--is clearly unwilling to become involved in race, national origin, and sex discrimination in a major way. Moreover, judicial proceedings are generally unavailable to the great majority of women and minorities. These proceedings are too complicated, too expensive, and too lengthy to be generally effective and available.

For these reasons, judicial proceedings can at best be a useful supplement to other vigorous and effective measures. But the OFCC area-wide plans and the apprenticeship outreach programs do not, in their present forms, constitute such effective measures.

Hence as of this date, there is no generally available, effective means of correcting discriminatory practices in referral unions.

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62. Perez v. Brennan, 384 F. Supp. 800 (S.D.N.Y. 1974).

FINDINGS

The record of this report demonstrates that because of the inherent shortcomings of the apprenticeship outreach approach, the structural inadequacies of the voluntary and imposed plans, the various limitations of the judicial process and the failure of any Government agency to adopt an enforcement mechanism for equal employment in the surface transportation industry, there is no effective means of correcting discriminatory practices in building trades and trucking unions.

Membership of Minorities and Women in Referral Unions

1. Among referral unions[1] generally, the greater the advantages of working in a particular occupation, the smaller are the proportions of women and minority group men in the corresponding membership category. Conversely, the fewer the advantages, the greater are the proportions of women and minority men.

2. Among all union members, as among employees generally, women and minority group men constitute disproportionately small numbers in the highest-paid occupations and disproportionately large numbers in the lowest-paid occupations.

3. Within occupational categories, the median earnings of white males are higher than the median earnings of women and minority men. These disparities in median earnings exist for union members as well as nonmembers, but they are slightly smaller among union members.

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1. Referral unions, unlike other unions, refer individuals to employers for hiring and frequently influence or determine the selection of individuals for membership or apprenticeship. In these ways, they directly influence entry into a job or trade. See chaps. 2 and 4.

4. Unionized construction craftworkers and unionized drivers and delivery workers are two occupational categories that have (a) median earnings higher than median earnings for all union members, (b) unusually high median earnings for union members compared to nonmembers, and (c) strong unions that generally play a major role, formal or informal, in referral. With only one exception, the proportions of minorities and women in these two occupational categories are below the proportions these same groups constitute of all union members. Hence, minorities and women receive a disproportionately small share of the benefits that the strong unions in these two occupational groups obtain for their members.

5. The highest-paid categories of workers in the building trades and among drivers are journeymen working in the construction industry and over-the-road drivers, respectively. Minority and female union members constitute especially small percentages of these two categories compared with their proportions of the general membership of the building trades unions and the International Brotherhood of Teamsters, respectively.

6. Among 15 building trades internationals, the 5 internationals with the highest percentages of minority workers in 1972 were in the five lowest positions as far as wages were concerned.

7. The record shows that many building trades locals and Teamsters locals have few, if any, minority or female members. For example:

a. Spanish origin persons constituted from zero members to less than 1 percent of all members in 77 percent of all reporting locals in six "mechanical trades" in 1969, according to EEOC statistics.

b. Among <u>all</u> referral locals of six international unions that reported 1972 membership to EEOC, there was either one woman or none in the membership.

c. In several areas with large minority populations, large Teamsters locals had no women and no minorities among their members in 1971.

8. The percentage of union members who are women is substantially below the percentage of women in the labor force. In recent years, the percentage of female workers who are union members has actually declined, while the percentage of male workers who are union members has increased.

9. In 1900, black union members constituted somewhere between zero and 1.6 percent of building trades unions' total membership. By 1972, the percentage of blacks was approximately 3.6 percent.

10. In many large international unions, the proportion of women and minority group men in the higher policymaking positions is either zero or far below their respective proportions in union membership.

Discriminatory Union Practices

11. Discrimination by unions is a major reason for the low membership of minorities and women in the building trades unions. In the building trades, unions have a decisive influence over access to jobs and job security in the highly-paid union sector. This influence is exercised through rules and practices relating to apprenticeship and other training programs, work-referral systems, and union membership.

12. The record in this report clearly demonstrates that deliberate and overt employment discrimination by building trades unions continues. But the effect of overt discrimination is probably less now than the

effect of institutional discrimination, exercised through union practices related to membership rules, recruitment methods, limitations on size of membership, eligibility for referral, interviews, and apprenticeship requirements, including age limitations and educational and experience requirements.

13. Statistical studies support the proposition that union discrimination exists and has a major negative impact on female and minority workers. These studies have reached the following conclusions:

(a) relative wage rates of construction trades vary with the racial composition of different trades so as to affect adversely minority workers;

(b) relatively low membership of white women in all unions and of black men in construction unions have caused decreased earnings of 2 percent and 5 percent for these two groups, respectively, relative to earnings of white men; and

(c) despite evidence of racial discrimination by construction and nonconstruction unions, black wages (men and women considered together) might be 2 percent higher, relative to white wages, than they would be in the absence of unions.

14. The entrance of women into the building trades through apprenticeship programs has been adversely affected by such factors as age, experience and oral interview requirements.

15. The Teamsters have less influence on hiring, referral, and related practices than the building trades unions. Teamsters locals have participated, however, in the exclusion of minorities from over-the-road driving by (a) negotiation of seniority and transfer provisions that inhibit minorities from entering these positions,

(b) refusal of white drivers to ride with minority drivers, and (c) union refusal to ensure equal opportunity in referrals to road-driving positions.

The Outreach Programs

16. The Department of Labor, in its administration of the apprenticeship outreach program (AOP), has chosen to focus on increasing the number of minority apprentices rather than on increasing the number of minority union journeymen.

17. The Department of Labor has failed to require AOP offices to collect information that would permit an assessment of the success of AOP in producing skilled union journeymen, although AOP has succeeded in increasing the percentage of minority apprentices in federally-serviced building trades apprenticeship programs from 6.9 percent in 1967 to 15.1 percent in 1972. The Department has placed very little emphasis on followup of AOP indentures once they are in union apprenticeship programs: Followup is generally performed only during the first 6 months of training. Further, statistics collected by the Bureau of Apprenticeship and Training do not indicate the race or ethnicity and sex of apprentices who complete training and become union journeymen.[2] Hence, the progress, if any, toward producing skilled journeymen cannot be measured. Information available from several individual programs (information on dropouts and on the number of journeymen completing training) indicates rather strongly that little, if any, progress has been made toward increasing the percentage of union journeymen who are minorities.

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2. In July 1975, when the analysis on which this report is based was largely complete, BAT began to make available breakdowns of apprentices completing training by sex and by race or ethnicity. Data is still unavailable on the number of apprentices who eventually became union journeymen and the breakdown by race or ethnicity of apprenticeship completions is not crossclassified by sex.

18. Some AOP offices have not shown an interest in the recruitment of women for apprenticeship programs. The establishment of two offices devoted primarily to the enrollment of women in apprenticeship, and the hiring of women in 1974 as recruiters in 13 outreach offices previously devoted almost exclusively to minority men, are promising steps but of insufficient magnitude to meet the need for recruitment of women.

19. Some AOP offices have also devoted too little attention to the recruitment of Spanish origin, Asian American, and Native American men.

20. The Journeyman Outreach and Training Program (JOTP) places minority workers as trainees and advanced trainees--who receive the same type of training as apprentices--and also as journeymen. Although the overall purpose of JOTP is to obtain journeyman status for minority workers, the Department of Labor does not require that sponsors of JOTP programs focus on the ultimate achievement of journeyman status for those minorities placed as trainees and advanced trainees.

21. The Department of Labor has failed to maintain an information system that would permit an assessment of the success of JOTP in producing skilled union journeymen. The Department does not compile records either on the number of JOTP recruits who were placed as journeymen or on the number of trainees and advanced trainees who eventually became journeymen.

22. Although Department of Labor regulations prohibit apprenticeship committees from discriminating on grounds of race, color, religion, national origin, or sex,[3] they fail to require affirmative action

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3. Although these regulations are administered separately from the outreach programs, they have a similar purpose.

plans for the enrollment of women in apprenticeship as they do for minorities. Since they are not legally obligated to develop such plans for women, apprenticeship committees have not cooperated with women's outreach programs to increase employment opportunities for women in construction.

23. A high proportion--probably more than one-half--of new white male journeymen enter building trades unions without serving an apprenticeship or enrolling in other training programs. Because of discrimination this entry route is effectively closed to minorities and women.

Voluntary and Imposed Construction Compliance Plans

24. The Office of Federal Contract Compliance (OFCC) has not required Federal and federally-assisted construction contractors to engage in affirmative action with respect to the employment of women. Neither the voluntary (hometown) construction compliance plans nor the imposed plans require affirmative action regarding the employment of women.

25. Strong community involvement in the operation of some voluntary plans has proved to be a viable means for some minority communities to articulate their views on increasing employment opportunities for victims of discrimination.

26. Only 70 geographic areas have either an imposed or a voluntary plan. The Federal Government does not require affirmative action plans of construction contractors in the rest of the country.

27. A major weakness of the OFCC voluntary plan program is the absence of an effective enforcement mechanism. Unions, contractors, and local governments have not been subjected to effective enforcement action by OFCC when they fail to negotiate, sign, or implement adequate plans.

28. Although the explicit goals of voluntary plans relate to minority employment rather than union membership, OFCC expected the achievement of the employment goals to lead to increased membership. However, OFCC audits of 40 voluntary plans failed to supply information either on the change in minority union membership or on minority employment. For example, many persons listed as placement credits[4] may have worked for little more than 30 days in the year covered. Furthermore, OFCC failed to reduce its audit totals to account for minorities who had been in unions before the plan began but who had ceased to be union members.

29. Analysis of the 1973 imposed plan compliance checks indicates that the imposed plans' goals, which relate to employment rather than to union membership, did not place any significant pressure on contractors or unions to lower their barriers to minority workers or to increase minority union membership. In 32 out of 48 trades in five imposed-plan areas for which there were compliance checks in 1973, the statistics on minority employment could have been produced by the selective referral of minorities already in the unions before the plans began to the monitored projects.

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4. OFCC's term for minority workers who were placed on jobs and counted toward the goals of a voluntary plan. See chap. 7.

30. The data collection system used by OFCC is largely manual, rather than automated, and is poorly designed either for purposes of obtaining comprehensive reports from Federal contractors or for obtaining accurate base period or current figures on minority and female membership of unions. In particular, Optional Form 66 does not require a report on workers' sex or whether workers are union members.

31. The size of the OFCC staff and the data collection system it uses are inadequate to the task of monitoring construction industry compliance with Executive Order No. 11246. The OFCC staff engaged in construction industry compliance is faced with a huge and complex task: the monitoring of hundreds of daily personnel decisions, made informally, in dozens of scattered cities. Given the magnitude of this task, the relatively small size of the OFCC staff, and the reliance on manual methods of recordkeeping, the staff cannot monitor the plans effectively. The task of securing compliance is further complicated by the time-consuming, multistage procedures that must be followed before the Department of Labor may apply its most effective sanctions, which are debarment of contractors and cancellation and termination of contracts.

32. EEOC's system for statistical reporting by referral unions (a) does not prevent nonreporting by locals; (b) does not prevent exaggeration of the number of minorities in the membership; (c) does not require differentiation among helpers, tenders, apprentices, and journeymen in the membership; and (d) does not require differentiation between construction and nonconstruction workers.

33. EEOC statistics overstate the minority percentage of union journeymen employed in construction. Information from 1972 EEO-3 forms shows that 9.3 percent of the members of locals of 15 skilled

building trades internationals were minorities. However, most, and probably all, of the factors listed in finding 32 cause overestimation of the minority percentage of union journeymen employed in construction. Purely suggestive corrections of the 9.3 percent figure, based partly on data obtained by Commission staff on field trips, and involving only three of the above factors, yield an estimate of 5.5- to 6.2-percent minority membership among journeyman union members employed in construction. The correct figure could well be less than 5.5 percent.

The Trucking Industry and Executive Order No. 11246

34. Affirmative action plans are currently not required of trucking firms or other surface transportation firms. The U.S. Postal Service, which monitors compliance of the trucking industry with Executive Order No. 11246, does not require written affirmative action plans of surface transportation firms. Under Revised Order No. 4, companies doing business with the Federal Government must submit affirmative action plans if they have contracts of at least $50,000; but individual bills of lading for shipment of goods rarely reach $50,000. Further, the Interstate Commerce Commission, which licenses and regulates rail and motor carriers, has failed to exercise its broad authority over its licensees to require that they eliminate discriminatory employment practices.

Judicial Remedies for Discrimination by Unions

35. Judicial remedies have produced limited results in the admission of minorities to referral unions. Although the deterrent effects of prospective civil actions against union officials might have been great, their direct effects have been curtailed by (a) limited accessibility of minorities to the courts owing to procedural obstacles and the potential expense involved, (b) the lengthy nature of court procedures, and (c) the limited number of suits and the relatively small number of parties that have been directly affected by most suits.

36. Although several recent court-ordered remedies for discrimination by construction unions have ordered fundamental changes in the unions' institutional practices, the goals and timetables for minority apprentices and union members have not been met.

The National Labor Relations Board

37. Recent decisions of the National Labor Relations Board (NLRB) show that NLRB exercises its jurisdiction regarding discrimination based on race, sex, and national origin within the narrowest possible limits. Hence, it has failed to become an effective instrument for implementing the national policy of ending employment discrimination, as expressed in the National Labor Relations Act, Title VII of the 1964 Civil Rights Act, Executive Order No. 11246, and other relevant statutes.

RECOMMENDATIONS

The Commission includes, by reference, its major recommendation in The Federal Civil Rights Enforcement Effort--1974 regarding a National Employment Rights Board:

> A National Employment Rights Board should be established which is vested with the authority for enforcing one Federal statute protecting citizens from employment discrimination on the basis of race, color, religion, sex, national origin, age, and handicapped status.[1]

Pending the creation of the National Employment Rights Board, the Commission recommends immediate adoption of the following fundamental changes in existing Federal programs and laws relating to equal opportunity in referral unions. It further is anticipated that responsibility for administration of such changes, where appropriate, eventually will be assumed by the Board.

The Construction Industry and Executive Order No. 11246

1. The President should amend Executive Order No. 11246 to cover labor unions with which Federal construction contractors have collective-bargaining agreements.[2]

Building trades unions typically play the major role in training, referral, and granting union membership in the unionized portion of the construction industry. Yet, Executive Order No. 11246

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1. U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V. To Eliminate Employment Discrimination (1975), p. 649.

2. In these recommendations, the term "Federal contracts" is used to refer to contracts where the Federal Government is the contractor as well as contracts with State and local bodies, where the contracts involve Federal financial assistance. Similarly, the term "Federal contractors" should also be understood to include subcontractors on Federal and federally-assisted contracts.

attempts to obtain compliance only from contractors. The Executive order should be extended to unions, usually the stronger party.

2. The Office of Federal Contract Compliance (OFCC) should terminate voluntary and imposed plans[3] and require:

a. Federal contractors to file affirmative action plans for the employment of minorities and women,

b. Unions that have collective-bargaining agreements with Federal contractors to file affirmative action plans for the admission of minorities and women to union membership, and

c. Contractors bidding on Federal construction contracts and unions that have collective-bargaining agreements with Federal contractors to have OFCC-approved affirmative action plans at the time bids are submitted.

Adoption of this recommendation would eliminate major deficiencies in the current OFCC programs by:

a. Placing specific affirmative action obligations on unions.

b. Imposing affirmative action obligations on individual contractors rather than on contractors' associations.

c. Covering projects located outside of voluntary and imposed plan areas.

d. Eliminating the incentive to selectively refer minorities to federally-monitored worksites.

e. Establishing affirmative action obligations for the admission of women to the construction industry.

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3. The U.S. Commission on Civil Rights is already on record as favoring the termination of the imposed and voluntary plans and the extension of the requirements of Revised Order No. 4 to construction contractors. U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V. To Eliminate Employment Discrimination (1975), pp. 664-65. The present recommendation extends similar requirements to construction unions.

Contractors should be expected to hire in conformity with their affirmative action plans, without regard to union cooperation or conflict between such plans and obligations under collective-bargaining agreements. Similarly, unions should be expected to pursue their membership goals regardless of the extent to which contractors cooperate.

3. OFCC should require Federal contractors to include in their affirmative action plans separate goals and timetables for each project, public and private, as well as a summation of goals and timetables for all projects.

This recommendation would facilitate more effective OFCC monitoring by:

a. Enabling a monitoring official in a given locale to determine whether a contractor is meeting its affirmative action obligations on projects in that locale and

b. Permitting a contractor who fails to meet its obligations on projects in a given locale to demonstrate that on all projects considered together goals and timetables are being met, if such is the case.

4. OFCC should require that contractors and unions set separate goals and timetables for:

a. Minorities (blacks, persons of Spanish origin, Asian Americans, and Native Americans), crossclassified by sex, and for white women.

b. Journeymen, apprentices, and all other employees (in the case of contractors) and journeymen, apprentices, and all other union members (in the case of unions).

Requiring separate goals and timetables for each race/sex group will better ensure that no group represented in the local work force is overlooked or excluded through such practices as the double-counting of minority women as women and minorities. Requiring separate goals and timetables for journeymen, apprentices and others will better ensure that contractors and unions do not meet goals and timetables primarily through the hiring or admission of apprentices, helpers, and trainees.

5. OFCC should declare contractors ineligible to bid on Federal construction contracts if unions associated with such contractors have failed to reach their membership goals and cannot demonstrate having exhausted all reasonable means of doing so.

Currently, contractors may be declared ineligible to hold Federal contracts, under section 209a (6) of Executive Order No. 11246, if they fail to comply with the Executive order. Where a union fails to reach its goals, and construction contractors retain their collective-bargaining agreements with the union, OFCC should declare the contractors ineligible to bid on Federal contracts. Where unions fail to take affirmative steps to ensure equal employment opportunity within the meaning of the Executive order, the Government should refrain from doing business with employers contracting with such unions.

The requirements of this recommendation supplement those of Recommendation 2, by specifying which contractors are eligible to bid, linking eligibility to the equal opportunity record of unions with which contractors are associated.

Monitoring Construction Industry Compliance with Executive Order No. 11246

6. The Equal Employment Opportunity Commission (EEOC) should modify its Local Union Report EEO-3 reporting requirements for all referral locals to provide that:

a. Unions keep tabulations of their memberships by race or ethnicity, cross-classified by sex.

b. EEO-3 reports show separately the sex and race or ethnicity of (i) apprentices; (ii) journeymen, separated by referral categories (A, B, C, etc.) or different pay scales; (iii) helpers, tenders, trainees, and others.

c. Union members (and nonmembers referred to jobs by the local or otherwise related to the local) be divided into those working in construction, those working in other industries, and those

the contractor's projects. The form should also indicate the race or ethnicity, cross-classified by sex, of each type of worker reported (union and nonunion journeyman, apprentice, helper, and trainee). The computer system should contain information from Optional Form 66, Local Union Report EEO-3, labor market statistics specified in Revised Order No. 4 as necessary for assessing the acceptability of affirmative action plans (e.g., the availability of workers having particular skills) and key sections of contractors' and unions' affirmative action plans.

Much of the information that could be provided by a computer storage and retrieval system is not readily available to Federal officials charged with approving and monitoring compliance with Executive Order No. 11246. In particular, officials of a given agency do not have information on a given contractor's employment of minorities and women on projects monitored by other Federal agencies. Officials are, therefore, unable to assess the overall compliance of contractors. While some of this information is available in libraries, other Government agencies, and elsewhere, the time required to obtain it is so great as to divert officials from other essential compliance responsibilities. If officials had easy access to this information, they could more effectively discharge their compliance responsibilities. This recommendation would also require, for the first time, that Optional Form 66 show a worker's sex and whether workers are union members.

8. The Federal Bureau of Apprenticeship and Training (BAT) should require all apprenticeship programs to submit yearly statistics on the race or ethnicity, cross-classified by sex, of persons who have completed apprenticeship training and persons who, within 6 months after completing apprenticeship training, become journeymen and union members.

Until 1975, BAT statistics on apprenticeship programs covered only the race or ethnicity and sex of apprentices in training. Progress toward the provision of equal employment opportunity through apprenticeship training cannot be readily assessed without knowing the numbers of minority and female apprentices who actually complete apprenticeship and become journeymen and union members.[4]

9. The President, pending the creation of the National Employment Rights Board, should amend Executive Order No. 11246 so as to transfer the Federal contract compliance responsibilities of the Secretary of Labor to EEOC.

This Commission has repeatedly found that equal employment opportunity could be implemented more effectively if most responsibilities were lodged in a single independent agency. It recommended in 1971 transfer of OFCC's responsibilities to EEOC.[5]

OFCC, as a relatively minor component in the Department of Labor, has not been successful in securing sufficient staff, adequate support services including data-processing services, or support for prompt and effective use of available sanctions against contractors and unions failing to comply with the imposed and voluntary plans. EEOC's

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4. In July 1975, when the analysis on which this report is based was largely complete, BAT began to make available breakdowns of apprenticeship completions by sex and by race or ethnicity, but the race and ethnicity statistics are not crossclassified by sex. Further, BAT does not yet report on the number of apprentices who become union journeymen.

5. U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort: A Report of the United States Commission on Civil Rights, 1971, p. 359.

responsibilities, on the other hand, are focused solely on eliminating employment discrimination. In view of these considerations and the continuing need to unify compliance responsibilities, the 1971 recommendation retains its original merits and deserves the President's careful consideration.

Outreach Programs

10. The Department of Labor should define the overriding goal of the apprenticeship outreach and journeyman outreach programs as an increase in the number of minorities and women who are journeymen and union members. In order to determine if this goal is being achieved, monthly reports currently being submitted by outreach offices should be modified to provide information on minority and female apprentices who have dropped out of apprenticeship and on those who have become journeymen and union members.

Currently, greater emphasis is placed on the admission of minorities and women into apprenticeship and other training programs than on their completion of these programs. In fact, followup of minorities placed in apprenticeship programs is usually for only 6 months. The goal of increasing the number of minority and female journeymen and union members would require apprenticeship outreach and journeyman outreach programs to do followup and counseling throughout the training period, so as to increase the number of minorities and women who complete training programs.

The reports currently submitted by outreach offices do not include information on minority and female apprentices who have dropped out of apprenticeship programs; the number of apprentices and other trainees who have become journeymen and union members; or the racial or ethnic breakdown of men and women who are in programs, have dropped out, or have become journeymen. Such information is necessary for determining how successful these programs have been in increasing the number of minority and female journeymen and union members and for determining whether changes in the outreach programs are required.

11. The Department of Labor should establish more outreach programs for women and expand existing outreach programs, now geared to minority men, to provide for recruiting and tutoring women in cities where apprenticeship outreach programs for women are not established.

The outreach concept was not applied to women until the establishment of two outreach offices for women in 1971 and 1973. Other outreach offices were directed almost exclusively toward the recruitment of minority men, though in 1974 women were hired as recruiters in 13 of these offices. As a result, most outreach offices still are unprepared to recruit women or provide them with essential information and preapprenticeship training. The funding of additional outreach programs for women and the hiring of women as recruiters in existing outreach programs would be major steps toward increasing the number of women in the skilled construction trades and in unions.

Apprenticeship Regulations

12. The Department of Labor should revise its regulations prohibiting discrimination in apprenticeship to require apprenticeship committees to formulate affirmative action plans, with goals and timetables, for the enrollment of women in apprenticeship programs.

The current regulations prohibit discrimination in apprenticeship on grounds of race, color, religion, national origin, or sex, but fail to require affirmative action plans, with goals and timetables, for the enrollment of women. The entrance of women into the skilled construction trades has been hindered by apprenticeship committees' practices regarding recruitment, maximum age restrictions, interviews, and experience requirements. Revised regulations are required to eliminate the adverse effects of such practices on women interested in apprenticeship.

Direct Admission to Unions

13. Based on the evidence of union discrimination presented in this report, and on any further investigation of its own, EEOC should issue national guidelines covering the building trades for the certification of minorities and women as journeymen and apprentices and for admission to unions and apprenticeship programs respectively. Certification procedures under the guidelines should take effect in any county or SMSA where EEOC finds the proportion of minorities or women in building trades unions to be substantially below their representation in the labor force. Authority for determining certification should be vested in panels appointed by EEOC from representatives of building trades unions, contractors' associations, State employment agencies, and outreach offices.[6]

The disproportionately low representation of minority members in the highest-paying building trades unions and the small percentages of women in all building trades unions, the persistence of union practices that discriminate against minorities and women in admission to unions and apprenticeship programs, and the restricted access of minorities and women to direct admission, still a major channel to journeyman status and union membership for white men, demand an extraordinary remedy. Providing for increased direct admission of minorities and women to journeyman status, apprenticeship programs and union membership would be a significant step in minimizing the impact of discriminatory union practices upon the employment opportunities of women and minorities.

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6. This recommendation is adapted from a proposal presented by the Administrative Process Project of Rutgers Law School and the New Jersey Division on Civil Rights in their joint publication Enforcing Equality in Housing and Employment Through State Civil Rights Laws (Rutgers Law School: Newark, N.J., 1972), pp. 288-300.

The Trucking Industry

14. The Interstate Commerce Commission (ICC) should adopt rules providing for:

a. Its regulatees in the trucking industry to submit to the United States Postal Service affirmative action plans that meet the requirements of OFCC's Revised Order No. 4.

b. Its revokation of licenses of firms which the Postal Service determines have failed to meet their goals and timetables under these plans and have not demonstrated that they have exhausted all reasonable means of doing so.[7]

Currently, the United States Postal Service, the OFCC-designated monitoring agency for the surface transportation industry, does not require trucking companies to submit affirmative action plans; and the ICC, the major regulatory agency for rail and motor carriers, assumes no responsibility for equal employment opportunity. This recommendation would ensure that ICC levy sanctions based on the findings of the monitoring agency.

The National Labor Relations Board

15. The National Labor Relations Board (NLRB) should engage in substantive and procedural rulemaking regarding union discrimination on the basis of race, national origin, and sex. The rules should define, among other matters, standards the NLRB will apply in determining whether unions have discharged their duty of fair representation.

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7. This recommendation is adapted from a U.S. Commission on Civil Rights report, Federal Civil Rights Enforcement Effort--1974, vol. I. To Regulate in the Public Interest (1974) (see pp. 233-34.) However, the 1974 report recommended ICC itself develop compliance mechanisms, while this study proposes that an OFCC-designated agency, with an established compliance mechanism, undertake the enforcement responsibility.

Decisions of the NLRB in this area have an ad hoc character that has left all parties--unions, employers, and persons alleging discrimination--in a state of uncertainty as to their obligations and rights. Establishing standards governing such practices as admissions procedures, eligibility for referral, age limitations and educational requirements for apprenticeship would clarify union obligations and facilitate NLRB's use of its powers to certify and decertify unions and to issue cease-and-desist orders so as to hasten the end of employment discrimination.

APPENDIX A. SELECTION OF CITIES AND UNIONS FOR FIELD STUDIES

Field interviews were included in the Commission's study of minorites and women in unions for three purposes:

1. To permit Commission staff to study, on the local level, the structure and operation of building trades unions, other unions, and apprenticeship programs.

2. To study in depth the current record on minority membership in a select number of unions, especially in areas where voluntary, court-ordered, and imposed affirmative action programs exist; and to study the operation of these programs.

3. To ascertain community views on the extent of discrimination in building trades unions.

Field interviews were limited to three cities, because of limitations of time and budget. The choice of the three cities would have to satisfy the following conditions. At least one city would have to have a voluntary plan; one would have to have an imposed plan; and one would have to have a court-ordered remedy. (Because of the large number of apprenticeship outreach programs, it was assumed that at least one of the three cities would have such a program.) Three referral unions were to be studied, of which two would be in the building trades. Selection procedures were outlined in detail before the selections were made.

Random sampling procedures were used to select the cities and all the unions but one.

SELECTION OF CITIES

The selection procedures required that the three cities be selected from three different regions of the country and that a large, a medium-sized, and a small city would be selected.

To determine the cities in each of the three city size groups, a list of all Standard Metropolitan Statistical Areas (SMSA'S) of 250,000 or more was compiled. Excluding Philadelphia,[1] the 1970 census showed 124 SMSA's with more than 250,000 people. These SMSA's had a total population in 1970 of 117.1 million. The SMSA's were divided into three groups, largest, next largest, and smallest, such that the total population of each of the three groups of cities would be as close as possible to 39.0 million (one-third of 117.1 million).

The 48 States in the continental United States [2] were divided into three geographical areas: the Northeast, the West, and the South. (See table A-1.)

Each of the three SMSA size groups was matched with one of the three regions. Numbers were arbitrarily assigned to city size groups (No. 1 for the largest cities, No. 2 for medium-sized cities, and No. 3 for the small cities) and the three regions (No. 1 for the Northeast, No. 2 for the West, and No. 3 for the South).

A table of random numbers [3] was used so that the city sizes would be matched with the regions on a random basis. It was then decided that the last digit of the five-digit numbers selected would indicate the city size grouping for each of the geographical areas. The first number selected would indicate the city size for Region No. 1, the Northeast. The first number selected was 81263 in column 4, line 40. Because the last digit, three, corresponded with the number assigned the group of smaller cities, the field study site in the Northeast was to be a small city. Next the selection was made for a city size for Region No. 2, the West.

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1. Philadelphia was excluded because staff believed, at the time of the choice of cities in October 1973, that the imposed Philadelphia Plan was atypical of imposed plans. Information obtained subsequently indicated that it was not atypical except perhaps in the unusually great efforts devoted by OFCC to Philadelphia.

2. Budget constraints prohibited any consideration of field trips to Hawaii or Alaska.

3. Helen M. Walker and Joseph Lev, Statistical Inference (New York: Henry Holt, 1953), pp. 484-85.

Table A-1. THREE REGIONS DEFINED FOR SELECTION OF CITIES

1. Northeast:

Maine	Pennsylvania
New Hampshire	New Jersey
Vermont	Ohio
Massachusetts	Indiana
New York	Illinois
Connecticut	Michigan
Rhode Island	Wisconsin
	Minnesota

2. West:

California	Utah
Oregon	Arizona
Washington	New Mexico
Nevada	Colorado
Idaho	North Dakota
Montana	South Dakota
Wyoming	Nebraska
Kansas	Iowa
	Missouri

3. South:

Alabama	Texas	South Carolina
Georgia	Oklahoma	North Carolina
Florida	Arkansas	Virginia
Tennessee	Louisiana	West Virginia
Kentucky	Mississippi	Maryland
	Washington, D.C.	Delaware

Proceeding on in the list of random numbers, the first number ending in either 1 or 2 was 07391, column 4, line 45. The final digit, one, corresponded with the grouping of largest cities. Thus for the West region, a large city was selected. Through the process of elimination, Region No. 3, the South was matched with the remaining SMSA group No. 2, medium-sized cities. At the termination of this step in the selection process, it had been decided that the field study would focus on a small city in the Northeast, a large city in the West, and a medium-sized city in the South.

MINORITY POPULATION

The next step in the process of site selection involved compilation of minority population figures for the selected cities (e.g., in the West region the only two "large" SMSA's are San Francisco and Los Angeles, and minority population figures were needed for those two SMSA's). It had been decided that cities with at least an 8-percent black population and a 5-percent Spanish origin population would be chosen. The use of these minimum percentages would eliminate any possibility that the total absence or almost total absence of minorities from unions was due to a small minority population.

Western Region--Largest SMSA's

Two choices:

a. Los Angeles
   Black population 11%
   Spanish origin population 15%

b. San Francisco
   Black population 11%
   Spanish origin population 11%

Southern Region--Medium-Sized SMSA's

Three choices:

a. Houston
   Black population 19%
   Spanish origin population 9%

b. Dallas
   Black population 16%
   Spanish origin population 6%

c. Miami
   Black population 15%
   Spanish origin population 22%

Northeastern Region--Small SMSA's

Two choices:

a. Gary-Hammond-East Chicago, Ind.
   Black population 18%
   Spanish origin population 6%

b. Jersey City, N.J.
   Black population 10%
   Spanish origin population 15%

Affirmative Action Programs

Next, three types of affirmative action programs--the voluntary hometown plan, the imposed plan, and court-ordered plans--were identified in each of the seven cities. Information on the hometown and imposed plans was obtained from the Office of Federal Contract Compliance. Information on court-ordered remedies was obtained from the Justice Department.[4] At the time of the selection, the following was found:

Western Region Cities

1. Los Angeles
   No hometown plan
   No imposed plan
   Court-ordered remedy in the case against Los Angeles Steamfitters Local 250 and three locals of the Ironworkers Union.
2. San Francisco
   Imposed plan in San Francisco City and County. Tentative or final OFCC approval had been given to voluntary hometown plans covering all other counties in the San Francisco SMSA. Court-ordered remedy for Operating Engineers Local 3 and Structural Ironworkers, Local 377.

Southern Region Cities

1. Houston
   No plans
   No court-ordered remedies
2. Dallas
   No plans
   No court-ordered remedies

4. The Justice Department was able to provide information only on suits it had filed.

3. Miami

   Had hometown plan

   No court-ordered remedies

Northeastern Region Cities

1. Gary-Hammond-East Chicago, Ind.

   No plans

   No court-ordered remedies

2. Jersey City, N.J.

   No plans

   No court-ordered remedies

A decision had been made to review one hometown plan, one imposed plan, and one court-ordered plan. The only court-ordered remedies were found in the two western region cities. San Francisco was selected over Los Angeles because it was the only city with an imposed plan. Miami was the only case in which the central city of the SMSA has a hometown plan; further, if the hometown plan of one of the counties in the San Francisco-Oakland SMSA had been selected, all three of the case studies of affirmative action plans would have been in the western region. Accordingly, Miami was selected as the southern region city.

The choice between the two northeastern region cities had to be made randomly because neither city had any of the three major plans in question. Again the table of random numbers was used, proceeding from the final number used previously. Gary-Hammond-East Chicago was assigned the number 1 and Jersey City the number 2. The next number ending with a digit of either 1 or 2 was 29992 on column 4, line 46.[5] Thus, Jersey City was selected as the city for field review in the Northeast. Regarding the fourth major affirmative action program, the apprenticeship outreach program, the three selected SMSA's had four different programs.

Selection of Unions

The final procedure involved selection of the unions to be studied. A list was compiled of those craft unions with a membership of 75,000 or more. (See table A-2.) Ten unions were found to have a membership of

5. See Walker and Lev, Statistical Inference, pp. 484-85.

Table A-2. SIZE CLASSIFICATION OF INTERNATIONAL BUILDING TRADES UNIONS

Above 75,000 members	Below 75,000 members
Boilermakers	Asbestos Workers
Bricklayers	Elevator Constructors
Carpenters	Granite Cutters
Electrical Workers (IBEW)	Lathers
Iron Workers	Marble, Slate and Stone Polishers
Laborers	Plasterers
Operating Engineers	Roofers
Painters	
Plumbers	
Sheet Metal Workers	
Total: 10	Total: 7

Source: U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1971 (1972). These 17 internationals are the members of the Building and Construction Trades Department of the AFL-CIO.

over 75,000; however, the Laborers Union was excluded because the union has a large minority membership and contains many unskilled members. For the nine remaining unions, EEOC data on minority membership was examined. In order to review one union with a relatively large minority membership and one with very small minority membership, the nine unions were divided into two subgroups: those unions with at least a 10 percent minority membership and those with a minority membership under 10 percent (see table A-3).

Table A-3. UNIONS WITH MEMBERSHIP OF 75,000 OR MORE AND THEIR MINORITY MEMBERSHIP, 1971

Assigned No.	Union	Minority membershi %
1	Painters	12.6
2	Bricklayers	10.5
3	Boilermakers	10.0
4	Carpenters	9.4
5	Ironworkers	8.3
6	Operating Engineers	7.3
7	Sheet Metal Workers	6.7
8	Electrical Workers	5.6
9	Plumbers	3.8

Source: H. Hammerman, "Minorities in Construction Referral Unions--Revisited," Monthly Labor Review (May 1973), p. 44. The figures are from the EEOC Local Union Report EEO-3.

Again the random procedure was used. Numbers were assigned to the unions, so that the union with the largest percentage of minority members (the painters) was assigned the number 1 and the union with the smallest minority percentage (the plumbers) was assigned the number 9. First, a selection among the three unions with 10 percent or more minority membership was made. Proceeding down the list of random numbers, the first number to end with a digit of 1, 2, or 3 was 38391, column 4, line 50. Number 1 corresponded with the Painters Union and, thus, that union was selected as the union with more than 10-percent minority membership. The next number in the list that ended with a digit between 4 and 9 was 87637, column 4, line 53. Number 7 corresponded with the Sheet Metal Workers Union. Thus, for those unions with minority membership under 10 percent, the Sheet Metal Workers Union was selected.

The selection of a nonconstruction referral union was the final determination to be made. This was the only selection not made by random procedures. It was decided that selection of such a union would not be randomly made because some of the nonconstruction referral unions were in industries where employment was declining and because the minority membership in some of these referral unions was over 20 percent.

Information about referral processes, union membership, and possible discriminatory practices was collected for four large referral unions: the Printing and Graphic Communications Union, the International Typographical Union, the Hotel and Restaurant Employees Union, and the International Brotherhood of Teamsters. These unions were reviewed because a relatively high percentage of their members are in referral units, because they are all large unions (the ITU is the smallest, with 115,000 members), and because it was expected that locals of these unions would be found in many large cities.

The International Brotherhood of Teamsters was selected as the nonconstruction referral union for the following reasons:

1. It is the largest union in the country, with 1,855,000 members in 1972.[6]

2. The referral function is an important aspect of employee selection in the Teamsters. According to EEOC data, the number of members in Teamsters' referral units was 371,000 in 1972, while 216 locals engaged in referral.[7] Hence, 20 percent of its membership was in referral units and 28 percent of its locals[8] engaged in referral, if EEOC figures are accepted; but some referral locals which should submit membership data to EEOC fail to do so,[9] so the correct percentages are undoubtedly higher. The Teamsters' membership in referral units,

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6. U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1973 (1974), p. 112 (hereafter cited as Directory of National Unions, 1973). The Steelworkers, with 1,400,000 members, was second largest.

7. Local Union EEO-3 Reports.

8. There were 783 locals in 1972. Directory of National Unions, 1973, p. 54.

9. See chap. 3.

371,000, was the largest of all unions construction or nonconstruction.[10] The Teamsters' National Master Freight Agreement, covering over-the-road as well as local cartage employees, requires that employers must give Teamsters locals the right to refer employees, though employers are not required to hire those referred by the locals.[11]

3. Trucking is a growing industry, while the industries organized by some nonconstruction referral unions, such as printing, do not have bright prospects for employment growth.[12]

4. Wage rates are high in the unionized sector of the trucking industry. Median earnings of unionized drivers and delivery workers in 1970 were 8 percent above the median earnings of all union members and 42 percent above the median earnings of nonunion drivers and delivery workers.[13]

5. There were preliminary indications that discrimination was present and was a feature of widely-practiced selection and transfer procedures. Hence, there appeared to be a problem worthy of careful examination.

In summary, the three areas selected for field studies were: San Francisco-Oakland, Calif., SMSA; Miami, Fla., SMSA; and Jersey City, N.J., SMSA. The three unions selected for study in the field were: the International Brotherhood of Painters and Allied Trades; the Sheet Metal Workers International Association; and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers.

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10. Local Union EEO-3 Reports for 1972. The Carpenters had the second largest referral unit membership, with 366,000.

11. Art. 3, sec. 1(c). Teamsters' hiring halls are used predominantly, but not exclusively, for part-time and casual drivers. However, Teamsters locals do not refer exclusively through hiring halls: Teamsters officials also make informal referrals to employers. (See chap. 4, for a more extended examination of the Teamsters' role in hiring.) In the course of Commission staff field studies, interviews were held with officials from three Teamsters locals which had over-the-road and local drivers among their members. All three locals used their hiring halls for local drivers and at least one used its hiring hall for over-the-road drivers. Officials of all locals, in response to the question, "do some of your contracts require the employer to at least notify the local of permanent openings for road drivers? local drivers?" answered in the affirmative in regard to road as well as local drivers. One official cited the previsions of the National Master Freight Agreement in answering this question.

12. U.S., Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook 1974-75 Edition (1974); compare pp. 40-48, 727 with pp. 321-23, 760.

13. Table 3, chap. 2.

APPENDIX B. THE ACCURACY OF REPORTED MEMBERSHIP STATISTICS FOR ELEVEN LOCAL UNIONS, 1973

Chapter 3 notes that EEOC does not regularly attempt to verify the accuracy of statistics submitted by local union officials on EEO-3 forms. An analysis of statistics relating to a group of 11 locals suggests that the figures on EEO-3 forms might exceed the number of minority union members that would result from more careful calculations by around 5.0 percent to 13.9 percent. The 13.9 percent figure is probably the better estimate of the actual discrepancy.

Officials of four unions supplied Commission staff with the figures stated on their EEO-3 forms and also supplied alternative estimates; in all four cases, the EEO-3 forms had been submitted less than 2½ months before the dates of the alternative estimates. In one of the four instances, the differences in the two estimates easily could be explained by actual changes occurring in the local's membership between the date of the EEO-3 form and the date for which figures were supplied during the interview. (In this particular instance, the time span was 1 month and 4 days. The difference between the two sets of figures was an increase of male minority members, from 30 to 33, and a decrease in female members from 1 to 0.)

In the other three cases, it would be implausible to explain the differences in the statistics on the basis of actual changes in membership. In the case of one local, a union official angrily expressed his wish that a second official who was answering questions from a Commission staff interviewer report only the statistics given in an EEO-3 form submitted less than 2½ months earlier; but the second official persisted in answering the questions independently of the EEO-3 report and gave much lower figures for minority members. In the other two cases Commission staff also concluded that the alternative, lower, estimates supplied during the interviews were made rather carefully and were more reliable than EEO-3 statistics.

Table B-1 displays the results of a comparison of the statistics received during the interviews and those submitted to the EEOC. In one interview, the reported percentage of women in the local's membership was higher than that reported to the EEOC, while in a second interview the opposite occurred. This result suggests that the EEO-3 statistics may not be entirely reliable, but it does not indicate that the EEO-3 statistics of women in unions are necessarily overestimates. However, the percentages of minorities in the memberships, as reported during the interviews, were lower than EEO-3 statistics by 13.9 percent, 73.1 percent, and 5.3 percent for locals A, B, and C, respectively. The EEO-3 statistics are apparently biased upwards, if indeed union officials were being more careful and frank during the course of the interviews, as Commission staff believe.

In seven additional interviews, union officials answered Commission staff questions about membership statistics by reading numbers from recent EEO-3 reports or by giving Commission staff persons copies of EEO-3 reports. There is no way of judging whether this was because: (1) the officials were convinced that they had reported accurate answers on their EEO-3 reports and could give no better answers; (2) the officials did not wish to take the trouble to make a fresh estimate of the numbers of minorities and women among their members; or (3) officials simply wished to ensure the consistency of statistics submitted to EEOC and to Commission staff. While the offhand manner of the officials during some of the interviews suggested to Commission staff that the effort to save time is the most plausible explanation, there is no factual or logical ground on which a choice may be made between explanations 1, 2, or 3 above. Accordingly, all explanations must be entertained.

In summary, in four cases officials gave separate estimates on the

Table B-1. MINORITY MEMBERSHIP IN THREE LOCAL UNIONS: A COMPARISON OF STATISTICS FROM TWO DIFFERENT SOURCES

	Total	Minority	Women	Minority Women
Local Union A				
EEO-3 (11/20/73)				
Number	2,506	1,082	306	30
Percent	100.0	43.2	12.2	1.2
Interview				
Number	2,506	931	330	55
Percent	100.0	37.2	13.2	2.2
Local Union B				
EEO-3 Form; date: (precise date not given; but between 10/31/73 and 12/12/73)				
Number	588	15	0	
Percent	100.0	2.6	0	
Interview				
Number	588	4	0	
Percent	100.0	0.7	0	
Local Union C				
EEO-3 Form; date: 11/15/73				
Number	1,100	434	4	___a
Percent	100.0	39.5	0.4	39.5
Interview				
Number	1,054	394	3	___a
Percent	100.0	37.4	0.3	___

Note: Deviation of interview percentage of minority members from EEO-3 percentage

Local A: $\frac{43.2-37.2}{43.2} = 0.139$. Local B: $\frac{2.6-0.7}{2.6} = 0.731$. Local C: $\frac{39.5-37.4}{39.5} = 0.053$.

Sum: 0.923.
Mean deviation: 0.308.

a. Not available.

Source: The figures in the EEO-3 reports and alternative estimates were provided to Commission staff by local union officials.

interviews and on the EEO-3 forms, and in three of these four it was not plausible that the different estimates could have reflected actual changes in the membership.[1] The three percentages of deviations between

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1. The EEOC comments: "by no sampling or other method did your Commission demonstrate that the four locals were representative of the 2,600 locals in the building trades which have reported as referral unions on the EEO-3 form". EEOC Comments. Similarly, the Department of Labor comments: "the study's findings are inadequately supported by the Commission's validation methodology.... It is highly questionable that results obtained from just 3 locals can be used as the basis for a general finding that the EEOC reports overstate minority and women employment, or that there is a general practice of discrimination." Department of Labor Comments.

USCCR notes that it has made no claim that the four locals are representative of all building trades and Teamsters locals. USCCR does not have sufficient resources to interview a nation-wide sample of locals large enough to support a calculation of the degree of inaccuracy, within specific probability limits, of EEO-3 reports. USCCR also notes that it is the first agency to conduct any field studies of the reliability of the EEO-3 reports. Finally, USCCR considers that its field studies indicate that there is some question as to the accuracy of EEO-3 reports and that its results are suggestive of the degree of inaccuracy which might be found in a large-scale field survey.

The Department of Labor comments: "The problem /of the reliability of the results obtained from three locals/ is compounded by the use of interviews as the means of data validation.... the method used by the Commission's staff to validate the data (as described in Appendix B of The Report) was no more than an opinion survey of the unions officials who were interviewed. The report's findings and conclusions would have been better supported had the staff examined union records and interviewed workers." Department of Labor Comments.

USCCR notes that union officials who were interviewed by Commission staff were able to consult their own records, in precisely the same way that they could do before submitting EEO-3 forms. However, as suggested in the text, the union officials who gave alternate estimates of minority membership were apparently rather careful in arriving at their estimates. Hence, if the Commission staff's interviews can fairly be characterized as "opinion surveys" then the EEO-3 forms could also be considered to record the results of opinion surveys. It may also be noted that the EEO-3 instructions permit four methods of obtaining information on members' race, national origin, and sex and that three of these methods ("visual survey," "making a tally from personal knowledge," and "self-identification") are not necessarily based on a written record. See Instruction No. 14, Local Union Report EEO-3, reprinted in Bureau of National Affairs, Fair Employment Practices Manual (Washington, D.C.), sec. 441:414-15.

the alternative estimates--see table B-1--divided by four (for four locals) equals 23.1 percent. This is the best estimate possible if either explanation 2 or explanation 3 above is the correct one; i.e., that the other seven interviews, during which union officials read statistics from EEO-3 forms, do not reflect an attempt by officials to give the most accurate statistics possible, but instead represent other considerations. If explanation 1 is entertained--that the seven officials who read figures from their EEO-3 forms believed that they could not improve the accuracy of their estimates--then the sum of the three percentages in table B-1 should be divided by 11 (7 locals plus 4 locals) to yield an estimate of upward bias on the EEO-3 forms of 8.4 percent.[2] The 23.1-percent estimate of overestimation of minority membership is more probable than the 8.4-percent estimate because explanation 1 seems a less likely explanation for the submission of identical estimates to EEOC and to Commission staff than either explanation 2 or explanation 3.

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2. The EEOC comments that "your disaggregated statistics which gave each of the four locals equal weight were compared with nation-wide aggregates developed by EEOC from the EEO-3 statistics. The resultant figures increase the impact of locals with few minorities and tend to maximize the deflators. If your research had aggregated the small sample of locals in the same way the EEO-3 figures were aggregated it is probable that the deflators would have been substantially smaller." EEOC Comments.

USCCR notes that there would be no justification for aggregating the statistics from the four locals. Equal weight was given to the four locals because the intention of the calculation was to provide an estimate of the average percentage by which locals overestimate minority membership on EEO-3 forms. To arrive at such an estimate the appropriate unit of observation is the local, so each local should be given equal weight. If the statistics from the locals had been aggregated, as EEOC suggests, the effect would have been to assign greater weight to the larger locals (not necessarily the locals with most minorities) in the sample. But this would have been incorrect since there is no evidence that the larger locals in the sample are more representative of all reporting locals than smaller locals, with respect to the degree by which they overestimate minority membership. In particular, there is no evidence that the degree of overestimation varies by size of local. Further, the size distribution of the locals in the sample is not representative of the size distribution of all reporting locals, so even if the degree of overestimation does vary by size of local, the aggregation of the statistics in the sample would not yield an estimate of the overall discrepancy that could be applied to all reporting locals.

A further adjustment to these 8.4 percent and 23.1 percent estimates is required, because some locals report zero minority members. A local which reports to the EEOC that it has no minority members cannot be overestimating its actual minority membership. Hence, the corrections should be applied only to those locals which have some minority members.

H. Hammerman calculated that 40.0 percent of all building trades locals which submitted EEO-3 reports in 1969 reported no black members.[3] If this percentage is accepted as the percentage of locals with no minority members,[4] then 40 percent of the locals could not have overestimated their minority memberships. If the 8.4 percent and 23.1 percent corrections are applied to the remaining 60 percent of the locals, the weighted percentages are 5.0 percent and 13.9 percent respectively.[5]

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3. Herbert Hammerman, "Minority Workers in Construction Referral Unions," Monthly Labor Review, May 1972, p. 21.

4. The accuracy of the 40 percent figure is clearly open to question. It is probably an overestimate of the percentage of locals with no minority members in 1969: some of the locals with no black members undoubtedly had members of other minority groups. On the other hand, it includes an unspecified number of Laborers locals; this is inappppropriate from the viewpoint of the use made of the figures in ch. 3. Further, it would be more appropriate to adjust the 8.4 percent and 23.1 percent estimates for the percentage of all members in locals with no minority members than for the percentage of all locals with no minority members. No figures more recent than 1969 are available for the percentage of reporting locals with no black members.

5. The 5.0 percent figure is calculated as follows:
$0.6 \times 8.4\% + 0.4 \times 0.0\% = 5.0\%$.

APPENDIX C. MINORITY MEMBERSHIP IN MIAMI BUILDING TRADES UNIONS, 1971

Chapter 3 states that the statistics reported by union officials in Miami to the Office of Federal Contract Compliance (OFCC) required adjustments to arrive at estimates of the proportion of minority union members engaged in skilled construction work in Miami. The adjustments involved elimination of two locals consisting entirely of helpers and tenders and elimination of nonconstruction workers among the members of the Miami Carpenters' District Council. These adjustments resulted in an improved estimate, 7.2 percentage points lower than the unadjusted percentage of the proportion of minority workers engaged in skilled construction work. This appendix explains the adjustment.

Part A of table C-1 presents statistics compiled by the Office of Federal Contract Compliance on the membership of most major Miami building trades locals as of late 1971. (The only major omissions are Iron Workers and Electricians locals.) Part C indicates that minority workers apparently accounted for 25.4 percent of the membership of these locals. In part B, the membership of two locals, the Plasterers' Tenders and the Roofers' Kettlemen and Helpers are subtracted from the respective totals of minority membership and total membership. Members of Roofers' Kettlemen and Helpers Local 316, a predominantly black local, do less-skilled work than members of Roofers Local 57, a predominantly white Anglo local, and members of Plasterers' Tenders Local 635-a predominantly black local-do less-skilled work than members of Bricklayers Local 7, a predominantly white Anglo local, whose members the Plasterers' Tenders assist on the job.

Similarly, members of building trades locals who do not engage in construction work, but who are employed in factories, shops, or with companies that service existing facilities, should also be deducted from the totals in part A. A substantial proportion of the membership of each of the following Miami locals--and possibly others, from which Commission staff did not obtain full information--are engaged in such nonconstruction work: Carpenters' District Council, Elevator Constructors Local 71, and

Table C-1. MINORITY MEMBERSHIP IN MIAMI BUILDING TRADES UNIONS, 1971

Part A

Minority membership as reported to OFCC in 1971

Trade	Total Membership	Black	Persons of Spanish Origin	Native Americans	Asian Americans
Asbestos Workers' Local 60	170	1	9	3	0
Boilermakers Local 433	947	2	50	10	7
Bricklayers Local 7 (Masons and Plasterers)	1,750	200	100	0	0
Painters District Council	1,526	11	296	5	1
Carpenters' District Council	8,000	800	2,000	10	0
Elevator Constructors Local 71	357	0	12	1	0
Lathers Local 345	200	8	11	1	0
Marble Polishers Local 121	350	122	52	0	0
Operating Engineers Local 487	1,448	142	31	2	0
Pipefitters Local 725	1,207	4	20	0	2
Plasterers' Tenders Local 635	400	360	32	8	0
Plumbers Local 519	1,001	15	55		0
Roofers' Kettlemen and Helpers Local 316	160	140	2	0	0
Sheet Metal Workers Local 223	1,005	25	191	0	0
Roofers Local 57	195	13	3	4	0
A. Total	18,716	1,843	2,864	44	10

Table C-1. (continued)

Part B

Minority membership, adjusted

Membership	Total membership	Blacks	Persons of Spanish Origin	Native Americans	Asian Americans
B. Membership of Roofers' Kettlemen and Helpers L 316 and Plasterers' Tenders L 635	560	500	34	8	0
C. Carpenters' membership excluding carpenters in shop work 1973	6,025	463	1,035	19	14
D. Members in construction work, excluding Helpers and Tenders /row (part A) minus original figure on carpenters minus B plus C/	16,181	1,006	1,865	45	24

Part C

Minority membership as percentage of total, before and after adjustment

Membership	Total	Minority	Percentage Minority
E. Members, before adjustment for helpers, tenders, and carpenters in shop work	18,716	4,761	25.4
F. Membership after adjustment	16,181	2,940	18.2
G. Change produced by adjustment /E-F/	2,535	1,821	7.2

Pipefitters Local 725. Only in the case of the Carpenters' District Council were figures available on the number of minority union members who were engaged in nonconstruction work. In part B of table C-1, line C is substituted for the figures given in part A for the Carpenters' District Council. (The Carpenters' figures in part B are for 1973, while those in part A are for 1971. No statistics were available to Commission staff on the number of shop employees in the Carpenters in 1971.)

Part B of table C-1 adjusts the membership statistics of part A by eliminating the helper and tender categories and also by eliminating nonconstruction workers among the Carpenters' membership. Part C shows that these adjustments result in a decrease in the proportion of minorities from 25.4 percent to 18.2 percent, a decrease of 7.2 percentage points.

The adjustments made in table C-1 are necessarily incomplete. Marble Polishers Local 121 had many members in the helpers classification, but the respondent was unable to give Commission staff the required figures. The unavailability of figures for Elevator Constructors and Pipefitters engaged in nonconstruction work has been mentioned. Unfortunately, OFCC did not collect figures from Miami locals on female members.

APPENDIX D: WORKING ESTIMATES OF THE MINORITY POPULATION, 1970, AND OFFICIAL STATISTICS ON MINORITIES AND WOMEN IN CRAFT AND OPERATIVE OCCUPATIONS, 1970

The membership of minorities and women in building trades unions and in the Teamsters is analyzed in chapter 3. This appendix compares these estimates with estimates of the minority population and with statistics on the minority and female work force in relevant occupational categories.

The first row of table D-1 displays official Census Bureau figures for the distribution of the 1970 population by race and ethnicity. The second row shows adjustments to these statistics. The adjustments are based on statistics in official Census Bureau publications, issued subsequent to the 1970 census concerning the undercount of black and white persons and concerning a special sample survey of persons of Spanish origin.

The Census Bureau has not revised its official 1970 population statistics.[1] But the Census Bureau's post-1970 publications are used to produce the adjustments given in the second row of the table; the adjustments are extremely simple and are obtained by quite cautious procedures. (See the footnotes to the table.) Rows three and four show the revised distribution of the 1970 population and the proportion of four minority groups in the total population. These revisions are not an attempt by the U.S. Commission on Civil Rights to provide a comprehensive alternative set of population statistics; rather, their use by the Commission is confined to this study of labor union membership.

Table D-1 indicates that in 1970 roughly 82.2 percent of the population consisted of whites, other than persons of Spanish origin while 17.8 percent of the population were members of four minority groups: blacks, persons of Spanish origin, Native Americans, and Asian Americans and others.

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1. For a critique of the Census Bureau's approach to counting minorities, see U.S. Commission on Civil Rights, Counting and Forgotten (1974).

Table D-1. U.S. POPULATION IN 1970, BY RACE AND ETHNICITY, AFTER ADJUSTMENTS
(thousands)

Population	Black	Persons of Spanish Origin	Native[a] American	Asian American and others[b]	Whites, other than Spanish Origin	Total
1. Population according to 1970 census[c]	22,580	9,073[d]	793	2,090	168,676[e]	203,212
2. Adjustments	+1,880[f]	+602[d] 186[e]	None	None	+3,264[e] -602[e]	+3,450 1,880
3. Unofficial revised estimates of 1970 population	24,460	9,861	793	2,090	171,338	208,542
4. Row 3 as percent of total	11.7	4.7	0.4	1.0	82.2	100.0

a. The Census category is Indian. There are indications that Native Americans, as well as Spanish origin persons and Asian Americans, have been undercounted. See U.S. Commission on Civil Rights, Counting the Forgotten (1974), p. 10, ftn. 34.

(Continued)

Continued from Table D-1.

b. The "Asian American and others" category includes Japanese, Chinese, Filipino, Aleuts, Asian Indians, Eskimos, Hawaiians, Indonesians, Koreans, Polynesians, and others.

c. The source of the original census figures is U.S., Department of Commerce, Bureau of the Census, General Population Characteristics: United States Summary, 1970 Census of Population, no. PC(1)-B1 (1972), p. 262, except for the figure on persons of Spanish origin (see note d).

d. The number of persons of Spanish origin according to the 1970 census was 9,073,000, while a March 1973 current population survey yielded a figure of 10,577,000. The difference between these two figures was due in part to revised classification procedures, but the Census Bureau estimated that "close to two-thirds" of the difference between the two figures was due to natural increase and immigration. "Close to two-thirds" has here been interpreted as 60 percent, yielding and upward adjustment of 602,000 of the 1970 figure. This statistic does not adjust for an undercount in the 1970 census. See U.S., Department of Commerce, Bureau of the Census, Current Population Reports (Series P-20; No. 259), Persons of Spanish Origin in the United States: March 1973 (Advance Report), Current Population Reports, series p-20, no. 259 (1974), especially p.3.

e. The figure for whites in the 1970 census is 177,749,000. Subtraction of the original official 1970 figure for persons of Spanish origin (9,073,000) gives the figure of 168,676,000 for other whites. An additional 602,000 is subtracted from this figure, since the increase of 602,000 in the Spanish origin category was due to changed classification procedures and improved survey techniques rather than to a correction of an undercount. The Census Bureau press release of April 25, 1973 (see note below) indicated an undercount of the white population of 3,450,000. On the assumption that undercounting affected Spanish origin persons and other whites in the same proportions--a most conservative assumption, since there are reasons to believe that Spanish origin persons were more strongly affected by undercounting--5.4 percent of these 3,450,000 or 186,000, should be added to the category "persons of Spanish origin" (9,073,000 plus 602,000 is 5.4 percent of 177,749,000). The remaining portion of the undercounted whites, 3,264,000, is added to the category "whites other than Spanish origin."

f. The Census Bureau has estimated that the undercount of black people in the 1970 census was 1.88 million. See U.S., Department of Commerce, Bureau of the Census, Press Release, "Census Bureau Report on 1970 Census Coverage," Apr. 25, 1973, p. 2.

The numbers of minorities and women who are experienced as craftworkers and operatives (excluding transportation operatives) provides a rough indication of the potential workers with skills relevant to construction work and who could be trained fairly rapidly to do such work. Table D-2 presents these proportions, as recorded in the 1970 census. This table makes no adjustment for undercounting of black people or inappropriate classification of persons of Spanish origin, as does table D-1. The figures for minorities in table D-2 are, therefore, likely to be underestimates, to a greater degree than in table D-2.

Table D-2. MINORITIES AND WOMEN IN CRAFT AND OPERATIVE OCCUPATIONS,[a] 1970

	(1) Total, all races and ethnicities (thousands)	(2) Minorities[b] (thousands)	(3) Nonminorities /col. 1 minus col. 2/ (thousands)	(4) Minorities as percentage of total	(5) Nonminorities as percentage of total
Male	17,366	2,441	14,924	10.9	66.8
Female	4,961	1,010	3,950	4.5	17.7
Total	22,326	3,452	18,874	15.5	84.5

a. The occupational categories are "craft and kindred workers" plus "operatives, except transport." The labor force category is "experienced civilian labor force."

b. Minority totals were obtained by subtracting the number of whites from the figure for all races and then adding persons of Spanish origin.

Source: Columns 1 and 2: U.S., Department of Commerce, Bureau of the Census, Detailed Characteristics: United States Summary, 1970 Census of Population, no. PC (1)-D.1 (1972), pp. 746-48.

APPENDIX E: THE HISTORICAL RECORD ON BLACK AND FEMALE UNION MEMBERSHIP[1]

Estimates of the extent of unionization among blacks for selected years from 1886 to 1970 are presented in table E-1.[2] Black unionists apparently made up 6.3 percent of all unionists in 1886. The percentage fell drastically, to 0.7 percent, in 1890 and did not surpass 6.3 percent until 1940. After 1940, it rose, reaching the neighborhood of 10 percent in 1967, and rose still further in 1970 to 12.4 percent. Even allowing for the fact that Asian Americans and Native Americans are included in the 1970 figure, it is clear that the proportion of blacks in unions has risen substantially from the extremely low figures of the 1920's and 1930's. If the percentage of union membership consisting of blacks, Native Americans, and Asian Americans was actually 12.4 percent, that falls short of the percentage of those minorities in the total population by less than 1 percentage point (table D-1, appendix D).[3]

Although it is extremely important to know types of work performed, skills utilized, and pay received by members of minority groups compared with nonminority workers, there are almost no historical records on such matters. Statistics are, however, available on the union membership of black craftworkers as of 1967, from two sources: the 1967 Survey of Economic Opportunity and the earliest published returns from the EEO-3 forms.

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1. Because the historical record on the number of minority unionists other than blacks is incomplete for years prior to the late 1960's, the record on blacks and women is the basis of this appendix.

2. For indications of the low reliability of the data, see the sources cited by Ashenfelter and Godwin in their table (see source note in table E-1). See also Herbert Gutman, "The Negro and the United Mine Workers", in The Negro and the American Labor Movement, ed. Julius Jacobson (New York: Doubleday, 1968), p. 110 and ftn. 98, p. 407.

3. However, in that table only the population statistic for blacks has been corrected for underestimation.

Table E-1. ESTIMATES OF THE EXTENT OF UNIONIZATION AMONG BLACK AND WHITE WORKERS, 1886--1970, SELECTED YEARS

Year	(1) Total union members	(2) Black union members	(3) Percentage of black labor force unionized	(4) White union members	(5) Percentage of white labor force unionized	(6) Black union members as a percentage of total union members
1886	960,241	60,000	2.4	900,241	4.2	6.3
1890	540,454	3,523	.1	536,931	2.8	0.7
1900	868,000	32,619	.9	853,381	3.5	3.8
1910	2,140,000	68,753	1.4	2,071,247	6.4	3.2
1926-28	3,500,000	61,000	1.1	3,439,000	7.9	1.7
1930	3,416,000	56,000	1.0	3,360,000	7.9	1.6
1940	8,717,000	600,000	10.7	8,117,000	17.3	6.9
1944	14,146,000	1,250,000	21.4	12,896,000	25.8	8.8
1955	16,802,000	1,500,000	21.3	15,302,000	26.0	8.9
1967	17,790,070	1,989,270	23.0	15,800,770	23.0	10.7
1970	17,192,000	2,130,000	21.8	15,062,000	20.2	12.4

Sources: Figures for 1886 to 1967 from Orley Ashenfelter and Lamond Godwin, "Some Evidence on the Effect of Unionism on the Average Wage of Black Workers Relative to White Workers, 1900-1967," Proceedings of the Twenty-fourth Winter Annual Meeting of the Industrial Relations Research Association, no. 2 (May 1972), p. 219. These statistics came from a variety of sources, some of doubtful reliability, and were not compiled on a uniform basis from year to year. Figures for 1970, which include Asian American and Native American as well as black union members, are from U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972).

Ashenfelter has published figures based on the 1967 Survey of Economic Opportunity which show that, for a number of major occupational categories, the percentage of black workers who were labor union members in 1967 is equal to or above the percentage of white workers in the same categories.[4] The construction industry is a major exception; 54 percent of white craftworkers in the construction industry were unionized, but only 44 percent of white craftworkers in all other industries were unionized. The proportion of black craftworkers in construction who were unionized was only 27 percent. But the proportion of black craftworkers in all other industries who were unionized was 46 percent, or virtually the same as the white workers in that category.

The percentage of black construction craftworkers who were unionized was, apparently, only half the percentage of white construction craftworkers who were unionized. And, unlike the case of white workers, the proportion of black construction craftworkers who were unionized was lower than the proportion of black craftworkers outside the construction industry who were unionized. (This finding is very similar to the results of the Commission's analysis of EEO-3 statistics for 1971 and 1972 as modified by statistics collected on the field trips by Commission staff.)

What indications are there of progress in the major craft unions, as far as black membership is concerned? Table E-2 presents statistics from the 1890 census as well as statistics from EEO-3 reports for 1967 and 1972. The statistics from the 1890 census are not directly comparable to the EEO-3 statistics. The 1890 census gives black employment as a percentage of total employment, without regard to union membership. The EEO-3 figures relate black members of craft unions to the total union membership.

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4. Ashenfelter, "Racial Discrimination and Trade Unionism," p. 451. Ashenfelter notes that the 1967 Survey of Economic Opportunity does not directly provide the statistics presented and that he relied on supplementary calculations performed by Daniel Saks of Michigan State University. (The complete results of the 1967 Survey of Economic Opportunity, U.S. Office of Economic Opportunity, have never been published.)

Table E-2 BLACK MEMBERSHIP IN SELECTED CRAFT UNIONS, 1967 and 1972, AND BLACK EMPLOYMENT IN SELECTED CRAFTS, 1890

International union (short name)	(1) Black membership as percentage of total membership 1972[a]	(2) Black membership as percentage of total membership 1967	(3) Black employment as percentage of total employment 1890
Carpenters	3.7	1.6	3.6
Painters	4.9	3.7	2.0
Bricklayers	9.7	9.6	6.1
Plasterers	16.0	14.0	10.3
Plumbers	1.5	0.2	1.1
Electricians	2.6	0.6	0.0
Common Laborers	29.1	30.5	20.0
Sheet Metal Workers	1.1	0.2	1.2
Boilermakers and Blacksmiths[b]	4.6	3.9	5.2
Printing Pressmen and Lithographers and Photoengravers	3.8[c]	3.0	0.8
Printing Pressmen	5.8	4.4	--[d]
Lithographers and Photoengravers	2.2[c]	1.3	--[d]
All reporting building trades (including Laborers)	8.3	8.4	--[d]
All reporting referral unions	10.6[c]	9.7	--[d]

a. Most statistics are preliminary.

b. The inclusion of Blacksmiths in the third column renders the figures in this row of doubtful comparability.

c. 1970 statistics.

d. Not available.

Sources: Col. 1: 1972 figures are from U.S., Equal Employment Opportunity Commission, News Release, June 30, 1974, except for Printing Pressmen. The 1972 figure for Printing Pressmen and the 1970 figures (see ftn. c) were supplied directly by EEOC. Col. 2 and 3: Orley Ashenfelter, "Racial Discrimination and Trade Unionism," Journal of Political Economy, vol. 80, no. 3, pt. 1 (May/June 1972), p. 444. Ashenfelter obtained these figures from an EEOC publication and from the Bureau of the Census report on the 1890 census.

In 1967, the percentage of black members in the selected craft unions exceeded, in most cases, the percentage of black craftworkers in the selected trades in 1890. Similarly, the black proportion of the membership had increased by 1972 compared to 1967, in most cases. Finally, even though the black proportions of most crafts listed increased between 1967 and 1972, the black percentage of all reporting building trades was virtually unchanged between 1967 and 1972.

The statistical deficiencies of these series are numerous. There are pitfalls in comparing EEO-3 returns between pairs of years. For example, "a comparison of Laborers Union locals reporting in both 1969 and 1971 shows an increase in black membership of only 1.3 percentage points over the period, in contrast to an increase of 4.4 percentage points in the gross figures for all locals surveyed."[5] The EEO-3 data, as shown above, are of exceptionally poor quality. Finally, the increase in black members of many construction unions in 1972, compared with 1967, was probably an increase mainly in apprentices, not in journeymen, and many of these apprentices never became journeymen. (See chapters 5 and 7.)

Perhaps the most nearly definitive statements regarding changes in construction union membership can be made on the basis of a comparison of the 1900 statistics (table E-1) and the 1972 statistics (table E-2). In 1900, there were 32,619 black unionists and 853,381 white unionists. Apparently 20,000 of the black unionists were members of the United Mine Workers, which had a total membership of 91,019.[6] Subtracting the UMW membership from the totals for

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5. Herbert Hammerman, "Minorities in Construction Referral Unions--Revisited," Monthly Labor Review, May 1973, p. 44.

6. See Gutman, "The Negro and the United Mine Workers," pp. 110-11. It is clear that the sources used by Ashenfelter and Godwin, in compiling their figures on black unionists in 1900, were the same as those used by Gutman in stating the number of black UMW members in 1900. See Gutman, ftn. 98, p. 407.

black and white unionists yields a figure of 12,619 blacks and 782,362 whites in all other unions, for a black percentage of 1.6. It is unlikely that the black percentage in construction unions was higher than this overall percentage of 1.6; it was probably lower.

In 1972 blacks were 8.3 percent of the members of all reporting building trades unions (table E-2). If the Laborers are excluded from the calculations,[7] the percentage becomes 3.6. This percentage may be adjusted, according to the same ratios developed earlier, to take account of mistaken reporting of black helpers, tenders, and apprentices, and of journeymen outside the field of construction, to give an estimate of roughly 2.4 percent[8] for the proportion of black union members in skilled, highly-paid construction work.

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7. According to the EEOC News Release of June 30, 1974, there were 1,604,451 members in all reporting building trades, of whom 133,572 were black. There were 295,563 members in the Laborers, of whom 86,000 were black.

Similar calculations for other minority groups, from the same source, lead to the following results, for the membership percentage of each group in the skilled building trades unions: persons of Spanish origin, 4.5 percent; Asian Americans, 0.4 percent; Native Americans, 0.8 percent. These percentages may be compared with the population percentages given in table D-1, in app. D: black, 11.7 percent; persons of Spanish origin, 4.7 percent; Asian Americans and others, 1.0 percent; Native Americans, 0.4 percent. Since there are serious deficiencies in both sets of figures, and especially in the EEO-3 figures, the comparisons should be accepted as only very broadly indicative of the degree of underrepresentation of the various groups in building trades unions.

8. Adjustments in chapter 3 caused a reduction of the apparent minority membership of highly paid construction unions from 9.3 percent to somewhere around 5.5 to 6.2 percent. The 6.2-percent estimate is 67 percent of 9.3 percent. (The 6.2-percent estimate is used in order to adjust the statistics in a cautious fashion.) The product of 3.6 percent and 67 percent is 2.4 percent.

Among unionized journeymen engaged in construction work, then, the percentage of blacks increased from somewhere between zero and 1.6 percent in 1900 to somewhere around 2.4 percent in 1972, or 3.6 percent if unadjusted 1972 EEO-3 figures are used. So little progress over 72 years shows that equal employment opportunity is not available to black workers in the building trades.

There are, however, indications of progress between 1967 and 1972 in a few trades--namely the plasterers, roofers, painters, and marble polishers (see tables 4 and E-2)--all of which are among the least well-paid crafts. But the indications must be characterized as weak: The 1967 EEO-3 data were probably even more unreliable than 1971 and 1972 data, and the factors leading to exaggeration in the EEO-3 reports of overall representation of minorities in highly-paid construction work in the building trades unions considered together would apply, with greater or lesser force, to these individual trades. The most informative single figure, as far as showing recent progress, is the earlier estimate of 2.4 percent for the black representation among journeyman union members engaged in construction work.

Statistics on the union membership of women show three dominant features. (1) The proportion of union members who are women has been increasing. (2) The proportion of female workers who are union members is much smaller than the proportion of male workers in unions. (3) Women are almost totally absent from the membership of several large unions that represent highly-paid workers.

In 1958, women unionists totaled 3.1 million, or 18.2 percent of all union members; in 1972 they totaled 4.5 million, or 21.7 percent of all members.[9] This growth reflected the long-term expansion

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9. Lucretia M. Dewey, "Women in Labor Unions," Monthly Labor Review, February 1971, p. 42 and U.S., Department of Labor, Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1973 (1974), p. 75 (hereafter cited as B.L.S. Directory 1973). Since these estimates are based on sources other than BLS Union Members, they cannot be compared directly with those in tables 1 and 2.

of the female labor force and the increasing diversity of occupations in which women worked.[10]

However, the growth of the numbers of women in unions has not kept pace with the growth of the female labor force, so the unions have recently been representing a declining proportion of the total female labor force. In 1958, union women constituted 13.8 percent of all women in the labor force, but 14 years later union women constituted only 13.6 percent of all female workers. Over the same period, union men as a percentage of the male labor force rose from 30.1 to 30.6 percent.[11] Throughout these years, the proportion of all women workers who were union members has been far below the proportion of all male workers who were in unions.

Female membership is heavily concentrated in a few unions. Despite their low proportion of all union members, women made up at least one-half of the total membership of roughly one-seventh of all unions.[12] Women constituted at least one-half of the members of the following unions, all of which also had at least 50,000 female members: Amalgamated Clothing Workers, Communications Workers, Ladies' Garment Workers, Office Employees, Retail Clerks, and American Federation of Teachers.[13]

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10. See U.S. Commission on Civil Rights, Women and Poverty (1974), pp. 10-11,60-67; and Dewey, "Women in Labor Unions," p. 42.

11. Dewey, "Women in Labor Unions," p. 43, B.L.S. Directory 1973, p. 75, and U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings (Jan. 1973), pp. 124-125. A partial explanation of this trend is the expansion of some industries, especially the apparel industry, into geographic areas where union organizing is more difficult.

12. Dewey, "Women in Labor Unions," p. 42.

13. Virginia Berquist, "Women's Participation in Labor Organizations," Monthly Labor Review, October 1974, p. 6.

At the other extreme, women constitute a very low percentage of the membership of unions representing workers in such industries as construction, railways, mining, firefighting, and truck driving. Construction and truck driving are two areas where women are an especially low percentage of union members--0.7 percent (or less) in construction and roughly 1.6 percent in trucking.

APPENDIX F: RESEARCH BY ECONOMISTS ON REFERRAL UNION DISCRIMINATION

Chapter 4 refers to empirical research by university-based economists on the discriminatory impact of referral union practices. Commission staff found a total of three such studies, all of which indicated the existence of discrimination.[1] The three studies are by John Landon and William Pierce,[2] Orley Ashenfelter,[3] and Leonard Rapping.[4]

Landon and Pierce (in agreement with a number of other neutral observers) state that building trades unions limit the supply of workers through such practices as restricting the number of apprentices and influencing occupational licensing. Because of this control over the supply of craftworkers, unions are able to exclude minorities from local building trades markets. The Laborers Union, on the other hand, does not control the local labor supply and, not coincidentally, has a high proportion of minority members. Landon and Pierce test their hypotheses using data on the wage rates of union electricians (who control the supply of labor with special effectiveness), the wage rates of union laborers, and the percentages of the members of the construction craft unions and of the Laborers Union who are black: the data relate to 27 large cities.

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1. All three articles dealt with racial discrimination, though Ashenfelter makes some brief comments on sex discrimination. No empirical studies were found that tested the existence of discrimination by sex or ethnicity.

2. "Discrimination, Monopsony, and Union Power in the Building Trades: A Cross Sectional Analysis," Proceedings of the Twenty-Fourth Annual Winter Meeting of the Industrial Relations Research Association, no. 2 (May 1972), pp. 254-61.

3. "Racial Discrimination and Trade Unionism," Journal of Political Economy, vol. 80, no. 3, pt. 1 (May/June 1972), pp. 435-64.

4. "Union-induced Racial Entry Barriers," Journal of Human Resources, vol. 4 (Fall 1970), pp. 447-74. Rapping's article is somewhat outdated and some of his results are not statistically significant. Though he found evidence of union discrimination, his results are not discussed here.

The authors find that, in cities where the craft unions have especially low percentages of black members, compared with the percentages of unionized black laborers, the pay for union electricians is especially high relative to laborers' pay. Hence, there is evidence that "unions and management tend to negotiate lower relative pay for black than for white workers." [5]

The authors state, in conclusion:

> "The empirical findings of this study confirm the suspicion that relative wage rates of construction trades are sensitive to their racial composition. In particular, we find a consistent association between high absolute and relative black participation among laborers and low relative pay for this trade." [6]

Ashenfelter examined the effect of unionism on the degree of labor market discrimination against black workers. He separated this effect into two components: the size of the union-nonunion wage differential for black and white workers and the extent of unionization among black and white workers.

Ashenfelter did calculations on the distribution among occupations of black and white workers in 1967, the proportions of the respective work forces unionized, and the union-nonunion wage differentials of black and white workers. These calculations led him to conclude that "in 1967 the ratio of black to white male wages might have been 4 percent higher in the industrial union sector and 5 percent lower in the craft union sector than they would have been in the absence of all unionism." [7] The ratio of black to white wages (men

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5. Landon and Pierce, "Discrimination, Monopsony, and Union Power," pp. 258-59.

6. Landon and Pierce, "Discrimination, Monopsony, and Union Power," pp. 260-61.

7. Ashenfelter, "Racial Discrimination and Trade Unionism," p. 435. See also pp. 451-53, 462. The craft union sector, for one of Ashenfelter's key calculations, was identical with unionized, male, blue-collar construction workers.

and women considered together) might have been 2 percent higher in the craft and industrial sectors combined than they would have been in the absence of unionism.[8]

In Ashenfelter's calculations, the component with the greatest negative impact on the relative black-white wage rate of construction workers is the proportion of black and white workers who are union members: In 1967, 54 percent of white construction craftworkers were union members compared to only 27 percent of black construction craftworkers.[9] These two percentages, and their impact on relative black-white wage ratios in construction, are fully in accord with findings in chapters 2 and 3 on the small proportion of minority journeymen in skilled construction unions and on the ability of such unions to win high wages for their members.

Ashenfelter applied the same methodology to the effect of unionism on the black-white wage ratio of female workers and found that the impact of unionism was approximately a 1.0 percent decrease in black women's wages relative to white women's wages. Finally, the effect of unionism on white women's wages relative to white men's was a 2.0-percent decrease in women's wages.[10]

In sum, the wages of black men relative to the wages of white men were adversely affected by construction unions. Industrial unions had an impact in the opposite direction. The relative wages of black women to white women and of all women to all men were adversely affected by unions of all types.

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8. Ibid., p. 453.

9. Ibid., pp. 451, 452.

10. Ibid., p. 453.

APPENDIX G. STATISTICS ON IMPLEMENTATION OF THE PHILADELPHIA PLAN, 1973

Chapter 7 notes that neither the OFCC's compliance checks nor the personhours statistics permit a calculation of the minority percentage of construction craftworkers in the Philadelphia area. The compliance check statistics are discussed in chapter 7. This appendix analyzes the personhours statistics; as in chapter 7, statistics on plumbers and pipefitters are used.

A Department of Labor press release[1] reported that plumbers and pipefitters covered by the Philadelphia Plan worked 3,818 hours in the 10 months ended in October 1973 and that 852 of these hours were worked by minority workers; this indicates a minority percentage of 22 percent, which is within the 1973 range of goals of 20 to 24 percent.

However, the 3,818 personhours worked represent roughly 0.09 percent of all hours worked by plumbers and pipefitters in the Philadelphia area. This estimate is arrived at as follows.

There were 11,544 plumbers and pipefitters in the Philadelphia, Pa.-N.J., SMSA, according to the 1970 census.[2] It may be assumed that 80.2 percent of these workers were in the five counties covered by the Philadelphia Plan; that they worked an average of 39.1 hours per week (or 173.17 hours per month); that half of them worked in new construction as distinct from being shop workers or engaged in renovations and repairs; and that 54.7 percent worked on unionized jobs (a relevant consideration because most large contractors who win Federal contracts are union contractors). These computations yield an estimate of 438,477 hours worked per month by unionized plumbers and pipefitters on new construction in the five counties covered by the Philadelphia Plan and, for an average 10-month period, an estimate of 4,384,770 hours.

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1. "Labor Department Extends Philadelphia Plan," Dec. 28, 1973.

2. U.S., Department of Commerce, Bureau of the Census, Detailed Characteristics, 1970 Census of Population, no. PC(1)-D1 (hereafter cited as U.S. Census, 1970).

The assumption that 80.2 percent of the 11,544 plumbers and pipefitters in the Philadelphia SMSA worked in the five counties covered by the Philadelphia Plan is based on the percentage of the population of the Philadelphia SMSA that lives in the five counties (Bucks, Montgomery, Philadelphia, Delaware, and Chester) covered by the Philadelphia Plan.[3] The figure of 39.1 working hours per week is the estimate of the number of hours per week that workers in the plumbing, heating, and air conditioning branch of the construction industry worked in October 1967.[4] The use of the ratio 1:2, for the number of workers employed in new construction, is based on conditions commonly found in the building trades. The 54.7 percent figure, regarding the proportion of unionized workers, is the national average for all construction craftworkers except carpenters.[5]

The 3,818 hours reported through the OFCC statistical system is only 0.09 percent of this rough estimate of 4,384,770 hours worked. If no minorities were employed outside the projects reported under the Philadelphia Plan, then the 852 minority personhours employed on Philadelphia Plan projects represented 0.02 percent of all personhours of the relevant type, rather than the 22 percent cited in the Department of Labor's press release of December 28, 1973. This figure of 0.02 percent confirms the conclusion reached in chapter 7 regarding the statistics from the compliance checks: that percentage was also less than 1 percent.

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3. See U.S. Census, 1970.

4. See U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings Statistics for the U.S. 1909-68 (1968), p. 43.

5. See U.S., Department of Labor, Bureau of Labor Statistics, Selected Earnings and Demographic Characteristics of Union Members, 1970 (1972), p. 6.

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