The Issue of Employer Intent or "Good Faith Effort" in the Affirmative Action/ Equal Employment Opportunity Process

by

Anthony L. Stoker
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First Reader Dr. Peter Gluck Peter R Gluck

Second Reader Dr. Albert Price Albert C. Price

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Personal Vita

NAME: Anthony L. Stoker

HOME ADDRESS: [redacted]

HOME TELEPHONE: [redacted]

OFFICE ADDRESS: Oakdale Regional Center for Devel. Disab.
2995 W. Genesee St., Lapeer, MI 48446

OFFICE TELEPHONE: (313) 664-2951, Ext. 209,210

PERSONAL DATA:

MARITAL STATUS:	Single
CHILDREN:	Tiffany Michelle (14)
DATE OF BIRTH:	December 8, 1945
PLACE OF BIRTH:	Flint, Michigan
HEALTH:	Excellent
HEIGHT:	[redacted]
WEIGHT:	[redacted]

EDUCATION:

June 1964 - Beecher High School, Flint, Michigan Diploma

Jan. 1975 - University of Michigan, B.A. in Psychology

Jan. 1981 - University of Michigan, The Horace H. Rackham School of Graduate Studies Masters Program in Public Administration

WORK EXPERIENCE:

1973-1977 - Genesee County Community Mental Health
Performed duties as a Mental Health Worker. Responsibilities included group and individual councelling for mentally ill adults as well as implementing daily activities in a milieu type setting.

1977 to present - Oakdale Regional Center for Devel. Disab.
Performed duties as a Program Director and Development Supervisor. Responsibilities included/include 24 hour administration for planning, directing and supervising programs for the developmentally disabled. Currently supervise the construction of new homes in the community for residents who transfer from the institution.

Abstract

In today's Affirmative Action/Equal Employment Opportunity process, employers have been expected to provide a "good faith" effort in reaching equality and eliminating effects of past discrimination. In doing so, "good faith" has not been clearly defined, leaving public administrators and personnel directors to interpret and implement numerous and often times conflicting AA/EEO directives on their own. Failure to provide such a "good faith" effort has at times resulted in some employers experiencing sanctions and consequences imposed by Federal entities and the courts. Existing in the past, and somewhat in the present, confusion has surrounded the "good faith" concept. Continuous revision and streamlining of directives from various Federal, State and Local governing bodies have and will provide a more clear understanding of employer expectations and progress towards defining the "good faith" notion.

Introduction

Almost two decades have passed since Title VII of the 1964 Civil Rights Act (later amended by the Equal Employment Opportunity Act of 1972) was enacted for the purpose of ensuring remedial action of past discrimination and future equal employment opportunity for the nation's minority citizens. Since that time the United States Congress has actively pursued the issues of equity by passing such measures as the Age Discrimination Act of 1967, the Vocational Rehabilitation Act of 1973, and the Vietnam Readjustment Act of 1974. In 1965, in response to President Lyndon Johnson's Executive Order 11245, the Federal Equal Employment Opportunity Commission (EEOC) and the Office of the Federal Contract Compliance Programs (OFCCP) were created to carry out enforcement and monitoring activities as intended by Congress.(1) Public and private agencies that traditionally had unlimited authority and freedom in implementing personnel practices were now subject to Federal guidelines and requirements aimed at eliminating discriminatory employment procedures.

Accompanying the passage of the Federal Acts was a myrid of complicated and confusing Federal mandates which attempted to define Affirmative Action/Equal Employment Agency compliance.(2) Bryner (1981) discusses some of the problems associated in complying with those mandates, in his article "Congress, Courts, and Agencies: Equal Employment and the Limits of Policy Implementation."

He suggests that Congress spent a great deal of time writing

and debating and changing the 1964 Civil Rights Act. But as he adds, "It was neither really careful to specify some important provisions nor willing to oversee the implementation of the Act." He points out that Title VII does not describe how limited employment opportunities are to be allocated among minorities and women thus creating competition between the protected classes.

In his discussion of Federal Agencies and Federal Courts, Bryner presents a picture of fragmentation and limited enforcement powers. He indicates that until 1978 there were more that twenty agencies besides the EEOC who were responsible for administering discrimination laws. And although the 1978 Carter Reorganization Plan remedied the problem to some degree, he points out that the courts, the EEOC and the OFCCP shared responsibilities to govern employer practies. The EEOC was to issue interpretive guidelines to assist employer compliance and to assist victims of discriminatory employment practices to gain redress. Their enforcement powers were limited to conciliation and recommendations to the Attorney General's Office for possible prosecution of AA/EEO violations. In the 1972 Amendment the Commission was granted the power to initiate suits on its' own behalf. Nonetheless, Bryner states, "Congress explicitly rejected here the traditional model of administrative regulation where the agency is empowered to impose administrative sanctions such as cease and desist orders. This greatly weakened form of administrative agency powers constituted a fundamental compromise made by proponents in order to gain passage of the bill. More than anything else this indicated the nature of support in Congress for an effective equal employment

policy and directs attention to the importance of Congressional deference to the Courts."

In summarizing, Bryner believes that the EEO/AA efforts by the Federal government have been shrouded by conflicts and inconsistencies. He makes the following concluding statements,

> "Government regulatory efforts, whether they be designed to achieve equal employment opportunity for all individuals or some other objectives, must be based on a consideration of the imperatives of implementation. They require a clear statutory basis, based upon general political support. The responsibility of making and shaping fundamental policy decisions cannot be delegated to the courts and administrative agencies. A failure to consider the politics of implementation is likely to render any policy objective-however important or worthwhile-weak and ineffective.

In addition to the potential for legal involvement, failure to have a clear understanding of the AA/EEO process may result in numerous time consuming complaints and grievances. Glen Schweitzner, writing in 1977, discusses this problem in his article, The Rights of Federal Employees Named as Alleged Discriminatory Officials". He presents data that shows that Federal employees in fiscal year (FY) 1970, filed 1,025 formal EEO complaints governmentwide. "At the same time the number of complaints which have resulted in a finding of discrimination and/or disciplinary action has remained at a low level. These unsustained allegations can have serious personal and careen implications for officials since their supervisors and peers usually become aware of the allegations but are seldom informed of the details of the investigations."

Higgins (1976) discusses the confusion surrounding AA/EEO issues and possible consequences for non-compliance in, "A Manager's Guide

To The Equal Employment Opportunity Laws".

> He states the following, "There is no central government unit which controls the overall EEO program nor one which provides organizations with systematic information related to its total requirements. As a result, organizations must seek compliance information from several sources, information which is often inconsistent in its treatment of essential issues. Compliance with EEO laws is complicated by the fact that there are six major federal laws related to EEO as well as various state and local laws."

He goes on to discuss possible consequences for failing to adhere to Federal guidelines and offers suggestions on how to better understand the laws and statutes involved and better manage AA/EEO programs. In Bryners article, discussed earlier, one of the OFCCP requirements for potential and existing contractors was to establish goals and timetables. These goals "may not be rigid and inflexible quotas; but "targets" attainable through "good faith efforts", or good intent.(3) But some employers may view "good faith effort" as being synonomous with goals and timetables. Anthony and Bowen (1977) discuss this problem in their article, "Affirmative Action: Problems and Promises". They point out that Title VII does not require goals or timetables but when the courts find an employer in violation of that Act they will often require goals and timetables as a remedial action. And further they suggest that of OFCCP which does require goals, defends their use by explaining that even though the goals are not reached, good faith efforts will avoid punishment and disciplinary action. He states the following, "many firms view the goals as a <u>quota</u> of minority and female applicants which must be hired or promoted to comply with AA policies. Firms often view it as a risk which cannot be taken. If the goals are not met and the reasons for missing the

goals are not accepted, the possibility of large expenditures and/or losses from court action exists, which could lead to financial ruin. The firm which follows this point of view will continue to view employment goals as quotas to reduce their own perceived risk".

Zaskin (1978) also discusses goals but in relation to "good faith efforts". He writes that while critics of AA/EEO view goals as quotas in disguise, Zaskin believes there are significant differences. He states, "In the definitions cited, the key concepts used to distinguish quotas from goals are 'mandatory requirements' versus 'good faith efforts' and 'fixed number of percentages' versus 'targets' based on the number of qualified applicants in the relevant job market." He further suggest that the basic difference between goals and quotas is the consequences applied when either are not fulfilled. He cites, Deborah Greenberg, Counsel for the NAACP Legal Defense and Education Fund as saying:

> "A quota exists if, when the designated number or percentage is not reached, the employer has a heavy burden of proving inability to find sufficiently qualified persons from the group previously subjected to discrimination. If the employer merely has to demonstrate some efforts and the burden of proof is on the party pressing for the numerical target to show bad faith, then the target can be said to be a goal."

Zaskin supports the issue of maintaining goals for AA/EEO. He believes it is a relatively easy method for assessing AA/EEO performance, supervisors/administrators do not set their sights too low or merely go through the motions and in conclusion states "So goals, to some extent serve as a proxy for evaluating the 'good faith' of AA efforts."

The issue of intent or good faith effort, although never specifically defined, has been a significant subject for review since the enactment of Title VII. Initially proponents of Title VII believed that discriminatory employment practices that were unintentional did not violate the act and therefore were not subject to administrative or judicial consequences.(4) But until the latter part of 1976, many of the court decisions reflected the decision rendered in the Griggs versus Duke Power Company (1971).(5) In that decision, any employment practice that held a discriminatory effect was judged unlawful, regardless of whether a good faith effort was shown. In 1976, the United State Supreme Court ruled in favor of employer intent in the Washington versus Davis case, which was a clear departure from the Griggs decision.(6) From 1976 on, countless court cases have been documented that suggest good faith effort by an employer is no longer a valid reason "to dispel statistical evidence of systematic exclusion of racial minorities".(7)

With the various court decisions and interpretive guidelines being provided by different monitoring agencies (e.g. OFCCP, EEOC) one might assume that the issue of intent or good faith effort would be clearly spelled out for agency administrators and personnel directors who have the responsibility to comply with various AA/EEO directives. This does not seem to be the case. A policy statement issued by the Federal Equal Employment Opportunity Coordinating Council in 1976 alludes to intent or good faith effort but does not specifically address itself to that issue. The following is part of that policy statement:

> "On the one hand, rigorus enforcement of the laws against discrimination is essential. But equally, and perhaps even more important, are affirmative, voluntary efforts on the part of public employers to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial or ethnic characteristics. Without such efforts equal employment opportunity is no more than a wish. The importance of voluntary affirmative action on the part of employers is underscored by Title VII of the Civil Rights Act of 1964, Executive Order 11246, and related laws and regulations-all of which emphasize voluntary action to achieve equal employment opportunity."

The policy statement goes on to discuss various affirmative steps if certain procedures have an "exclusionary effect" and concludes by saying the following:

> "Accordingly, the council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather the council recognizes that under applicable authorities, state and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the council believes that affirmative action programs will best serve the goal of equal employment opportunity."

The information or research gathered to date suggest that limited writings have been done on employer intent or good faith effort. Much of the past and current literature addresses issues such as intent,as in intent to discriminate, reverse discrimination, consequences of discrimination, issues of equity and mostly the problems associated with the AA/EEO process itself. Although good faith effort or intent is often mentioned in those same journal articles, books, essays and court decisions, it rarely has been the single topic for a research design, project or writing. For example Robertson (1977) discusses "employer motivation" rather than employer intent or good faith effort in his

writings on testing and the issue of equity. Even in reviewing some of the major Supreme Court decisions from 1971 to 1979, there were few that dealt with employer intent. Belohiav and Ayton (1982) list those cases and subjects below:

Year	Case	Subject
1971	Griggs vs. Duke	Employment discrimination
1973	Douglas Corp. vs Green	Burden of proof
1975	Albermarle vs Moody	Job relatedness
1976	Washington vs. Davis	Govt. employment
1977	Hazelwood School Dist. vs. U.S.	Statistics in employ.
1977	Frank vs. Bowman Trans.Co.	Seniority
1978	Regents of Univ. of Calif. vs. Bakke	Quotas
1978	Furnco Construction Corp. vs. Waters	Intent
1979	Weber vs. Kaiser Alum. and Chem. Corp.	Racial pref in hiring

Even though Zaskin, mentioned earlier, relates "good faith efforts" to goals, he too, fails to specifically define employer intent.

Many writers have attempted to discuss the problems associated with the AA/EEO process but none specifically outline the problem that may come about when reviewing "good faith effort". For instance, Pingpank (1983)-"Defending EEO Changes", Gery (1977)-"EEO-Managing the Process of Change", Belohiav and Ayton (1982)-"EEO Laws-Some Common Problems", Gilbreath (1977)-"Sex Discrimination and Title VII", and Anthony and Bowen (1977)-"AA: Problems and Promises", all discuss various problems associated with the AA/EEO process but do not specifically deal with the issue of employer intent Some of the problem areas they discuss are the

cost of emplementing AA/EEO programs, potential legal entanglements, multiple regulations, test validation, equity laws, managerial barriers, etc.

Statement of Purpose

The issue of intent or good faith effort is undoubtedly of great significance for students and practioners of public administration theory. AA/EEO public policy is not going to disappear, nor should it. It will continue to evolve and change, and the public personnel and agency administrators will need to adapt to those changes or face the possibility of charges of discrimination and costly legal entanglements, as mentioned earlier. But even more important is the issue of promoting a positive AA/EEO program that reflects the most current, up to date changes that may prove beneficial to the equity process.

Not only is it important to public administration followers but it is important also in the area of public policy as the AA/EEO concept itself is being challenged in the fact of economic and political disparity and uncertainty.(8) With a national unemployment rate reaching 10.8% and an even higher percentage for state and local municipalities, (9) it is not uncommon to speculate that employees of public agencies will engage in economic "survival" efforts in attempts to save their jobs, more so than they have in the past.(10) With this in mind, public policy makers must assume the difficult task of protecting AA/EEO gains and at the same time be equitable to public non-minority employees.

The purpose of this paper is to provide public administration students and practioners with a better understanding of some of the current issues surrounding employer intent or "good faith

effort" within the AA/EEO process. In providing that understanding an additional purpose of this paper is to research and attempt to answer four major related questions. Those questions are listed below:

1. In the contest of the AA/EEO process, how is employer intent or good faith effort defined?

2. What is the process for evaluating good faith effort or intent on the part of the employer?

3. What is the process for dealing with lack of good faith effort or intent for public employers?

4. Is it enough for public agencies to show good faith effort or intent in hiring, promoting, laying off, etc. of minorities or must there be determinable, measurable results within a specified period of time?

If public administration students and practioners have a clear understanding of what is meant by employer intent or good faith effort, they may be able to avoid (as Schweitzner suggests) numerous time consuming complaints and grievances, costly legal suits, and cancellation or denial of government contracts.

Method of Study

In an attempt to answer the four basic questions above pertaining to employer intent or good faith effort, the following will outline the specific areas of study as well as the methods to be used in obatining information within those areas:

1. Congress - responsible for enacting laws geared to eliminating past discrimination and providing future equal employment opportunities.

   Method - The 1964 Civil Rights Act will be reviewed for any specific language or discussion pertaining to employer intent or good faith effort. Also selected sections of Title VII within that Act will be studied for the same purpose.

2. Federal Equal Employment Opportunity Council - created by Congress to carry out enforcement and monitoring activities as intended in Title VII of the Civil Rights Act of 1964.

   Method - specifically this council's policies or policy statements will be examined as well as any additional AA/EEO guidelines that pertain to employer intent or good faith effort keeping in mind the basic questions needing review.

3. Federal Office of Contract Compliance - basically the same responsibilities as the EEOC but specifically with entities that have or want to have contracts with the Federal government.

   Method - the guidelines and/or contract requirements will be reviewed for any information that pertains or is related to employer intent or good faith effort. A finat comparison will be made between this agency and the FEEOC for language similarities or differences regarding good faith effort.

4. Federal Court Bodies - responsible for rendering decisions and consequences with regards to legally contested issues of equity and/or discrimination charges.

Method - in this instance two major court decisions will be examined; Washington vs. Davis (1976) and Griggs vs. Duke power co. (1971). Similarities as well as differences will be compared in terms of basis for the decisions.

5. State and local administrative agencies - responsible for interpreting, implementing and complying with public AA/EEO policies and plans.

   Method - specifically, the State of Michigan AA/EEO policy and requirements will be studied for language pertaining or relating to employer good faith effort. In addition, the City of Bay City, Michigan's AA/EEO policy will be reviewed for the same purpose. These two policies will then be compared for similarities and differences and finally both policies will be generally compared to the policy statement/s of the FEEOC.

Current and past literature in the field of public and personnel administration, specifically literature pertaining to the AA/EEO process will be used to support additional information presented in this paper. Also selected interviews with state and local agency administrators, personnel directors, and affirmative action officers will be obtained for further support.

Text

Congressional Legislation and Intent

Perhaps one of the most significant areas, with regards to the study of employer intent or good faith effort in the 1964 Civil Rights Act is that of Title VII, specifically section 703.(A) which states:

> It shall be an unlawful employment practice for an employer-
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or other wise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The meaning or intent by Congress was clear - discrimination in any form on the part of the employer would be held unlawful.[11] In section 706 (f) and (g) they delegated the responsibility of resolving any discrimination legalities to the courts, with the following authority:

> "If the Court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the Court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organizagion, as the case may be, responsible for the unlawful employment practice). Interium earnings or amounts earnable with reasonable deligence by the person

> or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the Court shall require the admission or reinstatement of an individual as a member of the union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended or expelled or was refused employment or advancement or was susepnded or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of Section 704 (A)."

Although Congress outlined several important aspects aimed at eliminating discrimination they failed to define or detail what was meant by employer intent or "good faith effort". This may have caused confusion and perceived "pressure to comply" on the part of some employers. Alan Saltzstein (1979) discusses this problem in his book, Public Employees and Policymaking. He suggests that often time laws do not result in clearly defined policies and laws that become controversial in nature leave implementation questions unanswered. And for the administrator or personnel director this means attempting to cope with the meaning of the law while at the same time not having the knowldege, skills and resources to carry out the intent. He makes the following statements, "Nowhere are these problems more evident than in the attempt to implement Title VII of the 1964 Civil Rights Act. While employment discrimination was forbidden by this law, the means to carry out its provisions still remain unclear. The burden of relating legislative and judicial intent with the realities of organizational life rests with the personnel policy maker. The problems of policy implementations are greater here than in other areas of concern because the societal committment has been limited, governments have allocated few resources to the problem, and conflicts between discrimination and other

rights are unresolved."

In support of Saltzstein, Backoff and Rainey (1977) state that intent or good faith effort is not well defined and the resulting confusion leads to increased pressure to hire, promote, train, etc. minorities and females. They argue that AA and EEO creates conflict on the part of managers who attempt to cope with those laws. They point out that "Affirmative Action tends to prescribe rules and actions for achievement of equal employment opportunity and in more public organizations at all levels of government." They cite AA/EEO critics as saying that the concept discourages hiring the best qualified because of the vagueness of the guidelines and faced with an uncertain environment, employers, "take the path of lease resistance" and attempt to hire on the basis of race and sex whether it is required or not. "It is reasonable to conclude that Affirmative Action involves pressure to achieve numerical representation by race and sex." The authors formally list the following norms and normative pressures as characterizing AA:

1. Special efforts of analysis, valadation, reporting and justification of personnel procedures, aimed at removing obstacles to Equal Employment Opportunity.
2. Pressures for alternations of personnel procedures and structure:
    A. For lowering or removal of certain standards, requirements or practices (such as written tests or high school diploma requirements) that are not job related.

B. For alteration of selection and certification procedures and other employment procedures, (sometimes, for "selection certification", for "hire, then train" procedures, for special pre-examination tutoring, for restructuring of tasks to allow for upward mobility), to remove obstacles to EEO.

3. Pressure for numerical representation for a degree of preference for minorities/female in personnel procedures, where failure to prefer them cannot be substantiated on the basis of clearly valid or job related criteria, and where their presence in the organization is clearly lower than their presence in the local population.

The authors conclude by saying that given the above mentioned norm and pressures, it would not be unexpected to find a number of complicated interrelationships within management systems with regards to AA.

Although intent or good faith effort is indirectly taken to mean "additional pressure" for some employers, others believe that AA/EEO laws are fair and becoming more clear as time goes on. Leap, Holley and Field (1980) discuss those laws in their article "Equal Employment Opportunity and Its Implications for Personnel Practices in the 1980's". They state the following, "Court decisions and rulings by administrative agencies subsequently clarified

the meaning of the fair employment laws and gradually delineated areas such as seniority plans and the use of selection tests, among others, that would receive the most attention and pose the greatest difficulty for personnel administrators." The authors go on to say that employers are expected to make "good faith efforts" in correcting any discrepancies in relation to the AA/EEO process, although they do not define the term.

Prior to the passage of Title VII, Congress included several discussions on employer action but the only really clear intent was that of prohibiting intentional discrimination.(12) Bryner, mentioned earlier suggest that Congress defined the standards to be based on intentional discrimination and that "the law would be enforced only where the employer had intentionally engaged in unlawful employment practices." He added that proponents of Title VII supported the notion, "inadvertent or accidental discrimination will not violate the Title.....it means simply that the respondent must have intended to discriminate." Other discussions were held, not in relation to good faith effort but to the similar issue of intent. The following are statements issued as separate minority views on Congressmen Richard Poff and William Cramer:(13)

> "With all of its concern for equality in employment opportunities, the equal employment opportunity title of this bill wholly fails to define 'equality'. Nowhere in the Title can be found language to guide the Commission in its investigation of charges of racial discrimination. All the Commission is required to find is 'reasonable cause' for the charge. In searching out evidence of 'inequality' or 'discrimination' in employment practices, what will the Commission find to be 'reasonable cause;? If the Negro labor force in a particular community constitutes 10 percent of the total labor force, will a company whose Negro employees constitute only 5 percent of the company payroll be considered guilty of discrimination? If the company

has 100 executives and only 4 are Negro, would this constitute discrimination in promotions to executive pay levels if the Negro work force in the rest of the company constitutes 10 percent of the total company work force? Suppose only 5 percent of the total company work force was Negro while the Negro work force of a competitor company in the same community was 15 percent of its total. Would that constitute evidence of discrimination? If the seniority list maintained by a company as a labor union had more white workers than Negro workers in the upperechelons, would this be evidence of discrimination in the discharge of employees? Even if these few examples are farfetched (which we believe they are not), still they illustrate the variety of charges which could be made and the complexity of the Commission's chore in finding or failing to find 'reasonable cause' for the charges. Once the Commission finds reasonable cause, no matter how unreasonable the evidence might appear to an impartial observer, the Commission, in order to save its own face and in compliance with the mandatory work 'shall' in Section 707(b), is bound to proceed with a lawsuit against the employer, and if for any reason, such as failure to find 'reasonable cause', the Commission does not bring the suit the complainant himself can bring the suit with the permission of only one member of the Commission. At the 'trial', the Commission presents whatever evidence it has compiled concerning racial disparity. At that point, the employer who has been charged with committing any 'unlawful employment practice' must assume the burden of producing evidence to show, either that the conduct complained of did not, in fact, constitute discrimination, or that he did not intend by such conduct to discriminate against the complaintant on account of his race. In other words it becomes the burden of the employer to prove his own innocence. In the process of attempting to do so, he will enjoy no right of trial by jury. Rather, the entire proceeding can be conducted, not only in the absence of the jury but in the absence of a judge before a master acting as a referee for the judge. And if the decision of the Court goes against the employer, he must abide strictly by the Court's order or be subject to a fine or jail sentence for Contempt of Court, imposed by the judge in the absence of a jury."

Needless to say, the above mentioned comments were certainly not without bias. But the statements are significant because it basically reflects the frustration over the lack of definitions within Title VII and specifically with regards to employer intent,

or good faith effort. Nowhere within Title VII language is intent defined. Although Congress did not define good faith effort or intent, they did commission various bodies to follow up on their initial efforts, two of those are discussed below:

Federal Equal Employment Opportunity Commission

The Federal Equal Employment Opportunity Commission was established by Congress under Title VII, Section 705(A) of the 1964 Civil Rights Act. The following is a description of their duties and responsibilities:(14)

1. The EEOC is a Federal agency empowered to investigate charges of discrimination and attempt to resolve them through conciliation. The 1972 amendments expanded the powers of the EEOC to include the authority to file and prosecute law suits against respondents subject to its litigation jurisdiction where conciliation efforts fail, and extended its coverage to encompass state and local governments.
2. Five Commissioners who are appointed by the President with the advise and consent of the Senate for five-year terms govern the EEOC. No more than three Commissioners may be of the same political party. It is thus designed to be relatively detached from presidential policy.
3. The EEOC maintains a large central and regional

staff. Most employee time is spent processing and resolving charges of discrimination. Complaints of discrimination are filed by individual employees or by organizations on their behalf. The Commission is empowered to investigate these complaints and seek remedies, if justified, through conciliation or legal methods. It also seeks to influence personnel agencies through the establishment of guidelines for acceptable practice.

Some additional comments by Cousens (1969) outlines the following:

1. As a Commission, it has more power than a Committee.
2. Resulting from Congressional action, it has permanent tenure, whereas those Commissions established by Executive Order cease to exist at the end of an administration.
3. Although the President names the chairman and four other Commissioners, it has greater autonomy than its predecessors which were chaired by the Vice-President and thus more closely tied to the White Hours.
4. Its budget is allocated by Congress, rather than drawn from the President's administrative budget which permits the Commission to present its needs to the appropriate Congressional Committees and

further frees it from excessive domination by the White House.

5. Its powers of enforcement, defined by legislation, are generally stronger than those of the earlier Committees, and, therefore, employers, unions, employment agencies, and others involved in the employment process are under more pressure to comply or run the risk of being penalized.

Cousens suggests that the EEOC has done little to contribute to the efforts of state and local governments in terms of policy understanding and implementation, despite any optimism preceeding its birth. He states the following, "In the legal relationship between the EEOC and other public agencies, as specified in Title VII, 'deference' is administered by the compliance division, another department having been established to conduct other types of liaison activity. The purpose was to assist state and local commissions in conduction research and affirmative action programs for fair employment practices in their respective jurisdictions. Ideally, the Federal agency should have provided, in addition to the necessary funds, a model for optimum cooperation between agencies, but this has been deterred by several factors." He lists those factors below:

1. In the complaint process, state and local commissions refused to relinquish their power and authority since their budget allocations are more often made on the basis of numbers of claims filed each year than on the more valid, albiet

more difficult, index of effective resolutions.

2. All public agencies, are understandably, concerned with political implications of their work, e.g., how their reputation is affected in the eyes of minority groups and of the total community.(15) Thus, prerogatives are jealously guarded and not likely to be surrendered to the Federal Commission that would thereby benefit from the greater visibility and power.
3. Inasmuch as Title VII had not created a Federal Fair Employment Practices Commission (FEPC),(16) the Commission, as ultimately defined, had less enforcement power than many of the state and some of the municiple commissions.
4. The existing agencies were staffed by professional "old timers", who had witnessed a series of Federal Committees come and go without making much impact on the problem of employment discrimination. Consequently, there was little anticipation that the new Commission would accomplish much more than earlier efforts.

One thing that the EEOC did do, according to McFeeley (1979) was to review and enforce AA plans in the public and private sectors including state and local governments. He cites the "Uniform Guidelines on Employee Selection", established by the Commission and other Federal Agencies(17) in 1978 in an effort to bring together all previous rules pertaining to AA/EEO implemen-

tation. Those rules are listed below:

1. Provided a single set of Federal guidelines for state and local governments to follow, and eliminating conflicting requirements from different Federal programs.
2. Establish the "four-fifths' rule which considers an employer's selection practices to have an adverse impact on a minority group when the selection rate among the group is less than 80 percent of that of the group enjoying the highest selection rate.(18) This rule provides employers and the adminstering agency alike a clearly definable point for determining when adverse impact exists.
3. Establishes a bottom line concept: When an employee's overall performance shows no adverse impact, the employer will not have to show that each stage of the process is free from discrimination. (Even so, however, individual workers or applicants may file complaints about discrimination at any stage of the selection process.)
4. Requires all employers to maintain profiles of all employees by race, sex. ethnic group and occupation to show impact of employee selection practices.

Although the guidelines attempt to further define AA/EEO implementation, the actual process of evaluating the employer's intent or good faith effort was not included. This, in effect,

meant that AA efforts of the employee would only be scrutinized or brought to light by the complaint or grievance process, and as Haynes (1968) points out, the efforts of some employers may not be in good faith at all. Writing some four years after the 1964 Civil Rights Act was written, he states in his article, "Equal Job Opportunity: The Credibility Gap," "One would be hard pressed today to find a major U.S. corporation that does not present itself as an 'Equal Employment Opportunity Employer'. He suggest that the pattern of exclusion from many jobs for minorities has remained relatively unchanged. He gives, as an example, the white collar positions of New York City businesses (4,249) where the Federal EEOC found that 43% had no black, white collar employees and that 46% had no Pureto Rican white collar workers.

And although the EEOC requires annual reports categorizing the sex and minority status of the employer's workforce by job category,[19] lack of good faith effort can often be disguised through statistical, numerical representation. Gery (1977) writing on "Equal Opportunity - Planning and Managing The Process of Change", emphasizes the "statistical" problem. She states, "Voluminous paper affirmative action programs lead some management to believe that a logical plan exists; in actuality those plans frequently focus exclusively on quantitative analysis of present representation of women and minorities in various segments of the workforce and on the establishment of statistical goals and timetables to effect change." She further states support for the establishment of goals and timetables as well as the "establishment of quantitative staffing objectives and the vigorous pursuit of the hiring and/or

promotion of women and minorities in support of those objectives."

In discussing the "statistical" problem, the EEOC also maintains that "Excessive data collection" is not required[20] and looks for employers to concentrate on the actual efforts of locating, hiring and training minorities. But some employers see statistics as a way of preventing and defending EEO charges. Pingpank (1983) suggest that employers should watch out for "subjective" judgements when dealing with AA/EEO issues and that the employer's personnel manager should carefully monitor their EEO progress. He states, "Many EEO lawsuits are won and lost on statistics, regardless of the true merits of the case brought by an individual. A good EEO profile can win a case even where the decision involving the plantiff is questionable and bad statistics can sink a case by creating an unfavorable impression, even if the initial decision regarding the plantiff is justifiable." It is this writer's contention that even though the EEOC has attempted to issue guidelines pertaining to Title VII, they have not specifically defined employer intent or good faith effort. The process of evaluating employer effort has imporved through more vigorus standards but still isn't sufficient to prevent "paper programs" by the use of statistics. Consequences for employers who fail to provide good faith effort are usually discovered by way of the complaint or girevance process. As Cousens (1969) points out:

> "The EEOC defers to the state and local government agency, i.e., the complaint is transmitted to the state or local agency and sixty days is granted for investigation and disposition, after which the complaint is returned to the Federal Commission. If relief is not obtained for the claimant and/or he is not satisfied, he may bring action against the respondent in a Federal District Court. This

> necessitates hiring a lawyer or having one appointed by the Court and is clearly a lengthy and complex process undoubtedly serving to discourage many individuals from filing. The implications are clear--- the most disadvantaged stratuim in U.S. society is further handicapped."

Cortez H. Williams (1972) might tend to disagree. He believes the EEOC was initially a "weak" administrative tool in terms of enforcement. Citing a backlog of some 60,000 cases in the Attorney General's Office. But by 1972 he states that job discrimination had become a Civil Offense and therefore could be tried in Court. He further notes that the American Telephone and Telegraph was required to pay 38 millon dollars in policy and wage adjustments. "AT&T then became a generous employer of minorities, and placed a number of blacks in administrative positions." He explains that the EEOC did not stop at AT&T, but continued to attack such large corporations as General Motors, General Electric, and Sunshine Biscuit Company, as well as unions representing the auto and aerospace industries. He concludes by saying, "Even though the EEOC made some headway, it remains to be seen whether or not black administrators will come above the national percentage mark of 6.1 in both the private and public sectors." One such Federal agency that has had a continuing impact on AA/EEO progress has been that of the Office of Federal Contract Compliance Programs.

Office of Federal Contract Compliance

The OFCCP was established in the Department of Labor in 1965 under Executive Order 11246 which required Affirmative Action by government contractors in recruiting minority employees.[21] The following is a brief description of their duties and responsibilities:[22]

The OFCCP is responsible for equal employment compliance in organizations and firms holding government contracts. Two basic contractual committments are expected;

1. Not to discriminate in employment on the basis of race, color, sex, religion, or national origin, and;
2. To undertake affirmative action to ensure that equal employment opportunity principles are followed in personnel practices at all company facilities, including those not engaged in a Federal contract.

FURTHERMORE:

1. Guarantees from subcontractors must be obtained.
2. State and local government agencies maintaining government contracts are also under OFCCP jurisdiction.
3. The OFCCP can impose sanctions on those in violation of equal opportunity clauses. This authority includes recommending that the Justice Department institute appropriate action to enforce the Executive Order, or cancel, terminate, or suspend any contract or portions of any contract and debar a contractor from future government work.
4. The OFCCP maintains a central staff and

delegates contract compliance responsibilities to representatives in agencies concerned with the type of contract in question.

In 1968, the OFCCP began requiring a "self-analysis" of employer practices for compilation of data related to hiring and promotional practices and to the relevant labor market; and goals and timetables to correct defiant hiring and promotion efforts.(23) From this point on Affirmative Action was no longer a question of effort but entailed statistical analysis, numerical projections, and more streamlined approaches to compiling data.(24)

Although nowhere could this writer find information that the OFCCP had defined intent or good faith effort specifically, their requirements for employer compliance seemed to progress in that direction. The Bureau of National Affairs (1977) makes the following statements reference the importance of the self-analysis, "A complete utilization-both internal and external-will aid the employer in developing an affirmative action program and also will help his defense, should charges of discrimination be filed against him. Further the accurate statistics obtained through a utilization analysis, will give the organization a good overall picture of where it currently stands and where it is heading in terms of Affirmative Action." To further stress the importance of the self-analysis, the Commerce Clearing House, Inc. (1981) has issue a Equal Employment Opportunity information booklet that consists of 53 detailed pages outlining "how to conduct the self-analysis". Some of those major categories are discussed under the Administrative Agency section.

Both the EEOC and the OFCCP were initially involved in implementing various aspects of Title VII and often times these approaches were similar and overlapping.(25) The major differences were in the areas of enforcement, monitoring and policy development. Where the EEOC initially developed suggestive guidelines for employers to follow, the OFCCP required that "contractors with 50 or more employees must develop an Affirmative Action plan that includes a set of specific results-oriented procedures and goals to correct any underutilization of women or racial minority groups in the firms work force". Secondly the enforcement process of the EEOC consisted of "bargaining" and "conciliating" in an effort to remedy incidents of discrimination as well as referring cases to the U.S. Attorney General's Office. On the other had, the OFCCP could either cancel existing government contracts for those who violated Title VII, in their opinion, or deny potential contracts. As Bryner points out,

> "The OFCCP, because of its powers to grant or terminate lucrative contracts, has been able to play a significant role in developing policy. Until 1978 their was a clear failure to coordinate requirements for employees who were subject to both EEOC and OFCCP requirements. Non-minotiry employees and applicants were pursuing claims of reverse discrimination through the EEOC against employers who were trying to comply with OFCCP regulations and regulations of other executive agencies, such as the Department of Housing and Urban Development (HUD) and the Department of Health Education and Welfare (HEW) which had established equal employment guidelines for recipients under their control. The EEOC after being caught in the middle between minority and non-minority grievants for several years, developed guidelines in 1978 that promised employers who were in compliance with the provisions that they should be free from suits of reverse discrimination backed by the Commission."

He goes on to say that administrative agencies providing an EEO policy had the same concerns as Congress; "What actions are required of employers, what tests are to be used in determining that discrimination has occurred, and what remedies are provided for."

The process of evaluating employer intent or good faith effort appears to be based on compliance requirements and the EEOC and the OFFCP do not differ much in this respect. Both agencies mandate that AA/EEO statistical information be provided on an annual basis and upon request. The filing of Report EEO-4 is required by law, it is not voluntary.(26) Under Section 709(c) of Title VII, the Attorney General of the United States may compel a jurisdiction to file this report by obtaining an order from a United States District Court and the making of willfully false statements on Report EEO-4 is a violation of the United States Code,(27) Title 18, Section 1001, and is punishable by fine or imprisonment as set forth therein.(28)

In concluding the review of the EEOC and OFFCP, the following has been noted for both:

1. There is no clear definition of employer intent or good faith effort. Regulations, requirements and guidelines have become more standardized and sophisticated mandating for justification of employer progress or maybe "good faith effort" by way of statistical analysis.
2. Other than through the grievance, complaint and litigation process, progress reports are re-

viewed on an annual basis for any lack of compliance or lack of good faith effort on the part of the employer.

3. Although there appears to be no positive incentive for compliance, the consequence for failure to follow requirements may result in a loss of government contractual monies through cancellation or denial and loss of time and money through lengthy court litigation.
4. It would be possible for employers to show through statistical manipulation that a good faith effort is being shown when in actuality it may not be, but the consequences involved may not be worth the employers effort Also a trained observer in the field of the AA/EEO may be able to pick out statistical discrepancies where someone else may not.

The Federal Supreme Court

With regards to employer intent or good faith effort in the U.S. Judicial System, two major Supreme Court decisions will be reviewed, they are:

1. Willie S. Griggs vs. Duke Power Company
2. Walter E. Washington vs. Alfred E. Davis

These specific cases have been selected for review due to their significant impact on employer actions regards the AA/EEO process.

Willie S. Griggs vs. Duke Power Company

The United States Supreme Court Reports cites the following summary of that case:

Negro employees of a power company brought a class action against their employer in the United States District Court for the Middle District of North Carolina, alleging that the employer violated the Civil Rights Act of 1964 by requiring a high school diploma and a satisfactory intelligence test score for certain jobs previously limited to white employees, so as to preserve the effects of the employee's past racial discrimination. The District Court dismissed their complaint. The United States Court of Appeals for the Fourth Circuit reversed the District Court's holding that residual discrimination arising from past employment practices was insulated from remedial action, but it affirmed the District Court's holding that absent a discriminatory purpose, the diploma and test requirements were proper.

On certiorari, the Supreme Court of the United States reversed. In an opinion by Burger, Ch.J., expressing the unanimous view of the Court, it was held that the Civil Rights Act prohibits an employer from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (1) neither standard is shown to be significantly related to successful job performance, (2) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (3) the jobs in question formerly had been filled only by white employees as part of a long standing practice of giving preference to whites.

Chief Justice Burger delivered the opinion of the Court on March 8, 1971. In relation to employer good faith effort or intent, he stated the following, "The Court of Appeals held that the Company had adopted the diploma and test requirements without any intention to discriminate against Negro employees. We do not suggest that either the District Court or the Court of Appeals erred in examining the employer's intent; but good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as build in headwinds for minority groups and are unrelated to measuring job capability."

The decision in this case was indeed a landmark one. The basic message that was being sent to public and private employers alike was that regardless of intent, discriminatory results were unlawful.(29) Since that time various other court decisions have followed suit with regards to employer "good faith effort". A few of those cases are listed below:(30)

1. Teamsters vs. U.S. (1977) 14 EPD.7579,413 U.S.34
   General statements that best qualified applicants were hired and affirmations of good faith in making individual selections were insufficient to dispel statistical evidence of systematic exclusion of racial minorities.
2. Baxter vs. Savannah Sugar Refining Corp. (CA5,1974), 7 EPD, 9426,459,F2d,437
   Good faith of employer is not a valid defense to back pay awards where economic loss to discriminators has occurred.

3. Williams vs. General Food Corp. (CA-7,1974) 7EPD, 9365,492 F2d,399

Summary rejection of Title VII sex bias claim was to be overturned where rejection was based on employer's lack of intent, in that employer denied female's overtime in accordance with requirements of state female protective laws. Whether or not employer's discriminatory practice is intentional is irrelevant to liability under Title VII and relates only to limitations on forms of remedy available for discrimination.

Saltzstien (1979) also emphasizes the importance of the precedence setting case. In discussing the Griggs vs. Duke Power decision, he makes the following statements, "In the Griggs case the Court ruled that employment tests that have a discriminatory impact on who is hired or promoted are forbidden unless those tests are in fact a reasonable measure of job performance. All Civil Service examinations are thus subject to question if, in fact, the consequence of the test is a dispropartionate number of minorities or women hired or promoted. The precedent established by the Griggs case was applied by numerous lower Court decisions. It resulted in the banning of practices such as the use of arrest records in evaluating prospective employees, reliance on 'word of mouth' contracts by unions and employers as a means of recruiting and the use of minimum height and weight requirements for various positions. According to this case, such requirements are valid only if the employer can clearly show that the traits are

job related."

Much controversy and literature was generated after the 1971 Griggs decision, but in June of 1976, that same Supreme Court ruled in favor of employer intent in the Washington vs. Davis case.

Walter E. Washington vs. Alfred E. Davis

The United States Supreme Court Reports cites the following summary:

In a class action suit brought in the United States District Court for the District of Columbia, by two Negro police officers against the then Commissioner of the District of Columbia, the Chief of the District's Metropolitan Police Department and the Commissioner of the United States Civil Service Commission, the sole issue before the Disctict Court, on motions by the plantiffs for partial summary judgement and by the defendants for summary judgements was the validity of a written personnel test to ascertain whether prospective police recruits had acquired a particular level of verbal skill. The plantiffs alleged that this test discriminated against black applicants on the basis of race, because the test excluded a disprotionately high number of Negroes, and violated their rights under the due process clause of the Fifth Amendment, under 42 USCS 1981, and under a District of Columbia statuate. The District Court granted the motion of the defendants and denied the motion of plantiffs. The Court of Appeals for the District of Columbia Circuit reverse and directed the grant of the plantiffs motion.

On certiorari, the United States Supreme Court reversed the

judgement of the Court of Appeals. In an opinion by White, J., it was held that (1) expressing the view of seven members of the court, the test did not violate the due process clause of the Fifth Amendment and its equal protection component, and (2) expressing the view of six members of the court, the test did not violate any statute, including the equal employment opportunity provisions of Title VII of the Civil Rights Act of 1964.

David Robertson (1977) discusses the Davis case in his article, "Update on Testing and Equal Opportunity". He indicates that in this case discrimination was alleged because some 50% of all black applicants had failed the above mentioned test, where compared to only 13% of all white applicants. He contends, "The Court held that the test is not unlawful merely because it places a substantially disproportionate burden on members of a particular race. A racially discriminatory purpose had not been proven, and the employers affirmative efforts to recruit black police officers negated any inference that the defendent discriminated on the basis of race, not withstanding the disproportionate impact of the test on Negro applicants."

Robertson also noted differences in the Davis case from the Griggs case. He points out that the initial Davis allegation; unlike Griggs, was brought under the Due Process Clause and not the Civil Rights Act of 1964. Until 1972 the public was not subject to Title VII and the Davis case had been started prior to that time. The author remarks, "It appears that the Court has ruled that conduct which is presumably forbidden by Title VII is not necessarily prohibited by the Constitution, and in the future,

it is uncertain as to whether this precedent will breathe new life into the importance of employer intent in other Civil Rights Cases." A second area of difference that makes the Davis case different from the Griggs and other preceding cases is that the test in controversy was Test 21, a widely known and used U.S. Civil Service Commission Test. He further states, "Had the Supreme Court declared that Test 21 unfairly discriminates and enjoined its further use, a wedge would have been driven into the entire Civil Service Testing Programs. Test 21 passed the Griggs standard of being job related by successfully predicting the applicants achievement in Recruit School, even though it had been determined that this test would not necessarily predict success once a patrolman is on the job."

Failure to provide a good faith effort, in the opinion of the Court, can result in various types of remedies. Gilbreath (1977) discusses some of those solutions in her article, "Sex Discrimination and Title VII of the Civil Rights Act". The author states that Title VII provides for corrective action and remedial relief when a discriminatory practice is found. "The Court may award such affirmative action as may be appropriate which may include reinstatement or hiring of employees, with or without back pay. Thus the employer may be required to reinstate employees to their former positions at the same time restoring and/or providing proper seniority, provide back pay for women who have lost wages for which they should have earned but for the alleged discriminatory practice, or perhaps hire new employees to achieve an appropriate balance between male and female workers." Gilbreath cites

an example of the American Telephone and Telegraph Company in 1973 where a consent decree was obtained. She states that the company agreed to change its literature to eradicate race and sex stereotypes, meet goals for promotion and pay 15 million dollars in back wages. In addition, in September of 1973, the Department of Labor statistics showed that a total of 40 million dollars in back pay had been granted in cases during fiscal year 1973.(31)

In summarizing, the Courts involvement with regards to employer intent or good faith effort has had a definite impact on governmental public agencies.(32) In the Griggs decision intent or good faith effort was not relevant if the end result was discriminatory. This ruling established a precedent for the lower courts to follow and many did until 1976 when the Washington vs. Davis case was heard. The Supreme Court, although never defining intent or good faith effort, ruled in favor of employer motivation, which was a clear departure from the Griggs standards. Rulings such as the Davis case can certainly have an impact on administrative agencies who do not have a clear understanding of "good faith effort" and may be subject to the consequences of the Court such as providing back pay and injunctive relief. In that components of the Court decisions as well as Federal guidelines have been open to interpretations and despite the various changes and improvements, state and local governmental agencies have had to develop their own standards and policies within those guidelines.

State and Local Agencies

In reviewing the issue of employer intent or good faith effort, one state and two local agencies will be analyzed. They are as follows:

1. The Department of Mental Health, State of Michigan.
2. City of Bay City, Michigan
3. City of Flint, Michigan

State of Michigan, Department of Mental Health

Previously noted, the Federal Equal Employment Opportunity Council issued a policy statement for state and local governmental agencies to utilize in developing their own AA/EEO programs. In November of 1976, some three months after the FEEOC issued their statement, the State of Michigan followed suit and issued a similar policy statement. In that summary they directed attention to the Federal statement, specifically Section 3 which deals with minority exclusion. That section states, "An employer who has reason to believe that its selection procedures have an exclusionary effect should iniate affirmative action steps to remedy the situation." In line with the suggested guidelines of the EEOC and the requirements of the OFCCP, those steps are cited below:

1. The establishment of a long term goal, and short range interium goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market.
2. A recruitment program designed to attract qualified members of the group in question.
3. A systematic effort to organize work and redesign jobs in ways that provide opportunities persons lacking "Journeyman" level knowledge of

skills to enter and, with appropriate training, to progress in a career field;

4. Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job calssifications.
5. The initiation of measures designed to assure that members of the affected group who are qualified to perform the jobs are included within the pool of persons from which the selecting official makes the selection;
6. A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and
7. The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in their programs where effectiveness is not demonstrated.

In citing various State AA/EEO studies done between 1967 and 1971, the Michigan policy statement suggested that exclusionary effects had indeed taken place. The following is a quote from that statement:

> "Michigan has ample and documented reasons to believe that its selection procedures have had an exclusionary effect on minority group persons and women and that such exclusion is immediately attributable to selection procedures which have not been validated according to acceptable professional standards. In

> order to strengthen and reinforce affirmative steps taken to date to remedy the effects of present exclusion, the Michigan Equal Employment Opportunity Council has adopted and is communicating through this issuance the policy that each state agency and department, in filling all positions in the classified service shall exhaust those procedures embodied in the rules of the Civil Service Commission which intent to assure the representation of minority group persons and women in the pool from which the selection is to be made, before any such position is filled."

Although "systematic effort" and "effectiveness" is mentioned in the above, employer intent or good faith effort has not been defined in policies, procedures and guidelines for the State of Michigan or the Department of Mental Health. In July of 1978 the State of Michigan presented a Technical Manual for Affirmative Action/Equal Employment Opportunity in State Government, with major expectations. It states, "Each department, however, is expected to make every good faith effort to attain the long range goal and to be able to substantiate these efforts when planned progress toward the attainment of the goal is not shown."

The technical manual was developed to assist department heads and agency administrators in understanding and interpreting State guidelines. The Department of Mental Health issued the following comments to introduce its manual to its state employees, "Pursuant to the Govenor's Executive Directive, 1975-3, the Michigan Equal Employment Opportunity Council in June, 1976, issued guidelines to the nineteen state departments for the development of Affirmative Action plans. These guidelines require that each department conduct a utilization analysis of its work force and to establish goals and timetables for the increased utilization of minorities and females. Little guidance was provided by the guidelines other

than to suggest that the factors listed above should be taken into consideration and that departments should attempt to attain a goal of minority and female utilization commensurate with the representation of these two groups in the area where each department facility is located." Although those guidelines may have been somewhat confusing, in October of 1981, the Department of Mental Health issued a General Policy on Equal Employment Opportunity and Affirmative Action, outlining various definitions within the AA/EEO process. Even though employer intent or good faith effort was not defined, it was alluted to in the definition of "systematic discrimination" which states, "employment policies or practices which, though often neutral on their face, serve to differentiate or to perpetuate a differentation in terms or conditions of employment of applicants or employees because of their race, color, religion, national origin, sex, age, height, weight, marital status, or handicap. Systematic discrimination normally relates to a recurring practice rather than to an isolated act of discrimination, and may include failure to remedy the continuing effects of past discriminations. Intent to discriminate may or may not be involved."

The process by means of evaluating employer intent or good faith effort is often done by way of reports and statistics. Initially, each agency is to submit on a yearly basis, a detailed AA/EEO plan, that includes documentation of progress or lack of through numerical representation. An agency AA/EEO Officer is then assigned by the agency director to assist, develop and monitor the plan itself. On a quarterly basis, the AA/EEO Officer

must submit to the Department of Mental Health the Utilization Analysis Report which outlines the various areas with regards to AA/EEO changes. The major areas of this report are listed below: (See Appendix A for sample forms.)

1. Disciplinary Actions
2. Appointments and Departures
3. Promotion/Transfer by Job Category
4. Training Programs
5. Grievances, Complaints, and Litigation Alleging Illegal Discrimination or Affirmative Action Violations

In a similar format the Bay City and City of Flint Personnel Directors have the responsibility of working closely with the EEO Officer on the following:

1. Vacancies
2. New Positions
3. Promotions
4. Re-assignments
5. Terminations
6. Demotions
7. Transfers

The Department of Mental Health AA/EEO Officer then reviews these reports for discrepancies, questions, or concerns.

The consequence for failing to provide good faith effort on the part of the employers are not outlined in any of the State of Michigan's or Department of Mental Health policies and procedures. In The General Policy Guidelines, it does state, "The Director of

the Department of Mental Health shall be responsible for the Affirmative Action Program and is accountable to the Governor for its success. Executive, management, and administrative and supervisory personnel at all levels shall implement the departments equal employment opportunities and affirmative action criteria." On April 26, 1983 a discussion was held with the State of Michigan's, Department of Mental Health AA/EEO Officer. She was questioned as to the type of consequences that were applied for agency administrators who fail to provide a good faith effort.(33) She basically indicated there were no direct documented consequences for lack of good faith effort but that progress in the AA/EEO was a significant part of the agency director's yearly performance evaluation and that the extreme outcome could result in an initial counselling or written reprimand. That reprimand could become part of the employee's permanent record. She further states, "If it appears to be that the agency or personnel director is not applying, good faith effort, the usual method of resolving the problem is informal discussion. If that is not effective, we then go to their immediate supervisor for resolution. But in reality we have not found this to be a problem. The majority of the time its usually a misunderstanding or a misinterpretation that can be corrected."

The State of Michigan comes under the auspicies of the Federal government in carrying out AA/EEO programs. Local governments are no different. The City of Flint and the City of Bay City are two cities who have also attempted to follow the Federal AA/EEO guidelines. They are discussed below:

Bay City, Michigan

In March of 1976, the City of Bay City formally adopted an AA/EEO program and plan. A policy statement was issued that same year and reaffirmed in March of 1982. (See Appendix B for Policy Statement.) In introducing the AA/EEO plan to its employees, the following was written, "Affirmative Action is a results-oriented plan, designed to increase materially the utilization of minority groups,persons and women at all levels and in all segments of the City of Bay City's workforce. The objective of this plan plus every good faith effort is equal employment opprotunity. A plan without effort to make it work ismeaningless; and effort, undirected by specific, and meaningful procedures, is inadequate." In addition the plan includes, "The filling of positions must have the committment of the City Commission and the City Manager. If the procedures are adhered to in filling positions by the City Commission and City Manager it will indicate that City Officials are putting forth every good faith effort to recruit and utilize qualified minorities and females in administrative positions with the City of Bay City."

Bay City's AA/EEO plan seems to be similar to the State of Michigan's plan in many respects. They too, have to submit goals and timetables, quarterly reports and utilization analysis work-sheets for review and compliance requirements. Aside from the technical and specific language differences, intent or employer good faith effort stands out as having more emphasis placed on it. In talking with Ms. Christine Thomas, Bay City's AA/EEO Officer, she states that enphasis is placed on good faith efforts because

an AA/EEO program will be much more effective if it is implemented relying on administrators and department heads to do it voluntarily rather than involuntary. In Bay City's approach the term good faith effort is defined. That definition is cited below:

> Good Faith Effort - are employer's broad and active effort to assure that all aspects of its Affirmative Action plan work together as a whole.

The process of evaluating good faith effort and consequences or lack of, are similar to that of the State of Michigan's. The process is monitored on a regular basis by the appointed AA/EEO Officer who works in assisting the City Manager/Commission in interpreting and implementing the AA/EEO program.

Some of the Bay City AA/EEO Officer's duties and responsibilities are listed below and are comparible to the State's AA/EEO Officer:(34)

1. Conduct studies of the EEO program to determine deficiences and assess progress towards goals.
2. Giving, or arranging for, specialized advice and counselling to supervisors and employees to resolve complaints informally.
3. Periodic review of the Affirmative Action plan and EEO program reports, goal setting and evaluation of both plan and program.
4. Give advice and assistance to supervisory personnel and line management on needed changes and improvements in the AA plan.
5. Arrange meetings for employees to raise questions

> concerning the policy, its implications and purposes, as well as to recommend improvements in the policy (including representation from all unions affiliated with city employees).

Consequences for failure to provide a good faith effort run parallel to that of the State's. The Bay City Commission delegates implementation of AA/EEO policies and procedures to the City Manager who work in conjunction with the Bay City AA/EEO Officer. Other than legal ramifications and possible performance evaluations, consequences have not been defined by the Commission, although the City Manager is responsible to that entity and could institute "corrective action" if necessary.

City of Flint

The process of evaluating employer good faith was recently discussed with Mr. Thomas Bugbee, Personnel Director for the City of Flint and Louis Hawkins, AA/EEO Officer for the City of Flint.(35) Initially when the issue of good faith effort was raised by this writer, Mr. Hawkins stated, "Good faith efforts, that's a term I have not heard in a long time." Ask about the process of evaluating, both indicated that other than their own internal audit being conducted, they were reviewed on an annual basis by the OFCCP, and EEOC after submitting the EEO-4 (See Appendix C) for aspects of the City that were under government contracts and through the normal grievance/complaint/litigation process.

The EEO-4, discribed by Mr. Hawkins, is a yearly report submitted to the EEOC and the FOCCP. The report, as in Appendix C , consists of the various employment categories (such as Professionals,

Technicians, Para-Professionals, etc.), salary ranges, and the total number of employees who are minority, non-minority, male and female.

The question was posed to them, "It is possible to use statistical evidence to show good faith effort when in reality it is not?" Mr. Hawkins responded and indicated that indeed it was a possibility but "to an evaluator who is trained in the AA/EEO process it would be extremely difficult." In addition, the State of Michigan and the City of Bay City have to submit the same identical EEO-4 report as does the City of Flint. There is no difference in terms of format or statistical data.

Consequences for failure to comply for the City of Flint can result in loss of contract monies and confrontation by their City Council.(36) As the City of Flint is obtaining monies from Federal agencies such as Housing and Urban Development (HUD) the possibility looms of cancellation or denial of funds for failure to meet Federal guidelines. The question was asked how real those threats could be? Mr. Bugbee responded by giving an example of a City in Grand Rapids, Michigan who recently had their funds withdrawn because of AA/EEO violations or lack of good faith efforts.

Although they could not specifically define intent or good faith effort, they implied, lack of it could bring the City under scrutiny. As recent as April of 1983, Flint's AA/EEO program was brought before the public light.(37) In an investigation conducted by the Flint City Council, the main issue being reviewed was the City's minority and promotion plans. "A proposed plan" say Greg Braknis, Flint Journal writer on April 8 of this year, "Calls for depart-

ment heads the first time, to look at the Affirmative Action goals, such as making sure there are no artificial barriers to minorities designed into jobs or job promotions." The author quotes Hawkins as "acknowledging that the councils investigation has been a catalyst for Affirmative Action of Affirmative Action". Hawkins also indicated that the City's workforce had 9.4 percent minority in 1972, went to 19.6 percent in 1975 and gained a high of 21.9 percent in 1980. Braknis indicated the City Council would soon be developing an AA plan and program "aimed at increasing the number of minorities in City employment and in administrative jobs." He quotes Council members as saying they "want the work force to more closely reflect the 46 to 48 percent minority makeup of Flint's population." In concluding, Mr. Bugbee noted, "What we have now is an Affirmative Action plan that has since yellowed with age."

As mentioned earlier, the Commerce Clearing House, Inc. issued a booklet on conducting self-analysis. Some major categories mentioned in that booklet are listed below:

1. Work Force Analysis (See Appendix D for sample form)
   The Work Force Analysis is defined in the OFCCP regulations as a listing of each job title as it appears in payroll records or collective bargaining agreements ranked from lowest to highest paid within each department or other organizational unit, including supervision. For each job title, the total number of incumbents (persons presently holding the job), the total number of male and female incumbents, and the total number of male

and female incumbents who are Black, Hispanic, American Indian or Alaskan Native, or Asian or Pacific Islander must be provided. In addition, the wage rate or range for each job title must be given. Each of the administrative agencies studied had reports that were similar in terms of statistical information, but differed in name, and format. For example the State of Michigan uses the "Utilization Analysis Report" which contains the above mentioned data with the exception of the wage range for each job title. That information is included on a separate form. In contrast, Bay City's form is titled "Minority Utilization Workforce" but contains the same information as the States. Their wage rate or range is also listed separately.

2. Major EEO-1 Categories (See Appendix E for sample) Many of the forms being used for work force analysis call for the listing of EEO-1 categories for each job title. The regulations do no explicity require this information on the work force analysis, but certain EEO-1 categories are identified as most often involved in underutilization problems. Asterisks indicate the categories in which women and minorities are most often found to be underutilized. A single asterisk refers to women, two to minorities, and three indicates that both women

and minorities are likely to be underutilized. All administrative agencies contacted used the same EEO-1 categories. Those categories which, are different than the suggested list in Appendix B, are listed below:

A. Officials and Administrators
B. Professionals
C. Technicians
D. Office and Clerical
E. Service and Maintenance
F. Skilled Craft Workers
G. Para-Professionals
H. Protective Services

The only differences appeared to be in types of forms and print used.

3. Job Grouping (See Appendix F for sample.)

Job group analysis is the basis for utilization analysis, and arithmetic approach to determining whether women and minorities are actually being given equal employment opportunities. Although the principles behind the establishment of job groups are the same for all employees, the defining of job groups will differ depending on the number of incumbents involved. Percentages cannot be considered meaningful when they are based on very small absolute numbers. The OFCCP says that a job group should have at least 50

incumbents. Job groups that have too few incumbents for meaningful statistical analysis should be combined with other job groups more similar in terms of work content, pay and opportunity. If the requesite skills for the jobs or some other such factor make it impossible to properly merge small job groups, the small job groups may be considered together for goal setting purposes but should be reported separately in the Affirmative Action Program. Bay City, City of Flint and the State of Michigan all used the job grouping process. The major differences were found only in the areas of job title and classification. For example the State of Michigan has listed the job title of "Developmental Disability Programmer VIB" which is designated under the EEO-1 category as the Professional class. Bay City has no such classification. In addition, they have sub-classifications for similar job groupings. Under the sub-heading of Community Development, there are listed several positions such as Urban Renewal, Planning and Building and Inspection. Other than that all statistical data was similar.

Conclusion

Since implementation of Title VII of the 1964 Civil Rights Act, Congress has actively pursued issues of equity by enacting additional laws aimed at elimination discrimination. In doing so, numerous rules and regulations have been initiated by various Federal agencies in an attempt to define those laws and provide guidelines for public agency administrators and personnel directors who have been delegated the responsibility to implement the AA/EEO process. A major area of importance within that process, although there has been little written on the subject, is that of employer intent or "good faith effort". The purpose of this paper was to review and investigate employer intent or good faith effort and answer the following basic questions:

1. In the context of the AA/EEO process how is employer intent or good faith effort defined?
2. What is the process for evaluating good faith effort or intent on the part of the employer?
3. What is the process for dealing with lack of good faith effort or intent for public employers?
4. Is it enough for public agencies to show good faith effort or intent in hiring, promoting, laying off, etc., of minorities or must there be determinable, measurable results within a specified period of time.

In attempting to answer the above questions the following

areas were investigated:

1. Congressional Action - Title VII, 1964 Civil Rights Act.
2. Federal Agencies - OFCCP and EEOC
3. Judicial Branch - Supreme Court
4. State and Local Governments
   a. State of Michigan
   b. City of Bay City, Michigan
   c. City of Flint, Michigan

Summary of Findings

Congress

In enacting the 1964 Civil Rights Act, specifically Title VII, the language used did not lend itself to defining employer intent or good faith effort. Discussions held by Senate Sub-Committees prior to or after the Act did not include specifically the issue of employer intent or good faith effort as well, although there was some concern over how "intent to discriminate" was to be monitored and enforced.(38) Congress did outline the specific consequence to be applied for unlawful discrimination and appointed the courts to resolve discrimination disputes. In terms of establishing guidelines for policy development and implementation, they created the EEOC.

Federal Agencies - EEOC and OFCCP

Delegated the responsibilities of enforcing and monitoring activities as well as the development of guidelines concerning Title VII, the EEOC was considered by some to initially be a weak

administration tool. Their enforcement powers were limited to that of reconciliation between the employer and grievant, and to recommend to the U.S. Attorney General, legal action against employers who openly practiced discrimination. In 1972 Congress amended Title VII and gave the EEOC power over governmental agencies and the power to initiate suits on their own behalf. Nowhere within their guidelines is employer intent or good faith effort defined. Although in 1978 the EEOC along with other Civil Rights agencies devised and distributed the Uniform Guidelines on Employer Selection. These guidelines although helpful to the employer in relation to areas and methods of compliance, "good faith effort" was not defined.

The EEOC's process of evaluating employers intent or good faith effort consisted of periodic reviews of submitted statistical information or the follow up on grievances and/or complaints that were brought to their attention. There is no on-going monitoring process.

Even though the EEOC does not specifically define employer intent or good faith effort, the consequence applied have direct impact on the agency involved. In enforcing Title VII, the EEOC can provide retroactive back pay, reinstatement, upgrading and restructing of employer action itself. The time involved in litigation brought by the EEOC can be lengthy and costly. And although not well defined, employer good faith effort or lack of it should be observed by reviewing the submitted documentation on a yearly basis.

The OFFCP appears to have a somewhat stronger enforcement

mechanism than the EEOC. Based on certain requirements employed by the OFCCP, persons wishing to obtain Federal contracts or maintain those same contracts must submit and work towards established goals and timetables. A lack of good faith effort or intent on the part of the employer can result in a loss of Federal contract monies or denial of a potential contract. As with the EEOC, the OFCCP issues employer guidelines to help the employer achieve his/her objectives but intent or good faith effort is nowhere defined.

The process of evaluating or monitoring good faith effort is similar to that of the EEOC. The EEO-4 is submitted and evaluated annually. But different from the EEOC, the OFCCP also sends represenatives to each contract agency and evaluates the progress or lack of it. Once again it may be possible to disguise a lack of good faith effort by manipulation of numbers but to a trained auditor/observer, such effort should be spotted and consequences applied.

Judicial Branch - Supreme Court

From 1971 to 1976, many discrimination contested cases were based on the Supreme Court Griggs decision which basically stated that any employer action that resulted in discrimination was unlawful, regardless of employer intent or good faith effort. In 1976, the Supreme Court ruled in favor of employer intent in the Washington vs. Davis decision. This was a clear departure from the Griggs decision even though the Davis case was sought under the due process clause of the Fifth Amendment rather than the Civil Rights Act of 1964. The Court did not define what constituted employer

intent or good faith effort in either case.

State and Local Governments

In reviewing the various policy statements and plans for the Department of Mental Health, State of Michigan, City of Bay City, Michigan and the City of Flint, Michigan, only one attempted to defint "good faith effort", (Bay City, Michigan). All of the above governments attempted to follow the guidelines established by the EEOC and OFFCP in carrying out AA/EEO objectives which consisted of establishing goals and timetables and submitting periodic reports aimed at informing governing bodies of the progress or lack of AA/EEO progress. Aside from those periodic reports, "good faith effort" is not evaluated on a regular basis. An AA/EEO Officer is usually appointed to monitor those efforts and reports to the agency administrator or city manager the results. Consequences for lack of good intent can result in poor performance evaluations on the part of the State officials to public scrutiny on the part of City officials in addition to any legal involvement and loss of Federal contractual funds. As mentioned earlier, it would be possible to provide a "lack" of good faith effort on the part of the employer but because of the possible consequences, it seems it would be the exception rather than the rule.

In concluding, it may be appropriate to quote Wagner (1977) in his article "Programming Failure Another Look at Affirmative Action". He states, "What does an organization do to comply with the letter and spirit of the equal employment law?" Employer intent or "good faith effort", has not been specifically defined by either

Congress, the Courts, Federal agencies, or state and local governments. Although not specifically defined, attempts have been made to help the employer work towards those efforts by way of Federal guidelines and standards. Consequences can range from informal discussion to lengthy and costly legal battles. The process of evaluating good faith effort is not in depth, usually consisting of the governing AA/EEO bodies reviewing periodic reports and making occasional audits to review progress or lack of it. Aside from the assigned AA/EEO Officer the only internal monitoring mechanism is the agency administrator or personnel director. In reviewing all the entities above, this writer believes that it is possible to show a good faith effort on paper, but in reality show a lack of it. But this appears to be rare considering the consequences involved as well as the actual concern of promoting voluntary AA/EEO efforts on the part of the employers.

In that "good faith effort" or employer intent has not been specifically defined, nor does it appear that it will happen any time in the near future, many writers have offered suggestions on how to present a good faith effort and actively pursue AA/EEO objectives. Felder (1976) believes that no one individual can provide the overall AA/EEO guidance that an organization may need. He indicates that "it is everybody's responsibility and that it is very important that the AA Officer be diplomatic enough to sell the program to the most conservative individual in the institution while maintaining a direction that will result in success within a reasonable period". He suggest the following steps to guide employers in providing their good faith effort:

1. Develop a written EEO policy statement for the signature of the Chief Executive Officer.
2. Analyze the current work force to identify areas of underuse of certain groups
3. Set specific, measurable, attainable hiring and promotion goals.
4. Locate qualified individuals.
5. Review employment procedures to isolate discriminatory aspects.
6. Develop programs of vertical mobility.
7. Develop systems to measure progress.
8. Maintain an AA plan.

The above suggestions are only a few among many writers. The AA/EEO process will continue to change and move forward. In doing so, policies and procedures associated with this process will need to be further defined in terms of requirements in order for Public Administrators and Personnel Directors to know that they are in fact providing a good faith effort or they are not. In the opinion of this writer, the movement seems to be in that direction.

Michigan Department of Mental Health | 10/1/82-12/31/82

NH = Non-handicapper H = Handicapper

DISCIPLINARY ACTIONS

		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
Disciplinary Suspensions-No pay-Term limited (NS)	NH	3																					
	H																						
Disciplinary Lost Time *	NH																						
	H																						
Written Reprimand in personnel file	NH	3																					
	H																						
Dismissal-Misconduct (SL)	NH																						
	H																						
Dismissal-Unsatisfactory Service(SM)	NH																						
	H																						
Dismissal-Rules Violation(SN)	NH																						
	H																						
TOTAL DISMISSALS	NH																						
	H																						
Demotion-Unsatisfactory Performance (DD)	NH																						
	H																						
Other _____	NH																						
	H																						

*After 15 months, still have no method of recording.

APPOINTMENTS AND DEPARTURES

		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse Im
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
Applicants not referred through employment list	NH																						
	H																						
Applicants from employment lists in certifiable range	NH																						
	H																						
Offers of appointment	NH																						
	H																						
Actual appointments	NH																						
	H																						
New Hires(H)	NH																						
	H																						
Promotions(P,Z)	NH		1																				Corrected demotion of last quarte
	H																						
Lateral Transfer (voluntary T,Y)	NH																						
	H																						
Reinstate (R)	NH	1																					
	H																						
Return from Layoff(recall L)	NH	1	3**					1															See Page 7, Comments, r garding thi recall
	H																						

**RCAS V (Supervisors) - decreased under-utilization for females.

		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse Imp
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
Abolishments due to RIF	NH																						
	H																						
Separations(S_ except SL, SM, SN)	NH		4																				
	H																						
Leaves of Absence (except for MS)	NH	6	9		1																		
	H																						
Layoffs(LB)	NH		9																				
	H																						
Voluntary Transfer (TV)	NH	1			1																		
	H																						
Involuntary Transfer (TI)	NH																						
	H																						
Demotions(DI)	NH																						
	H																						
Demotions(DV)	NH	1																					
	H																						
Other Retire	NH	1																					
	H																						

Michigan Department of Mental Health
PROMOTION/TRANSFER BY JOB CATEGORY

10/1/82-12/31/82

NH = Non-handicapper H = Handicapper

*outside the regular exam & certification process, not referred through employm

		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse Impa
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
Officials and Administrators Applied *	NH																						
	H																						
Officials and Administrators Appointed	NH																						
	H																						
Professionals Applied *	NH																						
	H																						
Professionals Appointed	NH																						
	H																						
Technicians Applied *	NH																						
	H																						
Technicians Appointed	NH																						
	H																						
Clericals Applied *	NH																						
	H																						
Clericals Appointed	NH																						
	H																						
Skilled Craftworkers Applied*	NH																						
	H																						

= Non-handicapper H = Handicapper — Promotion/Transfer by Job Category , cont'd

		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse Impact
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
led Craftworkers pointed	NH																						
	H																						
ice/Maintenance plied *	NH																						
	H																						
ice/Maintenance pointed	NH																						
	H																						
professionals plied*	NH																						
	H																						
professionals pointed	NH									NO		TRANSACTIONS											
	H																						
ective Svc Wrkrs plied *	NH																						
	H																						
ective Svc Wrkrs pointed	NH																						
	H																						
l Applicants not rred through oyment list *	NH																						
	H																						
l Promotions Transfers	NH																						
	H																						

UTILIZATION ANALYSIS REPORT
Michigan Department of Mental Health
TRAINING PROGRAMS

10/1/82-12/31/82

NH = Non-handicapper H = Handicapper

ANY TRAINING PROGRAMS OFFERED DURING THIS QUARTER WERE OFFERED TO ALL EMPLOYEES IN A SPECIFIC AREA, AS NEED WAS DETERMINED FOR THAT AREA. NO EMPLOYEE WAS GIVEN PREFERENTIAL TREATMENT AND NONE WERE DENIED EQUAL OPPORTUNITY IN THIS AREA.

Title of training prog (Indicate CS or DMH)		WHITE		BLACK			HISPANIC			AMER. IND.			ASIAN			TOTAL MINORITY		TOTAL FEMALE		TOTAL HANDICAPPED		TOTAL EMP	Adverse Impact
		Male	Female	Male	Female	%	Male	Female	%	Male	Fe.	%	Male	Fe.	%	Total	%	Total	%	Total	%		
	NH																						
	H																						
	NH																						
	H																						
	NH																						
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	NH																						
	H																						

Grievances, Complaints and Litigation
Alleging Illegal Discrimination or
Affirmative Action Violations

Basis	Nature of grievance, complaint or litigation	Date Filed	Current Status Action Taken	Indicate agency or court
	Female Employee in Laundry alleging harassment.	8-4-82	Not pursued by	employee.
	Female RCA alleging discrimination (denied use of annual time when late, while 2 male employees granted annual time under similar circumstances).	10-12-82	At Step 3.	
	Female Speech-Therapist alleging harassment.	6-17-82	At Step 4.	
E: FROM P. 2	Secretary IV - grieved lay-off notice, as she is the only minority in that classification.		Recalled 11-1-	82. Settlement between M.S.E. & D.

This Affirmative Action Plan, to be successful, must have the commitment of the ity Commission, City Manager, Department Heads and Staff in general.

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

The subject of Equal Employment Opportunity has been changing and expanding ver the years through legislation, greater social awareness and increased move- ents in Civil Rights Activities. For these reasons, it is the official policy f the City of Bay City to provide equal employment opportunities for all qualified nd qualifiable persons with particular emphasis on women and minorities; and, hat employees are treated during employment without regard to race, religion, sex, ge, color or national origin. This policy of equal employment opportunity includes, ut is not limited to the following:

Hiring, placement, upgrading, transfer or demotion, recruitment, advertising, or solicitation for employment;

Training during employment; selection for training

Rates of pay or other forms of benefits and compensation,

Layoffs, recalls, or terminations.

The objective of this policy is to recruit and obtain individuals qualified nd/or trainable for positions by virtue of job-related standards of education, raining, experience and personal qualifications without regard to race, color, eligion, sex, age or national origin. (except where age, sex, or physical require- ents constitute a bona fide occupational qualification necessary to proper and fficient functioning in the job).

ARLTON W. LAIRD, CITY MANAGER

CHRISTINE OAKES, E. E. O. OFFICER

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4)

EXCLUDE SCHOOL SYSTEMS AND EDUCATIONAL INSTITUTIONS

(Read attached instructions prior to completing this form)

APPROVED BY GAO
B-180541(R0096)
EXPIRES 12-31-78

1977-FLINT CITY
FLINT CITY
DIR OFF OF EQUAL OPPORTUNITY
~~1101 SOUTH SAGINAW ST~~ 120 E. Fifth St.
FLINT MI 48502

*** FILING DEADLINE EXTENDED TO 11/30/77 ***

26.

MAIL COMPLETED FORM TO
STATE-LOCAL REPORTING COMMITTEE
PO BOX 153
NORFOLK, VA. 23501
PHONE:
800 446-8133

A. TYPE OF GOVERNMENT (Check one box only)

☐ 1. State ☐ 2. County ☒ 3. City ☐ 4. Township ☐ 5. Special district

☐ 6. Other (Specify) _____

B. IDENTIFICATION

1. NAME OF POLITICAL JURISDICTION (If same as label, skip to Item C)

EEOC USE ONLY A

2. Address - Number and Street	CITY/TOWN	COUNTY	STATE, ZIP
120 East Fifth Street Basement of 68th District Courts Building	*Flint, Michigan*	*Genesee*	*Michigan 48502*

B

C. FUNCTION

(Check one box to indicate the function for which this form is being submitted. Data should be reported for all departments and agencies in your government covered by the function indicated. If you cannot supply the data for every agency within the function, please attach a list showing name and address of agencies whose data are not included.)

X	1. FINANCIAL ADMINISTRATION. Tax assessing, tax billing and collection, budgeting, purchasing, central accounting and similar financial administration carried on by a treasurer's, auditor's or comptroller's office and GENERAL CONTROL. Duties usually performed by boards of supervisors or commissioners, central administrative offices and agencies, central personnel or planning agencies, all judicial offices and employees (judges, magistrates, bailiffs, etc.)		8. HEALTH. Provision of public health services, out-patient clinics, visiting nurses, food and sanitary inspections, mental health, etc.
			9. HOUSING. Code enforcement, low rent public housing, fair housing ordinance enforcement, housing for elderly, housing rehabilitation, rent control.
	2. STREETS AND HIGHWAYS. Maintenance, repair, construction and administration of streets, alleys, sidewalks, roads, highways and bridges.		10. COMMUNITY DEVELOPMENT. Planning, zoning, land development, open space, beautification, preservation.
	3. PUBLIC WELFARE. Maintenance of homes and other institutions for the needy; administration of public assistance. (Hospitals and sanatoriums should be reported as item 7.)		11. CORRECTIONS. Jails, reformatories, detention homes, half-way houses, prisons, parole and probation activities.
	4. POLICE PROTECTION. Duties of a police department, sheriff's, constable's, coroner's office, etc., including technical and clerical employees engaged in police activities		12. UTILITIES AND TRANSPORTATION. Includes water supply, electric power, transit, gas, airports, water transportation and terminals.
	5. FIRE PROTECTION. Duties of the uniformed fire force and clerical employees. (Report any forest fire protection activities as item 6.)		13. SANITATION AND SEWAGE. Street cleaning, garbage and refuse collection and disposal. Provision, maintenance and operation of sanitary and storm sewer systems and sewage disposal plants
	6. NATURAL RESOURCES. Agriculture, forestry, forest fire protection, irrigation drainage, flood control, etc., and PARKS AND RECREATION. Provision, maintenance and operation of parks, playgrounds, swimming pools, auditoriums, museums, marinas, zoo, etc.		14. EMPLOYMENT SECURITY
	7. HOSPITALS AND SANATORIUMS. Operation and maintenance of institutions for inpatient medical care.		15. OTHER (Specify on Page Four)

D. EMPLOYMENT DATA AS OF JUNE 30

(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES		ANNUAL SALARY In Thousands 000	TOTAL (COLUMNS B K) A	MALE					FEMALE				
				NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
				WHITE B	BLACK C	D	E	F	WHITE G	BLACK H	I	J	K
OFFICIALS/ ADMINISTRATORS	1	$ 01.39											
	2	40.59											
	3	60.79											
	4	80.99											
	5	100.129											
	6	130.159	3	3									
	7	160.249	14	12					2				
	8	250 PLUS	8	6					2				
PROFESSIONALS	9	01.39											
	10	40.59											
	11	60.79											
	12	80.99											
	13	100.129	6	6									
	14	130.159	14	5	3				4	2			
	15	160.249	14	10	3					1			
	16	250 PLUS	1	1									
TECHNICIANS	17	01.39											
	18	40.59											
	19	60.79											
	20	80.99											
	21	100.129	2	2									
	22	130.159	19	13					3	3			
	23	160.249	11	8	1				1	1			
	24	250 PLUS											
PROTECTIVE SERVICE	25	01.39											
	26	40.59											
	27	60.79											
	28	80.99											
	29	100.129											
	30	130.159											
	31	160.249											
	32	250 PLUS											
PARA-PROFESSIONALS	33	01.39											
	34	40.59											
	35	60.79											
	36	80.99											
	37	100.129	17	1	4				5	5	2		
	38	130.159											
	39	160.249											
	40	250 PLUS											
OFFICE/ CLERICAL	41	01.39											
	42	40.59											
	43	60.79											
	44	80.99	34	2					16	16			
	45	100.129	81	6	2				58	14	1		
	46	130.159	18	3					14	1			
	47	160.249											
	48	$ 250 PLUS											

REMARKS (List National Crime Information Center (NCIC) numbers assigned to any Criminal Justice Agencies whose data are included in this report.)

INCLUDE LIST OF AGENCIES IN FUNCTION 15

CERTIFICATION. I certify that the information given in this report is correct and true to the best of my knowledge and was reported in accordance with accompanying instructions. (Wilfully false statements on this report are punishable by law, U.S. Code, Title 18, Section 1001.)

NAME OF PERSON TO CONTACT REGARDING THIS FORM	TITLE
Louis A. Hawkins	*Equal Opportunity Officer (Employment)*
ADDRESS (Number and Street, City, State, Zip Code)	TELEPHONE NUMBER AREA CODE
120 E. Fifth Street Flint, Michigan 48502	*(313) 766-7305*

DATE	TYPED NAME / TITLE OF AUTHORIZED OFFICIAL	SIGNATURE
11/8/77	*Louis A. Hawkins, Equal Opportunity Officer*	Louis A. Hawkins

(Sample format) Figure 1.--Work Force Analysis, Cont.

Department Administration Organizational Unit x Line of Progression

Job Title	EEO-1 Category	Wage Rate or Range (weekly)	All Employees			Minority Employees										
						Male					Female					
			Total	Male	Female	B	O	A.I.	SSA	Total	B	O	A.I.	SSA	Total
Production and Shipping continued																
Driver	7	150-225	4	3	1				1	1	1				2	
Buyer	2	163-230	2	1	1	1				1						
Asst. Supervisor	1	200-325	1		1											
Supervisor	1	300-425	1	1		1				1						
TOTAL			8	5	3	2			1	3	1				4	
Personnel Unit																
Telephone Operator	5	119-170	2		2						1				1	
Clerk Typist	5	122-172	4		4						1				1	
Secretary	5	130-180	2	1	1						1				1	
Personnel Spec.	4	176-305	2	1	1											
Asst. Personnel Mgr.	1	200-325	1	1												
Personnel Mgr.	1	300-400	1		1											
TOTAL			12	3	9						3				3	

HO 10-4

key to the code along with the affirmative action program. The key need not be a part of the program itself, and the contractor may request that the key be returned by the EOS once the review is completed (.30).

The regulations state that salary information is required for all job titles. However, the OFCCP does not require salary information for top level officials and managers (the president, vice president, general manager, for example). This is partly because, in most companies, there are no minorities or females in those positions. Also, salary information can be requested as needed (.30).

.10 41 CFR § 60-2.11(a).
.20 OFCCP Desk Audit Skills Course, Resource Book, page 27
.30 OFCCP Desk Audit Skills Course, Resource Book, page 28.

¶ 4070 LINES OF PROGRESSION

The work force analysis must include an indication of lines of progression (.10). The term "line of progression" is often incorrectly interpreted in a very narrow sense to mean a lock-step arrangement where every employee must start at the bottom and work his or her way up the line within certain intervals of time. Such an interpretation leaves out the many situations where promotional paths are informal but fairly definite. Even when anybody in the organization can bid on a job, experience in one job is often a prerequisite for placement. This informal type of progression sequence must be indicated to insure that women and minorities have been and continue to be given an equal opportunity to reach top positions (.20).

Two methods of indicating lines of progression are common. One way is to bracket those job titles in a department (already listed in descending order of pay) that are a line of progression. The other is to provide information on line of progression in a footnote.

.10 41 CFR § 60-2.11(a).
.20 OFCCP Desk Audit Skills Course, Resource Book, page 29.

¶ 4072 LISTING EEO-1 CATEGORIES

Many of the forms being used by consultants for work force analysis call for the listing of EEO-1 categories for each job title. The regulations do not explicitly require this information on the work force analysis, but certain EEO-1 categories are identified as most often involved in underutilization problems (.10). The EEO-1 categories are listed below for your convenience, along with a numerical code that can be used on forms (numbered 1 through 9 in the sequence in which they appear on the EEO-1 Form). Asterisks indicate the categories in which women and minorities are most often found to be underutilized. A single asterisk refers to women, two to minorities, and three indicate that both women and minorities are likely to be underutilized.

1. Officials and Managers ***
2. Professionals ***
3. Technicians ***
4. Sales Workers *** (except that women are not generally underutilized in over-the-counter retail selling)
5. Office and Clerical **
6. Craft Workers (Skilled) ***
7. Operatives (Semi-Skilled) *

8. Laborers (Unskilled)

9. Service Workers

.10 41 CFR §60-2.11

¶4074 ASSESSING DEFICIENCIES IN THE WORK FORCE ANALYSIS

There are two kinds of errors commonly made in preparing a work force analysis. Each will result in different actions on the part of the OFCCP compliance officer. The more serious type of error (or deficiency, technically), which precludes thorough review of the affirmative action program, and which must be corrected by the contractor before the compliance review can continue, involves such deficiencies as lack of salary information, lack of race and sex designation, and lack of incumbency totals by job title.

The other kind of error, which is termed a "paper and pencil" error and does not require immediate correction, does not preclude effective review of the affirmative action program. The EOS who notes a "paper and pencil" deficiency, such as a failure to rank job titles in wage order, will notify the contractor during the next phase of the review (the onsite review) that the deficiency needs to be corrected.

When the OFCCP is asked for assistance in preparing a work force analysis, various suggestions will be made that are not part of the legal requirement and cannot be the basis of a finding of deficiency. Nonetheless, it is good to keep in mind that the following are sought by the agency:

1. Pages should be numbered (the entire affirmative action program should be numbered);

2. The date of preparation of the work force analysis should be given (it should be as close to the beginning of the AAP year as possible);

3. No more than one department should be listed on a page (.10).

.10 OFCCP Desk Audit Skills Course, Resource Book, page 30—31

Job Group Analysis

¶4076

¶4078 INTRODUCTION

A second way of looking at the contractor's work force is the job group analysis. This is a grid showing all major job groups at the facility, with explanations for any in which minorities or women are currently underutilized. A "job group" is a collection of job titles that have similar content, wage rates, and opportunities (.10). Similarity is, of course, a matter of some subjectivity.

Establishing job groups is the first step in a process that eventually leads to a determination of whether the proportion of women and minorities employed in each job group is about equal to the proportion of women and minorities available for work in

Examples of Job Groupings Considering the Size of the Facility

EEO-1 Category — Official and Manager

Large firm (1000 & up)	Medium size firm (300 - 1000)	Small firm (under 300)
1. Executives	1. Executives and Department heads	1. Managers
2. Department heads		
3. Managers	2. Managers	
4. Supervisors of Exempt Personnel	3. Supervisors and Salaried Employees	2. Supervisors
5. Supervisors of Non-exempt Personnel		
6. Maintenance Foreman	4. Supervisor of hourly employees	
7. Production Foreman		

EEO-1 Category — Professional

1. Sr. Electrical Engineer	1. Electrical Engineer	1. Engineer
2. Jr. Electrical Engineer		
3. Sr. Mechanical Engineer	2. Mechanical Engineer	
4. Jr. Mechanical Engineer		

Notes

[1] James A. Belohiav and Eugene Ayton, "Equal Opportunity Laws: Some Common Ptoblems," Personnel Journal, April 1982, pp. 282-295.

[2] James M. Higgins, "A Manager's Guide To The Equal Employment Opportunity Laws," Personnel Journal, August 1976, pp. 406-418.

[3] Gary Bryner, "Congress, Courts, and Agencies: Equal Employment and the Limits of Policy Implementation," Political Science Quarterly, 96 (Fall 1981) 419.

[4] Bryner, p. 415.

[5] Griffs vs. Duke Power Company, United States Supreme Court Reports, 401 US 424, 28L Ed. 2d 158, 91 S. Ct., (March 8, 1971).

[6] Washington vs. Davis, United States Supreme Court Reports, 426 US 229 48L Ed. 2d 597, 96 S. Ct. 2040, (June 7, 1976).

[7] "employment Practices," Commerce Clearing House, Inc., (1982), pp. 1853-1858.

[8] Business Week, "The New Bias on Hiring Rules," 25 May 1981, pp. 123-127.

[9] Flint, Michigan has been as high as 21.25%.

[10] The recent Boston Firefighters Association is a good example of where they are currently fighting the AA/EEO issue of maintaining the least senior minorities or more senior employees for layoff purposes.

[11] David E. Robertson, "Update on Testing and Equal Opportunity," Personnel Journal, March 1977, p. 144.

[12] Bryner, p. 145

[13] U.S. Congressional and Administrative News. (1), 92nd Congress, Second Session, 1972, p. 2477.

[14] Alan Saltzstein, Public Employees and Policymaking, (Calif. Palisades Publ., 1979), p. 67.

[15] Ulric Haynes, Jr., "Equal Job Opportunity: The Credibility Gap," Havard Business Review, 46 (May-June 1968) p. 114.

[16] Paul H. Norgren and Samuel E. Hill discusses the FEP in their book, Towards Fair Employment, (Columbia: Colum. Univ. Press, 1964), p. 227.

[17] Terry L. Leap, William H. Holley, Jr., and Hubert S. Field, "Equal Employment Opportunity and Its Implications for Personnel Practices in the 1980's," Labor Law Journal, 31 (Nov. 1980) p. 671.

[18] Leap, Holley, and Hubert, p. 671.

[19] "Fair Employment Practices," The Bureau of National Affairs, No. 320, (1977), p. 29.

[20] The Bureau of National Affairs, P. 83.

[21] Belohiav and Ayton, P. 282.

[22] Saltzstein, p. 68.

[23] Bryner, p. 417.

[24] The Bureau of National Affairs, P. 29.

[25] Saltzstein, p. 69.

[26] "EEOC Form 164, State and Local Government Information (EEOC-4), "Equal Employment Opportunity Commission, Wash. D.C., (April 1977), p. 1.

[27] Equal Employment Opportunity Commission, P. 1.

[28] Equal Employment Opportunity Commission, U. S. Government Printing Office, Washington D.C., p. 7.

[29] Robertson, p. 144-145.

[30] "Employment Practices," Commerce Clearing House, Inc., (1982), p. 1855

[31] William P. Anthony and Marshall Bowen, "Affirmative Action: Problems and Promises," Personnel Journal, December 1977, p. 618.

[32] Neil D. McFeeley, "Weber Versus Affirmative Action," Personnel, January-February 1980, p. 41.

[33] Interview with Ms. Mary Pollock, Michigan Department of Mental Health, Lansing AA/EEO Officer on June 21, 1983 via telephone.

[34] "Affirmative Action Program," City of Bay City, Michigan, March 1976, pp. 4-5.

[35] Interview with Mr. Thomas Bugbee, Personnel Director, and Mr. Louis Hawkins, AA/EEO Officer for the City of Flint, Michigan on July 28, 1983 at City Hall, Flint, Michigan.

[36] Interview Bugbee and Hawkins.

[37] Greg Braknis, "Minority Hiring By City Outdated?," The Fling Journal, 8 April 1983, p. 1.

[38] U. S. Congressional and Administrative News, P. 2477.

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