

**The original documents are located in Box 12, folder “Equal Employment Opportunity Commission (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20506

*Forgeling  
in EEOC*

April 22, 1975

Mr. Robert D. Lilley  
President  
American Telephone and Telegraph  
195 Broadway  
New York, New York 10007

Dear Bob:

Please excuse my delinquency in not getting this letter out to you earlier; however -- as I am sure you realize -- the last several weeks have been quite hectic.

I suspect that many see the position of EEOC Chairman as a thankless job. However, in my opinion, quite the contrary is, in fact, the case. Although the position involves an awesome responsibility, it also affords a tremendous opportunity -- an opportunity to participate in the national thrust toward equal employment opportunity. To have served 15 months in a position, the importance of which -- even today -- is fully understood by only a few, was certainly a rare privilege. While my focus is now on the future, I am very mindful of the unique opportunity that was bestowed upon me.

Enclosed for your information are documents providing a chronicle of the last few weeks of my tenure as Chairman. As you can see from my letter of March 18, 1975 to Congressman Hawkins, Chairman of the House Committee on Equal Opportunities, it is my view that much progress -- progress that will endure -- was achieved during the 15 months that I had the responsibility of moulding EEOC into an effective law enforcement vehicle. I am thankful, in this regard, for having had the opportunity to apply in a novel context, earlier experience that I had acquired in both the public and private sectors.

In addition, as Chairman, I came into contact with a wide variety of persons, all of whom represent different components of EEOC's broad constituency. I also made many friends, some of whom -- such as yourself -- have responsibilities that include compliance with the law administered by this agency.



It is my intention to resume the private practice of law here in Washington, D.C. In returning to the private sector, I look forward to the opportunity of drawing upon the experience acquired as EEOC Chairman. I appreciate, for example, the candor and cooperation that have characterized the several meetings held with you and your colleagues during my tenure as Chairman. Moreover, I am hopeful that the initiatives generated at our last meeting will be sustained under the new Chairman. You have my assurance that I will do all that I can to provide such assistance as may be appropriate to whomever is eventually selected.

Finally, this records my thanks to you and your colleagues for your efforts in undertaking to bring about an amicable settlement of AT&T's remaining Title VII problems. Here's hoping that that effort will soon prove successful.

Best regards.

Sincerely,

  
John H. Powell, Jr.  
Commissioner

Enclosures

cc: Dr. Arthur S. Flemming  
Rev. Theodore M. Hesburgh  
Dr. Maurice B. Mitchell  
✓ Mr. Philip W. Buchen



THE WHITE HOUSE  
WASHINGTON

Mr. Wilderatter  
brought over  
the attached.  
Return to Jim  
with my thanks





EEOC  
U.S. DEPARTMENT OF COMMERCE  
Office of the Secretary  
Washington, D.C. 20230

April 22, 1975

MEMORANDUM FOR HONORABLE JAMES A. WILDEROTTER  
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: Edward W. Huffcut   
Administrative Assistant to the Secretary

Attached is a copy of the memorandum and attachments that I sent to Aaron Spaulding regarding John M. Heneghan recommending him for one of the EEOC positions presently vacant.

I am advised that Mr. Buchen is personally interested in these appointments and would appreciate your bringing this to his attention.

Many thanks and best regards.

Attachments



April 8, 1975

MEMORANDUM FOR AARON SPAULDING  
THE WHITE HOUSE

FROM: Edward W. Huffcut  
Administrative Assistant  
to the Secretary

Attached are the papers on John M. Heneghan, presently Director of the Office of Civil Rights, Maritime Administration, DOC.

Mr. Heneghan is the gentleman I discussed with you the other day. He is extremely interested in being considered for one of the EEOC posts presently vacant. I have discussed the political aspects with him and he has indicated that he can obtain endorsements from Senators Proxmire, Nelson and Mathias. Although he has not sounded out these endorsements, he looks to you for advice and I can only recommend him in the highest degree in his field of civil rights and EEO capabilities.

If you would like to meet Mr. Heneghan, I will be happy to bring him over and introduce him. I would also suggest contacting Bob Blackwell, Assistant Secretary for the Maritime Administration, for his views on Mr. Heneghan abilities.

Attachment

EWHuffcut:cq:4-8-75  
bcc: John Heneghan  
Chron



Mr. John M. Heneghan  
9905 Fernwood Road  
Bethesda, Maryland 20034

### EEO Experience

- 1968 - present Director, Office of Civil Rights, Maritime Administration, Department of Commerce. Responsible for the EEO contract compliance in the shipbuilding and shipping industry, as well as promoting minority business enterprise in the industry.
- 1966 - 1968 Deputy Regional Director, EEOC, Atlanta Regional Office.  
Oct. 1967 - March 1968 - Established and staffed the Birmingham, Alabama District Office.
- 1963 - 1966 Southeast Director, Navy Department EEO Contract Compliance Office (Atlanta).  
July-December 1965 - Member of initial task force to set-up EEOC.

### Related Experience

- 1957 - 1963 Assistant Professor, Industrial Relations, Loyola University, Chicago, Illinois.
- 1952 - 1957 Research and Training Director, United Cement Lime and Gypsum Workers International Union (Chicago, Illinois).
- 1951 - 1952 Assistant Information Officer, Bureau of Labor Statistics, Department of Labor.

### Military Service

- 1946 - 1947 USN enlisted service.
- 1961 - 1962 USNR Berlin Recall.
- Currently - CDR, USNR NARU, Washington, D.C.

### Education

B.A. (Economics) 1951 Iona College, New Rochelle, N.Y. M.S. (Industrial Relations) 1957 Loyola University, Chicago. Other graduate work New York University and University of Chicago.



Education (continued)

Maritime Executive Development Seminar - January-April 1970 (in conjunction with Harvard Business School).

Federal Executive Institute - April-May 1972.

Brookings Institute Conference for Federal Executives, March 1975.

Affiliations

Industrial Relations Research Association

Chairman, Sea Explorers Ship 1319

Chairman, Employment Panel, Montgomery County Human Relations Commission

Personal

Married Mary Coyle  
7 daughters - 5 sons

Telephone Numbers

Office - (202) 967-3886  
Home - 469-8637 (Bethesda, Md.)

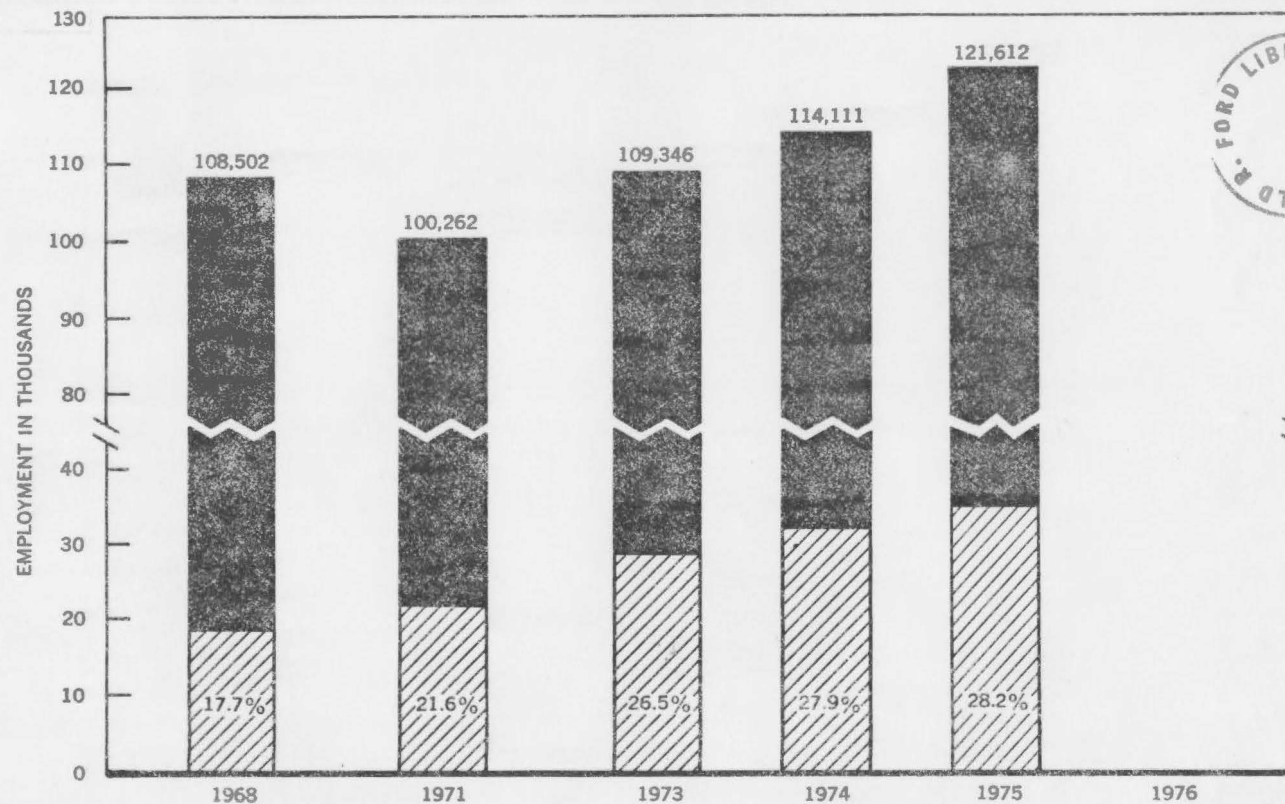


# Civil Rights: Contract Compliance

U.S. DEPARTMENT OF COMMERCE • Maritime Administration

PREPARED BY: 210  
SOURCE: EEO-1  
AUTHENTICATED BY:  
DATE: 4/3/75  
PREPARED: 3/1/75  
UPDATED: ANNUALLY  
AS OF: 1/75

EMPLOYMENT IN THE SHIPBUILDING INDUSTRY: Minorities in the Total Workforce,\* 1968, 1971, 1973, 1974, 1975



Total Workforce	108,502	100,262	109,346	114,111	121,612
Minorities	19,196	21,612	28,986	31,814	34,333
% Minorities of Total	17.7	21.6	26.5	27.9	28.2

Total Workforce
  Minorities

\* Actual employment in 30 major yards representing 80% of the shipbuilding industry.

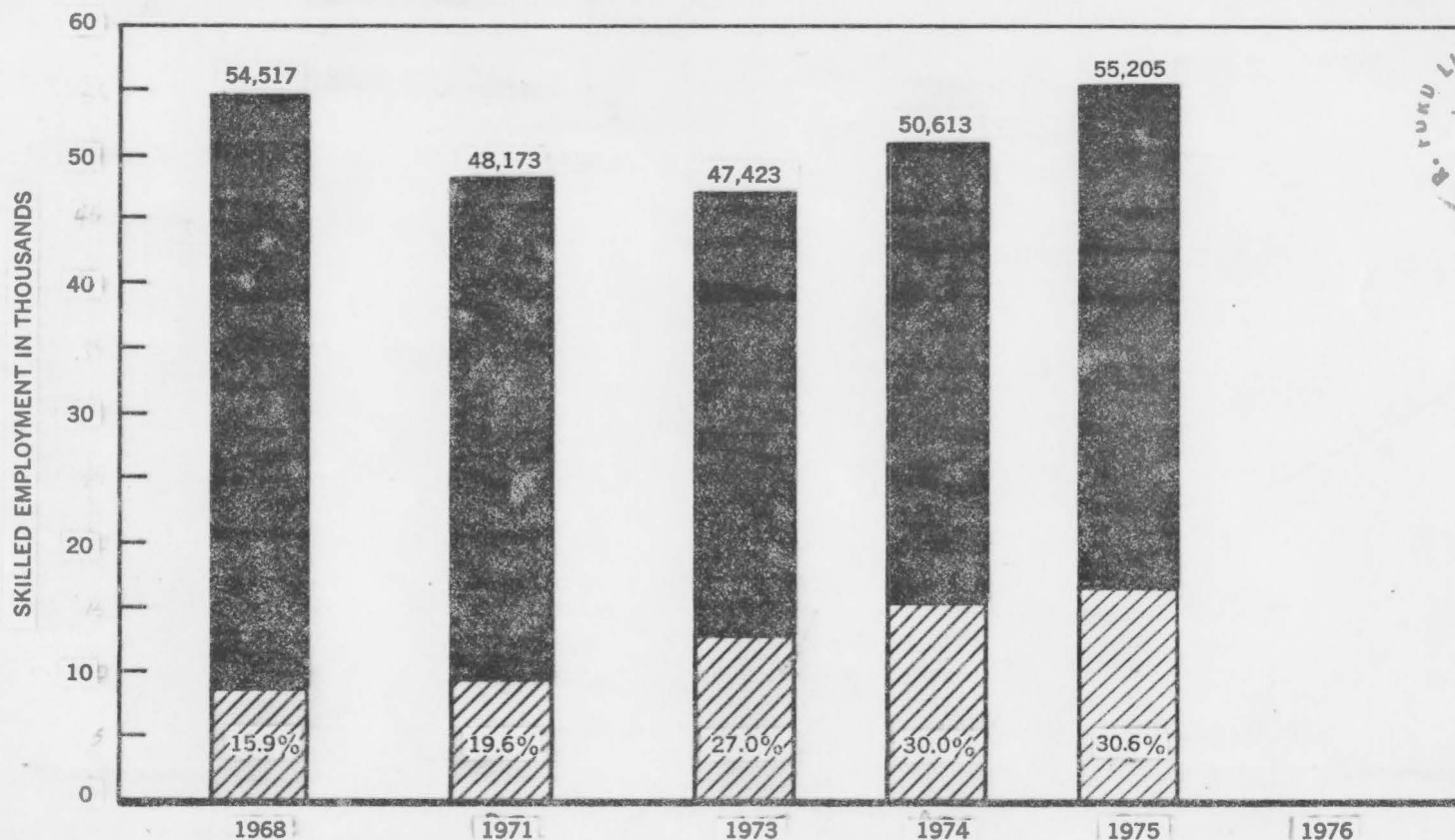


# Civil Rights: Contract Compliance

U.S. DEPARTMENT OF COMMERCE • Maritime Administration

PREPARED BY: 210  
SOURCE: EEO-1  
AUTHENTICATED BY: 210  
DATE: 4/8/75  
PREPARED: 3/1/75  
UPDATED: ANNUALLY  
AS OF: 1/75

SKILLED EMPLOYMENT IN SHIPBUILDING INDUSTRY: Minorities in Skilled Workforce, \* 1968, 1971, 1973, 1974, 1975



Total Skilled Workforce	54,517	48,173	47,423	50,613	55,205	
Minorities	8,663	9,440	12,800	15,166	16,894	
% Minorities of Total	15.9	19.6	27.0	30.0	30.6	



Total skilled



Minorities

\* Actual employment in 30 major yards representing 80% of the shipbuilding industry.



30% target

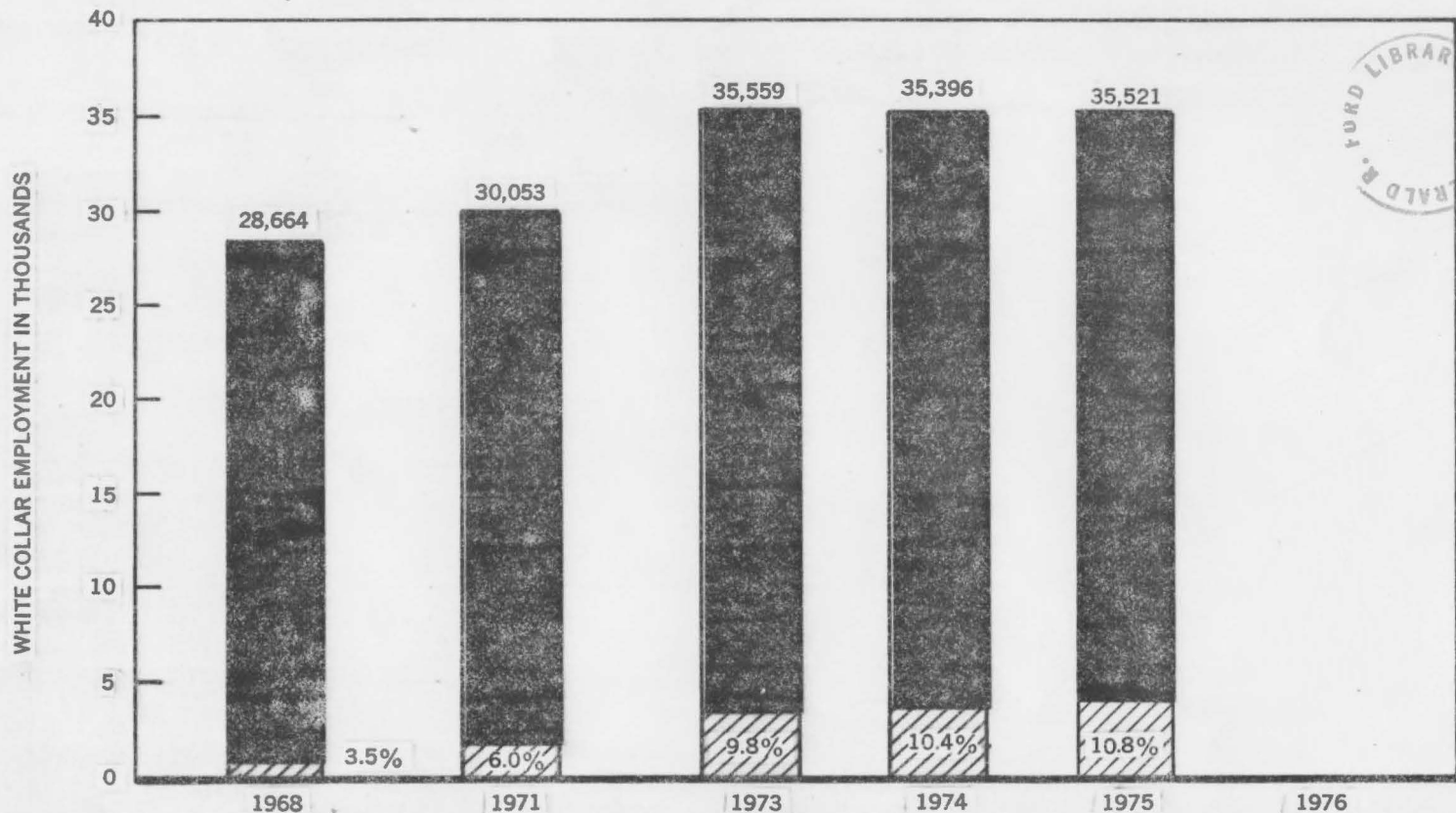
(101)

# Civil Rights: Contract Compliance

U.S. DEPARTMENT OF COMMERCE • Maritime Administration

PREPARED BY: 210  
SOURCE: EEO-1  
AUTHENTICATED BY:  
DATE: 4/4/75  
PREPARED: 3/1/75  
UPDATED: ANNUALLY  
AS OF: 1/75

WHITE COLLAR EMPLOYMENT IN THE SHIPBUILDING INDUSTRY: Minorities in White Collar Workforce\* 1968, 1971, 1973, 1974, 1975



White Collar Workforce	28,664	30,053	35,559	35,396	35,521
Minorities	993	1,795	3,474	3,664	3,832
% Minorities of White Collar	3.5	6.0	9.8	10.4	10.8



Total White Collar



Minorities

\* Actual employment in 30 major yards representing 80% of the shipbuilding industry.



30% tone

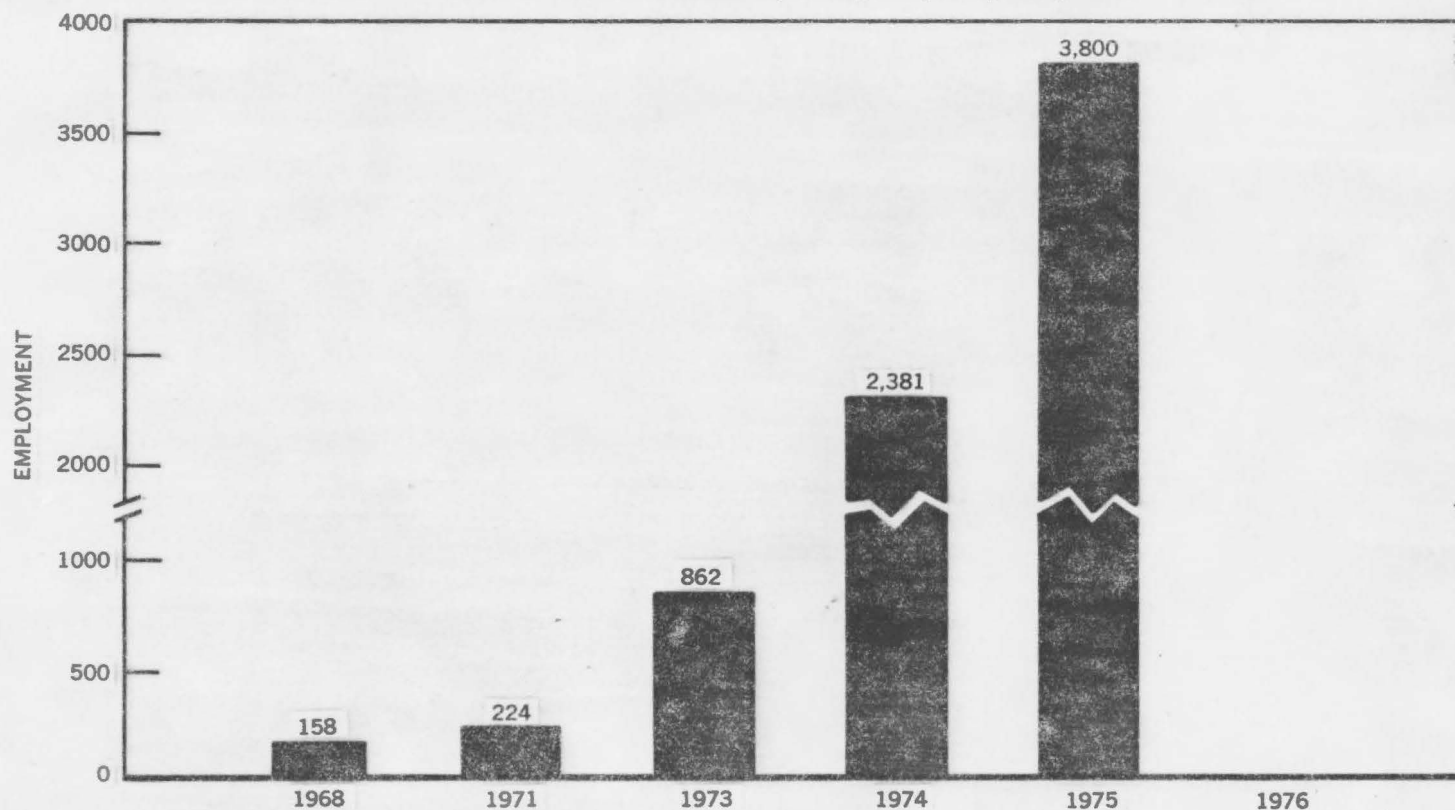
97

# Civil Rights: Contract Compliance

U.S. DEPARTMENT OF COMMERCE • Maritime Administration

PREPARED BY: 210  
SOURCE: EEO-I  
AUTHENTICATED BY: 210  
DATE: 4/3/75  
PREPARED: 3/1/75  
UPDATED: ANNUALLY  
AS OF: 1/75

WOMEN IN THE SHIPBUILDING INDUSTRY: Women in Blue Collar Workforce,\* 1968, 1971, 1973, 1974, 1975



Women in Blue Collar	158	224	862	2,381	3,800
% Women of Total Blue Collar	0.2	0.3	1.2	3.0	4.4

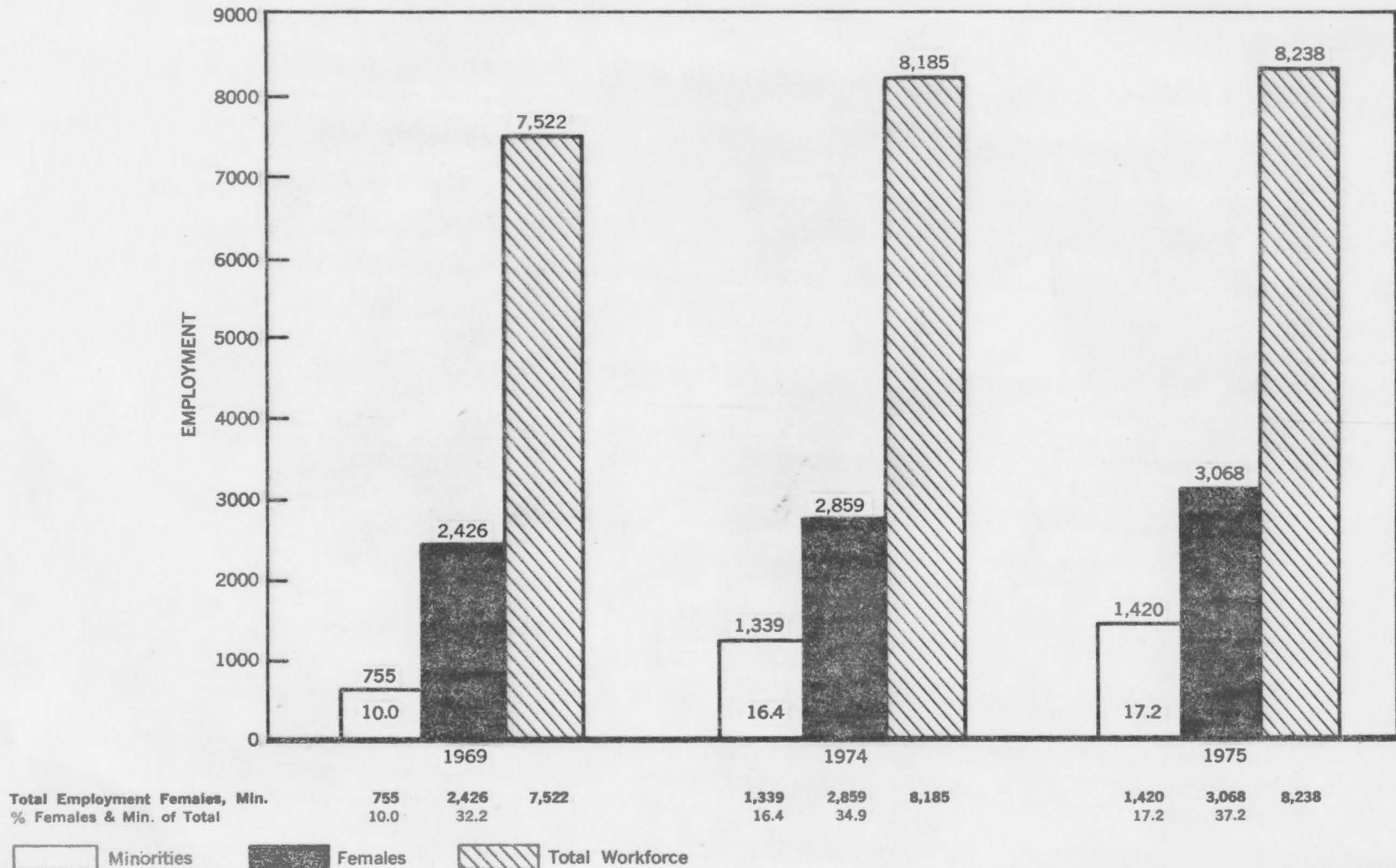
\* Actual employment in 30 major yards representing 80% of the shipbuilding industry.

# Civil Rights: Contract Compliance

U.S. DEPARTMENT OF COMMERCE • Maritime Administration

PREPARED BY: 210  
SOURCE: EEO-I  
AUTHENTICATED BY: 210  
DATE: 4/3/75  
PREPARED: 3/1/75  
UPDATED: ANNUALLY  
AS OF: 1/75

EMPLOYMENT IN THE SHIPPING INDUSTRY: Minorities and Females in the Total Workforce\*, 1969, 1974, 1975



\* Total land based permanent work force of 14 companies.

THE COURTS USE OF STATISTICS IN EMPLOYMENT DISCRIMINATION CASES

by

JOHN M. HENEGHAN  
Director, Office of Civil Rights,  
Maritime Administration  
United States Department of Commerce  
Washington, D. C.

---

presented at

WILLIAM KARP CONSULTING COMPANY, INC.

EEO/AFFIRMATIVE ACTION WORKSHOP

October 23, 1974

Chicago, Illinois



THE COURTS USE OF STATISTICS IN EMPLOYMENT DISCRIMINATION CASES\*

by

JOHN M. HENEGHAN  
Director, Office of Civil Rights  
Maritime Administration  
United States Department of Commerce  
Washington, D. C.

---

My remarks today are aimed at an overview of key court decisions concerning use of statistical data in determining the existence of discriminatory job patterns with respect to minorities and women.

I would like to put these remarks in their proper setting. In the next three days you will be working with workforce utilization analyses and goal setting problems. I hope my remarks here will indicate to you how objective third parties view employment statistics.

Before we get into our topic, I would like to give you some background information as to how the concept of affirmative action arose. It is that concept that gives us Orders 4 and 14 and the need for this kind of workshop.

In 1960 when the final report of The President's Committee on Government Contracts was issued, one of the observations made was that "overt discrimination in the sense that an employer actually refused to hire solely because of race, religion and color was not prevalent as generally believed." 1/ That report indicated that what was needed was a more positive policy on the part of employers as well as extra effort on the part of the minority community to overcome the employment patterns that existed at the time. That Committee report was the basis of the so called Kennedy Executive Order 10925, which amended the EEO clause in government contracts. After the sentence saying the contractor shall not discriminate, there was added a sentence that the contractor shall take affirmative action. Until Order 4, affirmative action was a nebulous concept that had very little meaning but at that time EEO was merely considered a moral issue or a social betterment goal.

In the interim, Title VII of The Civil Rights Act of 1964 came along and the persons responsible for developing the administration of Title VII made the same observations that discrimination because of personal bigotry could not account for existing employment patterns in American industry. They proceeded to develop a concept of systemic discrimination. This concept of systemic discrimination was best enunciated in the now famous Griggs versus Duke Power case. In that case, the Supreme Court said "Under the Act (Title VII) practices, procedures, or tests neutral on their face and even neutral in terms of intent, cannot be maintained if they operate to freeze the status quo of prior discriminatory employment practices . . . The Act proscribed not only overt discrimination but also practices that are fair in form but discriminatory in operation." 2/

---

\*Presented at William Karp Consulting Company, Inc. EEO/Affirmative Action Workshop October 23, 1974, Chicago, Illinois.

---



Having developed this concept, the courts took their affirmative action responsibility to be the elimination of patterns and practices of discrimination. I think you will best succeed in developing acceptable workforce utilization analyses if in doing them you try to make some determination whether systemic discrimination in your workforce can be inferred or not. I think it is important to emphasize this since my experience is that most employers balk at the thought of being charged with discrimination. Such a charge normally raises the specter in the mind of an employer of being dubbed a "red-neck bigot" or "male chauvinist pig."

In actuality, there is probably not an employer in this nation, including the federal government, free from some taint of systemic discrimination reflected by underutilization of women and minorities. When you come to think of it, more than 50% of the American workforce is protected under Title VII and Executive Order 11246 as amended, exclusive of those protected under veterans, handicapped and age discrimination laws. Yet white males have most of the key jobs in our economy.

"Make your Equal Opportunity Program Court Proof" is the title of a recent Harvard Business School Review article. 3/ It might well be the theme for this conference. The author of that article starts with the premise:

"...now the penalties imposed under employment discrimination laws are seen as posing severe financial threat, while available equitable relief could cripple the modus operandi of an entire industry."

She then goes on to cite the Steel Industry and AT&T settlements, both costly to companies that have long operated with Affirmative Action Programs.

The Wall Street Journal recently reported on the special attention that top management is giving EEO. Attention that is being generated by the big back pay settlements the courts are now awarding. We expect to see back pay guidelines under Executive Order 11246 to be published in the near future by the Office of Federal Contract Compliance (OFCC). But more about that later.

Another consideration should be kept in mind. "Racial discrimination is by definition class discrimination." Even the most unworthy person can raise the issue of discrimination and prevail with respect to the class. The Parham case is to the point. 4/ Parham failed to establish a claim for individual damages but the court held that "will not bar relief for the class he represents." Here the company had offered employment to Parham and changed its recruiting practices. The court looked to company practices at the time Parham was an applicant.

Before we get down to specific cases and the application of statistical evaluation, I would like to review how the courts have viewed statistical data in civil rights cases. The courts, particularly in the South, gained their familiarity with statistical analysis in the early voting and school cases.

In employment cases, the courts have given heavy weight to statistical disparities that exist. This attention stems from the Parham case where the court held, "as a matter of law, that these statistics which revealed an extraordinarily small number of black employees established a violation of Title VII of the Civil Rights Act of 1964" rather than a prima facie case.

In the Mabin case, the court stated that statistics that demonstrated racial disparities between the percentage of the blacks available for employment in a specific community and the percentage of blacks employed by a particular business in that community may in the proper case make out a prima facie case of racial discrimination. 5/

In a more recent fifth circuit case, Hester versus Southern Railway, 6/ the court more cautiously stated that "the paths to establishment of a prima facie case of racial discrimination are several. In some instances a showing of disparity between the percentage of minority members of the local population and the percentage in a particular job may be of significance." This compares to a fifth circuit opinion in the Ochoa case where the court held that we "accord statistical evidence great and oftentimes decisive weight." 7/

One thing is clear from the reading of the cases, there is very little consistency in what comparisons are made. In some cases, particularly cases against municipalities, comparisons are made against the demographic makeup of the total population of a city. 8/ The same is true in state cases, particularly state police type cases where the population of the state is taken into account. 9/ In one recent case, Rios v. Enterprise Assoc. 10/ the Appellate Court did rationally discuss the labor market concept in an appeal for a higher affirmative action goal.

In the Rios case, the union was handed a 30% job goal figure to achieve in the New York Metropolitan Area. Here the Appellate Court held that utilization of data for the five boroughs in New York City was not adequate since the union also encompassed predominantly white Suffolk counties. The court concluded that the workforce should be closer to a 20% minority by taking the census data of those males 16 years of age or older in the expanded territory. While noting that those under 18 would not be prospects it suggested that this was offset by an under-counting of Spanish surnamed citizens.

With respect to each of the areas in the employment process that the courts have looked at, I will try to follow the outline of the program you will be following at the Workshop for these next few days. First, I would like to look at the hiring process which consists of the following elements: recruitment, selection and placement.

Most of the recruitment cases involved such grave disparities that the courts did not have to deal with refined data. In Parham, the company's workforce was 1.8% black in a market that was at least 18% black. In Georgia Power, which is a state wide case, the company's employment was 7% black in a state that is 26% black. 11/ In both cases the courts knocked down the word-of-mouth recruiting practices of the companies and in neither case did they specifically reference the comparisons being made. It was just presumed that the employment ratio was self-evidently low.



There is no clear cut definition in the court cases as to what constitutes a grave disparity. In an NAACP case against San Francisco, the court used the 1970 Census data of the city population and found it was 14% black, 15% Latino and 14% Asian while the police force was 4.4% black, 4% Latino and .88% Asian. This was considered grave disparity. 12/ In a Toledo police case where the patrolman population was 6.8% black compared to a 13.8% population, the court made no finding of discrimination. 13/

The statistical findings do not always run against the employer. In the Hester case the plaintiff tried to make the case on the 51% black population of the city of Atlanta while the defendant used the SMSA population of 22% black. The case here concerned alleged discrimination of an applicant who was applying for a job as a "data typist." In a footnote, the court held that "meaningful comparison with the statistics for the general population is not possible on this record." They then went on to say: "A more significant comparison might perhaps be between the percentage of blacks in the population consisting of those able to type 60 words per minute or better." A virtually impossible task to determine. They found no discrimination.

In the Ochoa case, the 5th circuit found no discrimination under the following circumstances in a community that was 10% Mexican American. The plant employed between 662 and 745 people but only 5 to 7 Mexican Americans. Ochoa was 1 of 11 Mexican American applicants in an applicant population of 684. Of the 56 applicants hired one was Mexican American. The lower court reasoned that 9.09% of the Mexican American applicants were hired and only 8.17% of the other applicants were hired. The appellate court said that the smallness of numbers demonstrates that "the court was not compelled to allow such statistical showing to set in train the usual presumptions."

We might take some guidance on relevant labor market data from one of the Legal Aid Society of Alameda County cases. 14/ The court in that instance had this to say about affirmative action plans:

"For purposes of determining availability, the labor area must not be defined in such a way as to minimize the availability of minorities or women. In defining the relevant labor area, the contractor must set forth statistics showing the ethnic and sexual composition (including specific data for the four minority ethnic groups) of the population of the SMSA, county and city in which the establishment is located and other appropriate areas. Any program which adopts a labor area which has a minority population lower than the highest of the SMSA, county or city must be rejected unless the program provides an appropriate justification for the use of such area."

In the cases involving selection processes, we have a more consistent pattern from the courts. This is primarily because of the Griggs case. In Griggs, the Supreme Court accepted the fact that there was disparate treatment by noting the 1960 Census data concerning high school

graduates in the state of North Carolina when 34% of the white males and 12% of Negro males completed high school. The court also accepted EEOC findings that 58% of the whites passed the test battery compared to 6% of the blacks.

Because of the results of these selection devices the court found them unlawful with these words: "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as built in headwinds for minority groups."

In Johnson v. Goodyear, 15/ the 5th Circuit reiterated the Griggs holding. In that case Goodyear kept the high school requirement relying on a small difference in educational achievement between blacks and whites in the age 16-24 group in the immediate Houston area in 1970. The plaintiffs used the 1960 Census data for the state of Texas. The court sided with the plaintiffs saying:

"Goodyear's geographic and age limitations conveniently ignore the recognized mobility of today's black labor force and the obvious fact that the potential labor pool cannot be limited to one particular age group. A "young" black individual whether age 25 or 45 is a potential employee in the Goodyear plant. Moreover a black individual in rural Texas today may be an active participant in the Houston labor pool tomorrow."

Despite Griggs, Goodyear also continued testing including the Wonderlic test. The lower court found no disparate treatment since "132 black applicants failed the test compared to 126 white applicants." The district court said this 6% difference was minor. The 5th circuit read the data differently. They found that 49% of the blacks tested failed while only 15% of the whites tested failed. "Consequently, Johnson's evidence clearly revealed the pernicious consequence of the test on black applicants."

The courts have consistently knocked out selection devices that have a disparate effect on the protected classes. A clear line of cases occur in the municipality cases where both the entry tests and promotional tests have been challenged. In those promotional tests that are weighted by seniority and where in the past women and minorities were denied entry to employment the seniority factor can be challenged as an unlawful selection device. 16/ The Griggs principle of disparate effect applies to such issues as arrest record inquiries, 17/ polygraph tests and other devices that impacts on the protected classes.

The principles applying to initial selection practices apply as well to transfer and promotional selection practices.

The application of statistical evaluation to the placement process usually involves only internal comparisons of an employer's workforce currently and in the past. Here the courts look to the pre-Title VII, Civil Rights Act conduct of the company to see if that conduct contributes to disparities today. The comparisons run not only to department workforce utilization analyses but also to job titles and groups.



In Johnson v. Goodyear, despite token integration in the once all-black labor department, the court found discrimination where 88% of the laborers were still black. In addition, 40-50% of the new black employees were being placed as laborers while less than 1% of the new whites were so placed.

The courts have looked at several aspects of initial placement other than concentrations in menial positions as in Johnson. Even where all beginners earn equal pay the courts will look at high and low opportunity departments or lines of progression. A statistical device to measure the problem is to show average hourly earnings of each sex or racial group after a period of time. In the Baxter case the court found white production workers earned \$157 a week compared to blacks of \$134 in integrated jobs. The differential of blacks in black jobs was greater. 18/

In that case the court held that the differential was enough to determine a loss. The court went on to criticize the district court for imposing on the discriminatees the burden of proof to show individual economic loss. They went on to say that "Baxter has established a prima facie case of class-wide discrimination resulting in severe economic disparities between the earning power of white and black employees."

It is these disparities that have given us the rash of back-pay cases. Most of these cases have arisen out of initial placement disparities. It is no longer an issue of whether back pay is due but now the issue is how much. I refer you to the Pettway v. American Cast Iron Pipe Co. case for the best discussion of the intricacies of back pay. 19/ In that case the 5th circuit said:

"...in computing a back pay award two principles are lucid: (1) unrealistic exactitude is not required and (2) uncertainties in determining what an employee would have earned but for the discrimination should be resolved against the discriminating employer."

The court noted that in complex work situations with many employees, the exact reconstruction of each individual's work history is not only imprecise but impractical. Among the suggested methods of computation was the grouping of persons of comparable years of service and measuring the average earning differential by race or sex. The court indicated that district courts had wide latitude in determining back pay awards.

I would like to spend a few moments to discuss some other areas impacted by Griggs. Gregory v. Litton 17/ is a case in point. Litton's application asked for arrest records. Blacks stand a greater chance of being arrested over whites. The court found that line of questioning as a violation of Title VII. In that case the appellate court noted that: "Historical discrimination need not be shown in order to obtain relief from discrimination in fact, regardless of its cause or motives." The court based its decision on a statistical study showing blacks have a greater chance at being arrested than whites.

With respect to disciplinary terminations, we have two cases concerning garnishments. The employers dismissed workers after 3 garnishments within a set period of time. Relying on private statistical studies on garnishments, the courts held that discharge was improper since it fell on blacks more than whites even when applied consistently. 20/

In several areas, the Griggs principle applies to sex discrimination particularly where height and weight standards are used without a proven business necessity. 21/

I would like to talk briefly to an unsettled area raised by the Watkins case which held that the "last in first out" principle cannot be applied where the protected classes were formerly excluded from the workforce. 22/ The issue came up in an interesting case, Loy v. City of Cleveland. 23/ In that case the city was faced with the prospect of laying off 89 police officers. The city took the roster of the last 194 police officers and ranked them by their civil service rating. It went up the roster ticking off the 89 to be laid off except that after the bottom 16 minorities were reached they skipped the minorities. This was in keeping with their affirmative action effort (they hired 18% and they wanted to keep 18%). The newly hired policewomen sought and got an injunction because all but 2 of the 15 women would be wiped out. The injunction came because the court felt the women would prevail in a case of discrimination since 19% of those passing the test were women and only 8% of those hired were women. Taking the lead from the city with their minority effort and citing Watkins, the court ordered that only 8% of those laid off should be women. The case was appealed but the court held the matter moot since Cleveland found the money to prevent a layoff. This is another unsettled problem to be faced down the road.

Before closing my remarks I would like to address the issue of goal or quota setting. I would direct your attention to a Fifth Circuit decision, Morrow v. Crisler, which the Supreme Court will hear. 9/ This was an "en banc" decision with a wide range of discussion on affirmative relief in employment discrimination cases. The case involved the state highway police.

The heart of the decision stated that:

"Beyond insuring that objective hiring criteria are used, it will be incumbent on the District Court to order some affirmative relief. It may within the bounds of discretion, order temporary one-to-one or one-to-two hiring, the creation of hiring pools, or a freeze on white hiring or any other form of affirmative hiring relief until the patrol is effectively integrated."

The court did not state what effective integration meant. It did state:

"It is not required that the proportion of blacks on the Patrol mirror the proportion of blacks in the population. However, in view of the protracted and pervasive discrimination...the burden will be on the Patrol to prove that the residual effects of past discrimination has in fact been eliminated."



In the concurring opinions the judges spoke of "color conscious" hiring and using the "catch up" principle to overcome the effects of past discrimination.

In summary, goal setting will have to be determined by the degree of underutilization. In the Mississippi case, less than 11% of the highway patrol was black in a state with a 37.2% black population. The issue of quota hiring to overcome past discriminatory hiring will be decided by the Supreme Court.

In conclusion, I would like to point out that the use of statistical analysis to test for systemic discrimination can be done by you the employer. It is the type of analysis called for in Order 14. We have much in the way of judicial guidance to help in this evaluation.

NOTES

- 1/ 7th and Final Report of the Committee on Government Contracts P. 14
- 2/ Griggs v. Duke Power Co., 3 EPD 8137
- 3/ Harvard Business Review, September-October 1974
- 4/ Parham v. Southwestern Bell Telephone Co., 3 EPD 8021  
Quotation from Hall v. Werthembag, 1 EPD 9732
- 5/ Mabin v. Lear Siegler, Inc., 4 EPD 7768
- 6/ Hester v. Southern Railway Co., 8 EPD 9582
- 7/ Ochoa v. Monsanto Co., 5 EPD 8437
- 8/ Carter v. Gallagher (DC, Minn. 1971) 3 EPD 8205; CA-8 1971, 3 EPD 8335;  
(CA-8 1972) 4 EPD 7615; Cert denied (U.S. 1972) 4 EPD 7616; (DC Minn.  
1972) 4 EPD 7853 (see notes 12, 13 & 16)
- 9/ Morrow v. Crisler CA-5, 7 EPD 9237; US Sup. Ct. to Review
- 10/ Rios v. Enterprise Assoc., 8 EPD 9488
- 11/ U.S. v. Georgia Power, 5 EPD 9488
- 12/ NAACP v. Civil Service Commission, 6 EPD 8956
- 13/ Afro American Patrolmen's League v. Duck, 7 EPD 9207
- 14/ Legal Aid Society of Alameda County v. Brennan, 8 EPD 9483
- 15/ Johnson v. Goodyear Tire & Rubber Co., 7 EPD 9233
- 16/ Allen v. City of Mobile (DC Ala. 1971) 4 EPD 7582; (CA-5 1972)  
5 EPD 7958; (CA-5 1972) 5 EPD 8407; Cert denied (US SCT 1973)  
5 EPD 8656
- 17/ Gregory v. Litton Systems (CA-9) 5 EPD 8089
- 18/ Baxter v. Savannah Sugar Refining Co., 7 EPD 9426
- 19/ Pettway v. American Cast Iron Pipe Co., 7 EPD 9291
- 20/ Johnson v. Pike Corporation of America, 4 EPD 7517  
Wallace v. Debron Corporation, 6 EPD 8855
- 21/ Hardy v. Stumpf, 7 EPD 7425
- 22/ Watkins v. Steelworkers, 7 EPD 9130
- 23/ Loy v. City of Cleveland, 8 EPD 616

THE WHITE HOUSE  
WASHINGTON

May 1, 1975

Dear Mr. Robyns:

On behalf of Mr. Robert Hartmann, I  
acknowledge receipt of your recent  
communication.

Your inquiry has been forwarded to  
the Equal Employment Opportunity  
Commission which handles such complaints.

Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

Mr. Ted Robyns  
5 Morrill Street  
Nashua, New Hampshire 03060



May 1, 1975

**MEMORANDUM FOR:**

**Mrs. Ethel Bent Walsh  
Acting Chairman  
Equal Employment Opportunity Commission**

**The attached correspondence alleges racial  
discrimination in employment. It is referred  
for appropriate handling.**

**Thank you.**

**Jay T. French  
Assistant Counsel**

**JTF:fcg  
bcc: PWB**



Ted Robyns  
5 MORRILL ST.  
NASHUA, N.H. 03060

ROBERT T. HARTMANN  
THE WHITE HOUSE  
WASHINGTON, D.C.

Mr. Counselor

Sir: I wish to request your aid, as I am very poor.  
My tax return was prepared with the "help" of the IRS. office  
here in Nashua. Now I find the main office saying there is some  
error. I find this peculiar and believe I need help.

Also the: J. F. McELWAIN CO. INC.

12 MURPHY DRIVE  
NASHUA, N.H. 03060

Where I work I find very racist  
and prejudiced against person such as myself. I am filing a  
Complaint charging RACIAL, Job, and Color discrimination.

J.F. McElwain is a division of McMillan Corp. we make  
for Thom McAN shoes and also sell GOVERNMENT & MILITARY costumes

Sir: please investigate and if you find as I have stated, please  
help me in my struggle against racism for simple justice and  
the right to live. thank you

Ted Robyns



Thursday 5/15/75

Meeting  
5/15/75  
3:30 p.m.

5:05 We have scheduled an appointment for  
Vice Chairman of EEOC -- Ethel Walsh --  
for Monday 5/19 at 3:30 p.m.



MAY 27, 1975

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

---

THE WHITE HOUSE

EXCHANGE OF REMARKS  
BETWEEN THE PRESIDENT  
AND

LOWELL W. PERRY  
AT THE SWEARING-IN CEREMONY  
OF

LOWELL W. PERRY  
AS  
CHAIRMAN OF THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

12:58 P.M. EDT

THE PRESIDENT: Lowell, Mrs. Perry, Judge Keith, distinguished guests:

This is a very great moment in this Administration. It is my great privilege and pleasure to have selected for this very vital role a person that I have known a good many years, a person that I have admired for many, many years.

He first came to my attention when I saw his prowess on the gridiron at the University of Michigan. He made it and I didn't. He was really good and played not only exceptionally well at Ann Arbor, but very well for the Pittsburgh Steelers.

I have known Lowell over a period of time since then. I have always looked at his career, both in Government and with private employment, as an example of what a person can do who has got ability and the desire and the dedication.

I think, in this instance, it is Government's gain to have Lowell with us, and Lynn Townsend probably is losing one of his very finest young people in his Chrysler organization.

It just seems to me that Lowell Perry is the right person to do a fine job in the Equal Employment Opportunity Commission and I look forward to the job that he will do.

This Administration is totally dedicated to the elimination of any discrimination in the area of sex, race, creed, color, or what have you. Under the leadership of Lowell Perry, I am certain and positive that that dedication to that cause will be carried out.

MORE



And it is a great privilege, Lowell, for me to participate in your oath-taking with your old friend, and a friend of mine, Judge Damon Keith of the Federal Court in Detroit.

(Judge Keith administered the oath of office.)

MR. PERRY: Thank you, Mr. President, for your faith in my abilities to provide the leadership in administering Title VII of the Civil Rights Act of 1964, one of the most important laws in our land today.

I welcome the opportunity to serve your Administration and the citizens of the United States, and I pledge myself to a fair, open, and vigorous implementation of the responsibilities entrusted here to me today.

I might say that I have been gratified at the great response from individuals and organizations across the country, and I am really encouraged by it, and I would also like to take just this slight opportunity to say to my many friends and relatives who traveled here with me on this most important day of my life -- the very most important day of my life -- I will do the things that I swore to with Judge Keith. (Laughter)

Thank you.

END

(AT 1:01 P.M. EDT



THE WHITE HOUSE  
WASHINGTON

*Box filing  
PO*

The enclosed letter received in White  
House Mail Room in this condition, 6-5-75.

*W. Rainey*

*X 2582*



*attached is  
the previous  
letter from Mrs.  
Thornton (on  
their  
letterhead).*



# TRENTON BUSINESS AND PROFESSIONAL WOMEN'S CLUB

TRENTON, NEW JERSEY

May 5, 1975

The President of the United States  
White House  
Washington, D.C. 20500

Attn: Phillip Buchen, White House Counsel  
Re: Ethel Bent Walsh's Reappointment to  
Federal Equal Employment Commission (EEOC)

Dear Mr. President:

The re-appointment of Ethel Bent Walsh to the Federal EEOC would score a victory for the equal rights movement.

It is with pride in her personal and professional credentials and her impressive EEOC record of commitment and progress that we strongly urge you to rename her to another term.

The Business and Professional Women's (BPW) organization devotes its main attention to promoting the interests and priorities of employed women. Therefore, it is natural for us to be greatly concerned about the future of the EEOC and Ms. Walsh's contributions to the unfinished work ahead.

Women, minorities and this federal agency need individuals like her to serve on the EEOC if it is to achieve its challenging obligations to create equal job opportunities for citizens of our great nation.

Mercer County, one of the five largest counties in our state, knows what a human dynamo Ms. Walsh is. In October of 1972 she keynoted a "Salute To Women Dinner" co-sponsored by the Greater Trenton Chamber of Commerce and our club. The audience included men and women active in business, labor, government, education, politics, community organizations and women's groups.

The business community can honestly admit that her visit and her message had a beneficial impact, especially on a great percentage of members of the male-dominated local chamber of commerce. (The C of C has a nation-wide reputation for being male chauvinists!!)

She helped to change their attitudes and practices. I am pleased to report that since her appearance, women have been placed on chamber committees and a lone woman has been elected to the prestigious Board of Directors. This chamber has come a way but it has a long way to go. Ms. Walsh started it on this journey.

Mr. President, we feel that Ms. Walsh could enhance and strengthen the role of the EEOC, especially now when you have renewed your commitment to the noble goals of this agency. For the good and best interests of EEOC and its constituency, we hope that you will recognize her contributions and re-appoint her for a second term.

Sincerely,

*Eileen P. Thornton*  
Eileen P. Thornton

President

EPT:sj

CC: U.S. Senator C. Case (R-NJ)

U.S. Senator H. Williams (D-NJ)

78 Alberta Avenue

Trenton

New Jersey 08619





Hon. Phillip Buchen  
White House Counsel  
White House  
Washington, D.C. 20500

THE WHITE HOUSE

WASHINGTON

June 4, 1975

Dear Mrs. Thornton:

Many thanks for your letter of May 9 addressed to the President in which you endorse Ms. Ethel Walsh for re-appointment as a member of the Equal Employment Opportunity Commission.

Careful consideration is being given to various qualified candidates for the position now held by Ms. Walsh, and your comments in regard to her qualifications will be included in the material under review.

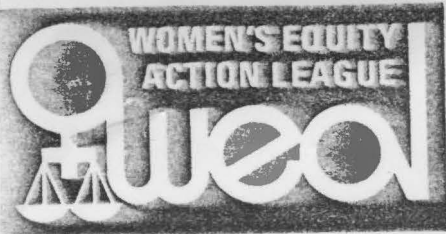
Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

Mrs. Eileen P. Thornton  
President  
Women's Equity Action League  
78 Alberta Avenue  
Trenton, New Jersey 08619





## NEW JERSEY

### STATE BOARD

#### PRESIDENT

Eileen P. Thornton  
18 Alberta Avenue  
Trenton, N. J. 08619

#### CENTRAL VICE PRESIDENT

Doris A. Schwartz  
1 Laurel Avenue  
Old Bridge, N. J. 08857

#### NORTHERN VICE PRESIDENT

Dr. Constance Waller  
53 Lakeside Trail  
Kinnelon, N. J. 07405

#### SOUTHERN VICE PRESIDENT

Joyce Countiss  
143 Chateau Ridge Apts.  
Pine Hill, N. J. 08021

#### SECRETARY

Donna Gray  
102 Montgomery Street  
Highland Park, N. J. 08904

#### TREASURER

Madora J. Doherty  
905 South Ocean Avenue  
Seaside Park, N. J. 08752

### STATE ADVISORY BOARD

Clara L. Allen  
Dr. Edward J. Bloustein  
Dr. Phyllis Z. Boring  
Congresswoman Millicent Fenwick  
Commissioner Joanne Finley  
Ruth Russell Gray  
Caroline Hoff Harmon  
Commissioner Ann Klein  
Stephen M. Nagler  
Vernon Potter  
Elizabeth C. Schwartz  
Katherine Elkus White  
Betty Wilson  
Deborah C. Wolfe

May 9, 1975

The President of the United States  
White House  
Washington, D.C. 20500

Re: Re-Appointment of Ethel Bent  
Walsh to Federal Equal Employ-  
ment Opportunity Commission

Attn: Phillip Buchen,  
White House Counsel

Dear Mr. President,

New Jersey WEAL takes pride and pleasure in supporting the re-appointment of Ethel Bent Walsh as a member of the Federal Equal Employment Opportunity Commission.

Her personal and professional credentials are highly commendable and merit her re-nomination. Ms. Walsh's impressive record of service reflects her strong determination and deep commitment that the law should be respected and enforced.

During her time as Acting Chairman of the EEOC, you have seen how her profound legal knowledge of the principles for equal justice as well as human rights have been put to good work.

Ms. Walsh's eloquence in speaking for equal job opportunities and recognition has been employed for the good and best interests of American employers and workers. She has spoken dynamically with skill and courage to students, university personnel, trade associations, women's groups, private sector executives and others.

Her audiences from Las Vegas, Wichita, St. Louis, Chicago, Oklahoma, down to Miami and up to Montreal have been impressed and enlightened by her words of "thou shalt not discriminate."

Ms. Walsh's determination for women to advance in employment is evidenced by her being a founding member and present chairperson of the Executive Women in Government. As you know, this group supported your efforts to name Carla Hills as HUD Secretary. The same zealous work she did to have this appointment approved was also done to place other highly qualified women in top federal posts.

Before she joined the federal government in 1970, she was part of New Jersey's private sector. Ms. Walsh was plant manager of



May 9, 1975

Lanvin-Charles of the Ritz in Holmdel.

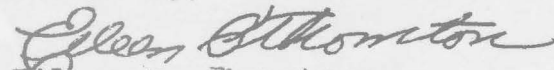
At a time when gains hard won by women and minorities through affirmative action efforts are being lost by these special victims of the economic recession, Ms. Walsh's capacity for progress and quality of work are so essential.

If the EEOC is truly meant to achieve its noble objectives, we need Ms. Walsh more than ever to be part of the long journey ahead towards equality for everyone.

Mr. President, you have personally seen how her experience and expertise have been so capably used during the EEOC transition. We are now calling on you to allow Ms. Walsh to continue in EEOC service.

We feel that the Ford Administration should utilize this capable individual.

Sincerely,



Eileen P. Thornton  
President

Hon. Clifford Case, Member of Senate (R-NJ)  
CO: Hon. Millicent Fenwick, Member of Congress (R-NJ-5th District)  
Hon. Edwin B. Forsythe, Member of Congress (R-NJ-6th District)  
Hon. Matthew J. Rinaldo, Member of Congress (R-NJ-12th District)  
Hon. Harrison Williams, Member of Senate (D-NJ)



THE WHITE HOUSE

WASHINGTON

June 18, 1975

E E O C

MEMORANDUM FOR: JACK SHAW

FROM: PHIL BUCHEN

P.W.B.

I have acknowledged the attached letters recommending the reappointment of Mrs. Walsh to the Equal Employment Opportunity Commission. I refer them to you for appropriate handling with respect to the selection process.



THE WHITE HOUSE

WASHINGTON

June 18, 1975

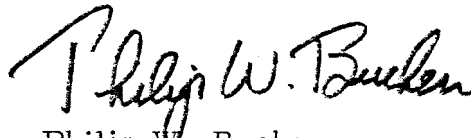
EEOC

Dear Ms. Cryan:

On behalf of President Ford, thank you for your letter of June 10, 1975, supporting the reappointment of Mrs. Ethel Bent Walsh to the Equal Employment Opportunity Commission.

I can assure you that your recommendation of Mrs. Walsh will be given full consideration. Your views on this appointment are most appreciated.

Sincerely,



Philip W. Buchen  
Counsel to the President

Ms. Marjorie N. Cryan  
17 Mountain View Road  
Trenton, New Jersey 08628



THE WHITE HOUSE

WASHINGTON

June 18, 1975

EEOC

Dear Ms. Doherty:

On behalf of President Ford, thank you for your letter of June 10, 1975, supporting the reappointment of Mrs. Ethel Bent Walsh to the Equal Employment Opportunity Commission.

I can assure you that your recommendation of Mrs. Walsh will be given full consideration. Your views on this appointment are most appreciated.

Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

Ms. Madora Jane Doherty  
Doherty & Doherty  
214 Washington Street  
Toms River, New Jersey 08753



Eva:

After Mr. Buchen signs the 2 letters,  
please xerox a copy of each and send  
to Jack Shaw.

Thank you.

Nancy



THE WHITE HOUSE

WASHINGTON

June 18, 1975

MEMO FOR: PHIL BUCHEN

FROM: BARRY ROTH

BR

Jack Shaw rather than Aaron Spaulding  
is handling this matter.

A memo to the President on this  
appointment is about to be staffed  
out.



THE WHITE HOUSE  
WASHINGTON

June 16, 1975

To: Barry

From: Phil Buchen

Please prepare acknowledgment  
letters and a transmittal  
memo sending the attached  
letters to Aaron Spaulding.

THE WHITE HOUSE  
WASHINGTON

June 16, 1975

To: Barry

From: Phil Buchen

Please prepare acknowledgment  
letters and a transmittal  
memo sending the attached  
letters to Aaron Spaulding.



DOHERTY & DOHERTY  
COUNSELLORS AT LAW  
214 WASHINGTON STREET  
TOMS RIVER, N.J. 08753

JEROME J. DOHERTY  
MADORA JANE DOHERTY

349-3292  
AREA CODE 201

PLEASE REPLY TO  
POST OFFICE BOX 476

June 10, 1975

The President  
White House  
Washington, D.C. 20500

Attention: Phillip Buchen, White House Counsel

Re: Ethel Bent Walsh's Reappointment To  
Federal Equal Employment Commission

My dear Mr. President:

As Treasurer of Women's Equity Action League,  
I urgently endorse Ethel Bent Walsh for reappointment on  
the Federal Equal Employment Opportunity Commission.

I have watched Mrs. Walsh progress during  
her term of office and feel that through her efforts she  
has made great stride in equal opportunities for women,  
especially in the employment market.

We in New Jersey have special knowledge of  
Mrs. Walsh's capabilities and feel that she is more than  
capable of putting equal job opportunities into action.

Respectfully yours,

*Madora Jane Doherty*

MJD:jnp

cc: U.S. Senator C. Case  
U.S. Senator H. Williams



17 Mountain View Road  
Trenton, New Jersey  
June 10, 1975

The President  
White House  
Washington, D. C. 20500

Re: Reappointment of Ethel Bent Walsh to EEOC

Attn: Philip Buchen, White House Counsel

Dear Mr. President:

Ethel Bent Walsh has been an effective and dedicated Commissioner serving the United States Equal Employment Opportunities Commission. I believe her appointment expires at the end of this month.

As a dedicated Republican and as a member of the National Organization for Women (NOW), I would like to see Mrs. Walsh continue in this post which she has so capably filled. Please reappoint Mrs. Walsh to the EEOC.

Sincerely,

Marjorie N. Cryan



FOR IMMEDIATE RELEASE

JUNE 19, 1975

Office of the White House Press Secretary

-----

THE WHITE HOUSE

The President today announced his intention to nominate Abner Woodruff Sibal, of McLean, Virginia, to be General Counsel of the Equal Employment Opportunity Commission for a term of four years. He will succeed William A. Carey who resigned effective March 19, 1975.

Mr. Sibal is presently serving as a partner in the law firm of Wells and Sibal of Washington, D.C. From 1970 to 1974, he was with the firm of Gadsby & Hannah of Boston and Washington. He was elected to Congress in 1960 and served in the 87th (1961-63) and 88th (1963-65) Congresses. He was a member of the Connecticut State Senate from 1957 to 1961, serving as Minority Leader from 1959 to 1961. During this time he was also a partner in the law firm of Sibal, Hefferan & Rimer, Norwalk and Wilton until 1970. From 1951 to 1955 he was Prosecuting Attorney in Norwalk, Connecticut.

He was born in New York, New York, on April 11, 1921. He received his A.B. degree from Wesleyan University in 1943 and his LL.B. degree from St. John's University of New York in 1949. He served in the United States Army during World War II.

Mr. Sibal is married to the former Mary Ellen Igou and they have two children.

# # #

