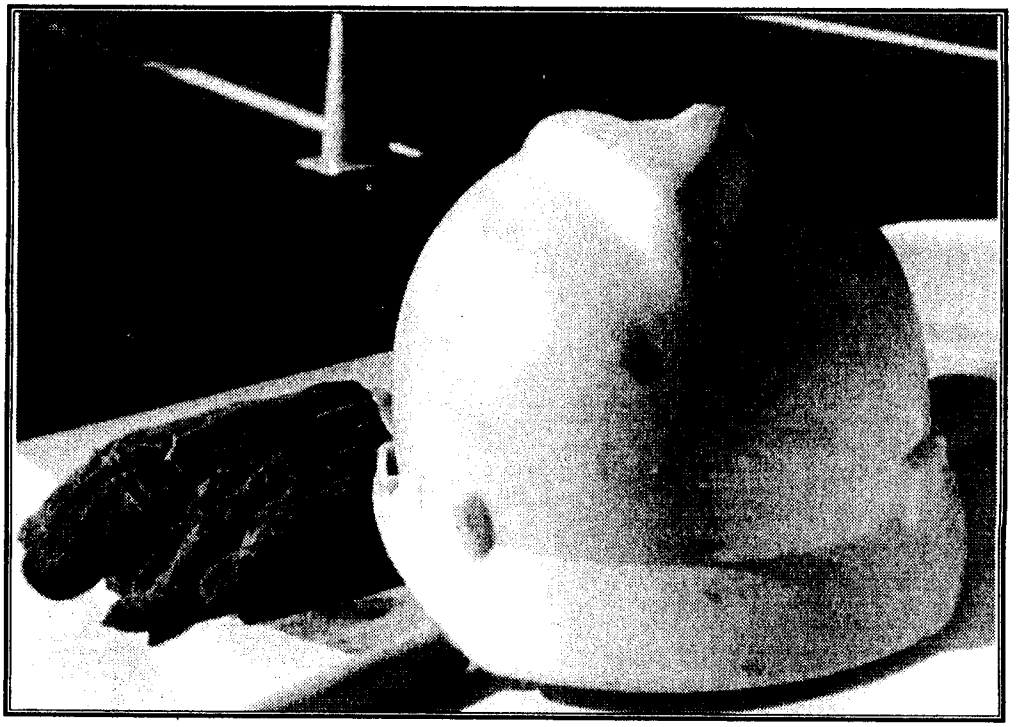
BUILDING BARRIERS

Discrimination in New York City's Construction Trades



A Report By
The New York City Commission on Human Rights

David N. Dinkins, Mayor

Dennis deLeon, Commissioner/Chair.

December 1993

BUILDING BARRIERS

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A Report on

Discrimination Against

Women and People of Color

in New York City's

Construction Trades

David N. Dinkins

Mayor

Dennis deLeon

Commissioner/Chair.

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COMMISSION ON HUMAN RIGHTS
40 RECTOR STREET, NEW YORK, NY 10006
Telephone: (212) 306-7560 TDD (212) 306-7686 Fax (212) 306-7658
DENNIS DELEON, *Commissioner/Chair*

December 20, 1993

Honorable David N. Dinkins
Mayor
City Hall
New York, New York 10007

Dear Mayor:

By this letter we forward "Building Barriers: Discrimination in New York City's Construction Trades."

In this Report, the Commission on Human Rights returns to a critical area of human rights abuse in New York City—race, ethnic, and gender discrimination and harassment in New York City's construction industry. The construction industry offers a textbook study of the pattern, practice and impact of institutionalized exclusion. It is a story of the failure of business, union and political leadership to ensure equal employment opportunity in an industry that could provide meaningful career and financial opportunities for many disadvantaged New Yorkers. This story was told by the Commission on Human Rights in 1963 and again in 1967, and has been supported in subsequent hearings and reports by other governmental and private civil rights agencies.

One might ask why the Commission on Human Rights, an agency with extremely limited resources, has chosen once again to examine employment discrimination in the City's construction industry.

An illustration of why the Commission has reopened the issue of discrimination in New York City's construction trades was provided when David Letterman brought on stage all the workers who had participated in the reconstruction of the Ed Sullivan Theater, where his CBS show debuted. A virtually all-white and all-male crew took deserved

cheers for the incredibly quick and professional rehabilitation of the theater, while graphically depicting the utter failure of the City's construction industry and relevant unions to include all New Yorkers in that moment of glory and home-grown pride. The racial and sexual profile seen on the screen that night is one that is seen on construction project after construction project throughout New York City.

A further reason for renewed attention to construction industry discrimination is that the minimal but noticeable progress experienced by women and people of color who sought entry into this high-paying field during the past two decades has stalled. Even in the booming economy of the 1980s, women, African-Americans, Latinos, and Asian-Americans were kept at the margins of the growth within the industry. Further, reports of sexual harassment and other obstacles encountered by women seeking employment in construction have increased over the years, while many government-funded programs designed to assist women who enter this male-dominated work environment have ceased to exist.

Another concern of the Human Rights Commissioners, which led in part to the hearings and this Report, is the growth of so-called "minority coalitions." These are organizations with the ostensible goal of promoting the hiring of people of color in the construction industry. But the objective of many of these coalitions is anything but obtaining equal employment. Many engage in violent disruptions of work sites to extort money and paychecks for no-show workers. They undermine the efforts of legitimate groups like FightBack and United Third Bridge, Inc., who are indeed seeking to open the trades to people of color. As reprehensible as the criminal behavior of these coalitions is, it is a by-product of the institutional failure of government and private industry to address the longstanding problem of discrimination.

Given these concerns, in 1990 the Commission initiated a formal investigation into the systemic exclusion of African-American, Latino, Asian-American and female workers from many union locals, apprenticeship programs and unionized work sites. Key to the

investigation were a series of 14 hearings that began in March, 1990 and continued through November, 1992. The hearings produced testimony from workers, union and contractor representatives, workers' advocates, and public officials regarding the extent of discrimination in the skilled construction trades. More than 80 workers testified, representing more than a dozen trades. The picture which emerged from the hearings is very disturbing.

Women and people of color testified that their attempts to obtain apprenticeships and find work were thwarted by unions and contractors alike. They complained that when working, they face negative conditions to which white males are not subject. Statistics gathered for this Report reflect, in many cases, a failure by unions to recruit and retain these groups, although in a few instances some forward movement has been seen. Finally, due to a lack of resources and/or political will, government agencies have neither enforced compliance with affirmative action goals nor pursued more progressive or creative remedies.

If the recommendations made in this Report are implemented, we are confident that opportunities for women and people of color in the construction trades will expand. While the Commission's proposals provide no panacea or quick fix, they will move the industry to once again begin to come to grips with the need for change. Implementing the recommendations over the next few years will require real political courage. With the building industry expected to remain depressed until the late 1990s, government and industry leaders will face the difficult challenge of fostering greater inclusion in a time of high unemployment. And if increased opportunities for people of color and women are seen as coming at the expense of white males, efforts at reform will meet great resistance. Government, private industry and labor leaders must form innovative partnerships if New York City is to realize a truly diverse workforce in the twenty-first century.

We want to express our deep sense of gratitude for the support and encouragement you have shown the Commission over the past four years. Your leadership has enabled us to bring a new sense of hope and creativity to the agency. Your understanding of the importance of the New York City Human Rights Law and the necessity for the Commission's vigorous law enforcement efforts has been critical to this transformation.

We look forward to meeting with you, or with whomever you designate, to discuss implementation of the Report's recommendations.

With respect and gratitude,

Dennis deLeon, Chair

Harilyn Rousso, Co-Vice-Chair
Edward Mapp, Co-Vice-Chair
Rabbi Balfour Brickner
Rabbi Jacob Bronner
George Daniels
Edward Ma
Burt Neuborne
Rev. Charles Norris
Ilka Tanya Payan
Msgr. John Servodidio
Vivian H. Shapiro
G. Jack Spatola

DAVID N. DINKINS, MAYOR

DENNIS DELEON, COMMISSIONER/CHAIR

Human Rights Commissioners

Rabbi Balfour Brickner
Rabbi Jacob Bronner
George Daniels
Edward Ma
Edward Mapp, Co-Vice-Chair
Burt Neuborne
Rev. Charles Norris
Ilka Tanya Payan
Harilyn Rousso, Co-Vice-Chair
Msgr. John Servodidio
Vivian H. Shapiro
G. Jack Spatola

Public Hearings Coordinators

New York City Commission on Human Rights
Russell Pearce, former General Counsel, and staff; Peggy Crull, Director of Research, Community Relations Bureau, and staff; Cheryl Howard, General Counsel, and staff; Rolando Acosta, former Deputy Commissioner for Law Enforcement, and staff.

New York City Division of Labor Services
Oliver Gray, former Director; Sheila Abdus Salaam, former General Counsel, and staff; Olivia Peck, former Director of the Construction Division, and staff; Debra Jackson, former General Counsel, and staff.

Workers from every part of the City Commission on Human Rights and Division of Labor Services devoted their time and energy to staffing each aspect of the public hearings.

Report staff

Project Director
Peggy Crull, Director of Research
Community Relations Bureau

Principal Writer/Researcher
Steve Herrick, Research Associate

Assistant Writer/Researcher
Dick Conette, Research Assistant

Editor/Graphic Designer
Keith O'Connor, Publications Director

Consultant: James McNamara, NYC Department of Employment

Cover photo: Tom Hoctor, NYC Department of Transportation

- Rosemarie Maldonado, Chief Administrative Law Judge, is the principal author of Appendix C, the Commission's Sexual Harassment Guidelines.

- Research for the original draft of Chapter 1 was performed by Jennifer Latifah Johnson, then supervisor of the Construction Investigation Unit at the Commission. Ms. Johnson also wrote the first draft of the chapter.

- Many staff members of the Commission on Human Rights and the Division of Labor Services contributed to the creation of this report through the early gathering of research materials and the summarization of hearings transcripts.

Acknowledgements

Many individuals helped organize the series of public hearings, and assisted in the gathering of materials which provide the basis for this report. They include representatives of women's organizations, coalitions, and workers' associations which advocate on behalf of African-Americans, Latinos, Asian-Americans and Native Americans, as well as legal experts and labor historians who have helped to place the issues in context.

Especially instrumental in bringing about the hearings and gathering testimony and information were:

United Third Bridge, Inc.
Harlem FightBack
NOW Legal Defense and Education Fund
Women's Project of the Association for Union Democracy
Nontraditional Employment for Women
Women in Construction, and
Women in the Trades.

The Commission also recognizes the contributions of the many individuals who work in the construction industry and testified at the public hearings, despite the possibility that their appearance might lead to retaliation. Except for those who testified anonymously, the names and organizations of those who testified at the 14 days of public hearings held between March 12, 1990 and November 13, 1993 are presented in Appendix B at the conclusion of this report.

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* ALANA = African-American, Latino, Asian-American, and Native American people.

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Executive Summary and Conclusions

In 1989, the New York City Commission on Human Rights (hereafter referred to as the Commission) and the Division of Labor Services (DLS—the former Office of Labor Services), began a series of initiatives to investigate the extent of discrimination against African-Americans, Latinos, Asians, and Native Americans (all of which will be referred to in this document either as "people of color" or as "ALANA", *i.e.*, the first letter of each of the four population groups just mentioned: African-Americans, Latinos, Asian-Americans and Native Americans) and women in the city's construction trades. The decision to target the construction industry was based on the following factors.

First, it is a large industry employing roughly 100,000 people, many of whom did not graduate high school but are skilled in a specialized trade that can pay between $30,000 and $100,000 annually. As such, it is one of the few avenues for social mobility open to persons with a limited formal education. Second, the industry has a history of discrimination against people of color and women. And, the Commission wished to assess the impact of past institutional remedies and legal battles regarding discrimination. Third, the City of New York spends billions of dollars a year on construction projects, making it the largest employer of construction workers in the area. Hence, more aggressive anti-discrimination efforts by City government toward unions and contractors could have a discernable impact on the racial composition of the workforce. Fourth, recent state and federal court decisions threatened governmental efforts to integrate the industry, efforts such as alternative training programs and the development of affirmative action plans. The Commission hopes its efforts will mobilize public and private institutions to re-commit to integrating the industry.

The investigation involved several initiatives, of which the most far-reaching was a series of 14 public hearings held between March 12, 1990 and November 13, 1992. The hearings extended over the course of two and a half years primarily because many of the unions invited to testify would not come forward until subpoenaed. Several refused to comply with subpoenas issued by the Commission in 1990, leading to a State Supreme Court decision and Appellate Court decision in favor of the Commission in the Summer of 1992. Subsequently, four unions testified before the Commission in November of 1992. (See Appendix A)

By the end of these investigations, 80 construction workers in various skilled trades, more than 50 advocates, legal experts, and officials representing 13 construction unions and/or their joint apprenticeship committees, several contractors and contractor association representatives, and numerous government officials appeared before the New York City Commission on Human Rights—and in some instances the Division of Labor Services—to testify about the extent of discrimination in New York City's construction industry (See Appendix B).

The Commission and DLS sought to obtain all relevant information from construction workers, industry experts, unions, JACs (joint apprenticeship committees), contractors and government officials concerning the following issues:

1) The racial and gender composition of each union;

2) Whether the union and/or JAC is or has been under a court order to remedy discriminatory practices;

3) Whether union/JAC policies with regard to recruitment, entry requirements and admission rates of new members into an apprenticeship or New York Plan for Training Program indicates disparate treatment of women and people of color;

4) Whether training and educational opportunities differ for women and people of color;

5) Whether success in graduating to journey-level status differs significantly based on race, gender or national origin;

6) Whether job referrals and work assignments indicate disparate treatment based on race, gender or national origin;

7) Whether the dominant mode of obtaining employment in each trade is through union referral halls or directly through contractors;

8) Whether disparities exist in the amount of hours worked by people of color and women in each trade;

9) Whether terms and conditions of employment (*i.e.*, access to health benefits, amount of hours worked) for ALANA and women differ from those of white male workers.

The hearings were successful in that they provided the Commission with a deeper understanding of the unique nature of the construction industry in New York City, and a factual basis for proposing policy recommendations to make the industry's workforce representative of the racial and gender composition of the city's workforce. If there is a shortcoming in this report, it is surely the lack of hard information provided by contractors in each of the trades. Despite invitations to more than 20 contractors during the hearings process (Appendix A), only a handful testified or submitted written data. Due to time constraints, the Commission did not pursue or subpoena contractors to obtain further information. Instead, unions and their JACs provided the focus of the Commission's effort, in part, because several unions freely participated early on in the process, and a decision was made to gather data from all the unions before further pursuing reluctant contractors.

The 13 construction unions profiled in this report represent roughly 52,000 skilled construction workers in the New York metropolitan area. They encompass numerous buildings trades such as carpenters, electrical workers, sheetmetal workers, plumbers, steamfitters, structural and ornamental iron workers, operating engineers and elevator constructors. The 13 unions were selected because they have been either the subject of class action lawsuits alleging discriminatory practices, or have been impacted by legal decisions concerning the training and employment of people of color and women in the trades. Many remain under consent decrees supervised by court-appointed administrators.

The gains made by people of color in many of the construction trades during the 1960s and 1970s stalled during the 1980s in relation to the increase of people of color in the city's population, and in some trades, ALANA representation declined. In the 1990s, workers of all races in the building trades were hurt by the virtual halt in office construction brought about by the stagnating economy. Unemployment in the construction industry stood at 24.7% as of 1991, according to the Federal Bureau of Labor Statistics. It remains to be seen whether the 1990s will be a decade of greater inclusion.

Findings

1. **The severe underrepresentation of people of color and women in the skilled construction trades persists despite decades of efforts to integrate the construction industry. People of color comprise only 19%, and women just 1%, of the unionized, skilled construction workforce. These figures indicate a profound failure in social policy.**

Among the nine unions that supplied information on the racial composition of journeyperson membership (See Table A), people of color varied considerably from as high as 31.0% in Local 580 of the Bridge, Structural and Ornamental Ironworkers Union (whose jurisdiction includes Long Island), and 25.4% in Local 638 of the Steamfitters (whose jurisdiction also includes Long Island), to as low as 9.3% in Local 14, and 14.8% in Local 15, both of the Operating Engineers Union.

These percentages, in many cases, are well below even the inadequate and sometimes outdated availability percentages used by city, state and federal agencies to set affirmative action goals. (See Finding 12 for a discussion of the problems with these availability figures and a complete table of the percentages. Please note that the availability figures cited here are based on the 1980 Census, since those were still in effect when the data was gathered for this report). The failure of the unions to meet even these minimal standards can be illustrated by a comparison of union membership to the availability figures used by DLS.

Locals 14 and 15 of the Operating Engineers exhibited the greatest disparity between the availability of people of color and women in the trade and their representation

Table A - Journey-Level Union Members Race and Gender Composition (% of Members)					
Union/Local	White	ALANA	Male	Female	Member
Dist Cnsl Crpntrs	*	*	*	*	22,000
IBEW No. 3	81.8	18.2	99.3	0.7	8,363
Sheet Metal Wrkrs No. 28	83.6	16.4	*	*	4,131
Oper Eng No. 15	85.2	14.8	99.4	0.6	3,209
Steamfitters No. 638	74.6	25.4	98.9	1.1	3,174
Elevator Const No. 1	79.9	20.1	97.0	3.0	2,600
Plumbers No. 2	*	*	99.6	0.4	2,399
Ironworkers No. 580	69.0	31.0	98.9	1.1	1,440
Plumbers No. 1	*	*	*	*	1,000
Structrl Irn Wkrs No. 361	82.2	17.8	*	*	997
Structrl Irn Wkrs No. 40	80.9	19.1	99.7	0.3	974
Oper Eng No. 14	90.7	9.3	99.8	0.2	818
Total (% approximate)	81.0	19.0	99.0	1.0	52,005

Note: Figures for Locals 40, 361 and 580, subpoenaed in 1990, are based on 1992 EEO-3 forms. All others: 1990. * = Not Available

among journeypersons within the trade union. Although the availability rate of people of color in the trade is 31%, according to DLS, Local 14 has a 9.3% ALANA membership and Local 15 a 14.8% ALANA membership, including people of color at less than 30% and 47.8%, respectively, of their 31% availability. Women are severely underrepresented in both unions, comprising 0.2% of members in Local 14 and 0.6% in Local 15—this despite a 3.0% availability rate. People of color in IBEW Local 3 represent 18.2% of the journeyperson ranks, although their availability rate as of 1980 was 36%. Their utilization rate, then, is only 50.6% of their availability in New York City's workforce. Women with electrician skills, according to DLS figures, are 2.0% of the workforce, but comprise only 0.7% of Local 3's membership—roughly a third of their availability.

In the Bridge, Structural and Ornamental Iron Workers trade, Locals 40 and 361 included people of color at rates of 19.1% and 17.8% respectively, which are near to the 20% ALANA availability rate. Local 580 actually exceeded this availability figure with a 31% ALANA membership. Although availability data lists the figure of 0% for female Structural Iron Workers, Local 40's and 580's female membership is 0.3% and

1.1% respectively. As for Steamfitters Local 638, the union's membership is 25.4% ALANA, significantly below the 35% ALANA availability rate in the trade. With a 1.1% female membership, the union meets the availability rate of 1.0%.

Local 1 of the Elevator Constructors Union had a 20.1% ALANA membership, somewhat below the 23% ALANA availability rate in the trade. Female membership, estimated at 3.0% by union president John Green, is substantially above the 0.5% availability rate used by DLS. Local 28 of the Sheet Metal Workers has a 16.4% ALANA membership, and its jurisdiction encompasses Long Island and northern New Jersey. Local 28's New York City membership is 38.4% ALANA, which exceeds the 32% availability rate used by DLS. The New York City District Council of Carpenters, and Locals 1 and 2 of the Plumbers Union did not supply journeyperson information on race, claiming they are not required to maintain such information and see no reason to compile it. The District Council of Carpenters and Local 1 of the Plumbers also did not provide data on gender.

It must be kept in mind that those memberships which are close to or higher than the DLS availability figures might fall short if availability were measured in the more comprehensive manner suggested by some of the hearings testimony.

2. While there is underrepresentation of all people of color within trade unions, it is most pronounced among Asian-Americans and Latinos, suggesting that outreach and recruitment are not evenly extended to all communities of color.

Nine unions provided data on ALANA membership, but only five broke the figures down into categories of African-American, Hispanic, Asian-American and Native American. The more detailed information provided by some unions showed that underrepresentation exists across the board, but is more pronounced for certain ALANA groups than others. Underrepresentation of African-Americans certainly exists, but not to the same degree as Latinos and Asians. Asians, in particular, are virtually nonexistent among union journeypersons in any of the trades, although this group is fast approaching 10% of the city's population.

Table B - Racial Breakdown of ALANA Journeypersons						
Trade/Union	Black	Hispanic	Asian	Native American	All ALANA	All Members
Sheet Metal Wrkrs Loc 638	802	3	0	0	805	3,174
Structural Iron Wrkrs L. 580	355	97	0	5	457	1,440
Iron Wrkrs Local 40	108	34	5	46	193	974
Iron Wrkrs Local 361	63	15	1	98	177	997
Op Eng Local 14	53	22	0	1	76	818
Total #	1,381	171	6	150	1,708	7,403
Total % ALANA	80.9	10.0	0.4	8.8	100.0	
Total % All Members	18.7	2.3	0.1	2.0	23.1	
Note: All figures provided by union officials						

As Table B indicates, blacks constitute 81% of all people of color, and 18.7% of all union members in the five unions for which complete data was available. Latinos account for just 10% of ALANA union members and 2.3% of all union members. Asians comprise only 0.4% of all ALANA union members and a miniscule 0.1% of all union members. The disproportionatlely high percentage of Native Americans (8.8%) among ALANA members is due to their large presence in the structural and ornamental iron works trades. Native Americans comprise 2.0% of all union members in the skilled trades—a figure greater than their representation in the city's population.

Among the unions for which complete data is available, there are no Asians among the 3,174 members of Steamfitters Local 638, the 1,440 members of Local 580 of the Ornamental Iron Workers, or Operating Engineers Local 14's 818 members. In Steamfitters Local 638, African-Americans are well represented at 25.3% of all union members, but Latinos are severely underrepresented at less than 1% of union membership. In Bridge, Structural and Ornamental Iron Workers Local 580, African-Americans account for 24.7% of all union members while Hispanics comprise only 6.7% of the membership. These figures demonstrate that gains made by newer immigrant communities, such as people of Latino and Asian descent, have been minimal, while African-Americans continue to be underrepresented as well.

3. Many unions and joint apprenticeship committees have yet to comply with court-ordered membership and apprenticeship goals

set in the 1970s as a result of class action lawsuits. Litigation has brought about improvements but also has led federal and state agencies to waive law enforcement responsibilities.

Several unions were under federal court orders during part of the 1980s as a result of longstanding litigation brought for racially discriminatory practices. Sheet Metal Workers Local 28, with an ALANA composition of 16.4% as of 1990, has yet to reach compliance with a Federal District court order from the late 1970s which set a 29.2% "minority" membership goal. Athough the union's New York City membership (25.2% of its 4,131 members reside in New York City) is 38.4% ALANA, the city accounts for a small portion of the total membership of the union. Nearly 75% of members reside in Long Island, northern New Jersey and other locations. Given that the available workforce in New York City greatly exceeds that of Long Island and Northern New Jersey, the union should be attracting far more than 25% of its members from New York City.

Elevator Constructors Local 1, with an ALANA membership rate of 20.1%, will remain under a consent decree until people of color comprise 33.3% of the union's membership. Operating Engineers Local 14 also remains under a consent decree as a result of a 1977 court case which set a 26% ALANA membership goal. With an ALANA membership rate of 9.3%, the union is far from reaching compliance. From 1982 through 1988, Operating Engineers Local 15 had been under a Federal District Court consent decree which set a goal of 20% ALANA membership. In 1988, a District Court judge dissolved this consent decree even though the union's ALANA journeyperson membership only reached 14.8%. Apparently this move was taken because the union's apprenticeship program was admitting people of color at an annual rate of 20%.

Ironworkers Local 580, whose jurisdiction encompasses New York City, Westchester and Long Island, has been under a consent decree since 1978, requiring the union to develop an affirmative action plan and increase its ALANA membership to 24% over a five-year period. In 1987, a Federal District Court judge found Local 580 in contempt of the court order, and in 1991, the U.S. Court of Appeals, Second Circuit, affirmed the 1987 ruling. The union has reached compliance with ALANA membership at 31% as of 1992, making it the only union to comply with court-ordered numerical goals.

The New York State Department of Labor (NYSDOL) has a policy of waiving jurisdiction over unions under Federal court order. However, since these cases dealt only with racial discrimination, women were not included in any of the court-ordered goals. As a result, neither the state nor federal government carefully monitored women's progress in these trades.

4. **For people of color and women, virtually the only way to gain journeyperson status is by completing an apprenticeship program, whereas whites often become journeypersons simply through being organized into a union local while employed at a job site, without going through an apprenticeship. Thus contractors share responsibility for the underrepresentation of women and people of color in unions.**

The unions studied in this report build their membership in three different ways: First, the primary means of swelling union memberships is through the process of organizing the workforces of non-union contractors or companies which fall under the work scope and jurisdiction of the union. The union requires the company to pay the rates and fringe benefits set in collective bargaining agreements. Second, apprentices admitted into the joint apprenticeship program and/or the New York Plan for Training Program are admitted as members. Third, occasionally contractors sponsor non-union workers in their employ, and if the workers are qualified, they are accepted by the union and receive standard union benefits.

Of these routes of entry, the largest number of workers enter construction unions by being organized into them while on construction sites, regardless of whether or not they have participated in joint apprenticeship programs. This was acknowledged by Thomas Maguire, President of the Operating Engineers, Local 15:

> *An individual can still get a journeyman's book without going through the apprenticeship program. There are various ways. We are constantly organizing where we are successful. If we can organize a company and the company signs an agreement and agrees to pay the rates and the fringes, we then organize the people working for that company who fall within the work scope and jurisdiction of Local 15.*

The racial composition of these newly organized workforces can vary, but they are often predominantly white, particularly if they are on privately financed jobs, in which case the contractors may not be under federal goals. Thus, unions pick up new members—but the existing workforce may have been assembled by a contractor who engaged in discriminatory practices.

Workers on these sites, who are most often white, usually are hired because they have personal connections, rather than—and regardless of—whether they have the necessary skills. They are then trained on the job, and automatically obtain union membership when the union organizes the workforce. These workers often don't have to endure a four- or five-year apprenticeship program which is virtually the only route of entry into the unions available to workers without such personal connections. As one worker explained,

> *The union will bring in a guy who happens to be their friend—he may be working in a pizza parlor all his life—and they put him to work. He doesn't have to know anything, and he can get paid full* [journeyperson] *scale. That mostly happens with the white guys.*

Thus, increasing ALANA participation in apprenticeship programs addresses only one route of entry into the skilled construction trades. Even if people of color are well represented among graduating apprentices, they continue to remain underrepresented in the trades because whites retain privileged access to these alternate avenues to union membership, which are generally not available to people of color.

For example, Operating Engineers Local 14 Training Director Thomas Gleason testified that the union had taken in 32 journeypersons in 1989-90. But only one person, a "minority," had graduated from the training program during that time. All the other new members entered the union as journeypersons through other routes: they did not have to complete the four-year training program. Local 14 has a 9.3% ALANA membership, the lowest of all unions profiled in this report.

Even the people of color who attempt to enter unions through apprenticeship programs have difficulty gaining union admittance:

> *The President of Local 15* [Operating Engineers] *made a lot of different appointments with me which he hasn't kept. He said there wasn't any opportunity to join*

the union. I operate a backhoe, excavator, bulldozer, front end loaders, most of the equipment. I have approached the contractor about his sponsoring me to get into the union but they don't do it. You have to have connections.

In August of 1989, I graduated [the apprenticeship program] *and I was denied a union book which prevented me from gaining access to a union job through their referral system, even though I had two contractors and a job for me upon receiving my book.*

I was able to join the union after a few months, but was unable to get credit for work I had done beforehand. They turned me down even though I gave them the name of the company, and they marked my card as a first year apprentice. The same day, a man who had just emigrated from Ireland walked in and applied. In return for a $500 fee, they didn't even ask him any questions about his experience and stamped his card as Mechanic level. Giving preferential treatment like this to men, especially white and Irish men, is very common.

5. People of color comprise 27.6% of apprentices, and females only 3.4% of apprentices, in nine major apprenticeship programs. Participation goals for women and people of color, as set by the New York State Department of Labor, are not enforced effectively in any joint apprenticehip program.

Based on figures provided by the Joint Apprenticeship Committees [See Table C on the following page], it is evident that ALANA (African-Americans, Latinos, Asian-Americans, Native Americans and others) continue to be underrepresented in most apprenticeship programs. People of color total 1,988 (27.6%) of the 7,212 apprentices in the trades of plumbing, electrical work, operating engineer, carpentry, sheet metal work, steamfitting, and bridge, structural and ornamental iron work.

Apprenticeship enrollment goals are developed by the New York State Department of Labor (NYSDOL) as authorized by the Federal Bureau of Apprenticeship and Training. They are based on the proportions of people of color and women in the Census. (See Table D on page 13; note that the goals are based on the 1980 Census, since 1990 Census figures were not in effect when the data was gathered for this report). Many of the apprenticeship programs do not meet these levels.

Table C - Race/Gender Composition of Apprenticeship Programs - % Enrolled - 1990					
Trade/Union	White	ALANA	Male	Female	Enrollment
Dist Cnsl Crpntrs	71.7	28.3	96.1	3.9	3,607
IBEW Local 3	83.6	16.4	97.3	2.7	2,169
Sheet Metal Loc 28	26.2	73.8	*	*	495
Plumbers Local 2	77.1	22.9	96.9	3.1	293
Steamfitters Loc 638	81.2	18.8	92.5	7.5	239
Plumbers Loc 1	81.9	18.1	100.0	0	160
Str Irn Wks Lc 40/361	69.9	30.1	98.6	1.4	139
Orn Irn Wkrs Loc 580	50.0	50.0	*	*	90
Op Eng Local 15	55.0	45.0	70.0	30.0	20
Totals	72.4	27.6	96.6	3.4	7,212
Note: Figures provided by union JACs. * = Not available					

With the exception of Sheet Metal Workers Local 28, which is under court order, no large joint apprenticeship program exceeds 30% ALANA enrollment. The smaller joint apprenticeship programs tend to have a higher proportion of people of color, as evidenced by Bridge, Structural and Ornamental Iron Workers Locals 40/361 and 580, which have 38.1% and 50% ALANA enrollment, respectively. Operating Engineers Local 15's apprenticeship program has a 55% ALANA enrollment—but there are only 20 participants. Since other routes to journeyperson status exist, a relatively high ALANA participation rate in apprenticeship programs cannot be expected to lead to significantly greater ALANA journeyperson membership a decade hence.

Women were severely underrepresented in each of the apprenticeship programs, comprising only 3.4% of all enrolled apprentices. The one program with a significantly high percentage of female participants—Operating Engineers Local 15's program—is so small that the 30% female enrollment is not statistically significant. The New York State Department of Labor (NYSDOL) has established goals of more than 40% for women in each joint apprenticeship program (See Table D). It is generally agreed by advocates for women and by regulatory agencies that these female goals are high, but the federal government has not authorized New York State to develop and enforce realistic goals for female apprentices.

Table D - Race/Gender Goals and Actual Composition of Apprenticeship Programs					
	People of Color		Females		
Trade/Union	% Goal	% Actual	% Goal	% Actual	Total Apprentices
Dist Cnsl Crpntrs	43.5	28.3	45.3	3.9	3,607
IBEW Local 3	43.3	16.4	45.3	2.7	2,169
Sheet Mtl Loc 28 **	29.2	73.8	44.1	*	495
Plumbers Loc 2	32.8	22.9	44.1	3.1	293
Steamfitters Loc 638	21.8	18.8	43.2	7.5	239
Plumbers Loc 1	39.3	18.1	45.1	0	160
Str Irn Wks L 40/361	39.3	30.1	45.1	1.4	139
Orn Irn Wks Loc 580	39.3	50.0	45.1	*	90
Op Eng Loc 15 **	29.0	45.0	44.0	30.0	20
Total		27.6		3.4	7,212

* = Not Available ** = Female goals supplied by NYSDOL. All others supplied by union JAC officials

No program is remotely in compliance with NYSDOL's goals for women. Although women comprised just 3.4% of apprentices in 1989-90, they comprised only 1.8% of all graduates and 7.5% of the drop-outs during the same period.

It is still not completely clear why the apprenticeship programs have not been brought into compliance by NYSDOL. Some testimony alleged that the State is simply too lenient with the JACs. Other testimony indicates that some JACs which were under court order followed only the standards set by that order, even when they were less stringent than the NYSDOL goals.

6. The problem of underrepresentation of people of color and women in the apprenticeship programs is compounded by the fact that people of color and women graduated at significantly lower rates than white males.

People of color, who comprised 27.6% of apprentices during 1989-90, accounted for just 16.4% of graduates, while whites comprised 83.6% of this group. Given the current rates of completion, the prospect of greater racial integration of the skilled

construction trade unions in the near future is dim. JAC officials provided a variety of explanations for these bleak results, including lack of work opportunities leading to financial hardships and discouragement, the demanding and long-term nature of the programs, and inadequate preparation of apprentices. These explanations beg the question as to why such disparities exist in graduation rates between white apprentices and apprentices of color.

Given the relative isolation of women, who number less than 10 in many of the apprenticeship programs, the pervasive sexual harassment and lack of career advancement opportunities have had a chilling effect on many female apprentices. A number of expert witnesses noted that the drop-out rate for women exceeds 50% in a number of joint apprenticeship programs.

7. Women and people of color have not experienced significant advancement to management positions in the unions and joint apprenticeship committees. Very few people of color are included among the ranks of elected officers in their union local. While many unions have appointed/elected some ALANA shop stewards, they remain significantly underrepresented.

In skilled construction trade unions, there are very few, if any, people of color and women elected to the various offices of union locals and joint apprenticeship committees. In Sheet Metal Workers Local 28 there are no people of color among 31 elected union officers, nor among the members of the joint apprenticeship committee, according to Joseph Casey, Local 28's Recording Secretary. He didn't know how many of the roughly 75 shop stewards, appointed by Business Manager Arthur Moore, were people of color or female. Charles Fanning, Director of Apprenticeship Training for the New York City District Council of Carpenters, stated that there were no women among the more than 100 officers of the District Council in 1990.

Joseph Santoro of Plumbers and Gas Fitters Local 1 stated that there were no female members of the joint apprenticeship committee. President Salzarulo of Plumbers Local 2, said his union had "four minority shop stewards" out of dozens of shop stewards, and some lower level ALANA officers on the union staff in the apprenticeship

program. (He stated he couldn't be sure how many). Local 40 of the Bridge, Structural and Ornamental Iron Workers includes no people of color or women among its 17 executive board members. Acccording to Local 40's Business Manager, James Mullett, "some minorities have run for office, but they weren't elected." Mr. Kaufman of Bridge, Structural and Ornamental Iron Workers Local 580 stated that the union "has one minority member of the executive board." He didn't mention women, though he was asked. Most other union officials claimed not to know how many people of color or women had campaigned for or were elected to higher union office.

8. Outreach efforts by joint apprenticehip programs to communities of color have not been evenly extended, particularly in communities where English is spoken as a second language (*e.g.*, Latino and Asian-American communities).

Outreach to ALANA communities by joint apprenticeship programs has been uneven and, in most cases, inadequate, as evidenced by Table E. Although all JACs announce enrollment opportunities in newspapers, including those with other than English-speaking audiences, direct outreach to communities of color by bilingual recruiters is limited. The evidence strongly suggests that some communities have not been aggressively recruited, and are significantly underrepresented in many apprenticehip programs.

Table E - Racial Breakdown of ALANA Apprentices

Trade/Union	Black	Hispanic	Asian	Other	ALANA
Dist Cnsl Carpenters	615	376	19	10	1,020
IBEW, Local 3	158	172	0	25	355
Plumbers Local 2	31	31	0	0	62
Steamfitters Local 638	27	16	2	0	45
Plumbers Local 1	21	8	0	0	29
Iron Workers Loc 40/361	38	13	0	2	53
Op Eng Local 15	7	2	0	0	9
Total Number	897	618	21	37	1,573
Total Percent	57.0	39.3	1.3	2.4	

Although more than three thousand Asian-Americans work for Asian-American non-union contractors, no persons of Asian descent were to be found in the apprenticeship programs run by Plumbers Locals 1 and 2, and Operating Engineers Local 15. Latinos were also underrepresented in joint apprenticeship programs, although not to the same degree as noted at the journeyperson level.

9. Eligibility requirements and selection procedures used by joint apprenticeship committees have an adverse impact on women, people of color, and immigrants who do not speak English.

All apprenticeship programs are registered with the New York State Department of Labor (NYSDOL). They are administered by joint apprenticeship committees which consist of contractor and union members. A board of trustees handles the financial management of the JAC. Each JAC develops minimum eligibility requirements, which vary slightly from one trade to the next. In the past, JACs have been sued for setting entry requirements which have an adverse impact on people of color (such as a requirement for a high school diploma) and on women (such as setting a maximum age). To date, there remain sharp differences in acceptance rates of whites versus people of color, and men versus women, in a number of the apprenticeship programs.

Several members of the District Council of Carpenters stated that the current "open admissions" policy is discriminatory in practice. Prospective apprentice applicants first must present themselves to a contractor and obtain what is referred to as an "intent to hire" letter before they can be admitted. As several women pointed out, they were laughed at when attempting to get such a letter from a contractor.

Several witnesses claimed that the appenticeship selection procedures were biased against women. The interview process, which some unions weight very heavily in selecting applicants, received its share of criticism. For example, the interview is nearly 40% of an applicant's score in IBEW Local 3's program, and it was said to be very subjective, with items such as "personal attributes" and "attitude" calculated into the scoring system. Plumbers and Gas Fitters Union Local 1 scores applicants based on five factors: education, physical condition, level of interest, personal traits, and attitude. Each factor is weighted at 20 points, allowing subjectivity to influence the selection process.

With respect to the interview process, no standardized, validated questions were used to assess appliants' qualifications. Women, in particular, often were asked inappropriate questions about their personal life. The interviews were conducted by a group of men (usually composed of two employers and two union representatives) who asked about marital status, interest in having children, and why the applicant would want to work in a predominantly male environment. Interviewers often tried to "weed out" women early in the process by stressing the difficulty of the work. Women also were informed that men would resent their presence. In no way was a tone established which apprised women that, if qualified, they would be supported.

10. Many joint apprenticeship programs are not large enough to enable them to maintain the apprentice-to-journeyperson ratios set by collective bargaining agreements. Often contractors have not employed apprentices in accordance with the number of journeypersons on job sites, nor have regulators required them to do so. Former apprentices and officials of joint apprenticeship committees agreed that a lack of employment opportunities is a major factor in the high drop-out rates in some programs.

Each union determines an apprentice-to-journeyperson ratio, which varies depending on the trade. However, the size of apprenticeship programs set up by the unions often falls short of supplying the number of apprentices that could be placed on job sites alongside journeyworkers. (See Table F on the following page). The most striking example of this is seen in Operating Engineers Local 15, which allows for an apprentice-to-journeyperson ratio of 1-to-6, but has only 20 apprentices for 3,209 journeypersons: a 1-to-160 ratio.

IBEW Local 3 has an apprentice-to-journeyperson ratio of 1-to-3, although in actuality the union has 2,169 apprentices and 8,363 journeypersons: about a 1-to-4 ratio. Sheet Metal Workers Local 28 allows for a 1-to-4 ratio, but maintains 495 apprentices and 3,222 journeypersons: about a 1-to-8 ratio.

Many unions claim they determine the size of their apprenticeship classes based on economic conditions. There is high unemployment in the industry, nearly 25%,

Table F - Union Apprentice-to-Journeyperson Ratios				
Trade Union	Apprentices	Journey-persons	Actual Ratio	Ratio in CBA
Dist. Council of Carpenters	3,607	22,000	1 - 6.1	1 - 5
IBEW Local 3	2,169	8,363	1 - 3.9	1 - 1, 1 - 3
Sheet Metal Wrkrs Loc 28	495	4,131	1 - 8.4	1 - 1, 1 - 4
Oper. Engineers Local 15	20	3,209	1 - 160.5	1 - 4, 1 - 6
Steamfitters Local 638	235	3,174	1 - 13.5	1 - 3
Plumbers Local 2	284	2,390	1 - 8.4	1 - 2, 1 - 5
Str Iron Wrkrs Loc 40/361	139	1,971	1 - 14.2	1 - 10
Ornmntl Iron Wkrs Loc 580	90	1,440	1 - 16.0	1 - 4, 1 - 6, 1 - 10
Plumbers Local 1	160	1,000	1 - 6.3	1 - 2, 1 - 5

Note: Local 15 figures apply to Heavy Equipment Operators. Heavy Duty Repairers have a ratio of 1-3 for the first four workeres hired, 1-5 for the next six workers hired, and 1-7 thereafter. Local 28 figures apply to Sheet Metal Workers. Sheet Metal Artisans have a 1-1 ratio. Source: Stated ratios were provided by the NYS Department of Labor in March 1993.

because of the recession. Still, the size of apprenticeship programs is somewhat arbitrary. The District Council of Carpenters used to have about 900 apprentices in the late 1970s, and has over 3,000 apprentices today.

11. The New York Plan for Training has been rendered virtually obsolete as a result of the Monarch decision. Trainees in the program can only work on federally assisted sites under the Industrial and Commercial Incentive Program (ICIP). This is unfortunate, since training programs graduate a significant number of people of color, as compared to joint apprenticeship programs.

The New York Plan for Training, a federally funded program created in 1970, was an attempt to provide people of color with a means of attaining journey-level status which would operate parallel to joint apprenticeship programs. The trainee programs were designed to offer continuous enrollment and flexible entry requirements for economically disadvantaged individuals along with instruction and training compa-

rable to that provided by apprenticeship programs. In 1980 the New York Plan for Training was bolstered by Mayor Koch's Executive Order 50. It mandated that city-assisted construction contractors working on projects under the federally funded Industrial and Commercial Incentive Program [ICIP] hire one economically disadvantaged person as a trainee for every four journey-level workers in each trade. The Division of Labor Services is charged with enforcing EO 50.

In 1987, the New York State Court of Appeals ruled, in Monarch Electrical Corp. v. Roberts, that contractors on city- and state-assisted work sites must pay trainees journey-level wages, not the lower apprenticeship-level wages. As a result of this decision, the federally funded training programs run by many unions have become virtually obsolete, since the vast majority of projects involve some state and/or city financial assistance. Local 3 of IBEW stopped enrolling new trainees in 1989.

These setbacks have led some advocates for construction workers to call for the elimination of the training program because it is fatally flawed. They argue that trainees are treated like second class citizens, given inferior education and training, and are stigmatized as undeserving "minorities" who are being assisted by a federally funded program.

People of color comprise 72.2% of trainees in the New York Plan, and women comprise 7.4% of the trainees, which is more than twice their participation rate in apprenticeship programs. Still, in numerical terms, their enrollment remains very low, and will not lead to a large increase in female journey-level membership. (See Table G).

Table G - Race/Gender Composition of Training Programs - % Enrolled 1989/90

Trade/Union	White	ALANA	Male	Female	Enrollment
Plumbers Local 2	58.8	41.2	95.0	5.0	119
IBEW	24.3	75.7	*	*	78
Dist Cnsl Carpenters	4.2	95.8	*	*	71
Sheet Mtl Loc 28	*	*	*	*	*
Steamftrs Loc 638	6.8	93.2	*	*	29
Op Eng Loc 15	55.0	45.0	70.0	30.0	20
Total	28.8	72.2	92.6	7.4	355

Note: All figures provided by union officials * = Not Available

The New York Plan's training programs generally were much smaller than the apprenticeship programs (7,212 apprentices compared to 355 trainees in 1990), but have a much higher percentage of ALANA enrollment than apprenticeship programs. 72.2% of trainees are people of color, as opposed to 27.6% of apprentices.

Despite its small size, the New York Plan for Training Program has had an impact. In 1989-90, at least 62 people of color and three women graduated, compared to 166 ALANA graduates and 18 female graduates in the apprenticeship programs. Since the training programs supply roughly two graduates to every five graduates supplied by the joint apprenticeship programs, their importance as an avenue for people of color to enter the unions cannot be dismissed.

With regard to IBEW Local 3, the District Council of Carpenters, and the Plumbers Local 2, the training programs supply nearly as many ALANA graduates as the apprenticeship programs. However, this says more about the failure of the apprenticeship programs to provide meaningful opportunities to people of color than it does about the success of the programs.

12. The availability figures used by government agencies to determine what proportion of contractors' workforces should be women and people of color should be employed by contractors are inadequate and often outdated. Because of this, even if contractors meet these levels, a large proportion of trained people in these groups will not be employed.

On federally funded projects, the U.S. Labor Department's Office of Contract Compliance relies on availability figures issued in the Federal Register in October 1980, and on 1970 census data. (See Table H). These figures are the basis for "minority" goals for electricians of between 9.0% and 10.2% of hours worked by all electricians on federally funded sites, for example, which contractors have little difficult exceeding. While it is widely recognized that these availability figures are badly outdated, they have not yet been revised. After 12 years of inaction under the Reagan-Bush administrations, the U.S. Labor Department is currently conducting a study to revise availability figures.

Table H - ALANA and Female Workforce Availability in Select Skilled Construction Trades in NYC				
Trade	OFCCP Availability Figures		DLS Availability Figures	
	% ALANA	% Female	% ALANA	% Female
Carpenters	27.6 - 32.0	6.9	35.0	1.0
Electricians	09.0 - 10.2	6.9	36.0	2.0
Sheet Metal Workers	24.6 - 25.6	6.9	32.0	2.0
Steamfitters	12.2 - 13.5	6.9	35.0	1.0
Operating Engineers	25.6 - 26.0	6.9	31.0	3.0
Plumbers	12.0 - 14.5	6.9	35.0	1.0
Elevator Constr/Repair	05.5 - 06.5	6.9	23.0	0.5
Structural Iron Workers	29.5 - 32.0	6.9	20.0	0.0
Ornamental Iron Workers	22.4 - 23.0	6.9	20.0	0.0
Note: Federal figures are based on 1970 census data and other pre-1970 sources. NYC figures are based on 1980 census data. Neither federal nor NYC figures have been revised as of the writing of this report.				

The New York City Division of Labor Services, which monitors New York City construction contracts for compliance with EEO requirements, also uses federal availability figures on federally funded projects. When a project involves state and/or city funding, DLS uses availability figures based on the 1980 census, as stated in Policy Memo #7-85 (See Table H). These figures range from 20% to 36%, depending on the trade. DLS reviews contractor EEO forms to ensure that they have made a good faith effort to employ "minority" and female journeypersons in accordance with the availability levels in each trade. At the time the data was gathered for this report, 1990 availability figures had not been developed, so that 1980 figures were still in effect.

Reliance on census data alone, regardless of how current it may be, was criticized by many of the advocates and experts who testified at the hearings. They contend that, since the number of people who are trained in the skilled trades and are thus reported as such in the Census is held down by discrimination, employment goals based on these will always be too low. In addition, the problems with undercounting

people of color, which have received considerable publicity, add to the sense that availability figures based solely on the Census are inadequate.

Many advocates for women in the trades stated that the availability figures for women, much like for people of color, merely reflect the past discrimination which has prevented qualified people of color and women from entering the skilled construction trades. The U.S. Department of Labor began setting federal goals for female employment on federally funded job sites in 1978. In 1980, the numerical goal was revised upward to 6.9%. Hence, any contractor receiving federal funds is required to employ women at a rate of 6.9% of all workers on every work site, both public and private. When contractors employ workers on federal projects, women are more likely to be found on job sites—but rarely at the 6.9% level. Many women who testified at the hearings stated that it is usually the case that each is the only female in her trade on a work site.

13. The lack of standardized formal procedures and accountability in hiring on the part of contractors and union referral halls has a disparate impact on people of color and women in terms of both employment opportunities and hours worked.

There are two primary modes of obtaining employment in the construction industry. Most workers obtain employment directly from contractors and foremen; others are referred to jobs by union-run hiring halls. Both methods lack standardized, formal procedures, and in practice have an adverse impact on women and people of color.

Hiring by contractors

Historically, nepotism and patronage have been endemic to the construction industry. As recently as 1963, the Commission concluded after extensive hearings that the construction unions were largely Irish or Italian. Union entry and work opportunities were simply a matter of being sponsored by a family member or personal acquaintance. For example, in 1964, the New York State Division of Human Rights found that in Sheet Metal Workers Local 28, 80% of the 430 apprentices had family ties to members.

While the industry has been forced to be more careful about implementing hiring policies, often as a result of costly litigation, personal connections still can play a critical role when it comes to obtaining work. As many ALANA construction workers pointed out, while an achievement in itself, union membership does not guarantee that they will obtain work on a regular basis. Unemployment among New York City construction workers is very high—24.7% during 1991 (the most recent year for which data is available)—and anecdotal evidence indicates that among people of color, unemployment is even higher.

The standard procedure for obtaining work in most trades, with the notable exception of the electrical trade, is through an informal grapevine. Contractors and foremen assemble work crews which often stay intact from one job to the next. Workers pass along information to friends about contractors who are hiring, leading to unequal access to information about jobs. This places people of color and women at a significant disadvantage.

The two primary routes to obtaining work are directly through a contractor, or through the union's referral hall or "hiring hall." Several major trades, such as Steamfitters Local 638 and Sheet Metal Workers Local 28, do not utilize a hiring hall.

In such trades, union members obtain work mainly through contacting contractors or foremen for whom they have previously worked. Contractors often seek out a crew of workers who worked for them on a previous job when setting up a new site. If such work doesn't come along, union members may go out "shaping" sites or calling a business agent to find out about contractors who are hiring. ALANA workers testified that when they shaped jobs, many contractors tried to pay them less than the prevailing wage.

A number of African-American and Latino workers testified that, at times, they shaped work sites for weeks and months without success. Their frustration over the limited availability of work has, over the years, resulted in the formation of numerous "minority coalitions." Some coalitions work with contractors and through the political process to increase the representation of people of color in the construction industry. Other so-called minority coalitions use intimidation and violence to "shake down" contractors and secure jobs for members. Some ALANA workers acknowledged belonging to coalitions which disrupted work sites in order to demand jobs. While

reprehensible, these practices must be viewed in the context of government's failure to enforce fair hiring practices in the construction trades.

People of color and women testified that contractors hire them only if a project is federally funded, in which case certain goals must be met. For women in particular, the primary means of obtaining work seemed to be when a contractor called an organization such as Nontraditional Employment for Women (NEW) to request one or more women for a federally funded job. Aside from federal projects, job opportunities for female apprentices and journeypersons are severely limited by union contractors. Several women stated that the city and unions already know which contractors discriminate against women, but choose to do nothing about it.

> *I found that the most outrageous contractors were ones who the city gives the most money to—Tishman, HRH and S&A Concrete. The fines are obviously not significant enough, and they know also that they can get support from the unions. You can't find women on Tishman jobs. From January 1988 to June 1989, NEW was only able to get one woman hired on a Tishman job. The apprentice adminstrator of Local 28 just a week ago told me that it is a fact that the employers are refusing now to hire females.*

Job referrals by union hiring halls

In most instances, union-run hiring halls account for less than 30% of job referrals for skilled workers. Many do not refer workers on a "first in-first out" basis, nor do they maintain information on jobs available and persons referred in an open, accountable manner. Despite these drawbacks, people of color and women often must rely on hiring halls for work because they lack the personal and familial connections white males often have.

Testimony by construction workers and union officials at the public hearings highlight two major points about the referral halls. First, IBEW Local 3, the 17 local affiliates of the District Council of Carpenters, and the United Assocation of Ornamental, Bridge and Structural Iron Workers Local 580 are the only construction unions in which hiring halls play a major role. In most of the trades, only a small percentage of jobs, especially long-term jobs, are funneled through them; and second, in those trades which have hiring halls, they are administered in a non-standardized and politicized manner.

As attested to by Thomas Maguire, President of Operating Engineers Local 15, the number of individuals referred by their hiring hall is *"minor, maybe twenty, twenty five percent."* The same is true for Local 14, according to Training Director Thomas Gleason. And Plumbers Local 1 President Joseph Santoro stated that *"a very small percentage"* of workers obtain jobs through the referral hall.

Based on the testimony of union officials, it is clear that the unions don't have uniform job referral procedures. In theory, hiring halls process contractors' requests for workers on a first in-first out basis. However, if contractors request a specific person, the request is honored, regardless of the worker's place on the list. This is not a rare occurrence: a number of workers and union officials testified that it is common for contractors to ask for union members by name.

Local 3 of the International Brotherhood of Electrical Workers has the most comprehensive job referral system. Virtually all union members are sent out to job sites by the Employment Director of the Joint Industry Board (JIB). In theory, unemployed members are welcome to sign the "out-of-work list" at the JIB office. The union's business agent places the names of those members who have been out of work the longest at the top of the list, and keeps track of each member's placement on the list. When a union member's name moves to the top of the list, he or she is allegedly the first member referred out for a job. However, the JIB also takes into consideration the worker's skills, experience and past job performance before referring the individual for a job.

Numerous workers in Local 3 stated that they were denied access to the union office to sign the out-of-work list. As one African-American journeyperson testified:

> *Local 3 is the only local in the country I've ever seen that denies you an opportunity to just sign the out-of-work list when you're a Book 2, dues-paying member of the IBEW.*

Others mentioned that work assignments and overtime depended on whether they supported union functions, such as buying raffle tickets and demonstrating support for elected union officials. Allegations of discrimination were made repeatedly by members of Local 3 with regard to the Employment Director, Mr. McCormick, of the JIB. Many people of color claimed that they were unemployed at least 12 weeks out of the year—a much higher downtime than white workers.

Over the last year, I would say [I've been unemployed] *about twelve weeks.* [The average journeyperson working for Local 3 is unemployed] *about half as many weeks . . . When I go down to the hall to sign up for another job, I'm told "we'll get back to you."*

The [Employment] *Director of Local 3 is never to be found. I was out of work for a year and a half, and my unemployment ran out.*

As a minority, you are the last to be hired and the first to be fired. They put you to work for one or two days at a job that is finishing, you get laid off and you end up back at the union. You have to wait weeks, a month and a half. So you're lucky if you get three months of work a year.

We have a serious problem down at our local [Local 3] *with the Employment Director, Robert McCormick. He has a lot of power, and he is just not using it the right way.*

Local 3's President, Thomas Van Arsdale, Jr., acknowledged that, in general, the union does not make the referral list available to members who wish to examine it. He was not aware that unions in which more than 10% of members obtain work through referrals must, according to National Labor Relations Board (NLRB) policy, make the referral list available to members. Most of the unions with hiring halls did not post referral rules or have a standardized system for informing members of job openings or allowing them to sign up for work.

The 17 locals affiliated with the District Council of Carpenters have job referral systems that constitute "exclusive hiring halls" according to a U.S. Court of Appeals 1987 decision in the case of NLRB v. Carpenters Local 608, because the Carpenters' contracts require employers to obtain 50% of their workers from the union. Despite this ruling and the testimony of carpenters in several local unions, Charles Fanning, Director of Apprenticeship Training for the District Council of Carpenters, stated that the union did not have hiring halls, *per se.*

People of color and women, who are less likely to benefit from the "old boy network," tend to rely on hiring halls for job placement much more than white males. For example, the president of Operating Engineers Local 15, Thomas P. Maguire, testified that half of the people sitting in their referral hall in Queens on the day he testified were people of color, although they comprise only about 15% of the membership.

In Operating Engineers Local 14, about 30% of the members of color rely on the referral hall, compared with 20% of the white members. Consequently, people of color expressed dissatisfaction with the arbitrary administration of the hiring hall system, stating that business agents discriminate when selecting workers to refer to contractors.

While the collective bargaining agreements which apply to all union contractors state that contractors are ultimately the ones who hire and fire workers, many workers contended that union officials had a strong influence on this process. As several witnesses testified, when contractors are told by a union that the member being referred is a woman, they sometimes refuse. Many said the unions compound this problem by failing to challenge discriminatory refusals.

14. A widespread pattern of disparate treatment and sexual harassment was faced by women in the skilled construction trades. More than 5% of the women in the entire unionized industry came forward to testify about hostile working environments. More than half testified anonymously due to the fear that disclosure of their identities would result in retaliation.

Despite concerns about being blacklisted by employers, 46 of the 80 workers who testified (nearly 60%) were women. The hearings marked a dramatic change in the industry since the Commission's original construction hearings in the late 1960s, when testimony was restricted to racial discrimination. The turnout by women was overwhelming: exceeding 5% of the less than 800 female journeypersons, apprentices and trainees in the skilled construction trades. More than half of the women (26) testified anonymously, speaking from another room through a voice-distorting device, because of the fear that they would be identified and targeted for retaliation. Several mentioned receiving death threats because of the decision to testify. More than a dozen female workers did not identify their trade, much less their union, fearing that even such general information would threaten their anonymity, because of the scarcity of women in the trades.

While many of the discriminatory practices described by women apply to people of color as well, sexual harassment in the construction trades is directed almost exclusively at women. Virtually every one of the 47 women who testified stated that she had experienced sexual harassment on the job on at least one occasion. For most women, it is an ongoing situation which varies only in its severity. In many unions, women are not able to seek redress for harassment because the shop steward or foreman is unsympathetic or, in some cases, is the perpetrator. When the harasser was a supervisor, the women were faced with the option of tolerating the abuse, or confronting the harasser at the risk of being laid off or fired. Women depicted various incidents:

> *At one job, the general foreman had a crush on me. He would come to where I was working about twenty times a day and stare at me and ask me why I was working so hard. After three months, he must have felt rejected because he did a 180-degree turn, became verbally harassing, supervising my work with a magnfying glass.*

> *My boss would make demeaning sexual jokes and remarks like "go up the stairs first because I want to look at your ass."*

> *At the end of one work day, I was alone in the changing area when the foreman came in angry and drunk. He stuck his hand inside my outer sweatshirt. He said, "You're gonna have to learn a thing or two if you're gonna stay in this business." He took his hand from around my waist and grabbed me around the neck and pulled me towards him like he was going to kiss me.*

> *The contractor held out the check and I reached for it, and then he put it behind his back and told me I had to see him later on Friday night in order to get paid. Whenever I was alone with him, he would try to fondle me.*

In many instances, sexual harassment was combined with racist insults, as indicated by the following remarks:

> *The foreman's son, with whom I was working, said "We did not want to hire you. We were told that we had to hire a nigger woman. If we had to hire a woman, at least we wanted to hire a white woman and not just a nigger." The shop steward said, "Just because you're black and a woman, don't think you have any rights here. Why don't you just get the fuck off the job?"*

Numerous women described having to contend with male co-workers who touched their breasts or buttocks, regularly made sexually suggestive remarks, exposed themselves, urinated, and even masturbated in front of them. In several instances, women were threatened with physical violence.

Many women testified that there were no separate changing rooms or bathroom facilities for women on the job. The lack of a uniform practice or policy regarding such facilities placed women in the position of having to negotiate the issue with the foreman or "minority coordinator" each time they were employed at a new site. Some decided to improvise rather than confront contractors or union representatives who, in practice, were unsympathetic to their situation:

> *There was a shanty set up for the men. There was no shanty for the women. I was the only woman on the job. I made it my business to make it to work ten minutes before the foreman appeared. I took the initiative to get a lock put on the foreman's shanty. They didn't like this at all. They said I showed too much initiative and that I had no business being on the job, and that I should be somewhere in somebody's office instead of being on the job working with a bunch of men.*

> *The lack of bathroom and changing facilities for women is a constant problem. When there is a portable toilet designated for women, the men will frequently use it. On one occasion when a woman complained about a man who insisted on using the woman's bathroom, the shop steward refused to intervene. The men had shanties on all of the jobs. I had to find my own place to change, which takes time away from work or after work. When I did have a shanty* [on one job], *the men got jealous, came peeking in, left behind pornography. There is no one to complain to about this. The foreman doesn't care.*

Raising the issue of separate shanties and bathroom facilities for women sometimes caused a woman to be labeled a trouble-maker. In some cases, women said they built their own shanties just to have somewhere change their clothes. Risking disciplinary action, some women were forced to go off-site to use a bathroom at a nearby restaurant or store.

The hostile working environment facing women in the trades can take other forms as well. Most women who testified noted the pervasive presence of pornography, as well as sexually explicit and hostile-to-women grafitti on the walls at work sites. These

images serve as encoded messages, constantly reminding women that they are trespassing on male turf. Other women cited examples of harassment including theft of their clothes or tools, or actual sabotage of their work. The aim of all these hostile activities is to create the impression that women are incompetent and more trouble on a job than they are worth.

While the contractor is ultimately responsible for creating a working environment free of all forms of sexual harassment and discrimination, unions have a responsibility to address the issue as well, through their representatives, such as shop stewards and foremen.

Joint contractor-union apprenticeship programs can set a tone which states that this behavior is unacceptable. However, as several women testified, the JAC instructors let workers know the reverse—that it is completely acceptable:

> *My* [apprenticeship] *teacher tells a lot of sexist jokes, and has used graphic sexual terms to describe equipment in his lectures. The point of the jokes is to put women down or to humiliate women. Easy jobs in my trade are referred to as "tit jobs." If something needs a slight adjustment, it is referred to as being a "cunt hair off."*
>
> *In apprenticeship classes, they taught us to remember the color coding for transistors by saying "bad boys rape young girls, but Violet gives willingly."*

The impact of this constant barrage of overt misogynist language and behavior, along with other acts of discrimination, has a strong and negative psychological impact on women in the construction industry. A number of women testified that they sought therapy to deal with symptoms of stress, low self-esteem, generalized anxiety and depression—and often had to pay for treatment out of their own savings:

> *It got to a point where I hated to go to work. I was depressed, and I started having nightmares. I started crying as soon as the alarm went off.*
>
> *Dealing with the feeling of isolation and constant assaults on your self-esteem is very difficult. I am in therapy myself, and I think the union should pay for it.*

A number of women testified that after years of apprenticeship training, they decided to leave the industry and start a new career because of limited employment opportunities and pervasive sexual harassment in the construction trades.

I know that resigning my job was not a good move for my career, but it was necessary for my sanity. Quitting was my only way of fighting back, like it is for many other women.

I found out that for women, the end of your apprenticeship is the end of your career. I feel disgusted. I wasted four years. I could have been in college.

The low representation of women in the trades reinforces their marginal status on the job site, making it easier for men to harass them, and less likely that supervisors will take remedial measures to ensure equal treatment. While many women stated that the industry should institute a code of conduct, as well as educate and sensitize men to the issue of sexual harassment, the overwhelming consensus was that the best way to reduce sexual harassment is to increase the number of women in the construction trades.

15. Disparities between whites and people of color, and between men and women, in work assignments, on-the-job training, earnings, and medical and vacation benefits in the skilled construction industry were common. Contractors and unions share responsibility for these conditions.

Work assignments and training

The most striking commonality between the women and people of color who testified was that, unlike white males, they were not given mentors or more experienced partners who could help them build upon their skills while working. Instead, many people of color and women testified that they were often assigned to work alone on menial tasks which wouldn't enlarge their range of skills, leaving them without the skills a journeyperson in their trade must possess:

Three of us were apprentices at the same time: a white man, a white woman and me [a Latina]. *The male apprentice got to work with the most experienced mechanic so that he would learn the trade, while the two of us most often worked with each other and got assigned jobs like sweeping, dusting or getting lunch.*

In a snowball effect, after years of "coffee duty" and laborer duties, people of color and women are considered less desirable employees by contractors. This is especially true in the case of women. Men are discouraged from developing mentor relationships with women, and those who do are subject to sanctions.

> *I was ordered off a machine by a superintendent while I was being willingly taught by the driver.*

> *A non-company operator asked by boss if I, a union member, could learn on his machine. The boss said he would fire this man if he let me even sit in a machine, let alone teach me.*

While some people of color and women complained that they were not given an opportunity to learn their trade, others claimed they sometimes received dangerous assignments or were set up to fail with complicated tasks, without the proper instruction, equipment or staff support.

> *I was assigned dangerous jobs such as walking on an outside wall as high as 16 floors without a safety line. I* [a female] *was the only person asked to perform that task.*

> *My foreman would send me up on a scaffold five stories high in the rain to tighten bolts without a life jacket or safety belt.*

> *I was working on an elevated train station in the cold and rain, late at night,* [with] *no light,* [and] *supposedly* [on] *a dead track. Half was dead, half was not. 600 volts DC. I fell, hurt my hand.*

> *I worked with a mechanic on a wiring job. He told me to hook up two different colored wires. I knew that it was incorrect but I did it because I thought I had to do what I was told. The foreman saw the mistake and rotated me to the Bronx.*

Supervisors often assign people of color and women unpleasant tasks—whether too menial, too complicated or deliberately dangerous—in order to send a message that they are not welcome in the trades. People of color and women have to prove they are exceptional if they are to survive in the trades. Their mistakes are used as an excuse for a layoff by the contractor or, in some cases, dismissal by a joint apprenticeship program.

I [a woman] *was put on 90-day review because I had gotten a bad report from Pride Electric saying "needs constant supervision" and "low production."* [A year later] *I was terminated from the apprenticeship program and told to get a job at McDonald's.*

The unions are notified of a worker who is laid off for being "unproductive" or "in need of supervision." Such workers have to write a letter of explanation to the referral hall before they can be referred for a new work assignment.

There was no material on the job. I made up some extension cords and some lights. Later that day, the foreman came back and says, "this is all you did?" I was laid off. I was told to write a letter explaining what happened.

Given that contractors and unions jointly control the economic livelihood of workers, there is always a potential for abuse of the power to hire and fire workers for reasons unrelated to their work performance. In fact, the parceling out of work assignments by hiring halls and contractors, and the laying off of workers as the workforce on a site is trimmed, is a very politicized process. People of color, women, and dissident whites have all been targeted for such treatment.

Workers who bring discrimination charges, or speak up on behalf of the rights of other workers, or challenge union leadership, sometimes find themselves targeted for other forms of harassment. The overall intent of this retaliatory behavior is to demoralize workers and force out "undesirable" members. The harassment can take the form of work assignments far from home, threats, or acts of violence.

Whenever you do something that [contractors] *don't particularly like, you get a tour of the city, which means you'll get transferred every other day or every week, whether it be Queens, Manhattan, Brooklyn, the furthest from your home as possible to discourage you from breaking their rules.*

At one company, I tell the boss the material they use is awful for the men's eyes. It burns. The next minute, I'm fired. They had to hire me back because they fired me the wrong way. Now they are threatening to throw me out the window at Trump Tower.

After running for office, I was blackballed by the union. A colleague was gunned down in front of his house for trying to organize minorities.

Ghettoized workers

Women and people of color contended that often they are "ghettoized" into federally funded construction projects. This occurs because there are numerical hiring goals for women (6.9%), more governmental oversight of the hiring of people of color, and no legal snags regarding employment of trainees. These jobs are less prestigious assignments than privately financed jobs.

> *The union moves all the women through these* [federal] *jobs instead of bringing more women into the union. I know that without the quotas, I wouldn't have been hired, but once in, the quota hurts me because it's only on some jobs, usually industrial like transit, sewage, etc. So the training is limited and the health hazards are outrageous. White men don't stand for these assignments unless they are in big trouble with the union.*

Since people of color and women are often referred to a number of short-term jobs to meet an affirmative action plan goal, a practice known as "checker-boarding," they tend to have the least site-specific seniority, and thus are the first to be laid off when the workforce is reduced. Many who testified said they believed that contractors and unions were both responsible for these practices.

Disparities in earnings

According to a 1987 Port Authority study of the construction industry, in 1980, white electrical workers made $5,500 more than their black counterparts, and $7,500 more than Hispanic workers in their trade with comparable levels of education. The Commission's hearings revealed that these disparities are due to several factors:

1) Whites tend to work on unionized jobs, whereas people of color tend to be non-unionized and are paid less than the prevailing wage;

2) Whites receive more long-term assignments, working, on average, more hours per year than people of color; and

3) Whites tend to be given more opportunities for overtime than people of color.

I came from Hong Kong three years ago. I was doing carpentry and masonry. We [Chinese-Americans] *worked for seven hours per day and our our wages were from $4 per hour to $8 per hour. I started working at Red Ball Construction in demoli-*

tion. My wages started at $9 an hour. FightBack told me I was supposed to get $18 an hour. Another problem is San Ramo demolition. The black and Latino guys made $6 an hour. They were given less than full-time work. The rest of the people, Italian people, were given 55 to 60 hours a week.

Various organizations are taking money under the table to put non-union workers on the job, paying them $50 to $60 a day instead of $20 to $40 an hour.

I shaped one job, Nativo, and the guy says "We have lots of jobs for you, but it's at $7 an hour." The scale at that time was $26 an hour.

Disparities in vacation, health and pension benefits

Many union medical benefit plans require members to work a minimum number of days or hours in a quarter, six-month period, or year in order to be eligible for health benefits. For example, Plumbers Local 2 requires members to work 70 days in a six-month period, according to union president Peter Salzarulo. In the District Council of Carpenters, members must work at least 1,000 hours a year to maintain their eligibility. In Local 40 of the Bridge, Structural and Ornamental Iron Workers, members must work 120 hours a month for the first four months, after which they need only work periodically in order to be eligible for benefits, according to Edward Cush, Local 40's Business Manager.

Because of long periods of unemployment, many people of color and women find that they haven't accumulated enough hours of work to become or remain eligible for medical and vacation benefits.

You need to work about 1,000 hours in a year [in the District Council of Carpenters] *in order to be eligible for benefits. You pay into the annuity, and into the apprenticeship program, through your work hours. You don't get that money back if you're not eligible for benefits.*

As a result of not being wanted, I don't make the required hours annually, which is 900, to receive medical benefits. In the eight years I have been working in the field, I haven't received benefits. I had to go outside to pay to get benefits, yet my weekly salary goes toward the welfare fund, which is medical benefits for other carpenters.

If I am unemployed two or three times a year, then at the end of the year, when it comes time for vacation, they say you're not eligible for a vacation. So, two years in

a row they said I was ineligible for vacation. You have to make $24,000 a year to be eligible for medical coverage. That's like six months worth of work, but they only give you three months worth of work. We are only making $11,000, so there's no medical coverage. I was in a car accident and I have no medical coverage.

Under more flexible benefit plans, a greater number of workers could be eligible for health and vacation benefits. However, some difficulties described by workers are the result of sloppy and indifferent procedures on the part of union and contractor officials. For example, people of color and women testified that they fell behind in their payment of dues because of long periods of unemployment, and lost their union membership and its attendent benefits.

No one wrote me to inform me that my dues were in arrears. When I spoke to my business agent, I told him I would be willing to pay back whatever monies I owed them. I was told to write the executive board about my situation. The executive board denied my reinstatement because I had failed to pay my dues.

Nearly a third of the Local 3 workers who testified mentioned being injured on the job and having difficulty getting the union to do the paperwork which would enable them to receive reimbursement or coverage of their medical expenses.

I have been out on workers' compensation for two years due to herniated disks and pinched nerves. But [the union] *refuses to pay my benefits. A judge ordered them to pay for physical therapy, and they were refusing. I'm a card-holding union member in good standing. They take my dues. But they don't compensate me for what is supposed to be coming back.*

I got hurt when the foreman dropped a light bulb on me and then he never filed an accident report. I filed an accident report. [They claimed] *nobody received it . . . The local refuses to pay my medical bills.*

I had an accident which was witnessed. I told my boss who said he would try to get compensation. I mailed in receipts [but was never reimbursed].

Numerous workers with injuries mentioned being laid off for absenteeism after taking one or more days off to see a doctor. Many were apparently not informed of the union's policy regarding notifying the union of work-related injuries.

I was injured on the job [when the foreman drilled a hole through my hand]. *I got about five stitches and stayed out for five days. I didn't file for compensation, and they laid me off for absenteeism.*

Mitchell Langbert, an expert on pension programs, noted that multi-employer pension plans in the construction industry tend to be defined benefit plans which are inflexible and which require minimum hours of employment before employees become eligible for benefits. In contrast, he noted that intermittent employees are better served by defined contribution plans (*i.e.*, 401K, money purchase) which take into account the employee's financial contribution to the pension plan. Under such pension plans, employees would be eligible to recieve some benefits regardless of whether they had worked steadily over a given period of time.

Lack of due process

The prevalence of workers' greivances regarding work assignments, denial of vacation benefits, inadequate safety measures, lack of training, and other practices indicate a lack of due process in many of the unions. Many workers testified that they were not informed by their union local regarding union policy with regard to numerous basic procedures. In some unions, workers who take the initiative and ask for a copy of the union's constitution and by-laws are regarded suspiciously.

Workers don't have confidence in the grievance resolution process because many of the officials to whom they are told to direct complaints (shop stewards, foremen, executive officers in the union) have power over their employment or working conditions. Workers who assert their rights by filing grievances concerning alleged unfair practices are vulnerable to retaliation (*i.e.*, harassment, assignment to solitary and unpleasant tasks, denial of access to jobs, or extended lay-offs).

As a result, many workers try to settle their complaints with the union informally rather than file a formal grievance and experience possible repurcussions.

I tried to apply for a position that had become available, but the shop steward responded that I was not qualified, even though I had my license and a year's experience. I went to file a grievance, but was persuaded by the union to meet informally with business representatives.

17. State and municipal affirmative action plans have been subjected to stricter "scrutiny" standards by the U.S. Supreme Court as a result of the decision in City of Richmond v. Croson. The testimony and statistics gathered for this report demonstrate a history of racial discrimination in employment in New York's construction industry, as required under these standards.

Several legal experts testified that the Supreme Court ruling in City of Richmond v. Croson does not preclude the development of race-based affirmative action plans by municipalities. New York City could develop such a plan, covering all city contracts, if it were narrowly tailored to address discriminatory practices which have been identified. Race-neutral methods of increasing the representation of people of color in the construction trade must be considered before resorting to race-conscious plans.

It is clear both from testimony and materials supplied by unions and contractors that people of color are still significantly underrepresented in the memberships of virtually every union. This fact provides strong evidence of discrimination by unions and joint union-/contractor-administered apprenticeship programs. By limiting the pool of skilled workers of color developed by apprenticeship programs, unions and contractors act as equal partners in practices which ultimately affect the racial composition of the available skilled workforce.

Contractors set the tone for equal opportunity in the industry in many ways, particularly by assembling the work crews which are ultimately organized by trade unions. They often fail to meet the employment goals established by federal and local agencies, but somehow have always have been able to demonstrate "good faith efforts." Although contractors were unwilling to come forward and testify at the hearings, evidence exists to indicate that they share responsibility for discrimination within the industry.

Consequently, the material gathered through these hearings, and the data submitted by the unions and joint apprenticeship committees, provides a basis for developing a race-conscious affirmative action plan, encompassing remedial goals and timetables for each of the construction trades in New York City. Such goals and timetables

cannot be implemented by executive order. Former NYC Mayor John Lindsay's Executive Order 71, issued in the early 1970s, led only to court challenges. Two decisions by the courts, Broderick v. Lindsay in 1976 and Fullilove v. Beame in 1979, both issued by the Court of Appeals, held that the Mayor lacked the authority to impose goals and timetables without enabling legislation, such as the City Council might pass.

Recommendations

1. **The New York State Department of Labor must monitor apprenticeship programs more closely to ensure that entry requirements and selection criteria and procedures are being implemented in a nondiscriminatory manner.**

The New York State Department of Labor (NYSDOL) has abdicated its responsibility for monitoring the recruitment, enrollment and quality of training for women and people of color in the construction industry. Despite the failure of joint contractor- and union-administered apprenticeship programs to recruit women and people of color in proportion to their workforce availability; to conduct unbiased selection procedures; to meet NYSDOL enrollment goals; and to provide classroom instruction which is free of sexual bias, the NYSDOL has never once de-certified a joint apprenticeship program for failure to meet minimum requirements.

NYSDOL must do more to ensure that the joint union and contractor apprenticeship programs recruit a greater number of women and people of color, and accept all qualified applicants. NYSDOL has set realistic goals for "minority" enrollment in each joint apprenticeship program, based on the demographic composition of the program's geographic jurisdiction, Even so, people of color often are enrolled at only between 50% and 75% of the NYSDOL goal.

With regard to women, NYSDOL has been more negligent in its enforcement efforts. The agency must develop realistic goals for female participation in joint apprenticeship programs, and actively enforce compliance. The current goal range tends to be over 40%. Given that women comprise only 3.4% of all apprentices in the skilled trades, one must conclude that these goals are not based on realistic expectations,

and that contractors and unions know that NYSDOL does not take seriously the issue of female enrollment.

In addition, NYSDOL must keep more extensive records on the race and gender composition of applicants for apprenticeship programs, and analyze disparities in application, rejection and drop-out rates, as well as in on-the-job training hours when evaluating programs for re-certification.

2. Unions and contractors should expand joint apprenticeship programs to achieve the apprentice-to-journeyperson ratio stated in collective bargaining agreements.

None of the unions have a sufficient number of apprentices to achieve the apprentice-to-journeyperson ratio stated in collective bargaining agreements. The stated ratio for Sheet Metal Workers Local 28 is 1-to-4, but the actual ratio in the union is 1-to-8. For Operating Engineers Local 15, the stated ratio ranges from 1-to-4 to 1-to-6, but the actual ratio is closer to 1-to-160. The District Council of Carpenters has significantly increased the number of apprentices in its joint apprenticeship program from 900 in 1978, to over 3,000 today. Other unions should follow this lead.

Imbalances should be corrected by recruiting and enrolling more apprentices, and requiring contractors to employ them at stated ratio levels. This would provide more employment opportunities for ALANA and female apprentices without denying white apprentices similar employment opportunities.

3. The City of New York should create an apprenticeship program and corresponding job titles in city government to provide training to persons seeking entry-level positions in the skilled building trades.

The City of New York, as an employer, must take steps to ensure that it provides more opportunities for women and people of color seeking employment in the estimated 4,000 building trades positions existing in Mayoral agencies such as Transportation, Sanitation, General Services, Environmental Protection, Parks, Ports, Police, Fire, and Corrections, as well as the many non-Mayoral agencies such as the Housing Authority, Health and Hospitals Corporation, and Board of Education.

To institute the proposed expanded program, the City must seek union cooperation. Since virtually all current apprenticeship programs are administered jointly by employers and unions, the City should model its program closely on the existing structure, with prevailing wages, fringe benefits, on-the-job training, and classroom instruction requirements parallel to those utilized in private industry. The City should negotiate with the unions to utilize their apprentice training facilities and instructors. Charles Fanning, Director of Apprenticeship Training for the Carpenters Union, and Francis McCardle, Managing Director of the General Contractors Association of New York, each expressed support for City apprenticeship programs. (Mr. Fanning called for expanding "Project Pathways," a NYC School Construction Authority initiative which offers apprenticeship training to disadvantaged people. Currently, many contractors on School Construction Authority projects are exempt from the program). Priority in creating such a program should be given to the largest trades, such as carpenters, electricians, plumbers and others, since trades with relatively few journeyperson titles in city government would not warrant this initiative at the outset.

4. Section 220 of New York State's Labor Law must be amended by the state legislature to allow trainees under the New York Plan to work on city- and state-assisted construction sites at apprentice wages.

The New York Plan for Training has been rendered inoperable by the *Monarch* ruling which states that trainees must be paid journey-level wages on state- and city-assisted projects. Section 220 should be amended to allow trainees to work on state- and city-assisted sites. A "sunset" provision could be included in the amendment to allow trade-specific training programs to be dismantled once apprenticeship programs come into compliance with numerical goals for women and people of color. The Governor and the State Department of Labor, neither of whom has been supportive of the New York Plan, must endorse this change. The New York City Council must pass a resolution calling on the state legislature to amend Section 220 to this effect.

These efforts should not undermine legitimate efforts to pressure unions and contractors to enroll a greater number of apprentices than they do currently, and admit all qualified women and people of color so that the New York Plan would eventually

become unnecessary. Until this occurs, the New York Plan should be preserved and its shortcomings corrected.

5. Standardized rules should be developed by the City of New York in order to govern job referrals through union-run referral halls in a more accountable manner.

Every referring organization must be required to adopt written rules which describe the policies, rules and procedures governing the referral system which it employs. All referral rules will be required to contain a nondiscrimination clause, and describe the method by which applicants register their availability; criteria used to rank applicants for job referrals; identifying information of those on the referral list; information about jobs available and those referred to jobs; the method by which applicants are notified of job referrals; and the method by which the job referral information and rules will be distributed and posted. These practices should be codified as rules and regulations, violations of which should be enforceable in the New York State Supreme Court.

6. The New York City Comptroller's Office and the U.S. Labor Department's Wage and Hour Division should conduct regular audits of contractors on city- and federally-assisted construction projects respectively, to determine whether significant disparities exist between white and ALANA male and female workers with comparable skills and experience, with regard to hours worked, pay scales, overtime and medical benefits.

Testimony included a number of allegations that white workers were employed on worksites and paid journey-level wages though they never attended joint apprenticeship programs, while people of color often were paid less than the appropriate scale relative to the number of years of apprenticeship training they had completed. (Apprentice wages vary depending on the number of years of apprenticeship training completed, in accordance with collective bargaining agreements).

The Comptroller's Office regularly must audit union membership rolls and contractor payroll records on city-assisted projects to determine whether there exists a disparity in pay scales; in health, vacation and pension benefits; and in overtime hours worked by whites and persons of color, and by men and women. Where significant disparities exist, offending contractors should be fined and, if warranted, barred from the bidding list.

7. Union officials and contractors should negotiate more comprehensive health plans with insurance carriers so that all workers maintain their benefits, even when discrimination results in their working fewer hours than white workers.

Because of discriminatory referral practices, many women and people of color don't work enough hours quarterly or annually to retain their health insurance and pension eligibility. Unions should negotiate with appropriate private entities (*i.e.*, insurance companies, contractors, etc.), through the collective bargaining process if necessary, for defined contribution plans which provide health and pension benefits that are more favorable to short-service employees.

In addition, the imbalance of work distribution must be addressed. A high unemployment rate currently exists within the industry (and has a heavier impact on women and people of color), while at the same time, many employed workers receive substantial hours of paid overtime. Given that it is currently more expensive to hire a new worker than to pay overtime to the existing workforce—because of the cost of fringe benefit programs—alternative benefit programs which do not create disincentives for hiring additional workers must be designed. If contractors and unions don't explore alternatives, appropriate legal remedies should be considered under Title VII of the Civil Rights Act.

8. Contractors and unions which do not take responsibility for preventing sexual harassment on construction sites by instituting prevention programs should incur fines and punitive damages.

The Commission on Human Rights has drafted guidelines pertaining to sexual harassment in employment (see Appendix C) which set forth a range of measures

which all employers covered by the New York City Human Rights Law must, at minimum, implement. The Commission contends that if these guidelines are followed, a contractor or union can prevent discrimination and harassment; develop and distribute a sexual harassment prevention brochure; implement a training program for all union members (including apprentices and journeypersons); educate members about what constitutes sexual harassment; and establish procedures for filing complaints and taking remedial action.

A standard sexual harassment policy statement must be included in each construction contract, and be posted on job sites. The Division of Labor Services should conduct site visits, including confidential interviews with female workers to determine whether measures to prevent sexual harassment are being employed by contractors. These visits also should ensure the availability and adequacy of bathroom and changing facilities for women.

The New York State Department of Education, which oversees apprenticeship curriculum, should work with the New York State Department of Labor's Joint Apprenticeship Council to require joint apprenticeship committees to devote three hours of instruction per 144-hour year to a guest facilitator to train workers about appropriate boundaries in a mixed-sex work environment. Workers should be notified that those who fail to attend will not be referred for work until the course is completed. Contractors also must honor the training program.

9. The high attrition rate of women and people of color in the construction trades must be addressed by unions through more effective membership assistance programs. Construction unions should provide all members with a minimum set of services which meet basic work-related needs. Unions should conduct a needs assessment of their membership to determine if more effective intervention can address personal problems which contribute to members dropping out of apprenticeship programs.

Unions should develop programs which provide members (trainees, apprentices and journeypersons) with basic supportive services, including counseling, to reduce the

high attrition rate among women and people of color. These services should be available to all union members who request them.

Currently, services provided by unions to dues-paying members vary greatly, but the following should be required: all members should be provided with training on their rights and responsibilities as stated in the union's constitution and by-laws; on union and contractor policies and practices in areas such as job referral procedures, as well as on workers compensation, codes of conduct on the job, health and pension benefits, and other relevant policies.

Unions in each of the construction trades should also conduct a needs assessment survey of their memberships to determine the demand for affordable day care, mental health services, drug and alcohol treatment, and training in non-violent conflict resolution techniques. While it is not clear whether the absence of such services has a disparate impact on women and people of color, the unions should determine this fact by conducting confidential membership surveys.

If a demand for such services is found to exist, appropriate services should be provided for dues-paying members at minimal or no charge. Since the improved mental and physical health of the construction workforce is in the interests of unions and contractors, added costs should be addressed through the collective bargaining process.

10. Federal, state and city contract compliance agencies must find more comprehensive methods for developing ALANA and female availability figures and must update them more frequently. Based on the revised data, New York City must create an affirmative action plan that includes goals and timetables for ALANA and female employment in the construction trades. In accordance with prior court rulings, goals and timetables must be approved legisla-

tively. The City Council must act to make an integrated workforce in the construction industry a reality.

In order to increase employment opportunities for women and people of color in the construction industry, the City must ascertain the current availability of women and people of color in each construction trade in New York City, and replace Executive Order 50 with an affirmative action plan that includes goals and timetables for hiring women and people of color. The assessment of availability must at least begin with 1990 Census data, but should adjust for the problems discussed earlier, which suppress the numbers of trained people of color and women defined as "available." The City Council must introduce legislation authorizing the Division of Labor Services to create an affirmative action program for city contracts, encompassing goals for the percentage of total hours worked by women and people of color, and timetables for attaining these goals.

The U.S. Department of Labor's Office of Contract Compliance Programs must revise its employment goals immediately, using adjusted 1990 Census data, for federally assisted construction projects. The New York City goals established by the OFCCP and DLS should be similar, if not identical, to these goals.

11. The New York City Human Rights Law must be strengthened to enable plaintiffs in discrimination cases to collect punitive damages and attorney fees, as is the case in civil court proceedings.

The current Human Rights Law, which went into effect on September 16, 1991, gives plaintiffs the power to seek compensatory damages from contractors or unions found to discriminate, but does not award punitive damages or allow for reimbursement of plaintiffs in successful litigation. The New York City Human Rights Law should be amended to afford plaintiffs in administrative tribunals the same remedies as are available to plaintiffs in civil court actions, namely the right to collect punitive damages and attorneys' fees.

12. The Mayor and Governor must move aggressively to implement these recommendations through a taskforce composed of members from industry associations, advocacy groups, and all levels of government.

First, the taskforce must be empowered to increase immediately the resources of the agencies which monitor compliance, such as New York City' Commission on Human Rights and Division of Labor Services, and New York State's Department of Labor and Division of Human Rights so they can carry out their mandates effectively. Second, it must initiate and shepherd this report's recommendations, which are designed to plug up the loopholes in, and add new teeth to, anti-discrimination laws and affirmative action policies at all levels of government. Finally, the taskforce must remain intact over the long term in order to continue to coordinate these changes and to ensure that progress toward equity in construction employment is not halted.

1

Introduction

Though the current economic downturn has created widespread unemployment, the construction industry continues to employ more than 100,000 workers in New York City, making it one of the City's largest employers. It is also one of the highest paying employers of persons with a limited educational background. Construction jobs, even for persons without a high school degree, can range in salary at the journeyperson level from $30,000 for a laborer with limited skills, to $100,000 for an electrician with extensive skills. For a person with a limited education, these jobs can mean the difference between working at subsistence wages or having a middle or upper-middle income job. However, since the early 1960s the construction industry has been accused of limiting its opportunities to white males through systemic employment discrimination against women and people of color.

Fourteen days of public hearings began in March 1990 and concluded in November 1992, providing the central component in a coordinated effort to combat discrimination in the building and construction trades. The purpose of the hearings, conducted jointly by the City's Commission on Human Rights and Division of Labor Services, was threefold. First, the hearings would provide a means to determine the extent of discrimination in the construction industry and would identify the most egregious offenders. Second, the hearings would help assess past efforts to deal with this problem. Third, the hearings would be an opportunity to explore proposed solutions and develop comprehensive litigation strategies as well as nonlitigation approaches. For example, in the aftermath of the Supreme Court decision in City of Richmond v. J.A. Croson, the hearings could establish a basis for affirmative action goals and time-

tables for increasing employment levels of people of color and women in the construction trades. The hearings and the present report serve to strengthen and update steps taken by the Commission and the City over the last thirty years to make construction jobs available to all qualified New Yorkers.

A history of New York City's efforts to monitor the industry

In 1963, the Commission, as a result of a series of hearings, issued ***Bias in the Building Industry: An Interim Report to the Mayor,*** which revealed a pattern of exclusion in a substantial portion of the building and construction industry which effectively barred all racial groups except whites from participating in this area of the city's economic life. Three facts emerged:

- Employers failed to accept their responsibility to include people of color in their workforce.
- People of color seeking union membership, either as apprentices or journeypersons, were faced with almost insurmountable barriers.
- All levels of government—at the federal, state and municipal levels—failed to enforce laws and regulations barring discrimination.

After the 1963 hearings, the Commission continued to receive complaints from individuals and civil rights groups that the pattern of exclusion in the building and construction trades persisted, and unions and employers continued their discriminatory employment practices, particularly in the same skilled crafts which had been investigated previously. A preliminary investigation by the Commission's Division of Employment indicated considerable justification for these complaints. Accordingly, the Commission, with the approval of Mayor Lindsay, initiated a series of hearings to update the 1963 findings.

The hearings and collateral investigations commenced in September 1966 and continued through mid-March of 1967. Testimony was taken from union officials, individual union members, officials of contractors' associations, individual contractors, and representatives of civil rights organizations. Conferences were held with representatives of governmental agencies at all levels who were directly and indirectly

concerned with the problem. Additional contractors, union members, and non-union journeypersons were interviewed.

At that time, the basic construction industry labor force included more than 200,000 journeyperson workers who were members of local unions affiliated with 18 international unions. Black membership was limited, with some few exceptions, to the unskilled and semi-skilled trades, and carpenters and plasterers. But in the major skilled local craft unions which had established some of the highest wage rates in the city—plumbers, sheet metal workers, metal lathers, steamfitters, ironworkers, elevator constructors, and operating engineers—there existed a highly disproportionate racial imbalance. In the nine union locals investigated, ALANA* journeypersons constituted less than 2% of the total journeyperson membership of approximately 28,000.

In 1967 the Commission found the following conditions:

- The pattern of exclusion within the building and construction trades, which was revealed in its 1963 hearings, persisted;
- The unions continued to maintain almost insurmountable barriers to ALANA journeypersons seeking membership;
- Contractors continued to shirk their responsibility to include ALANA journeypersons in their workforce by permitting unions to maintain *de facto* closed shops;
- There was a need for the Bureau of Apprenticeship Training of the New York State Department of Labor to abandon its passive, neutral role by judging whether the qualifications for acceptance into union apprenticeship programs were job-related or needlessly stringent;
- Strong unions are essential to the well-being of the American workforce and the community at large, and deserve the protection of the law and the community's support. But when unions indulge in discriminatory practices, and thereby exclude from their ranks a substantial portion of the city's labor force, they violate the very principles which gave rise to their

* ALANA = African-American, Latino, Asian-American, and Native American people.

existence, and place their own narrow and selfish interests above the common good. Such practices should be condemned.

- When employers surrender their prerogatives and responsibilities to such recalcitrant unions, they aid and abet the perpetration and persistence of such practices.

The Commission concluded its 1967 report with several recommendations. The first of these resulted in Executive Order No. 71 (EO 71) on equal employment contract compliance, issued on April 2, 1968. EO 71 provided that in the performance of city contracts, equal opportunity in employment be given to all qualified persons without discrimination based on race, creed, color or national origin. It promoted these objectives through affirmative action programs and the setting of numerical goals and timetables. The goals and timetables underwent legal challenges in Broderick v. Lindsay in 1976 and Fullilove v. Beame in 1979. The decision issued by the Court of Appeals held that the mayor lacked the authority to impose goals and timetables without enabling legislation (*i.e.*, a legislative basis from which goals and timetables logically could emanate).

EO 71 has since been replaced by a series of Executive Orders, culminating in EO 50, issued by Mayor Koch on April 25, 1980. EO 50 covers discrimination on the traditional bases, and also on age, sex and sexual orientation. Many of the Commission's other recommendations were never implemented or were implemented in an ineffective manner. Some recommendations are still being advocated for twenty-five years later. For example, the 1988 *Report of the Mayor's Commission on Black New Yorkers* recommends the use of community hiring halls to serve economically disadvantaged people (primarily people of color and women) who wish to work in the construction industry but have experienced difficulties securing employment.

Overview of construction trades and trade unions

The construction industry in New York City has been characterized as a "huge, fragmented, decentralized industry composed of thousands of small and medium sized construction companies and suppliers of related goods and services."[1] Generally, the industry as a whole can be divided into five categories: commercial, high-

way, heavy industrial, pipeline and home-building.

The vast majority of construction work performed in the New York/New Jersey Standard Metropolitan Statistical Area (NY/NJ SMSA) is performed by workers organized by trades. These building trades are associated with approximately one hundred union locals.

The construction trades can be divided into four main categories:

The first is the skilled mechanical trades, which includes electricians, iron workers, sheet metal workers, plumbers, steamfitters, elevator constructors and operating engineers. Within this group, the primary unions are the United Association of Plumbers and Gas Fitters, Locals 1 and 2; the International Brotherhood of Electrical Workers, Local 3; the International Union of Elevator Constructors, Local 1; the Sheet Metal Workers International Association, Local 28; the Enterprise Association of Steamfitters, Local 638; the International Union of Operating Engineers, Locals 14 and 15; and the International Association of Bridge, Structural and Ornamental Iron Workers, Locals 40, 361 and 580.

The second group includes nonmechanical trades such as carpenters, bricklayers, painters and roofers. Within this group, the primary unions in the NY/NJ SMSA are the following: the NYC District Council of Carpenters; Bricklayers District Council; and Roofers Local 8.

The third group encompasses unskilled workers who are primarily laborers. People of color and women largely fall into this group.

The fourth group is composed of workers who provide support for, but do not physically perform, construction-related tasks. The most notable unionized force in this category is the truck drivers, who belong to the Teamsters Union.

Wage structures and work conditions are negotiated by unions and contractors on a regular basis through various contractors' associations, such as the General Contractors Association, whose membership is comprised of heavy construction, excavation and road contractors; the Building Contractors Association; the Contractors Association of Greater New York; and the Building Trades Employers Association. The official route for learning and entering the trade is through apprenticeship programs

jointly run by contractors and unions.

Overview of apprenticeship programs

In New York State, the apprenticeship of new members in the construction trades is regulated by the United States Department of Labor (DOL), Bureau of Apprenticeship and Training through DOL's Apprenticeship Training Program. In concert, these two entities approve the curricula and tests required for certification.

With the notable exception of the NYC District Council of Carpenters, which represents 17 local carpenters' unions, and the International Brotherhood of Electrical Workers, most apprenticeship programs, administered jointly by contractors and unions, maintain between 90 and 300 apprentices. While apprenticeship programs are an important avenue for bringing skilled workers into the unions, many industry experts claim that up to half of the skilled workers in some unions never go through these programs. Instead, they enter through familial and personal contacts—connections generally unavailable to women and people of color. Nonetheless, among those admitted into apprenticeship programs, people of color and women are represented at rates significantly below their representations (*i.e.*, availability rates) in the labor force. A 1988 report covering over twenty years of the operation of the New York State Apprentice Training Program, from January 1967 to May 1987, indicates that 47 construction trades participate in the Program, with 13,560 members who reside in New York City. Of that number, 3.9% of the apprentices were female, 21.8% were black, and 11.8% were Hispanic.[2]

Several major joint apprenticeship programs, which account for nearly 90% of all apprentices in the skilled construction trades, are highlighted below.

Carpenters

The Joint Apprenticeship Committee (JAC) of the 22,000-member District Council of Carpenters runs the largest apprenticeship program in the skilled construction trades. In January 1990, enrollment in this program totalled 3,607 persons. Entrance to the four-year apprenticeship program, which includes 144 hours of classroom instruction per year, is based upon a written application, test and interview. Presently, application is on a rolling admissions basis, where applications are accepted

twice a month throughout the year. Once applicants receive an "employer's intent to hire" letter they are entitled to search for a job. When hired, they are indentured into the program.

Electricians

Electrician apprenticeship programs are governed by a JAC composed of union and employer representatives. Apprenticeship lasts four years, with an additional period of one to two years during which journey-level electricians work on small alteration jobs in the midjourneyperson [MIJ] program, which is designed to provide a cheaper source of unionized labor. As of 1990, there were 2,169 apprentices indentured under Local 3's program, about 300 of whom were in the MIJ phase. Admission to the apprentice program is governed by scores compiled from an examination and interview. Local 3, with over 8,300 journeyperson members, receives 3,000 to 5,000 applications each year for its apprentice program. Most applicants are interviewed; about 700 are accepted.

Steamfitters

The Steamfitters JAC has jurisdiction over a joint apprenticeship program which encompasses New York City and Long Island. Among the entry requirements for the program are a minimum age of 18, a high school diploma or certificate of equivalency, and a passing score on an aptitude test administered by the New York State Department of Labor. Graduates must complete five years of classroom instruction at 144 hours per year—a total of 7,500 hours of on-the-job training.

The JAC remains under a court order which dates back to 1975, Rios v. Steamfitters Local 638, which set a 26% ALANA participation goal in the joint apprenticeship program. There are about 250 apprentices in the program at any given time, and according to union president Edward Malloy, 26% of each class is reserved for the top ALANA candidates.

Plumbers and Gas Fitters

The plumbers are organized into Union Locals 1 and 2. Local 1 has jurisdiction over Brooklyn and Queens, while Local 2 has jurisdiction over Manhattan and the Bronx. Local 2's membership totalled 2,390 as of 1990. Local 1's membership is smaller, but

figures were not provided by the union. Both locals have five-year apprenticeship programs. Local 1 maintained 180 apprentices in 1987, but this total declined to 160 in 1989. Local 2 had 225 apprentices in 1987, a number which increased to 284 in 1989. Admission to both programs is governed by a joint apprenticeship committee and is based upon test scores and an interview.

Iron Workers

Locals 40 and 361 of the Structural, Bridge and Ornamental Iron Workers, whose jurisdictions encompass New York City and Westchester, share a joint apprenticeship program. The three-year program admits 60 apprentices per year, providing it with a maximum of 180 apprentices. Local 580, also of the Structural, Bridge and Ornamental Iron Workers, with jurisdiction over New York City, Long Island and Westchester, admits 30 apprentices per year to its three-year program, for a total of 90 apprentices.

The joint apprenticeship program administered by Locals 40 and 361 requires a high school diploma, a passing score on an aptitude test which does not test applicants on formal knowledge beyond that learned in 10th year math and English; a physical exam; and a rigorous physical test which involves climbing a column, walking a beam, and using a 50-pound impact tool at different heights. Local 580's entry requirements include a passing score on a written test, a medical exam and a similar rigorous physical test of strength and fear of heights.

Apprentice-to-journeyperson ratios

Participation of trained journeypersons in the construction trades is further constrained by the concept of relative ratios of journeypersons to apprentices/trainees. Each trade, through apprenticeship councils, has established on-the-job ratios of workers. The District Council of Carpenters used to maintain a 1-to-6 ratio of apprentices to skilled workers, but in July 1984 the ratio was changed to 1-to-5, which increased the number of apprentices that can be employed on work sites. In actuality, the ratio of carpenter apprentices to journeypersons is about 1-to-5.6.

Local 3 of the International Brotherhood of Electrical Workers maintains an on-the-job ratio of one apprentice to each skilled worker on small jobs (four-unit apartment buildings and/or jobs costing under $10,000) and a 1-to-3 ratio for larger jobs. The actual ratio of apprentices to journeypersons in the union is 1-to-3.9.

Sheet Metal Workers Local 28 allows for a 1-to-4 ratio of apprentices to journeypersons, but in practice, maintains one apprentice for every eight journeypersons. Iron Workers Locals 40 and 361 are maintained by contract at an apprentice-to-journeyperson ratio of 1-to-10. In fact, they maintain a 1-to-14 ratio.

Litigation concerning discriminatory apprenticeship programs

Discrimination in the construction industry, primarily in the entry level apprentice programs, has been so well documented that it has been given judicial notice by the courts. See United Steelworkers of America v. Webber, 743 U.S. 193, 198 n. 1 (1979), where the Supreme Court determined that judicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice.

There have been numerous judicial findings of discrimination within the construction industry in New York City. By and large, findings have focused on the exclusionary practices of apprentice programs, which practices have a discriminatory impact on women and people of color.

While these decisions ruled against many of the exclusionary practices of the trade unions, implementation of court orders often has been thwarted by recalcitrant unions. Most notable, perhaps, is the resistance of Sheet Metal Workers Local 28. In 1986, the United States Supreme Court affirmed the lower court's findings of contempt against the union, which was first found to have denied access to blacks and Hispanics by the State Court in 1964, two full decades earlier. Despite efforts in other regions to abolish barriers to apprenticeship for people of color, incidents of discrimination are ongoing and have provided a basis for new litigation in New York City.

Underrepresentation of women in the construction trades

The presence of women in nontraditional occupations continues to be minimal. According to 1985 annual averages compiled by the United States Bureau of Labor Statistics (USBLS), women comprised 2% nationally of workers in the construction trades; 0.5% of brickmasons and stonemasons; 1.2% of carpenters; 1.5% of electricians; and 3.1% of construction laborers.[3]

A May 1981 review of the status of women in the construction industry, conducted by the Office of Federal Contract Compliance Programs (OFCCP), found:

> *According to the 1970 Census of Population, women constituted 37% of the experienced civilian labor force, and 19% of all persons 18 years or older with vocational training in trades or crafts. At the same time, however, women constituted only 5% of the experienced labor force in craft and kindred occupations, and only 1.2 % of the experienced construction labor force. The gross disparity between the percentage of women in the construction trades undoubtedly will continue until positive action is taken to ensure that construction jobs are made available to women in construction.*

The OFCCP study refuted claims that the lack of female representation in construction reflected a lack of interest:

> *The interest of women in the construction trades and their availability for employment has been clearly demonstrated. In October, 1975, for example, the OFCCP conducted fact-finding exercises in the construction industry. Representatives from EEOC, various women's organizations, and academic institutions testified that discrimination and not the lack of available and interested female applicants is keeping the percentage of women in the construction trades at such a low level . . .*
>
> *Experience* [shows] *that as more women were employed, more women applied. Once women knew that they would be hired without regard to sex, they applied in large numbers . . . The exclusion of women from well-paying jobs in the construction industry exists despite persistent effort among women to break into construction work.*

These national figures are reflected in the representation of women in apprenticeship programs in New York State. According to the New York State Department of Labor, Bureau of Apprenticeship and Training (NYSDOL BAT), as of May 1988, women represented only 3.9% of the state-registered apprentices in the New York City metropolitan area. In several categories, including woodworking, plumbing and heating, and interior finish/painting, the representation of women actually declined from 1984 to 1985.

Programmatic efforts to increase ALANA and female employment in the skilled construction trades

Because of the seasonal and transient nature of much construction employment, the unemployment rate in the industry tends to be higher than in the economy as a whole. Nonetheless, the problem of unemployment in the industry has significantly worsened in recent years. In 1986, during the boom of office construction in New York City, approximately 91,000 people in the workforce were categorized as construction workers, of whom 15.1% (about 13,700 people) were unemployed. In 1991, of the roughly 98,000 people in the construction industry, 24.7% (about 24,300 people) were unemployed—much higher than the 9.3% annual average unemployment rate in 1991, according to USBLS. The boom in office development in the 1980s has led to high office vacancy rates, and little demand for new construction of office buildings in the 1990s.

Figures regarding disparities in the unemployment rate of whites and people of color in construction are not available, but anecdotal evidence from workers in the trades suggests that the unemployment rate of skilled ALANA construction workers is significantly higher than that of skilled white construction workers.

Community-based groups in the New York City area have responded in a variety of ways to bridge the employment gap of people of color and women in the construction industry. Coalitions have formed—for example, FightBack—an unincorporated, voluntary, community-based membership organization comprised of African-American and Latino/a men and women who seek to obtain jobs on construction sites. Operating since 1969, FightBack has employed various methods, including demonstrating, site visitations, and lobbying, to obtain jobs. Recently, other coalitions such as Link, Community Construction Workers, Inc., Fair South Brooklyn Construction

Workers, Inc., Brooklyn FightBack, and Free at Last have been plagued with legal entanglements or prosecutions for corrupt practices such as trespassing on work sites, and extorting jobs and money from constructors.

Other groups have confined themselves to the training of women and people of color outside the apprenticeship programs in various forms of pre-apprenticeship training and placement. They include NonTraditional Employment for Women; AllCraft; the Westchester-Putnam Affirmative Action Program; and Access for Women.

The New York Plan for Training

In addition to judicial remedies designed to relieve the pervasive and persistent discrimination in the construction industry, New York City governmental entities have sought in the past to highlight the problem and initiate programmatic action. After the New York City Commission on Human Rights held its first set of public hearings in 1963 and 1967, to determine whether trade unions had made progress in combating discrimination, the New York Plan was established in 1970 to provide training and employment opportunities to people of color who had been systematically excluded from joint apprenticeship programs. Initially jointly funded by the State and City of New York, along with the Building Trades Association, the New York Plan is now privately funded and refers trainees to contractors seeking to comply with federal and local requirements for such workers.

The Division of Labor Services (DLS) is the New York City agency charged with enforcing Executive Order 50 (1980) to ensure that companies doing business with the City of New York provide equal employment opportunity to employees and job applicants. The Construction Division of DLS is charged with enforcing EO 50's training requirement, which mandates that construction contractors under the jurisdiction of EO 50 hire one economically disadvantaged trainee for every four journey-level workers in each trade. The trainee program is an alternative to the union's apprenticeship program. Its purpose is to create opportunities in the construction industry in areas previously closed to women and people of color.

During Fiscal Year 1985, women and people of color comprised 95% of the trainee workforce; a full 20% of all trainees were women. A 1987 decision rendered by the Court of Appeals in Monarch Electrical Corp. v. Roberts, 70 NY 2d 91, NYS 2d 711,

required contractors on public work sites to pay trainees journey-level wages, since trainees are not included in the State's Labor Law. This decision rendered the trainee program virtually inoperable.

Despite the judicial setback, the trainee program has been recognized within certain trades as a vehicle for increasing the available pool of apprentices. For example, trainees from the New York Plan have been indentured as bricklayer apprentices, doubling the number of apprentices in that union since 1980.

Scope and structure of the report

The following sources were relied upon in the preparation of this report:

1) More than 70 hours of testimony at a total of 14 public hearings held between March 1990 and November 1992. Testimony was provided by workers in the various construction trades; legal and academic experts; representatives of government; advocacy groups; legal defense funds; union locals and joint apprenticeship committees; and contractors and their associations;

2) Documents, including those supplied by unions and their joint apprenticeship committees; "Program Status Reports" filed with the New York State Department of Labor; responses to questionnaires and subpoenas prepared by the Commission, copies of collective bargaining agreements, and union constitutions and by-laws;

3) Research conducted by experts in government, non-profit agencies and academia regarding employment practices in a number of skilled trades; and

4) Legal documents resulting from lawsuits brought against construction unions.

Because of the complexity of the construction industry and the large volume of material to be analyzed, specific areas were selected for emphasis in this report: first, presented in detail are testimony excerpts of individual construction workers and their advocates, since they are a primary source of complaints of discrimination; and second, extensive analysis of material provided by construction unions and JACs concerning the number of people of color and women in apprenticeship and training programs, and their membership in unions. The figures are important in order to

determine union/JAC compliance with goals established by the NYS Department of Labor and various court orders.

Vigorous attempts were made to elicit testimony and materials from all major industry players—unions, joint apprenticeship committees, contractors' associations, and contractors. Many of those contacted ignored repeated invitations to testify. (Appendix A describes which unions, apprenticeship programs, contractors, and contractors' associations were invited, and how each responded). After a lengthy process of subpoenaing unions and JACs, and 14 days of testimony, it was decided in the interest of timeliness to publish what information had been obtained rather than continue to subpoena other parties. At the time of this writing, not all of the subpoenaed materials have been received from the unions, and several unions stalled testifying until the end of 1992. Therefore, limited findings from their testimony are included in this report. With the exception of Chapter 5, each chapter of the report begins with an overview of information gathered, and concludes with abstracts of testimony on specific topics. Chapter 5, which covers unions and joint apprenticeship committees, gives an overview of information on each union or JAC, and the relevant abstract of testimony, each in turn. Major findings and recommendations appear in the executive summary rather than in the body of the report.

Chapter 2 provides historical context concerning the limited successes experienced thusfar in attempting to integrate the construction industry.Perspective is presented by various public officials and policy makers. The problem of determining the extent of underrepresentation of people of color and women in the unionized construction trades is discussed.

Chapter 3 presents abstracts of the testimony of 80 construction workers who testified about their personal experiences of race and/or sex discrimination in the construction trades, beginning with an overview of the Commission's findings.

Chapter 4 analyzes construction industry policies and practices, focusing on union-run hiring halls, the pervasiveness of sexual harassment on job sites, the disparate conditions of employment for people of color and women (as opposed to white males), and the procedures by which workers' grievances concerning these issues are addressed by union officials and contractors.

Chapter 5 presents a union-by-union analysis of 13 trade unions, their joint apprenticeship committees and the more than 50,000 members in eight distinct skilled construction trades. The Commission's analysis relies upon union responses to a Commission questionnaire, additional documents supplied by unions, and the testimony of numerous union local and JAC officials. Excerpts highlight union and JAC practices, and charts are provided (in Appendix D), illustrating the racial and gender composition among journeypersons, apprentices and, in some unions, trainees under the New York Plan.

Chapter 6 provides an overview of the apprenticeship programs jointly administered by contractors and unions through their JACs. The racial and gender composition of nine apprenticeship programs is presented, and graduation and drop-out rates for white males, people of color and women are contrasted. The causes of racial and gender disparities are analyzed through an examination of program entry requirements, recruitment efforts by JACs, and the performance of the New York State Department of Labor in enforcing goals for ALANA and female participation.

Chapter 7 analyzes the training program jointly administered under the New York Plan by unions and contractors. The race and gender composition of the programs is presented, as are graduation and drop-out rates for whites males, people of color and females. The viability of the New York Plan is discussed in light of the Monarch decision, which ruled that contractors must pay trainees journey-level wages on state-funded projects, effectively making the program inoperable, except for federally funded projects.

Chapter 8 deals with the role of contractors in hiring people of color and women. Given that the Commission was unable to obtain the cooperation of a large number of contractors, findings regarding contractor practices were based largely on the testimony of workers and union officials. The testimony of a small group of contractors is included in this chapter.

Chapter 9 discusses the law enforcement role of government agencies, and the lack of adequate enforcement and oversight that has occurred over the years because of inadequate staffing, unclear jurisdiction and a lack of political will to address the disregard for the law and entrenched corruption which prevails in the construction trades.

Chapter 10 provides a dialogue among legal experts concerning the impact of the U.S. Supreme Court decision in Richmond v. Croson on municipal efforts to create and enforce affirmative action programs to remedy past discrimination in the construction industry.

Summaries of the testimony of more than 130 individuals are presented in this report. In many sections, witnesses are quoted verbatim and at length. All testimony appears in italics and is indented. Remarks in this format are to be understood as direct quotes. Summaries, on the other hand, appear in brackets and are not italicized. In some cases, the sequence of an individual's statements, though not the content, has been changed in order to provide continuity of subject matter. Testimony is not presented chronologically, but rather by topic throughout ten chapters. As a result, in some instances the same individual is quoted in several chapters, speaking about different issues. Hopefully this will enable the reader to discern more readily the range of views regarding each issue. Transcripts of the hearings are available for those wishing to read the entire testimony of persons who appeared at the hearings. (See Appendix B for a list of those who testified at the hearings).

1. *Interim report by the New York State Organized Crime Task Force, Corruption and Racketeering in the New York City Construction Industry, Cornell University, 1988.*

2. *New York City residents participating in the New York State Apprentice Training Program Construction Trades. January 1967 - May 1987; Labor Research Report 1988 - No. 2, April 1988.*

3. *Handbook of Labor Statistics, U.S. Department of Labor, Bureau of Labor Statistics (June, 1985).*

2

The history and context of underrepresentation of women and people of color in the skilled trades

Overview: The series of public hearings concerning alleged discrimination in the construction industry began with an overview presented by elected and appointed public officials, civil rights and labor advocates, and legal scholars and academics, many of whom have been actively involved with industry issues for two decades. Many officials testified about the limited progress made in integrating the construction industry, and the need for coordinated public policy in order to move forward.

Several speakers cited evidence of the underrepresentation of people of color and women in the construction industry. Although the figures and base years presented by speakers may differ slightly, they point to the same conclusions. People of color and women are making slow and minimal gains in the skilled construction trades. In some cases, the progress experienced in the 1970s eroded during the 1980s. There have been gains in the non-unionized sector, which provides far less in the way of monetary rewards, and no fringe benefits. The NYC Comptroller's Office pointed out that, according to a 1989 study conducted by the Port Authority of New York, the percentage of African-American construction workers in New York City declined from 23.0% in 1981 to 17.4% in 1986. Latinos increased from 11.8% to 21.0% during the same period, but primarily in the non-unionized sector.

According to Roger Waldinger, co-author of *Access and Opportunity: Developing a Skilled Construction Labor Force in the Port Authority Region*, people of color are, in fact, decreasing in the industry, when one takes into account their increasing

proportion in the city's population. Although African-Americans and Latinos increased from just under 21% of construction employment in New York City in 1970 to 35% in 1986, the increase has not kept pace with African-American and Latino population gains, which reached 45% in 1990. Many of the gains in ALANA* employment occurred in the non-unionized sector, with individuals working on renovation rather than new construction jobs, the result being lower pay and less continuity of work.

According to the Comptroller's Office, women, who represent over 50% of the population, comprise only 7% of the construction workforce, including clerical workers. Female participation in the skilled trades increased slightly, from 1.1% in 1981 to 1.7% in 1987, and from 2.3% to 3.4% in the laborers trade during the same period. Even these low employment figures may be inflated due to the practice of checkerboarding (moving women and people of color from site to site so that contractor reports to regulatory agencies will indicate higher levels of ALANA and female employment than would be reported with stationary assignments). Given the evidence of ALANA and female underrepresentation in the trades, Manhattan Borough President Ruth Messinger called for withholding tax abatements, government subsidies and zoning variances until contractors produce evidence of fair employment practices. Several other speakers called for the creation of an affirmative action program which includes goals and timetables.

Before goals and timetables can be established, government must determine the extent of underrepresentation of people of color and women within the unionized construction trades. Several speakers noted the problems this presents because of flaws in current policy. At the state level, advocates alleged that goals for ALANA participation in joint contractor-and-union apprenticeship programs were set by the New York State Department of Labor in the mid 1970s and are badly out of date. At the federal level, employment goals on federally financed projects have not changed since 1976. As a result, they do not reflect the increased availability of people of color or women in this area. In addition, the federal goal for women does not distinguish between skilled and unskilled labor. Consequently, many women on federal projects are hired as laborers or flag persons rather than as skilled workers.

A methodological problem exists as well, in that statistical analysis requires a significant number of workers in each trade before findings of discrimination can be con-

* ALANA = African-American, Latino, Asian-American, and Native American people.

sidered statistically valid. General contractors often have numerous sub-contractors, and each sub-contractor often has less than a dozen, and rarely more than fifty, people on its payroll at any given time, an insufficient number of workers upon which to make a statistically significant finding of discrimination, even if there are no women and only a few workers of color. According to Diana Autin, former General Counsel at DLS, in order to make a statistically significant finding, the contractor must have a workforce that excludes women or workers of color to such an extent that there is a less-than-5% probability that the situation occurred by chance alone.

In addition, the current low availability of union and non-union women and people of color in construction is a reflection of past discrimination. Many people of color choose to enter other professions because of a perception that the construction industry is rife with discrimination. In effect, this creates an artificially low availability pool figure. These figures also are based on census data which is out of date and undercounts people of color.

Abstract of testimony

Opening remarks

Dennis deLeon, Commissioner/Chair, NYC Commission on Human Rights:

> *These hearings are not the first of their kind, and may not be the last. Today we start with remarks from public officials and honored guests who are in the forefront of the struggle for equal rights and who have come to lend their support to our efforts to remove the barriers of exclusion. While we are here to investigate the extent of alleged discrimination in the trades, one thing is perfectly clear: people of color and women are significantly underrepresented. We hope that as a result of these hearings positive steps can be taken to increase minority representation in this industry.*

Oliver Gray, Office of Labor Services:

> *The Office of Labor Services* [In late 1991, OLS became the Division of Labor Services (DLS). It will be referred to as DLS for the remainder of this report] *is the city's contract compliance agency and is mandated by Mayoral Executive Order No. 50 and the revised City Charter to ensure that there is compliance with the*

equal opportunity requirements of federal, state and local laws by contractors who do business with the city of New York.

DLS has its origins in over 35 years of efforts to address unfair treatment of unskilled workers. These efforts range from a 1956 NYC Department of Labor report about unethical employers and racketeering unions to Mayor John Lindsay's 1968 Executive Order No. 71 forbidding discrimination on the basis of race, creed, color or national origin and requiring contractors to take affirmative action. Later, in 1970, Mayor Lindsay issued Executive Order 20, requiring contractors on city-funded construction projects to employ minorities for training-level jobs, and to administer on-the-job training programs and to make a good faith effort to hire one minority trainee for every four journey-level workers in each craft. That same year, the city reached agreement with the New York building and construction industry on a minority training program, the New York Plan for Training, which has been an alternative to the apprenticeship program.

In 1973, the Office of Labor Complaints and the Office of Contract Compliance were consolidated into the Bureau of Labor Services, which in January of 1990 became DLS.

Unfortunately, the mid-1970s were characterized by several court challenges to EO 71's goals and timetables for minority group members in construction. Two decisions by the courts, Broderick v. Lindsay in 1976 and Fullilove v. Beame in 1979, issued by the Court of Appeals, held that the Mayor lacked the authority to impose goals and timetables without legislation.

A truce of sorts was called in 1980 when Mayor Koch issued EO 50, mandating the use of one economically disadvantaged trainee for each journey-level worker engaged on construction projects. For several years the training requirement prevailed. But in 1987, the Court of Appeals interpreted Section 220 of the New York State Labor Law, which states that employers must pay prevailing wages on public works projects, and ruled that trainees on such projects must be paid journey-level wages. This decision severely impaired DLS' ability to enforce the trainee requirement. Later, another decision by the state's lowest court, the State Supreme Court, nearly abolished the trainee requirements. It should be noted that there were some 1,000 workers who were able to gain admission to the unions through the trainee program.

The L.K. Comstock case of 1989, which the city is appealing, ruled once again that the Mayor lacks the legislative authority to mandate specific trainee requirements. Thus the city seeks legislative changes on the state and local level to address these court decisions, which brings me to why we are here today.

Namely, the underrepresentation of women and minorities in the trades. In 1971, minorities and women constituted 21% of people within the trades. In 1981, it moved up slightly to 28%, and our most recent data indicates it is down to 19% and we fear that it may be going lower. DLS and the Human Rights Commission are forced to take a hard look at the root causes of discrimination in the construction trades industry and to develop a comprehensive strategy to address it. I cannot overemphasize the importance of gathering the facts and information necessary to develop a program to address these problems. They have evaded easy solutions. These hearings are the first steps towards a workable solution.

Sally Hernandez-Pinero, Deputy Mayor for Finance:

Mayor Dinkins has asked me to represent him here today. [Almost 25 years after Mayor John Lindsay opened a series of similar hearings at the Human Rights Commission], *we're still only in the beginning of our ability to provide equal access to good middle-income employment opportunities for women and people of color in the building and construction trades in this city.*

As the Supreme Court takes one step backward, let us all take two steps forward. If these hearings find discrimination, let us fight it through legislation, through advocacy and through cooperation. I ask the unions, construction companies and employers to join us and help us make a difference for women and people of color. Let us make New York City a model nationally for economic development and equal opportunity.

Justice William Booth, former NYC Human Rights Commissioner:

In 1963, I joined a protest against construction unions' membership, hiring and training practices at the site of the Jamaica, New York racetrack in Queens, where the present development, Rochdale Village, now exists. With a coalition of NAACP, CORE, and the clergy of the area, we raised the issue [of discrimination] *with some 6,000 picketers over a period from July through October, 1963. I still see, very vividly, this development going up in a black neighborhood, but with white workers*

coming out of automobiles with Alabama, Mississippi, and Louisiana license plates. Very few black workers were employed there.

In February, 1966, Mayor John Lindsay appointed me Chairman of the New York City Commission on Human Rights. We held hearings and directed some changes. Perhaps the establishment by the Mayor of a compliance office and the establishment of a training program were among the significant accomplishments of that period of the Lindsay Administration.

At the same time, some of the unions were cooperating, and private organizations like FightBack were in the trenches continuing their battle to galvanize the entire New York City community to join in eradicating racial discrimination in the building trades. This city's progressive image will be dulled unless racism is once and for all removed from employment practices.

Ruth Messinger, Manhattan Borough President:

The construction industry provides over 100,000 jobs for the City of New York. These jobs offer those people with limited education the opportunity to have a higher standard of living because these jobs are comparatively well-paid.

Although twenty years ago the representation of women and men of color in the construction industry was dismal, today the inequity is mostly manifested in the skilled trades where the members of these groups are minimal. Thus, we [public officials] *need to concentrate on identifying the nuances of inequalities mainly in these trades.*

City government should begin to better monitor unions and contractors to ensure that they adhere to anti-discrimination laws. There should be better enforcement of these laws to accompany this monitoring. It is important to eliminate any inequities along racial and gender lines that might exist in this industry. Since this industry remains one of the biggest employers in the city, it is important that they set a tone [of equality] *for the city.*

At all the different levels that city contracting can happen, there should be complete scrutiny of the workforce. Where discrimination is suspected, tax abatements and other government subsidies and granting of privileges [such as zoning variances] *should be withheld until contractors can produce evidence to the contrary. Many advocates and contractors are against such measures because they claim that this*

would delay even longer the numerous procedures contractors have to complete already.

Miriam Friedlander, Councilperson:

[During the 1980s, the construction industry benefited from many of New York City's economic policies] *but the majority of our population, women, have not gotten the full benefit out of this economic growth. We have found that the majority of poor single-parent households in New York City are headed by women.* [Given the low pay rates of most traditional women's jobs], *women need to break through* [to higher paid skilled jobs in construction] *so that it isn't just the exception for women to get these jobs, but the rule. This can only happen when the city establishes laws, regulations and oversight, most of which we don't have.*

In the last administration, the term affirmative action was not permitted to be written into any of the regulations. Without it, we have no possibility of accomplishing what we [need to do]. *According to the New York Tradeswoman, an activist group that supports women in nontraditional work, 2% of workers in unionized building trades are women.*

It's very difficult to get figures from the unions and from the contractors in terms of [workforce composition]. *The Commission should press* [unions and contractors] *to get them. Women have to break through with training, whether from union apprenticeships or programs such as Nontraditional Employment for Women (NEW) or AllCraft,* [or the non-unionized sector] *since most of the industry is non-unionized. Somewhere along the line, we have to tell the communities that are doing these small jobs that women must be hired too.*

Checkerboarding [the practice by which contractors move women and people of color to different sites to show a false and greater distribution of women and people of color in their employment reports] *is one of the most famous ways of avoiding commitments to* [hiring women. Confucius Plaza in Chinatown was the site of a major struggle 17 years ago between working people in the Chinese community and builders over employment opportunities for people of color and women. Checkerboarding was an issue there.]

Sexual harassment happens in every single workplace. But it is much worse in a workplace that is strictly all male, macho and blue collar. There has been very little sensitivity training going on. The Commission should require companies, contrac-

tors and unions to participate in training forums to sensitize people. The entire Fire Department has done it. It would be a major beginning in changing the general attitude [of the male workforce].

Women are also discouraged from entering [the trades] *because of the lack of support. Unions and contractors must assume a greater responsibility in providing child care and parental leave both for men and women. This has to be shown as a family problem so that both men and women assume responsibility.*

First, we have to develop affirmative action programs based on the knowledge, facts and figures you get here. Unless you set concrete, firm objectives, we have nothing to reach for. Quotas, goals, can be used with city contracts.

Of the twelve vocational schools, nine of them were for training for higher paying jobs such as electrical, auto, aeronautics, and on and on. In those schools, 95% were young men. Three of the schools were for nursing, secretarial, cosmetics, et cetera. 95% were young women. There is an equity coordinator in every school and there has been serious sensitivity training [in these schools].

Evidence of the underutilization of people of color and women

Pam Elam (representing then-City Comptroller Elizabeth Holtzman):

There has been a decline in the percentage of African-Americans employed in construction in New York City from 23% in 1981, to 17.4% in 1986. Employment for Hispanics increased from 11.8% to 21% during the same years [data obtained from the Port Authority Study]. *Women, who make up 53% of the population, presently make up only 7% of the construction workforce. Lower percentages are cited for the skilled trades although for women they show a slight increase: from 1.1% in 1981 to 1.7% in 1987 in the skilled trades and from 2.3% to 3.4% in the laborers trade during the same period.*

Little change has taken place in the construction industry since the Commission held hearings on the construction industry and developed programs to open the industry to women and minorities twenty-five years ago. There are still too few women and minorities holding skilled journey-level union jobs, such as electrician, plumber and carpenter. They are also underrepresented in the less skilled job categories, such as laborer. This is the case despite the fact that the 1980s saw a boom

in the New York City area, and thus an expansion of construction jobs. It is one of the few industries still offering high-paying jobs for those without high school diplomas. Pay can range from $30,000 a year for a laborer with limited skills, to $100,000 for an electrician.

Wing Lam, Chinese Staff and Workers Association:

The Chinese Staff and Workers Association was formed in 1980. Of all the buildings constructed in Chinatown, we are sure no Chinese workers from our community were hired. Most Chinese construction workers and contractors have been excluded from new construction jobs; they can only work in non-union rehab jobs.

In 1987, there were 90 construction firms in Chinatown. Now [in 1990] *there are 150, a 67% increase in the last three years. Many of these companies were started by Chinese-American workers who cannot get a living-wage job in the industry. Many new immigrants have the necessary skills; over 3,000 Chinese-American workers are presently working in construction. Almost every one of these jobs is non-union, earning low wages with no benefits.*

Stan Mark, Asian-American Legal Defense Fund:

The number of Chinese-American construction firms has risen dramatically in the past decade in Chinatown from 90 to 150 [a 67% increase] *employing 3,000 Chinese-American construction workers in non-union jobs. In Flushing, Queens, some 50 Korean construction firms now operate. Despite this growth in skilled Asian construction workers, there has been no growth in employment of Asian-Americans on union construction sites; this is strong evidence of discrimination.*

Oliver Gray, Director, New York City Division of Labor Services:

In 1971 minorities and women comprised 21% of the [construction] *trades. In 1981 the figure rose to 28%, but our most recent data show a development downward to 19%.*

Jim Houghton, Harlem FightBack:

[More than a quarter century earlier, black workers engaged in a sit-in at the City Commission on Human Rights] *because it was not doing its job. Once again, hearings are being held because the Commission still hasn't done its job. The ineffectiveness of efforts to expand opportunities for racial minorities and women*

relates to the political nature of the struggle. The building trades violate the Civil Rights Act of 1964, the Taft-Hartley Law, the state law against discrimination, and they get away with it because of the corruption in the industry.

Racism is at the heart of corruption in the construction industry. The Task Force on Corruption failed to mention racism at all in their 1989 report. The systemic racism and sexism in the construction industry has set a very destructive and dehumanizing tone in the city, contributing to the problems of drug addiction and crime in communities of color. If more people of color could be given the opportunity to build and rebuild this city, we wouldn't need to continue building jails.

The building trades are not capable of reforming themselves; they're too deeply mired in their racist pathology. Since 1964, the city has created a lot of affirmative action programs. But it is like something up in the sky, while the action is down here; here where contracts are being given, where employment and training are taking place. [Mr. Houghton doesn't look to affirmative action to change the structured racism and sexism of the building trades. He concludes that a new approach has to be taken to create jobs, training opportunities and contracts for people of color].

The term "minority" is a problem as well. It labels people of color incorrectly. If the term minority must be used, apply it to the white workers. They're truly the minority. The term minority, applied to us, feeds into the ongoing racism in the industry.

Roger Waldinger, Associate Professor of Sociology, CUNY:

In the past three years, I have worked with the Port Authority of New York and New Jersey to analyze employment patterns in the construction industry and to help the Port Authority to develop an effective strategy of using its construction dollars to boost minority employment in the industry. Equal employment in the construction industry is particularly desirable because it's one of the few industries that still provides high-paying jobs for people with modest amounts of education.

30 years ago, the NYS Commission Against Discrimination found outright exclusion of black workers from the skilled trades, and their restriction to the less skilled trades involving the most difficult, lowest paying jobs. Today, there are African-American, Latino, Asian and women workers in every trade and every union, including the most skilled. Still, progress has been disappointing. Minorities remain underrepresented in the industry. In fact they are becoming increasingly underrepresented in the industry. From 1970 to 1986, African-Americans and

Hispanics increased from just under 21% of construction employment to 35% in New York City. However, the increase has taken place at a time of even faster growing black and minority gains in the population overall.

To the extent that minorities have succeeded in moving into the more skilled occupations, they have mainly done so outside the unionized sector. That is, they're working in the non-unionized sector in smaller renovations and rehabilitation jobs where the pay is less good and there's less continuity of work. Even when minorities make it into the union sector, they continue to encounter discrimination. While NYC government has limited influence over employment patterns in the industry, it has greater ability to affect apprenticeship programs.

In 1990, there were only two construction trades in which minorities were more or less at parity. They were interior work [primarily painting] *and brick-working. In all other trades, there is very substantial minority underrepresentation, especially in plumbing and electrical trades, where minorities are at less than 50% of full representation. These are the elementary facts of the situation. The knowledge-base on employment practices in the construction industry is already in place, which would enable public policy makers to act.*

Lola Snyder, Nontraditional Employment for Women:

Executive Order 11246 mandates a formula that promised a percentage of 6.9% of women in each labor and skilled trade.[1]

By today's formula, there should be 23% women representation in all trades. In order to achieve this goal, the contractors must be forced to comply with EO 11246 and they should be compelled to take aggressive affirmative action to ensure that women are hired at 23%.

Elvia Arriola, Attorney General's Office:

The patterns of sexism, racism, and sexual harassment many women and men of color have experienced cuts across all of the construction trade unions and all of the major industry employers. These problems are all systemic.

Merrick Rossein, Associate Professor of Law, CUNY Law School:

The city should develop goals and timetables as a measure of compliance. [Mr. Rossein points out that] *when the city is mandated to use goals because a project is*

federally funded, more women and minorities are employed on that construction site. Chapter 13B, Section 352 of the Revised City Charter (1989) requires that the Director of DLS, upon a finding of noncompliance with the equal employment opportunity requirements of the Chapter and federal, state and local law, seek the contractor's agreement to adopt an employment program designed to ensure equal employment opportunity. This includes measures designed to remedy underutilization of minorities and women [which Mr. Rossein reads as permitting the use of goals and timetables].

Problems with current measurements of underutilization

Howard Sheffey, State Department of Transportation:

One of the problems we have is with the employment goals that are in place to remedy past practices for discrimination that are based on vintage 1970 census data. That is the result of the Federal Office of Contract Compliance Programs [OCCP] *that programs have not developed reasonable goals. However, whether or not they develop up-to-date goals, the goals are only for federal programs. In the state and local government, we should advocate our responsibility by being about the business of developing a system where the goals that are affixed to projects are reasonable and obtainable.*

Diana Autin, former General Counsel for DLS:

There are several shortcomings in the current means of identifying underutilization, such as the following:

1) *Federal construction goals have not been changed since 1976. As a result, they do not reflect the increased availability of minorities or women in this area.*

2) *Because the federal goal for women does not distinguish between skilled and unskilled labor, many women on federal projects are hired as laborers or flag persons rather than as skilled workers.*

3) *The statistical analysis used to identify discrimination in the construction field requires a significant number of workers in each trade before the findings of*

discrimination can be statistically valid. Many contractors have an insufficient number of workers in each trade to make a statistically significant finding, even if they have no women or workers of color. In order to make a statistically significant finding, the contractor has to have a workforce that excludes women or workers of color to such an extent that there is a less than 5% probability that it occurred by chance alone.

4) *The availability of women and workers of color in construction reflects years of discrimination and is based on census data which is out of date and inaccurate with regard to the availability of women and workers of color in the trades.*

Merrick Rossein, CUNY Law School:

In order to withstand a legal challenge, the city will need to show a "manifest underutilization" of protected group members [women and people of color] *to justify the use of goals and timetables. The city will need to decide what is the relevant labor pool to compare with the minority and female participation levels in the construction trades.* [Mr. Rossein argues that the current underutilization analysis of people of color and women in construction] *is flawed because it uses Census Bureau data* [from an EEO Special File] *to measure the number of people in various construction trades by race and sex. Since Census undercounts minorities, and past discrimination has kept many out* [for example, only 9.2% of all sheet metal workers in the SMSA are black], *the real available labor supply is skewed.*

1. *EO 11246 was issued by President Johnson in September 1965, and requires employers who contract with the federal government to be nondiscriminatory in employment decisions and to engage in affirmative action to increase the employment opportunities of protected classes. (C. F. R. 340).*

3

Personal accounts of women and people of color in construction

Many legal efforts in the past 25 years have attempted to bring unions and contractors into compliance with governmental laws and regulations regarding equal employment. The majority of the thirteen unions who were asked to appear at the construction hearings have signed consent decrees, in effect stating that they will comply with court orders to increase their ALANA* and female representation to targeted minimums by implementing various affirmative action programs and policies as of a specified date.

However, as the following testimony from eighty former and current construction workers in at least a dozen different trades demonstrates, allegations of race and gender discrimination persist. Many people of color and women contended that they face substantial obstacles in many aspects of the apprenticeship programs, in the hiring process, and in their attempts to advance to journeyperson in the trades.

According to many women and people of color, the entry requirements of most apprenticeship programs, and the process by which are implemented by union and contractor officials of the joint apprenticeship committees (JACs), place them at a decided disadvantage. For example, many programs require a minimum level of proficiency in English. This tends to have a disparate impact on immigrants who speak English as a second language. While this requirement is not in itself discrimi-

* ALANA = African-American, Latino, Asian-American, and Native American people.

natory, it is applied unevenly. According to a number of witnesses, workers of Asian and Latino nationalities are often rejected because of the English proficiency requirement, while non-English-speaking European immigrants such as Italians and Poles are readily admitted.

Another obstacle to entry into the apprenticeship programs is that JAC officials rely heavily upon subjective criteria in the admittance process. In some programs, the interview counts for as much as 40% of an applicant's rating. Applicants are rated on nebulous criteria such as "personal attributes" and "attitude." Many women stated that often they are asked personal questions about their marital status, and whether they have children, while males are not.

Many workers blame both unions and contractors for their difficulty in breaking into the trades. Numerous carpenters cited the Catch-22 situation created by the District Council of Carpenters' requirement that prospective apprentices bring an "intent to hire" letter from a contractor in order to be admitted into their apprenticeship program. Many women and people of color stated that when they approached contractors for such a letter, they were told they first must be a member of the union. The requirement, in effect, barred them from entry.

Gaining entry into an apprenticeship program is no guarantee that women or people of color will obtain work. In IBEW Local 3, the Joint Industry Board, which is responsible for virtually all union job referrals, controls the livelihoods of members. Many workers in Local 3 testified that the business manager discriminates in referring people of color and women to job sites, leaving many workers unemployed for months, and consequently ineligible for health and vacation benefits.

ALANA and female apprentices and journeypersons contended that they were given menial tasks for which they were overqualified, or were not provided a mentor from whom they could learn to refine their skills. Others suspected they were deliberately given unsafe assignments and were not provided with proper equipment. Many people of color found that when they were laid off from a job, they faced long periods of unemployment during which they had to go out to "shape" sites or wait for weeks, even months, while their white male peers were referred quickly for jobs by the business agent or manager.

Many workers were not informed of their rights, and when they attempted to complain about working conditions, were punished with transfers to remote sites, menial work, or layoffs. Some who could not afford to pay their monthly dues because of financial distress brought on by long-term unemployment found their union membership terminated; many were not entitled to health benefits due to the insufficient number of hours worked.

In addition to the systemic practices cited above, women encountered sexual harassment on the job—both verbal and physical—and sometimes at the hands of the foremen who hired them. In some cases, shop stewards to whom they reported their problems were in collusion with management, received their complaints unsympathetically, and attempted to discourage them from remaining in the trade. Women testified that pornography was commonplace on the site, and they often did not have a private shanty or bathroom in which to change clothes. Combined, these conditions created a hostile and stressful workplace. Since in almost every case they were the only women on the site, it was all but impossible to get foremen to treat their concerns seriously or appropriately.

The following testimony excerpts are first person accounts of alleged discrimination provided by 80 individuals (47 of whom are women and 33, men) in a variety of skilled and semi-skilled construction trades. Approximately half of those who testified and identified their trades and locals came from two trades—carpentry and electrical work. Twenty-one members of the District Council of Carpenters and twenty members of the International Brotherhood of Electrical Workers, Local 3 testified. Four people testified from Sheet Metal Workers Local 28, and three from Operating Engineers Locals 14 and 15. No more than one person identified him- or herself as being a member of any other skilled trade union. Many witnesses testified anonymously, and at least a dozen did not specify their trade for fear of retaliation.

As noted earlier, where testimony is summarized by the Commission, it appears in brackets and is regular (*i.e.*, non-italic) text (for example: *testimony;* [Commission comment]). Remarks in italics are direct quotes. In some cases, the sequence of an individual's statements, though not the content, has been altered to provide continuity of testimony by subject matter. Testimony is organized by trade and thus is not presented in the order in which individuals testified. For example, the testimony of carpenters is presented in one group, as is the testimony of electrical workers, to

make it simpler to discern the consistent patterns and practices which emerged from testimony on a particular trade.

Abstract of Testimony

Carpenters

Spencer Meeks, Carpenter; member of FightBack:

I've been a member of Local 17 for three years. I'm a journeyman. I completed an apprentice program in Florida, and I transferred here from Florida. During that [three year period] *I haven't been referred to any job from the Local. The work that I receive in the union has been through my coalition, Harlem FightBack. That's the only recourse I had: to join a coalition and go out and shape jobs and do what has to be done to get work.*

During the three-year period that I have been in the local, I have been signing the work lists on a weekly basis, but I have never received any call concerning work. People above me and below me on the work list have gone out to jobs that last up to six months or a year at a time. I have noticed that most of the jobs that members of minorities are sent to only last a few weeks, or a few days. It's almost impossible to find a long-term job in construction if you're a minority. The longest time I've worked on a job is six months, which is the site I'm presently working on—the National Black Theater up in Harlem.

Eusteus Mason, Carpenter; member of FightBack:

I've been in the Carpenter's Union, Local 17, for sixteen years. In 1972, I tried to get in the union. The VA had no power to get me in the union. So I went over to the union myself and I began shaping construction jobs. I joined FightBack and was able to get in right away. If the contractor lays you off, the union is not going to come back and find out why you were laid off. They're just going to send you to another job when they feel like it.

The organizations make an effort to put you back to work. [If a white foreman began the job, he would be permitted to finish, but when there's a black foreman, cheaper labor is brought in to finish the job once the technical work is complete]. *I can name quite a few projects where I was laid off when the layout* [drawing lines where the wall goes] *was finished.*

The Carpenters don't use tests [before accepting you into the union]. *They send you on a job, they tell you to build a wall or build a step; if you're a journeyman you're supposed to be able to build that step. If you build it, they can't say you're not a journeyman. Whereas the Mechanical Union will bring in a guy who happens to be their friend—he may be working in a pizza parlor all his life—and they put him to work. He doesn't have to know anything, and he can get* [paid] *full scale. That mostly happens with the white guys.*

[Mr. Mason got into the union in 1972 and] *was able to run a construction site by about 1979 or 1980. I was going to NY Institute of Technology at night. There are very, very few minority foremen in Local 17. I'm talking about the real foreman that has his own project. I would say maybe at this point none.*

Michael E. Murphy, Carpenter:

The construction trade is a cesspool. The Hispanics and blacks of New York City are the largest manpower pool of non-union labor in the city. There has been a concerted effort by the unions and contractors to prevent the tradesmen of the minority groups from becoming organized. A colleague was gunned down in front of his house for trying to organize minorities. Discrimination prevails in job referrals. [After running for office he was blackballed by the union.] *I've had to go back to work outside the industry. Laborers are used to doing carpenters' work because their rate of pay is less. You have to be on a buddy-buddy list to get the jobs with the overtime.*

[Mr. Murphy was asked why he is testifying about discrimination in his union, since he is not a minority, to which he replied:] . . . [I]*f you want to maintain a strong union and union control on the job, you have to bring minorities in. It's the right thing to do. If someone does the right thing by me, I will do the right thing by them.*

Local 608

Peter Dooley, Carpenter:

These public hearings are biased. There are forty percent of non-whites working on construction sites throughout the city of New York. The discrimination level you are being told about is false and misleading. There is a lot of racial banter and it's accepted because it's not malicious. I've never seen a white guy using a racially discriminatory term towards a black man on the job.

Shirley Hemmings, Carpenter:

The day I started work [in 1983], *male members of the company made comments about me. For instance, one of the construction workers said, "This is the woman we were expecting," because they had, of course, talked about the woman coming on the job. "She doesn't even have a body. What are we going to do with her?" A couple of days later, the foreman's son, with whom I was working, then said, "We did not want to hire you. We were told that we had to hire a nigger woman." He continued to say that, "If we had to hire a woman, at least we wanted to hire a white woman and not just a nigger. You're not going to be on the job long anyway. You'll be on welfare and your kids will be on welfare forever." These statements were also heard by other workers, who said nothing.*

One time a male worker called me over and said, "Look at this," and he waved his penis in front of me. They would also hide my clothes. One time they pushed heavy material in front of the door so I could not get out of the bathroom. I had to crawl through an eight-inch space on top of the door just to get out of the ladies' room, and then I had to go home without my coat because they had locked the office. Everybody had went home and they left me closed up in the bathroom. The men working with me always sent me for coffee. After reaching journey-level status, I was often commended by the big bosses. Nevertheless, when there was a layoff, men with less seniority were kept while I was constantly laid off.

While working on the docks, my foreman would send me up on a scaffold five stories high in the rain to tighten bolts without a life jacket or safety belt. On most of the jobs there are portable saniports. Regardless of the number of saniports provided, there is never one set aside for the women. [Shirley Hemmings' response to why she continues to go back to the same trade was:] *This is how I feed my family. Previous to getting into the trade, I was on welfare, the whole cycle, which was no fun. This isn't fun either, but it's a way of making a living. And I'm qualified.*

Local 135

Barbara Trees, Shop Steward;
founder, New York Tradeswomen:

My situation in the union has improved since these hearings. I'm now working as a shop steward. Also, at a recent Local 135 meeting, the business agent spoke out, for the first time, against sexual discrimination.

Contractors have the power to fire people on job sites, and they exercise that power unfairly against women, especially women apprentices. If contractors were required to give, in writing, the reasons for layoffs, then an effective grievance procedure might be established. Right now, the grievance procedure is confusing. I don't know anybody who has gone through it.

To be admitted to apprenticeship school, first you must present yourself to a contractor, and get a letter of intent-to-hire. This so-called "open admissions" policy is discriminatory in practice. Contractors don't hire women off the street. I would shape jobs and the contractors would laugh at me. The school used to maintain a list, and people were ranked according to education and experience, and if you were fairly high on the list, the school would help you find a job. It didn't help women that much, but at least they went by some order.

The union does not operate democratically. It's hard to make it change. Workers don't get to vote on their contract. Shop stewards are chosen by the business representatives. Business representatives hold your working life in their hands. If they don't like you, you probably won't get work. They either re-elect themselves continuously, or replace themselves with their sons.

We need to form women's committees to support each other, particularly the apprentices just breaking in, but the union holds back information about its members, and it's hard for us to find out who we all are. Even though our contract states that apprentices are to be kept on the job until the very end, that certainly has not happened in my case.

For quite a while, the union ran its work referral system by phone, which lends itself to discrimination, because you can't see who is going out for what jobs. Now, because unemployment is so bad, lots of workers are showing up at the hiring hall, and sitting and waiting for the union to give them a job, but that doesn't happen very often. Our contract provides health benefits, but workers have to acquire a certain number of hours before they are eligible to receive them.

Local 531

Witness Audio B, Carpenter:

I'm a carpenter in Local 531. I've been in the union approximately eight years. [The hiring hall refers people to jobs]. *In a few situations, I have worked better*

than some of the other members of the crew, yet I have been the first one to be laid off because I am a woman. A possible solution to this problem might be having a women's construction crew.

As a result of not being wanted, I don't make the required hours annually, which is 900 hours, to receive medical benefits. In the eight years I have been working in the field, I haven't received benefits. I had to go outside to pay my own money to get benefits, yet my weekly salary goes toward the welfare fund, which is medical benefits for other carpenters. Perhaps a solution to this would be if they would give partial coverage for under 900 hours or have an optional contribution into the welfare fund rather than taking money out of my check every week, because it's a substantial amount and I'm not seeing any of the benefits whatsoever.

Unspecified Carpenter Locals

Eileen Soloway, Carpenter,
International Brotherhood of Carpenters:

I'm a Civil Service carpenter and I'm a member of the United Brotherhood of Carpenters. I've been a carpenter for ten years. I want to go on record testifying about the method the city has of hiring tradespeople through the Civil Service procedure because I feel that, in some cases, it can lead to discrimination.

There is a Civil Service test; you need five years of experience as a journeyperson to take it, and then you're placed on a list based on your score, and then they have pools. The city agencies have employment pools of fifty people at a time off the list. Before Koch, there was a one-for-one: you got hired in the order that you were on the list. When I came in, they had changed the ruling and they have a one-out-of-three law which means that the agency can choose one out of three applicants. My experience was that I was fairly high on the list and I was rejected by each agency. I was a qualified applicant, so I assumed it was something that had to do with my gender. I found that I was going down further, and I would end up in pools with people further down on the list. I eventually did get a job as a temporary worker for the city, and then I eventually got picked up by the Health and Hospitals Corporation as a permanent worker. [But before this] *I was in one of these pools with the Parks Department, and I knew I was the third person, and I knew the other two hadn't been hired. They asked me if I would submit to a pre-employment investiga-*

tion that would take thirty days, and I agreed. I never heard from them again. I think the city should not have the opportunity to discriminate in this way.

Chan Kam, Carpenter:

I came from Hong Kong three years ago. I was a construction worker for ten years in Hong Kong in scaffolding. I have years of experience in scaffolding. In January, 1987 I was hired by the American-Chinese Planning Council (ACPC), and I was doing carpentry and masonry. We worked for seven hours per day and our wages were from $4 to $8 per hour. We had no medical benefits, we had no vacations. In December, 1988, I was fired because we organized a union. In November, 1989, I went to the New York Plan, but they sent me away. They said I had to be accepted by the apprentice program before I could qualify for work.

But if I were to be accepted by the apprenticeship program, I would need to have nine years of education and to understand and speak English fluently. I am working for American supers and owners. So my complaint is against the trade union which set up conditions that really ostracize or eliminate people from Hong Kong, from Taiwan and from Mainland China, while favoring people from Italy. They can still find work very easily. This is very unfair and discriminatory.

We tried to set up our own trade union to improve working conditions. The city government used to have a contract called IRAR, Intercity Remodelling or something, and they used to contract with ACPC, but the contract was taken away [because we began to organize a union]. *This is another sign of discrimination. This means we minorities are not able to join the trade union to get proper* [working conditions. In the IRAR program, administered by HPD], *we were doing mostly debris removal and taking down partitions. We weren't being given skilled work.*

Anthony Clements, Carpenter:

I registered with the carpenter's trade school in hopes of obtaining an apprenticeship three to four years ago. My background included a vocational education from Thomas Edison High School in Jamaica, Queens. I had worked as a carpenter at Creedmoore Psychiatric Center in Queens Village as a work study job, and later worked full-time for more than a year.

I became disillusioned when, after fishing around with a list of dozens of employers given to me by the training school, I didn't find a job. Most of the places I went to

didn't care that this whole process was set in motion by the trade school. Where are people who wish to learn this trade to go if they have no family background or experience? I felt as though my $25 application fee was just a donation to an indifferent organization. The thing was that you had to have a job to get in the union and the union didn't take you unless you have a job.

Linda Leday, Carpenter:

I was told from the beginning that there would be some hardships. I was told to ignore things, things will go away, things will be worse if you stand up for anything. Although there were bathroom facilities provided for the men, they would relieve themselves against the columns in front of me.

I am under stress because of all the harassment I am constantly confronted with on the job, pornography pictures everywhere, and sexual comments, sexual innuendoes. The graffiti gets to me more than anything else. Being the only female in an elevator surrounded by men with sexually explicit drawings all over the walls. There is no way females can't have separate [changing] *facilities. We can build buildings in this town; a shanty takes only a few hours to build.*

Tradeswoman G, former Carpenter's Apprentice:

I was discouraged from succeeding as a carpenter's apprentice because I am a woman. I have worked as a carpenter's union apprentice here in New York. I applied to the carpentry school on E. 26th Street. I was hired and joined the union local. My boss [would make demeaning sexual jokes and remarks like] *"go up the stairs first because I want to look at your ass."* [He would ask inappropriate personal questions]. *I had to get the men coffee. When I asked how they wanted their coffee, they would respond, "I want you to give me a blowjob." One guy locked me out of the shanty one weekend so I couldn't get my coat or drop off my tools. It was Winter.*

Only once or twice did the boss show me how to cut wood, but he stopped once I refused to have sex. If I wasted any wood trying to learn, the younger guy would threaten to tell the boss. This same young guy gave wood away for private use constantly. The male apprentices were taught by the mechanic—I was not. I had an accident which was witnessed. I told my boss, who said he would try to get Compensation. I mailed in receipts [but was never reimbursed].

Tradeswoman H, Carpenter:

[Tradeswoman H is a woman of color who lives in New York City]. *Wanting to be a carpenter, I took classes at a carpentry school through Nontraditional Employment for Women (NEW). All the other students but two were male. We women from NEW were segregated from the regular carpentry school attendees and not taught seriously.*

Out of financial desperation, before I finished my carpentry training, I took a job as a laborer on a construction site where, out of a workforce of about 130, there was only one other woman. I had a continuing problem with my foreman on the job. I was always assigned to work alone, while the other laborers, all men, were told by the foreman to work together on both light and heavy jobs. They would be sweeping while I was carrying heavy equipment on my own. Also, while the super gave me direct orders and watched me, he had nothing to do with the other workers. It's like a rule. If you're female you have to work twice as hard if you want the job. The guys take cigarette breaks, bank breaks, etc. I knew better than to try.

At first I had nowhere to change out of my dirty clothes at the end of the day. It took over three months for the other woman, an electrician, and I to get changing facilities. On the job there were pictures of naked women everywhere—done in spray paint anywhere there was a wall—pictures and vulgar language. It disgusted me.

I was often subjected to verbal harassment. The men would say many things which are hard to put in particular contexts, because they happened so often. Once the foreman grabbed his genitals through his pants and gestured to me.

[I was laid off after eight months on the job and have not worked construction since then]. *I have tried to get work through NEW, not the union, because the shop steward told me the union would just tell me there was no work. I understood that it would be because of my sex.*

Claire Ervin, Carpenter:

I've been a carpenter for 12 years. In 1981, I began the apprentice program after working a few years in non-union jobs. I was harassed by my union instructor in the apprenticeship program. He put his arms around me in school and called me at home. This attention was unwanted, but I tolerated it in order to complete the program.

On my second union job in 1982, I was sexually harassed by the laborer foreman. I also was assigned dangerous jobs such as walking on an outside wall as high as 16 floors without a safety line. I was the only person asked to perform that task. On the same project, I was asked to move and build large concrete forms. I suffered a permanent back injury.

After completing this job, I looked to the union for a dispatch. Usually women are dispatched to heavy concrete projects: bridges, jails, sewer plants. I was dispatched to an airport job, a heavy concrete pan job, along with four other women. They were all hired and laid off the same days within a 3-week period, a blatant misuse of affirmative action guidelines.

I was then assigned to a county jail to do heavy lifting tasks. I also experienced more sexual harassment, including a barrage of sexually explicit comments and jokes. The shanty walls displayed sexually explicit pictures of women.

During my third year as an apprentice, I repeatedly applied for work on a large construction project and was always told there was no job available. I was finally hired after an EEOC discrimination lawsuit. I was assigned light work. I proved my competence and was given the chance to move up, entering 3rd year apprentice level and leaving three years later as part of a project management team on a $2.5-million project. The company now employs several women.

In November 1986 I left Portland, Oregon and went to the carpenters union hall to get my union book transferred to NY I was told I had to get a job before my union book was accepted. This is a violation of union rules.

After unsuccessful efforts to resolve this violation of my rights, I filed a discrimination suit with the Bureau of Civil Rights. A female general contractor friend advised me to back down to avoid problems, which I did. The local finally accepted my book in November 1986, but I never sought to be dispatched from the union hall in New York. I found my own union work, but I was still subjected to verbal harassment and obscene sexual gestures.

In the summer of 1987, I began doing non-union work. I haven't done union work since then. From 1978 to 1987, I never worked on a job site that had a separate bathroom or changing room for women. I want to point out that in 1981, twice as many women were in the carpentry trade in Washington State than in NYC in 1990.

Portia Walton, Carpenter; former Shape Leader from NEW:

I'm a former shape leader from NEW. I was not [associated with any union at that time]. *I had an intent-to-hire letter that was ignored by the sites that I went to. I worked out of a private non-union shop. I did register with the New York Plan for Training in 1988. I was responsible for taking at least twelve to fifteen women to construction sites throughout the metropolitan area. This was done on a daily basis. We always met with a negative response from project managers. They would say, "The women don't have substantial training" and things like that.*

There were instances where there were like 89 workers and only two or three women represented. We brought them information like executive orders that said there should be 6.9% women in the trades, but there were long gaps in between the time that we went to the sites and when they hired the women. Still, there were times when we went back to those same sites, and there were additional men on the sites, even though we had been told, "We are gearing down our employed."

The Tombs was a site we would continually go to because it was receiving state or federal money, and there were 14 bricklayers and one of them was a woman. There were nine males on the site and there were no women. It's been my experience that the general contractor says "Well, the union does the hiring . . ." and the union says, "Well, the general contractor does the hiring." I think that if I was a GC, I would have some adequate knowledge of what the hell was going on at my site: who is doing the hiring, who is doing the layoffs and that someone would be able to converse with me in an adequate manner in regard to what was going on.

Tradeswoman P, Carpenter:

I'm a 38 year-old Caucasian, and I reside in New York City. [This individual testified anonymously out of fear of physical violence or other retaliation]. *I was able to join the union after a few months, but I was unable to get credit for work I had done beforehand. They turned me down even though I gave them the name of the company, and marked my card as a first year apprentice. The same day, a man who had just emigrated from Ireland walked in and applied. In return for a $500 fee, they didn't even ask him any questions about his experience and stamped his card as Mechanic-level. Giving preferential treatment like this to men, especially white and Irish men, is very common, but I have never seen a woman get credit for her outside experience.*

About a month after I joined the union I got my first job—it was a small job, with older carpenters, and they treated me pretty well. At the second job I worked on, pornography was posted all over the site. One worker had a giant cardboard wall full of graphic pictures of penises and vaginas, naked women in provocative poses, gaping orifices everywhere. When I told him I was offended, he laughed. After I had said something, other men started bringing in posters of barely dressed women.

Some of the men would take down the posters when a woman came on the job, but others would deliberately leave them up just to get a reaction from the women. There is usually no one to complain to, because the foreman or union representative is in on it. You feel really alone anyway, and having to complain to all men makes it worse; it just makes you more of a target.

There is an enormous amount of hostility against women on the job: a lot of sexist comments, talk about how they hate their wives. This is the only place they feel they can go to get away from women, that it's their turf, and they can get away with anything. It is very threatening to them to have me there. I've heard them say "Women have no business being in the trades," and men telling each other not to talk to me, not to let me know that there is work to do, etc. [Once Tradeswoman P caught the union representative at the hiring hall in a deliberate lie about no jobs being called in for apprentices].

[Out of the five jobs she has worked on, only one provided her with a separate shanty]. *The men had shanties on all of these jobs. I had to find my own place to change, which takes time away from work or after work, and someone has to wait to let you out. When I did have a shanty, the men got jealous, came peeking in, left behind pornography. Often it got used as a storage closet, until there was almost no room to change in. There is no one to complain to about this; the foreman doesn't care. Dealing with the feeling of isolation and constant assaults on your self-esteem is very difficult. I am in therapy myself, and I think the union should pay for it.*

I would like to see apprentices' work monitored more closely, with stricter requirements on the number of hours you have to spend actually learning your trade, and not just doing menial jobs. Women especially need this because they have no other way to learn their trades. I would like to see a guarantee of toilet facilities and a changing room for women on every job. The shop steward and the foreman together need to make sure that women know their rights and have a place to go to complain about their problems. Support groups for women would really help.

James Brown, Carpenter:

I have been in the Carpenter's Union for thirty years. I have had a case before the Commission on Human Rights for almost two years. And because they have not grappled with my problems, I can't get a job through the trade union. The collusive effort between the trade union and the contractor to destroy the African-American carpenter trickles down to those who supervise the carpenters on the job. When the workforce decreases, the African-American is less likely than the European-American to remain on the job.

[Mr. Brown spoke of the discrimination he experienced during thirty years as a carpenter.] *I worked at a site on 125th Street and Fifth Avenue as a shop steward for a month in December, 1989. It was at the black theater there. I was laid off. One of the shareholders of the company came up on the roof and said "Are you James Brown?" When I said yes, he said, "We had a James Brown some time ago. He gave us hell." That contractor used to work in the District Council of Carpenters office, so he knew me. He used to be in the office when I used to go there and protest the dastardly deeds that were being thrust upon the black carpenters over the years. He laid me off because of a longstanding grudge he had against me.*

Akil Luqman, United Brotherhood of Carpenters and Joiners, Nassau County:

I'm a member of the United Brotherhood of Carpenters and Joiners, Nassau County. Everything that has been said here today as far as discrimination and racism in the trades can be amplified one hundred times when it applies to Nassau County. People in the trade [find that] *if you don't work, you don't get the benefits, you don't get medical coverage. So if you don't get time in, you can't provide for yourself or family.* [A member has to work about 1,000 hours a year in order to be eligible for benefits.] *In Nassau, and I believe in New York City, you pay into the annuity and into the apprenticeship program as well, through your work hours.* [You don't get that money back if you're not eligible for benefits.] *The only thing you get back is your vacation pay, which is allotted to you twice a year.* [The money] *stays within the District Council.*

I went through the apprenticeship program that was funded by the State of New York, with 144 hours every year, and graduated and became a journeyman. I've been told that I'm a troublemaker simply because I asked for more work out of my local.

Frank Hogan Jr., Carpentry Apprentice seeking employment:

I have been trying for the past two years [to get into the Carpentry trade]. *I have been holding an intent-to-hire letter from the apprenticeship school. I have seen guys on the same jobs that I have been going to, and they got their jobs, and I have had a hard time getting into an apprenticeship program.*

Brenda Stokely, former Employee, Carpenter;
Member of NEW and Harlem FightBack:

One of my major responsibilities at NEW was to take each cycle of women, usually a crew of twenty, to various construction sites throughout the city. I would make contact with the superintendent or project manager to assess what the job needs are. Usually what we experienced was out-and-out racism in terms of derogatory comments not only from workers on the site but some of the people in charge.

I found that the most outrageous contractors were the ones who the City gives the most money to—Tishman, HRH and S&A Concrete. The fines obviously are not significant enough, and they know also that they can get support from the unions. You can't find women on Tishman jobs. From January 1988 to June 1989, NEW was only able to get one woman hired on a Tishman job. In the case of S&A, they would hire [a woman] *and have her carrying twelve-foot beams by themselves. Women are not protected in terms of job safety. A piece of sheetrock dropped from the third floor hit a woman in the head who was told it wasn't necessary for her to obtain a hard hat.*

At Citicorp, a woman that we had sent to the job was stopped on a stairway and threatened by a white male worker and called a nigger bitch, and told not to come back to the job again. It turned out that all of the black men on the job had faced similar situations, had been harassed and threatened and called racist names. This was on a major job in Long Island City. At the same site there were numerous violations in terms of safety and hiring practices. Still, all of the subcontractors and contractors [such as Turner] *continued to get monies from the city. There is no respectable leadership coming from contractor representatives on the job sites nor from the unions. The shop stewards would lie just like the project managers and supers. Women,* [and] *black and Latino men pay large dues and entrance fees and get very little representation. If the women filed grievances at a higher level they were blacklisted.*

Julio Porrata, former Carpenter
Chairman of the Latino Democratic Caucus, Bronx County:

I'm the Chairman of the Latino Democratic Caucus from Bronx County. I first had my experience in construction in 1967. I graduated from high school in 1965 as a carpenter. I looked for two-and-a-half years for work. I couldn't get work. In 1971, I started to go to every construction site in the Bronx and Manhattan. At the construction site they told me, "Mr. Porrata, we can hire you, but first you got to be a union member." At the union hall, they told me, "You can't be a member of the union unless you have a job first." You know: what they call the Catch-22.

I joined the Black and Puerto Rican Coalition of Construction Workers and we went over to 135th Street and Broadway, where the Diesel Construction Corporation had a project, and we kicked the living pants, physically, violently, out of a whole bunch of people, and finally we got the master electrician off the project. Where there were no jobs, forty-something guys were hired. I don't make any excuses for what I had to do; you've got to feed your kid.

We had to produce—to clean up four and five floors while other people that were laborers [union members] *were doing one and two floors. The project came to an end within six months, and we kept on paying our dues for a year after the project was over. I stayed in the industry until 1974. I couldn't live like that. I had to get into another profession.*

With all due respect, I don't believe these hearings will solve anything. The only way that this [discrimination] *can be stopped is by violence. I think the system has failed us. If New York City can't do it* [reform the industry] *in peace, I guarantee you that the people will do it violently in their hunger for dignity and for human rights.*

Electrical Workers

Local 3

Samuel C. Lopez, Electrician;
President, United Third Bridge, Inc.:

I'm President of the United Third Bridge [UTB] *Incorporated, a nonprofit organization in the area of civil rights. We formed UTB back in 1975. We started to organize. We finally got incorporated after two years of being sent to the wrong*

places, being kept out of work, blackballed, intimidated, harassed and blacklisted. The big people who opposed the incorporation of UTB were the International Brotherhood of Electrical Workers [IBEW], *Local Union No. 3 of New York City. Also involved in that was the New York State AFL-CIO. And the Building and Construction Trade Council, who at that time was headed by Peter Brennan.*

During the time that we were continuing to incorporate, various of our members were kept out of work. I was getting threatening calls at home, told that I was going to be found at the bottom of the East River with concrete and cement. And at one point I was told that my children were going to be kidnaped, at which point we contacted the FBI. During this time, we took our problem to the United States Attorney's Office and to the Justice Department in Washington, D.C.

One of the people we were having meetings with, Manny Labido, was found on Third Avenue with his head blown off. One of our members, John Rodriguez, was supposed to go with me to Washington [to meet with the FBI and Justice Department]. *John never showed up. He was found dead in his apartment. The FBI and Justice Department told us to deal with their New York offices. Nothing came out of our meeting with Ms. Bloom of the U.S. Attorney's office.*

We also complained to our legislators about the tactics that were being used on us. We complained to the Black and Puerto Rican Legislative Caucus at that time. Al Vance sent letters to the State Division on Human Rights, the Equal Employment Opportunity Commission [EEOC], *and the National Labor Relations Board. We have serious problems with these agencies. They were not interviewing our members properly.*

[During this time, harassment continued.] *Tony Cancel, a member of our organization, was coming home from work, and an Hispanic person put a gun in his side and then a white person jumped in front of him, put a gun to his forehead, and told him to drop his case with the EEOC.*

Every time we went to the EEOC to file a class action suit, we were met with a person by the name of Al Cursey who gave us such a hard time. He told us that we couldn't file these papers. Another member, Gladys Lopez, after completing the apprenticeship program and actually getting a college degree, was thrown out of the union two weeks ago.

[Recently] *I did a radio talk show with the Deputy Commissioner of the New York City Commission on Human Rights, and Gladys also appeared on this show. This was Tuesday. Wednesday I went into work, I was transferred. Thursday I was fired. I ran for the executive board of my union. As I was running for the executive board, my daughter was beaten up. Charles Calloway is our executive officer. While working, a person pointed a gun at him on the job.*

While we were trying to incorporate UTB, a person by the name of Carmine Scialto approached me and said, "James McCarrin [Business Representative of Local 3] *has got a lot of muscle and we are going to get rid of you F . . . 'in Puerto Ricans."* [Mr. Scialto said this in front of Charles Calloway as well]. *Mr. Scialto later came back as a shop steward.*

Mr. McCormick has controlled the employment office at the union hall. Every local around the country has a list and you do know who is in front of you and where you are on the list. It is posted. New York City is the only one that doesn't have that list. We should have that list so we know who is in front of us and who is behind us.

Also what is greatly used in our industry is favoritism. We have the business representatives and their families. We have Mr. McCormick and his family. I think at this time, the agency has to take an accountability and start to look at how many of the union representatives, business representatives, how many people who they have in their families that are working in the union and where are these people working? What jobs are these people holding today, and where exactly are Mr. McCormick's sons, his relatives and all the business agents and their relatives? That includes Thomas Van Arsdale [Local 3 President] *and his relatives. We can also get a sense of how much unemployment they had in comparison with us.*

We have the out-of-towners working in our jurisdiction now. We have close to 2,000 of them working. We can't even get jobs for our local men. From what I understand, there's close to 300 men out of work. How is Local 3 employing close to 2,000 out-of-towners in our jurisdiction when my card says I'm a dues-paying member and I can't even get a job? Some of these out-of-towners have been here, mind you, for nine years. Some of them at this point are buying houses here. I have been in the union for twenty-four years and I had to take my daughter out of college this year because I couldn't afford it. I had to take my small son, who is nine years old, out of Catholic school because I couldn't afford it. But yet, we have travelers working in our jurisdiction that are buying homes and putting their cards into our union. This is really outrageous.

I was working with Northgate Electric. I was told that if I don't buy a raffle [ticket] *that I couldn't work any overtime. I was asked if I wanted to work on election day. I said fine. I was pulled over and told, "You're going to have to hand out leaflets for David Dinkins, and if you don't, you can't work on election day." I said I'll be in. I came into* [the hiring hall] *that day. I was told to go to an office on 116th Street to hand out pamphlets. I said to them that I will not go to 116th Street to hand out leaflets. Two weeks later I was laid off. I filed a complaint with the Commission with reference to Northgate Electric.*

In order to incorporate UTB, we needed approval from the judge, a waiver from the Attorney General's Office and filing with the Secretary of State, who at that time was Mario Cuomo. A letter from Mr. Bruce Stuart [at the Secretary of State's office] *told us that in order to get approved, we needed the approval of the Industrial Board of Appeals. I knew that this was not true, but it was a way to stop UTB from incorporating. They denied us. The union was very much involved. I got letters, which I have given to the Commission, which stated that we were nothing more than a dissident faction who overreached our status, and that our Certificate of Incorporation should be rejected for that matter. I took the papers to the judge and to the Attorney General. I sent the papers to the Secretary of State for approval. The incorporation papers went through.*

This is just an example of what kind of stuff this union is involved with, and the political power this union has, to be able to get into the EEOC and get our cases automatically closed, no interview by investigators. Some of these politicians are getting money from the union PACs, and when it comes time for them to be here to represent us, they choose not to be here. So we have a very serious situation. We hope the Commission will be able to penetrate through all of that stuff.

Charles Calloway, Elecrician;
Executive Offices, United Third Bridge, Inc:

I am an A-Journeyman of Local 3. I came into the union through the joint apprenticeship program in 1972. I have eighteen years in the trade. I'm also executive officer of United Third Bridge. I have a problem with Mr. McCormick, the Employment Director. On various occasions I get laid off. When I go down to the hall to re-sign-up for another job, I'm told, "We'll get back to you." I call them, and I'm told, "He's busy" or "He's not in." I've gone to the EEOC and the Commission on Human Rights, but it seems like the problem is still happening.

On a job I was working on for Federal Chandross out in Coney Island, it was just me and an apprentice. They were just starting up the job, so there wasn't much to do; there was no material on the job. I made up some extension cords and some lights. Later that day, the foreman came back and says, "This is all you did?" Words were exchanged, I was laid off. I went down to the hall. [I was told] *"You have to write a letter explaining what happened," and again they tell you "We'll get back to you." So there's a lot of subtle discrimination, and if you try to speak up, you're a trouble-maker. I have been labeled as such.*

Over the last year, I would say [I've been unemployed] *about twelve weeks.* [The average journeyperson working for Local 3 is unemployed] *about half as many weeks. I think* [that people of color are out of work for longer periods of time than white males in the trade]. *Just recently, I was sent out by the Employment Department to go to work for WJK Electric, Fifth Avenue. They were working on two separate buildings. And I was working with another apprentice, we were drilling some holes in the floor. An apprentice tells me that the foreman told him that after we finish, we could go. So this is exactly what I did. Lo and behold, there's the story that "Oh no, I didn't say that," so I'm written up and laid off. I always went through the union for work* [instead of going directly to the job site or to the GC].

Feliciano Felix, Electrician;
Member, United Third Bridge, Inc.:

I am an electrician for seventeen years, working for the IBEW, Local 3. I feel I have been discriminated against for several years, mainly by the Director of Employment. I've been held back from work, and I believe this is a practice that's been done by contract between the contractors and the union because I have been unemployed several times for different reasons. They could say I'm not productive and [am in need of] *constant supervision or a whole slew of reasons, most of them were not true.*

You're supposed to write the union about why you believe you were terminated. When you go to the union, they actually like to keep it within their circle. They are going to investigate the matter. But how long does a phone call take? Does it take a month to actually verify that the guy is wrong or right? For most workers that have complaints, within three days or so they have a job. In my case, it's been a month's time before I get a job. If I am unemployed two or three times a year, then at the end

of the year, when it comes time for vacation, they say you're not eligible for a vacation. Then you have to write a letter stating the days that you were out and why you were out. So, two years in a row they said I was ineligible for vacation.

I wish there was a list [that indicates who is unemployed, in chronological order, who is hiring, and who to apply to]. *As a member of Local Union No. 3, your practice is to go back to the hall. You can't actually go to any job site stating any jobs. They will not hire you on job sites.* [If a referral comes from the union, the electrical contractor will take the worker on]. *Anyone over your status* [such as a foreman], *maybe even under your status, can actually have you terminated for whatever reason they wish.*

Mary Swinson, Electrician:

I'm presently employed with Local 3, the IBEW. I graduated an electrician from Franson Institute in 1984. [With a recommendation from NEW, I entered the training program]. *On the first day of employment, I was sent to Forest Electric at Two Penn Plaza. There were no bathroom facilities on the job, and* [there was] *pornography on the walls. No one knew what the training program was about. At the end of the day, I was dismissed. I was rerouted to the Brooklyn Navy Yard. I was the only woman on the job for the first three weeks, then a Hispanic woman was hired. I had to use a bathroom at a store which was across the street.* [After being laid off from that job] *I was sent to Federal Chandross, a sewage plant where conditions were intolerable.*

[After being told I had to leave my work clothes at the job, they were stolen. My tools were gone also. I was told I would have to pay to replace them.] *On another job, I got concrete in my eye. I had to arrange for first aid by myself. I was told to be back on the job by Friday or I would be laid off* [despite a doctor's note]. *I was terminated from Local 3 on March 16th. I wrote a letter of appeal to the JIB* [Joint Industry Board]. *It was denied. The letter informing me of the decision does not say why it was denied. I was told I should apply for any kind of benefits that I was entitled to. I told* [Buddy Jackson] *that I am entitled to all of my benefits since I've been working for Local 3 for five and a half years and I completed the apprenticeship program with a 93.5 average.*

There was a shanty outside set up for the men. There was no shanty for the women. I was the only woman on the job.

I made it my business to make it to work ten minutes before the foreman even began to appear. I took the initiative to go to someone else to get a lock to put on the foreman's shanty. They didn't like this at all; they said I showed too much initiative and that I had no business being on the job, and that I should be somewhere in somebody's office instead of being on the job working with a bunch of men.

Once I left my clothes and tools on the job. When I returned, they were gone. When I complained, I was laid off for reduction of workforce. Anyone over your status, maybe even under your status, can actually have you terminated for whatever reason they wish.

Arnold Brown, Electrician;
Treasurer, United Third Bridge, Inc.:

I've been a member of Local 3 for eighteen years, a journeyman for ten years. I was working for a contractor called Dunkinson Electric on a job in the Bronx. I was transferred to a job in Queens [because I refused to work on another site for another contractor]. *The general foreman on the site in Queens, a black man, suggested I take a layoff from the job, and go back to the union for a different job. I said okay. But six months later, I was still out of work. Mr. McCormick, the director of Local 3, is never to be found. I was out of work for a year and a half, and my Unemployment ran out.*

One of the business agents at the union hall, Howie Cohen, said he would put me back to work. I have been working with Fishback and Moore for the last year and a half. But, the thing is, we have a serious problem down at our local with the employment director, Robert McCormick. He has a lot of power, and he is just not using it the right way.

Richard Martinez, Electrician;
Member, United Third Bridge, Inc.:

I'm a Local 3 member for the last two years. I was denied vacation from Local 3. I was laid off for taking three days off in a six-month period. They kept me out eight weeks for that. [They claimed it was] *for nonproduction with seven other guys* [but it was in order to extract concessions]. *We took them up in front of the grievance board. There's three guys on the grievance committee.* [After you meet with them], *they have the contractor come in and they hear his side of the story. There's one*

black guy and there's two Italian guys. I was out of work for four weeks going through that process with no income coming in.

David Martinez, Electrician;
Member, United Third Bridge, Inc.:

My trouble started with Local 3 back in 1984. I was injured on the job [when the foreman drilled a hole through my hand]. *I got about five stitches and stayed out for five days. I didn't file for compensation, and they laid me off for absenteeism.*

I went to the Joint Industry Board. They didn't want to give me a job. I got a job about two or three months later. [At another job,] *I was working for Dunkinson Electric from Long Island City. After about seven or eight months, I injured my shoulder on the job. I went out on compensation. I was out for seven months. I reported back to work sometime in 1986, and applied for work. The Employment Director, Mr. McCormick, looked at my report and said, "It looks like you don't want to work. Why don't you go find a job doing something else?" Three years went by, and I still didn't have a job.*

I began driving a cab. After three months, I went back to the Joint Board. They again refused to give me work. They finally gave me a job. I've been working for about a year now. [Even though they hired me] *they told me to quit the union.*

Gladys Lopez, Electrician;
Recording Secretary, United Third Bridge, Inc.:

I'm the Recording Secretary for UTB. I came into Local 3 in 1982 through the apprenticeship program. I always have had problems since the beginning. [I worked a couple of jobs where I was given coffee duty]. *I was at Forest Electric for a year and a half. I was terminated from them after five foremen gave reports that I was not accurate. In 1986, I was terminated from the apprentice program. I filed a complaint with the New York City Commission on Human Rights. The case was dismissed because Local 3 denied that I was terminated for discrimination.*

In April 1989, I was put on 90-day review because I had gotten a bad report from Pride Electric saying, "Needs constant supervision," and "Low Production." I have been with twenty-six contractors in nine years since I've been in the union. On February 6th, 1990, I was in front of the Joint Apprenticeship Committee. [I was

terminated from the program and told to get a job at McDonald's because it was a waste to pay me $27.00 an hour].

Sandra Pardes, Apprenticeship applicant:

I applied to the apprenticeship program of the International Brotherhood of Electrical Workers, Local 3, in the late Spring of 1989. Of the approximately 80 people who showed up to take the written test, I was the only woman. In addition, there was one Asian man and a handful of African-American and/or Caribbean men.

[When I went for my interview I noticed] *some older white men with their arms wrapped around younger white men.* [They appeared to be fathers with their sons]. *The fathers would talk to the men at the sign-in table and then talk to the ushers, who brought you to the interview table. After talking with the ushers, these young men were immediately taken into the interview room. They did not follow the same waiting process that I and the other applicants did.*

After waiting a half-hour I was brought into the interview room, which had approximately 40 tables. At each table were four interviewers [two employers and two union representatives]. *I looked around for female interviewers, but did not see any.*

One of the interviewers [whom I think was an employer] *had a style of questioning which was very confrontational. I felt that he was either trying to intimidate me and make me cower or trying to get me mad enough to act improper during the interview. I did neither and remained calm throughout the interview. I have never been on an interview where the interviewer behaved in this manner. Everything I said was challenged—I could do nothing right.*

Man P said that I would be "digging ditches" for my full term as an apprentice, eight years. I knew this was a misrepresentation of the job, so I tried to reply as best as I could without seeming weak or offending him. This went on for about five minutes, out of a fifteen minute interview. He kept giving me these unanswerable questions about unrealistic situations and then trying to discredit whatever I said. To him, I could answer no question correctly. It was frustrating, to say the least.

[Despite my assertions to the contrary], *he refused to believe that I was willing to do the rough work of the trades. After this battery of questions, no one had any other questions to ask me and I was dismissed. A few months later I decided not to go into the trades.*

Antonio Cancel, Electrician;
member, United Third Bridge, Inc.:

I have been a member of the IBEW and Local 3 since 1968. In 1982, [my life was threatened by two men who put a gun in my face and told me to drop my charges against Local 3]. *As a minority, you are the last to be hired and the first to get fired. They put you to work for one or two days at a job that is finishing, you get laid off and you end up back at the union. You have to wait weeks, a month and a half before you get lucky. So you're lucky if you get three months of work a year. As a result, since becoming a journeyman in 1975, I have not really worked a full year.*

The so-called union representatives are more like your opponents. If you ask certain questions, you're blackballed from work. Your name goes around. If you don't fully support the discriminatory union by, for example, purchasing raffle tickets that are anywhere from $25 to $50 per ticket, you coincidentally find yourself unemployed within two days. I have been out on Worker's Compensation for two years due to herniated disks and pinched nerves. But [the union] *refuses to pay my benefits. A judge ordered them to pay for* [physical] *therapy, and they were refusing. I really don't believe that I will be able to go back 100% into construction and do my line of work due to the injuries that I sustained. I'm a card-holding union member in good standing. They take my dues. But they don't compensate me for what is supposed to be coming back.*

Evidently they are beyond the law. It seems an abuse of power, and it raises questions about how some people get in positions of power in the union and in management.

Leroy McCollough, Electrician;
member, United Third Bridge, Inc.:

I have been a member of Local 3 for ten years. I was employed five and a half years at Light Lighting Equipment in Maspeth, Queens. [There were approximately 100 employees at the plant]. *I was outspoken about irregularities at the plant. For example, we did not have a public telephone we could use. We had to get permission from the bosses to use the telephone in emergency cases. I called up the union's business manager and insisted we have a public telephone.* [Another instance involved a co-worker being assigned work—mopping a floor—that was not part of his job duties. I spoke up for him before the shop steward and management]. *They began to resent me.*

A month or so later, [my welding partner was moved to another department]. *That exposed me to having the least seniority of about six men. They used this as a means of laying me off. I said this is not right. Of the hundred men, I had more seniority than at least 60 percent of them. I got laid off from the job on the pretext that things were slow and I was the youngest man in my department. I was classified as a C-Division employee, meaning I could be shifted from one position to another. If it was slow, why didn't they move me to another position?*

I had been making $11.00 an hour. The new worker took over my job at $8.00 an hour. They said they will call me back when there is work. They never called me back. Instead, they hired other people [for less money].

Tradeswoman J, Electrician:

[Tradeswoman J is a Latina who resides in New York]. *As soon as I entered the apprenticeship program, I found much to discourage women from continuing. Women weren't welcome. No toilet or changing facilities were available. Some men treated women as invisible. Those assigned to teach women did not go into detail. We had to force ourselves on them to be able to learn. The males did not have to do that. They were treated with respect.*

When I was an apprentice, they put the women mostly on big construction jobs. The problem with that was that the best way to learn a trade was to get into a small job where you could learn a lot by doing a lot of different things. On one job I and another new journeyman from the Dominican Republic were put in the bull gang unloading trucks. I believe that this was bias against us based upon my sex and his national origin.

The lack of bathroom and changing facilities for women is a constant problem. And when there is a portable toilet designated for women, the men will frequently use it. On one occasion when a woman complained about a man who insisted on using the woman's bathroom, the shop steward refused to intervene.

About five years ago, I had my own locker on a job, next to the men's locker. They put pinholes in the walls to look in or make me think they were looking in. They put pornography under the door. In other jobs we had to share the shanty with the men and the walls were covered with pornography.

There is always some Casanova trying to hit on me. My first partner would scratch his genitals when he talked to me. All the workers on the site used to have to change

clothes in the same shanty, and there was a lot of explicit sexual talk and photos from Playboy there. [After a dinner date with a male apprentice for the sake of friendship], *he kept on asking me out and I kept refusing. He began verbally harassing me, saying that he lusted after me and he wanted to go to bed with me. Whenever I went to a foreman about this sort of problem the message I got was that it was not unreasonable and that I should just handle it.*

At one job, the general foreman had a crush on me. He would come to where I was working about twenty times a day and stare at me and ask me why I was working so hard. I would tell him, "I have a job to do," or "It makes me nervous," etc. After three months, he must have felt rejected or something because he did a hundred-and-eighty-degree turn, became verbally harassing, supervising my work with a magnifying glass, day after day after day until I finally told him to go to hell. The subforeman was his drinking buddy and he would not intervene to stop anything. All he and the other guys did in response was laugh and smile. The only other person I could have complained to was the shop steward, and he was oblivious to it all. I started missing a lot of time. I was having nightmares about this foreman; it was affecting my love life and my lover.

Attempting to take problems to the union leadership doesn't help. A group of women asked to meet with the apprentice director to address the problems of sexual harassment and lack of toilet and changing facilities. He told us we should just deal with it. A proposal by women apprentices that union reps, stewards and others in management take steps to correct the problems was ignored.

In the years I have been in the trade no women have risen to foremen or other leadership positions in the union. I think that they take the guys by the hand and groom them to become leaders. They do not groom women as far as I could see.

I believe that the union apprentice committee deliberately picks women who they know will drop out. Many of the new women get disgusted and quit. At least 60% of the job is knowing how to deal with the harassment and poor conditions. When women are going to drop out, the union does not get them to talk to other women in the union. There is a panel of union women, but many of them are not women others would feel comfortable complaining to.

The more women in the trades, the less sexual harassment will go on. But it is important for women to learn not to let it go on and to stand up for themselves. It is

also important for mechanics to stand up for the apprentices and help the apprentices stand up for themselves.

Tradeswoman F, IBEW trainee:

I am a college-educated woman and a minority. A few years ago, I began work as an electrician's trainee in a union-run program. I attend classroom training four hours a night twice, a week. My instruction program is the same as that for apprentices. All the people in the trainee program [which is federally funded] *are minorities, whereas the apprenticeship program* [paid for by contractors, is mostly white]. *I entered the training program because I was denied admission into the regular apprenticeship training with the union.*

As trainees, we were told we could only be on federally funded jobs. I worked at a plant for about six months. There were two apprentices, both white men. Most of the time I was at that job, I had to get coffee for the entire crew and lunch for the foreman. I was assigned to work with an "M" Mechanic of Italian background who could not read blueprints or read English. I couldn't learn my trade from him. There were often nude pictures of women placed on a desk where I would be working.

At my next job, there were about 20 to 30 IBEW employees. There were four apprentices, all of whom were white men. I was paired with a mechanic who basically ignored me. I didn't get to work with tools at all, although the other trainee and the four apprentices were actually allowed to do work. He refused to answer me when I asked a question. I saw him working with other apprentices who he joked with and explained things to.

[After the union found that the job I was on could not be funded by federal money], *I was sent to another plant* [where I stayed for a year and a half]. *There were about 300 IBEW people there. At that site my primary duty was to clean and vacuum the computer room every day.* [There was a lot of pornography on the site].

Eventually, I was transferred downtown to a site with about 130 people, where I stayed for six months. There were about 20 apprentices, one or two of whom were women, and one other female trainee besides me. At that site, I had to do personal errands for one of the foreman, like get his Lotto ticket. They said I had to run errands because I didn't know how to use my tools. At that job, I worked with a

mechanic on a wiring job. He told me to hook up two different-colored wires. I knew that it was incorrect but I did it because I thought I had to do what I was told. The foreman saw the mistake and rotated me to the Bronx, which was over an hour on the subway and bus. I was often late for classes at night in Manhattan. [I worked a couple of other jobs after that, and was not given any real training, but I quit because I was so depressed over the situation on these jobs]. *Right after, I went to a mental health clinic for therapy.*

Gilbert Lopez, former member, Electrician;
member, United Third Bridge, Inc.:

After completing a tour of two years active duty in the United States Navy, and the rest [four years] *in the Reserve, I returned to the union, but my job was no longer there.* [Mr. Lopez feels he was discriminated against for two reasons: he is a person of color, and he is related to Samuel Lopez of UTB]. *They told me the only way to return back to work would be to start over again.*

Cynthia Long, Electrician;
President, Women in Construction:

I'm a rank and file member of Local Union No. 3 for the past twelve years. I'm a journey-level construction electrician. It is significant to me that many women testified anonymously, citing retaliation by employers and unions as their reason for concealing their identities.

It is clear to me that women [and] *people of color, have been let down by many of those* [government agencies] *responsible. The tax-paying public are paying some contractors and subcontractors millions of dollars in spite of the fact that these companies have blatantly and subtly discriminated against women and people of color. This means that, as taxpayers, we are subsidizing daily acts of discrimination. I'm glad that the Comptroller's Office plans to scrutinize contracts and take action.*

I think we need to move beyond the problem of individual unions, although they are extremely powerful. [Discrimination and sexual harassment are] *a societal and institutional problem. We can't forget that the employers are the ones who control the monies and the employment situation. The issue I would like to raise is that there is insufficient outreach to women and communities of color. Once people are accepted into the training programs, we have to look at the fairness and the evalua-*

tion of the application process as well as retention of the workforce. Recruitment for vocational training programs is almost nonexistent [for women] *and once a woman gets into a vocational high school, she has to fight just to stay in her school, as we have to fight to stay on our jobs.*

The Board of Education should be taking a more affirmative role in providing role models in terms of career days, but they have to do more extensive programs than they're doing. Sex equity programs that are supposed to be implemented by the Board of Education, I have seen very little effect. Materials are not widely available nor widely distributed. There really isn't any realistic career guidance taking place in the high schools.

A crucial element to being able to redress some of the problems is the ability to withhold monies and to withhold contractors from the bidding list. Without the ability to affect a company economically we'll make no headway because they will continue to discriminate because it doesn't cost them anything. We need comprehensive enforcement from all agencies that are responsible.

[Ms. Long read a letter from a Ms. Melanie Sako of Seattle, who worked as an Electrician in Local 46 for 10 years in Seattle. She also worked as a foreman on some sites. In 1989, she was appointed by her local union president to serve as a labor trustee on the JAC. Her apprenticeship program has 368 apprentices; 50 are people of color (13.6%), and 45 are females (12.2%). They are working towards even greater representation for women in their apprenticeship program. These efforts] *are supported by tradesmen, contractors, the Bureau of Apprenticeship and Training, the Construction Industry Council, and unions. I see no reason why some initiative can't be taken* [in New York] *that would parallel something like this. If we are serious about this problem, we need to fund tradeswoman support groups, such as Women Electricians, New York Tradeswomen and Women in Construction, because these are organizations that help those tradeswomen survive the day-to-day harassment and discrimination. We need to fund advocacy organizations, such as the Association for Union Democracy, Nontraditional Employment for Women, and the National Organization for Women, because these groups have been instrumental in assisting individuals who have been discriminated against.*

[We need to] *enforce current rules, regulations, and guidelines. They exist on the books. I have never seen any contractor, or any union achieve 6.9%, which was the federal goal set way back in 1975. We need to move beyond those goals and in-*

crease the numerical goals; we need to shorten the timetable. Most times they say, "We can't implement this in three years." We need to stop the monies to the violators and discriminators. We need to do things like withhold final payments to them. We need to remove contractors who are discriminators from the list of eligible bidders for city, state or federal work. We should also look into the possibility of revoking licenses of general contractors and subcontractors who discriminate. Finally, victims of discrimination should be awarded compensatory monies.

There are some people whose attitudes we will not change. Let us try to get those who are undecided or in the middle there, to see our perspective, our point of view, and have some sensitivity.

Alan Marshal, Electrician, former member:

I'm an electrician. I worked [within] *Local 3's jurisdiction for a number of years before I was asked to leave. I complained about unsafe working conditions. I was working on an elevated train station in the cold and rain, late at night, no light, supposedly* [on] *a dead track. Half was dead, half was not. 600 volts DC. I fell, hurt my hand. I told the shop steward, but I didn't hear anything.*

[Another time] *I got hurt when the foreman dropped a light bulb on me and then he never filed an accident report. I filed an accident report; nobody ever received it. I have been terminated on numerous sites for complaining about unsafe working conditions. My last termination was for destroying a rain suit. I have sustained injuries on the job, and the local refuses to pay my medical bills.*

Anonymous witness #2:

My testimony is based solely on the Local 3 retirement practices. In May 1987, I suffered an injury on the job. I was off the job for two years. In April 1989, I called the local to inform them I was coming back to work. I was told that I was no longer a union member because I had not kept up my dues payments. I was never informed that I had to continue paying dues while on compensation. No one wrote me or called me to inform me that my dues were in arrears. When I spoke to my business agent, I told him that I would be willing to pay back whatever monies I owed them. I was told to write the executive board about my situation. The executive board denied my reinstatement because I had failed to pay dues. A labor lawyer informed me that the union has a right to deny access to a member who fails to pay dues. I was never given any kind of constitutional by-laws for Local 3. I only

received a contract agreement with the apprentices about things we could do on the job. I was treated unjustly simply because of ignorance.

With regard to affirmative action, we need to concentrate on the success rate, the completion rate of apprentices entering unions that usually discriminate against people of color and women.

Audio CL2, Electrician:

I'm a journey-level Electrician. One of the things I want to address is the whole area of promotions and the issue of staying in the trade. The fact is that we don't get the opportunities to advance, and frequently it's because we are not perceived as competent professionals. I personally know six journey-level women who have left the industry because they have reached a dead end in their careers, including myself.

If we are pregnant on the job, we are harassed. Going to the apprenticeship director for redress is ineffective because he is also one of the ones to harass us. We have less than the 6.9% [NY State Department of Labor goal for] *women taken into apprenticeship programs. We have a high drop-out rate because women are constantly discouraged. I know women who have gone on for additional schooling, or who have left the state to pursue an entirely different line of work because they feel that they have been harassed out of the industry.* [In apprenticeship classes] *they taught us to remember the color coding for transistors by saying, "Bad boys rape young girls, but Violet gives willingly." I was really traumatized, hearing this coming from my electrical instructor.*

[Job referrals] *in the electrical industry are handled by the Joint Industry Board employment department. It's only through the union. I cannot find my own jobs. It's important that the union understand that they cannot tell employers that the available worker is a woman, allowing the employer to discriminate. If you remove* [contractors who discriminate] *from the bidding list and withhold payment, those are the only ways that you can control the employer. You can't just count on them to do the right thing.*

Tradeswoman A, Electrician:

I am a woman of color residing in New York, and I am a member of the Electrician's Union. I began working in construction in the early 1980s. I heard

about a CETA-funded project which helped women get into the unions. I waited in line [for several days] *because they were only distributing 2,000 applications. Male applicants told us that women didn't belong in this business, and that we were taking jobs away from men who had families to support.*

After they evaluated my application, they gave a test administered by the New York State Department of Labor. The third step of the application process was the interview. The interview was weighted at 400 points, with four or five men evaluating you. My interview was a lot longer than many of the men's interviews were. They asked a lot of inappropriate personal questions. They asked me questions about electrical work [even though I hadn't even begun my apprenticeship]. *The medical examination included an internal vaginal examination and questions about sexual relationships which were inappropriate.*

On the job, the foreman has complete discretion in assigning particular people to particular jobs. Female apprentices are given less desirable assignments than male apprentices. Females are given more short-term jobs. Women and people of color are being ghettoized in government projects which are the least desirable to work on, such as sewage and pollution plants. Promotion prospects for women are dismal.

Harassment is a big problem, along with pornography, no bathroom or change facilities, and constant foul language. If I would bring complaints to the shop steward or foreman, such action only resulted in more harassment. The apprenticeship program should be more structured to ensure nondiscriminatory rotation of job assignments.

Local 76

Clarence Elliot, Electrician:

I'm an Electrician, and I'm a member of Local 76 (Tacoma, Washington) IBEW. I'm a Book 2 person. I have an Electrician's license from the State of Washington. I haven't been employed by Local 3 in five years. I personally believe that Local 3 functions on nepotism and how politically well-connected you are within the union.

You don't get overtime if you don't buy the raffle ticket sold from political clubs by the steward. [I was terminated from my last job with Local 3 in 1985 even though my partner, a Russian immigrant, was not. Later, they hired an Irish out-of-towner from Cleveland].

Starting with the referral procedures, Local 3 is the only local in the country I've ever seen that denies you an opportunity to just sign the out-of-work list when you're a Book 2, dues-paying member of the IBEW.

Through the referral procedure, I never get past the window where the lady sits, or put my name on an out-of-work list. The [union] *talks to my business agent. I have him call every few months, but then he'll call for other members of my Local and they'll give them an appointment.* [Unable to get work in Local 3] *I worked out of Local 675 in Elizabeth, Local 164 in Jersey City, Local 52 in Newark, Local 456 in New Brunswick, and Local 211 in Atlantic City.*

I would speculate on the average, in New York City every Springtime, Local 3 employs somewhere between 1,500 and 2,000 people from out of the jurisdiction, or out of the City of New York, Electricians which would be classified as A-members, Book 2, like myself. Some leave when the Winter comes, some stay. One acquaintance [a black man] *got work with Local 3, but only for about three months.*

Sheet Metal Workers

Local 28

Ezekial Gray, Sheet Metal Worker:

I've been working in Local 28 for twenty years. Local 28 was one of the last locals to take blacks in their union. Up until 1965, it had always been a father-son local. It's a nepotism thing. All the blacks are in a separate union organization. My testimony is not about being discriminated against, but I would like to deal with union policies. We need more information as union members. You go on one job, it's one [set of rules] *and you go on another job, it's a different deal.*

A father will let his son know what is happening, but we need to keep up with things that go on in our union. [For example], *one guy will work overtime and his business agent doesn't want to cover me for whatever reason. If I can get enough guys behind me, then we can* [resolve things]. *We get 200 members at our union meetings. About 10 are black, about 5 percent.*

We had a merger about seven years ago with New Jersey's [sheet metal workers] *local. They pay $5.00 an hour less than New York City. So until we balance that off, people will keep coming from New Jersey to work here, but no one will go from*

New York to New Jersey to work for less money. I would like to see more minorities get involved in [creating] *union policies.*

Debra Jones, Sheet Metal Apprentice:

I'm an apprentice of Local 28. I have been laid off since November 3rd [*i.e.*, four months prior to her testimony]. *Hopefully I will graduate in January of 1991. It is going to be five years since I started the program. The apprentice administrator of Local 28 just a week ago* [told me] *that it is a fact that the employers are refusing now to hire females. There are a series of problems with females and Local 28. In fact, we are having a meeting with the State Attorney General, the attorneys and the females who are laid off at this time.*

The foreman had me do heavy, heavy work where I sustained injury. They did not file an accident report with the Labor Department, [and] *I had to go through a lot of paper work on my own to bring this to their attention. I was then terminated from Local 28 because they were unaware . . . that I had sustained an injury which resulted in absenteeism.*

Local 28 is still under court ruling. I have at times experienced sexual harassment. I have had one guy grab my breasts—in front of the foreman, and I grabbed his genitalia with the force as if I wanted to rip it off. At that time, the foreman laid the guy off. On that particular job the foreman stressed to all the men from this point on that he would not tolerate that type of behavior out of the men, and in the future, he will bring men up on charges.

I think employers should be held responsible. But I think there should be more [focus on] *the foremen and the shop stewards to whom we bring these complaints, because they are the immediate member between us and the employers. Half the employers are not aware of what is taking place on their jobs. If the foreman wants to, he can eliminate the problem. If the Commission would step in and make the foremen liable, as well as those who commit the serious act, we can definitely eliminate this problem. I think it should be mandatory that there should be a class on sexual harassment which everyone should attend. Women don't understand what sexual harassment is, too, as well as the men.*

There are around four to six [women on the job sites]. *I believe two happen to be black, and three I know for sure are Caucasians. There were two others that were females, and they dropped out of the trade. There has been a high drop-out rate of*

women in Local 28. I think women drop out because the foreman gives them too much work to do, to see if they're able to do the job.

There is a court administrator who you go see when you are terminated from a job. You give them a written statement as to why you are protesting this termination. They can remedy it through the joint committee or you can bring it through the civil court. On one job the foreman came to me and stated that he does not want females working for him, he wanted all women thrown out of the union. I reported this incident. It never got remedied.

Juan Colon, Sheet Metal Worker:

[Recently I] *and some of my co-workers were fired by Local 28* [because] *we were debating our rights regarding salary increases with the union.* [Since the union contract was expiring, we wanted to know what the wages would be in the next contract]. *They said we were fired because of a diminishing workforce, which wasn't true, because after they fired seven Hispanic laborers, they hired seven Polish laborers to take their place. We were terminated March 16, 1990. On March 19, the following Monday, the seven Polish workers were hired.* [Mr. Colon assembles louvers for systems]. *You don't need to be a mechanic or journeyperson to work in that plant—Air, Louver and Damper, Incorporated. He has been a member of Local 28 for 22 months. His co-workers were there 11 years.*

Tradeswoman N, laid-off Sheet Metal Worker:

[Tradeswoman N is a woman of color living in New York City. She has been trained as a sheet metal worker]. *When I began, I wanted to do duct work because you do that work inside and it's not seasonal. On my first job, I actually did do duct work, but I had trouble with my foreman. He constantly asked me if I knew another woman who had previously worked there. Finally I said that her name was familiar, and shortly afterward I was laid off.* [I subsequently talked to the woman in question and learned that] *one of the bosses at the duct shop* [had gotten] *fresh with her and she refused.*

I was assigned to other work and never got any more duct shop work. That first foreman hurt my career because of my sex. He thought women were trouble. As an apprentice, I learned to solder by working alongside the journeymen, but it was a struggle. The superintendents would ask the journeymen, "Why are you letting this woman do this?" And while some journeymen would try to teach me, lots of others

would give me bullshit work that was irrelevant to the trade and drop remarks like, "Women shouldn't be here, they should just have babies." Other times they would try to keep me back by giving me the terrible work [like working outside in sub-zero temperatures while all the men were inside], *or dangerous work. It was all done to discourage me from staying in the trade.*

Three and a half years into my apprenticeship I was laid off, but the work was booming and no one else was laid off except one guy with an absentee problem. I objected and was reinstated, because the company was scared because they had heard I planned to sue the union, the employer, everyone. Although I did then continue to work for the last six months of my apprenticeship, I was laid off two weeks after my graduation as a journeyman, and have been laid off ever since. The union does nothing for me except send me dues notes. If you don't know somebody in the union, you get no service from them. I soon found out that for women, the end of your apprenticeship is the end of your career. I feel disgusted. I wasted four years. I could have been in college.

Operating engineers

Local 138

Mary Scardina, graduate, Operating Engineers Program:

Starting in 1986, I attended the International Union of Operating Engineers Apprenticeship Training Program in Local 138, Long Island. In August of 1989, I graduated and was denied a union book which prevented me from gaining access to a union job through their referral system, even though I had two contractors and a job for me upon receiving my book.

When I graduated the Operating Engineers Program, I was able to run the following equipment: backhoe, dynahoe, batching plant, bending machine, bulldozer, forklift [and dozens of others]. *My only recourse has been the State Division of Human Rights. I'm waiting on a two-year list for my complaint to be investigated, and to this day, I still haven't been referred to work as an operator.*

Upon graduation [from the program], *I called them to tell them I wasn't going to be able to come in for it. So I was told, "You missed your graduation." I was told I was a tin can kicker and we don't need any tin can kickers around here. That means I'm a troublemaker. I also had filed a sexual harassment suit against one of*

the foremen in the company that I worked with. It took the NLRB lawyer to even get me my diploma. They were withholding my diploma and my state certificate.

Operating Engineers, Unspecified Local

Tradeswoman I, Operating Engineer:

I got hired last year [as an Operating Engineer union apprentice in New York]. *I was not allowed to run a machine, only to back it up and go forward. A male apprentice hired before me by a different company had told me he was running a machine every day. I felt there ought to be some standard—when there are no standards, the employers can ignore women.*

[I have been discriminated against in many different ways]. *I was ordered off a machine by a superintendent while I was being willingly taught by the driver/operator. On another occasion a non-company operator asked my boss if I, a union member, could learn on his machine. The boss said he would fire this man if he let me even sit in a machine, let alone teach me. Some drivers have refused to take me in a machine to and from the job site. I have not been allowed to sit in the machines, even for shelter when it is pouring rain or freezing cold.*

For months I just watched and was not allowed to do anything. State inspectors would come by and do nothing about it. I felt like crying every day. In three years, male apprentices would be journey level, making $22.00 per hour, while I learned nothing, standing around in dangerous conditions.

[I called NEW and talked to "a man from the state" but I'm worried because the matter hasn't been kept confidential]. *The inspector came up to me in front of everyone. Now it looks as if I am a troublemaker. I have felt the men's moods change negatively towards me. However, recently things have improved. A short time ago, they put me to work on the machines. I think it's because of the state pressure, and I don't know how long it will last.*

Local 15

Sam Degans, Operating Engineer seeking Local 15 membership:

My problem is that I have been in the construction industry for the past fifteen years, and I never worked for over a nine-month period on one job. I have been a

member of Locals 48, 59, 23 6A, 18 and 20 as a Laborer. When one job is finished you cannot and most likely don't get a job in Local 23 anymore, so you have to switch your book from Local 23 to Local 59, or perhaps go out and buy another book for probably $360 or $400.

Since then, for the last three and a half years, I went to school and learned to operate heavy equipment. So I have been trying to get into Local 15 for the last three years with no success whatsoever. I called the business agents. Once someone promised to give me a job, but I needed a permit. I called three of the business agents and they refused to give me the permit to work on their jobs because they claim they have 600 of their own men that [are] *out of work.*

The president of Local 15 made a lot of different appointments with me which he hasn't kept. He said there wasn't any opportunity to join the union. I didn't understand why he wouldn't just talk to me and make an effort. I operate all different types of heavy equipment within Local 15's jurisdiction. I operate a backhoe, excavator, bulldozer, front end loaders, most of the equipment. [I have approached the contractor about his sponsoring me to get into the union] *but they don't do it. You have to have connections. I went to school on the outskirts of Philadelphia and got a diploma, but before that I learned on different job sites where people allowed me to learn.*

[I found work as an Operating Engineer] *on a major construction project on Eastern Parkway in Brooklyn. The guy hired me, and when I looked at my paycheck it said $8.25 an hour instead of the prevailing wages the operators make. I didn't* [file a prevailing wage] *complaint because it would get back to them. What I did was jump off the machine, picked up a shovel, jumped in the hole, and I made $17* [an hour] *doing that because I haven't been able to support my family for the last five years.* [The job where I was paid $8.25 an hour was city-funded]. *I didn't see any inspectors at that job site, but the unions do come along, and if you don't have a book they'll try and throw you off the machines on their own.*

[When I was living in New Jersey] *I took* [Local 15's] *aptitude tests and I had two appointments where they inform you of how they handle their apprenticeships. I received a letter from them saying I was not chosen to be an apprentice even though I knew everything about the machines. Two guys that I tried to get a permit from two or three years ago* [Business Agents Tom Garrity and Danny Murphy] *denied me a permit. It seemed to be just for certain people.*

Plumbers

Local 2

Elaine D. Ward, Plumber:

I am a journey-level plumber in Local 2. I went through a four-year apprenticeship program that I started in March of 1986. I'm thirty-five years old. I was accepted into the union and received the notice that I was supposed to attend my first apprenticeship class [a week after it had begun]. *I did not work for three months when I was first an apprentice, and back in 1986 there was not a serious unemployment problem in Local 2. None of the other apprentices in my class were out of work.*

Local 2 is different than the other trades. Every other week we go to school during the day. So if we are working, the plumbing contractor pays for our apprentice day in school. Since I was not working, I did not get paid for attending school. The head of the apprentice school told me, "Well, the union doesn't exactly have open arms to women. You have to really be a pain." So I called every day for a week. It was June, 1986. Finally, the next time I went to school, I was told to show up the following Monday at a certain job site. That was three years and eight months ago and I'm still employed by the same contractor. I received my journey-level status three weeks ago and I'm now earning $26.91 an hour, a thirty-five hour week.

I have managed to survive the harassment. My experience has been [like it has been for other women in the construction trades, that] *the work is not the problem. The women who do it are smart enough, physically able and determined. However, the environment is such that there's a determination on the part of the men to consistently and persistently keep women off the jobs and to create situations where women will automatically eliminate themselves. Harassment is mental, emotional and physical. There is harassment by being denied certain privileges that the men have. For example, not being given overtime. You don't get your benefits until you have been working for six months. So I had to wait until December before my benefits took effect, while all the other fellows in my class had their benefits earlier.*

[Regarding my interview to get into the apprenticeship program] *I was only asked three questions. I was asked did I know the starting rate of pay; was I married; and was I afraid of heights and tight places. In the first year I was an appren-*

tice, none of the other classmates would talk to me. That's another way to intimidate and harass.

The second and third year, even right up to graduation, I received continuous teasing, taunting. Each of these things may sound trivial, but this is my livelihood, and yet day by day I'm being told in various ways that I am not supposed to be there. During my entire apprenticeship I was the only woman in my apprentice school. The common questions I got were, "Was I married," and since I'm not, then "Why not?" and then homosexual jokes were presented to me.

The male sex organ is a primary topic of conversation on the jobs on a regular basis in one way or another. When we were talking about measurements, a co-worker would make comments that implied this had to do with his sex organ. I've heard the same statements in the elevator from other tradesworkers. This is an ongoing, regular occurrence. Another journeyperson I worked with for a month said to me when he came on the job [the first day], *"My prick is bigger than the fellow you used to work with".* [Ms. Ward cited several other instances of sexist remarks on the job].

I had a partner who would tell me to do things and then walk away. I would be there doing my work, at $11.80 an hour, and his work. [He earns journey-level wages]. *I heard through the grapevine that he would turn around and say to the supervisor, if he wanted to know why the work wasn't done right, "Well, you know I only have half a helper."*

The men have bathrooms to go to, but they still like to pee up against the columns. I would like to say that I think the reason women drop out of this business is not because of the work itself, but because of the harassment. The harassment is a symptom of a greater problem which is that there are not enough women on the jobs. As long as I'm one woman alone on a job—and I must say that in my three and a half years, 99.9% of the time I have been the only woman on almost every job I have worked on. Right now, I'm in a forty story building, and I'm the only woman on that job. The harassment works. Eventually, the women are timid enough, exhausted enough, tired of paying for shrinks to keep their sanity, that they quit.

The only thing I know that will hurt a man is taking money from his pocket. We need laws to make the men behave in a different manner, even if it means firing every single one of them in a very severe way.

Steamfitters

Local 638

William Blackwell, Steamfitter:

I'm a member of Local 638 with 17 years of experience. That includes four years apprenticeship training also. I was recently laid off, January 11, 1990, for what I thought was an unjust cause. I was working with the foreman, a guy named Mike Quinn. I made suggestions [regarding the job] *and I guess he felt I was getting out of hand in terms of suggesting how to do things.* [Another instance occurred when I was on] *a job at LaGuardia College, April 2, 1989. I was laid off for two weeks. An Engineer there who worked for Fuller Construction recommended another contractor. So I gave that contractor my card. I was hired right away, only to be fired after two weeks. This guy led me to believe, prior to hiring me, that he had plenty of work. There is a lot of discrimination and racism in the construction trade.*

Plasterers

Unspecified Local

Carlos Roman, former Plasterer's Helper,
New York City Housing Authority:

I was employed by the New York City Housing Authority for about ten years as a plasterer-helper, and during that time, I tried to advance myself to become a plasterer. I took courses and I also trained on the outside, side jobs in the construction field. I put in over eighteen applications to become a plasterer-provisional, and [my requests were] *always denied. When I looked into it, these applications were never found, so I started sending them in Certified.*

Whenever you do something that they don't particularly like, you get a tour of the city, which means you'll get transferred every other day or every week, whether it be Queens, Manhattan, Brooklyn, the furthest from your home as possible to discourage you from breaking their so-called rules. I went to the Department of Civil Service Commission. They allowed me to take a Civil Service Exam. I passed it. They were forced to put me on as a plasterer.

During the time in that year that I was a plasterer, I was transferred to places very far away from home, where it took me almost two hours to get there. I was harassed. My tires were cut. I was written up for false charges and told, "Who is going to believe you?" Most of the staff is Italian and they stick together.

I started documenting everything. I took pictures. I recorded conversations. They broke into my home, stole my papers. I would have been finished with probation on August 31st. I was terminated August 19th. The grounds were time and attendance. [I have proof of my days on the books]. *The Commission on Human Rights has been handling my case for over a year and a half.*

There is no chance for a minority to advance in the union the way things are set up. They have an organization, Sons of Italy, which 70 percent of all the plaster foremen and supervisors belong to. I'm really up against the wall.

Masons and Tenders

Local 59

Aubrey Mitchell, Mason Tender:

I'm a Mason Tender and a member of Local 59. I was laid off ten months ago. Every day I go to the union hall or call them. They tell me there is no work. I checked job sites. White guys who got laid off with me are now working. That is why I got involved with Harlem FightBack, and last week I was able to get a couple of days of work.

You go job-shaping, trying to negotiate jobs. The man comes with baseball bats, pipes. I got arrested only last week. I'm supposed to go to court next week. My hands were all cut, swollen.

Local 48

Joe Wright, Mason Tender:

I've been in Local 18A, Cement and Concrete, since 1966. I am 63 years old and I don't have enough time to retire [with benefits]. *The union never got me a job. I was working on one job for Tishman where the foreman told me I was too old. There were men there older than I am* [but I was laid off, while] *they are working. When they hire you, they give you the hardest job they can find so you will leave.*

I need two more years [in the union] *but I won't be able to draw my pension. I have to have ten years in. I've been in Local 48, Masons and Tenders, now for nine years.* [There is an effort being made to try to stop me from reaching retirement]. *There's a lot of discrimination in the trades.*

Stone Setters

Local 84

Denice Holmes, Stone Setters applicant:

I applied as an apprentice to the Stone Setters in July 1988. It took them a year and a month to send me a letter to come in. I went into the meeting, and I seemed to be qualified at the time to get interviewed. I wasn't there five minutes when they said they would send me a letter notifying me. The next letter stated I had to pay an initiation fee of a hundred dollars to get into the [program]. *I finally got the money to get in. The next meeting I went to, they let us all know that we were officially apprentices of the Local 84, Stone Setters. At that meeting, it states that apprentices don't have no rights. We didn't need any books, any guidelines, nothing. I was the only black female in the local. There was another female, but I have never seen her* [since].

Mr. Richard Pughes, who is the Business Manager, stated that in order for me to be in the program, I have to pay more money, which is another $100. All this time I've been paying out money and haven't received any work, and school is mandatory as part of keeping work in the local. We had to attend Mechanics Institute to take up drafting, architecture, and I had to also pay a $25 registration fee, put out $150 more for tools and equipment. He also wants us to pay union dues every month, even if we are not working.

All the other apprentices who go to school with me ask me the reason why I haven't gotten any work. The bottom line is the man doesn't want to put me to work. I went to the Commission on Human Rights and didn't receive any help. I went to the Department of Labor, and they didn't help me either. [After the union wouldn't give me a copy of the by-laws], *I had to go to the Department of Labor or something. That's how I got it. Everything Mr. Pughes asked me for, all the initiation fees, all the money, there is nothing stipulated in any of the guidelines. Now I'm dropping out of the program, and I'm going through another route, which is the*

Labor Board, to try to get help. [The apprenticeship program] *was advertised at the New York State Building on 125th Street.*

International Brotherhood of Painters

District Council 9

Michael Sabatel, Painter:

I was in the union for eighteen years and got in through FightBack. Blacks within my union are not getting an equal share of the work. You're supposed to make at least $30-40,000 a year. You have to make $24,000 a year to be eligible for medical coverage. That's like six months worth of work, but they only give you three months worth of work. We are only making $11,000, so there's no medical coverage. I was in a car accident and I have no medical benefits.

At one company, I tell the boss the material they use is awful for the men's eyes. It burns. The next minute, I'm fired. They had to hire me back because they fired me the wrong way. Now they are threatening to throw me out the window at Trump Tower.

I'm bringing the union up on charges. Within the past decade, there hasn't been one black or Hispanic business agent. There are six business agents. The agents make $75,000 a year plus insurance benefits. I recently organized a demonstration against the union. I'm being threatened. I've been told they can kill me any day of the week. But enough is enough. I hate to see them look at another black or Hispanic guy who says "I haven't worked in eight months," and they say, "This is not an employment office." What do we pay union dues for? This has got to stop. My union doesn't have a hiring hall. Workers are told by the union that they have to have a job before they can join. The contractor tells them you have to be in the union before he can hire you. You're supposed to go down every week and sign your name on a list stating how long you have been out of work. The list is just for the business agents.

Bricklayer

Unspecified local

Witness Audio A, Bricklayer:

I graduated out of Gateway Job Corps as a bricklayer [after two years]. *The guys that went to Job Corps with me paid $40 for their union book, an improver's book* [which is good for two years]. *I had to pay $410 for my union book. I've worked on a lot of jobs where there's a lack of female changing facilities, and a lot of verbal harassment. I have been in the trade for five years, not including schooling. When my book expired I was told I didn't have enough hours, and that I should wait another year* [to get my book]. *They still wanted me to pay for this book. So I stopped paying union dues and they put me out of the union, but I still have been working. Most of my jobs come from NEW, the New York Plan, and I free-lance. Usually when I am working a job, I am the only woman on the job. I don't like that at all.* [When I'm laid off from a job] *the union says, "We'll call you," but they never do.*

[The union doesn't take care of its members. They don't provide] *raincoats, boots, gloves. You have no protection from the weather. On one job, I got sick, got a doctor's note for being out two days, and I still got laid off.*

Maintenance trade

Unspecified local

Tradeswoman R, Maintenance:

[Tradeswoman R is a Latina residing in Brooklyn. She works in a maintenance trade as a union member, but wishes to remain anonymous because she is trying to advance in her career and needs the union's help]. *I think it is not safe for me to come out in public with my story.*

Upon completing a training program and receiving a certificate, I had an interview with the union. They didn't even make me take a test, even though I know others had to take an aptitude test. I believe that they needed me to fill their quota, because I was a woman of color, and so they decided to hire me the minute they saw me. The union sent me for my first job interview. Just as with the union interview, I got this job because they had the same kind of quota to fill. I was not given any tests.

Choosing me for these characteristics of sex or race was de-humanizing. I was not a person but a statistic.

At my first job as an apprentice, my boss did not like me, and did not want me there. He tried to make life impossible for me and tried to get me out of there. As an apprentice, everyone has to take a lot of garbage, that is the way the system works. But for me, a colored woman, there were extra twists.

Male apprentices also have to take a lot of garbage, but they have an advantage in the "buddy system." The men have the opportunity to learn and become part of the system, but the women are never fully accepted. To be accepted at all you have to give up so much of yourself. It amazes me how much garbage men of color put up with in order to be part of the buddy system, but women are never able to be part of it.

Three of us were apprentices at the same time: a white man, a white woman, and me. The male apprentice got to work with the most experienced mechanic so that he would learn the trade, while the two of us most often worked with each other and got assigned jobs like sweeping, dusting, or getting lunch. We complained to the union but they didn't do anything about it.

The male apprentice was also given overtime when the two of us women never got any. We should have all been treated the same but we weren't. You can only be as strong as your knowledge of your trade. Because we were not given the opportunity to learn our trade, we could not be strong.

One thing that I had to deal with all the time was pornographic pictures. I never knew what I would find or where it would be or how I would deal with it. One co-worker put up an 8½ by 11 picture of a vagina. I ripped pictures down when they went too far. I learned how to retaliate or push back when people pushed me too far.

Everything seemed to be infused by sexuality or sexual references. For example, a lot of the supplies have names which have sexual connotations: ball cock, shoulder nipple, tit, and so on. These are trade terms which can't be avoided [so] *I had to learn to deal with it.*

I was so miserable on the job that I would hide from the other workers. I dreaded hanging out and being part of the crew. I was always ready for the next racial slur or sexual innuendo. We had nowhere to turn and had to learn to deal with things

on our own, because there was no one to help us but ourselves. It is very hard for women to unite because we work all over the place, and live all over the place, so it is very hard to develop support.

[After I completed the apprenticeship and passed the mechanic test I changed work sites]. *I was working with mostly black and Latino men, so the racist slurs were less but the sexism continued. Sexual abuse came from all of my co-workers. One guy grabbed my leg, and I smacked him. Another guy used to come up behind me and grab me. I got no help from my boss when I complained about the abuse.*

To succeed in this field of work, women need child care facilities, as does any worker who is a single parent or has a child to care for. The unions will discriminate against women with children by asking them how they are going to care for them when they don't ask men the same questions.

I was eventually able to establish a path for myself. I still get harassed, but not like it used to be. I am now at a level where I get respect from my co-workers as a human being, although it is still intertwined with sexism. But what I want is their respect for me as a mechanic, and this is denied to me as a woman.

Anonymous witness, General Maintainer:

I was exposed to sexual harassment, unsafe work conditions and terminated for speaking up. I was harassed by male co-workers during training and threatened by a co-worker for tearing down pornography posted on the walls of the shanty. I was exposed to hazardous chemicals at a major transportation corporation in New York. I shared dirty respirators with other workers in tunnels without safety training. I was threatened with termination for complaining about unsafe tools and working conditions. I was given a truck with a steering problem that almost caused me to lose control on a 55 mph highway. There was widespread nepotism in the agencies where I worked. Women and minorities were excluded from the old boy network.

Laborers

Simbal Leites, Laborer:

[Mr. Tirado translated for Mr. Leites, who doesn't speak English]. *I started working at Red Ball Construction in demolition. My wages started at $9 an hour, and I started working there for a little while. After a couple of months there, I said I*

should get a little more. They said no and they started cutting down my time again. FightBack told me I was supposed to get $18 an hour because they sent some guys there. When I went to FightBack, I got fired. [I filed a complaint a few weeks ago at the Human Rights Commission. I wrote a statement and was interviewed]. *Another problem is San Ramo Demolition. The black and Latino guys make $6 an hour.* [They were given less than full-time work]. *The rest of the people, Italian people, were given 55 to 60 hours a week.*

Tradeswoman D, Laborer:

[Tradeswoman D is an African-American woman residing in New York City. She works as a Laborer and testified anonymously for reasons of self-protection]. *On my first job I was the only female on a job consisting of about 10 laborers and 10 tradesmen. The reaction to me was instant harassment. I was made very uncomfortable. The Labor Foreman did not like me and treated me with disrespect. He put the men in position of not wanting to be seen talking to me. I was always on time, but he would still yell at me that I was late. He would stand over me and tell me to move faster and say, "You want equal rights, I'll show you equal rights."*

Three times my boots were missing, and I believe that the foreman was behind their disappearance. Sometimes he would assign me to work with guys who would harass me. One guy would feel my behind, make passes, talk close-up in my face, talk sexually to me. One time when he grabbed my breast, I hit him. When I was assigned to work alone, I usually found that I was working in a dangerous situation. Complaining to the foreman did no good.

After four or five months, I was laid off the job along with nine others, but found out that everyone else had been rehired a week later, and that there was a new man on the job, a white guy, and I learned from the other minority male laborers that the guy had never worked construction before.

Unsuccessfully, I shaped at the union for about six months, calling every day, and going to the hiring hall a few times to see if I could pressure them. I had the impression that white males were getting assignments during that time. My second job came from a community-based group, not from the hiring hall. There was a dispute between the foreman and the shop steward over one of my work assignments. So later if I was supposed to ask the shop steward for help he would ignore me. After about a week, the steward said "Just because you're black and a woman, don't think you have any rights here, and why don't you just get the fuck off the job."

[I complained to the minority coordinator, who held a meeting the next day with myself, the project manager, and another coalition leader]. *After that the shop steward held a grudge against me and gave me the silent treatment. As soon as the old foreman left, the new foreman started harassing me. He would subject me to overbearing supervision and give me impossible and unreasonable work assignments. I was told not to talk to anybody on the job. I was the only one he told this to. I had the busiest floor and I did not have a partner. Other people had lighter work and had a partner.*

The foreman made me clean up the street by hand. I was supposed to pick up every little can, paper, cigarette butt, etc. On the one occasion when someone else did that job, he let them use a broom and shovel. [I was told to come in early to take the coffee break order, but stopped when I learned I would not be paid for the extra time].

After a point it got to where I hated to go to work. I was depressed and I started having nightmares. One morning when I got up I started crying . . . at the thought of having to go into work and face all this another day. I met with the minority coordinator and the project manager. Later on that day they must have talked to the foreman, because the next day he had a different attitude. Everything was fine for five or six months after that—no more harassment.

Then, one day, the foreman told me I was being laid off. When I called the agency, they said that he had asked for a replacement. He told them that I had been doing poor work for six or seven months, and that he had been complaining about me, which was not true. I think the whole thing was set up just so that he could get rid of me. All the harassment was supposed to make me quit, but when it didn't work out that way, he had to come up with something else.

I filed charges with the State Division of Human Rights. As far as I know, they haven't done anything about it. Five months later, I got my next and last job. There was no direct harassment, but the white guys would get light duty and the minorities and women would get assigned hard manual labor on a daily basis. White guys could take days off with pay, stand around and talk, and take long lunches, but the minorities and women had to toe the line. Eventually I just got so fed up and tired of this that I quit, so I am currently unemployed and looking for work outside the construction trade.

The only way I could see it getting better is that they would send an inspector down to the job site when a female complained. If they can harass people and mess up their lives without any fear of losing their jobs, it will just keep on happening.

Roy Lopez, non-union Laborer:

I go to school at night and I try to work in the construction industry in the daytime. I have never worked for a period of longer than three months. There are two or three of us [who] *are always the first ones laid off. I noticed that there's a great amount of nepotism. Other workers always have a place to go after the layoff period comes. The more difficult tasks are given to us. It doesn't seem evenly distributed throughout the different races.*

The thing I observed the most is a general arrogance of foremen. There's constant reprimanding for work that you have accomplished. I work as a laborer. I am not in the union. No sooner do you ask the foreman, "How do I get into the union," you won't be working after that. [I have worked on jobs for three months where I didn't have a work permit from the union. I got the jobs through coalitions such as]. *Harlem FightBack. At times they* [paid prevailing wage], *if FightBack complained strongly enough to the super or to the GC. Other than that I never received prevailing wages.* [I didn't get paid time-and-a-half for jobs where I was required to work beyond 3:00 P.M.] *except on the job where I worked for three months.*

Tradeswoman B, Laborer:

I am a white woman residing in New York City. A few years ago I decided to become a laborer. A woman laborer saw me [gathering metal from dumpsters to sell it] *and told me about Nontraditional Employment for Women. I enrolled, and they taught me how to be employable, professional, mature, et cetera. My first day on a job site, my foreman tried to break me. He gave me a container on wheels, which could hold 300 to 400 pounds of debris, a shovel and a broom. He pointed to a spot under where the bricklayers were working, where concrete had fallen and solidified. I had to clean it up. I got as much as I could.*

Four or five months later, I saw the same man give two men the job, and picks to do it with. On the day I moved a piece of scaffolding to what the foreman said was the wrong place, he got mad and moved me to the ninth floor ledge with no roof and made me work under the bricklayers. A brick fell within one foot of me.

The building had seventeen floors, and the only women's bathroom was on the first floor. When the elevator was out, you had to walk. Men did it anywhere and everywhere.

I did fear rape on the job. I had heard of it happening on other sites. Once when I was cleaning a room, my foreman walked in, complimented me on how fast I was working, and gave me a bear hug. I pushed him away and said, "No man touches me like that unless he marries me." I wanted to defuse the situation and not make him hate me. I knew I had no witnesses. He laughed and left. Half an hour later he found me again and started complaining about my work and walked away.

I wanted to join the union. After a month, one of my co-workers admitted he was a shop steward of a Local, and drove me there to help me sign up. I paid my dues. Once I was laid off, I called the union to get work, but they said there was nothing. After three months or so, they sent me to an asbestos site. Later I found that Irish women—it was an Irish local—would be given good jobs, as would relatives. Everyone else got stuck with asbestos.

I worked as a Laborer for one day and quit because of lack of decontamination and proper masks and gloves. I was very insecure about not getting another job as a woman, but my health had to come first. After four or five months of unemployment, trying to get work through the union and by going to different sites throughout Manhattan, I went to work as a Laborer doing asbestos work again. Again there was nowhere to wash and no decontamination until the fourth day. We were given only five minutes to wash in the decontamination room before the naked men would rush in. They would come in before the five minutes was up. We would have to run to a new room to put on clothes and the men would walk in on us naked there too. The job was supervised, but not the facilities.

Leola Pitman, unemployed Laborer:

The contractors and foreman do not want to open the doors to women. If we can do the job, why not hire us? Last year I made $33,000, last week I had to go apply for Welfare. Contractors are selling the jobs to non-union workers. Various organizations are taking money under the table to put non-union workers on the job, paying them $50 to $60 a day instead of to $20 to $40 an hour.

When I go on a site, the first thing I see is disgust and disgrace in their eyes. All I ask for is a fair hand and an opportunity to work like anybody else. I don't want to

be a statistic. I don't want to be on Welfare, but . . . I don't have a choice, I have to feed my son. Life is difficult enough without discrimination against anyone trying to get work in any field. I'm asking you to put your powers and your efforts to work to stop this discrimination against women and minorities.

Jerome Meadows, Laborer; member of FightBack:

I'm a Laborer, and a member of the FightBack organization. Without FightBack, I would not have gotten into the construction industry because it is discriminatory. It is very racist. Before I got the job that I have, I had to go out and shape. A busload of us who were able-bodied men and women of color would go around to the various work sites, and some of the job sites had all whites. We would ask a foreman, "Where [are] *the minorities?" When you stop these jobs, you go through a whole lot, but you get the job. But you are the last hired, and you're the first fired. Not only that, they give the black or the woman worker the hardest job to do.*

They don't want you to get in the union. When you start talking about getting into the union, you're laid off. I'm tired of busting heads, because these are people, and I don't think they [white workers] *are at fault. It is the people that are higher up who is to blame, and these people never see what is happening in the street. Construction firms now have groups called coordinating groups. They are set up to actually keep minorities off the sites. They come to the work sites with baseball bats, knives, guns.*

I have worked for Big Apple Wrecking, and I have seen them lay off black workers and bring family members in—all white. I worked for Cipico. I was underpaid and overworked. When I talked about getting into the union, I was laid off. The white workers never seem to get laid off.

Raymond Tirado, Laborer; member of FightBack:

I'm with FightBack Black Coalition. I would like to talk about racism and thievery [on the part of] *general contractors. I shaped one job, Nativo, and the guy says, "We have lots of jobs for you, but it's at $7 an hour." We didn't go with that. This is a HUD program. They don't have a union there either. So you don't get the benefits and everything—the scale at that time was $26 an hour.*

But they say, "We'll negotiate later on, why don't you come and work. You know, a little money in your pocket, a little money in my pocket." I'm riding the bus, and

he's driving a Volvo, and he wants a little money that I'm working for? It didn't make sense. To make it short, he laid me off after three days of work. Being that I told him I was going to go to the Labor Board, he gave me the $26 an hour. Something has to be done with these people. If they have the money that is coming from the government . . . they are making the money automatically from having the contract. I think that should be stopped.

I'm a Laborer. I went shaping with FightBack. At the beginning, they said, "We have plenty of jobs." Then when they realized that we knew what the prevailing wage is, the story changed. "We don't have that many jobs." Then they tried to negotiate, came up to $10, then $12. I was thinking about getting into the trade of carpentry, but it doesn't make too much of a difference if you are in the trade or not because Electricians from Local 3 [have difficulty getting work, too].

I don't really think that [the discrimination] *is stopping* [people of color], *but it does deter them some. It reaches a point of discouragement. So you either got to fight back or drop dead, just fall out of existence, because they don't want to give you your money.*

[The contractor] *Nativo seems to have a lot of minority workers working there, a lot of them that don't speak English. You come from Puerto Rico, where the minimum wage is like even less than $3, you come over here and they offer you $10, you grab it.*

Trade unspecified

Audio Witness XLA, Tradeswoman:

I have had journey-level status for several years. During my years in the construction industry, I have been the target of sex discrimination and sexual harassment. Once, while a second year apprentice on a job, I was working alone on a rolling scaffold called a Baker. While I was working on it several workers came in and removed tiles on the floor [making the scaffold unstable]. *The next day, I came in to find the words "Property of the cunt" on the scaffold. The foreman saw the sign and said he would take care of it. But the end result was that I was transferred to another job, and never learned the work skills needed on the first job.*

In the mid-1980s, I was a senior apprentice. I was working with a company renovating a department store. The foreman was the worst I had ever worked with. He

routinely touched my breasts. The foreman also talked about how I was making a lot of money for a woman. In my fourth year of the apprenticeship, [when I was] *making 95% of journey-level wage, harassment escalated. My partner stopped supporting me, and I was laid off.* [Even though there was nearly full employment in the industry in the mid-1980s,] *I went weeks without a job. The business agent would send me on one-day jobs. One day, the agent sent a second-year apprentice out on a job ahead of me even though I was a fourth-year apprentice.*

After hurting my thumb badly, I was put on a layoff list. I was told they didn't want any more women on the job. I didn't work for a long time. I was told that another woman was sent to the job, but when I called this woman and asked if she was sent there she said no. So I filed a grievance with the District Council. The business agent called me back in a day or two with a job.

On another job, I was not given a shanty. I was told, "You'll change with the men." A few days later, after a couple of other women on the job complained, we heard the super say on the walkie-talkie, "Okay, let the bitches build the shanty." While we were building it, we stepped away for a few minutes and came back to find written on it, "Lesbians Local 69."

On another job, I was never given a partner for more than a day. The stuff they were giving me were the kinds of things that two or three guys would do, like putting up heavy equipment. They gave me sixteen-foot two-by-fours with metal braces to pass up the outside of a thirty-story building. We were working near the top of the building. I had no safety belts.

Tradeswoman C, Journeyperson:

[A journey-level worker for several years, Tradeswoman C asked to remain anonymous out of fear of retaliation]. *Sexual harassment is a big problem on the job. On my first job, my subforeman flirted with me. When I did not respond, he assigned me to work alone with a dangerous piece of equipment I had not been trained to use.*

[On another occasion] *the same subforeman waved a pornographic magazine which showed two women having sex. He called my name, and asked, "Hey, is this what you do? 'Cause if it is I'd love to watch." I did not say anything but just walked away. He followed me. I went somewhere and cried. I complained to the shop steward, but he was the subforeman's drinking buddy, and could barely keep himself from laughing.*

[On another job, my foreman] *was racist and was always harassing the black men in the crew, telling them to call him "master." At the end of one work day, I was alone in the changing area when the foreman came in angry and drunk. He stuck his hand inside my outer sweatshirt. He said, "You're gonna have to learn a thing or two if you're gonna stay in this business." It was dark and no one was around. I was afraid he was going to rape me. He took his hand from around my waist and grabbed me around the neck and pulled me towards him like he was going to kiss me. Then he let go. I ran and got my coat in the trailer. When I came out he had his fly unzipped and he was urinating on the trailer. I left quickly while he gave me a leering look.* [Because of my past experience, and as a result of an unencouraging conversation with co-workers, I did not even report the incident].

As a result of sexual harassment on the job, I am always on guard because I never know when it is going to return. Sometimes, even when I realize what is going on, there is nothing I can do about it. There is pornography on the walls, and co-workers bring pornographic magazines to the job. When I became a journey-level worker, I was still treated like an apprentice. I was sent out for coffee. I haven't been given a chance to prove myself. It is always difficult dealing with this kind of thing and obviously it comes up because I am a woman.

One outstanding and pervasive problem of sex discrimination is that women are assigned almost exclusively to jobs involving government contracts that have goals and timetables for women and people of color. These jobs afford less opportunity for on-the-job training. They are large jobs that require more routine, repetitive work involving less diversity of tasks. The union is quite open about the fact that it saves women and minorities for these government contracts and will refuse to give us other opportunities.

The city should follow the federal and state monitoring of shops and not contracts; by monitoring the employer's entire shop and not the government contract alone, the government oversight would ensure affirmative action without the detriment of the limited opportunities.

Tradeswoman E, Construction Worker:

Male apprentices were assigned duties that allowed them to receive training and learn how to use tools. I was not afforded the same opportunity. When I complained, the manager told me I would never be a mechanic and all there was for me to do was painting. I applied for a promotion which I was qualified for. Two

male apprentices with less seniority and experience received the promotions. I was harassed by my co-workers. I filed a grievance with the local union. They are like the Mafia—if you fight them, they blackball you.

Tradeswoman K, Apprentice:

[Tradeswoman K is a white woman living in New York, who has worked for several years in the construction trades as an apprentice and is a member of a union local. She believes she is treated better than most women in construction because her husband also works in the industry].

Changing facilities are a major problem on the construction site and there are never adequate bathrooms for women. On my first job, I had to share a locker room with twelve guys, and I was the only woman. I do not want to change in front of the men and I don't want to watch them changing. In that locker room there were two naked pictures of women. One of them was a poster of a woman with her legs spread masturbating, no clothing at all.

On my present job, to change in private, I have to go two stories up to a finished bathroom. This is inconvenient and takes extra time for which I do not get paid. On another job, where the men had a huge locker room, I was put in a storage shanty that was very stuffy in the middle of the summer. [Finally the women were given a shanty]. *However, our room was not finished, and the top of the walls were open to the wind and weather. The men's room was completed temporarily with insulation and plastic around the ceiling. As it got colder we told the foreman that we had to take the time to finish the room temporarily, which we did, even though the work was out of our trade.*

On another job where the men had a big bathroom, the women had a separate bathroom, but it was very small, one stall. Nonetheless, whenever I went to use the women's bathroom there was a man in it. Eventually we put a lock on the women's bathroom but the lock was broken off frequently. They would pry the hasp off. I am sure this was done, at least in part, to harass the women.

On my first job, I was threatened by an apprentice. He was a very big guy, over 6 feet and 250 pounds, who was known for getting in fights and using drugs. While we were in a deserted area he said to me, "You know, I could attack you right here and nobody would ever believe you." This guy did not advance in the apprenticeship because he kept failing school and he had to go to drug rehabilitation, but they kept

giving him chances. It took him six years to complete the first three years of his apprenticeship. I doubt that they would give a woman with his record that many chances.

Racism and racist attitudes are a problem. I've heard men in the trades and foremen say "nigger" and tell racist jokes, but not when a black person is around. "Nigger" is often written around the construction sites; rarely does anyone take this graffiti off. The word "cunt" is often written on the walls in the construction site. Rarely does anyone take this off either. Although I have never been called that, I know women who have been. I have also seen "dyke" written on the wall and I have heard of women being called "dyke."

On my second job, I used the women's bathroom as a changing area. Even though the job had been going on for at least two months, there wasn't any pornography on the walls until I got there. I think it was put up to annoy me. One guy in my trade expressed the attitude that women do not belong in construction. He cut out a lot of pictures of "crotch shots" and naked women having sex with a man, and made a collage. Then he photocopied it and posted the copies in fifteen or twenty different places at the site. I complained to the foreman and they were taken down, and the general contractor superintendent announced that there was not to be any pornography on this job.

At school for apprentice training, my teacher tells a lot of sexist jokes and has used graphic sexual terms to describe equipment in his lectures. The point of the jokes is to put women down or to humiliate women. Men are rarely the butt of those jokes. Sexual terms are common at work. Easy jobs in my trade are referred to as "tit jobs." If something needs a slight adjustment, it is referred to as being a "cunt hair off."

Tradeswoman M, Apprentice:

[Tradeswoman M is a white woman living in New York City. She has been working in the construction industry for the past few years as an apprentice in a skilled trade. She would not reveal her trade or local, fearing that her union would retaliate by] *making it impossible for me to ever get my journey-level card.*

Initially, my application to the apprenticeship program was stalled by the union's requiring a note from my doctor saying that the prior removal of a benign cyst in my uterus would in no way interfere with my being able to do skilled work. Since

this I have spoken to four other women who were also initially denied admission because of alleged physical problems. I was not the only woman whose irrelevant difference from men seemed to be a problem for the union.

There are thousands of jobs altogether but only quotas on the government jobs. The union moves all the women through these jobs instead of bringing more women into the union. It's clear the union isn't meeting their quotas. I know that without the quotas . . . I wouldn't have been hired, but, once in, the quota hurts me because it's only on some jobs, usually industrial, like transit, sewage, etcetera; so the training is limited, the health hazards are outrageous, and the union has no incentive to send you anywhere else. White men don't stand for these assignments unless they are in big trouble with the union.

Only once have I had a shanty to change in separate from the men. Even in office buildings we gut, which have bathrooms built in, the men rip out women's bathrooms or use them for storage while leaving a bathroom for themselves intact. I have had to beg women secretaries on intact floors for permission to use their bathrooms. I am also sent out for coffee more than any male apprentice. When men don't do a good job, they're "lazy." If women don't, we're "incompetent." I have to fight to do my assigned duties—the men always want to do my job for me—which obviously affects my training. The union condones all this. The foremen have never been trained to provide shanties, bathrooms, training, etc. for women and so of course they don't do it.

There is everyday stupid bullshit and constant cracks. There was one new male apprentice who would always make obscene noises when he walked past me. When I confronted him, he called me a "fucking dyke" and the next day started throwing equipment in my proximity to intimidate me. The foreman wouldn't protect me and accused me of provocation. You can never say the right thing to the men.

Tradeswoman O, Apprentice:

[Tradeswoman O is a woman of color, residing in Brooklyn. She is a union member and an apprentice in a construction trade, but testified anonymously out of fear of retaliation. Out of 5000 union members in her trade, all but about 50 are male].

[After passing the written test for apprentices which I took with] *approximately 40 men, mostly white, and one other woman, who was black, I was assigned to a job in the Bronx, a two-hour commute. I think the union sent me up there deliber-*

ately so that I wouldn't be able to stick it out. When I asked the union to put me somewhere closer, they kept telling me that they didn't have anything. Later I found out that they had assigned another woman to a job right in my neighborhood.

The job in the Bronx was pretty good, but I had to use the men's shower inside the boiler room, and share the secretary's bathroom. A [male] *co-worker came in and tried to pull the door open while I was in the shower. I yelled at him, and reported it to the supervisor, but he took it as a joke. I was the only woman working there, with 20 men, who were almost all white. Because of apprentice classes in Queens and a second job in Manhattan, I had trouble getting to the Bronx job on time, and was terminated after about eight months for lateness.*

[On my next job, the person assigned to train me] *didn't tell me half of what I needed to know. When I messed up later on, I caught hell for it, but when the guys messed up no one paid any attention. As a first-year apprentice, I wasn't supposed to work by myself, but they sent me out to an apartment anyway. They didn't tell me about certain dangerous things which could go wrong, and I had a lot of trouble.*

After that the men started treating me really nasty. I wasn't told how to do anything. The men started refusing to answer my questions. I received no more training, while the male apprentices continued to work with partners.

[After two months my supervisor said he would have to let me go] *because I had made too many mistakes. Men who made the same mistakes I did got co-workers to cover up for them, and had no problems. Many of the guys don't go to school at all either and no one cares. Once when I was feeling sick and had to work overtime, "the guys" told me to take it easy, but turned around and complained to the supervisor the next day that I wasn't working. Despite the efforts of the union business agent, they canceled all the overtime until I left.*

Another time, the shop steward all of a sudden exploded at me. [He said to me], *"Lady, you don't even exist." I felt that my union had abandoned me, was not on my side anymore. When I was laid off, he* [the shop steward] *didn't fight to keep me on, of course.*

[After being unemployed for about three months, I was sent by the union to work as a storeroom clerk]. *It was not a job where I could get any training or practice. I was told by the union that I could be promoted, but when positions opened up, I would always be passed over. This union always puts the guys in the*

premiere jobs, while telling the women that there is nothing available. They were trying to set me up to get me fired. My boss wrote me up for lateness and for taking "excessive sick days," even though I had doctors' notes for three of the six days I was out. I had been there over a year with no prospect of getting back into engineering, so I resigned. Since then I have been calling the union, trying to get a job where I could be learning something about my trade, [but without success].

I think women in the trades need to stick together, and work to get the union on our side. We need for them to treat us like brothers and sisters, like family. If you need to use legal means to force them to let you in, they will always resent you and do it only as much as they have to. I know that resigning my job was not a good move for my career, but it was necessary for my sanity. Quitting was my only way of fighting back, like it is for many other women.

Tradeswoman Q, union member:

[Tradeswoman Q is Caucasian and resides in New York. Her union has over 2,000 members, of which approximately 26 are women. She testified anonymously out of fear of harassment].

I tried to apply for a position that had become available where I worked, but I met with resistance. The shop steward responded that I was not qualified, even though I had my license, my degree, and a year's experience. I wanted to file a grievance, but was persuaded by the union business manager to meet informally with union representatives. I wanted to fight for backpay, but I agreed to settle for an agreement that I would get the next similar available job, as well as immediate retroactive seniority over the guy who had been hired in my place. I settled for this agreement because I was afraid of what the union would do to me if I did file a formal grievance, like setting me up on the job by sabotaging my equipment.

I did finally receive a promotion but I lost the seniority I should have gotten. I have also lost the support of both my shop steward and the union officials, and I am now experiencing harassment from my supervisor. I believe all this is because I am a woman.

When I was first promoted, my supervisor harassed me continuously. There are 19 men on the site, including three minorities, and only two women. He would yell at us women all the time even when I was doing good work. He would constantly complain about little things—details that the men get away with all the time. We

felt that he was trying to get rid of all three of us, because he often told us, "If one goes, you all go." His behavior improved a lot when we complained and the union talked to him about it.

Members of the union officials' families, and those who know people in the union get the best jobs. The union has almost total control over who gets the jobs, since the employer will hire anyone they tell them to. [Union agents] *do not go out of their way to settle problems of harassment, and do not try to make sure that women get promoted. The expectation is that women will never advance from the lowest jobs, that we won't make it.*

Anonymous witness #1:

[Witness #1 is a woman of color]. *I got a job at Carlton Construction through NEW. When I first got there, everybody was nice to me except the foreman. I lost weight on the job* [because of the heavy work]. *The foreman started asking me if I was on drugs. He had people watching me. If something was missing, I was always blamed for it. One woman on the job would fill my boots with dirt, put garbage in my clothes.*

There were nine people on the job. Everyone had a partner except me. Nobody was allowed to talk to me. My shop steward was no help. I'm a Laborer. My union hasn't gotten me a job in over a year. I have to go out and find my own jobs which isn't fair because I had to fight for the [union] *book in the first place, spend all this money in the second place, and then I'm paying $20 a month* [in union dues], *and these people are not going to find me a job.*

On one job, I was the only woman out of 155 men. I managed to stay there for eight months. I never mentioned to anyone [that the foreman was harassing me] *because I was scared that I would lose my job. Finally, the foreman laid me off. A few days later, I bumped into some guys that I worked with who told me, "Charlie just hired four, five guys. You're not supposed to be laid off."*

I went down and filed a complaint at the Human Rights Commission against Carlton Construction and Charles Shelby. It had taken them four years to put a woman on the job, and that woman was me. Mr. Shelby had tried to prevent it, and when he couldn't, he took out his anger at NEW on me.

Anonymous witness 3, Construction Worker:

There are two events I want to tell you about. The first was on a small non-union job. On payday, the contractor held out the check and I reached for it, and then he put it behind his back and told me I had to see him later on Friday night in order to get paid.

The second event was on another job. Whenever I was alone with the contractor, he would try to fondle me. This was the carpentry trade. I got paid, but everybody else got their paycheck more easily than I did.

Young Shi Lee, Construction Worker:

I emigrated from Taiwan in 1985 and I thought construction was a very good profession. In October 1986, the American-Chinese Planning Council [ACPC] *was hiring construction workers and I was hired. The first day we were sent to work in East Harlem, a five-story apartment building. What we had to do was clear the rubbish from the whole building, five trucks of 30 cubic meters each, and we also took down the partitions in the whole building. I worked there for three weeks, then I went on to another site. We had no safety measures at all. We took down the walls without masks. The lighting was extremely bad. There were a lot of accidents, such as piercing the feet and sometimes rocks falling on your head. Our stuff was often stolen;* [we were] *even mugged. We complained to our superiors and to the ACPC. We finally wrote a collective complaint, but I was fired because of it. After a year of legal action, I resumed my job. There was still no change, no safety measures. The construction workers thought the only way they could maintain or protect their rights was to form their own trade union, so they could have the power to bargain with the supers or the management. We discovered the problem was not only in the Planning Council, but that HPD had awarded a contract to them* [even though they discriminate].

We read up on [prevailing wages] *and found that the average . . . was $20* [an hour] *for construction workers, but the HPD contract with CPC was for $95 per workday. After everything was deducted, it is like $4 per hour. There were no benefits of any kind. The Labor Relations Board approved this setting up of our trade union in November 1988. We think that is why the HPD postponed or eventually terminated its contract with the ACPC.*

[At the same time] *a group of us also tried to join the traditional trade unions. We had contacted the Building and Construction Trade Council. We asked them to help in putting us in touch with traditional trade unions, but we have had no response from them. This is over a three year period. So, when I came from Taiwan I was full of hope, now I'm very hopeless. The Chinese construction workers are lowly paid and they have no benefits, so I tried to get into other construction ranks. I couldn't do it. So now I am forced to change my trade and I am now learning to drive truck trailers.*

Anonymous Witness E, Construction Worker:

I have been a tradeswoman for over ten years. My experience has been working in the public sector. [After I came out as a lesbian on a job] *my supervisor threw my personal belongings in the trash* [and gave me a menial job]. *After one year on that job, I got a better union job with a government agency. I am the only woman out of about 200 workers in my craft. Although I decided not to identify myself as a lesbian on this job, I have overhead supervisors talking about me and referring to me as a dyke.*

Workers are free to work with a partner if they choose. I have only worked with partners on a temporary basis even though I have wanted to work with a partner. This has forced me to become very isolated with no support on my job. I have not been given overtime as much as the men even though I have requested it. The difference in pay amounts to as much as $10-15,000 per year. The men are given favorable treatment [in terms of lateness, issuing of equipment, and job evaluations]. *My supervisor recommended that I be fired even though it is extremely rare for anyone to be fired from this position. I fought it through the grievance procedure* [which was stressful and time-consuming].

I was transferred to another location [involving] *an hour-and-a-half commute each way. Although my next supervisor gave me a better evaluation, I continue to be isolated on the job. I think the way to improve the situation for women is to encourage more women to go into the trades and support those who are already there so that they will stay.*

Anna Palmer, former vocational school student:

Although I don't work in the field of construction, I have been exposed to some of the same harassment. I was the only female in my vocational class. Sexist comments

were made on a daily basis by the teacher and classmates. He would say [such] *things as "no interruptions, and no erections," and the whole class would stare at me. Rumors were started that I was a whore or a lesbian. Because of my bad experience, I did not pursue my chosen field of electronics.*

Society's perception and stereotypes of the roles women should play in society does not include the nontraditional field. As a result, women who pursue the nontraditional field of work are often labeled by society as dykes or lesbians.

Teamsters

Lanere Rollins, Teamster:

I have been working as a Truck Driver-Teamster in the theater and film industry for thirteen years without a union card. When I approached coordinators about joining the union, I was told not to be funny—there are no black women Teamsters. I had to go to Wilmington, North Carolina to get my card. Now, back in New York, even though I've got my card, I can't get a union job. I've never been accepted. The referral hall just keeps sending the same guys to the same jobs. They don't have a list. When does the new guy get a chance?

There is no Teamster apprenticeship program in New York. To become a teamster, you have to be referred by a union member. Once you are presented to the membership, they have to vote you in. The vote has nothing to do with your experience, it's just a matter of whether they like you and who knows you.

Witnesses on behalf of construction workers

Judith Schneider, President, Association for Union Democracy:

[Ms. Schneider spoke on behalf of a woman who had been scheduled to testify but withdrew]. *A woman, who is a member of one of the major construction unions and was scheduled to testify anonymously, will not appear out of fear of retaliation. Her co-workers and union officials have threatened her life and the life of her children. She is being followed. They told her that they'd be watching the building and that they would know who testified. The difficulty that these women face is often immense—people are literally terrified. Women who have turned to nontraditional work to escape the feminization of poverty have had to face*

unsympathetic and hostile union agents who have little interest in representing them.

The Women's Project of the Association for Union Democracy aims to strengthen and democratize unions by increasing the involvement of, and influence of, women union members, and to help women to mobilize unions in support of issues of particular concern to women. The union movement has great potential for progress, a potential that is unfortunately often thwarted by unions which fail to represent women fairly.

In the construction trades, unions often control access to jobs. This power is frequently used to punish members who complain about discrimination. Women union members are routinely denied jobs and routinely harassed sexually. Many women are denied access to apprenticeship programs by practices that are blatantly sexist and racist.

The problem of discrimination against women in the construction trades is not limited to the private world of contractors and hiring halls. It is rampant in the various transportation authorities and New York City agencies.

Susan D'Alessandro, member, Local 30;
Women in Construction:

I would like to steer this committee away from any missionary work [*i.e.*, trying to change how male construction workers think] *and* [instead] *be concerned about how people behave on a job site. The reason sensitivity training is a waste of time is there's nothing in place to reinforce that after the fact. A male trainee who commits acts of harassment won't be reprimanded. Anyone who brings a complaint against such a person has to go bring a case before a panel of white men. The training is a farce that gives the false impression that a remedy exists.*

[Another issue is that] *the employers are required to make a certain kind of contribution towards apprenticeships and training, and it would seem that the city, with the collective bargaining agreements, has simply not been willing to come forward with that contribution that's necessary to initiate apprenticeship training.*

Most journeypersons don't really have the best interests of apprentices at heart. The ratio of apprentices to journeypersons [is] *usually* [small]. *It seems* [that the ratio is kept low] *because of the financial distributions of benefits that go on the table. This*

is one of the most opportune areas for the Commission to become involved in. [Increasing the ratios of apprentices to journeypersons] *would open up numerous slots for women and minorities. There has been a lot of testimony about monetary punitive action against contractors. The City of New York automatically re-issues licenses—electricians' licenses, riggers' licenses, any kind of heavy machinery—without any inquiry into minority discrimination or harassment.*

Outright financial fines might be an appropriate avenue to deal with noncomplying contractors. Suspension or revocation of licenses might be an effective sanction. Perhaps using the tax structure, some kind of surcharge on offending parties would be a viable approach.

Perhaps the Worker's Compensation Bureau could afford compensation to individuals needing therapy as a result of stress brought about by on-the-job harassment. Otherwise the trend appears that minorities who've been in the trades for 89 years are experiencing unpleasant working conditions.

Almost all women in nontraditional employment work as lone representatives of their gender on a given job site, in a gang or in a crew. We are, by that circumstance, ostracized before the fact. We continue to lose significant numbers among us because women are becoming distressed and burned out before they achieve the skills necessary to assure stability and market them.

Rumors were spread that a female co-worker had been involved sexually with several members of the staff, which was wholly untrue. She continued to hold her own until one night when she was attacked in a darkened area of the plant by a fellow co-worker. He grabbed her while clothed only in his underwear, knocked her down and got on top of her. She fought him off, and although she never described the incident as an attempted rape, she was clearly upset to have been physically overpowered against her will by a man with whom she wished to have no physical contact.

After she made a formal complaint to her shop steward, the harassment escalated further. There were cards addressed to her containing obscene material posted for view on the bulletin board, and her daily tasks at work began to become defined in such a manner as to make it physically impossible for her to perform.

She apprised her business representative of the situation [and the individual] *responded by having a discussion with her fellow workers. She was put on notice*

that the shop men were extremely unhappy to have been reported to the union and would ensure her life would get worse. Eventually, she resigned her position because of the pressures and the lack of support by the unions.

Those of us that worked in the Women's Committee and lent our continual support to women in the union became convinced that the union had little or no interest in any practical support, nor did they seem capable of securing a safe work environment for women. Those of us who were aggressive and vocal in our demands for women's rights were also developing problems beyond our ability to cope, so that as I speak to you today, the two women who were most vocal among us have resigned their positions and work outside the confines of the union.

The issue that I would like to raise is that the Buildings Department continually renews the licenses of all people involved in that trade; and I would like to see if there is some way that some intervention could be made when the City of New York is re-licensing these people to go out and harass and discriminate. So I would like you to consider that fact and to see whether or not you can make some impact.

Were someone to pose the question as to whether things were improving, I would pass on a quote from a recent conversation that was held between one of the women at the local and her business representative. He said to her, "We seem to be losing a lot of women lately and I have no idea why." I would like to leave you with that thought and with the hope that these hearings will address that statement.

4

Expert analysis of industry policies and practices

The construction industry employs thousands of workers for indefinite durations at many construction sites throughout the city. The constant flux and flow of workforces makes the process of monitoring industry practices a difficult one. As the testimony provided by workers in Chapter 3 demonstrates, the construction industry is an assortment of trades covered by multiple union locals and employers. For this reason, terms and conditions of employment often vary from one job to the next.

Despite differences in size and jurisdiction, and certain unique policies and procedures within a trade, some basic union issues—such as unfair job referral practices and the need for sexual harassment prevention programs—cut across trades. The testimony which legal experts, and labor and civil rights advocates provided during the course of the hearings highlights several areas in which the industry must be more responsive to charges of discrimination and abuses of workers' rights.

Hiring by contractors

In most trades, skilled construction workers obtain work directly through contractors or foremen. Many contractors assemble work crews which remain intact from one job site to the next. According to Francis McArdle, president of the General Contractors Association (GCA), people of color comprise one third of the GCA workforce. He did not state what portion of this workforce is unionized, or whether people of color are concentrated in the less skilled, lower-paid end of the construction industry. Since they jointly administer apprenticeship programs with the unions,

contractors share responsibility for the fact that less than 20% of skilled unionized construction workers are people of color. Though contractor representatives sit on joint apprenticeship committees, most apprenticeship programs have a less than 30% ALANA* participation rate.

Contractors and foremen often assemble work crews through an informal grapevine which is difficult to monitor. This process favors white male workers with personal and family connections over people of color and women. The testimony of construction workers indicates that contractors are more likely to hire people of color and women if a project is federally funded. However, work assignments are often short-lived, and these workers are transferred from one site to another, a practice known as "checkerboarding," in order to meet federal employment goals.

Job referrals

The consensus among experts, supported by a large body of evidence provided by the construction workers who testified, is that the job referral systems in the various trades do not incorporate adequate safeguards against discrimination. Although relatively few jobs come through union referral/hiring halls—generally between 10% and 30% in most unions—still it is essential that unions develop standardized and non-politicized referral procedures to prevent discrimination. This is especially urgent in the case of the International Brotherhood of Electrical Workers, Local 3, the only union in which virtually all job referrals are made by a unique referral system created by the Joint Industry Board (JIB) Employment Plan. Another exception is Local 580 of the Bridge, Structural and Ornamental Iron Workers Union which must, as of January 1993, according to a court order, refer 65% of jobs obtained in its jurisdiction through its referral hall.

Although some unions have hiring hall systems with rules which purport to address discrimination, they are easily violated because New York City does not effectively monitor referrals, thus allowing patronage and favoritism to dominate the process. Given the scarcity of available jobs in the currently depressed building industry, referral halls are faced with the difficult task of parceling out scarce jobs to members who sign in early in the morning in the hope of finding work. One union official

* ALANA = African-American, Latino, Asian-American, and Native American people.

stated that on the day he testified, about 100 members had signed in at the hiring hall, half of them people of color (a disproportionately high amount given that they account for less than 20% of union members), and only two workers were referred out that day.

As reported in the previous chapter, union officials testified that they took into account the order in which members signed in, but also considered whether each worker was properly skilled for the position, and had demonstrated a professional work attitude on previous assignments. These subjective criteria allow for possible abuses of union referral powers, particularly in the case of workers who have filed complaints against a union or employer.

Although unions generally select workers from the "out-of-work list" in order to refer them to contractors who call for workers with particular skills, the contractor ultimately has the right to refuse workers referred by the union. Race and gender discrimination on the part of the contractor, then, can play a role in the referral hall process. As some union officials pointed out, they are often asked to refer a specific individual who has worked for the contractor. When female or ALANA workers are requested, it is usually because the project is government-funded, and the contractor must meet a specific goal. The prerogative of contractors to make specific requests for individuals undermines union-initiated efforts to create systematic and equitable referral procedures. As Francis McArdle, President of the General Contractors Association, stated, the contractor ultimately does the hiring, and is under no obligation to accept an "unqualified worker" referred by the union.

Historically, these practices have led a number of people of color to conclude that neither contractors nor union referral systems can provide them with meaningful job opportunities. In response, many testified that economic necessity forced them to join coalitions which typically arrive *en masse* at job sites, demanding jobs and often engage in violent confrontations with work crews.

While there was consensus among the experts in identifying problems within current referral systems, recommendations for reform differed, with experts and advocates laying out three basic models to overhaul the current fragmented union-run hiring hall/contractor system. While some components of the differing models are not mutually exclusive, they differ in terms of which entity will administer them. They consist of the following:

1) **A community-run hiring hall**

Advocates and experts, including Jim Houghton of Harlem FightBack, Merrick Rossein of CUNY Law School, and Esmeralda Simmons of the Medgar Evers Center for Law and Social Justice, favor a community-run hiring hall. Mr. Rossein's proposal called for a centrally located hiring hall with one hiring hall to function in each borough, run by a local nonprofit community-based organization (CBO) under contract with DLS. CBOs would be selected through a Request For Proposals (RFP) process, and would remain independent from unions and contractors. They would be responsible for assessing the skill levels of workers they refer. Ms. Simmons outlined a very similar model, and elaborated on the responsibilities of contractors and subcontractors to complete weekly evaluation forms on skills and performance levels of the workers referred, with a right to reject workers who perform poorly, and an obligation to accept qualified replacement workers from CBOs.

2) **A city-run hiring hall**

Suzanne Lynne of the Office of the Attorney General, Stan Mark of the Asian-American Legal Defense and Education Fund, and Wing Lam of the Chinese Staff and Workers Association proposed a city-run community hiring hall. Stan Mark advocated a city-sponsored hiring hall that would require developers, contractors and subcontractors doing business with NYC to hire a contractually binding percentage of their workforce from the community in which the job is located. He proposed a three- to five-year plan for its implementation, starting with a first-year study to determine whether a centralized hiring hall or many local neighborhood halls operated by the city would be more effective with respect to increasing ALANA and female representation. In the second year, a demonstration project would be evaluated by local community construction workers, contractors and experts. The Commission on Human Rights and the Division of Labor Services would be charged with developing guidelines which hiring halls must follow.

3) **A more accountable, union-run referral system**

A more accountable union-run referral system was proposed by Herman Benson and Judith Schneider of the Association for Union Democracy (AUD); Sarah Burns

of NOW Legal Defense and Education Fund; and Miriam Frank, CUNY Labor Historian. The referral system they proposed would require that referral rules and job referral information be written, and posted in a public area of the union hall. Referrals be filed with the Commission on Human Rights, and be available for inspection; and all referral information would be posted for at least one week at the union hiring hall. Referral information should include the names of contractors requesting employees; applicants seeking employment; applicants referred for employment; and other relevant information. Government agencies would monitor compliance with referral procedures.

Abstract of testimony

Problems with union hiring halls

Jim Houghton, Harlem FightBack:

The unions have not reformed their racist and sexist practices in the past 100 years. They are like a separate government from the government of this city, and have monopolistic control over the hiring of workers. Thus, the city must adopt the program for a city-administered community hiring hall. That hiring hall would be a parallel route to the union hiring hall. It would be run by the city and would have jurisdiction over all public sector, public-sponsored construction. It would be used for tradespeople as well as trainees.

The community hiring hall would get people work and, once they were in a union job, they would be eligible to join the union. When I discussed this proposal with Deputy Mayor Esnard and OLS [the Office of Labor Services, now called the Division of Labor Services] *director Oliver Gray, I was told there was no money available to run the program.* [Houghton counters this argument, saying] *the creation of jobs for African-American and Latino workers would reduce unemployment and save money by reducing social and economic problems in those communities.*

[In response to a question by Olivia Peck about the logistics of setting conditions which require contractors to use the community hiring hall, Mr. Houghton suggested] *two approaches: first, to have OLS create a study on the availability of people of color and women in the various trades; and second: the "underutilization approach." In this scenario, the city would establish through its inspectors the*

number of people of color working on various job sites in relation to the availability of those workers, and then contractors would have to draw their labor from the community hiring hall. There would be no problem in recruiting thousands of workers every week.

The present system has created a number of problems. One is the so-called community groups which have come into existence. They have created a position they call coordinators, and these coordinators actually work to keep other blacks off the site. When a group like FightBack, or any other group legitimately seeking work for unemployed black and Hispanic workers, goes down to a site, a brawl ensues because of these coordinators. The media doesn't cover this type of incident anymore. It has given up on the effort to report on integration within the construction industry.

Susan Jennik and Herman Benson,
Association for Union Democracy (AUD):

[Mr. Benson suggested that there should be] *some sort of public control over hiring and distribution of jobs critical to the construction industry. To have a single hiring hall might be a bureaucratic impossibility, but there has to be some kind of public control over hiring halls. Unless there is control over the employer, controls over unions are not too powerful. The employer is not required to hire from the hiring hall. Very few unions have a complete hiring hall and the employer is not compelled by law to hire someone—or rather, to reject someone—because he or she is not a union member.*

[Ms. Jennik said] *the hiring system in construction compounds the worker's insecurity. Most jobs are assigned through union referral systems or hiring halls. While some referral systems have objective rules which, on their face, seem to prevent discrimination, in fact, these rules are easily violated. Workers who are not on the good side of union officials are at their mercy. If they make a complaint, they may find themselves unemployed for years.*

According to National Labor Relations Board policy, job information must be made available to applicants on request, and discrimination in job referrals is prohibited. This policy is not effectively enforced. Past attempts to reform the referral system in the construction industry have been unsuccessful. A new approach is needed. Enforcement systems that rely on the efforts of individual employees are doomed to

failure. The hiring hall system must be reformed to require fair and nondiscriminatory job referrals for all workers.

[AUD's proposal focuses on reforming the hiring hall system to require fair and nondiscriminatory job referrals for all workers]. *The Commission on Human Rights should develop a model job referral system based on the following assumptions:*

1) *Unions which do not use model job referral rules should be presumed to be discriminating in job referrals;*

2) *Contractors which seek employees from discriminatory job referral systems should be presumed to be discriminating, and should be subject to immediate and certain penalties.*

Requirements of a referral system are as follows:

a) *Referral rules should be written and posted in a public area of the union hall and at a union office;*

b) *Referrals should be filed with the City Commission on Human Rights, where they will be available for inspection or copying;*

c) *All referral information should be posted, and remain posted for at least one week, at the union hiring hall, and at any union office;*

d) *Referral information includes: requests from contractors for employees; requests from applicants for employment; identifying information of applicants contacted for employment; and applicants referred for employment;*

e) *The principle of the referral system should be "first-in, first-out";*

f) *Government employees should monitor compliance with posting and recordkeeping requirements;*

g) *Government employees should monitor and enforce rules on referral-related complaints. Referrals should be written and posted in a public area of the union hiring hall, if there is one, and at any union offices. Referral rules and posting locations should be filed with the City Commission on Human Rights, where they will remain available for inspection or copying. All referral information should include requests from contractors for employees, requests from*

applicants for employment, and a list of applicants referred for employment. The guiding system of the referral system should be first-in, first-out. This would provide for fair treatment of applicants. Providing workers with a fair hiring system is a necessary first step towards eliminating corruption and discrimination in the construction industry.

Applicants should be eligible for referral if they meet objective standards for performing the work or trade. The standards should credit experience obtained outside the union system. It is unlawful, under the rules of the National Labor Relations Act, for a union to discriminate against nonmembers of the union in job referrals. Under federal law, someone who has received a job referral and worked for seven days is required, whenever the contractor has a contract with the union, to join the union. Union officials, representatives, or dispatchers who violate the discrimination prohibition should be removed from their position and prohibited from carrying out any duties related to job referrals. Such discriminators should be subject to individual liability for damages caused by their actions, including liability for emotional distress, and punitive damages.

A city agency should be responsible for assisting construction workers seeking fair treatment in job referrals. A city agency should investigate and decide worker complaints of unfair treatment in job referrals.

Government employees should visit union hiring halls to check for compliance with posting and recordkeeping requirements. They should distribute literature informing construction workers of their rights on the job and within the union.

Providing construction workers with a fair hiring system is a necessary first step towards eliminating corruption and discrimination in the construction industry. Without some kind of job protection and economic security, victims of unfair treatment would be reluctant to register complaints or work for reform of their unions.

James N. Finney, Associate General Counsel,
US Equal Employment Opportunity Commission:

Ideally, members of construction unions should expect to be referred or "shaped" on a first-come, first-served basis. In fact, we have found this to be the exception rather than the rule with several construction unions in the New York area having consent decrees with the EEOC. The process of referral to a job by operation of the sign-in sheets maintained at the referral hall has been, and continues to be, abused with

respect to minorities. Typically, these members go to the hall, where they wait futilely. Although construction jobs might be plentiful, very few of the available jobs come through the referral hall, and those that do are often the least desirable in terms of overtime, premium time, or duration. Too often, the great majority of jobs, and the most desirable ones, will be "shaped" at the job site under the unfettered control of a union "business officer" and/or contractor. [There are more than 200 licensed contractors in the New York metropolitan area].

At the hiring hall of one union, the few jobs which come through for referral have been found to be subjected to discriminatory manipulation of the sign-in sheets by officials at the hall. A sign-in rule of that union, which we have challenged, expressly required sign-in sheets by officials at the hall. A sign-in pencil rather than pen. This rule facilitated discriminatory referrals; some sign-in sheets were erased and the names of non-minorities were substituted for those of minorities. On the other hand, widespread job site "shape-ups" have allowed for biased assignments. They have also allowed for the attempted exercise of retaliation against many minorities who have openly supported the EEOC's nondiscrimination enforcement litigation.

Discriminatory referrals have an impact not only on minority journeymen, but also on minority apprentices. Apprenticeships in most construction unions have a duration of several years of combined class work and on-the-job training. Typically, we have found minority apprentices receive fewer referrals than non-minorities, making it difficult for minority apprentices to support themselves and their families for the duration of the program. Many of them have been compelled to drop out.

Without reliable recordkeeping and recordkeeping practices, periodic reports submitted by the affected unions can be authenticated only through tedious secondary methods. Such reports very likely will not satisfactorily supply accurate information on such issues as membership size, total and average number of hours available and worked, and legitimate dobymen and permitmen activities. It is essential that records be reliable and that they include accurate and complete information on daily referral and shape-up activities.

Because there has been some stubborn resistance to compliance on the part of several of the larger construction unions in New York and surrounding communities, the EEOC is seeking court-ordered centralized referral systems tied to pen-and-ink sign-in sheets. A centralized referral system would go far in eliminating dis-

criminatory practices, particularly if the system is keyed to an approved computerized recordkeeping system.

Merrick Rossein, CUNY Law School:

Create a centrally located community hiring hall system, independent of the unions and contractors. It should provide some form of protection to the workers it refers for jobs. There should be one hiring hall per borough which would be run by a local organization under contract to DLS. The CBO should be chosen through the normal RFP process and be responsible for assessing the skill levels of the workers it refers. The community hiring hall system would also be beneficial in providing data on the pool of non-union tradespeople available for work. This information is critical to determining the degree to which contractors are complying with the civil rights laws, particularly where race-conscious factors are used.

Wing Lam, Chinese Staff And Workers Association:

Create city-run community hiring halls. Building trade unions have failed to correct their exclusionary policies, and so new measures have to be taken. In the meantime, support any legislative measures to ensure open records of waiting lists at the union hiring hall. Make sure the union hiring hall is fair.

Stan Mark, Asian-American Legal Defense and Education Fund:

Strong consideration must be given to city-sponsored community hiring halls that require developers, contractors, and subcontractors doing business with New York City to hire a contractually binding percentage of their workforce from the community where the job site is located.

A three-to-five year plan for its implementation must include a first-year study to determine if a single citywide hiring hall or local neighborhood halls are more feasible and effective at increasing the number of minority and women workers in the trade unions. During the 2nd and 3rd years, a demonstration project with adequate monitoring mechanisms and review would be operational so that final adjustments to the hiring hall concept and its operations would be incorporated. The final two years would allow for citywide hearings to measure its effectiveness from the perspective of local communities, construction workers, and experts who would assess actual numbers of trainees and union members who participated in the project.

The Commission, working with DLS, must develop uniform guidelines that hiring halls must follow with an appropriate budget for monitoring and enforcement. Since construction union hiring halls vary in their amount of recordkeeping, the posting of available jobs, and the rules for job referrals, hiring hall procedures must be disclosed upon request. They should also be posted in the hiring hall.

Suzanne Lynne, Attorney General's Office:

Given the informal hiring system used by business agents and union hiring halls, it's hard to persuade minorities to invest four years in an apprentice program to enter a trade that is so vulnerable to economic cycles. Consideration should be given to replacing the business agent system with union-run or city-run hiring halls.

Miriam Frank, Labor Historian, CUNY:

The Commission [CCHR] *should set guidelines on fair hiring hall rules and should insist that the unions follow such rules. These rules would limit the power of the business agents to control hiring.*

Hiring hall rules should be clearly posted for all union members to read. Referral information should be posted daily and should include the names of employers and the names of the union members who were sent out to fill the jobs. This information should also be filed with CCHR. CCHR should enforce these rules so that members who challenge any aspect of the job referral process will not be put at risk for their questions.

In order to institute more democratic union practices, there must be an elimination of the business agents' power to control hiring and to intimidate workers who want to protest unfair practices. Unfair hiring practices have resulted in economic injustice. There is a patronage system that persists in the trades. The business agent exclusively decides who works and who doesn't.

Esmeralda Simmons, Medgar Evers Center for Law and Social Justice:

Community hiring halls should be established, which would be independent from the unions and the contractors and endowed with the authority to provide some form of protection to the workers it refers to jobs, and be able to track the type of work they have been doing.

There should be one hiring hall per borough, which would be run by a local organization under contract to DLS. These community-based organizations should be chosen through the normal RFP process and be responsible for assessing the skill levels of the workers [they refer]. *Such a program was already utilized on a state project in a UDC procedure on Harlem on the Hudson.*

Contractors and subcontractors would have the responsibility of completing weekly evaluation forms on the skills and performance levels of the workers referred, with a right to reject a worker for poor performance, and the obligation to accept replacement from the community-based organization for a rejected worker.

The community hiring hall will allow people of color and women to have some access to the construction industry while the debate on how to reform the training program rages on. The community hiring hall system would be beneficial in providing data on the pool of non-union tradespersons available for work. This information is critical in determining the degree to which contractors are complying with civil rights laws, particularly where race-conscious factors are used.

William Shaw, Urban Affairs:

Coalitions are a controversial force in the industry. Some people will tell you they [the coalitions] *get minorities and women jobs in the industry. But many of the 37 coalitions I deal with have an unknown number of members, and they run over to a job site and physically take the job site over. Others have only three men walking the street with a beeper, and they call themselves a coalition. Some of* [the coalitions] *charge members $35-40 a week for getting them an occasional job. If they trespass on our sites, we will lock them up.*

Sexual harassment

The Commission found a widespread pattern of discrimination and sexual harassment directed against women in the skilled construction trades. The 47 women who testified about discrimination, sexual harassment and hostile working environments represent more than 5% of the women in the entire unionized industry (see Chapter 3). While many of the discriminatory practices described by the women who testified apply to people of color as well, sexual harassment in the construction trades is directed almost exclusively at women.

Virtually every one of the 47 women who testified stated that she had experienced sexual harassment on the job on at least one occasion. For most women, it is an ongoing problem, varying only in its severity. In many unions, women are not able to seek redress of the harassment because the shop steward or foreman is unsympathetic or, in some cases, is the perpetrator. When the harasser was a boss or supervisor, the women were faced with the option of tolerating it or confronting the harasser at the risk of being laid off. Women depicted various incidents:

> *At one job, the general foreman had a crush on me. He would come to where I was working about twenty times a day and stare at me and ask me why I was working so hard. After three months, he must have felt rejected, because he did a 180-degree turn, became verbally harassing, supervising my work with a magnifying glass.*

> *My boss would make demeaning sexual jokes and remarks like, "Go up the stairs first, because I want to look at your ass."*

> *At the end of one workday, I was alone in the changing area when the foreman came in angry and drunk. He stuck his hand inside my outer sweatshirt. He said, "You're gonna have to learn a thing or two if you're gonna stay in this business." He took his hand from around my waist and grabbed me around the neck and pulled me towards him like he was going to kiss me.*

> *The contractor held out the check and I reached for it, and then he put it behind his back and told me I had to see him later on Friday night in order to get paid. Whenever I was alone with him, he would try to fondle me.*

In many instances, the sexual harassment was combined with racist insults, as indicated by the following remarks:

> *The foreman's son, with whom I was working, said, "We did not want to hire you. We were told that we had to hire a nigger woman. If we had to hire a woman, at least we wanted to hire a white woman and not just a nigger."*

> *The shop steward said, "Just because you're black and a woman, don't think you have any rights here. Why don't you just get the fuck off the job?"*

Numerous other women described having to contend with male co-workers who touched their breasts or buttocks, made sexually suggestive remarks on a regular

basis, exposed themselves, urinated, and even masturbated in front of them. In several instances, women were verbally threatened with physical violence.

Many women testified that there were no separate changing rooms or bathroom facilities for women on the job. The lack of a uniform practice or policy in this area places women in the position of having to negotiate the issue with the foreman or "minority coordinator" on the site each time they were employed at a new site. Others decided to improvise, rather than confront contractor or union representatives who are often unsympathetic to their situation.

> *There was a shanty set up for the men. There was no shanty for the women. I was the only woman on the job. I made it my business to make it to work ten minutes before the foreman appeared. I took the initiative to get a lock put on the foreman's shanty. They didn't like this at all. They said I showed too much initiative and that I had no business being on the job, and that I should be somewhere in somebody's office instead of being on the job working with a bunch of men.*

> *The lack of bathroom and changing facilities for women is a constant problem. When there is a portable toilet designated for women, the men will frequently use it. On one occasion, when a woman complained about a man who insisted on using the women's bathroom, the shop steward refused to intervene. The men had shanties on all of the jobs. I had to find my own place to change, which takes time away from work or after work. When I did have a shanty* [on one job], *the men got jealous, came peeking in, left behind pornography. There is no one to complain to about this. The foreman doesn't care.*

Raising the issue of separate shanties and bathroom facilities for women was sometimes reason enough to be labeled a trouble-maker. In some cases, women said they built their own shanties in order to have a place change their clothes. Some women had to go off the site to use a bathroom at a nearby restaurant or store, risking disciplinary action.

The hostile working environment faced by women takes other forms as well. Most women noted the pervasive presence of pornography, as well as sexually explicit and hostile graffiti all over the walls on work sites. These images serve as encoded messages, constantly reminding women that they are trespassing on male turf. Other women cited examples of harassment that included the theft of female workers'

clothes or tools, or sabotage of their work. The aim is to create the impression that women are incompetent and cause trouble on the site.

While the contractor is ultimately responsible for creating a working environment free of all forms of sexual harassment and discrimination, unions have a responsibility for addressing the issue as well, through their representatives, such as shop stewards and foremen. Joint contractor and union apprenticeship programs can set a tone which clearly states that this behavior is unacceptable. However, as several women testified, some JAC instructors let workers know that this is, in fact, completely acceptable behavior.

> *My* [apprenticeship] *teacher tells a lot of sexist jokes, and has used graphic sexual terms to describe equipment in his lectures. The point of the jokes is to put women down or humiliate women. Easy jobs in my trade are referred to as "tit jobs." If something needs a slight adjustment, it is referred to as being "a cunt hair off."*

> *In apprenticeship classes, they taught us to remember the color coding for transistors by saying, "Bad boys rape young girls, but Violet gives willingly."*

The impact of this constant barrage of overt misogynist language and behavior, as well as other acts of discrimination, has a strong psychological impact on women in the construction industry. A number of women testified that they are in therapy because of symptoms of stress, low self-esteem, generalized anxiety and depression, and often must pay for treatment out of their own pockets.

> *It got to a point where I hated to go to work. I was depressed, and I'd started having nightmares. I started crying as soon as the alarm went off.*

> *Dealing with the feeling of isolation and constant assaults on your self-esteem is very difficult. I am in therapy myself, and I think the union should pay for it.*

A number of women testified that after years of apprenticeship training, they decided to leave the construction industry and start a new career because of the limited employment opportunities and the pervasive sexual harassment.

> *I know that resigning my job was not a good move for my career, but it was necessary for my sanity. Quitting was my only way of fighting back, like it is for many other women.*

I found out that, for women, the end of your apprenticeship is the end of your career. I feel disgusted. I wasted four years. I could have been in college.

The low representation of women in the trades reinforces their marginal status on the job site, making it easier for men to harass them, and less likely that their supervisors will take remedial measures to ensure equal treatment. While many women believe the industry should institute a code of conduct, as well as educate men about and sensitize them to, the issue of sexual harassment, the overwhelming consensus is that the best way to reduce sexual harassment is to increase the number of women in the construction trades.

A number of experts, advocates, and female construction workers made recommendations for minimizing, if not eliminating, sexual harassment on job sites, responding to it when it occurs, and taking the long-term measures necessary to ensure that women are treated as equals on the job, rather than invaders of male turf.

The following recommendations are assembled from the testimony of dozens of witnesses, many speakers having suggested similar remedies for city and industry officials to implement:

1) Contractors must institute specific written policies against sexual harassment;

2) There must be monetary penalties for contractors who fail to take appropriate action against discrimination;

3) DLS should work with the Procurement Policy Board to write a standard sexual harassment policy, to be included in each construction contract;

4) All appropriate individuals should be informed of the policy, its function, and the punitive measures which will be taken in cases of noncompliance;

5) Sexual harassment training should be incorporated into the union curriculum;

6) Women should be employed on work sites in sufficient numbers to ensure that they aren't singled out for abusive treatment;

7) City investigations of all complaints of harassment should be conducted expeditiously;

8) The sexual harassment complaint procedure should be made completely confidential in order to minimize the possibility of retaliatory harassment against the complainant;

9) Unions and construction companies should publicize the confidential nature of reports of sexual harassment, in order to encourage reporting;

10) DLS should conduct periodic site visits to ensure that policies are being upheld and that contractors are complying with the requirement to provide separate bathrooms and changing facilities for women.

Abstract of testimony

K.C. Wagner, Independent Consultant:

Sexual harassment is pervasive. The following patterns illustrate this:

Women are often greeted every morning by sexually explicit pin-ups of women or the sight of used condoms tacked up in public areas such as the tool room or inside a woman's personal locker.

Finding a cartoonlike drawing of yourself or the only other woman on the job site as either nude or performing a sexual act with a person, or at times with animals, on dry walls at a construction site that might face a public sidewalk or walkway. Sometimes, if the likeness is not clear, a name and phone number might accompany the art work.

Constant use of sexually explicit language by co-workers or foremen that might be directed toward you, describing a sexual fantasy having racist overtones, or spoken within your earshot about their sexual conquest of another woman.

Lewd comments, gestures, lip-smacking, licking or guttural noises in response to your physical appearance; or comments about just needing a good "screw" with a "real man" if you are known or thought to be a lesbian.

Having your breasts or buttocks fondled or having someone shove his tongue down your mouth while cornering you in an isolated location so your cries won't be heard, or in front of a group, suggesting a gang rape; this may occur while you are handling a tool such as a hammer or blow torch or heavy material such as a 2x4 so you have to compromise your physical safety or dignity in order to cope.

[Ms. Wagner cited Carothers and Crull's explanation that "sexual harassment appears to be a form of retaliation against women for invading a male sphere and threatening male economic and social status." She added that sexual harassment undermines individual, work and group productivity and morale, contributes to high job turnover, absenteeism and increases health insurance costs. A 1988 federal study estimated that sexual harassment costs the federal government approximately $286 million dollars over a two-year period.

She stated that the following reforms should be implemented:]

1) *Institute specific policies against sexual harassment and inform all involved individuals of the policy, its function, and any punitive measures to be taken in case of noncompliance;*

2) *Incorporate sexual harassment training into the union curriculum. Such training should include the following components:*

   a) *A definition of sexual harassment, both behavioral and environmental, emphasizing a sociological rather than a legal definition;*

   b) *The impact sexual harassment has on the individual and work environment;*

   c) *An overview of relevant laws, governmental regulations, policy, contract language, investigatory and grievance procedures;*

   d) *An opportunity for workers to demonstrate an understanding of the above information through group discussions and small group problem-solving exercises.*

Unions should be held responsible for the determined effort to eliminate sexual harassment. Further, they should actively recruit women and provide resources to keep them on the job so that they may correct the current imbalance.

Merrick Rossein, CUNY Law School:

To reduce sexual and racial harassment against women and people of color, several measures should be implemented:

1) *Ensure that they are employed on work sites in sufficient numbers so that they aren't singled out for abusive treatment;*

2) *Require contractors to maintain a firm, well publicized and vigilant policy against sexual and racial harassment* [incorporating] *taking swift and appropriate disciplinary action, including discharge;*

3) *Conduct expeditious city investigations of all complaints of harassment;*

4) *Monetarily penalize contractors who fail to take appropriate action.*

Pam Elam, advisor to Liz Holtzman, former City Comptroller:

The underrepresentation of women and people of color in the trades makes them vulnerable to a pervasive level of [sexual and racial] *harassment once they enter the industry. Such harassment usually results in not allowing them to develop their skills to levels comparable to the other groups. Also, it tends to discourage the employees from pursuing a career and advancing in the industry. The harassment and actual job disparities are manifested in the following ways:*

1) *Females and people of color are given the dirtiest, most menial and dangerous tasks.*

2) *They are given less hours to work than their white counterparts. One study found that the average white construction worker made $6,000 more than their male- and female-of-color counterparts.*

3) *Often women and men of color experience verbal and physical abuse by their co-workers.*

4) *The lack of bathrooms and changing facilities represents a particular problem for women. Sexual harassment is encouraged and condoned by allowing displays of explicit pornography at the sites.*

5) *Women are subjected to sexual physical contact, demands for sex, and offensive sexual jokes. If these acts are reported, the women might face retaliation.*

The following policies should be implemented:

1) *The supervisor of each job site must be trained to make anti-harassment policies clear, and intervene effectively when sexual harassment occurs.*

2) *The sexual harassment complaint procedure should be made completely confidential to avoid retaliatory harassment against the complainant.*

3) *The unions and construction companies should publicize* [their] *confidentiality to encourage the reporting of such harassment.*

4) *The Division of Labor Services should work with the Procurement Policy Board to write a standard sexual harassment policy to be included in each construction contract.*

5) *In addition, DLS should conduct periodic site visits to ensure that the policies are being upheld and that the contractors are complying with providing bathrooms and changing facilities for women.*

Barbara Trees, Carpenter; founder, New York Tradeswomen:

Ensure that the building trades and contractors are actively fighting discrimination, including sexual harassment, racism, and gay-baiting, by establishing special grievance procedures and educational programs.

Miriam Friedlander, Councilperson:

Sexual harassment remains the major obstacle to women remaining in the construction industry. Sensitivity training on sexual harassment should be provided to all construction workers. This should be required by law from all the unions and/or contractors.

Sarah Burns, NOW Legal Defense and Education Fund:

The Commission and OLS [the Office of Labor Services, now called the Division of Labor Services] *should initiate a campaign to educate the unions, the contractors and the workers on sexual harassment policies in the workplace. Also, the pertinent authorities should pressure the unions to implement rules and regulations regarding sexual harassment. The labor and/or human rights law should be amended to include the display of pornography in the workplace as a violation of women's rights. It could be argued that pornography creates a hostile work environment which disparately affects women and it can constitute a form of sexual harassment.*

Elvia Arriola, doctoral candidate in American Legal History, NYU:

The patterns of sexism, racism and sexual harassment many women and men-of-color have experienced cuts across all of the construction trade unions and all of the major industry employers . . . All the problems are systemic.

[The following examples of harassment were cited:]

1) *Men regularly drop their pants in front of* [women].

2) *Men expose genitalia in order to shock and intimidate.*

3) *One woman was assigned a partner who masturbated in the woman's direction.*

4) *Women are expected to tolerate constant sexual touching and teasing.*

5) *Women confront sexually hostile work environments and pornography.*

Employers do not provide changing rooms for women on construction sites. When they are provided, women's privacy is often disrespected: doors are often opened, and women have found pornographic graffiti or photographs placed on the walls. Some men even relieve their bladders against the walls of the shanties to harass the typically sole female worker on the site.

Women are not provided with separate toilets, forcing some to search for a public restroom and thus [the women] *become accused of unnecessary absenteeism. This then becomes a convenient reason for a layoff. Accumulated absences then become reason to deny journeyperson status.*

Susan D'Alessandro, Women in Construction:

With regard to the idea of sensitivity training, my own organizing efforts through the women's groups at Local 30 using this approach have led me to believe it's a dead end street. I suggest that no efforts be made in that direction. [She described efforts to change male construction workers' attitudes as "missionary work" and said energy should be focused on how they behave on the job site].

Another concern is the conditions under which employers enter into joint apprenticeship training agreements. Employers are required to make a certain kind of contribution towards apprenticeships and towards that training. It would seem that the city has not been willing to come forward with the contribution that's necessary to initiate apprenticeship trainings. Money doesn't appear to be the overriding issue, but rather that journey-level workers don't have the interest of apprentices at heart. The Commission could get involved in this matter to open up opportunities for women and minorities.

Lola Snyder, Nontraditional Employment for Women:

EO 11246 requires contractors to ensure and maintain a working environment that is free of harassment, intimidation and coercion at all sites. This is a requirement that is often disregarded when contractors are found to be in noncompliance. Thus, regulations should be implemented that compel contractors to educate their staff on sexual harassment, and penalize those who are found to be in violation of regulations.

William Shaw, Urban Affairs:

In terms of trying to sensitize supervisors and people working at the management level about sexual harassment, I am developing a videotape program whereby a supervisor can view it and learn techniques and responses to situations of sexual harassment.

I have worked closely with DLS and the US Dept, of Labor, and I understand how they define sexual harassment, and their goals for eliminating it. I apply these principles within my own corporate structure, as well as with our contractors. The rules my company has regarding sexual harassment are that if it happens once, depending on the severity, it could mean immediate termination for the individual that's employed either with them or with one of their contractors. If the contractor refuses to get rid of that individual, his company would have to let the contractor go.

When sexual harassment happens on any of my jobs, I handle it personally. I will sit down with each party, weigh the facts and render a decision. If I think the individual was abusive and shows no remorse, I'm going to fire him almost immediately. Since my company subcontracts, I get an opportunity to look at other companies' EEO policies, and if they do not have any language in there regarding sexual harassment, I make an effort to have them incorporate such language. They define it, and spell out consequences and penalties. I am open to the idea of providing training on job sites for workers, including forepersons.

We try as best we can to discourage public pornography on the job sites, and to provide equal bathroom and changing facilities, but it depends on the site, and on the logistics. On my job sites, I have had only two incidents of racial harassment, and they were resolved satisfactorily, so I don't think it's a serious problem.

We post the various governmental signs talking about sexual harassment, discrimination, things like that. Workers can bring grievances to their foremen and file a complaint. If they don't think they get satisfaction, they can go to one of my senior EEO administrators who is responsible for that project and file a complaint. I would then follow a specific set of guidelines to verify that it did happen, to get as many facts about it as possible and to then find a remedy. The unions have generally supported my position whenever I've had to go and talk to them about it.

Disparate conditions of employment

1) Training and work assignments

The testimony of workers illustrated a pattern of disparities in training opportunities for white males in contrast with people of color and women. Skilled white males tend to form mentor relationships with white male apprentices, passing down knowledge and experience that enhances the apprentice's skills. But for many people of color and women, these mentor relationships are unavailable, and thus they don't learn the range of skills which a journeyperson in their trade should possess.

Three of us were apprentices at the same time: a white man, a white woman and me [a Latina]. *The male apprentice got to work with the most experienced mechanic so that he would learn the trade, while the two of us most often worked with each other and got assigned jobs like sweeping, dusting or getting lunch.*

After years of "coffee duty" and laborer duties, women and minorities are considered less desirable employees by contractors. This is especially true in the case of women. Men are discouraged from developing mentor relationships with women, and those who do are subject to sanctions.

I was ordered off a machine by a superintendent while I was being willingly taught by the driver.

A non-company operator asked my boss if I, a union member, could learn on his machine. The boss said he would fire this man if he let me even sit in a machine, let alone teach me.

While some people of color and women complained about not being given the opportunity to learn their trade, others claimed they would sometimes receive

dangerous instructions or be set up to fail with complicated tasks without the proper instructions, equipment or staff support.

> *I was assigned dangerous jobs such as walking on an outside wall as high as 16 floors without a safety line. I* [a woman] *was the only person asked to perform that task.*

> *My foreman would send me up on a scaffold five stories high in the rain to tighten bolts without a life jacket or safety belt.*

> *I was working on an elevated train station in the cold and rain, late at night, no light, supposedly a dead track. Half was dead; half was not. 600 volts DC. I fell, hurt my hand.*

> *I worked with a mechanic on a wiring job. He told me to hook up two different colored wires. I knew that it was incorrect but I did it because I thought I had to do what I was told. The foreman saw the mistake and rotated me to the Bronx.*

Elvia Arriola described how unions and contractors were each complicit in the process of undermining female and ALANA construction workers, in terms of their training, work assignments and job placement. She and other expert witnesses stated that women and people of color are unlikely to get prime, required, on-the-job training which will assure them of obtaining journeyperson or mechanic status. Employers do not provide women with properly sized safety equipment and the union officers do nothing to assure that their training is safe. Those who eventually get that status are not assured fairness in job placement, or assignments that will provide them with reasonable annual incomes.

Supervisors assign people of color and women unpleasant tasks—whether too menial, too complicated or deliberately dangerous—in order to send them a message that they are not welcome in the trades. People of color and women have to prove they are exceptional if they are to survive in the trades. Their mistakes are used as an excuse for a layoff by the contractor or, in some cases, dismissal from the joint apprenticeship program.

> *I* [a woman] *was put on 90-day review because I had gotten a bad report from Pride Electric saying "needs constant supervision" and "low production".* [A year

later] *I was terminated from the apprenticeship program and told to get a job at McDonald's.*

The unions are notified of any worker who is laid off for being "unproductive" or "in need of supervision." Such workers have to write a letter of explanation to the referral hall before they can receive new work assignments.

There was no material on the job. I made up some extension cords and some lights. Later that day, the foreman came back and says, "This is all you did?" I was laid off. I was told to write a letter explaining what happened.

Given that the contractors and unions jointly control the economic livelihood of workers, there is always potential for abuse of the power to hire and fire workers for reasons unrelated to work performance. In fact, the parceling out of work assignments by hiring halls and contractors, and the laying off of workers as the site workforce is trimmed, is subject to a very politicized process. People of color, women and dissident whites have all been targeted for some of the treatment cited above.

Workers who bring discrimination charges or speak up on behalf of the rights of other workers, or challenge union leadership, sometimes find themselves targeted for other forms of harassment. As Ms. Arriola explained, rumors of workers' assertiveness often reach the job site before they do, affecting their on-the-job treatment by promising an early layoff and more unemployment. The overall intent of these actions is to demoralize workers and force "undesirable" members out. The harassment can take the form of work assignments far from home or overt threats and acts of violence.

Whenever you do something that [contractors] *don't particularly like, you get a tour of the city, which means you'll get transferred every other day or every week, whether it be Queens, Manhattan, Brooklyn, the furthest from your home as possible to discourage you from breaking their rules.*

At one company, I tell the boss the material they use is awful for the men's eyes. It burns. The next minute, I'm fired. They had to hire me back because they fired me the wrong way. Now they are threatening to throw me out the window at Trump Tower.

After running for office, I was blackballed by the union. A colleague was gunned down in front of his house for trying to organize minorities.

2) Ghettoized workers:

People of color and women contended that they are often ghettoized into federally funded construction projects due to the fact that there is a numerical hiring goal for women (6.9 %), more governmental oversight of the hiring of people of color, and no legal snags regarding employment of trainees. These jobs offer less prestigious assignments than privately financed jobs.

> *The union moves all the women through these* [federal] *jobs instead of bringing more women into the union. I know that without the quotas, I wouldn't have been hired, but once in, the quota hurts me because it's only on some jobs, usually industrial, like transit, sewage, etc. So the training is limited and the health hazards are outrageous. White men don't stand for these assignments unless they are in big trouble with the union.*

Since people of color and women are often referred to a series of short-term jobs to meet an affirmative action goal, a practice known as checkerboarding, they tend to be laid off first when the workforce is being reduced. Many believe that the contractors and unions are jointly responsible for these practices.

3) Disparities in earnings and benefits

According to a 1989 study prepared for the Port Authority, entitled *Access and Opportunity: Developing a Skilled Construction Labor Force in the Port Authority Region*, white electrical workers made $5,500 more than their black counterparts and $7,500 more than Latino workers with comparable levels of education in their trade in 1980. The Commission's hearings found that these disparities are due to several factors:

1) Whites tend to work on unionized jobs, whereas other racial groups tend to be non-unionized and are paid less than the prevailing wage;

2) Whites receive more long-term assignments and work, on average, more hours per year than people of color;

3) Whites tend to be given more opportunities for overtime than people of color.

I came from Hong Kong three years ago. I was doing carpentry and masonry. We [Chinese-Americans] *worked for seven hours per day and our wages were from $4 per hour to $8 per hour.*

I started working at Red Ball Construction in demolition. My wages started at $9 an hour. FightBack told me I was supposed to get $18 per hour. Another problem is San Ramo demolition. The black and Latino guys made $6 an hour. They were given less than full-time work. The rest of the people, Italian people, were given 55 to 60 hours a week.

Various organizations are taking money under the table to put non-union workers on the job, paying them $50 to $60 a day instead of $20 to $40 a day.

I shaped one job—Nativo—and the guy says, "We have lots of jobs for you, but it's at $7 an hour. The scale at that time was $26 an hour.

Because of long periods of unemployment, many people of color and women find that they haven't accumulated enough hours of work to be eligible for vacation and health benefits. Numerous workers, particularly members of the District Council of Carpenters, reported working an insufficient number of hours to be eligible for health insurance.

You need to work about a thousand hours in a year [in the District Council of Carpenters] *in order to be eligible for benefits. You pay into the annuity, and into the apprenticeship program, through your work hours. You don't get that money back if you're not eligible for benefits.*

As a result of not being wanted, I don't make the required hours annually, which is 900, to receive medical benefits. In the eight years I have been working in the field, I haven't received benefits. I had to go outside to pay to get benefits, yet my weekly salary goes toward the welfare fund, which is medical benefits for other carpenters.

If I am unemployed two or three times a year, then at the end of the year, when it comes time for vacation, they say you're not eligible for a vacation. So, two years in a row they said I was ineligible for vacation.

You have to make $24,000 a year to be eligible for medical coverage. That's like six months worth of work, but they only give you three months worth of work. We are only making $11,000, so there's no medical coverage. I was in a car accident and I have no medical coverage.

According to James Finney, Associate General Counsel of the Equal Employment Opportunity Commission (EEOC), the under-insurance of people of color is deliber-

ate. The EEOC is examining union practices, such as limiting job referrals to less than one thousand hours, and is likely to bring a legal challenge regarding the issue.

The number of hours worked within a prescribed time frame dictates whether an apprentice can continue to receive medical and dental health insurance coverage at group rates. The EEOC has documented instances where apprentices of color have received referrals to within a few hours of the total required to allow continuance of group insurance coverage. In one instance, the loss of coverage occurred at a point when the child of an apprentice was incurring medical costs in excess of $150,000, expenses which the apprentice is now expected to pay out-of-pocket.

Under more flexible benefit plans, a greater number of workers could be eligible for health and vacation benefits. However, some difficulties described by workers are the result of sloppy and indifferent procedures on the part of union and contractor officials. For example, people of color and women testified about falling behind in payment of their dues because of long periods of unemployment, and suffering a loss of their union membership and its attendant benefits as a consequence.

> *No one wrote me to inform me that my dues were in arrears. When I spoke to my business agent, I told him I would be willing to pay back whatever monies I owed them. I was told to write the executive board about my situation. The executive board denied my reinstatement because I had failed to pay my dues.*

> *Nearly a third of the Local 3 workers who testified mentioned being injured on the job and having difficulty getting the union to do the necessary paperwork to enable them to receive reimbursement or coverage of their medical expenses.*

> *I have been out on Worker's Compensation for two years due to herniated disks and pinched nerves. But* [the union] *refuses to pay my benefits. A judge ordered them to pay for physical therapy, and they were refusing. I'm a card-holding union member in good standing. They take my dues. But they don't compensate me for what is supposed to be coming back.*

> *I got hurt when the foreman dropped a light bulb on me and then he never filed an accident report. I filed an accident report* [but they claimed] *nobody received it . . . The local refused to pay my medical bills.*

> *I had an accident which was witnessed. I told my boss, who said he would try to get compensation. I mailed in receipts* [but was never reimbursed].

Numerous other workers with less serious injuries mentioned being laid off for absenteeism after taking one or more days off to see a doctor. Many were apparently not informed of the union's policy regarding notifying the union of work-related injuries.

> *I was injured on the job* [when the foreman drilled a hole through my hand]. *I got about five stitches and stayed out for five days. I didn't file for compensation, and they laid me off for absenteeism.*

Mitchell Langbert, an expert on pension programs, noted that multi-employer pension plans in the construction industry tend to be defined benefit plans which are inflexible and require a minimum of hours of employment before employees can be eligible for pension benefits. In contrast, he noted that intermittent employees are better served by defined contribution plans (*i.e.*, 401-K, money purchase, etc.) which take into account the employee's financial contribution to the pension plan. Under such pension plans, employees would be eligible to receive some benefits regardless of whether they had worked steadily over a given period of time.

Abstract of testimony

Earnings and benefits

Mitchell Langbert, Columbia University, Graduate School of Business:

> *Since women and minorities in New York City's construction industry have short and intermittent service periods, their entitlements to pension benefits suffer. Multi-employer pension plans in the construction industry can be redesigned through the collective bargaining process to provide pension benefits that are more favorable to short service employees. Reductions can be made in service requirements for vesting and benefit accrual and through substitution of defined contribution plans with a hundred percent immediate vesting for defined benefit plans.*
>
> *For purposes of vesting, an employee who works at least 1,000 hours in a year is entitled to credit for a year's participation. Under 1984 amendments to law, no more than five years of service may be required for full vesting under a so-called graduated vesting schedule. Given the low level of benefits to which most minority and female plan participants are entitled, they may find themselves unable to take advantage of ERISA's* [Employee Retirement Income Security Act of 1974] *protec-*

tions because their benefit levels don't financially justify the legal fees which litigation in Federal Court necessitates.

The Commission could consider providing public legal service support to minority employees who might need to pursue legal action against construction industry pension funds under ERISA, for example, because of unfair denial of benefit claims. Since ERISA preempts state and local law, but does not supersede other federal law, including Title VII, the Commission could consider the possibility of legal action under Title VII of the Civil Rights Act.

Defined contribution plans are more beneficial to intermittent and short-service employees, and hence, to minorities, than are defined benefit plans, because defined contribution plans are relatively front-loaded. Contributions to defined contribution plans are made in current dollars while benefits accrue under defined benefit plans in terms of future dollars that are discounted back to the present. Defined benefit plans are predominant amongst construction industry multi-employer funds. They work to the disadvantage of women and minorities since they have short and intermittent service. New York City should study further whether minorities and women are receiving pension benefits in proportion to their industry employment, and if it finds they are not, the Commission might consider supporting employee litigation under Title VII of the Civil Rights Act.

Liz Holtzman, former NYC Comptroller:

While all construction workers in the same trade are paid the same hourly wage, white men tend to work more hours per year and they get hired for more jobs and get much more of any available overtime. The average white construction worker made $6,000 more per year than the African-American workers in the same trade, and $7,500 more per year than Hispanic workers.

William Horsak, representing Assemblyman Hector Diaz:

[Mr. Horsak expressed the Assemblyman's opposition to] *any personnel system that penalizes employees for sickness, disability and being handicapped.*

Lack of democracy and due process

The prevalence of workers' grievances regarding the practices cited indicates a basic lack of due process in many unions. Many workers testified that they were not in-

formed by their union local regarding union policy with regard to numerous basic procedures. In some unions, workers who take the initiative to ask for a copy of the union's constitution and by-laws are regarded with suspicion.

Workers don't have confidence in the grievance resolution process because many of the officials to whom they are told to direct complaints (shop stewards, foremen, executive officers in the union) have power over their employment or working conditions. Workers who assert their rights by filing grievances concerning alleged unfair practices are vulnerable to retaliation (*i.e.*, harassment, assignment to solitary and unpleasant tasks, denial of access to jobs, or extended layoffs).

To avoid possible repercussions, manyworkers try to settle their complaints with the union informally, rather than file a formal grievance.

I tried to apply for a position that had become available, but the shop steward responded that I was not qualified, even though I had my license and a year's experience. I went to file a grievance, but was persuaded by the union to meet informally with business representatives.

Abstract of testimony

Lack of democracy and due process

Samuel Lopez, President, United Third Bridge, Inc.:

UTB was formed in 1975, even though it was encountering a lot of resistance in our organizing efforts from the IBEW, Local Union #3 of NYC. UTB members received threats, were blackballed, kept out work, sent to the wrong sites, and blacklisted. As these types of intimidation increased, UTB contacted the FBI and the US Attorney's Office and Department of Justice. A couple of members were killed as a warning. The Feds did very little. UTB went to the Black and Puerto Rican Caucus. Al Vann sent letters to CCHR on their behalf as well as (to) the EEOC and the NLRB. UTB has a problem with all of these agencies. Their investigations were not conducted properly.

One UTB member who had brought a discrimination case was told by two men at gunpoint to drop the case. After recently appearing on a radio talk show about the construction industry, I was fired from my job.

Another incident involved a man named Carmine Scialto who came to my job and told me . . . that James McCarrin, the Business Representative of Local 3, wants to get rid of the Puerto Ricans. This guy later came back as a shop steward.

Another concern is the Grievance Committee that has been set up at Local 3. When someone files a grievance, they can be kept out of work for a month without getting any compensation, even after you've won your case. In other unions in the city, this is not the case. You get back pay, and you get your job back. This doesn't happen at Local 3. In addition, Local 3's employment director, Robert McCormack, should be replaced.

[Mr. Lopez went on to cite a Mr. Louis Represto, who was quoted in *Newsday* on March 3rd as saying that Sam Lopez and UTB fabricate stories about discrimination. To this allegation, Mr. Lopez lists beatings and deaths of Latino union activists which have not been looked into by investigators].

Dr. Miriam Frank, CUNY Labor Historian:

Among the problems Dr. Frank cited are the following:

1) *Intimidation: Women and minorities are reluctant to speak out against discrimination and harassment out of fear of retaliation (verbal, physical, job loss), hence maintenance of the status quo.*

2) *There is a general fear of loss of job security, trouble/danger and violence.*

3) *There is long-term loss of employment for those who actually do file complaints.*

Florence Moore, Association for Union Democracy (AUD):

Women are afraid of filing complaints of discrimination against their employers because of the possibility of retaliation.

Elvia Arriola, doctoral candidate in American Legal History, NYU:

Asserting civil rights in the construction industry can lead to job retaliation entailing being out of work for months at a time or sometimes being threatened with physical harassment and further abuse or discrimination. There have been displays of hangmen's nooses to send obvious messages of racial hostility to black male workers.

The only way to reduce or eliminate this harassment is to significantly increase the representation of women and workers of color at all skill levels and in all trades on all construction sites across the city.

Herman Benson, AUD:

There should be a fair system for distributing work with work lists, jobs and rules posted in public, which are enforced not only against the union officials, but against employers who discriminate against workers.

There should be due process for workers. Employers can have the right to reject applicants who are on the work list, but only for good cause, not arbitrarily or by whim. There should be a fair grievance procedure and shop stewards who represent the workers, not the employers and union officials.

Jim McNamara, Department of Employment:

Some of the reasons there is such a lack of workers' rights and democracy in the unions are racism, and an extension of that is racketeering. The average building trades worker is not operating under the seniority system. He doesn't have a real grievance procedure, and so he stays quiet about abuses in his union. Of course, women and minorities, who are usually the most recent ones on board, have the least sense of security. They are not part of the political machinery. Wherever a union is the dominant factor in referrals, that's where the city, state and feds, at least in NYC, should require some kind of statement outlining fair grievance procedures and job referral procedures.

5

Profile of construction unions and joint apprenticeship committees

Among the many witnesses invited to testify at the public hearings, the Commission on Human Rights and the Division of Labor Services invited union officers and joint apprenticeship committee (JAC) officials to discuss their roles in carrying out the mission of their respective unions. More than a dozen unions were invited, as were their JACs, to testify and present written documents including questionnaire responses. Generally, the unions were invited based on past evidence of significant underrepresentation of people of color and women, or allegations of discriminatory practices on the part of the union or its JAC.

The 14 invited unions and JACs and/or training program administrators comprised ten trades, representing over 50,000 members. They are the Sheet Metal Workers Local 28, District Council of Carpenters (which encompasses 17 locals), Operating Engineers Locals 14 and 15, the International Brotherhood of Electrical Workers (IBEW) Local 3, Teamsters Local 363 (invited to testify about IBEW Local 3), Steamfitters Local 638, Plumbers and Gas Fitters Locals 1 and 2, Elevator Constructors Local 1, Structural Iron Workers Locals 40 and 361, Ornamental Iron Workers Local 580, and Metal Lathers Local 46.

Despite a great deal of resistance on the part of numerous unions, testimony was obtained from eight union officials and seven JAC officials over a two-and-a-half-year period, from March 1990 to November 1992. (See Appendix A).

Sheet Metal Workers Local 28, Operating Engineers Local 15, and Structural Iron Workers Locals 40 and 361 were the only unions that sent both a union executive and a JAC official to testify regarding the totality of their union and JAC practices. All of the other unions (with the exception of Local 46, which has yet to testify before the Commission) sent either a union official or a JAC official, but not both. As a result, many union officials, when speaking about the apprenticeship program, did not have firsthand day-to-day knowledge of how it worked. Nonetheless, the hearings provided an understanding of the structure and operations of these entities.

Testimony covered the following subjects: the geographic and craft jurisdiction of the union local; the overall racial and gender composition of the union and joint apprenticeship and/or training program; the racial composition of executive officers, foremen, shop stewards and other personnel workers; union policies and practices as set by the union's constitution, by-laws and collective bargaining agreements; the job referral practices of the union business managers or agents; the employee grievance resolution process; outreach to and recruitment of people of color and females for enrollment in the joint apprenticeship programs administered by unions and contractors; the litigation histories of the union local, if applicable, regarding violations of Title VII and compliance with court orders and consent decrees; and the existence of training programs jointly administered by the union and contractors under the New York Plan for Training. An overview of the Commission's findings is presented at the beginning of the section on each union.

New York City District Council of Carpenters

Overview: The New York City District Council of Carpenters is an umbrella organization responsible for collective bargaining on behalf of its 17 affiliate union locals in the categories of Carpenter, Mill-Cabinet, Floor Covering, Millwright and Carpenter Pile-Driving. The union's jurisdiction covers the five boroughs of New York City. As of June 1990, there were 22,000 journeyworkers in the carpentry trade in New York City. No figures were provided by the District Council of Carpenters concerning the racial and gender composition of journey-level workers in New York City.

The union uses the "employer's intent-to-hire letter" method of apprentice recruitment and placement, which means apprentice applicants must obtain a letter from a contractor stating that they will hire the applicant if he or she is accepted into the

apprenticeship program. A number of women argued that this recruitment method is discriminatory (see Chapter 3) because contractors are more likely to sponsor men than women. The more than 3,000 apprentices currently in the program are given an opportunity to go into the field and obtain employment. The apprenticeship program is sponsored by the District Council of Carpenters' Apprenticeship, Journeyman Retraining Educational Fund (a joint apprenticeship committee) at the Labor Technical College on East 26th Street in Manhattan.

The JAC has developed an Affirmative Action Plan which is implemented by the Affirmative Action Officer, Charles P. Fanning. Mr. Fanning reports to Paschal McGuinness, the JAC Chairman. The ALANA* staffing goal of this program is 43.5% and the female staffing goal is 45.3%, set by the New York State Department of Labor. Goals are based on the percent of these groups in the labor force in the principal counties of operation.

According to material dated April 1990 and supplied to the Commission and DLS by the JAC, there were 3,609 apprentices in the Carpentry Apprenticeship Program. There were a total of 2,587 whites (71.7%), and 1,020 people of color (28.3%): 615 blacks (17.1%), 376 Hispanics (10.4%), 19 Asians (.5%) and 10 Native Americans (.2%). [Appendix D, Figure 1]. There were 137 women, constituting 3.8% of all apprentices. [Appendix D, Figure 2]. Of the women, 23 were white (16.8%), 94 were black (68.6%), 18 (13.1%) were Hispanic, and 2 (1.5%) were Native American.

According to "Program Status Reports" dated June 1990 and filed by the JAC with the State Department of Labor's Apprenticeship Training Office, the Carpenters JAC, Local 20, oversees four apprenticeship programs. The largest of the programs is for the trade of Carpenter, cited above. However, the figures provided in this report, filed two months later, show a lower total number of apprentices and lower ALANA representation. There were 3,339 apprentices: 2,457 whites; 698 (20.9%) people of color; and 184 (5.5%) women. Since overlapping categories are not broken down in the State's "Program Status Report," there may be some double-counting of black and Hispanic women in the report.

Although the District Council of Carpenters did not supply the Commission and DLS with data regarding its three other apprenticeship programs, the N.Y. State Program

* ALANA = African-American, Latino, Asian-American, and Native American people.

Status Reports contain the following information: There were 267 apprentices in the trade of Tile and Carpet Layer: 204 were white; 60 (22.5%) were people of color; and 3 (1.1%) were women. There were 243 apprentices in the trade of Cabinet Maker: 157 were white; 86 (35.4%) were people of color; and none were women. In the trade of Millwright, there were 69 apprentices: 2 were people of color (2.9%), and one was a woman.

Minimum qualifications for entry into the Union's joint apprenticeship program are:

1) To have achieved a minimum age of 17;

2) To have completed a year of high school or high school equivalency;

3) Proof of citizenship.

There was a striking disparity in the acceptance rates of whites and people of color, with whites accepted into the apprenticeship program at twice the rate of virtually all other groups. In 1989, according to Local 3's response to a Commission questionnaire, the acceptance of applicants was as follows: 625 of 751 whites (83.2%); 131 out of 301 blacks (43.5%); 86 out of 201 Hispanics (42.8%); 7 out of 12 Asians (58.4%); and 4 out of 50 Native Americans (8.0%).

Given that the District Council of Carpenters does not require a high school diploma for admittance to the apprenticeship program, these disparities are especially striking. According to testimony by some carpenters, the union requirement of proficiency in English is applied differently for European and non-European immigrants.

The Carpenters also participate in a training program, for which the New York Plan is responsible for recruitment, establishing entry requirements, and maintaining a list of applicants in the order in which applications were received. The trainee program is a four year program like the apprenticeship program. It provides continuous year-round enrollment, and trainees attend classes with apprentices. The figures concerning the composition of the trainee program are dated December 31, 1988. At that time, there were 71 trainees, of which 68 (95.8) were people of color, and 3 (4.2%) were white. Of the ALANA group, 45 (66.2%) were black; 20 (29.4%) were Hispanic; and 3 (4.4%) were Asian. [Appendix D, Figure 3].

Abstract of testimony

District Council of Carpenters

Charles Fanning, Director of Apprenticeship Training:

[When Olivia Peck cited the above figures regarding ALANA male representation in the Carpenters Apprenticeship Program (25.7%), and female representation (2.5%), Mr. Fanning responded that] *the goals of the District Council of Carpenters are a lot higher than the percentages of minorities in the program. It is our intention to increase the proportion of minorities. I think it's inevitable that* [their representation will increase] *because of the shrinking pool of youth in general.*

I'm not always sure that most minority candidates [who come] *to the program are coming with the intention of really becoming an apprentice carpenter. They pick up an application, and a large percentage don't return them. The application and requirements are fairly simple.*

There is no differentiation between a trainee and an apprentice. They receive the same rate of pay, the same incremental rate of pay, and the same progression from first- to second- to third- to fourth-year apprenticeship.

Around the end of 1979, our International Union, which we meet with once a year, arrived at the conclusion that these fixed lists [should be reduced from two years to one year]. *This is because people on the list lost interest within a very short period of time.*

It's a subcontracting business really. The GC is a thing of the past. So a lot of contractors only have five to ten people working for them, that's the average. On a big job, that may increase to forty or fifty.

We give out applications on the first Tuesday of every month. There's no limit on the number we give out. If they fill it out, we give the individual a package which guides them on how to go job hunting. [People can get jobs the next day or take six to twelve months]. *But using the fixed list didn't tell you if the individual could get out of bed in the morning and get out on the job. We had a lot of problems with contractors. We notified people, and they would arrive late or not at all.*

The employer's "intent to hire" system [whereby an individual shows up ready to work on a site] *indicates to the employer that the individual is able to get to work at 7:00 A.M., and has a bona fide letter from us saying he is eligible to become an apprentice carpenter because he has met the minimum requirements. We have seen as a result of this program, an increase in the apprenticeship recruitment. I think in the late 1970s we had about 900 apprentices. We now have over 3,000. The employer only comes to us because we can produce skilled workers, and if we cease to be able to do that, then we are out of business.*

In a letter we wrote to the local unions—this is before the California court case found that this sort of job hunting system was discriminatory because it had a disparate impact against women applicants—we told them that we would have to establish clearly for the NYSDOL that this method of recruiting was not discriminatory, that we would show an improvement in the numbers of women and minorities entering the program, and that has been the case.

We have four apprentice counselors, and the scope of their work is broad. They encourage shop stewards, foremen and employers to give an opportunity to all these young men and women who are turning up on the job site, and always we have in mind the minority situation.

We've been trying for a number of years to get the City of New York and the Civil Service part of their hiring, to establish an apprentice program. We presented it to the Housing Authority, to the Board of Education, and we showed them where it could be very good for them, as well as minorities, because of the population of public housing. We have made no progress in this effort.

We have a new school over at 395 Hudson. We talked with the School's Construction Authority in October, 1989 and we encouraged them to establish an apprentice program through the Board of Education. We're talking to John Ferrandino, who deals with Special Projects for the Board of Education.

I'm on the Advisory Board for Occupational Education, and we have a school out in the Brooklyn-Queens area, Harry Van Arsdale School of Construction. There's a possibility we may adopt the senior class in carpentry in this coming year if we can work out the details. There are a lot of problems with vocational education. They can't get instructors who are qualified—people perceive vocational education as the last resort other than college. Patrick McGuinnis is the president of the New York City District Council of Carpenters. He's been extremely interested in all these

innovative programs. We have seventeen affiliate locals. We have to talk to all of them.

To the best of my knowledge, we don't have a formal program other than myself urging everybody [the business agents and delegates] *at the monthly District Council meetings, to support women and minorities on the job. We haven't* [formed a women's committee or people of color committee within the District Council to foster retention and advancement opportunities], *but it's not a bad idea. We have a very strong connection with NEW, Nontraditional Employment for Women. We take all the women they have into our daytime program and teach them about tool recognition, use and safety.*

Skill training comes over the years. You don't give [an apprentice] *a roll of plans right away and tell him to build a house. A lot of people who don't make it don't take advantage of the daytime opportunity. The daytime opportunity is excellent. They can stay there several days, full eight-hour day or seven-hour day, and work on every conceivable part of construction. But some aren't prepared to pay their dues, as it were, in training that they never had prior to coming to us.* [If you don't get a job first, then you're not able to register in the apprentice program. Getting a job is part of the selection process].

The locals don't have hiring halls, per se. The contractors learn who the workers are. Workers get calls at home, or they get calls directly to local unions asking for them by name, which is allowed under Taft-Hartley, and that happens to people.

A lot of the people [who complain] *are doing nothing on their own to enhance their skills. We have a journeyman upgrading, and have had it for the last 22 years. The courses are usually full. Now that we have bought this building at 395 Hudson, more than doubling our training space, we will be able to offer more courses for journeymen and -women.*

We [carpenters] *have the majority of skilled craftspeople on any job site, and our work tends to move in spurts. The dry wall contractor, ceiling contractor, interior trim contractor, concrete contractor—all could be on the job at one time. This system seems to respond to the needs of the industry. Whether it would work for any other trade, I don't really know.*

I think that minorities that enter a new industry experience resistance in the beginning stages. By the way, carpenters always had women. We had women in our floor covering industry, and in our factories where we make cabinets. I think the resis-

tance is not as strong as it may be someplace else. By the year 2000, [minorities] *will be the only population we can draw from. They better be ready to take control when that time comes. I'm not just talking about apprenticeship, but everything else.*

We do sensitivity training, but we have to do it better. Nobody has ever come to me in the 22 years that I've been Director of Training and said [someone exposed himself to me, or there's pornography on my site]. *If they did, I would pursue it until I resolved the situation.*

[Olivia Peck mentioned that the distribution of females and people of color in the overall number of applicants for apprenticeships is more representative of NYC's population, which is 57% ALANA.[1] Of the applicants for the District Council of Carpenters, 39% were people of color: 23% black, 15% Hispanic, and less than 1% Asian-American and Native American].

[Mr. Fanning said that the percentages change dramatically] *for two reasons: A disproportionate number of minorities don't complete the application and return it; and individuals give up hope too easily and don't continue to knock on doors. It's because of . . . not following through.*

The class hours [144 hours annually] *are only part of the training. We have established 1,200 hours per year as the number an individual should have on-the-job in order to move from year to year, or 4,800 hours in all. The hands-on training with tools involves replicating job site conditions at the school.*

We aggregate the whole thing for four years. If a person did 600 or 700 hours one year, and 1,500 the following year, the time spent on the job [is aggregated], *and the time spent in school continues, regardless of their success on the job. When we total up the hours of fourth year apprentices . . . very few of them come up short.*

Maybe out of a graduating class of 300 - 400 apprentices, you might get about 20 apprentices that have [not accumulated the 1,200 hours needed on the job]. *We put a letter in their file simply saying, you're graduating from school. However, to gain journeyperson status, you have to put in another 400 or 600 hours or whatever it turns out to be.*

I have no idea what the annual turnover is for journey-level persons in the Carpenters' Union. There is tremendous turnover in times of high unemployment. From

1973 to 1978, we probably lost about half our membership. In addition to apprenticeships, organizing is very important to maintaining our membership.

In Mayor Koch's administration, we had an agreement with him that employers doing business with the City of New York—and they are numerous, and a lot of money has been spent—would have to be a party to an apprentice program which generated many more job opportunities. The agreement became so watered down that it has to do with only brand new construction. [As for benefits], *there are certain degrees of eligibility. You would have to ask somebody from the welfare side of our operation.*

Local 608 has a huge apprenticeship intake. It is probably in excess of 800 apprentices. That local union is the cornerstone of our apprentice program. If you are a skilled and productive worker, and your record in the industry is such that contractors and foremen know you, you really don't have to rely on the local union for a job referral. There's no question that [someone's productivity would be affected by work site harassment].

I have no idea [how many ALANA or women shop stewards are currently working, nor how many out-of-towners are here]. *Send us a letter, and we'll see what we can do for you. Maybe you should try the District Council for those questions. I don't believe the locals keep those kinds of records.*

There's no professional shop stewards that I know of. You can be made that for a three- or four-day job, or you can be on a six-month job. It depends. [Carpenters on city jobs] *would attend our school, they'd have a career, it didn't necessarily have to be with Civil Service, at least the initial part of it would be, because of the job opportunities, but they can go anywhere in New York City, or anywhere in the country for that matter, as long as they carry an international work card.*

I've seen great successes in the New York Plan, at least the carpenters have. [For every apprentice working with five journey-level workers, there would also be a trainee]. *It was a door that individuals could come through regardless of their education, and they were all minorities. The problem with establishing a relationship with the Housing Authority was the bureaucracy. They would be interested in the apprentice program during meetings, but there was no follow-up.*

The local unions are affiliated with the District Council. The Council is in charge. They have a president, vice presidents, secretary-treasurer, assistants to the president, and these people publish newspapers, new jurisdictional stuff, organizing, et

cetera. There's over a hundred people on the Council. I don't know how many are minorities. As far as I know, there are no women yet, but they're coming.

Local 3
International Brotherhood of Electrical Workers (IBEW)

Overview: IBEW, Local 3 is the largest union in the electrical trade in New York City. Its jurisdiction encompasses the five boroughs of New York City. It comprises roughly 8,363 journey-level members, of which 6,871 (82.2%) were white; 1,492 (17.8%) people of color [Appendix D, Figure 4]; and 55 (.7%) were female as of December 31, 1989. [Appendix D, Figure 5]. There were 28 white women and 27 women of color.

Local 3 operates a referral system unique in the construction industry in New York City. The Joint Industry Board (JIB) of the electrical industry operates an employment department which governs Local 3's job referral procedures. Virtually all employees in Local 3 obtain work assignments by being referred out to work sites by the referral hall operated by the Employment Department of the JIB. The JIB consists of contractor representatives and union members. The Employment Department of the JIB developed the Employment Plan of the Electrical Contracting Industry, most recently amended in 1978, which specifies the jurisdiction of the JIB in maintaining lists of journeyworkers eligible to work. The Employment Plan allows employers to maintain a "minimum service force." This is a class of employees who have been employed by the same employer for two years prior to the plan. These employees are exempt from the union's rotation system. The plan allows for a total exemption of no more than 750 employees for all employers combined.

Employees are assigned to employers from the eligibility list for a minimum of four weeks. The Employment Plan stipulates how work will be assigned, the actions the JIB may take at its own discretion, and how employees may submit complaints or grievances. Additional duties of the Joint Industry Board include supervising the medical department, administering the Pension, Annuity and Vacation Plans, and making decisions about investing funds and determining eligibility.

The Employment Plan states that "qualified journeymen electricians shall be referred to Employers without discrimination as to whether or not such qualified journeymen

electricians are or are not members of the Union."[2] However, non-union workers are given the opportunity to join the union within seven days after beginning employment on a site.

Over the years, and at the hearings, workers have questioned the process by which the JIB refers workers. They allege that referrals are not being made in an equitable fashion, and have advocated that a written referral policy and list be produced by the JIB.

Many ALANA union members expressed their opposition to Local 3's practice of employing out-of-towners at the expense of local women and people of color. According to documents provided by Local 3, there were 900 white (69%) and 400 ALANA (31%) out-of-towners working in Local 3 in 1990. Mr. Van Arsdale mistakenly stated at the hearings that there are about 800 ALANA out-of-towners working for Local 3. He said, "When the employment level goes down, they'll go home." But many members of color testified that unemployment among people of color has risen sharply in the electrical trade, and yet over 1,000 travelers, primarily whites, are still earning a living within Local 3. Mr. Van Arsdale argued that if the Local tried to get rid of travelers whom the employer wanted to keep, the Local would be in violation of the law and subject to penalties and damages. This has happened in other jurisdictions, according to Mr. Van Arsdale.

Local 3 runs three separate apprenticeship programs: the Electricians Program, Electrical Elevator Repairer Program, and Plant Maintenance Electricians Program. Local 3's JAC maintains a list of applicants for the apprenticeship program in the chronological order in which requests for applications are received. Apprenticeship openings are publicized through the NYS Department of Labor, NYC Office of Labor Services, US Bureau of Apprenticeship and Training, NYS Job Service, and ALANA as well as non-ALANA newspapers.

According to data submitted to the Commission and DLS in 1990, Local 3 has 2,169 apprentices in its Electricians' Apprenticeship Program: 1,814 (83.6%) are white; 158 (7.3%) are black; 172 (7.9%) are Hispanic; 20 (0.9%) are Asian; and 5 (0.2%) are Native American. [Appendix D, Figure 6]. Altogether, there are 355 ALANA members. There were 2,111 males (97.2%); and 58 females (2.8%) [Appendix D, Figure 7]. This

falls considerably short of the goals of 39.3% people of color and 45.1% female participation, established by the New York State Department of Labor.

In response to a Commission questionnaire, Local 3 described its selection procedure for apprentices. It consists of assigning A numerical weight to each applicant, totalling a maximum of 480 points. Four interviewers each rate an applicant based on education (160 points), work experience (60 points), performance in the interview (180 points), and the aptitude test administered by the Jobs Services Division of the NYS Department of Labor (80 points).

Based on information provided by Local 3, the differences in the acceptance rates of white and ALANA male applicants into the apprenticeship program was less striking than the fact that white males accounted for 81.9% of all male applicants into the program (2,544 out of 3,106). As to acceptance rates, 600 out of 2,544 whites (23.6%), 46 out of 295 blacks (15.6%), 52 out of 234 Hispanics (22.2%), 11 out of 21 Asian Americans (52.4%), and none of the 12 Native Americans were accepted.

While the acceptance rate of black males is in need of improvement, the overwhelming problem is that in a union whose jurisdiction encompasses New York City, with a population that is more than 50% persons of color, more than 80% of Local 3's applicants to the apprenticeship program are white. This strongly indicates that outreach to minority communities is insufficient, and that the union's reputation in communities of color is negative. For this reason, many people of color don't bother to seek entry into the union. Based on the consistent testimony of people of color in Local 3 about the discriminatory job referral practices of the Joint Industry Board, the latter conclusion is more persuasive.

A number of members of Local 3 testified that the selection process was highly subjective, with too much weight given to the interview process. Women in particular were often asked questions by interviewers (all of whom were male) which appeared arbitrary, and sometimes hostile. Given that many women felt unwelcome in the union, it is not surprising that only 58 out of 3,164 applicants (1.9%) were women. Despite the low number of female applicants, 18 of 60 women (31.1%) were accepted into the program in 1989, making the female acceptance rate slightly higher than that of males. 15 of 37 whites (40.6%), 1 of 13 blacks (7.7%), and 2 of 8 Hispanics (25.0%) were accepted. It was also noted that the upper age limits have a negative impact on

female applicants, and the education requirements have a negative impact on both women and people of color.

As for Local 3's Trainee Program for Electricians, as of December 31, 1988, there were 78 trainees: 19 (24.4%) whites; 25 (32.1%) blacks; 30 (38.5%) Hispanics; and 4 (5.1%) Asians. [Appendix D, Figure 8]. No figures were available regarding female trainees. At the time of the Commission/DLS hearings, Local 3 was no longer recruiting trainees. In 1982, the State Division of Human Rights found Local 3 guilty of intentionally violating the New York State Human Rights Law, as well as a Memorandum of Understanding between the Local and New York City by treating trainees differently than apprentices. Beginning in 1971, the union placed trainees in a program that required them to spend eleven years in classroom and on-the-job training before qualifying for "A" journey-level examinations, instead of the five years of training required by apprentices. On appeal, the Appellate Division of the New York State Supreme Court upheld the Division's ruling, and required Local 3 to equalize the apprentice and trainee programs and to allow "M" journey-level workers to train for and take the "A" journey-level test.[5]

Local 3 provided the Commission and DLS with its Collective Bargaining Agreement (CBA), effective through June 11, 1992, between the New York Electrical Contractors Association, Inc. and Local Union No. 3 (IBEW), known as "Agreement and Working Rules." The CBA also included separate agreements for the Telephone Interconnect Employees, the Expeditors Division, and for Administrative Employees.

Section 4 of the Preamble to the CBA states,"It is recognized and agreed that the electrical industry's comprehensive non-discriminatory Apprenticeship Program and the Union's Training Program to promote minority training in the electrical industry and its comprehensive organizational program . . . have provided ample and sufficient training for persons desiring to become electricians. The Union and the Contractors agree to the continuing development and improvement of an affirmative action program to preclude discriminatory practices by any parties to this Agreement against race, religion, color, sex, age, marital status, national origin, sexual preference, or against persons with physical or mental handicaps who may be qualified for employment under this agreement." [6]

Abstract of testimony

IBEW, Local 3

Thomas Van Arsdale, President, IBEW Local 3:

I would like to comment that I think it's difficult to combine the question of equal opportunity for women in the construction industry and equal opportunity for minority men. Traditionally women have not been employed in this country in the construction industry, and I think that contributes to the reason why we don't find very many women in the industry today. [With regard to the treatment of women on the job], *I would submit that women are not treated too well in the construction industry or any other industry. So, it's expecting a lot to think a woman is going to be treated in the finest manner by men who come from all different kinds of rough backgrounds.*

For many years, when the question of equal opportunity for minorities was raised in the construction industry, the issue of equal opportunity for women was not. [The way the industry works is as follows:] *We have about 400 or less electrical contractors who have agreements with Local Union No. 3. There are more, nearly 2,000, licensed electrical contractors in the City of New York. We have always had to go out and organize workers into our union, so that we're not perceived as having a protected industry where no one else has a job opportunity except union members.*

Every public contract that is awarded is given to the lowest responsible bidder, and many contracts have been given to contractors who don't have agreements with Local Union No. 3. So we have a continuing program in Local 3 where we replenish our workforce by taking men and women into our membership through an apprenticeship training program.

We publicize openings in the program. Although we might take 1,000 or less, 4,000 or 5,000 apply for that apprenticeship. [The most recent figures showed 3,100 people applied]. *A very limited number of minority men or women apply, but the opportunity is clearly there. We are continuously organizing contractors into signing agreements with new contractors and taking their employees into our union.*

Although it's quite common for us to find large numbers of minority men in those workforces, I don't know of one case where we have found a woman [employed in

non-union work] *that we have been able to organize into our union. If there are any, it's a very small number.*

When an individual is referred to a job from our Employment Department, they certainly are referred without discrimination in regard to race, religion or sex. When an individual gets on a job, the employer has the right to determine whether the employer is satisfactory to them. [When they have to cut back on the size of their workforce], *they decide which employees are least needed by them. Because of the atmosphere that has developed over the years in regard to* [equal employment] *requirements for electrical contractors,* [ALANA and female] *individuals have been kept in the workforce on particular jobs even though they are not the most valued employee on that job.*

We don't accept that it's necessary for any outside agency to come on a job site and make a determination as to whether or not the individual employee is being fairly treated. We handle very many complaints. There's a reluctance on the part of many women to raise the question [of harassment/unfair treatment], *but wherever it has been raised, they* [employers/unions] *have dealt with it and they will be prepared to deal with it in the future.*

In response to the sheet that was sent out [by the panel], *this is dated as of April 11, 1990: minorities and females who are minorities total 349; white females, 37; for a total of 386, which is 18.4% of the* [roughly 2,100] *apprentices at that time. The number and percentage of minorities and women who are journey-level members of the union as of December 31, 1989 is as follows: male minorities, 1,465; all females, 55; for a total of 1,520, or a percentage of 18.2%* [of roughly 8,340 journeypersons].

Drop-out rates of minorities and women apprentices as compared to the drop-out rate of non-minority males is as follows for the year 1989: [ALANA males was 4, all females was 2, and 25 white males dropped out]. *The termination rate in the year 1989* [was as follows]: *15 male minorities, 6 females, and 62 male non-minorities were terminated.*

[People of color, and females to some extent, who graduate high school] *are sought by corporations and by colleges to become students at college, and so there's not as many available* [to us]. *Trainees attend classes with apprentices. Their curriculums are identical. Our trainee program does not provide continuous enrollment. We limit enrollment to periods less frequent than once a year. We*

maintain a list of applicants for the trainee program in the chronological order in which the applications are received. Currently, we are not recruiting trainees.

As of December 31, 1988, we had 25 first year trainees: 4 were white; 7 black; and 14 Hispanic. In the second year, we had 10: 2 were white; 4 black, and 4 Hispanic. In the third year, we had 21: 4 were white; 7 black; 9 Hispanic; and one was Asian. In the fourth year we had 18: 8 were white; 5 black; 2 Hispanic; and 3 were Asian. In the fifth year, were had 4: 1 was white; 2 black; and 1 was Hispanic, for a total of 78 trainees. Altogether, 19 were white; black, 25; Hispanic, 30; Asian, 4.

You'll note that there are white trainees. The original definition of a trainee would be that he or she would be a minority. That was opposed in the law in the courts, and it was determined that they had to come up with a new definition. It was discriminatory against the others, and so they came up with a concept that the trainee was supposed to be economically disadvantaged. We never recruited white trainees. The way we got these trainees was that we organized another organization into ours.

If you select 1,000 apprentices out of a group of 4,000, and they all have high school degrees, it's a little difficult to imagine that a trainee from a deprived background can keep up with them. Within the past calendar year [in our trainee program] *we have a total of 15 graduates: 7 were white, 5 were black, 1 was Hispanic, 2 were Asian. During that time we had 18 drop-outs: 4 were white, 7 were black, 7 were Hispanic, and no Asians.*

We do not operate a hiring hall. We have the Joint Industry Board of the Electrical Industry, which is jointly management and labor. That organization operates an Employment Department. We have a provision that as part of our apprentice training program, the individual must take electrical classes and pursue college classes for college credits. An individual worker completes the four-year apprenticeship, and must also complete a two-year associate degree program in the Empire State College.

We have a group of primarily black construction workers who are known as the Louis Howard Lathum Progressive Association. We have a Santiago Iglecias Society that is now mainly members from the Construction Division. We have a Greek Orthodox Council and an Asian Cultural Society, all of which encourage young people from minority groups to apply for apprenticeships.

As an individual completes his or her apprenticeship, he or she becomes a secondary rate journeyperson, and serves for one and half years in that category. That category exists for two reasons: one, to compete with the non-union people who do that kind of work at somewhat below those standards on the small work sites, and to provide an opportunity for residents and other small users to have access to unionized electrical workers at a reduced rate.

There was reference [in the testimony of other individuals] *to people who are working here from other cities. During a period of peak need in our city, we invited skilled electrical workers who were unemployed in other parts of the country. When there's a shortage of men, and these men come in from other parts of the country, they're welcome to get the jobs done that need to be done in our city.*

When the time comes for the layoff, the union has no right to violate the law. The law says you may not discriminate. At one time, we had close to 2,000 electrical workers from other parts of the country. Now we're down to around 1,000, but many of those individuals have moved their families [to places like New Jersey, Long Island or Westchester] *and are probably never going to go home. So they are, for all practical purposes, citizens and residents of the metropolitan area.*

The electrical construction industry involves hazardous and hard work. There is a great deal of heavy lifting and carrying, pulling and moving the cable reels, climbing ladders and structures. You're in the subway, tunnels and elevator shafts. In industrial plants, you come across chemicals. You're moving from job to job. You have irregular hours. You're asked to do overtime on short warning.

It's not hard to understand that many women would not seek employment in this industry. It's hard to say that some woman was unable to maintain a job because she complained about photographs or some individual relieving himself [in full view], *which has been traditional in New York City. I don't think it's fair to describe that as sexual harassment. I don't think it endangers the individual's* [chances of] *being a success on that job. When I worked on jobs, I objected to* [pornography on the job site] *but I say "is someone looking for a reason, an excuse,* [since] *you're only in a given area over a very short period of time?"*

I would say [pornography] *is common in our industry. The business agent took it upon himself to not allow pornography in the locker. It's not professional. If it's brought to the attention of officials in our union, the matter will be corrected.*

If a person can't get along in a particular job, send him to another job. Now, if you develop a pattern, whether it's in regard to sexual harassment or something else, that you send an individual to one contractor after another and they are not satisfactory, you are costing that contractor money. As an Employment Department, you take the position that we have to send qualified people to a job to perform. If an individual can't work or won't, you get to the point where you stop sending them.

I would say that probably a much higher percentage of minorities who apply to the apprenticeship program are accepted than the percentage of non-minorities who apply. [Applicants are screened through an aptitude test supervised by the State, a transcript of their high school performance, and an interview regarding their interests, their reliability and so forth].

Mr. Robert McCormack has been the director of the Employment Department for many years. At this time of year, there are almost 300 individuals unemployed. Last summer, there were no people unemployed, but when a job winds down, a given contractor makes a decision as to which employees he is going to release. In our industry, there are no rules governing how he shall make that determination. [Differences in types of skills and seniority are all factors in a manager's decisions with regard to reducing the workforce]. *When someone is terminated, the employer usually gives the reason on the termination slip.*

The Joint Industry Board makes a decision as to whether this employee is suitable to be re-referred. If they decide he/she is, they place him/her on a list. People who have been unemployed the longest are referred first. They match up jobs with individuals on the list, so an individual [may be skipped over and sent when a more appropriate job comes along]. *It's a judgment call. We have a number of people in our industry that the Employment Department has taken the position* [that] *they will not refer them. An example might be people who are alcoholics.* [However, recovering alcoholics have been re-referred].

The list is generally not available to individuals who wish to view it. [Olivia Peck pointed out that if more than 10% of the workers receive employment through some type of union referral system, then the union is required to make the list available to those individuals that are affected. Mr. Van Arsdale was not familiar with this legal requirement].

[The Employment Department is part of the Joint Industry Board, as opposed to being a hiring/referral system operated by Local 3. It has been this way since

1935]. *The Joint Industry Board supervises the medical department. It administers the Vacation and Holiday Plan, sending out the checks. It administers the Pension Plan, making decisions about eligibility. They send out the checks. It decides how to invest the pension funds, administers the Annuity Plans, handling contributions from the contractors, on a weekly basis, into those funds.*

We have a number of contractors who are minorities. I think it is a very difficult thing for someone to be a success in the electrical contracting business under the best of circumstances, and it is not an easy matter for a minority electrical contractor to be successful even though these jobs are set aside at 10% [of contracts for people of color]. *Generally they don't have the background of being in business for a very long time. We have 18 minority-owned companies and two female-owned contractors. Where we identify a company that has the capacity to be successful and live up to the terms of our contract, we're more than willing to sign an agreement with them.*

There are about 800 minority out-of-towners working for Local 3 [sic]. [Our analysis found there were around 900 white and 400 minority out-of-towners]. *When the employment level goes down, they'll go home, and you're not anxious to encourage them to stay in the city, and you're not anxious to offer them membership, when there's not enough jobs. Many of them have families who live in other cities or they don't have a family, and they come and go, so you just don't have a policy of just taking any of them in. If you take some, then you might find yourself required to take them all, so you take none.* [Travelers are working while Local 3 members are not].

If the Local tried to change that, and the employer wants to keep him, the local union would be in violation of the law and subject to penalties and damages. There are cases in other jurisdictions where that is exactly what happened.

[Harry Van Arsdale's Labor School is connected with the Empire State College]. *Apprentices must go to college for the two-year degree which is paid for by the industry. Whether you see* [the value of] *it or not, we haven't had a problem with it.*

Altogether, there are about 35,000 members in Local 3. We have a number of major divisions: the Maintenance, the Motor Shops, the Sign, the Electrical Wholesalers, the Fixtures, the Switchboard, the Miscellaneous Manufacturing Division.

We have had out-of-town electricians come into New York City for many years, and it served a good purpose. We had enough electricians when we needed them. Dur-

ing years when we didn't need them, we encouraged them to go home. But in recent years, they have developed this concept that we are not allowed to tell them they have to go home. So now we have to re-evaluate that policy of having out-of-town people come in if there is no way that they are going to go away again.

[Semi-public] *urination is common on construction sites in New York. It doesn't mean that it can't be stamped out with the proper supervision. It never became a big issue, that I was aware of. Every job is a little different, but if you talk about an ordinary situation where you're building a multi-story office building, generally, there are temporary facilities on the job, toilet facilities. It's not referred to in our contract.*

We have been thinking about [requiring training concerning sexual and racial harassment], *but we haven't had a reason to do it up to the present time.* [Russell Pearce, then the Commission's General Counsel, mentioned that these hearings were undertaken to collect testimony on patterns and practices in the construction industry, and stated that there had been considerable testimony about Local 3. The issues of pornography on the job and the men relieving themselves, would be a textbook example of a very clear, unlawful, discriminatory practice. There could be discrimination in addition to that].

Note: Commissioner Rivera stated that he was appalled at the opening statements and sentiments voiced by Mr. Van Arsdale, and considered them a crass attempt to justify racism, sexism, and domestic and other violence.

Teamsters Union, Local 363

Overview: Thomas Carlough, Director of Electrical Workers' Apprenticeship and Training Programs for Teamsters Local 363, was invited to testify because his trainee program was the defendant in the Monarch lawsuit which rendered the New York Plan for Training virtually inoperable by requiring that trainees be paid journey-level wages. Mr. Carlough's training program rivaled IBEW Local 3's Electrical Worker Apprenticeship Program, providing opportunities for people of color and women to gain journey-person status without having to go through Local 3's program.

Local 363's apprenticeship program had been de-registered by the state in 1975 or 1976. Mr. Carlough alleged that Harry Van Arsdale, as President of the major electrical union, Local 3, used his influence with the New York State Apprenticeship and

Training Council's Director, Lois Gray, to prevent Local 363 from competing with Local 3 for members. The Commissioner of the State Department of Labor at that time, Lou Levine, signed off on the de-registration of the union local.

Mr. Carlough signed a formal contract in 1979 with members of Local 363's apprenticeship committee and began the process of developing a training program, registered with the US Department of Labor's Bureau of Apprenticeship Training (BAT). The training program began in 1980. In 1982, Local 363 registered an apprenticeship program with the New York State Department of Apprenticeship and Training.

The programs are identical in that trainees and apprentices each attend the programs for four years, attend the same classes, and receive the same wage and benefit package. The only exception is that apprentices are required by New York State to have a high school diploma, whereas trainees can enroll without one. He believes the state's requirements are in place to keep blacks out. New York City residents attend the program at Thomas Edison High School two nights a week. Nassau and Suffolk County residents used the BOCES sites. The trainees' success rate is only three percent lower than the apprentice rate. Local 363 has no jurisdictional boundaries. It's apprenticeship and training program is sponsored by three employers and three union officials. Local 363's Collective Bargaining Agreement (CBA) mandates a one-to-one ratio of journeypersons to trainees/apprentices.

The New York State Appeals Court decision in the Monarch case involved a Local 363 trainee. It ruled that trainees cannot be used on State-funded jobs under Section 220 of the New York State Labor Law, Mr. Carlough has been unable to place many trainees on job sites that are 90% federally funded because the State has provided 10% of the funding. Mr. Carlough believes the Monarch case was brought with Local 363 in mind. He cites the fact that the New York Plan has existed since 1970, and for more than a decade, New York State never brought a case against any union local until Local 363 began to pose a threat to Local 3.

Until the recent Monarch decision, Mr. Carlough had 250 trainees and 150 apprentices. Now that the trainee program is virtually obsolete, he has less flexibility because he has to rely more on apprentices whom, unlike trainees, he can only recruit by placing ads in the paper and filing a lot of paperwork with the state. Trainees could be recruited year round. The State Department of Labor has offered to convert trainees to apprentices automatically.

Local 363's apprenticeship and training program maintains a list of apprentices who have been laid off. The union is responsible for maintaining a list of journeypersons. Since 1979, Local 363 has grown from 30 apprentices to over 400 apprentices and trainees. It has collective bargaining agreements encompassing over 100 companies, as opposed to only 17 companies in 1979. According to Mr. Carlough, 40% of Local 363's membership are people of color. He acknowledged that women are underrepresented, but gave no precise figures on female trainees and members.

Mr. Carlough alleged that the State Department of Labor allows Local 3 to get away with numerous irregularities such as backdating applications of apprentices by a couple of years in order to shorten the amount of time they need to attend the program.

Abstract of testimony

Teamsters Union

Thomas J. Carlough, Local 363, Director of Apprenticeships and Training:

I became director of the apprenticeship program for Local 28 prior to the civil rights movement, before anybody got involved with bringing minorities in. Mel Farrell was President. He took public stands, stating, "There will never be a nigger in this union, over my dead body."

At that time, my uncle, Edward Carlough, who was then General President, organized a group of people called the Blow Pipe Workers in NYC. The group was 70% minority, but there were no women at the time. He offered a group of people to Local 28's Mel Farrell. There was a general meeting with all the membership, and the members rejected about 700 people. Now, in the union business, if you offer me 700 people, I'm going to grab them, because that's my business.

At that time, there were three locals in NYC: Local 28, Local 137 and Local 400. Local 400 was 80% minorities. It was strictly a production local. They never had an apprentice program. They have limited skills. My uncle then appealed to Local 400 to take this local, and they agreed to take them.

[Since Local 400 didn't have an apprentice program], *my uncle asked me to go over to Local 400 and become their apprentice director. Ernie Green trained minority people to take the test to get into the apprentice program. He referred*

many people to me. I ran that program since 1965. Then Lyndon Johnson's administration developed the Job Opportunity to Business Sector program. Each area formed a Human Resource Development Institute [HRDI]. *I served on that board. I negotiated in a period of four years thirteen contracts and put approximately 4,000 people to work for different unions under that program 95% of them were minorities.*

Charges were brought against Local 28 by Federal, State and City government for a pattern of discrimination. In 1970, I was involved in the committee that negotiated the New York Plan, to bring minorities into the building trades. I was still on the board of HRDI. All the unions signed this plan with Governor Rockefeller and Mayor Lindsay, except four locals, [including] *Local 28 and Local 3. We placed approximately 800 minority people in all other trades: carpenters, lathers, plumbers, so forth.*

In 1980, I was approached by the President of the Carpenters Union, who has 40,000 carpenters. I met with Gordon Canizio, who told me he couldn't get an apprentice program. He had been de-registered [in 1976], *and he could not get a program.*

[Local 363 was de-registered for three years between 1975 and 1978. Mr. Carlough alleged that the Commissioner of Labor at that time told him and Gordon Canizio that an official of Local 3] *wanted it done." I told everything I'm telling you people to a Federal prosecutor.* [Mr. Carlough alleged that he had been informed by a high-ranking person at the NYC Building Trades Council that IBEW Local 3 had an arrangement with the Governor and people at the Labor Department to prevent him from obtaining certification for his apprenticeship program]. *The NYS Apprenticeship Council recommended de-registration of the program originally, and then Lou* [the Commissioner of Labor] *signed off on it.*

I told the apprenticeship committee, "I will take over the program under the following conditions. I'll be the tie-breaking vote [if there is a 3-3 split between labor and management]. *I control the board. I run the program. Agreed." I signed a formal contract with them in 1979.*

A training program is registered with the US Department of Labor, Bureau of Apprenticeship Training. An apprentice program is registered now with the New York State Department of Apprenticeship and Training. The State of New York [requires] *an applicant* [in the electrician trade] *to have a high school diploma or*

equivalency diploma with one year of algebra or Regents math which automatically screens out 90% of the black population. I have proven [these qualifications] *to be ridiculous. Harry Van Arsdale didn't graduate high school. I didn't graduate high school. They only set these standards up to keep blacks out. If I get a black or Latino kid with a high school diploma who knows algebra, this kid doesn't even want to be a plumber. He wants to go to college and become a lawyer or a director.*

My training program has no requirement except a man must be able to converse in English. And you can't be color-blind, because you can't mix a white wire with a black wire, or you'll blow the building up. So that's the only two requirements I have. I have a training program, and I have an apprentice program. For my apprentice program the State says you must maintain the standards, and for that program I have to maintain it. And I even dropped the high school diploma.

I have competed since 1980 against the most powerful local in the City of New York, Local 3 of the IBEW, who weren't even in the AFL-CIO. [Two years after I developed the training program], *I got an apprentice program because Ernie Green said, "We can't duck this anymore." I take my apprentices and my trainees and I put them in the same class. The trainees and apprentices are registered with different agencies, that's the only difference. They get the same money, the same benefits, the identical education in the same class. At the end of four years, the trainees' success rate is only three points lower than the apprentice rate. There's no algebra; we teach electrical work.*

When I took over this program, there were approximately seventeen companies and about thirty apprentices. Today there are 100 companies [employers] *and 400 apprentices and trainees. And we are beating Local 3. I would say 40% of my program is minorities. We are weak in women, and the State of New York will make me weaker.*

We do transit work; we do airport work. We are competitive bidders against Local 3, and we are highly successful. [To get a license, however], *you must be in the business as a journeyman seven or eight years. There's no discrimination on licenses, by the way. You take the test. You pass or fail.*

My apprentices and trainees serve four years maximum. Some do it in three years or two years if they have previous credit. They then become journeymen at prevailing wages the next day. Local 3 apprentices take eight or nine years, or in the case of trainees, eleven years, and some never make it to journeyman. My kids, after

four years, make the same as the guy in Local 3, full class-A man. It's about 40-something dollars an hour. There's no test to become an A-man in the prevailing [wage] *shops. I never took a test to become a Sheet Metal worker. If you can't do the work* [or pass the test], *they didn't give you the proper training.*

Our apprentice program does require—mandated by the State, not by me—a high school diploma and a driver's license, because you have to drive a truck. [The high school diploma was required because] *they said, "We think you should have it because Local 3 has it."*

[Mr. Carlough alleged that officials in the State Department of Labor are "puppets" of Local 3]. *Whatever Local 3 wanted, Local 3 got. If they forget to register a kid, they would say, we forgot this kid was in the program two years, backdate his application.* [Our geographic jurisdiction] *is from here to the Pacific Ocean and from Canada to Florida. My apprentices and trainees and journeymen do not have a jurisdictional boundary around them.* [Primarily, they work in New York City, Nassau, Suffolk, Westchester and Rockland Counties]. *You're allowed to send apprentices out of the state, under the Federal laws.*

[Our program is sponsored by] *three employers and three union officials. My collective bargaining agreement has been changed from a one-to-three* [one apprentice or trainee to three journeyworkers] *ratio to one-to-one.* [Local 3's] *collective bargaining agreement reads: for Type A work, one-to-one; for type B work, one-to-one; for type C work, one-to-three.*

[Officials at the NYS Department of Labor] *refuse to clear up the matter of journeyperson-to-apprentice/trainee ratios, even though I showed them Local 3's and Local 363's contracts, which are the same.*

We have what is called a prevailer employer, who will do any City, State, Federal or agency job. Another employer, who will do one-family homes, jobbing, or renovation work. It's a lower skill. He's called a nonprevailer. [They have separate rates]. *I would say 80% of shops are prevailing wage shops.*

Ernie Green designed a Federal Training Program, which has been approved by the Davis-Bacon Act. A trainee and an apprentice can go on the job and be paid through the registered program. The guidelines Ernie Green set up say a trainee can go into a program without any requirements and will receive the same benefits as an apprentice and get the same education [provided that they can do the program]. *He adopted it under the Carter Administration. It's been in effect ever since.*

Under State Labor Law 220, the word "trainee" is not mentioned; you must be either an apprentice or a mechanic. Therefore, trainees are not allowed on State work anymore. And my contractor has been fined for putting them on and [he was] *told that you cannot put a trainee on unless you pay him or her a journeyman's wage. No one is going to put a new kid on and pay them journeymen wages. We contested that in the State courts. We think the legislature should change the law to include the word "trainees."*

Mayor Koch wrote [three times] *to Governor Cuomo, and said the law should be changed to allow the word "trainees."* [No one was found guilty of violating Labor Law 220 by putting a registered trainee on a job prior to Local 363].

One contractor did a highway job, [85% federally funded, 15% State and local monies] *and he put a female trainee on the job. The State of New York said "No, if there's one penny coming from NY State, a trainee cannot go on that job, because NY State law will supersede Federal law." We don't care what the contract says. The contract specifically stated that if there is a dispute between Federal and State provisions, the Federal provision will prevail.*

We want to file a class action suit against the State of New York on behalf of minorities, namely minorities and women [who are trainees], *for what they just did to my contractor on that one job alone.* [We will argue that trainees] *should be allowed on Federally-assisted work, if the funds are intermingled, on Federal work. I will be more than happy to provide the panel with* [legal documents] *I have at my disposal.*

How can I put women to work if I can't be allowed to put them on State work, which is 90% federally funded? Again, they've set up a barrier to keep the women out automatically. And the State is going along with it. [Our apprenticeship program is opened] *once a year, every July. We normally take in fifty apprentices* [but not trainees] *a year, and we place fifty to work. The employers suggest that they can absorb fifty people a year with no problems. Until recently, I averaged more trainees. I had 250 trainees and 150 apprentices, until this recent decision.*

I can hire a trainee twelve months a year. I can't hire an apprentice twelve months a year. For an apprentice program, I've got to take an ad in the paper, I got paperwork this thick. [To become a trainee], *the employer hires you. There's no recruitment* [done by me] *whatsoever.*

When [someone] *comes into the union, we sit* [him or her] *down and we say, "You, as a trainee, you will be obligated to go to school two nights a week. You're the same as an apprentice. But we don't hire you, the employer hires you. Under the Taft-Hartley Law, you've got to join the union in thirty days, under the law. Then we can get rid of you if you don't join the union."*

But we don't have any screening. There's no control over who the employers hire, as in Local 3. [In Local 363] *the union or the apprentice trustees have no jurisdiction, nor do they want any, in telling an employer who he can hire, except that he is told, make sure when you hire people it's not discriminatory. We do keep a layoff list. I maintain only an apprentice training list. I don't maintain a journeyman's list. That's a union function.*

I'll sit down with Mr. Canizio and have him give me the information [to answer your questions about overall journey-level membership and the apprenticeship program]. *I have three locations: the Thomas Edison Evening High School; for my Nassau and Suffolk County residents, I use BOCES; for my journeyman upgraded classes, we use the headquarters at the union.*

Why is it that for ten years the State of New York never investigated or brought up one charge against any union that put trainees to work until Local 363 entered the picture? We're the first one they ever tried to de-register, and now the second and third and fourth.

We advertise [in the newspaper] *that we'll be giving out applications. We notify the State of New York. I will be more than glad to furnish you with my full procedure. I normally gave out 300, 400 applications, so I used to print 500.*

The State has now said, "We'll take any trainee and make him an apprentice automatically." They are trying to short circuit the trainee program. Donald Grabowski has stated in public, "We will accept any trainee as an apprentice, without any requirements whatsoever. But you can't become an apprentice under those rules, but we will accept any trainee without a test." He said this [in Albany] *after the trainee issue started with the TAP case on this job.* [The other side of the coin is that they will discontinue recognizing trainees to work on public works].

[For additional information] *I would suggest you speak to Mr. Patrick Bellantoni. He is Secretary-Treasurer of the union. Mr. Canizio's knowledge of the apprentice program would be very limited.*

Sheet Metal Workers' International Association

AFL-CIO, Local 28,
Metropolitan New York - New Jersey

Overview: The Sheet Metal Workers' Local Union 28 has jurisdiction over the manufacture, fabrication, assembling, handling, erection, hanging, application, adjusting, alteration, repairing, dismantling, testing, reconditioning and maintenance of all Sheet Metal work. Local 28's jurisdiction encompasses the five boroughs of New York City, all of Long Island, and six counties in northern New Jersey (Essex, Passaic, Hudson, Bergen, Union, and Morris Counties) as of March 1991.

As several expert witnesses testified, Local 28 has a 25-year history of litigation regarding discriminatory employment practices. When the Commission on Human Rights held public hearings on discrimination in the construction industry in 1963, out of 3,000 Local 28 members and 75 apprentices, none were black.[7] After City and State efforts to integrate the union failed, the U.S. Justice Department filed a federal lawsuit in 1971, charging Local 28 with violating Title VII of the Civil Rights Act. A U.S. District Court judge found Local 28 and its joint apprenticeship committee guilty of intentional discrimination, and ordered a goal of 29.23 percent ALANA membership by July 1, 1981.

In 1982, the union and JAC were found to be in contempt of the affirmative action program and court order. The court fined the union $150,000, which was to be placed in a fund to improve the ALANA representation in the apprenticeship program that is Local 28's primary source of membership. The amended court order stipulated the following: the JAC must create at least two apprenticeship classes each year. Selected procedures were prescribed to avoid an adverse impact on prospective ALANA apprentices; the Local was prohibited from issuing work permits for out-of-town Sheet Metal workers without the approval of the court-appointed Administrator and the plaintiffs; Local 28 must actively recruit people of color, publicizing employment opportunities in communities of color; the journey-level test must be revised to avoid an adverse impact on people of color; and frequent progress reports must be submitted.[8]

On January 16, 1985, the Second Circuit Court of Appeals affirmed numerous findings of contempt against the Local and upheld a modified affirmative action program. In 1986, with only 122 ALANA journeyworkers [about 4%] in a union with approximately 3,300 members, the Supreme Court confirmed the lower court's order and expressly approved the use of race-conscious remedial relief. Local 28's JAC was ordered to take in three ALANA apprentices for every white apprentice; or 75% of all new apprentices. Since this decision, the State and City have monitored Local 28 and its two JACs, and continued progress has been made in achieving compliance with Title VII and other relevant anti-discrimination statutes. However, Local 28 has not yet reached the ALANA membership goal of 29.23% ordered 11 years ago.

Local 28 and its JAC were subpoenaed by the Commission and DLS on February 4, 1991 after declining to respond to a questionnaire and request to testify. Mr. Joseph Casey, Recording Secretary, who represented Union President Arthur Moore, and Murray Liebowitz, Administrator of Local 28's JAC, testified in May 1991. They provided the Commission and DLS with copies of a "Program Status Report," dated April 1990, which showed 4,131 journey-level members within Local 28's jurisdiction. 3,542 members (83.6%) were white, and 679 members (16.4%) were people of color. [Appendix D, Figure 9]. Local 28 provided a breakdown of members residing in New York City, northern New Jersey and Long Island. New York City members totalled 1,043, or 25.2% of all members in Local 28's jurisdiction, with 642 whites (61.5%) and 401 people of color (38.5%). It is worth noting that Long Island and northern New Jersey combined have only about half as many residents as New York City, yet 75% of Local 28's members emanate from these regions. Nassau and Suffolk County members totalled 1,309; 1,225 (93.6%) were white, and 84 (6.4%) were people of color. Of New Jersey's 1,050 members, 912 (86.9%) were white, and 138 (13.1%) were people of color. The remaining 729 members (18%) were out-of-towners residing in other locations. Local 28 provided no figures on female journeypersons.

In Local 28's joint apprenticeship program there were a total of 495 apprentices. A Program Status Report, dated April 1990, combines memberships of both New York City's and New Jersey's programs, so it is not possible to discern from this source how many members are New York City residents. Overall, there were 495 apprentices; 365 (73.7%) were people of color, and 130 (26.3%) were white. [Appendix D, Figure 10]. The category of "minorities" was not separated into Black, Hispanic and Asian sub-categories. As for gender composition, there were 11 females (2.2%) and

484 males (97.8%). [Appendix D, Figure 11]. Although the federal court order in the EEOC case does not address women in Local 28, the Federal Equal Employment Opportunity in Apprenticeship Training Regulations set a goal of 6.9% for females in Local 28's JAC.

A March 20, 1991 letter from Local 28's lawyer, Edmund D'Elia, provides a breakdown of apprentices by geographic area. However, the numbers differ from those in the Program Status Report. In the joint apprenticeship program covering Nassau/Suffolk and New York City, 224 (68.3%) of the 328 people were people of color. In New Jersey, 79 (61.2%) of the 129 apprentices were people of color. Overall, the two apprenticeship programs combined provided a 66.3% ALANA representation rate.

Unlike most other apprenticeship programs in the construction trades, Local 28's program does not require applicants to have a high school diploma. Applicants' qualifications are evaluated by an Experience Board. The selection criteria relied upon by this Board has been called into question. A 1990 study of Local 28 first- and second-year apprentices, conducted by Richard G. Buchanan, Ph.D., of 10 predictor variables such as race, amounts of education in math, drafting, shop, test battery performance and other variables showed that most of the selection criteria had no relationship to performance in the program.[9]

Apprentices must remain in the program for four years. Since the JAC is under court supervision, Administrator David Raff manages NYC Department of Education JTPA funds, and selects candidates, 75% of whom must be people of color.

According to Local 28 Recording Secretary Joseph Casey, members of Local 28 are free to work for whomever they choose. The union does not maintain a hiring hall or a list of unemployed workers for hiring purposes because the contractor has the sole right to hire and fire workers. Nonetheless, business agents often inform unemployed members of contractors that are hiring.

Shop stewards are appointed by the Business Manager, Arthur Moore. There are anywhere from 75 to 100 shop stewards in the union, but Mr. Casey did not know how many were people of color. He did, however, acknowledge that all 31 elected union officers are white. In addition, there are no people of color on the JAC.

Mr. Casey stated that there is no formal process for informing union members of their rights. He acknowledged that, despite the fact that there have been complaints by women who charged that they had experienced sexual harassment, neither the union nor the contractors provide sensitivity training workshops to educate members about issues such as sexual harassment. However, he asserted that Local 28 investigates these complaints, and notifies the contractor of his legal obligation to address the problem.

Local 28's collective bargaining agreement, Article IV, states that "the employer agrees to require membership in the Union as a condition of continued employment of all employees within seven (7) days following the beginning of such employment."[10] This provision is common to all of the construction trades in New York City. The CBA also states that each apprentice class shall have approximately 60 apprentices per term, the actual number to be based upon the number of journeypersons employed.

Abstract of testimony by expert witnesses regarding Local Union 28

James McNamara, New York City Department of Employment:

In 1948 the N.Y. State Division of Human Rights ordered Local 28 to delete the by-laws provision for "Caucasians Only." Fifteen years later, a black Air Force Veteran initiated a complaint which led to a 1964 ruling by the State Division that ordered the union to cease and desist excluding blacks. A 1963 City Commission on Human Rights report to Mayor Wagner stated there were no black members or apprentices among the 3,300 members.

A 1964 State Court case had so little effect, that in 1971 US Dept. of Justice filed a suit charging violation of Title VII of the Civil Rights Act. NY State and City joined this case and in 1975, a US District Court Judge found Local 28 and its joint apprenticeship committee guilty of intentional discrimination. The court ordered a goal of 29 percent minority membership by July 1, 1981. In 1982, the union and the JAC were found guilty of contempt for failure to even approach that goal. Another contempt proceeding is scheduled for a New Jersey affiliate that is now part of the merged Local 28 union.

Suzanne Lynn, Chief of Civil Rights Bureau,
New York State Attorney General's Office:

It has been the Civil Rights Bureau's experience in combatting discrimination that the Sheet Metal Workers Union, Local 28, is a representation of the exclusionary practices found in many of the construction trade unions. In 1971 the State Attorney General joined the City of New York and the Equal Employment Opportunity Commission in a suit against Local 28, alleging continued and longstanding discrimination against minorities seeking to enter the union.

In 1975 a District Court order brought an affirmative relief, including setting a goal of 29 percent minority membership in the union and a joint apprenticeship committee by 1981, and appointed an administrator to oversee it's enforcement. In 1982 and 1983, New York State and City moved for an order of contempt based on the union's noncompliance with the affirmative action plan. To which, the judge ordered the union to pay $150,000 in fines and directed the union to establish an Employment, Training, Education and Recruitment Plan. The goal was modified to 29.23% minority membership.

In 1986, the Supreme Court confirmed the lower court's order and expressly approved the use of race-conscious remedial relief in cases involving egregious use and longstanding intentional discrimination. Since that decision, the State and City have monitored the unions and JACs closely, and substantial progress has resulted.

In 1964, the State Division of Human Rights was the first government agency to find Local 28 rife in nepotism. Out of 300 members and 430 apprentices, there were no minorities, and 80% of the apprentices had family ties to the members. Twenty-five years later, out of 4,071 journeyworkers, 629 (15.5%) are minorities, and out of 549 apprentices, 359 (65.4%) are minorities.

It is important to note that without a major infusion of scarce litigation resources to compel the union to comply with the Court's orders, it is doubtful that any progress would have been achieved. Through the Local 28 experience, the State, which is charged with formulating policies, must take the following into consideration:

1) *Bringing minorities into existing apprentice programs is not sufficient; supporting services such as counseling, tutorial work and mentoring relationships are essential;*

2) *Focusing on ensuring that minorities and females who graduate from apprenticeship programs have the same employment opportunities as white male journeymen.*

Unions without a hiring hall, such as Local 28, use a business agent who acts as liaison between employer and unemployed worker. Theoretically, every union member has equal access to the business agent and the information possessed by the agent. However, white journeyworkers with familial and/or community ties to the agent are more likely to hear about the more desirable jobs (i.e., those with the potential for overtime and/or long-term employment). Therefore, ALANA journeypersons have no other option but to approach employers, foremen or owners directly to inquire about openings. Owners and foremen also operate on the basis of friendship, and familial and community ties.

Litigation alone cannot eliminate discrimination in construction trades. There must be a huge infusion of government resources, especially at the federal level. Without a doubt, race and sex discrimination will continue to pose a serious barrier to true integration of the trades unless there is an enormous, sustained commitment of government resources.

Samuel Rabinove, American Jewish Committee:

Local 28 v. EEOC was a major construction case. In 1986, the Supreme Court approved (5-4) a lower court order that imposed on the union a goal of 29% black and Hispanic membership by August 1987. The Court of Appeals, which had originally imposed the 29% goal, had noted foot-dragging and egregious noncompliance over a period of more than 20 years, which resulted in the union's being held in contempt of court and being heavily fined.

Even the Justice Department acknowledged as much while nonetheless opposing any numerical remedy for these transgressions as discriminatory against whites. Local 28 of the Sheet Metal Workers Union established a record of intransigent resistance to both the law and judicial decrees, which was without parallel in the annals of equal employment litigation.

Almost 22 years have passed since the issuance of the first court order forbidding Local 28 to engage in racial discrimination. In 1964, when the first injunction against discrimination was issued, Local 28 had over 3,000 journeymen members, every one of them white. In 1986, after two decades of litigation and more than a dozen subsequent court orders, the union still had only 122 non-white journeymen, in a city almost half black or Latino. Today, that union must hire three non-white apprentices for every white apprentice.

Local 28 and JAC officials

Joseph Casey, Recording Secretary, Representing President Arthur Moore:

Wages are $26.71 per hour, with fringe benefits at $42 per hour. Geographic jurisdiction is the five boroughs of New York City, Nassau & Suffolk, and seven counties in Northern New Jersey. Seven counties in Jew Jersey merged ten year ago and Long Island joined the New York City Chapter eight years ago, doubling the size of our membership.

[Mr. McNamara made reference to data regarding Local 28's membership, submitted pursuant to a subpoena. It lists the total number of journeymen as follows: total 4,131; white 3,452; non-white 679, for a percentage of 16.44 ALANA journeymen. A total of 457 apprentices, of which 154 are white and 303 are people of color, equaling 66.30 % non-white apprentices. Grand totals, combination of journeymen and apprentices is 4,588: whites total is 3,606; ALANA total, 982. The percentage of people of color is 21.4%. The court order does not deal with women].

[Mr. Casey replied that] *it is Local 28's policy to accept as journeypersons only individuals who have been graduated from the regular four-year apprenticeship program. However, some people are accepted when a non-union shop is organized. The court order provides for a four-year Experience Board to review work history and to interview individuals. About 15 to 20 apprentices in the last three years, some minorities, were accepted by the Board. Permits for out-of-town members must be submitted to Administrator Raff. In excess of 90% of mechanics went through the four-year apprenticeship program.*

[Mr. McNamara stated that the union's participation in a hiring hall or other referral system was cited by Local 28's attorney as follows: In the Collective Bargaining Agreement, "The employer shall be at liberty to employ and discharge whosoever it

shall see fit, and the members of the union shall be at liberty to work for whosoever they shall see fit." He asked whether an employer ever utilizes this option].

To my knowledge, [we don't use that option]. *Local 28 does try to steer unemployed union members to contractors or places where we think they could find employment.* [An out-of-town contractor can bring only two employees into Local 28's jurisdiction]. *Local 28 doesn't maintain a list for unemployed members to sign onto in order to be contacted about jobs.*

We know the number of our people unemployed because we have a supplementary unemployment plan within the union. When a member is out of work, in conjunction with his State Unemployment, he can come in and also sign for a check from the supplementary unemployment plan.

Yes, [the union has a way of monitoring which members are laid off and when]. *There's a certain amount of politics involved here; everybody has to get re-elected. If the business agent is smart, he would acknowledge calls from an unemployed member and tell him about contractors' hiring. The contractor has the sole right and option to hire and fire.*

Local 28 has anywhere from 75 to 100 shop stewards presently in the union. I don't know the percentage of minorities or women stewards. Business Manager Arthur Moore appoints stewards. They can't be terminated until there are under six men on the job site. We have only two or three minority contractors—no females.

[Mr. McNamara stated that Local 28 provided the panel with a list of 31 elected officers, all of whom are white, and then asked if a person of color ever had been nominated or approached to run with the administrative team or opposition slate].

Minorities have run . . . some of them did not get elected. [He acknowledged that] *no full-time minority professionals have been appointed by the union or recommended or appointed for employment by the union trustees of the various funds.* [This is] *because, basically, they are full-time elected officers that act as trustees. There are no minorities on the joint apprenticeship committee.*

[Mr. Casey does not personally review manpower reports which summarize hours worked by journeyworkers, by race, for each individual employer. These reports are submitted to him by administrator Raff, so he didn't notice disparities in hours and overtime that may have been reported, and consequently didn't initiate any actions]. *Those reports are just forwarded on to the court.*

Individual apprentices involved in disciplinary hearings are informed, although not in writing, that they have the right to appeal to the administrator. There are some complaints [from journey-level workers regarding issues of discrimination by an employer], *not a lot—a few complaints from the female members on sexual problems within the workplace. We investigate, notify the contractor that he has an obligation under law to address this problem.*

There are three or four field personnel to one shop member. I don't know [how the percentages of ALANA workers employed on construction sites compare with those employed in shops]. *I don't know* [how many ALANA males are foremen, or whether Local 28 files EEO-3 forms with the Federal Equal Opportunity Commission. Ms. Abdus-Salaam requested that Mr. Casey provide the panel with the union's EEO-3 forms for the last two years, if they in fact filed them].

[There are] *maybe 40 women in the union, guesstimate, 30 journey persons and 10 apprentices; ten* [of the journeypersons are] *minorities.* [He could think of no example where any government agency, city, state, federal, or public authority denied a Local 28 contractor an award because of failure to live up to Equal Employment Opportunity or Affirmative Action requirements. To his knowledge no contracts have been canceled or contractors debarred because of not living up to EEO requirements].

I don't know what the $500,000 [in settlement claims to the EEOC, as listed in the US Dept of Labor report for 1989] *specifically alludes to. We are under obligation to pay three cents per hour for every hour worked into an educational, training, and recruitment fund administrated by Mr. Raff. About $120,000 was paid in 1990. Also, under court order the union had back pay claims, $200-250,000 was agreed upon in 1989 or 1990.*

[It has been estimated that about 40 different city, state, and federal attorneys have been involved in the EEOC case since it started about 20 years ago. The total amount paid to the administrator by Local 28 and/or the JAC over the 20 years is] *in excess of a million dollars.*

If Administrator Raff wants to conduct a hearing, I think we pay him $120 per hour. Any time he spends on a letter or subsequent telephone call is all billed to the union. [This accounted for $85,000 in fees in 1990].

In order to assist unions to increase the number of minorities and females in the trade, contractors could continue their educational process, after they graduate their apprenticeship. A contractor could contact the business agent [to request ALANA workers when there is underrepresentation in its workforce on government-funded projects. The union does provide a copy of its collective bargaining agreement to each member].

I would have to say no, [there is no process for informing members about their rights or educating them with respect to an issue such as sexual harassment].

Murray Liebowitz, Administrator of Training, Joint Apprentice Committee:

I have held this position since 1984. The New Jersey program is separately funded, with different wages and trustees. Long Island and New York City merged into one JAC. It is a four-year program. Apprentices receive raises every six months. Recruitment is ongoing, and applications are kept on a computer log. Individuals must achieve 8.5 math level. A high school diploma is not required. Candidates go to work at the ratio of three minorities for every non-minority.

The JAC has met with Park West High School and others. Contractors donated equipment. Preference would be given to the best sheet metal students, but there are not many openings now. As of yesterday, we had 221 minority male and 13 minority female apprentices; 113 non-minority male and 1 non-minority female apprentices. A total of 348 active apprentices, 67.2 percent minority, working in New Jersey, New York City and Long Island. We try to maintain a ratio of one apprentice to four journeymen, pursuant to court order.

Generally 85 to 90 percent of people who start the apprenticeship program finish it, which is quite a high percentage. We offer incoming apprentices remedial math for this math-intensive trade. There is a minor unemployment problem for apprentices now, about ten apprentices are out of work, although about 800 mechanics are unemployed. Both get supplementary unemployment insurance of $100 per week. The subcommittee of the JAC reviews absenteeism; family and other problems are referred to the Member Assistance Program.

There is one minority observer and one minority member of the appeal committee. Two of the six instructors are minority. [Mr. Liebowitz didn't know if the Rules

and Regulations booklet includes a notice to the effect that apprentices can appeal to an administrator, but he had no objection to including an appeal provision in the booklet].

The JAC is funded at a rate of 26 cents per employee-hour, paid by the contractor for all employees. The fee also covers a journeyman training program for classes in drafting, computers, welding, air balance, etc. We submitted a list of minorities and women involved in journeyperson training.

The NYC Department of Employment provides JTPA [Job Training and Placement Act] *funds which go to administrator Raff. His people select JTPA candidates who become regular apprentices. I don't know the level of funding. JAC secured a JTPA contract with Occupational Resources of Hempstead. We placed nine JTPA in work as apprentice. Apprentices pay a tuition fee of $150 per six months which goes up to $200 per period for fifth to eighth terms.*

International Union of Operating Engineers, Local 14-14B

Overview: Local 14-14B of the International Union of Operating Engineers is a skilled mechanical trade union involved in the operation and service of machinery, including cranes, hoists, forklifts, pile drivers, backhoe excavators, graders, rollers, pavers, and concrete mixers. In a unique arrangement, Local 14 shares its geographical jurisdiction over the five boroughs of New York City with Local 15, also of the International Union of Operating Engineers. Members of Local 14 and 14B are distinguished from each other by the kinds of equipment they are authorized to operate.

Historically, members of Local 14 have done construction work, while members of Local 14B, far fewer in number, have been stevedores, and brickyard or scrapyard workers. While Local 15 has been assigned, by Charter of the International Union, the sole administration of the Operating Engineer Apprenticeship program, Local 14-14B does run a trainee program under the New York Plan. As of June, 1990, according to the Collective Bargaining Agreement, the hourly rate for trainees, who do not receive fringe benefits, was $7.00. This was considerably less than the $13.15 starting hourly package rate received by first year Local 15 apprentices, who did receive

fringe benefits. The total wage and fringe package for journeyworkers, depending on the kind of equipment operated, ranged from $26.72 to $42.03 per hour.

Local 14-14B is operating under a consent decree. In the 1977 court case E.E.O.C. v. Operating Engineers Local 14 et al., evidence established that membership requirements were not job-related and discriminated against people of color. The District Court order called for revised membership requirements and the establishment of a training program with a prescribed procedure for the recruitment of people of color. After a remand by the Court of Appeals, a negotiated settlement was reached in March of 1985, providing that the NYC Department of Personnel would count time spent in the training program towards the experience needed for the granting of a hoist operator's license, expediting advancement to journey level. Also, Local 14-14B was required to report to the EEOC twice yearly for the next five years on the ethnic composition of its journey-level membership and training program.

In 1963, the State Advisory Committee found that "Locals 14 and 14B, in addition to requiring completion of a three-year training program, an applicant also had to pass an exam and obtain two union sponsors before gaining admission to the union."[11] Today, union sponsorship isn't required. To recruit trainees, Local 14-14B notifies the US Department of Labor, the New York Plan for Training, and Nontraditional Employment for Women of openings in the program. Applicants must be at least 18 years of age and physically able to perform the work, the determination to be made through a medical examination, if necessary. The program lasts four years, and involves 144 classroom hours per year (576 hours in total), as well as on-the-job training. As of December 31, 1988, 27 out of the 29 trainees, or 93.1%, were people of color. [Appendix D, Figure 12]. Thomas Gleason, the Director of Training, testified that he believed that 8 out of the 29 trainees, or 27.6%, were female [Appendix D, Figure 13].

The evident success of Local 14-14B in recruiting people of color and females is diminished, however, by its apparent inability to keep them in the program through graduation. 18 of the 29 trainees were in their first year of the program, with the remaining 11 fairly evenly spread throughout years two, three and four. There was only one ALANA graduate, and there were 14 drop-outs. Although by consent decree all graduates and drop-outs are immediately replaced, simply maintaining class-size has little long-term value if few progress through the program, let alone graduate.

In a 1963 report on the construction industry issued by the New York State Advisory Committee to the United States Commission on Civil Rights, the Committee found that "only 23 minorities out of a total membership of 1,600 (1.4%) had been admitted to Locals 14 and 14B."[12] As of August 1985, the year of the consent decree, people of color had made very little progress in Local 14. Out of 599 members, 566 were white (94.5%) and 33 (5.5%) were people of color; Local 14B, on the other hand, had a much greater level of participation by people of color. Out of 110 members, 36 (32.7%) were people of color. The figure for the combined membership was 69 people of color out of 709 (11.5%).

By the end of 1988, Local 14 had 818 members—742 whites (90.8%), 53 blacks (6.5%), 22 Hispanics (2.7%) and 1 Native American (0.1%). [Appendix D, Figure 14]. Therefore, while the total membership increased by 15.4% between 1985 and 1988, the ratio of people of color to whites actually decreased. There were only 2 women (0.2%) in the union out of 818 members in 1988. [Appendix D, Figure 15].

In July 1990, Thomas Gleason testified that since 1985, 20-25 trainees, of whom 90% were people of color, successfully completed the program and advanced to journey level. A comparison of the 1985 and 1988 figures, however, shows only a net increase of 7 ALANA members (one of the two females reported in 1988 was black). Without statistics for 1989 and 1990 a complete analysis cannot be made, but the figures indicate that the rate of graduation reflects the limited capacity of the trainee program to correct the continuing underrepresentation of people of color and females.

There is a relative concentration of people of color in Local 14B, as opposed to Local 14. At the 1963 hearings, representatives of Local 14-14B testified that 90% of the scrapyards (14B's jurisdiction) have ALANA workers. In 1985 the percentage of people of color in Local 14B was over five times greater than the percentage in Local 14. There was no breakdown between 14 and 14B in the figures reported by the Union in 1988, but given Gleason's assertion in 1990 that, for the last five years, people of color in 14B have consistently worked more hours per year than whites, it seems clear that the relative concentration of people of color in 14B still holds. There is not enough information to draw conclusions from this apparent disparity. The non-construction work performed by Local 14B is probably less prestigious than the work of Local 14. The hourly wage rate in 14-14B varies so greatly as to the nature of the

job performed, that it would be instructive to know how the average salary of people of color and females compares to that of white males.

Mr. Gleason testified that, in 1989, 32 people came into the union as journey persons. However, the Union reported only one graduating trainee. Other means of entry are outlined in the consent decree[13] as follows:

1) Employment by a contractor when organized by Local 14. Such a worker is required to take and pass a test administered by the union within seven days;
2) Successful completion of a practical test on one substantial piece of equipment . . . that test being the same test provided for in the training program; the test is to be administered within 15 days of request by the applicant;
3) Possession of a New York City hoist operator's license. This test is given by the Department of Personnel. Graduates of the four-year trainee program are qualified to take the exam, according to the consent decree. This pertains only to prospective members of Local 14, not Local 14B; and
4) Transfer from another Operating Engineers' local.

The by-laws of Local 14-14B, approved October 16, 1986, specify that new applicants to the union must be accompanied by two sponsors who have been union members for at least two years. The practice of sponsorship, long recognized as being discriminatory and not job-related, has been officially eliminated from most union entry procedures. The 1985 consent decree makes no mention of sponsorship being necessary for admission. It is not clear if this omission supersedes, in practice, the requirements of the 1986 by-laws. Gleason did not specify the race and gender of 1989's new members, but given the slight increase in their numbers between 1985 and 1988, it seems unlikely that many people of color or females were able to avail themselves of these alternative means of entry.

Local 14-14B does not operate an exclusive hiring hall, but does maintain a referral system within the Union Hall, where requests for work are processed on a first-in, first-out basis. However, Mr. Gleason stated that if an employer made a special request for a person of color, that request could be honored without regard to the individual's position on the list. Members are also allowed to seek work directly from contractors, and contractors have the complementary right to hire without going

through the referral system. In proportion to their population, according to statistics from September/October 1988, ALANA males were more dependent on the referral system than white males—29.3% as opposed to 20.5%. There were no female applicants for referral. This admittedly short sample period may be an indication that, while people of color are indeed served by the referral system, they are less likely to find work on their own.

Mr. Gleason testified that Local 14-14B received complaints of sexual and racial harassment a few years ago, but they were proven to be unfounded. There was testimony at the recent Commission hearings by a woman who felt she was denied training opportunities because of her gender, and another who claimed she was kept off the job in retaliation for filing a sexual harassment suit. Local 14-14B does not provide changing facilities for any of its workers but, according to Mr. Gleason, does provide separate bathroom facilities. There is no union anti-harassment policy, but there is an apposite passage in the 1986 By-Laws which defines "Injuring a brother member by word or deed, in reputation or employment'' [14] as discreditable conduct, and outlines punishment for conviction which ranges from fine to expulsion for continued violation.

Abstract of testimony

Local 14

Thomas Gleason, Director of Training Program:

The geographic jurisdiction of the union is the five boroughs of New York City. We service the operation of cranes in New York City. We also operate pile drivers. We have a couple of backhoe type of excavators. Our union has a training program registered with the Federal Department of Labor. We don't have a registered apprenticeship program because another local in the city covers some of the same jurisdiction. Our trainees come from the New York Plan for Training and from Nontraditional Employment for Women. We advertise in the papers. The consent decree lists what we have to do for the EEOC.

85 to 90 percent of our trainees are minorities, even though the consent decree says we have to have 66 percent. The consent decree has been in effect since 1985. We

continually upgrade our class of trainees so that when some drop out, we replace them with new ones right away.

[According to Local 14-14B's lawyer, Stanley Casey], *the consent decree did make provision for individual claimants so that if someone could prove that they were individually discriminated against, there would be seniority rights for them. There were provisions for money damages if they could prove they were discriminated against. Under that consent decree, we had to advertise in* El Diario *and* The Daily News *two years ago, stating that if anyone had a grievance or claim against Local 14, they should come forward and notify EEOC. To our knowledge, no one has. That provision for filing claims is still in effect. John Johnson of EEOC is assigned to the case.*

[There are 29 people in the four-year trainee program as of December 31, 1988]. *During that year 14 dropped out but were replaced right away. We assign very few trainees because Local 15 has the apprentice charge. Right now there's 34 trainees* [of all races]. *One other thing. Our collective bargaining agreement doesn't* [spell out an hourly rate of pay or fringe benefit contributions for trainees]. *When trainees are on the job, they are paid a rate that was set up by the program. 90 percent* [of the individuals in the program are people of color or women].

[The fact that you cannot assign trainees to any public work covered under State of New York Labor Law or City of New York projects] *may very well reduce the number of slots that are available to you. The trainees go through 144 hours of classroom instruction.*

[The overall membership of the union is 6% black, 3% Hispanic and 90% white]. *We don't* [rely solely on the training program as the mechanism to bring people of color and women into our particular union]. *Our jurisdiction concerns a New York City license. To operate a crane or a piece of hoisting equipment in the City of New York you have to have a hoist machine operator's license. Specifically, the Department of Personnel says that you have to have two year's paid experience in order to sit and take the test. The City now gives the training program half credit. If they spent four years in the training program, this City allows them to sit and take the test.*

There's an International Charter [by which the International Union of Operating Engineers has given, in effect, a monopoly on apprenticeship registration to

Local 15]. *We are the only situation like this in the United States, where there's two separate locals in the same city.*

Since 1985, about 20 or 25 people [have been given licenses and books so that they are able to work as journeypersons]. *Out of that 20, 90% or better are minority. Members of Local 14 are allowed to solicit their own work from contractors. You come down to the Union Hall on a referral list, you sign in, it's a first-in and first-out basis. A worker has the right to know what his position on the list is. If an employer calls up and says "I need a minority for a job," we can jump over to a minority and give him a minority.*

We do admit people from other jurisdictions, other locals, according to the consent decree. Last year, 32 people came into the union as journeypersons. According to the consent decree, I believe 26% have to be minority. [The total membership of Local 14 is 816 persons]. *I'd like to think that* [the difference in terms of going from 90 percent white male apprentices to 90 percent people of color, has occurred because of outreach efforts]. *We have continuous enrollment.*

The City Department of Personnel gives tests twice a year, every September and March. Tests are open to trainees, or anyone who has the minimum of two years in the industry with that equipment. On our consent decree, we asked EEOC to give us four additional slots just for women. We have women that applied to the training program. You can ask Ms. Karp. I believe there are eight women in the training program now.

[In order to be eligible for medical benefits], *I believe there are a certain number of hours per third of the year required. It is a rolling four-month process. Under the consent decree, we have to* [keep statistics on hours worked by members]. *In 14B, consistently for the last five years, minorities have worked more than non-minorities, more hours per year. I think this is because of my training program.*

If you had one person come in [with an application], *and he was referred out to five different jobs in one week, you count each time he was referred* [which explains why the answers to the questionnaire show less applicants for referral across the board than the actual number referred].

We had [received complaints of sexual and racial harassment] *a few years ago, but they were proved unfounded. We would have to see* [an industry-wide anti-

harassment policy] *first before joining it. We don't* [have changing facilities on sites for any of our workers, male or female], *so it doesn't apply. We have separate bathroom facilities.*

There are two or three [operating engineers on any given site]. *Some of the bigger jobs in Manhattan have six, seven, or eight. There's a security clause in the contracts, so if he works under the contract he must become a member within seven days.* [The onus is on the individual to become a member]. *Now, everybody has to take a test. If a person comes in and says he can operate a piece of machinery, he has to be tested* [by the union]. *We have had no problems yet. If he has a New York City license, the City deems him qualified.* [We don't test these individuals].

International Union of Operating Engineers, Local 15 & 15-A

Overview of Local 15: Local 15 has three construction-related branches with a jurisdiction that covers the five boroughs of New York as well as Nassau, Suffolk, Westchester and other suburban counties. Members of Local 15 operate, maintain and repair construction equipment (bulldozers, loaders, backhoes, etc.) on building and heavy construction sites and perform related work, including surveying, within the union's work and geographic jurisdiction.

After refusing to attend the hearings, Local 15 and its joint apprenticeship committee were subpoenaed to testify and respond to the Commission/DLS questionnaire on February 4, 1991. As a result, Mr. Conaty, Director of Local 15's JAC, testified in May 1991. However, Local 15 President Thomas P. Maguire did not testify until November 1992, at which time he was accompanied by attorneys Frank Petramalo and Robert D. Brady. Mr. Conaty stated on behalf of Local 15 that there are 2,500 journeypersons in Local 15-15A. In response to a subpoena, Local 15's lawyer Robert D. Brady wrote to the Commission and DLS, that "as of February 20, 1991, Local 15, A, B, C and D had 3,209 members initiated within the last 25 years who were members during the period from 1988 through 1991. Of that number, 475 (14.8%) are black or Hispanic [Appendix D, Figure 16] and 19 (.6%) are female."[15] [Appendix D, Figure 17].

In 1971, a complaint was filed against Local 15 by the United States Attorney in the Southern District, alleging discriminatory acts. After a decade of trials which included an appeal to the Court of Appeals, a consent decree was signed. It was in effect from April 1982 through 1988. The consent decree, which addressed discrimination against people of color, but not women, provided for the following:

1) Local 15 agreed to admit no less than 20% people of color annually. According to Local 15's President and Business Manager, Thomas Maguire, during that period, roughly 20% of the people admitted into the union were people of color.

2) The court ruled that priority may be given to people of color to meet federal affirmative action goals or remedy shortfalls in members' working hours caused by previous union discrimination. Individual victims of the Local's discrimination were required to be awarded compensation or priority for work referrals.[16] People of color whose hours of work for certain years proved to be less than the number of hours worked by whites in the same year could file claims for shortfall of their hours, and were to be paid from monies that Local 15 had deposited with the clerk of the court. The consent decree also addressed the issue of job referrals, requiring that members be referred for work on a first-in, first-out basis. According to Mr. McNamara, one reason ALANA engineers were not getting many of the jobs in the Operating Engineers union is that people were being hired on site. Although the union hiring hall existed on paper, the union circumvented it.

3) Local 15 was required to set up a non-discriminatory apprenticeship program by applying equal standards for admittance, setting ALANA membership and training goals, and actively recruiting people of color. According to James McNamara of DOE, the Operating Engineers never had a formal system for people to get into their trade and acquire a journeyperson's book. Entry into the trade and job referrals occurred through word of mouth. The Court established qualifications for apprenticeship training pertaining to minimum age, citizenship, and other entrance requirements to be set by the JAC in consultation with the Training and Selection Committee of the New York Plan. The Court Order also established the selection procedures for apprentices, term of apprenticeship training, apprentice-trainee wages and benefits, the ratio of apprentice-trainees to journeyperson (no more than one apprentice for

each four journeyworkers), and the duties and responsibilities of the apprentices and the JAC.[17]

For several years, Local 15 hadn't complied with the consent decree, claiming it needed to raise more funds for the apprenticeship program. Due to a lack of accountability, no one within the union questioned the management and labor trustees' claims that there were insufficient funds to set up the program. The EEOC initiated contempt proceedings against Local 15, and the court found that the union had failed to abide by the terms of the consent decree. The court ordered Local 15 to immediately establish an apprentice program, which was set up in 1985.[18]

After years of delay by the union in setting up an apprenticeship program, on July 12th, 1985, in a case brought by EEOC against Locals 14 and 15 in US District Court, the judge ordered that Local 15 of the International Union of Operating Engineers and the General Contractors Association implement the Court-approved joint apprenticeship program with no further delay.

In July 1986, Local 15/15A's Apprentice Training Program was registered with the New York State Department of Labor. NYSDOL's goals, as of November 1992, are 32.0% ALANA for heavy duty repairers and heavy equipment operators. The female goal is 44.0%. Apprenticeship Programs for 15B, 15C and 15D are administered separately. 15B's program is run by the Port Authority who do everything themselves, including hiring. 15C is for Repair Persons, and is run by an association of manufacturers and dealers. 15D is the Surveyors Branch. They attended their first class at a JAC school in November 1991. As of March, 1990, there were a total of 20 apprentices in Local 15's Apprenticeship Program. 11 (55%) whites, 7 (35%) blacks and 2 (10%) Hispanics [Appendix D, Figure 18]; there were 6 (30%) women, the highest female representation of any apprenticeship program in the skilled trades. [Appendix D, Figure 19]. The racial composition of females was not specified.

In 1988, Judge Broderick dissolved the consent decree at the request of EEOC because ALANA participation had increased. Nonetheless, Local 15 claims that it continues to follow the membership and employment practices set forth in the consent decree. According to Mr. Conaty, approximately half of those who were accepted and completed the program in 1989 were people of color. In recent years, the number of participating females has increased, particularly in surveying.

In terms of new members entering Local 15, the union provided the following figures. From 1988 through 1990, 455 individuals were initiated as new members of Local 15; 72 (15.8%) were black or Hispanic; 4 (.9%) were female. The entrance of new ALANA members over this three year period is below the rate which would bring the union up to the 20% goal set by the Court, and in fact new ALANA membership, which had been stable at 37 out 191 (19.4%) in 1988, and at 26 out of 130 (20.0%) in 1989, declined to only 9 out of 134 (6.7%) in 1990.

Local 15 President Thomas Maguire claimed the drop in ALANA membership is caused by contractors, since most new members entered the union when Local 15 organized the workforce of various employers. As he explained, "[W]e won't go in there and say to the contractor 'you don't have any women or Hispanics or blacks so we are not going to organize you.' He is the person who hires the individual and we are the one that organizes them." Apart from new members brought in by organizing work sites, Maguire defended the union's record of graduating ALANA apprentices.

Local 15 has about ten collective bargaining agreements (CBAs) with various contractor associations—such as the General Contractors Association, the Nassau and Suffolk Contractors Association, and the Building Contractors Association—which govern the terms and conditions of employment for Local 15 members employed by individual contractors. Under these agreements, individual contractors are free to hire employees from any source they choose, as provided for in the CBA. Local 15 shares a referral hall with Local 14, located in Queens. Since it is not an exclusive referral hall, the vast majority of Local 15's members secure jobs on their own. According to Union President Maguire, only 30% of the union's members secure work through the referral system.

Mr. Maguire argued that New York City should direct its attention to the large number of nonunion contractors, including the City of New York, who are not paying prevailing wages to skilled workers. He cited the School Construction Authority and the Parks Department as being among the worst offenders in this regard.

Abstract of testimony

Local 15 & 15A

Thomas Maguire, President and Business Manager of Local 15 International Union of Operating Engineers:

Local 15 has five construction-related branches: 15, 15A, 15B, 15C and 15D with a geographical jurisdiction covering the five boroughs of New York and suburban areas. The main office is at 265 West 14th Street in Manhattan. Members of Local 15 operate, maintain and repair construction equipment, dozers, loaders, back-hoes, etc. on building and heavy construction sites and perform related work, including surveying, within the union's work and geographic jurisdiction.

Local 15 has collective bargaining agreements with various contractor associations. Under these agreements, individual contractors are free to hire employees from any source they choose as provided in the collective bargaining agreement. Local 15 does not maintain an exclusive hiring hall from which contractors are compelled to seek employees. In practice, the vast majority of Local 15 members secure jobs on their own. Contractors hire off the street, especially former employees whom they know. They also transfer employees from job to job, and often employees are sent by equipment rental shops with a piece of rental equipment. The union does have a referral hall where employers call occasionally for workers who indicate to the union they are out of work, but less than 30 percent of the union members secure work through the referral system.

Nearly 20 years ago, a lawsuit was brought by the Federal Equal Employment Opportunity Commission claiming Local 15 excluded blacks and Hispanics from membership and work opportunity. After years of litigation in the New York Courts, the United States Court of Appeals for the Second Circuit held that Local 15 had not discriminated as claimed by EEOC. Nevertheless, in order to put an end to groundless claims of discrimination and to avoid spending more of the membership money on litigation, Local 15 agreed voluntarily to continue its program of affirmative action. That program was embodied in the consent decree between the Union and EEOC, which was approved by Federal District Court Judge Vincent L. Broderick. From approximately 1982 to 1990, Local 15 operated under the provisions of that decree. In 1988, Judge Broderick at the request of the EEOC dissolved

the decree because its purpose of increasing minority participation in the industry within Local 15's jurisdiction had been achieved.

There are approximately 4,900 members [in branches A, B, C and D] *of Local 15. Today in the apprentice school, there are 27 people. 14 are women, of which eight are black and six are white. There are 13 men, five black, five white, and 3 Hispanic.* [According to Mr. Petramalo, Esq., all of the old New York Plan trainees became apprentices, so there are no trainees mixed in with the 27 apprentices]. *We still file annual reports with the EEOC.*

[According to Mr. Petramalo, Locals 14 and 15 have different jurisdictions, crafts and equipment. There is no overlap between the two locals]. *Unlike Local 15, Local 14 operates basically cranes, cherry pickers on building work exclusive of excavation of foundations, compressor engineers, certified machine engineers, the bigger back-hoes.*

Local 15 has a minority auditor and a minority trustee, I believe. They are not full-time positions. They are elected, and are part of the executive board. All the officers are elected. The assistant administrator in charge of the vacation annuity fund and apprenticeship fund is a woman. So is the computer programmer.

There are approximately 400 Local 15 members employed by the City of New York as tractor operators, welders, firemen, oilers, and, I believe, loader operators, equipment operators. The Department of Sanitation is the biggest employer. The City is responsible for who gets hired. We also have about 200 to 250 Port Authority members. Cherry pickers, welding on permanent structures, have to be city-certified. For a state job they have to have a state certification. If it's a Con Ed job they have to be Con Ed-certified. The Department of Buildings gives the test for the city.

An individual can still get a journeyman's book without going through the apprenticeship program. There are various ways. We are constantly organizing where we are successful. If we can organize a company and the company signs an agreement and agrees to pay the rates and the fringes we then organize the people working for that company who fall within the work scope and jurisdiction of Local 15. Another way which comes up from time to time, is where somebody will call me saying he is working for a contractor and he would like to join the union and I will contact the contractor and if he is a union contractor he will accept him as a qualified employee to the point where he will pay him the rate and fringes under the agreement. Then we would make provisions for him to become a union member.

[Mr. Maguire didn't know the number of people who get their books (*i.e.*, union membership) because they were organized or sponsored by a contractor as opposed to those who enter through the apprenticeship program].

Where there are job referrals, it's at the referral hall in Queens, it's a joint referral hall for Locals 14 and 15. We work together when it's construction for machines but if it's for individual machines, we take care of ourselves and they take care of theirs. A member doesn't have to sign in at the hall. It's for convenience. I would say the preponderance of the members get the jobs on their own. Most of the equipment vendors want people who work for them and who they feel know the equipment and will take care of it. That's perfectly all right as long as the member is a paid-up member of Local 15. The member who signs in has to be qualified to run the piece of equipment, and there are times the employer calls for a specific member who is out of work, who worked for him before and we acknowledge that. We tried to do first-in, first-out, but it's based on qualifications. When we initiate members, we tell them the referral hall procedures. Members have a right to see where they are on the referral list. If a member has a complaint about how the referral was made, the by-laws provide for remedies.

In order for us to put a foreman on a job, the job has to be at least $25-million and there have to be five engineers of a mix between Locals 14 and 15. The foreman goes on the job when a Master Mechanic goes on. A contractor is well within his rights to start someone on the job who is not a member of Local 15 as long as he is willing to pay him the prevailing rate and the classification he is employed under and also pay the fringe benefits.

I get very upset [when contractors blame unions for the underutilization of people of color on the job] *because if they wanted minorities or women on the job, they can call us when they start the job. We have a referral hall. So I don't agree with that at all. I'm not sure what the current goal is. I think it's around 20 percent, 25 percent, I'm not sure whether that is measured in hours or bodies. I think the goal for women is around six percent.* [Mr. McNamara stated that the Office of Federal Contract Compliance of the U.S. Department of Labor indicated that the ALANA goal is 25.5% and the female goal is 6.9%].

The government agencies that award the contracts deal directly with the employers. They don't sit down to discuss goals with the union. We have minority contractors under the collective bargaining agreement. I don't know the specific number. The

unemployment rate of our journeymen is, I would say, 25 to 30 percent, minimum. It could be higher.

I think the operating engineers are doing a fine job in recruitment and I'm proud of Local 15's record. [Mr. McNamara pointed out that in 1990, Local 15 admitted 134 new members, of which only 9 (6.7%) were people of color, which is far below the 20% admittance rate required under the consent decree which was dissolved in 1988]. *When we organize we don't go in there and say to the contractor, "You don't have any women or Hispanics or blacks so we are not going to organize you." He is the person who hires the individual and we are the one that organizes them. If that number comes out to six percent, that is not Local 15's fault. I know what we do in the training school, and the record speaks for itself.*

When admitting new apprentices, Mr. Conaty, the JAC Director, looks at the unemployment rate and determines how many apprentices they will be able to give jobs. There's no sense in putting an inordinate amount of people in if you know at the end of the program, there aren't going to be any jobs for them. Mr. Conaty is authorized on his own to decide how many apprentices are going to be taken in. He makes a report at the trustee's meeting. [The trustees are in general agreement with the goals submitted].

Right now, 50% of the work coming out of the New York City Department of Education, New York City School Authority, is non-union. The same problem is in the Parks Department. I would say two out of three jobs that come out of the Parks Department are non-union. They are supposed to pay the prevailing rate, but I don't believe that is so. Because of the budget crises, there aren't any inspectors in the Comptroller's Office to do that, but certainly the job isn't being done as far as I'm concerned. I made complaints about this with the Office of Construction, and from time to time to the Comptroller's Office. Sometimes you are beating your head against the wall with the Comptroller's Office. They say, "Hey, we don't have the body to go out there to do what we have to do." The same problem with the State. I would doubt very much if [these non-union contractors] *have any bona fide apprenticeship programs.*

Another problem is not-for-profit work in the city. The City of New York builds a $30- or $40-million dollar health clinic on 42nd Street and because it was a not-for-profit job, it didn't come under the prevailing rate and it went entirely non-union with rates five, six, seven dollars an hour with most of the people working there minority. We went to the State to amend Section 220 of the New York State

Labor Law, and asked the Mayor to issue an Executive Order to mandate that the prevailing rate in New York include not-for-profits.

[We have a recruitment film that] *we show at all our membership meetings. It is shown all over the country through the local unions. No incidents of sexual harassment have been brought to my attention. If there were any, I would certainly notify Alice Roman. She teaches part of the apprenticeship training school. The women feel comfortable with her. My recollection is that she spoke with the women about sexual harassment* [and according to Mr. Petramalo, she utilizes the Department of Sanitation's educational materials on sexual harassment]. *If workers have any grievances, whether sexual harassment or not, they can bring it to the attention of the Executive Board and to my office, but nobody has brought anything like that to my office.*

There is very little private work going on in the City. Economists say the Northeast will be the last to come back from this terrible problem and New York City is always the last to come back. I try to get to the referral hall as often as I can. The $200-million ferry terminal with the huge clock is one of the projects we have been working on. There are mornings I sit in the hall hoping the phone will ring. That's why I'm happy that the members can get their own jobs too, because most of them do. Contractors call in sometimes and say, "I want a minority operator or a minority welder." There are some days we send out more blacks than whites. So it's hard for me to give you a specific percentage.

Joseph Conaty, Director of Joint Apprenticeship Committee, Local 15-15A, Operating Engineers Union:

[For the purpose of this report, the Local will be referred to as Local 15. Both Local 15 and the JAC declined requests to testify and were subpoenaed. An attorney for Local 15, Robert D. Brady, mistakenly told the NYC Human Rights Commission's General Counsel, Cheryl Howard, that Mr. Conaty was an Executive Board member of the joint apprenticeship committee who, in his capacity as a member of the Executive Board, would testify for the union as well. Although he was granted permission to testify, the Hearings Panel reserved the right to call Mr. Maguire at a later date to testify on behalf of Local 15].

The geographic area of the JAC is the five boroughs of New York City. Local 14 is primarily crane operators. Local 15 operates a variety of equipment: bulldozers, payloaders, bobcats, maintenance work, welding.

Local 15 officially registered [to begin its apprenticeship program] *on July 1, 1986.* [Mr. Conaty pointed out that 23 years earlier], *the 1963 City Commission on Human Rights Report stated that Local 15 was seeking approval for an apprenticeship program.*

[When Mr. McNamara asked, "Is it accurate to say that Local 15-15A did not implement the apprenticeship program until ordered to by a federal judge?" Local 15's attorney, Frank Petramalo, responded, "I object . . . I think we should be more careful here in the way questions are phrased." In response, Mr. McNamara stated, "In the spirit of being careful, I submit the order signed by Judge Vincent Broderick on July 12, 1985 which directed Local 15 to establish its first registered apprenticeship program." At the close of testimony, Mr. Petramalo said, "Let me make an apology to Mr. McNamara. He was correct on the date of that court order—it was July 1985."]

[Resuming his testimony, Mr. Conaty stated] *We took* [people of color already in Local 15 as New York Plan Trainees] *and indentured them into our* [first] *apprenticeship training class. Apprentices are trained separately based on different Local 15 divisions—15, 15A is one. 15B is Port Authority, who do everything, hiring, themselves. 15C is our Shop Locals or Repairpersons, and 15D is the Surveyors Branch. There's fifteen apprentices in 15 and 15A; in 15C manufacturers and dealers control their own people. 15D Surveyors will start their first class at JAC school in November.*

The Apprenticeship Skill Improvement and Safety Fund started in 1980 or 1978. We have six people on staff, including myself, and probably six volunteers on Saturdays. Alice Ryan, my curriculum coordinator, is a minority. [Upon being told by a panel member that] *she is a woman, not a minority,* [he replied], *I thought all females were considered minorities.*

[Mr. McNamara stated that the NYS Dept. of Labor approval, dated 8/01/90, for a contract with the JAC, states that a ratio of one apprentice for four journeypersons will be used in the program. It also states that there are 2,500 journeypersons (heavy equipment operators) in Local 15-15A].

[Mr. Conaty stated that there are 15 apprentices active in the program now]. *We graduated seven last year. Three white women, three black males, and one black female—our second graduation class. The first class was fourteen and 100% minor-*

ity, including one Hispanic female. They [Local 14] *have a registered training program, but they don't have a registered apprenticeship program.*

[Mr. McNamara stated that State Labor Law 220 does not recognize trainees for prevailing wages governing city and state public contracts. This means that only Local 15 apprentices, and no Local 14 trainees, are permitted to work on city and state public contracts].

[Mr. Conaty replied that] *the Department of Education validated Local 14's requirement that all apprenticeship applicants must have a high school or equivalency diploma. Prior to the state-approved program, they did not have this requirement for individuals entering the union. Ask the New York State job service about the reasons for the aptitude test which they required.* [There are fifteen active apprentices in 15-15A. 15C has only two right now. The Department of Labor said the aptitude test was necessary. Mr. Conaty doesn't think it is necessary].

The Affirmative Action Plan approved by the New York State Department of Labor commits Local 15 to take in one black and one Hispanic this year. [Last year no blacks or Hispanics were included in Local 15's apprenticeship program, but there were six women]. *We were granted a special dispensation by the NYS Commissioner of Labor. We did not recruit in 1990. We have just recruited for the* Ssurveyor Apprentices] *program. It was just approved this year. It will start with ten people.*

[Local 15 projects 14 new apprenticeship positions for the five-year period, 1990-1994]. *In 1991 we will take more, probably ten. Probably about six will be minorities.* [Mr. Conaty projects 24 vacancies for graduates and drop-outs for the same five-year period]. *The present class of fifteen includes five blacks and three white women.*

[The way the referral system works for unemployed workers is] *first one in, first one out. They sign a log at the referral hall.* [Mr. Conaty estimates that the number of positions filled by this system is] *minor, maybe twenty, twenty-five percent.*

Apprentices have to learn to operate the three major pieces of our jurisdiction. They don't get paid for the day they're on the equipment at school. The employer trustees on the JAC to review the affirmative action goals. They meet every three months.

It would take many years, obviously [for the Local 15 journey-level workforce to reflect the current demographics of New York City, based on current enrollment rates by race]. *As the minority contractor becomes bigger, those numbers will change in Local 15. There are contractor-sponsored persons—another route. In 1990, about 130 persons went into the entire local as journeypersons. Sponsoring by contractors is one of the more effective ways of further integrating the union. We* [the joint apprenticeship committee] *would certainly offer* [the City] *all the help they need* [in establishing an apprenticeship program].

[With regard to sexual harassment, Mr. Conaty stated that there have been no complaints about sexual harassment from women apprentices]. *Ms. Ronne has a program—strictly for women—to prepare them for the construction trades, how to dress, trying to avoid some of the nonsense that some of the women are subjected to. We started a program this year* [teaching male apprentices what sexual harassment is]. *We use some of the literature that is distributed to the Sanitation Department.* [In response to a question about the need for separate changing facilities for female operating engineers, Ms. Ronne stated she preferred getting in the car and getting home as quickly as possible, and into a shower].

G. Enterprise Association of Steamfitters, Local Union 638

Overview: Local 638 of the Enterprise Association of Steamfitters is a skilled mechanical trade union involved in pipe-fitting for heating, air conditioning, refrigeration, hydraulic and sprinkler systems. Its jurisdiction extends over the five boroughs of New York City and Nassau and Suffolk counties.

Journey-level workers are distinguished according to the nature of their work: the A Division is responsible for installation, and the B (or Metal Trades) Division is responsible for maintenance and service. Training is administered by the Joint Steamfitting Apprenticeship Committee, which also participates in a parallel trainee program under the New York Plan.

Within the apprenticeship/training program there are two schools—one which prepares workers for the A Division, and another for the B Division. Steamfitters usually work in teams of two—either two journeyworkers, or a journeyworker with an apprentice or trainee. According to the collective bargaining agreement with the

Mechanical Contractors Association, as of July 1, 1992 the hourly package rate (including fringe benefits) for journey-level workers in the A Division was $43.50. Journey-level workers in the B Division receive the considerably lower hourly rate of $20.85 (including $1.50/hour pension). B Division workers are more likely to be continuously employed than A Division workers, however, and, in addition to the hourly rate, B Division workers receive a $347 monthly Welfare Fund allotment, and get paid vacation, holidays and sick days. First year Apprentices and Trainees are paid 40% of journey-level wages (including all fringes)—$17.40/hour for the A Division, and $8.34/hour for the B Division.

In U.S. v. Local 638 et al. (1973), affirmed in 1974, and modified on remand in Rios v. Steamfitters Local 638 (1975), evidence established purposeful discrimination against people of color in both the apprentice and hiring programs, and, in particular, in the practice of admission into the A Division. The Court found there were relatively few people of color in the apprenticeship program, and those few rarely graduated into the A Division. On the other hand, many whites had been directly admitted into the A Division without either having to complete the apprenticeship program or taking an entry examination. The unfair advantages afforded whites were found to be reinforced by the absence of a hiring hall, and the generally informal method of spreading information regarding available jobs by word of mouth. The court required the union to revise its training and work referral systems, to expand its recruitment by advertising in ALANA news media, and to actively assist qualified people of color in obtaining employment. A goal for ALANA participation was set at 26%.

In compliance with the court order, Local 638 advertises apprenticeship openings in such ALANA newspapers as *The Amsterdam News* and *El Diario/La Prensa*, and sends notices of apprenticeship openings to organizations and agencies which represent people of color and women, such as The Urban League, the NAACP, NOW, and Nontraditional Employment for Women. Applicants for the apprenticeship program must be at least 18 years of age, have a high school diploma or certificate of equivalency, and take an aptitude test administered by the New York State Department of Labor. Personal traits, attitude and interest are measured in an interview session. Although all applicants are ranked for admittance based on test results, Edward Malloy, President of the union, testified that 26% of each class is reserved for the top ALANA candidates. The program lasts five years and involves 144 classroom hours

per year as well as a total of 7,500 hours of on-the-job training. Although New York Plan trainees are not required to have a high school degree or certificate of equivalency, and do not attend classes with apprentices, they go to the same school, have an identical curriculum, are subject to the same salary structure, and, upon graduation, obtain the same certificate of completion.

Local 638 was once party to a consent decree which set a goal of 26% ALANA participation in the union to remedy an historical pattern of discrimination. In 1963, 200 (2.9%) out of 6,800 members, and 6 (1.4%) out of 437 apprentices were people of color.[16] There were no women in the trade at that time.

According to data supplied to the Commission and DLS by Local 638 in March 1990, there are 239 apprentices, of which 194 are white (81.2%), and 45 are people of color (18.8%); there are 27 blacks (11.3%), 16 Hispanics (6.7%) and 2 Asian-Americans (0.8%). [Appendix D, Figure 20]. There were 18 women in the program (8.1%): 9 whites, 7 blacks and 2 Hispanics. [Appendix D, Figure 21]. Altogether, 54 apprentices (24.4%) were either people of color or female. The trainee program had 29 people enrolled, of which 27 (93.3%) were people of color. [Appendix D, Figure 22]. There were 25 males, of which 17 (68%) were black and 8 (32%) Hispanic; and there were 4 women—2 white, 1 black and 1 Hispanic. [Appendix D, Figure 23].

In calendar year 1989, 805 (25.4%) out of 3,174 journey-level members 2,369 (74.6%) were white and 805 (25.4%) were people of color, almost all of whom were black. There were 802 blacks and 3 Hispanics. [Appendix D, Figure 24]. As for females, only 34 out of 3,174 journeypersons (1.1%) were women. [Appendix D, Figure 25]. This falls far short of the 6.9% goal set forth in EO 11246. These gains have been achieved despite an alarming apprentice and trainee withdrawal/cancellation rate. Since 1973 the number of people of color and/or females who failed to complete the program (203) rivals the number of people of color and/or females who graduated (248), and greatly exceeds—by almost two-to-one—the number of white males (111) who withdrew or were dropped.

Another consideration complicates interpretation of the data. It seems likely that the construction work done in the A Division, with its significantly higher wage rate, is more prestigious than the maintenance and service work done by the B Division. This likelihood is supported by the fact that all 200 ALANA members in 1963 worked

in the B Division and that the court cases from 1973-1975 focused on discrimination in admission to the A Division. Since the Commission received no separate race/ gender breakdown by branch, while it can be reported that ALANA participation approaches 26%, nothing can be said about the quality (*i.e.*, number of hours worked, and duration of assignments) of the participation.

The goals set by the Equal Opportunity in Apprenticeship Training Regulations and enforced by NYSDOL, 39.3% people of color and 45.1% female, are higher than the 26% mandated by court order.[20] In his testimony, Mr. Malloy acknowledged that Local 638 had "no experience with working toward achieving this higher goal." He noted in particular that women were not part of the consent decree, and that the union's efforts to recruit them through advertising and meetings with organizations that represent women in construction met with little success. In 1989, 8.1% of the apprentices and 1.1% of the journey-level membership was female.

Mr. Malloy testified that the union had a good relationship with women who entered the program. He admitted that there may have been some transition problems beginning with the first female apprentice in 1976, but stated that these have since been overcome and that any minor harassment complaints which come up are handled in-house. Mr. Malloy further testified that there are no union rules regarding pornography on the work site or separate changing and bathroom facilities for women, and that while there have been a few female shop stewards, there are no female union officers.

Despite the court order to revise its work referral system, Local 638 still does not seem to have a formal hiring system which ensures equitable distribution. Mr. Malloy testified that they do not have a hiring hall; that the journeyperson has the initiative to solicit work; that it is the employer's right to hire and fire; that every member is apprised of all agreements negotiated with contractors; and that members share information about job openings at meetings held twice monthly. Malloy asserted that, according to the union's records, people of color account for 26% of annual hours worked. However, complementary figures concerning the annual wages of white and ALANA workers were not available.

Abstract of testimony

Steamfitters Union

Edward Malloy, President of Local 638:

[The geographic distribution of our union is] *the five counties of New York City, Nassau and Suffolk counties. Steamfitters do the installation of all heating, air conditioning, refrigeration, hydraulics, sprinkler systems, all power piping and power houses and refuse centers and major construction jobs.*

We work in units of two. A journeyperson is teamed up either with another journeyperson or an apprentice. The journeyperson is responsible for training the apprentice. Some journeypersons have been teamed up with a partner for 20 or 30 years. [We have an A division and a B division]. *We do all the installation. There is the Metal Trades Division, which is the service division of Local 638. They do all the maintenance and service.*

[One becomes a member of the union] *through recruitment, through applications, through organizing.* [At the time of these hearings, OLS, now called DLS, had not received the questionnaire from Local 638]. *I believe that the numbers for journeyworkers and apprentices is presently 3,155. 26%* [are people of color or females].

We have been under court decree since 1971. The Court mandated at that time that we maintain and comply with the 26% ratio of minorities in Local 638. That has been complied with. There had been [a Special Master assigned to us], *but that was terminated because of full compliance.* [As to when we reached full compliance] *I believe it was—in 1978.*

As far as the apprenticeship is concerned, in 1973, we had a class of 400 apprentices, of which 175 were minorities. Since then, every class that we have educated has a 26% minority [participation rate]. *In our apprentice program, we have open recruits, we do all the advertising according to the Department of Labor of New York State, and we recruit* [throughout our geographic jurisdiction]. *In October of this year* [1990] *we will have another recruitment. The last one we did, I believe, was in 1987.*

The organizations that were notified include The Daily News; Newsday; The City Sun; The Amsterdam News; El Diario, Ethnic Woman; *Nontraditional Employment for Women; Urban League in Melville; the NAACP; the State Division of Human Rights; Commonwealth of Puerto Rico, SUNY Educational Opportunity in Hempstead; Board of Education in Brooklyn; Baruch College; SUNY at Stonybrook; SUNY at Old Westbury; New York City Technical College; LaGuardia Community College; New York State Department of Labor; New York Welfare and Public Assistance; New York Unemployment Office; New York City Metropolitan Council; and the Veterans Administration.*

[In the last round of recruitment for the apprentice program], *I believe there was between 1,700 and 1,800 applicants. We take a class of, on the average, between 55 and 60 in each class. 26% are minority applications.* [To narrow the field of applicants], *we use the New York State testing procedure, and they are ranked. We take the top 26% minorities. The next class is done the same way.*

In 1987, the total number of applicants was 1,640. There were 1,601 males. Of the males, white was 1,254; black was 231; Hispanic was 106; Asian was 10. Of the females, it was 39 that filed applications: 22 were white, 14 were black, 2 were Hispanic and 1 was Asian.

[Women are not part of the consent decree. However, the affirmative action goals established by the New York State Department of Labor are higher. The female goal is about 44%, and the ALANA percentage is around 34%]. *We have always achieved the goal as far as the decree was concerned. The* [affirmative action] *goals just came out, and I think the latter part of last year or this year reflect the recruitment that goes on for the better part of two weeks. We place ads in newspapers, and the public offices that I read of.* [We've had no experience in working toward achieving the higher goal established by the Department of Labor].

We do not [run a referral or hiring hall]. *A journeyperson solicits his own job. The employer has the right to hire and fire. The apprentices, on the other hand, are under the direction of the Director of Education, and they are sent out as needed.*

We have a list of contractors which is updated after every agreement is negotiated. Every member is sent and gets a copy when they sign the contract. We also hold meetings twice a month. Members share information among themselves about jobs. If [individuals who are not in the union] *are working for an employer who has not*

signed a contract with us, but we do organize that job, in all probability we will take those people in.

Up until 1987, I believe the New York State Department of Labor classified females as minorities. Since then they split them down and classified them by themselves. [Our apprenticeship program] *has about a three year turnaround. With the number of applicants we have, we have enough females, minorities to make up maybe three or four classes. We have one class a year. It's a five-year program. We have approximately 260 to 300 persons.*

[We have trainees as well]. *They are treated the same as apprentices. I believe they have about 26 to 30 trainees presently.* [We track them in terms of their hours. They have the same credentials as apprentices]. *They sign an apprentice agreement with the Department of Labor. They go to school with the apprentices* [but in different classes], *and they get the same salary structure as the apprentices. They get the same certificate of completion upon graduating as apprentices.*

The total number of women in Local 638, including 16 journeypersons and 18 apprentices, is 34. There are 19 white, 12 black, 3 Hispanic. Women comprise 7.5% of the [apprentice] *membership of 239. I don't have an answer* [for why the percentages are low]. *We go out and we advertise. We have met with different organizations that represent women in construction. It just seems like we don't seem to get any applicants that come in, due to lack of interest or some other reason.*

Some [of the women] *like the trade. For some, the first year is a transition period. The construction trade has its highs and lows, there's employment, unemployment, there's cold jobs. As far as any problems with females in the program, I haven't heard of any. There may have been minor* [harassment complaints], *but we handle those in-house. They're handled through the Director of Education. We have never gone to a third party to have a harassment issue resolved. If* [the harassment case] *is with an employer, he'll call them and tell them he wants it resolved. If she is an apprentice and has a problem with a journeyperson, he will probably remove her and put her with another journeyperson.*

The first female apprentice came in, I believe, in 1976, and like anything else, they were something different than what the males were used to working with. But we overcame them, and now they're acceptable. We have a very good relationship with

our membership. [Mr. Malloy was noncommittal about participating in the development of a training program for unions on sexual harassment and Title 7].

The only parallel local to 638 is the plumbing local. We are part of the same international. [We organized] *probably between 15 and 20* [shops last year]. *Some were predominantly people of color.* [He will send a list of the organizations]. *There have been a couple of female shop stewards. There are no female officers. I could not guarantee that* [if you went to any steamfitters' shanties], *you would not find any pornographic pictures. We don't have any rules for our members regarding pornography on the site or separate changing places.*

There have been some [instances] *when people were laid off, and people thought they should have stayed and other people* [of different races] *should be laid off.*

Our apprentices go to a day school once every two weeks. They can state their problem to the Director of Education, and if he can't resolve it, he'll contact the business agent in the area. [Responsibility for insuring continued compliance with the 1971 Consent Decree] *is shared between myself and the Secretary Treasurer.*

The NYS regulations state that [apprentices] *have to go to school 144 hours a year and then they should have 1,500 hours of on-the-job training. Back in 1973, we took in 400 apprentices under the consent decree. 175 of those were minorities, and in 1973 there was very little work in the construction industry.*

Some of these apprentices didn't work for years, but we kept the school open. Some graduated. We felt that as long as they had all the school training, that we would make efforts to help them in other areas [even if they hadn't worked 1,500 hours because the work was not available].

[The drop-out percentage for 1989] *was 20 percent. We don't have a breakdown on the females and minorities. We have a breakdown, on a calendar year, of the number of hours that have been worked, and we look at minority participation against the nonminority, and it is always within the ballpark of 26% of our membership.*

To this date, we are a nonreferral type of union. We are probably under [court supervision] *until the termination of Local 638. There's an ongoing permanent injunction which is still in effect.* [Under the Consent Decree, there were a num-

ber of workers who were to receive back pay]. *The last checks will be processed probably within two weeks. That will finalize the back pay issue.*

[When we sign employers to a contract], *it's basically a boilerplate contract. There is an arbitration clause in the agreement for violations of the rules and regulations. There are independent agreements we sign with no such arbitration clause, but everything else, the work rules, wages and all other conditions prevail.* [That's the contract that the new shop signs].

When a contractor hires a non-union person, they are obligated to pay the wages and fringes as per our agreement. The worker will then submit an application for membership. He may or may not be accepted. Our position is that if there are minorities who are qualified to do the steamfitting work, we welcome them into 638. We feel it's an asset to both the employer who we're organizing and to the union itself. [To qualify for benefits, a member has to work] *750 hours in four consecutive quarters. That's for eligibility.* [It's a rolling four quarters].

You may go on some jobs where the minority workforce is 8%. On another job, it may be 70% minority. There are some jobs where the mix could be in favor of minorities, and other jobs, the mix would be in favor of nonminorities. A lot of it depends on qualifications. We have minority members who are excellent welders in all phases of welding, and some jobs have, you know, need that special skill and they would be hired on those jobs. Maybe in the sprinkler field you would get a different mix because most members like that trade.

United Association of Plumbers and Gas Fitters, Local 1

Overview: Local 1 and its JAC were subpoenaed on February 4, 1991 to appear before the Commission and DLS after failing to respond to a questionnaire and invitation issued in March of 1990. The union's Secretary-Treasurer, Frank Rutter, wrote to the Commission's General Counsel, Cheryl Howard, on March 1, 1991, and stated that Joseph Santorro, Director of Local 1's Apprenticeship Program, would testify regarding apprenticeship training. Although Local 1's Business Manager, James Hart, was invited to testify, Mr. Rutter responded in writing to questions concerning the union. No one testified on behalf of the union. Mr. Rutter stated, "Our local union does not maintain records or documents pertaining to our members' race, religion, national origin and gender. . . We do not have any documentation

which sets forth, for each year during the applicable period, the number, by race, and/or gender or national origin of: a) members of the union; b) journey-level members of the union; c) apprentice-level members of the union; d) all other members of the union; e) applicants for membership in the union; f) applicants accepted into membership."[21] The letter went on to state that there are no grievances, no complaints and no lawsuits presently filed against Plumbers Local 1.

The United Association of Plumbers and Gas Fitters, Local Union No. 1, is a skilled mechanical trade union involved in the installation of piping, equipment and accessories for gas and water supply, with jurisdiction over Brooklyn and Queens. Within the trade, journey-level workers are distinguished according to the nature of work they perform: the A (Building Trades) Division is responsible for new construction, and the B Division is responsible for Jobbing and Alteration. After five years in the B division, a worker can apply to the Executive Board to be examined for entry into the A Division. Training is administered by the joint apprenticeship committee, which also participates in a parallel trainee program under the New York Plan. According to the collective bargaining agreement, as of September 1, 1990, the base hourly wage for apprentices and trainees, including fringe benefits and personal safety expenses, was $6.60. The total hourly wage and fringe package rate for journey-level workers was $44.83.

According to the testimony of Joseph Santoro, Director of the Trade Education Committee of the Plumbing Industry Board, recruitment of apprentices takes place in all five boroughs. Public notification is made in city-wide newspapers, *e.g., The Daily News.* Notices are also sent to agencies and organizations, including those representing people of color and women. In fact, a July 1, 1989 Apprentice Training Opportunity Announcement specifically encouraged women and people of color to submit applications. Applicants to the apprenticeship program are required to be at least 18 years old, have a high school diploma or equivalent, and be certified by the NYC Department of Health as physically capable of performing the required work.

Applicants are evaluated on the basis of education, experience, job aptitude (as measured by the NYS Job Service Aptitude Test), and personal traits (measured during an interview with labor and management representatives), and are accepted according to their ranking. The *Guide for the Interview Session* counsels the interviewer to beware of "uncontrolled biases or prejudices" and urges the interviewer to

"keep the job requirements in mind" and "eliminate extraneous personal factors," but assumes, in its use of pronouns, that the applicant is male, and, in its references to a "wife (or girlfriend)," assumes the applicant is heterosexual. Santoro stated that the interviews have been conducted by people of color, but never by females. The apprenticeship program lasts for five years and consists of 720 hours of classroom work (144 hours per year) and 8,500 - 10,000 hours of on-the-job training under the direction of a journey-level worker.

New York Plan trainees are screened, interviewed and referred to Local 1 by the "Contractor Association" (not further specified by Mr. Santoro). They receive the same instruction and advance at the same rate as apprentices. However, since most trainees have not completed high school, many need remedial work in reading and math.

In 1963, there were only two people of color in Local 1's apprentice program.[22] According to Local 1's Affirmative Action Plan (AAP), dated May 17, 1989, 160 apprentices were enrolled in the apprenticeship program: 131 whites (82.9%), 21 blacks (13.1%), and 8 Hispanics (5.0%). [Appendix D, Figure 26]. There were no women. Mr. Santoro stated that, as of January 1991, out of "maybe" 160 apprentices, "maybe" 33 (20.6%) were people of color, and "about" 3 (1.9%) were women, representing a slight increase—if the figures are accurate. While showing some improvement since 1963, the 1989 and 1991 figures fall considerably short of the 39.3% ALANA and 45.1% female goals set by the Equal Opportunity in Apprenticeship Training Regulations.

Mr. Santoro testified that, despite the union's efforts at outreach in recruitment, they don't receive many applications from women. Santoro also stated that the program loses many people of color and women to better paying jobs with more security. He acknowledged, however, that the relatively low hourly wage over the five-year program, together with periods of unemployment, has the effect of discouraging whites as well. These factors, therefore, don't explain sufficiently the underrepresentation of people of color and women. In addition, because of general unemployment in the plumbing industry, the apprenticeship program has declined in size over the last five years, and is accordingly diminished in its capacity as an avenue of entry for these classes. Apprentices may seek work on their own, but the vast majority (over 90%) are referred to their jobs by Mr. Santoro.

Santoro testified that there were a total of "maybe" thirteen trainees in the program, all of whom were people of color. The small size of the program and the hampering effect of the Monarch decision, which restricts trainees to private construction projects, make it unlikely that many females or people of color will advance to journey level in Local 1 through the New York Plan in the future. To make matters worse, the completion rate of the trainee program is lower than that of the apprenticeship program. Santoro stated that in the last 5-6 years there were many terminations, which he attributes to the trainees' incomplete educational background.

In 1963, out of a total of 3,000 members in Local 1, 9 (0.3%) were ALANA journeyworkers. Unfortunately, Local 1 provided the Commission with no breakdown of its current journey-level membership, which numbered 1000 in 1989, according to the AAP. In his March 1, 1991 response to the Commission's subpoena request, Frank Rutter, Secretary-Treasurer of Local 1, wrote, "We do not have any documentation which sets forth . . . the number by race, and/or gender and/or national origin of journey-level members of the union." Without this information, there is no way to gauge how the apprenticeship and trainee programs have improved upon the severe imbalance reported in 1963. It is true that Local 1 no longer requires, as it did in 1963, that two current members sponsor any new applicants, a provision that only perpetuated the exclusion of people of color.

Local 1's job referral system is largely an informal network whereby members share information about contractors who are hiring. A very small percentage of workers obtain jobs through the hiring hall. Mr. Santoro described his experience as a working plumber by saying, "I just would let everybody know that I need work, and then, if there was work, I would go to a job." Mr. Santoro also testified that workers have the right to solicit jobs for themselves, but that the contractor "really is the critical person in determining" who is to be hired, without any obligation to go to the union for referrals.

In the Collective Bargaining Agreement with the Association of Contracting Plumbers, Article II, Sections 7 and 8 state, "The employers agree that they will give priority in employment opportunity to experienced, qualified and competent persons . . . This agreement shall be applicable to all employees without regard to race, color, religion, national origin or sex."[20] Without relevant statistics, however, it is impossible to tell whether what is apparently an informal, unregulated system of referral

operates in conjunction with the above stipulations of the collective bargaining agreement to ensure an equitable distribution of work among the membership.

Mr. Santoro testified that harassment of females or people of color is not a problem in Local 1. The JAC has no policy on sexual harassment, and no training had been conducted prior to the hearings. Mr. Santoro was unaware of the existence of a grievance committee or any other formal complaint procedure, although a discrimination complaint procedure is outlined in the Apprentice Training Program Affirmative Action Plan.

Abstract of testimony

Plumbers and Gas Fitters, Local 1

Joseph Santoro, President,
Director of Apprenticeship Training:

I've received a subpoena. I spoke to my lawyer, and he said I never received any prior documentation requesting me to be here. I'm here voluntarily. I don't need a subpoena. I've [been the Director of Apprenticeship Training] *since May of 1981. It's an appointed position.* [We have a program for trainees as well]. *Our area of jurisdiction is Brooklyn and Queens. Our school is located at 2400 Linden Boulevard, between Atkins and Montauk.*

The program funding for trade education comes from the members. A percentage of every hour they work is allocated towards trade education. We receive money from the City of New York to pay the teachers' salaries. [Our instructors are certified by the Board of Education]. *First year apprentices receive mathematics and science, and then get what we call basic pipe shop, and in the second half, advanced pipe shop. In the second year, they take soil waste, and then applied drawing. Then they study lead wiping, rigging, braising, welding, and building codes. In the final stages of the fifth year, there is a review of the course material. Then they go on to what we call making a module. They start from scratch, make a composite drawing right up to an installation module. From the module, we do actual testing.*

[In the 1970s, the program was reduced from five to four years, but it has been brought back up to five years]. *The four year program did not show enough time to train our people in the more technical things, especially code revisions.*

The budget of our program would run approximately $250,000 to $300,000. The students get 10,000 hours of on-the-job training. They get 144 hours per year of theory training; over five years, it's 720 hours. [The apprentices] *are earning a salary. They work for a contractor. Our minority breakdown would be around 28%.* [As of] *January, it was about 33 out of 160 apprentices in my program. I have about three women. Our problem is that, after we go through the recruitment, once we call them, they seem to get disenchanted with the program and don't want to continue.* [People look for more steady work with more job security].

[The entrance salary for an apprentice is] *$5.82 to start, plus 28 cents safety. So it totals $6.10. The journey-level salary is, I believe, $27.16 per hour. The age range is 25 to 65 years old. We request from the NYS Department of Labor BAT to have a recruitment.* [If they approve it] *we make public notification in the papers, stating a particular time and place. We send out notices to multiple agencies and organizations, with the dates and qualifications or requirements for recruitment. We take recruitment in all the boroughs.*

[After someone fills out an application], *we review it. We make sure they filled out all the questions and we have the proper information* [by having them return it in person]. *If everything is fine, they are then given dates for an aptitude test, and for the interview date. After the test and interview, they are scored and ranked.*

[We don't keep track of who picks up applications in terms of race and gender. We do set affirmative action goals]. *The goal is 39.6% I believe for minority males. There was a percentage for women, which was 43 percent. We tried—we don't have that many applying.* [The size of our class is based] *upon the need of the industry for work. We may not even have a class. If I have thirty people sitting on the bench, not working, what's the sense of having a class?*

[We would look at the current journeyperson unemployment rate] *to see if we have work in the industry. The last class we are having now, we just took in fifteen.* [But we put no limit on the number of applications we give it]. *Everyone* [who shows up] *gets an application. There is really no formula. If a lot of projected work is coming, then we try to meet those goals by having a bigger class. But if we have unemployment,* [workers] *are not getting the training,* [and] *they won't stay in the program.* [In the last five years, the size of] *our program has declined.* [A committee makes a projection about how many apprentices we will need].

[To my knowledge we haven't advertised in papers like El Diario or any Spanish-speaking papers]. *We have sent* [notification] *to all women's groups, all minority groups. We have about a 15 to 20 percent drop-out* [rate], *so we have a pretty good rate of graduates, 80%. A majority of them drop out within the first six months. You're going to get 10% out of that; 20% are minorities.* [*i.e.*, half of all drop-outs are people of color].

In my program, I have never seen harassment on any level [against women]. *If* [co-workers] *are saying things at them, I wouldn't know, but every female or minority has never been a problem for us. If there is someone abusing, verbally, or saying something, I always request that they contact me. Our union* [doesn't have a sexual harassment policy spelling out its commitment against sex harassment and a procedure for addressing it. There is no training done by either me or the other supervisors in Local 1]. *I wouldn't know if there is a grievance committee in the local.*

Applicants are given a test by the New York State Testing Division of the City of New York. When we get a result from that test, they go to an interview [with one management and one labor representative from the joint apprenticeship committee]. *In the interview, they sit down and review their transcripts of their high school grades. They both score the applicant, average the scores, and give them a rank. We have had minority people interviewing applicants. No women are part of the JAC committee. The JAC consists of five labor and five management representatives. I have no formal position on the JAC. The committee usually changes every year.*

[The ranking system rates people at] *a high, medium, low on the aptitude.* [The scoring system covers] *education, physical factors, interest, personal traits and attitude.* [Each is weighted at 20 points]. *The categories are excellent, good, fair, poor and unacceptable.* [Physical factors encompass questions like] *do you like to work with your hands . . . [and are you] scared of heights . . .* [and] *are there physical problems that you have?*

[I have] *a computer readout from New York State of active apprentices. We work off this list* [entitled] *"Recruitment List for September, 1989." If we want fifteen, we take the first fifteen. I don't know* [how many women picked up applications, and went through all the interviews]. *There are four women on the active list right now. One of the four declined the entry. She's now a registered nurse, and doesn't want to continue. One of the* [remaining] *three quit a job because she felt it was not suited for her. She left the program.*

[The Board of Education designated Local 1's school as an annex of the Board of Education a number of years ago]. *The income of the program is based on employers' contributions per hour and whatever the Board of Education adds to it. The total budget is around $300,000 a year. We are a tax exempt organization.* [Mr. McNamara requested a copy of the annual financial report sent to trustee members].

We have anywhere from fifty to sixty journeymen participating in special programs in welding, braising and code starting out in our program since September. About thirty percent of them are minorities. [The New York State Labor Department gives Local 1 its Affirmative Action goals]. *The State DOL requires me to submit the recruitment list* [similar to the 1989 list I showed you]. *It was never required* [that we maintain a list of the initial group of people who picked up applications]. *I have the folders of everyone that returned an application going back for the last five years. But it was never asked of me by the DOL.*

[The current collective bargaining agreement with Local 1 spells out the ratios for each segment of Local 1. For example, in terms of mechanics, if there are one hundred journeypersons on a site, there must be 10 apprentices]. *For the sake of argument,* [take a contractor such as] *AB Plumbing and Heating. He may have two mechanics with one apprentice, and two mechanics with one apprentice on two different jobs. He may have another job with two journeymen, with no apprentice yet because maybe he's just starting the job.* [If there's no apprentice on the job site], *I send the apprentice.*

Apprentices can seek their own jobs. [They call me and let me know the location of a job where the contractor said they could use their labor]. *I just clear them. But over 90%* [of apprentices get jobs] *from the referrals. When* [apprentices] *leave my program, the company gets a letter saying they are now journeymen,* [it states] *their rate of pay. The journeyman would go to the union to seek employment.*

We have [different] *journeyman classes. The apprentice may work one week on waste lines; the next week he's working on water; the next week he's working on gas pipes. He moves through different stages of the job, whatever it is. For example, an apprentice on a residential job—one- or two-family homes—working in that type of work for three or four years would start to get a very good understanding of doing that work. If you take another person, doing a hospital job for two or three years,*

working with gas lines, vacuum lines, air lines, he would not see that in a residential house. [The skills needed vary depending on the nature of the job].

[I don't get complaints from apprentices that they stated a job and were given things to do that were too difficult]. *90% of the problems I receive are that apprentices don't show up at work, or they're late, or they'll work three days and not show up two days. As long as the person is willing and able to learn a trade, they are given every opportunity to learn that trade, as long as the job is there for them to learn.*

James Hart, the principal officer of Local 1, knows more about the referral process. When an employer hires a Local 1 member, he does not have to call Local 1 and say, "I have an opening." If someone walks in off the street with 10 years experience, he can go on a job as long as its a union job, or the City or State are working with the union.

The employer is really the critical person in determining who he's going to put on his payroll, provided, of course, they're a member of the union. The collective bargaining agreement that he's signed with the union says that the job involves hiring only union members. [In response, Mr. McNamara stated that employers are not obligated under the collective bargaining agreement to go to the union. The union does not have an exclusive hiring hall]. *We don't have a hiring hall,* [Mr. Santoro concurred].

[For an apprentice to move from one term to the next, attendance and passing class grades are the determining factors. On-the-job training in the field is important too.] *If I had an apprentice who worked for only seven or eight months in one year, we wouldn't advance him. If out of five years maybe he worked one year. He's not really gotten certain qualifications under his belt in the field.* [Employers don't submit any kind of performance evaluations].

[Olivia Peck mentioned that many individuals who testified complained that when they are placed on large jobs, particularly where the State has some jurisdiction in terms of monitoring, they're not getting the training they need. They're treated as go-fers]. *Nine out of ten times, when we're going to be running a line through walls in a building, an apprentice is going to be doing the chopping, at a lower rate than the mechanic who will be putting in the pipe. But the apprentice also starts learning how to work with the pipe and how to make the measurements. Over time, they are given more responsibility.*

I believe over the course of the five years . . . apprentices get the basic knowledge that is required for them to pursue journeyman status. But that's why we even have journeyman programs, because sometimes they have not mastered skills totally, and they would like to continue acquiring more knowledge in the industry. There are things you learn, but later forget, and which is why we have these courses, so that journeymen can update their skills. No one fully acquires all the knowledge they are expected to get [during their apprenticeships].

An apprentice spends roughly 20% of their time in a classroom as opposed to 80% on the job. We touch on things in class that may not be covered in the field. Let's say apprentice A worked for a shop for one year, and he was doing residential work. When jobs come along, I would try to place him in a different kind of work, maybe in a commercial building. But there are times that those availabilities are not there. We keep records on their card about where they went to work. We will put down when they started and when they completed it.

[Over the last five years, there have been five or six women accepted into the program]. *We make a very sincere effort to get to all nontraditional groups of women, like NY Prep, Nontraditional* [NEW], *saying, "Please have them come down."* [As for men of color], *we have called them, but they have either refused to come in, or they have acquired other jobs in the interim, so they decline to enter.*

[When we meet with the DOL, and they ask why we didn't meet our goal with regard to males of color], *I try to tell them the situation that has been occurring and that we're trying to meet those goals. They say okay, but you've got to keep trying, and promote the thing.*

I sit on the Advisory Board for the New York Edison High School. I go and meet with the students on what they call Career Day. I tell them we are having a recruitment. Come down. I give them my card. I give them requirements that they have to meet. They are graduates, they are eighteen. These students are plumbers. The two years of plumbing they had would be part of their curriculum. I talk to the Queens Vocational High School, and New York Edison High School.

There are about 13 trainees in the program. All minority. That's got nothing to do with the figure of 33 [I mentioned earlier]. *So that brings the count up to close to 45. They get the same rate of pay as the regular apprentices, and they attend our classes and get the same instructions. They advance at the same rate of speed up the ladder.*

Trainees are referred to us by the General Contractors Association. They have been screened and interviewed. A memorandum from the Comptroller's Office of New York City notified all agencies that trainees now, under the 220 Law, cannot be given apprenticeship rates or parallels if its a Federal-funded job, or tax abatement job. It's either going to be a journeyman, or he's no apprentice.

[Local 1 has] *an Alteration Division. We try to give the workers jobbing alteration training, which has nothing to do with the apprenticeship. We give it as a voluntary thing.* [It's not a registered apprenticeship program]. *The training program's disadvantage is that it doesn't have to meet certain standards that the apprenticeship program has to. The completion rate* [of the trainees as compared to that of the apprentices] *is pretty good. For a program that has twelve or thirteen, I would say within the last two years, eight went through the whole five years.* [I can supply these records on trainees over the five-year period to you]. *These stats are registered with the US Department of Labor.*

Nine out of ten trainees don't even have a high school diploma. [They often] *have problems which require a little bit more tutoring and more remedial stuff which we try to furnish them. They get reading. I refer them to other schools. I personally gave them instructions. I would try to help them with math.*

Our training program basically is a very, very poor program. When we get these people, they have third, fifth, eighth grade reading levels. Their math skills are very poor. We try to elevate them. Over the course of the last five years, six years, I had a lot of terminations, [people] *that couldn't handle it and left the program. Overall, the performance of the program can be much improved upon. The completion rate for the trainees is less than 80%. The people that complete it tend to have a high school diploma, and the drive to further themselves in their skills.*

The procedure to become a contractor [is governed by a number of regulations]. *For example, the City ordinance requires seven years in the industry as a licensed master plumber. Generally, you work your way up through the ranks, although not necessarily through the union. But before you could even apply to become a contractor, you have to start out as a helper. From a helper you become a mechanic. From a mechanic you then apply for a master plumber's license. To be a contractor, you don't have to be in a union.* [I don't know how many contractors came up through the unions].

[If I were going to try to improve ALANA and female representation in the plumbing trade], *I would try to have better communication with the NYS Depart-*

ment of Labor and the NYS Division on Human Rights. I've spoken to Barbara Sujet there. I've always tried to work towards certain goals. Any program must have stringent guidelines. To put a person into a program and not follow up is a shame. The function of the program is to have longevity after you leave the program.

There's one key secret to success in a program, and that is hard work and continued education. All I could do is be a supportive factor. I've always tried to go to schools, to meet with people that would like to apply and give them encouragement to come in for our recruitment. I go to Edison High School, and I go to Queens Vocational. We even go to junior high schools.

There are travelers that are allowed to come in under the United Association that they have a right to travel into different areas, and they can apply for work, if there's work available.

United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada

Plumbers Union Local 2

Overview: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Plumbers Union Local No. 2 is a skilled mechanical trade union involved in the installation of piping, equipment and accessories for gas and water supply, with jurisdiction over Manhattan and the Bronx. The Joint Apprenticeship Committee administers the training program both for apprentices and New York Plan trainees. As of June 25, 1991 the hourly package rate (including fringe benefits) for first-year apprentices and trainees was $11.49. The wages for journey-level workers vary according to the nature of the work they perform. As of June 29, 1988, journey-level workers doing new construction, alteration, or rehabilitation received an hourly package rate of $40.56. Journey-level workers in the Repair and Maintenance Division received a considerably lower hourly package rate of $23.54, according to the union's collective bargaining agreement.

In 1963, out of 4,100 total members, "approximately" 16 (.4%) were people of color.[24] According to data provided by Local 2 to the Commission and DLS, as of 1989, Local

2 has 2,399 "active members." No breakdown was given of the race and ethnicity of members. According to Peter N. Salzarulo, President of Local 2, statistics on race are not maintained because they don't "find it necessary." The local did provide information on the number of women: a total of 9 out of 2,399 members (0.4%). [Appendix D, Figure 27].

Mr. Salzarulo, the President of Local 2, didn't know how many of the 110-130 members of the lower-paying Repair Division were people of color or women. He did testify that some shop stewards and four minor officers on the union staff were ALANA males. In the collective bargaining agreement with the Association of Contracting Plumbers, effective June 29, 1988, Local 2 has pledged not to "discriminate because of race, creed, color, sex or nationality against any individual." But without the necessary statistics on the racial composition of Local 2's membership, it is impossible to determine whether this policy has been translated into practice.

Mr. Salzarulo testified that recruitment for apprentices takes place every two years. Public notification is made in newspapers with primarily ALANA audiences (*i.e., The Amsterdam News* and *El Diario-La Prensa*), as well as in major city-wide daily newspapers (*Daily News, New York Post*). Notices are also sent to organizations that represent the interests of women and people of color, such as Non-traditional Employment for Women, and the Northwest Bronx Community & Clergy Coalition. The May 4, 1990 New York State Department of Labor Apprentice Training Opportunity Announcement specifically encouraged women and people of color to submit applications.

Applicants to the apprentice program must be at least 18 years of age, have a high school diploma or GED, and pass a physical examination, which determines their ability to perform the required work. Besides these qualifications, applicants are evaluated on previous work experience, job aptitude (New York State Department of Labor uses Test S61-R 78) and personal traits, as measured in an interview session with labor and management representatives, and are accepted according to ranking. The program lasts five years, and involves 144 classroom hours per year as well as on-the-job training.

New York Plan trainees are not required to have a high school diploma and do not attend classes with apprentices, but, according to the union, their curriculum is

identical. Trainees are usually brought into the program by contractors, who choose people who live in the neighborhood of a particular job site and recommend them to the Union.

In 1963 there were only "two or three" apprentices of color in Local 2.[25] In 1989, out of a total of 293 apprentices, 226 (77.1%) were white, 34 were black (11.6%) and 33 were Hispanic males (11.2%). [Appendix D, Figure 28]. There were no Asians in the apprenticeship program as of 1989. There were a total of nine women enrolled as apprentices—3.1% of the program. [Appendix D, Figure 29]. Of the females, four were white, three were black and two were Hispanic. Clearly, there has been progress since 1963, particularly for people of color, but apprentice figures still fall far short of the New York State Department of Labor's Equal Opportunity in Apprenticeship Training staffing goals of 39.3% ALANA and 45.1% female.

The 1989 figures for drop-outs in Local 2's Apprenticeship Program showed a high drop-out rate, with a total of 73 drop-outs. The drop-out rate for whites, 63 (28.4%) in relation to 222 currently enrolled was actually higher than the ALANA drop-out rate, 10 (16.1%) in relation to 62 trainees currently enrolled. There were no female drop-outs in 1989, but only one female graduated.

According to the questionnaire responses provided to the Commission by Local 2, the 1989 figures for apprentice graduates were as follows: out of a total of 67 graduates, 3 (4.4%) were ALANA males, and none were female. These figures are not encouraging and call into question the accuracy of the drop-out figures cited above. If people of color are not dropping out at a higher rate than whites, why are there so few ALANA graduates? Figures provided by the union raise more questions than they answer. In any case, with the slowdown in construction in recent years, fewer apprentices are being accepted into the program, and consequently, fewer can be expected to graduate in years to come.

While Local 2 is aware of its severe underrepresentation of women, and pledges in its Affirmative Action Policy Statement "to prepare women and encourage women to enter traditionally male programs," in a December 1, 1989 letter, Kevin O'Lenahan, Director of Training, expressed a belief that the NYSDOL female staffing goal is "unrealistic" and doubted that "a sufficient pool of women exists." The relatively low percentage of people of color, despite the union's outreach efforts, is not explained.

According to 1989 data provided by Local 2 regarding its training program, there were 119 trainees, of whom 70 (58.8%) were white and 49 (41.2%) were people of color; [Appendix D, Figure 30]. Six trainees (5.0%) were female. [Appendix D, Figure 31]. In comparison to training programs in other trades, the ALANA figures are lower than average. Another noteworthy aspect of Local 2's Training Program was the very high drop-out rate. 37 people of color and 4 women dropped out in 1989, which is cause for great concern, given that this amount nearly equals the 49 people of color and 6 women enrolled as of 1989.

Mr. Salzarulo testified that "there are a number of reasons for drop-outs," among them, the decrease in employment for plumbers, and, therefore, a decrease in on-the-job training opportunities for apprentices—"If they haven't got a job, they're not interested, they don't go to school." He acknowledged that the 1989 drop-out figure was unusually high, but stated it was a situation over which the union had no control.

The 1989 trainee graduate figures—16 people of color (80%) and one female (5%) out of 20—are better than the apprenticeship figures, but in a trade with over 2,000 members, the entry of just 16 people of color through the training program and three people of color through the apprenticeship program, suggests that the trade will continue to be overwhelmingly composed of white males for years to come.

To make matters worse, the nine currently active female journeyworkers were trainees Local 2 obtained "from the Non-Traditional Women's Group," according to Mr. Salzarulo; none came through the apprenticeship program. With the Monarch decision limiting the work available to trainees through the New York Plan, this route of entry for women into Local 2 may disappear.

Local 2 does not operate a hiring or referral hall. Members seek employment on their own and through union business agents. According to Salzarulo, information on the number of hours worked is kept by the Union Fund Office, but there is no ALANA or gender breakdown. Without such statistics, the Commission cannot ascertain if the mechanisms for work distribution function in an equitable manner.

In response to a Commission questionnaire, Local 2 reported that no grievances were filed during calendar years 1988 and 1989. Mr. Salzarulo testified that, to his knowledge, there had been no complaints by people of color or women of harassment or

discrimination in terms of training or job assignment. That there was individual testimony of just such harassment and discrimination at the hearings is an indication, at minimum, of the isolation of management from such problems on the worksite. Local 2 has no anti-harassment policy. And while Mr. Salzarulo asserted that women can use the foreman's shanty as a changing room, and that bathroom facilities are provided for women upon request, no such provisions are included in the otherwise comprehensive article on Temporary Facilities in the 1988 Collective Bargaining Agreement with the Association of Contracting Plumbers.

Abstract of testimony

United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada

Peter Salzarulo, President, Local 2:

Our jurisdiction is Manhattan and the Bronx. On the journey level, we don't keep statistics [on the number or percentage of blacks, Hispanics or women] *because we don't find it necessary. We don't operate a hiring or referral hall. Our membership has the right to seek their own employment. In our upcoming recruitment for the apprenticeship program, our goal is to bring in four women, two Hispanics and four other minorities out of 10 apprentices. We open up our apprenticeship program every two years. The number of people we recruit depends on how the construction industry is going.*

We have a 100-point selection criteria for rating apprentice applicants. We give 20 points to educational requirements. They include a high school diploma or an equivalency. Another 20 percent is given for level of interest. We measure it by looking at their previous type of work. Aptitude is another 20 points. Apprentices do take a physical. The physical accounts for another percentage. Personal traits also had 20 percent. It includes such things as attitude. We rely on interviews with labor and management to determine this.

[In response to a question from Olivia Peck about whether they evaluate selection criteria in the light of lower acceptance rates for people of color and women into the program, Mr. Salzarulo said] *We haven't done that.*

We have a training program. It mainly brings in underprivileged people that didn't receive a high school diploma. They are brought into the program by the contractor

for the job in that area. The unions also recruit trainees. The trainees, in comparison to the apprentices, have an excellent record of getting through the program.

We have a training school in the Bronx, which is inspected a few times a year by the State Department of Labor. The State DOL set the goals for our program. They just look at our training program, not our journeypersons. [There are nine females out of approximately 284 people in their apprenticeship program].

For a time we had [problems in terms of attracting women to our apprenticeship program]. *Now we go to the women's groups and notify them when our applications are coming out. We have a first come, first served basis. We notify the groups involved, and tell them the number of applications that will be given out over a one-week period at our school facility. When the applications are exhausted, then we close down.*

We have had no complaints [that women were not being given the same training or learning opportunities as men, or complaints about harassment on the job site]. *Our membership has the right to seek their own employment. Unemployed persons can put their name down in the books of our six business agents. If somebody continues to be unemployed, you'd see his name still on the list. If they disappear, you figure they have gone to work. Our fund office keeps information on the number of hours worked by our members. They don't keep this information by race. We keep no statistics on unemployment* [by race or gender]. *We don't file reports with EEOC.*

Members are eligible to receive medical benefits if they work 70 days in a six-month period. Workers who don't reach the 70 day minimum have the option of paying to pick up the plan on their own.

None of the nine women in our local came through the apprenticeship program. Some of them were once trainees that we got from the Non-Traditional Women's group. To my knowledge we have not had any complaints of sexual harassment. Usually there's a shanty for the men for changing, and women change in the foreman's shanty where he keeps blueprints and tools. I wouldn't know [if the plumbers pin up pornographic pictures in the locker rooms]. *Bathroom facilities are provided on the site if they are requested. We don't* [have any anti-harassment policy of any kind at present].

To become a union steward, you must get appointed by the business agent in the area. We have four minority shop stewards and minor officers on our union staff in the apprentice program. I think they're on the arbitration board.

I don't think we've been keeping data [on the number of people of color in our program] *more than a couple of years. I don't know if there was a requirement to do that previously.* [When Commissioner Rivera pointed out that there was only one black graduate and two Hispanic graduates in 1990 out of a total of 140 in the program, Mr. Salzarulo stated that there are a number of reasons for drop-outs].

Our program is designed so that workers get schooling and on-the-job training. While in school, people are given tests. When there's no work, they lose their concentration and stop coming to school. You have 144 school hours which must be completed in order to go to the next step in the training program. It's a five-year training program; it used to be four years. We have no control over people dropping out.

When we went out to recruit people for our program, about 350 to 360 applications were returned. We couldn't tell how many of them were minorities or women. Our applications are sent up to the training center and they're processed through the training program of the state. We can [keep statistics on what percentage of applications were received from people of color, and what percent were returned].

I believe we have anywhere from 110 to 130 members in the Repair Division. A lot of repair work is done for private contractors. [Of the 119 people in the trainee program, 49 are male persons of color; six are females]. *A representative of the Federal Bureau of Apprenticeship Training* [BAT] *comes to our office to monitor our program.*

International Union of Elevator Constructors, Local 1

Overview: Local 1 of the International Union of Elevator Constructors has approximately 2,600 members. The union's jurisdiction is all five boroughs of New York City, all of Long Island, and New Jersey from Monmouth County to the northern part of New Jersey. Local 1 must comply with various provisions of a court supervised consent decree approved by the U.S. District Court in the early 1980s in the case of

Goding and Weathers v. International Union of Elevator Constructors, Local 1. In addition to requiring the union to refrain from discriminating in the issuance of probationary working cards or work permits, referrals for employment, admittance to membership, or raising to journey-level status, the consent decree mandates that preparation and review classes designed to prepare applicants for the mechanic's test be operated and made available by the defendant employers with the cooperation of the local.[21]

The consent decree also stipulates that the local and employers must notify people of color of employment opportunities available in the elevator construction industry, and must recruit people of color for employment as probationary helpers. The consent decree must remain in effect until people of color comprise 33.3% of all persons employed under Local 1's agreement.[23]

According to Local 1 President and Business Manager John Greene, Local 1 has 2,600 members, of whom 20.1% are people of color (approximately 523 members). [Appendix D, Figure 32]. He provided no further breakdown by race and ethnicity, but did estimate that female membership was approximately 3%. The union has a three year training program, but does not have an apprenticeship program. No figures on the racial and gender composition of the training program were provided. The educational component of the training program is financed by a payroll deduction of 8.5 cents per hour worked by each member. Trainees begin with a six month probationary period, during which time they are considered experienced class helpers. Individuals who have been laid off are placed on a list posted in the union hall. According to Mr. Greene, they are referred out in the order they were laid off.

Abstract of testimony

Elevator Constructors Local 1

John Greene, President and Business Manager:

> *I didn't receive the questionnaire. When I told DLS that I didn't receive one, it was sent to our Secretary-Treasurer. My membership is approximately 2,600, about 20.1% minority* [which includes mechanics and helpers] *and maybe 3% women. They tend to leave construction and move into the service end of the business, meaning maintenance and repair.*

The jurisdiction of our union covers a thirty-five mile radius from the city core. So we cover the five boroughs, all of Long Island, as well as New Jersey from South Monmouth County to the northern part of New Jersey.

We work as a mechanic-helper team in construction. In the service area, there can be more mechanics than there are helpers, because they don't work as a team. I don't have the figures separated out for mechanics and helpers.

We don't have an apprenticeship program. We recruit members from advertising in local papers, but primarily our minority members recommend people to us through the New York Plan. When an individual comes into the industry, they are assigned a number, and are called. They are called based on their qualifications—a high school diploma and physical fitness for the job.

There is a six month probationary period during the schooling program called NEED, a national educational program, and it is certified. If the students pass, they advance to the remaining required educational module, which takes approximately three years to complete. Our school is the Mechanics Institute on 44th Street in Manhattan. When they complete it, they sit for their journeyman's test. If they pass, they are considered a Mechanic. This takes a minimum of three-and-a-half years. If they fail, they can go through a review program and take the test the following year. Tests are scheduled every year.

[When asked by Olivia Peck of DLS if his union has ever analyzed whether the requirement of a high school diploma eliminated a substantial number of people of color and women, he said] *No. Minorities who took these tests scored, on average, better than their white peers.*

Since our union works on rather large projects, there are only about seven or eight contractors that can handle that size job. They would include Otis, Westinghouse, and so forth. However, we also have smaller-sized and minority contractors that are signed with us. We deal with the installation of the freight elevator, naturally, which is big enough to take in a trailer truck, and we go down to a single lift for a paralyzed person that may need it in their house.

There is fairly steady work for our membership, primarily in the service area—the repair and replacement of parts. Our training program is entirely financed through our workers agreement, by which we deduct eight-and-a-half cents for all hours worked. The money is put into strictly the educational program. It's a national plan.

There are sections of our consent decree that deal with the referral process. Let me explain how the process works by starting with the probationary individual. Once they complete the six month probationary period, they are considered experienced class helpers. If they get laid off, they are put on a list in the order that they are laid off. The list is posted in the union hall, and referrals are sent out.

In the mechanics area, there are different phases: the construction, maintenance and repair portions. When an employer requests someone, we make sure we refer someone in the mechanic and helper categories who can do the job. Under the consent decree the goal is 19 percent, and we are in compliance with the consent decree. [In response, Olivia Peck said she was almost certain it was around 30 percent. Mr. Green said he would check the figure and get back to the panel].

Right now, we have about 350 people out of work that are qualified people, and some in that area are minorities; the majority are not. If we train too many people, we will not be able to supply a job to everyone. That's a problem. In cases where we don't have enough workers to do the work available, we notify people to come and apply, and then we refer them out on the basis of demand for their services. We keep them on file for up to three years. The thing is that if you overtrain people during a boom period, when the economy winds down, you've got to lay off a lot of capable people. We rarely hire travelers, only when there's an emergency or we need someone with a particular expertise.

I have had some situations where there was some harassment on the job site, particularly when women were introduced into the industry. Workers should have respect for women in the workplace, and not go overboard with jokes and references and so forth. There has been the problem of men using offensive language and urinating in front of women.

We insist that there must be a clean bathroom facility on the site. It is not a contractual obligation, but it is the obligation of the general contractor to put one in use. When there are women on the site, we set aside a portion of the shanty where they could change. But we don't have any formal rules, but we wouldn't have any problem with implementing them. We do have weekly safety meetings with the steward on the site which provide people with an opportunity to bring up issues such as harassment.

Given that the classes are given at night, they have a home study program set up so that the individual, given the lack of day care, can enroll in the home study pro-

gram by which people can complete a portion of the required courses. When an individual's personal situations improve, they are advised to come in for the hands-on classroom work.

International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO), Local 40

Overview: On February 4, 1991, Union Locals 40 and 361 of the Structural and Ornamental Iron Workers (who share a joint apprenticeship program) were subpoenaed to present documents and appear before the Commission to respond to questions about their membership, recruitment, enrollment and training of people of color and women in their apprenticeship program, and the union's referral hall procedures. Locals 40 and 361 moved to quash the subpoenas in State Supreme Court, but were defeated.

The decision was appealed, but in July 1992, the Appellate Division of the State of New York upheld the State Supreme Court, ruling that the Commission was exercising its legitimate authority to ascertain whether discriminatory practices exist in Locals 40 and 361, and ordered the unions to comply with the subpoena. Executive officers for both unions and their shared JAC testified before a hearings panel at the offices of the New York City Commission on Human Rights on November 4, 1992. The following is a summary and analysis of the testimony provided by Locals 40 and 361 and their JAC.

Summary: James R. Mullett, Business Manager and Financial Secretary-Treasurer of Local 40, testified on behalf of the union. The work performed by the union includes putting steel frames in buildings, repairing, maintaining, renovating, and demolishing viaducts and overhead structures. The union's geographic jurisdiction encompasses Staten Island, Manhattan, the Bronx and Westchester. The union's members earn about $25 an hour plus an additional $25 an hour in fringe benefits such as health benefits, annuity and vacations.

In July, 1971, the US Attorney General filed a complaint against Local 40 and its Joint Apprenticeship Committee, and the employees' association, Allied Building Metal Industries Association. They were charged with violating the US Civil Rights Act by discriminating in the employment of people of color. Judge Murray Gurfein noted in

his ruling that when the Civil Rights Act became effective in 1965, Local 40 had one black member and one person of Spanish ancestry.

The court found that by April 1972, the total ALANA membership of Local 40 consisted of 4 blacks, 16 Hispanics, 6 Asian-Americans and 66 Native Americans. There were a total of 86 apprentices, including an estimated 14 blacks and Puerto Ricans. Black and Hispanic apprentices and journeypersons combined accounted for about 3.6% of the 980 members in Local 40 in 1972.

According to EEO-3 forms provided to the EEOC by Local 40, as of July 1992, the union had 974 members: 788 whites (80.9%), 108 blacks (11.1%), 34 Hispanics (3.5%), 5 Asians (0.5%), and 46 Native Americans (4.7%). [Appendix D, Figure 33]. The union has three women (0.3%), race unknown [Appendix D, Figure 34].

Not many of the major contractors working in Local 40's jurisdiction are non-union. Contractors are required to register each new job with the union before starting operations. Contractors frequently don't call in when they have a crew going from one job to another, so union officials inspect the sites to see what is going on. However, the City of New York, as a contractor, has employed non-union people to work with Local 40 members on the repairing of bridges and roadways around the city.

The union has a non-exclusive referral hall where members sign in. Contractors call for specific types of workers, such as welders, connectors, and raising gang people. The referral hall gets calls for people of color, and responds as requested, according to Mr. Mullett. Ultimately, the contractor makes the hiring decision. But the foreman, who is a Local 40 member, has critical responsibilities in determining what type of personnel the contractor wants, and the foreman deals directly with employees. A foreman is selected by the contractor, generally without input from the union.

The referral hall, located on 31st Street between Fifth and Madison Avenues, opens at 6:00 A.M. when a business agent arrives. Union members sign the sign-in sheet, and provide basic information such as address, telephone number and social security number. The business agent maintains information on the number of days the member has been waiting in the referral hall and the skills the member possesses. Workers cannot register by phone. On the day he testified, Mr. Mullett claimed only two welders (both people of color) were sent out for jobs out of 100 people in the hall.

The racial composition of members in the referral hall was 50% white, 50% people of color.

Approximately 17 percent of all jobs obtained by members are gotten through the referral hall, according to Mr. Mullett. The vast majority of journeypersons hook up with a contractor on their own. However, most apprentices (who are not permitted to do certain journeyperson tasks) are referred out through the union referral system. There are exceptions. As Mr. Kelly of the JAC stated, "We have apprentices who stay with one company for years and years, because when these companies get ahold of somebody that's pretty good, they take them from job to job. That's why we don't get into that big percentage of referrals that maybe some other trades do."

There are usually two business representatives at the referral hall at all times. The business representatives refer union members to jobs, and often make judgment calls concerning who is more qualified for an assignment, based on specific job requirements. In general, business representatives are drawn from the elected officials of the local union.

The referral hall rules and procedures do not exist in written form. According to Mr. Mullett, everyone knows the system. There is a fresh sign-in sheet every day. In addition to relying on the workers' assessments of their skills, as expressed on the sign-in sheet, Mr. Mullett said business representatives rely on "word of mouth" regarding workers' skills. Given that the union is not large, each member's abilities are well known. Local 40 is in the process of buying computers to maintain better records about the race of members, how work is distributed, hours worked and money earned by each member.

Workers who have problems on the job, such as sexual harassment or difficulties with partners, are instructed to go to the shop steward. If they don't get a satisfactory response, they can call the office and speak to a business agent. The union hasn't developed or distributed for its members informational material which directly addresses issues such as sexual or racial harassment. However, Mr. Mullett believed he was equipped to resolve such issues fairly. The union does set up separate bathroom and changing facilities for women on work sites.

Members who have a grievance regarding referrals or some other situation can appeal to the executive committee, which consists of five elected members. The

executive committee meets every month, and members can bring a complaint prior to the regular meeting. The racial composition of the 17 executive board members is all white. Some people of color have run for office, but they weren't elected. The next election is in 1994. The union does have ALANA shop stewards.

International Association of Bridge, Structural and Ornamental Iron Workers, Local 361

Summary: Unlike Local 40, Local 361, as a labor union, was never part of the EEOC lawsuit. However, its joint apprenticeship program in partnership with Local 40, was subject to the legal ruling in that case. Mr. Edward J. Cush, Business Manager and Finance Secretary/Treasurer, testified on behalf of the union on November 4, 1992.

The geographic jurisdiction of Local 361 is Brooklyn, Queens and Long Island. It has the same craft jurisdiction, collective bargaining agreement and wages and benefits as Local 40. According to Mr. Cush, Local 361 has 624 journeypersons. However, Local 361 provided a racial breakdown of their membership, including journeypersons, apprentices, pensioners (over 62 years of age) and honorary members (over 65 years of age). The figures are as follows: 997 members: 820 whites (82.3%), 63 blacks (6.3%), 15 Hispanics (1.5%), 1 Asian-American (0.1%) and 98 (9.8%) Native Americans. [Appendix D, Figure 35]. There are five female members (0.5%). [Appendix D, Figure 36]. Local 361 does not file bi-annual EEO-3 reports, because they don't consider themselves to be subject to EEOC regulations.

Unlike Local 40, Local 361's referral hall produces less than 10% of the jobs obtained by members. Thus they are not a local referral union under EEOC guidelines. Local 361 also has no exclusive-right-to-hire agreement with contractors. The referral hall works as follows: there is a new sign-in sheet each morning. Members state their qualifications, and list the amount of time they have been out of work. Union officials take into consideration how long members have been out of work. Contractors often ask for specific individuals who have worked for them before. Members who are present in the hall will be referred before individuals who call in by phone, but the union also refers members over the phone. These procedures are not spelled out in any formal written document.

Every three years, Local 361 has elections. Any member in good standing is eligible to run for office. Three of Local 361's 16 officers are people of color. One is a trustee, one a conductor and one a member of the examining board.

In order to be eligible for benefits, members must work 120 hours a month for the first four months, after which they just need to keep working periodically. Members who are out of work, and who fall behind in payment of their dues are notified if nonpayment exceeds five months. Mr. Cush said no member has been terminated from the union for failing to pay dues for six months.

Local 40/361 Joint Apprenticeship Program

Local 40 and Local 361 of the Structural Iron Workers Union administer an apprenticeship program in a joint venture. The joint apprenticeship program, begun in 1955, is administered by Mr. John G. Kelly, who chairs meetings of the joint apprenticeship committee. He supervises instructors, and oversees curriculum and the ordering of materials.

Entry requirements for the three year apprenticeship program include a high school diploma, passing an aptitude test which does not exceed tenth year math and English, and a physical exam. The aptitude test, which came about as a result of a court order, is administered by a private firm called Personal Paradigms. The application fee is $25.00.

Mr. Kelly provided then-current (1992) figures concerning enrollment in the apprenticeship program. There were 139 apprentices: 86 whites (61.9%), 38 blacks (27.4%), 13 Hispanics (9.4%), and 2 Native Americans (1.4%). [Appendix D, Figure 37]. There were two women in the program (1.4%); there was no breakdown of women by race. [Appendix D, Figure 38].

Twenty trainees are included in the apprenticeship program. Apprentices and trainees obtain virtually identical classroom instruction and other training. The only difference is that trainees are not required to take the aptitude test. However, both must take a series of agoraphobia and vertigo tests, which involve climbing a column, walking a beam, and using an impact tool (a 50-pound air-operated device) which workers must attach to a bolt at different heights. The physical tests

administered by the Local 40/361 apprenticeship program are the most rigorous in the trades.

The Local 40/361 apprenticeship program recruits applicants by notifying over 3,700 public and private agencies (obtained via a mailing list supplied by the New York State Department of Labor [NYSDOL]) that they are enrolling new members. They also place ads in all of the local newspapers. NYSDOL examines the apprenticeship program's recruitment records, and reviews the racial composition of applicants.

In addition, the JAC files an annual affirmative action plan with NYSDOL. Goals set by NYSDOL are based on census reports of available minority candidates within the union's geographic jurisdiction. The goals are 39.3% people of color and 45.1% women. Although women comprise less than 2% of the program, Mr. Kelly, director of the JAC, stated that the JAC has made good faith efforts to meet the 45% goal. They show NYSDOL their recruitment records, and NYSDOL has found these efforts to be sufficient.

The JAC recruits new apprentices every three years. Roughly 60 new apprentices are admitted each year for three years, as the JAC officials work off a list. Mr. Kelly noted that of 21 applications issued to women in 1982, 5 were returned. In 1986, 108 applications were issued to women, and 29 were returned. In 1989, of the 102 applications issued to women, 33 were returned. The number of women admitted in 1989 was not mentioned in the hearings, but two women are currently in the program. The JAC plans to do another round of recruiting in 1993.

The apprentice-to-journeyperson ratio required by the collective bargaining agreement is 1-to-10. The apprentice-to-journeyperson ratio of Locals 40 and 361 is about 1-to-13 (139 to 1832). The drop-out rate is about 10% to 15% for each of three classes of 60 students, according to Mr. Kelly. The current number of apprentices (139) suggests the drop-out rate is somewhat higher. Data on drop-out rates for people of color and women is not maintained. The JAC offers some counseling to potential drop-outs, but does not offer remedial math education. Until last year, the Board of Education funded 45% of the instructors' salaries; (although this amount has been reduced) the Board of Education still provides free space.

International Association of Bridge, Structural and Ornamental Ironworkers, Local 580

Summary: In 1971, the Equal Employment Opportunity Commission filed a complaint in federal court against Local 580 and its apprenticeship program, charging them with violating Title 7 of the Civil Rights Act by discriminating against blacks and Hispanics who sought admission into the union and jobs through the referral system. In 1978, Local 580, its apprenticeship program, and the employees association signed a consent decree. The consent decree enjoined Local 580 and the apprenticeship program from practicing discrimination. This judgment imposed a detailed affirmative action plan for increasing the membership of people of color to 24% over a five year period.

In 1984, the EEOC filed a motion for civil contempt, and in 1987 Judge Robert Carter found Local 580 in contempt. In 1988, the court ordered appointment of a Special Master to oversee future compliance, and included a ratio of one white to one minority apprentice as an interim step. The court order did not address the situation of women. In 1991, the US Court of Appeals, Second Circuit, affirmed Judge Carter's ruling.

The president of Local 580, Mr. Kaufman, testified before the Commission on November 4, 1992 on behalf of Local 580, and discussed the union's progress in complying with court-ordered reforms. Mr. Kaufman was accompanied by his attorney, Mr. Garley, and his associate, Mr. Rodriguez. Initially, Local 580 provided written materials to the Commission, but refused to testify. Although Local 580 officials were not subpoenaed, Mr. Kaufman agreed to testify after Locals 40 and 361 lost their appeal of the Commission's subpoena.

The geographic jurisdiction of Local 580 includes New York City, Long Island and Westchester. The craft jurisdiction encompasses miscellaneous iron work, involving architectural metals, aside from the structural steel on the building. For example: stairs, windows, curtain walls, metal panels on the face of buildings, building entrances, etc. The hourly wage for mechanics is $24.60, not including fringe benefits.

According to Mr. Kaufman, at least 50% of the journeyworkers in the union went through the apprenticeship program. Some are former trainees, although the pro-

gram no longer exists. Others, such as welders, were certified by the City Department of Buildings after passing an exam, and were admitted as journeypersons. The union began its apprenticeship program in 1954.

According to a 1990 EEO-3 report submitted to the Equal Employment Opportunity Commission by Local 580, the racial composition of the 1,440 members in the union is as follows: 983 white males (68.3%), 355 black males (24.7%), 97 Hispanic males (6.7%), and four Native American males (0.3%). [Appendix D, Figure 39]. There are 16 females of all races (1.1%). [Appendix D, Figure 40]. Mr. Kaufman said the composition of the union is basically the same as it was in November of 1992.

Mr. Kaufman didn't know whether people of color obtain work in proportion to their representation in the union, (*i.e.*, whether 31% of all jobs are obtained by people of color). Unemployed workers have the option of coming down to the referral hall and signing in or shaping sites on their own. The union has referral rules, in accordance with a December 3, 1991 court order. A computerized system was expected to be in place by January 1, 1993, to systematize referrals. At that time, 65% of all jobs obtained by union members are expected to come out of the hiring hall. At present, Mr. Kaufman estimates that 40% of the jobs go through the hiring hall.

Workers must physically sign in on a daily basis at the referral hall in order to obtain work through the business agents. The hall, located on 42nd Street and Seventh Avenue, opens at 6:30 A.M. According to Mr. Garley, the first criteria for sending someone out is the number of consecutive days the individual has been on the referral list. Members record on the sign-in sheet their race, the number of days they have been out of work, where they live, their skills, and whether they have a car. They are entitled to request from one of the four business agents a copy of previous lists and jobs referred.

Members who believe they were unfairly passed over for work may raise the issue with the business agent. If the problem persists, members can appeal to the executive board. Unlike journeypersons, apprentices are placed in jobs exclusively through the referral hall. The racial composition of the people waiting in the referral halls on any given day is about 50% people of color, according to Mr. Kaufman. The majority of these are apprentices.

Contractors may request mechanics by name. They usually call them at home, rather than contact them through the hall. Contractors also call the referral hall to request a person with a particular specialty. In such cases, the union selects the person on the list who has the specialized skill and who has been on the list the longest. Contractors may not request apprentices by name, although they can ask for an apprentice by class level (*i.e.*, a second or third year person). Beginning on January 1, 1993, contractors are not supposed to hire more than 35% of Local 580 members on their own. The foremen are responsible for assembling the work crew. However, a foreman doesn't have complete authority to hire and fire. He must rely on the supervisor or boss. There are numerous non-union contractors working in Local 580's jurisdiction. According to Mr. Kaufman, the city contracts out to many of them.

The union maintains records, by race, of members' hours worked and contributions paid by workers into funds. Apprentices are sent out to jobs based on a review of these records, which shows hours worked for the year to date. This is done to maintain an equitable distribution of work.

The apprentice-to-journeyperson ratio on a job is supposed to be 1-to-4. Shop stewards are responsible for policing this policy. At present, the union has one apprentice for every 15 journeypersons. Other than economic constraints, there is nothing preventing the union from expanding the number of apprentices enrolled in its program. However, this does not mean they all will be able to obtain work. Currently, unemployment is between 40 and 50 percent in Local 580, according to Mr. Kaufman.

Local 580 does not have an affirmative action program with the New York State Department of Labor. The federal court order essentially supersedes the jurisdiction of any other enforcement entity with respect to affirmative action plans. Mr. Kaufman assumed that issues not addressed by the federal court order, such as female application and employment, would fall under existing Title 7 and state requirements.

Special Master Mr. Raff was appointed by the court, and is available to the union on an on-call basis. Sometimes he is called in by union officials or by EEOC to deal with a particular issue. Sometimes individual apprentices or journeypersons request his involvement to deal with a complaint.

Local 580 has a members assistance program, created as a result of the court order, mainly to deal with the apprentices. It provides orientation to apprentices concerning remedial education programs, referral procedures, substance abuse counseling, disciplinary actions, and other matters.

The joint apprenticeship program administered by Local 580 has not made an effort to target women for recruitment. The current requirements for admission include a written test, a physical exam, and an assessment of the candidate's fear of heights. The test deals with math, mechanical reasoning and spacial relationships. A high school diploma is not required. Physical tests are administered by the Sports Medicine Institute. Of 30 apprentices admitted each year, 15 slots are set aside for JTPA candidates. The last round of recruitment occurred in 1990. More than 1,000 people applied for the 30 slots. The 200 top finishers were put on the list, which the union has nearly exhausted.

Outreach to candidates for the apprenticeship program is done by advertising in newspapers and on radio stations, as mandated by court order. 60% of the cost of the apprenticeship program is paid for by the Board of Education. With 30 apprentices admitted to each of the three classes, there have been 90 apprentices enrolled. Mr. Kaufman said there are currently about 85 enrolled since a few dropped out. He estimated that the racial composition of the group is about 50% people of color. [Appendix D, Figure 41]. In the last graduating class, which was a double-class of 60 apprentices, 54 graduated and 6 dropped out, giving a relatively low drop-out rate of 10%.

All members of Local 580 take a sworn oath that they will be respectful to brother members and help procure work for other members. All of the union officers are currently going through a sensitivity program (dealing with race and gender) under court order. The program is conducted by the Columbia School of Social Work, and occupies four hours of the officers' time every two weeks.

Mr. Kaufman acknowledged that pornography is common on work sites. He said if a female in Local 580 brought proof that a member of Local 580 wrote sexist graffiti or put up pornographic pictures, he would bring the member up on charges. The general contractors have private restrooms for women and are obligated to provide a private place in which women can change their clothes. In the past five years, Mr.

Kaufman is unaware of any claims of sexual harassment or gender discrimination made by women in Local 580.

One member of Local 580's executive board is a person of color. In order to be eligible for election, a member must be in good standing for two years.

1 *U.S. Bureau of the Census, 1990. Population by race and Hispanic origin, NYC.*

2 *Employment Plan of the Joint Industry Board, Local 3, International Brotherhood of Electrical Workers.*

3 *Equal Employment Opportunity Commission Determination, October 13, 1981. Pg. 2.*

4 *Ibid.*

5 *Ibid.*

6 *Local 3 Collective Bargaining Agreement.*

7 *Bias in the Building Industry, the NYC Commission on Human Rights (1963).*

8 *Memorandum from Diana Autin, Deputy General Counsel at OLS, to Esta Bigler, General Counsel, April 29, 1986.*

9 *Sheet Metal Workers Local 28 - Coefficients of Correlation Among Race, 11 predictor variable and fabrication Average: Validity of the So-Called Section Criteria. Richard G. Buchanan, Ph.D.; May 1990. Pg. 31.*

10 *Local 28's Collective Bargaining Agreement.*

11 *Bias in the Building Industry, the NYC Commission on Human Rights (1963).*

12 *Ibid.*

13 *Consent Decreee in resolution of the case, EEOC v. Local 14 International Union of Operating Engineers and Local 15 of Operating Engineers, et al. 1985. Pg. 5.*

14 *Local 14 by-laws*

15 *Letter to Commission on Human Rights, General Counsel Cheryl Howard, Esq., from Robert D. Brady of Corcoran and Brady, P.C. re: Local 15. February 28, 1991. Pg. 4.*

16 *Memorandum from Diana Autin, Deputy General Counsel at OLS to Esta Bigler, General Counsel. April 29, 1986. Pg. 4.*

17 *US District Court Order in the case of EEOC v. Local 14and Local 15 International Union of Operating Engineers, et al. July 12, 1985*

18 *Ibid.*

19 *Bias in the Building Industry, the New York City Commission on Human Rights. (1963).*

20 *"Apprenticeship Training Program Affirmative Action Plan"; Joint Steamfitting Apprenticeship Committee. March, 1990.*

21 *Letter to the General Counsel of the NYC Commission on Human Rights from Frank Rutter, Secretary-Treasurer of United Association of Plumbers and Gas Fitters Local Union 1, dated March 1, 1991.*

22 *Bias in the Building Industry, the New York City Commission on Human Rights. (1963).*

23 *Collective Bargaining Agreement between the United Association of Plumbers and Gas-Fitters and the Association of Contracting Plumbers.*

24 *Bias in the Building Industry, the New York City Commission on Human Rights. (1963).*

25 *Ibid.*

26 *Memorandum from Diana Autin, Deputy General Counsel for the Bureau of Labor Services to Esta Bigler, General Counsel.*

27 *Ibid.*

6

Apprenticeship programs

Overview: Apprenticeship programs are the primary means of entry to journey-level work in each of the construction trades. Each program is administered by a joint apprenticeship committee (JAC) consisting of union and contractor representatives. Although more than half the workers in some unionized trades did not go through an apprenticeship program, the vast majority of newer members in the trades obtain some apprenticeship training. The programs have expanded in size during the past two decades. According to Roger Waldinger, co-author of the Port Authority study, *Access and Opportunity: Developing a Skilled Construction Labor Force in the Port Authority Region,* the number of apprentices in registered programs in New York City increased by about 200% between 1980 and 1987.

The apprenticeship system in the United States was established by the National Apprenticeship Act of 1937, also known as the Fitzgerald Act. Under this Act, the US Department of Labor's (USDOL) Bureau of Apprenticeship Training (BAT) was given the responsibility of overseeing individual apprenticeship programs. The USDOL issued two regulations which encompass its administrative responsibilities. One regulation is "29 Code of Federal Regulations Part 29" (29 CFR 29), which relates to the registration of apprentice programs and agreements. In 1978, under 29 CFR 29, New York State was granted the power to enact laws concerning apprenticeship programs, and the New York State Department of Labor was designated as the agency responsible for writing and enforcing regulations.

The New York State Department of Labor has an Apprenticeship and Training Council consisting of 15 members who advise the Commissioner of the Labor Department

on regulatory and administrative matters. The Council also has the power to approve curriculum, admissions prerequisites, and tests required for certification upon graduation, if applicable. Individual apprenticeship programs are designed and administered by JACs. Local programs must meet the minimum standards established by the National Joint Apprenticeship and Training Committee for that trade.

Apprenticeship programs usually consist of three to five years of classroom instruction (depending on the trade), plus on-the-job training. Upon completion of the program, which sometimes requires a passing grade on an exam in order to obtain certification, journey-level status is granted. Once an individual is accepted as a member of an apprenticeship program, he/she is eligible to receive work assignments from a union referral hall. In some unions, all apprentices must obtain work through the referral hall, while in others, apprentices can "shape" sites on their own. A first-year apprentice often makes about half the base salary of a journeyperson, the hourly wage rising as the apprentice completes each year of training on his or her way to journey-level status.

The Labor Department's authority to regulate the apprenticeship system is given added weight by the Davis-Bacon Act, which stipulates that all journey-level workers on jobs funded by the US Government must be paid the prevailing wage (usually the union wage). Apprentices (and trainees under the New York Plan) are paid at a lower rate. Section 220 of the New York State Labor Law created a similar provision for projects funded by the State or New York City, although this section of the law has been a subject of litigation concerning trainees.
(See Chapter 7).

Low enrollment of women and people of color in joint apprenticeship programs:

1) Participation of people of color in apprenticehip programs:

The apprenticeship program, as a primary means of entry into the unions, has been the focus of governmental efforts to correct racial, ethnic and gender imbalance. Historically, among the unions that operated apprenticeship programs, there existed until very recently a practice of limiting available openings to sons and relatives of members, or requiring that prospective apprentices be sponsored by one or more

members. A pattern of discrimination against people of color was demonstrated by the fact that in 1963, people of color constituted less than 2% of all apprentices in New York City.

Today, such discriminatory barriers to entry have been legally removed, though often only after lengthy court cases. Nonetheless, people of color continue to be underrepresented in apprenticeship programs in most trades. According to a report prepared for the Port Authority of New York, "[T]he proportion of apprentices in the region who were either black or Hispanic actually decreased from 22.3% in 1980 to 21.9% in 1987."[1] The report found that in New York City, ALANA representation increased from 21.0% to 23.0% during that time.

A number of witnesses at the Commission hearings cited the report's figures, and pointed out that this slight increase is not proportional to the population increase of people of color in New York City during the 1980s. In fact, the industry-wide figures mask a *decrease* in the participation of people of color and women in seven of the eight apprenticeship trades studied. According to data from the NYC Department of Labor, the proportion of ALANA apprentices in such programs went down in all but one trade: brick and cement work. ALANA representation in the bricklayers program, one of the lowest paying trades, increased by 14% during the 1980s.

Based on material submitted by some unions in response to Commission inquiries, people of color comprise 27.6% of the apprentice slots in the nine programs profiled. [See Table 1 on the following page]. This level of participation, while an improvement, still represents less than 50% of the available pool of people of color in New York City.

The Joint Apprenticeship Committee of Sheetmetal Workers Local 28, which is under a court order to reach a 75% participation rate for people of color, in order to raise the level of people of color in the journey-level membership, skews overall figures by having an apprenticeship program which is 73.8% people of color. Apart from Local 28, the only other apprenticeship programs in which people of color were represented at rates approaching their labor force availability rates—Local 580 (45 people of color) and Local 15 (9)—were the two smallest programs, thus having little impact on overall representation of people of color in the trade. Virtually all the remaining apprenticeship programs had a 30% or less representation of people of color, and

Table 1 - Racial Composition of Apprentices Enrolled in Joint Apprenticeship Program - 1990											
Trade/Union	White		Black		Hispanic		Asian		Other		Total
	#	%	#	%	#	%	#	%	#	%	
District Council Carpenter	2,587	71.7	615	17.1	376	10.4	19	.5	10	.3	3,607
Electricians Local 3	1,814	83.6	158	7.3	172	7.9	20	.9	5	.2	2,169
Sheet Metal Local 28	130	26.2	-	-	-	-	-	-	365	73.8	495
Plumbers Local 2	226	77.1	34	11.6	33	10.9	0	0	0	0	293
Steamfitters Local 638	194	81.2	27	11.3	16	6.7	2	0.8	0	0	239
Plumbers Local 1	131	81.9	21	13.1	8	5.0	0	0	0	0	160
Str Iron Locals 40/361	86	60.9	38	27.3	13	9.4	0	0	2	1.4	139
Orn Irn Local 580	45	50.0	-	-	-	-	-	-	45	50.0	90
Op. Eng. Local 15	11	55.0	7	35.0	2	10.0	0	0	0	0	20
Totals	5,224	72.4	900	12.5	620	8.6	41	.6	427	5.9	7,212

Source: JACs of each union local. Note: Local 28 data on people of color is not broken down. Blacks, Hispanics and Asians are combined as "Other."

three fell below 20%. In Electrical Workers Local 3's apprenticeship program, the second largest program in the group, there were only 16.4% ALANA.* (This represents a further decline in the representation of people of color within the electrical trade—from 19.5% in 1987 and 25.7% in 1980.)[2] 17% of Local 638's apprentices, and 18.1% of Local 1's apprentices were people of color. In the largest apprenticeship program, jointly run by contractors and the District Council of Carpenters, 28.3% of the apprentices were people of color.

2) Female participation in apprenticeship programs:

Expert witnesses provided comparable figures regarding female participation in joint apprenticeship programs, citing different data sources and different base years. According to Pat Sullivan of the NYSDOL Apprenticeship and Training Council, New York City actually has a lower female representation in many trades than does the rest of New York State. Women's representation statewide in all trades is 5.2%, while in New York City it is 3.0%, and declining in certain trades as of 1989. According to

* ALANA = African-American, Latino, Asian-American, and Native American people.

Table 2 - Gender Composition of Apprentices Enrolled in Union Apprenticeship Programs					
Trade/Union	Male		Female		Total
	#	%	#	%	#
Carpenters	3,470	96.1	137	3.8	3,607
Electrical Wrkrs Local 3	2,111	97.3	58	2.7	2,169
Plumbers Local 2	284	96.9	9	3.1	293
Steamfitters Local 638	221	92.5	18	7.5	239
Plumbers Local 1	160	100.0	0	0	160
Str. Irn Wks Loc. 40/361	137	98.6	2	1.4	139
Orn. Irn Wks Local 580	-	-	-	-	90
Oper. Eng. Local 15	14	70.0	6	30.0	20
Sheet Metal Local 28	-	-	-	-	495
Totals	6,401	96.6	226	3.4	7,212

Source: JAC officials of each union local. All figures 1989-90 except Local 40/361 and 580 (1992). Note: Calculations of male and female percentages in apprenticeship programs is based on 6,614 apprentices, not including Locals 580 and 28.

May 1988 figures from the NYSDOL, women represented only 3.9% of the state-registered apprentices in the NYC metropolitan area. Lola Snyder of Nontraditional Employment for Women, citing the 1987 Port Authority study, testified that women held only 3.5% of the apprenticeships in the New York City area.

The Commission's findings confirm that, with the exception of Local 15, women are substantially underrepresented in each of the apprenticeship programs, comprising only 3.4% of the apprentices in seven programs for which data was provided by JACs. [See Table 2 above].

ALANA and female participation falls far below NYSDOL goals

While union's and women's advocates agree that the NYSDOL goal of more than 40% female participation in joint apprenticeship programs is unrealistic, at the present rate, women will not even reach the more modest 6.9% journeyperson goal set by Federal Executive Order 11246. For example, Plumbers Local 1 has no women in its program; women comprise only 2.7% of Electrical Workers Local 3's joint apprenticeship program; and 3.8% of the District Council of Carpenter's program are women.

Table 3 - Race and Gender Composition of Apprenticeship Programs (% Enrolled v. NYSDOL Goal)					
Trade/Union	People of Color		Females		Total Apprentice
	% Goal	% Actual	% Goal	% Actual	
Dist Cnsl Carpenters	43.5	28.3	45.3	3.9	3,607
IBEW Local 3	*39.3	16.4	45.1	2.7	2,169
Sheet Metal Local 28	*32.9	73.8	*44.1	-	495
Plumbers Local 2	*39.3	22.9	*45.1	3.1	293
Steamfitters Local 638	*39.3	18.8	45.1	7.5	239
Plumbers Local 1	39.3	18.1	45.1	0	160
Str Irn Wks Local 40/361	39.3	30.1	45.1	1.4	139
Orn Irn Wks Local 580	39.3	50.0	45.1	-	90
Op. Eng. Local 15	*32.0	45.0	*44.0	30.0	20
Total		27.6		3.4	7,212

* NYSDOL goals were used because goals provided by JAC officials were outdated or inaccurate. Local 3's ALANA goal was revised downward from 43.3% in May, 1991; Local 28's goal was increased from 29% in November 1992. Local 2's was revised downward from 43.76% in June 1992 to 33.2%, and back up again to its current level in October 1992. Local 638's goal was revised from 21.8% to 30% in April 1990, and then raised to 39.3% in October 1991. Local 15's goal was raised from 29% to 32% in November 1992.

According to the NYSDOL, goals for ALANA participation in joint apprenticeship programs range from 32.0% in Operating Engineers Local 15, to 43.5% for the District Council of Carpenters. Many unions have an ALANA goal of 39.3% because their jurisdiction covers all or part of New York City. [See Table 3 above]. The ALANA participation goal is adjusted for each program, based on its geographic jurisdiction, since some programs encompass parts of New Jersey, Long Island or Westchester, which have fewer people of color in their populations.

The only JACs to reach or exceed NYSDOL goals for people of color have been those subject to federal court orders, confirming that significant progress in bringing about greater inclusion of women and people of color has only occurred in the unionized construction industry due to the force of litigation. In the case of Sheet Metal Workers Local 28 and Ornamental Iron Workers Local 580, both of which are currently subject to court orders, their ALANA apprenticeship participation levels are 73.8%

and 50% respectively. Operating Engineers Local 15, whose court order was dissolved in 1988, has an apprenticeship rate of 45% for people of color. Three unions, IBEW Local 3, Steamfitters Local 638, and Plumbers Local 1, would have to double their people-of-color enrollment rates to meet or even come close to the NYSDOL goals.

Two of the JACs, Local 28 and Local 15, informed the Commission that their participation goal was 6.9%, mistakenly using the employment goal set by Federal Executive Order 11246, in place of the apprentice goals developed by NYSDOL. The fact that both JACs are under federal consent decree or court order indicates that NYSDOL officials don't communicate regularly with JACs which are under court supervision. However, it should be noted that none of the court orders address the issue of female underrepresentation in joint apprenticeship programs.

Race and gender disparities in acceptance of apprentice applicants

Given that skilled construction jobs offer substantial earning opportunities, there is stiff competition for the limited number of entry slots available. Some JACs, such as Operating Engineers Local 15, admit only between 20 and 30 apprentices, and recruit only every three years. Other unions, such as the District Council of Carpenters and Local 3, have annual enrollments with much larger classes—1,346 and 728, respectively, in 1990—but the size of enrollment varies, depending on the job market. Although information was requested from each of the JACs regarding applications and enrollment in 1990, only two JACs—the District Council of Carpenters and Electricians Local 3, the two largest—provided information.

Carpenters

In 1989, there were 1,403 applicants for the District Council of Carpenters' Joint Apprenticeship Program. 1,315 were male (93.7%) and 88 were female (6.3%). 767 applicants were white (54.7% of the applicants), while 636 applicants (45.3%) were people of color. The acceptance rate for men was nearly twice that for women. 853 males were accepted (64.9% of all applicants), while 31 females (35.2% of all applicants) were accepted.

A breakdown of enrollment and acceptance rates of males, by race, showed striking disparities between white males and males of color: 83.2% of the white males who applied (625 of 751); 43.5% of black males (131 of 301); 42.8% of Latino males (86 of 201); 53.8% of Asian males (7 of 12); and 8% of Native American males (4 of 50) were accepted into the program.

With regard to women, blacks were accepted at a higher rate than all other racial groups. In 1989, the District Council of Carpenters admitted into its apprenticeship program 45.1% of all black females who applied; 31.2% of white females (5 of 16); 20% of Latins (3 of 15); and 0% of Asian (0 of 6) females. No Native American females applied.

Electricians

The breakdown of 1990 enrollment in Local 3 for males, by race, is as follows: 710 out of 3,106 male applicants (22.9%) were accepted. The acceptance rate for whites was 23.6% (600 of 2,544 applicants); blacks: 15.6% (46 of 295); Hispanics: 22.2% (53 of 234); Asians: 52.4% (11 of 21); and Native Americans: 8.3% (1 of 12). With regard to females, 18 out of 60 female applicants (30%) were accepted. 57.5% of white females (15 of 26); 4.4% of black females (1 of 23); 22.2% of Latinas (2 of 9); and neither of the lone Asian or Native American female applicant was accepted.

The Electricians had a much higher number of applicants than did the Carpenters, due perhaps to greater outreach and recruitment efforts, but the effort resulted primarily in reaching white applicants: 82% of the applicants for Local 3's apprenticeship program were white, and 18% were people of color. This is a strong indicator of inadequate outreach to people of color.

Causes of low enrollment

1) Insufficient outreach to women and people of color:

Miriam Friedlander, former City Councilmember, and Diana Autin, former General Counsel to DLS, stated there has been a failure to identify qualified women and people of color, and recruit them at the apprenticeship level. Most women are brought in by organizations like NOW and NEW, without which no women would be

trained, since JACs make very little effort to recruit them. Roger Waldinger noted that greater outreach could be achieved by tapping into existing city resources such as high school vocational programs. High schools offer vocational programs in construction, but none of these programs have any formal relationship to union apprenticeship programs.

Lola Snyder of NEW recommended that contractors, as partners in the joint apprenticeship programs, establish vigorous outreach and recruitment programs which encourage women to apply for apprenticeships. She agreed that the City should create a program that involves community organizations and vocational schools in efforts to target women and people of color and increase their participation in apprentice programs to the levels stated in regulatory goals.

2) Discriminatory apprenticeship entry requirements and procedures:

In an attempt to increase the representation of people of color in apprentice programs, in 1964, New York State legislation and subsequent regulations added provisions stating that "apprentices shall be selected on the basis of qualifications alone, as determined by objective criteria which permit review." JACs are now required by state and federal law to ensure equal employment in their selection process. Unions now admit apprentices after conducting interviews, issuing a battery of aptitude and physical tests, and implementing additional procedures.

Methods of recruitment and apprentice selection must be approved by NYSDOL and all apprentice recruits who meet the minimum qualification standards are entitled to go through the entire selection process. A program sponsor can have an occupational qualification, provided that it is job-related and applied equally to all applicants. Qualifications that have been found to be discriminatory include a requiring a high school degree (which has a disparate impact on people of color) and maintaining a maximum age standard (which has a disparate impact on women). In the latter part of 1993, a Federal Judge in NYC ruled that Local 3's JAC maintained education and age requirements which discriminated against blacks and women.[3]

The aptitude tests used in the selection of apprenticeship candidates were developed by a federal/state cooperative network in a project funded and directed by USDOL. A

maximum number of points (35 out of 100) is allocated to the testing model as part of the assessment process. Interviews are also used for apprentice selection, and are weighted from 20% (Local 3) to nearly 40% (Local 28) of the evaluation. It has been contended, however, that for many apprenticeship programs, these interviews have not been standardized or validated.

Roger Waldinger of the Port Authority; Diana Autin, former General Counsel of DLS; Lola Snyder of NEW; Jim McNamara of the Department of Employment; and others stated that the City should encourage the NYS Department of Labor and US Bureau of Apprenticeship Training to expand the monitoring of apprenticeship admissions procedures and criteria in order to ensure that women and workers of color are fairly represented within their ranks.

According to these experts, JAC entry requirements which have a potentially discriminatory impact on people of color and/or women, such as unreasonable maximum age requirements, or unnecessary education and physical strength requirements, should be eliminated. Diana Autin called for NYSDOL to conduct a statistical analysis of the comparable rates at which men, women, whites and persons of color successfully apply to apprenticeship programs and actually complete such programs, in order to determine if certain JAC entry requirements have an adverse impact.

Ms. Autin noted that many apprenticeship programs allocate 25% of an applicant's point total to a subjective interview, generally conducted by white males. The State does not require the use of standardized and validated interview questions, nor does it monitor interviews to ensure that all questions asked are job-related and that discrimination does not play a role in the process.

3) High drop-out rate for people of color:

The skilled construction trades involve physically demanding, sometimes dangerous work in rapidly changing environments, and sometimes in cold, wet weather. These conditions lead many apprentices, regardless of race or gender, to reconsider their choice of profession. Donald Grabowski, Director of Employability Services at the New York State Department of Labor, acknowledged that, according to 1989 NYSDOL data, the apprenticeship drop-out rate was 40%. A 1987 study by the Port Authority found an apprentice drop-out rate of over 50%.

The data supplied by the unions provides a snapshot of the racial and gender composition of graduates and drop-outs for 1989. Given that whites comprised 72.4% and people of color, 27.6% of all apprentices, they should make up similar proportions of graduates and drop-outs. In fact, white males accounted for 81.1%, and men of color only 18.9% of all graduates in 1989. Conversely, white males comprised 77.0% of all drop-outs in 1989, while people of color accounted for 23.0% of all drop-outs, according to the four JACs which provided data. [See Table 4 below]. At this rate, men of color will comprise less than 20% of journey-level workers indefinitely—and will perhaps decline even further.

Table 4 - White and ALANA Male Graduates and Drop-outs in Joint Apprenticeship Programs

Trade/Union	White Graduates		ALANA Graduates		White Drop-outs		ALANA Drop-outs		Male Apprentices
	#	%	#	%	#	%	#	%	#
Plumbers Local 2	64	95.6	3	4.4	63	86.3	10	13.7	284
Electrical Local 3	278	84.5	51	15.5	86	72.9	32	27.1	2,111
Carpenters DCC	245	73.8	87	26.2	122	75.3	40	24.7	3,470
Steamfitters Local 638	85	84.2	16	15.8	17	81.0	4	19.0	221
Total	672	81.1	157	18.9	288	77.0	86	23.0	6,086

Source - joint apprenticeship committees of each union local. Note: Figures for Iron Worker Locals 40/361 and 580, Plumbers Local 1, Operating Engineers Local 15 and Sheet Metal Workers Local 28 were not available.

The most striking example of a low ALANA male graduation rate was the apprenticeship program of Plumbers Local 2, whose enrollment is 78.2% white and 21.8% people of color. Yet, as Table 4 illustrates, white males accounted for 95.6%, and men of color only 4.4% of 1989's graduates. Given that the JAC claims there were no ALANA drop-outs in 1989 (and 63 white drop-outs), this raises a number of questions. It is possible, but unlikely, that people of color are concentrated among the first, second and third year students. Or it may be that people of color are terminated from the programs at a higher rate, but are not considered drop-outs. Whatever the actual case, the numbers provided by Plumbers Local 2 seem unlikely.

In IBEW Local 3, people of color accounted for 15.5% of all graduates in 1989, just below their enrollment rate (16.4%) in the apprenticeship program. However, ALANA males accounted for 27.1% of all drop-outs in 1989, which suggests that they dropped

out at a much higher rate than white males. The fallout from this situation is likely to be reflected in ALANA graduation rates in coming years, as fewer people of color go through the program. In other JACs, whites and people of color graduated in relative proportion to their enrollment rates in the joint apprenticeship programs. However, the number of ALANA graduates was still quite low.

4) High female drop-out rates:

Eighteen women graduated from the four apprenticeship programs which provided information [See Table 5 below]. Females comprised only 2.1% of the 847 graduates in 1989, a rate which is a little more than half the 3.4% female enrollment in these trades. To make matters worse, the 22 female drop-outs comprised 5.9% of all drop-outs (396), or nearly three times the rate at which they graduate..

Table 5 - Gender Comparison of Graduates and Drop-outs in Apprenticeship Programs - 1989

Trade/Union	Female Grads		Female Drop-outs		Male Grads		Male Drop-outs		Total Apprentices
	#	%	#	%	#	%	#	%	#
Plumbers Local 2	1	1.4	0	0	67	98.6	73	100	293
Electrical Local 3	3	0.9	8	6.3	329	99.1	118	93.7	2,169
Carpenters DCC	11	3.1	9	5.3	332	96.9	162	94.7	3,607
Steamfitters Local 638	3	2.8	5	19.2	101	97.2	21	80.8	235
Total	18	2.1	22	5.9	829	97.9	374	94.1	6,304

Source: joint apprenticeship committees of each union local.

Given the overall scarcity of females in the trades, it is quite common for only a handful of women to graduate from an apprenticeship program in a given year. The Carpenters graduated 11 women in 1989; Local 3 graduated three women while eight women dropped out. Local 638 graduated three women while five dropped out. One woman graduated from Local 2 and one woman graduated from Plumbers Local 2.

The low representation of women in apprenticeship programs has an impact on their success in the classroom and in the field. A number of women testified at the hearings that they were the only women in their apprenticeship class, and stated that this made them targets for sexual jokes and harassment. Classroom instructors often use

sexually explicit analogies when describing how to use tools and equipment. As one female apprentice testified,

> [T]*hey taught us to remember the color coding for transistors by saying "Bad boys rape young girls, but Violet gives willingly."*

In this male-dominated environment, the use of tools and machinery is viewed as a masculine activity, conversely feminine characteristics are attributed to everything that is acted upon. Thus, women are subjected to an implicit message that it is unnatural for them to build things and work with metals, wood, wiring, and other inanimate objects. On work sites, female apprentices, like female journeypersons, experience a pronounced sense of isolation. Among the eight female electrical workers from Local 3 who testified at the hearings, half were apprentices or former apprentices who had dropped out. Among the 11 women who testified from the District Council of Carpenters, all said they had been sexually harassed. As one woman testified,

> *There is an enormous amount of hostility against women on the job. This is the only place* [men] *feel they can go to get away from women, that it's their turf. It's very threatening to them to have me there. I've heard them tell each other not to talk to me, not to let me know that there is work to do.*

Given such a hostile environment, it is not surprising that more women drop out of apprenticeship programs each year than graduate.

Proposals to reduce drop-out rates by addressing program deficiencies

James McNamara of the Department of Employment, Roger Waldinger of the Port Authority, and others called upon the New York State Department of Labor to deal with the high drop-out rate in joint apprenticeship programs by doing a number of things:

Mr. McNamara urged State and Federal government officials in the Labor Department to re-examine the length of training/apprenticeship programs because, for some, the drop-out rate is as high as 50 percent. He acknowledged that the reasons could range from lack of work to better options in other professions, but stated that

the drop-out rate in the building trade apprenticeship programs is a severe indictment of the way programs operate.

Mr. McNamara cited the case of Local 530, Amalgamated Plasterers Union, which he contends was set up to undermine a legitimate union—Local 1974, the Tapers Union. When Local 1974 applied to the NYSDOL for approval of an apprenticeship program they had designed, with the approval of employers, to be an eighteen-month program at the end of which people obtain full journeyperson rates, the State refused, saying it would create a dangerous precedent. To streamline its training and give people full status in a year and a half, when other trades take up to four or five years to do this, was considered unacceptable. Finally, Local 1974 agreed to a two-year compromise. Local 530 has a three year program.

McNamara noted that IBEW Local 3's JAC has an apprenticeship program which requires that a regular apprentice, in addition to spending five years in the trade, go to a classroom and obtain related instruction after work (the requirement is 144 hours per year), adding yet another layer to the process. They mandate that all apprentices obtain a college degree from the Empire State, which only increases the probability of more drop-outs across the board. A single mother, for example, is not likely to complete such a program.

William Horsack, speaking on behalf of Assemblyperson Hector Diaz, expressed opposition to the excessive time it takes to complete many apprenticeship programs, because of the minimum requirements for hours of schooling and on-the-job training. He pointed out that people of color, due to financial problems, often take longer than whites to graduate to journeyperson status—sometimes as much as nine years, when such programs normally are completed in five.

Diana Autin, James McNamara and Roger Waldinger argued that State and City government must provide greater services and support to apprentices to ensure that they remain in programs. Their recommendations included the following:

1) JACs should conduct vocational assessments of applicants to determine appropriateness of assignment as apprentices;

2) JACs should provide pre-apprenticeship counseling, including an orientation to the industry, particular trades, and the responsibilities of apprentices in the

work environment. This should include social services, counseling agencies, and sources for physical training, particularly for recruits who don't meet apprenticeship entrance requirements;

3) Pre-site placement counseling is necessary;

4) Tracking progress of female apprentices and male apprentices of color from entry into the apprenticeship program through journey-level status. If intervention is necessary, *e.g.*, if a woman or person of color files a complaint of harassment or other form of discrimination, it must be provided.

5) JACs should maintain information and report periodically on the progress and success rates (*i.e.*, graduation rates) of female workers and workers of color;

6) Government agencies should monitor more closely the apprenticeship programs, unions and contractor associations. Federal, state and local agencies need to coordinate their oversight activities to address problems such as the "revolving door" syndrome which allows JAC officials to inflate the reported numbers of women admitted into the apprenticeship program, because officials fail to account for the actual number of hours worked by each woman.

Proposals to create more apprenticeship training and employment opportunities

1) Improve referral hall practices:

As the testimony of numerous construction workers made clear, many apprentices drop out because they do not obtain enough work through their union referral halls to sustain themselves financially while progressing through the lengthy apprenticeship process. In many unions, apprentices are required to obtain work solely through the union referral hall. There, they are completely dependent on business agents who sometimes don't refer them because they do not yet possess the skills necessary for certain jobs. In addition, as Susan D'Alessandro of Local 30 pointed out, apprentices are also victims of a politicized job referral process. In the process of initiation, apprentices are frequently asked to contribute to the local political action fund spon-

sored by the union, such as Local 30's Political Action Fund, IBEW Local 3's Political Action Fund, and others. Apprentices who don't have the political savvy to navigate their way through this system of allegiances find themselves out of work indefinitely. Many advocates and experts argued for a more accountable job referral process—one that would be fair to all union members, including apprentices [See Chapter 4].

2) Enforce apprentice-to-journeyperson ratios:

The collective bargaining agreement (CBA) of each union sets a ratio of apprentices-to-journeypersons on the job site. As Table 6 shows, it varies from union to union. But what is most noteworthy is that no union actually maintains an apprentice-to-journeyperson ratio in accordance with stated ratios. For some, like Operating Engineers Local 15 and Sheet Metal Workers Local 28, there is a striking disparity between the ratio stated in the CBA and the actual ratio. Thus, each of the unions could enroll many more apprentices than they currently do, providing more education and training opportunities for persons interested in entering the skilled trades.

Table 6 - Union Apprentice-to-Journeyperson Ratios

Trade Union	Apprentices	Journey-persons	Actual Ratio	Ratio in CBA
Dist. Council of Carpenters	3,607	22,000	1 - 6.1	1 - 5
IBEW Local 3	2,169	8,363	1 - 3.9	1 - 1, 1 - 3
Sheet Metal Wrkrs Loc 28	495	4,131	1 - 8.4	1 - 1, 1 - 4
Oper. Engineers Local 15	20	3,209	1 - 160.5	1 - 4, 1 - 6
Steamfitters Local 638	235	3,174	1 - 13.5	1 - 3
Plumbers Local 2	284	2,390	1 - 8.4	1 - 2, 1 - 5
Str Iron Wrkrs Loc 40/361	139	1,971	1 - 14.2	1 - 10
Ornmntl Iron Wkrs Loc 580	90	1,440	1 - 16.0	1 - 4, 1 - 6, 1 - 10
Plumbers Local 1	160	1,000	1 - 6.3	1 - 2, 1 - 5

Note: Local 15 figures apply to Heavy Equipment Operators. Heavy Duty Repairers have a ratio of 1-3 for the first four workeres hired, 1-5 for the next six workers hired, and 1-7 thereafter. Local 28 figures apply to Sheet Metal Workers. Sheet Metal Artisans have a 1-1 ratio. Source: Stated ratios were provided by the NYS Department of Labor in March 1993.

Unions contend that their enrollment is based on employment conditions in the industry, and that the current depressed building industry does not warrant increasing apprenticeship enrollment. Nonetheless, many skilled workers, particularly members of IBEW Local 3, point out that their unions draw upon hundreds of "travellers" or "out-of-towners" to do work that could be done by ALANA apprentices and journeypersons.

Since apprentices can only obtain work through referral halls in most unions, the unions should know if this is in fact the case. As Table 6 on the opposite page illustrates, the apprentice-to-journeyperson ratios set by unions and contractors bear little relation to actual ratios in the trades.

James McNamara of the Department of Employment argued that the City, when developing contract regulations, should consider a requirement that contractors with whom they do business put on their payroll for City jobs the maximum number of apprentices permitted under collective bargaining agreements. The ratios would vary for each trade. Such a requirement, he argued, would help apprentices, regardless of race, to obtain some training.

Diana Autin, former General Counsel to DLS, stated that in 1987, the state felt it had no authority to increase the number of apprentices or demand changes in entrance requirements. She maintained that this isn't true; rather, it is a process of negotiation with the New York State Joint Apprenticeship Council and the JACs.

3) Require all union members to complete apprenticeship programs:

Ms. Autin and Mr. McNamara stated that, while unions contend that the number of apprentices accepted in a given year is based largely on industry employment prospects, the disturbing reality is that the vast majority of white journey-level workers never went through an apprenticeship program. They often are simply trained on the job due to the nepotism and patronage prevalent in the trades. For people of color and women, on the other hand, apprenticeships are virtually the only route to journey-level status.

James McNamara emphatically argued that too much attention has been focused on getting people into the industry through apprenticeship programs. He cited two

former US Secretaries of Labor—Peter Brennan, who served under Nixon, and Raymond Marshall, who served under Jimmy Carter—each of whom freely acknowledged that the vast majority of people who hold journeyperson cards in the unionized building trades nationwide never went through a regular apprenticeship program.

> ***Women and minorities are always told that to get into a given trade they have to register for these programs, as if this were the usual process. It's absolutely false. If you were to take a snapshot of all building trades workers working in NYC during any given hour, you would find that perhaps six percent are registered apprentices. Well over 90 percent of building trades workers are not registered apprentices. This is true from laborers right on up to the highly skilled trades.***

4) Create a city-administered apprenticeship program:

According to Mr. McNamara, the attitude of officials in the apprenticeship program is that apprentices must start from scratch. This, he contended, is a waste of money. Instead, he suggested that the Board of Education play a leadership role in developing a proposal with the JACs—and with the support of City Hall—for a cooperative educational program whereby students work a week or two on construction jobs, and then return to city classrooms for further learning.

Wing Lam, of the Chinese Staff and Workers Association, also supported the creation of apprenticeship programs run by the City, although he suggested that they be monitored by the community as a component of a city/community hiring hall. The City apprenticeship training programs would complement union programs. CSWA opposes the current pre-apprentice or pre-trainee programs, contending that these programs view participants as a source of cheap labor.

Roger Waldinger, a CUNY Professor, also called upon the City and State to develop a strategy to boost the enrollment of persons of color in apprenticeship programs while increasing their employment in the construction industry by involving public high schools and community organizations in the recruitment of apprentices and trainees. Ken Kimmerling of the Puerto Rican Legal Defense Fund pointed out that the City has thousands of students enrolled in high schools to learn various vocational trades. The vast majority are people of color. However, there's no real connection between the Board of Education's vocational high school programs and the joint apprenticeship programs. Vocational school graduates trained in carpentry or plumbing do not

earn credits that can be applied to the JAC program in that particular trade. As a consequence, they must enter as first-year apprentices, regardless of the skills they may possess.

5) De-certify noncompliant JACS:

James McNamara, of DOE, Lola Snyder of NEW, and others stated that the bureaucrats within the State Department of Labor see their role as being nothing more than rubber stamps who automatically approve any program put before them. Mr. McNamara contended that they have never de-registered a single apprenticeship program under their jurisdiction for failure to make a good faith effort to indenture people of color and women in accordance with their goals. Until NYSDOL de-certifies a program, the JACs will not take it seriously.

Mr. McNamara pointed out that the State Department of Labor has the right to review the length of programs, assess the validity of curriculum, and analyze disparities in the completion rates of whites and people of color.

Lola Snyder noted that although NYSDOL collects information on the numbers of women and people of color enrolled in apprenticeship programs, it does not adequately monitor the practices of JACs.

Ms. Snyder stated that, if an apprenticeship program is not meeting its mandate to swing its doors open wide and meet its goal, 23% [sic], the NYSDOL is expected to step in to address these issues. NYSDOL is required to place JACs under special rules when apprenticeship programs fail to reach proportional representation.

Roger Waldinger recommended that the NYS Joint Apprenticeship Council become more involved in efforts to increase the number of people of color and women, and review employment participation goals for people of color and women in the apprenticeship programs. However, he cautioned that, given the historical record, one can't create a successful strategy to reform the construction industry without attempting to reach some accommodation with the unions. He concluded that the unions would be amenable to reasonable policy changes. They are aware of the broader political changes that have taken place in the City and State. But public officials must inform the public and the unions that they're determined to do something.

Suzanne Lynn of the NYS Attorney General's office stated that fear of litigation should not deter government agencies, such as the New York State Department of Labor, from enforcing established goals. Longstanding and egregious discrimination such as has been witnessed in the construction trades can only be effectively addressed through affirmative action remedies, including goals and timetables.

According to Ms. Lynn, the Civil Rights Bureau of the Attorney General's office has a great deal of expertise to offer in this area, and the Bureau is ready to consult with any agency wishing to draft a viable program.

Cynthia Long of Women in Construction pointed out that New York State trails behind the state of Washington in terms of meeting goals in affirmative action programs. Ms. Long read a letter from Ms. Melanie Sako, a local electrical union president in Seattle, who described how she had been given an opportunity to enter a commercial electrical apprenticeship in 1980. The apprenticeship program had 368 apprentices; 50 were people of color and 48 were females. The state goals are 13.6% people of color and 23.4% female. They are in compliance with race/ethnicity goals, but are deficient for females at 12.2% (which is still three times higher than New York's record). The apprenticeship program's noncompliance required documented proof of a good faith effort.

The apprenticeship program in Seattle has provided classes on racial discrimination; prevention of sexual harassment; and grievance resolution procedures for journeyworkers and apprentices. Washington State's Department of Labor is expected to recommend soon that dozens of building trade service unions be cited for failing to meet affirmative action goals in their apprenticeship training programs, and the Washington Apprenticeship Training Council may penalize unions and contractors which employ them.

6) Require greater public disclosure of JAC funds:

Mr. McNamara also called for the NYSDOL to require greater public disclosure concerning the assets of JACs. He stated that, given that the building trades apprenticeship programs lobby for several million dollars from the state legislature each year, the public, City, and State are entitled to know the amount of assets the JACs have, and how the money is being spent.

Unions and contractors share responsibility for JAC policies

Lola Snyder stated that unions and contractors are, by law, equal partners on all joint apprenticeship committees, and contractors must begin to shoulder responsibility and exercise equal authority in the administration of affirmative action laws. Ms. Snyder said that NEW often has heard contractors excuse themselves by stating that they would hire women, but the unions don't refer them.

To these contractors we say, well, ask your union to hold a targeted recruitment for women. If you're out of compliance, that's your problem. Remember, it's a joint apprenticeship committee.

Abstract of testimony

New York State Department of Labor and New York State Department of Transportation

Monitoring of joint apprenticeship programs

Virgil Hodges, Donald Grabowski, Rich Wong,
New York State Department of Labor:

The New York State Department of Labor [NYSDOL] *has statutory responsibility for the promotion, development, supervision and credentialing of registered apprentice training programs under Article 23 of the New York State Labor Law. This responsibility is shared in part with the New York State Education Department, which is charged by Section 812 of Article 23 to provide related instruction for registered apprentices, with and through local school officials.*

Under the National Apprenticeship Act of 1937 [known as the Fitzgerald Act], *the US Department of Labor has responsibility for apprenticeship programs jointly administered by unions and contractors. Under the Act, responsibility to regulate individual apprenticeship programs is given to the Bureau of Apprenticeship and Training in the US Department of Labor.*

Since the National Apprenticeship Act allows states to exercise an option to establish their own State Apprenticeship Councils with the approval of the BAT, the

New York State Department of Labor has assumed this regulatory responsibility. The NYSDOL requires "each sponsor of an apprenticeship program to recruit, select, employ and train apprentices during their apprenticeship without discrimination because of age, race, color, religion, national origin, sex, disability or marital status."

The NYSDOL has issued two regulations implementing Article 23. NYSDOL pointed out that each trade's minimum qualifications and selection standards are established by the industry itself—labor and management—using their combined judgement about skills, abilities and aptitudes necessary to learn all facets of their trades and become a fully skilled worker. Except for setting a legal minimum working age, and a prohibition on using a maximum entry age, neither Federal nor State government set apprenticeship selection criteria.

Each registered apprentice training program has specific female and minority participation goals. These are established by formula set forth in federal and state regulations, and are based upon the population and labor force participation of women and minorities in the geographic areas where each program operates. Federal and State field representatives regularly monitor each apprentice training program, update the statistical information, review program operations, interview program sponsors and apprentices, and report on their findings.

Past efforts by the NYSDOL included fiscal support to help launch the New York Plan in the early 1970s, to provide an alternative route to skilled worker status in the construction industry. State support was eventually discontinued because experience demonstrated that government-supported efforts were doomed to failure.

According to NYSDOL, a large problem when trying to increase minority and female participation is posed by duplicate, overlapping, contradictory and competing federal, state and local affirmative action requirements. Program sponsors (contractors and unions) often are frustrated by contracting agency requirements designed to achieve the same purpose. Lawsuits over the years have placed some programs under the administration and/or direction of federal courts, and progress slowed.

Thus a unified government effort is needed to resolve these problems. The NYSDOL, in cooperation with construction industry and labor representatives, has devised a plan which is being implemented in the NYC metropolitan area through the Interagency Labor Force Training Initiative (ILFTI).

Over the next eight years, extensive programs are planned by public authorities and agencies to rebuild the City and State's infrastructure (e.g., roads, bridges, schools). An Interagency Construction Task Force composed of seven public agencies was formed by the Governor's office in 1988. The Task Force has recommended a program that builds upon the existing construction industry's apprenticeship training system, and uses new and existing resources to attract labor in order to train enough skilled workers to meet the city's future needs. The multi-billion-dollar capital construction programs will create the opportunity to increase the number and quality of apprenticeship training opportunities available to local minority and female residents in the trades.

These joint efforts will allow minorities to achieve representation in the construction workforce proportionate to their participation in the region's labor force by 1995, and for women, a representation of 10 percent by 1995. Each participating agency and authority will include provisions in their construction contracts to require that registered apprentices must be employed up to the maximum allowed under current collective bargaining agreements, consistent with job requirements and industry practices regarding training, discipline and productivity.

Minorities and women need to be enrolled in increasing percentages in registered apprentice training programs if programs are to reach the enrollment goal of reflecting their respective participation rates in the labor force. Contracting agencies, the DOL, and trade unions will work together to come up with target goals for minority and female hiring in each trade, recognizing that each trade has unique practices, traditions and collective bargaining agreements.

The strategy for implementing these requirements is as follows:

1) *Contractual language will be developed, requiring successful bidders to employ registered apprentices up to the numbers permitted in collective bargaining agreements.*

2) *The training programs will continue their efforts to recruit and train candidates from targeted groups in their apprentice programs in order to meet regulatory goals.*

3) *A new program will be established to recruit, prepare and enroll qualified minorities and women.*

Each of the government agencies and authorities will share the costs of preparedness training and supervising of new apprentices; adopt a single set of goals and timetables to guide labor force affirmative actions for participating contractors and unions; create and finance an operating organization to contract with joint apprenticeship committees and others for the training and support of new apprentices; collect, tabulate and distribute information on program activities and results; and monitor and report on participant and program progress.

The NYSDOL will carry the bulk of responsibility of supervising and monitoring the apprenticeship programs and enrollment activities. They will enforce compliance by unions and contractors with the goals of the program.

Donald Grabowski, Director of Employability Services, New York State Department of Labor:

I'm charged with the responsibility of supervising the state's activities under Article 23 relating to apprentice training in the Labor Department. Article 23 establishes the New York State Apprenticeship and Training Council, a fifteen-member group appointed by the Governor to act in an advisory role to the Labor Commissioner on all matters relating to apprentice training. The Council is not a separate operating entity but an advisory organization.

The US Department of Labor has the Fitzgerald Act as its basic statute citing responsibility for apprenticeship. Under this statute it has issued two regulations:

1) *29 CFR 29, which relates to the registration of apprentice programs and agreements;*

2) *29 CFR 30, regarding affirmative action and equal employment opportunity in apprenticeship.*

In 1978 or 1979, under 29 CFR 29, New York State was designated as a state apprenticeship agency, allowing it to submit to the federal government the following: New York laws, regulations and plans that relate to the administering of an apprenticeship program.

NYSDOL acts as a registration agency for all apprenticeship programs and agreements. The Council acts as the advisory group to NYSDOL [Mr. Grabowski acts as Executive Secretary], *which meets at least four times a year to discuss matters relating to apprenticeship, and to hold open forums for the public. The Council*

makes recommendations to the Labor Commissioner, and NYSDOL undertakes the appropriate administrative activity.

In the earlier years of the apprenticeship program, joint federal affirmative action training was conducted by the US Department of Labor, Federal Bureau of Apprenticeship Training [BAT] *personnel and others. However, in recent years, due to budget constraints and limited resources, training sessions have not continued, but regular lines of communication are maintained with the US Department of Labor. To date, NYSDOL's Division of Affirmative Action Program in the Labor Department has the specific responsibility of handling the affirmative action portions of the apprentice training regulation and program activities.*

NYSDOL regularly reports to the Federal Department of Labor through a tape exchange, so that they are aware of the numbers that NYSDOL is producing. In addition, the US Department of Labor has four or five professional field apprentice training representatives who physically monitor, service and assist program sponsors in the operation of the apprentice program. However, no feedback has been received within the last five years from the Federal BAT regarding the levels of participation of minorities and women in New York apprenticeship programs.

In terms of affirmative action programs prepared by JACs, the Affirmative Action Division within the State Department of Labor reviews these programs on a form that permits five-year projections for program sponsors, which gives NYSDOL specific information on the sponsor's plans and activities. NYSDOL reviews how many apprentices are in the program as well as how many are female and/or minority. When a substantial gap exists or there does not appear to be continuing progress toward achieving the goal, NYSDOL's Grants Management Specialist and an Affirmative Action Officer meet with the program sponsor to review the situation and learn what the program sponsor intends to do to improve their performance. If the sponsor is reluctant, NYSDOL advises the sponsor that they will not approve their recruitment and/or certify their apprentices.

NYSDOL tries to avoid de-registration of the program, because this action hurts individuals in the program. To date, NYSDOL has only de-registered one program [a number of years ago]—*New York City-Teamsters Local 363—because no one was completing the apprenticeship. The de-registration was not issued solely for affirmative action reasons, but for a combination of many circumstances.* [Mr. Grabowski did not provide examples].

NYSDOL does not request that the sponsor keep track of the number of minorities and women that actually apply, due to the fact that it involves extensive recordkeeping. However, NYSDOL can keep track of some apprentices through the aptitude test that NYSDOL conducts. Basically, NYSDOL considers the clerical burden extensive, and NYSDOL would rather concentrate on the results by evaluating the selection criteria based on the requirements of the occupation and the realities of the labor force. NYSDOL does not conduct validation studies on a national level because it involves extensive field work.

NYSDOL regulations require that all apprentices who meet the minimum qualifications as stated in the application be entitled to go through the entire selection process and be ranked. However, one of the principal difficulties for applicants in general, not just minority and female applicants, is the aptitude test which has been used for 40-45 years and regularly updated and validated by the US Department of Labor.

JACs that have national apprenticeship standards that include an aptitude test must be approved by the US Department of Labor, and also parallel New York State standards which are approved federally. The Federal regulation on equal employment opportunity and the State regulation on equal employment opportunity and apprenticeship both specify that a program sponsor can have an occupational qualification, provided that it is job-related and applied equally to all applicants regardless of race, creed, or color.

However, IBEW has a national standard which indicates that individuals with a high aptitude are substantially more likely to succeed as apprentices and become fully-qualified workers. Therefore they encourage their JACs around the country to select only highs, regardless of the impact on the number of apprentices that will be accepted. Some JACs select "M" aptitude.

NYSDOL does not believe that JACs violate Title 7 of the 1964 Civil Rights Act [under the theory of discrimination/disparate impact] *with regard to their apprenticeship programs, because JACs' standards mirror U.S. Department-of-Labor-approved standards. In addition, regulations require and permit the case of an occupational qualification where it can be established as necessary for success in the occupation, and it can be determined that it is applied uniformly. Yet, NYSDOL encourages sponsors to have a selection process that goes beyond merely the aptitude test, to establish a selection system that gives no particular component more than 25-30 percent of the total process.*

In Monarch Electric v. Commissioner Roberts, the court stated that training programs served "a compelling policy of eradicating discrimination from our construction industry . . . It would be highly desirable for the Legislature to re-examine Labor Law Section 220 in light of 20 years experience, because its application today unexpectedly frustrates the very important policy of reducing discrimination in the construction labor force."[5] *This confirms NYSDOL's position, and NYSDOL would like to facilitate the transition of trainees into registered apprentices.*

However, after much research, NYSDOL found a large number of trainees were in fact registered apprentices [often in the Carpenters Union]. *NYSDOL can only list all of the individuals who have ever registered as apprentices, noting whether or not they completed the apprenticeship and received a Certificate of Completion. NYSDOL cannot provide current union membership status. It is the responsibility of the Federal Department of Labor to oversee trainees to which the USDOL can provide information on the amount and type of monitoring they do and the validation of the activities of trainees.*

Recruitment

To ascertain the number of positions that should be recruited, the NYSDOL Division of Research and Statistics regularly prepares projections of employment opportunities by occupation and industry, including apprenticeship occupations, and NYSDOL shares these projections with representatives of the industry and with the State Apprenticeship and Training Council, and discusses this subject with labor and management in the JAC. It is the JACs who decide how many apprentices ought to be recruited in order to meet their need [based on the amount of work available]. *It is the NYSDOL position not to keep statistics on the membership of the unions because the nature of the industry is a geographically mobile one. Many contractors operate on a regional basis and it is the contractors who provide the employment in the industry. So the industry and its members, particularly the workforce, flow back and forth.*

Thus NYSDOL finds it a problem in gathering information on local unions which have apprenticeship programs. Therefore NYSDOL does not request information on union journeyperson workforce, the kind of progress the apprentices are making, or ethnic or gender information, due to the tremendous amount of data that NYSDOL collects. NYSDOL finds it does not have the ability to capture and manage such information, and retain it in an accurate format. Therefore there is a good deal of data in many programs that NYSDOL does not collect, simply because it does not

directly relate to the administration of the program, such as classroom training, which under Article 23, is the responsibility of the State Education Department.

In recent years [1980-1987] *NYSDOL has been deeply concerned about a decrease in minority registration in the apprenticeship program. Though Professor Roger Waldinger has found* [in prior testimony] *that there were more people who dropped out than went on to graduate as apprentices, the NYSDOL data indicates a completion rate of 60 percent.*

NYSDOL regulates enrollment by the use of goals that are approved and assigned to apprenticeship programs. The goals vary by trade and geographic area and are developed by official figures that the US Department of Labor and US Government are using for that particular area. This is then compared to the participation rate in the labor force in the program area. The goals are updated annually for New York state, are disseminated through the Division of Research and Statistics, and promulgated to program sponsors by field staff.

The minority participation goal in New York City is 43.8 in the five boroughs. The goal is adjusted for programs that have jurisdiction in both New York City/Long Island, or New York City/Westchester County, or New York City/New Jersey.

Eligibility requirements

There is a statutory requirement for at least 144 hours of related classroom instruction for a registered apprentice. A number of program sponsors, including the electricians, have moved to have related instruction delivered at the post-secondary level rather than at the secondary level, because the nature of the occupation is continually getting more difficult, and a post-secondary educational system is increasingly able to deliver more related instruction than before. The great value of this is that individuals get college credit for their work experience, and this usually totals half of the total number of hours required for an Associate Degree.

Though some apprentices complain about the additional classroom instruction [most frequently about remedial courses in English and Mathematics], *the nature of the industry increasingly requires proficiency in basic areas.*

Investigation of complaints

NYSDOL does investigate complaints from apprentices who inform them either informally or formally of problems. One common complaint is that the apprentice is

used as a go-fer. Apprentices often are very anxious to learn, they want to quickly get in and do everything, and unfortunately, the industry often is not organized to spend the amount of time for this to happen. Therefore each apprentice is required to keep a "blue book" to replicate work processes and hours.

Each apprentice has a copy of the registration documents so they know they are registered apprentices and they are aware of the responsibilities of both the program sponsor and the apprentice. In addition, NYSDOL field staff [who work evenings and Saturdays] *advise participants how they can file complaints, who to complain to, and provide telephone numbers appropriate for complaints.*

Though NYSDOL has a written sexual harassment policy which is included in the copy of the regulations, [including information about discrimination] *in the areas of pornography on the sites and harassment of female apprentices, State regulations provide that the Division of Human Rights handle all complaints relating to discrimination. However, NYSDOL, at its annual State Apprenticeship Conference, offers affirmative action programs by the Division of Affirmative Action to answer questions and assist managers.*

NYSDOL does not ensure compliance with EEOC requirements, but the field staff, the people who service the program, and the staff of the Division of Affirmative Action Programs are actively involved in the area and feel a responsibility for enforcement of equal employment opportunity.

Richard Wong, New York State Department of Labor:

Apprenticeship testing is used for (1) vocational counseling, and (2) for the selection of employees for companies, unions and civil service positions. Four types of tests are used in job service, including (1) achievement; (2) clerical skills; (3) interest measures; and (4) aptitude. Aptitude tests are used for the selection of apprenticeship candidates.

The program that developed the various tests for the job service network is a federal/state cooperative program funded and directed by the US Department of Labor in Washington D.C. There are four regional centers. The Northern Field Center in Detroit, Michigan is the center to which the New York testing unit reports. The program, which has engaged in testing for 50 years, employs the latest statistical methods and complete technology used to develop and meet current professional and

legal standards [*i.e.*, the apprenticeship program has been researched nationwide with the inclusion of ALANA samples].

The study for specific occupations is completed by the following:

1) *Job analysis through direct observation of jobs and interviewing of workers and supervisors. Information is gathered regarding job duties, skills, knowledge, abilities and training time.*

2) *Job performance criteria such as supervisor/instructors ratings, work samples, average hourly production, and average hourly earnings.*

3) *The test is then administered to a sample of workers that represent the particular occupation with respect to age, education and experience.*

4) *Job analysis information, test results, data determining aptitude and cutting scores (satisfactory versus unsatisfactory). Scores must be shown to be nonbiased.*

5) *Running a check study with different workers and trainees to verify effectiveness.*

Tests are scored in the apprenticeship selection by the following criteria: "H" or High = meets or exceeds cutting scores; "M" or Medium = meets or exceeds cutting score plus one standard error of measure; "L" or Low = does not meet cutting score. The standard error of measure is a statistical way of determining an individual's score, given that an individual's score usually does not vary more than one standard error.

There are currently 374 specific aptitude test barriers, 184 being used for restricted selection, and 290 for unrestricted. However, approximately 100 are used for apprenticeship selection. The New York State Department of Labor assigns suitable specific aptitude test battery [sic] *for apprenticeship selection by considering the following: 1) Request from testing units in New York City from Apprenticeship Central Unit in Albany whenever a registered program requires a testing assignment; 2) After review, a suitable testing unit is assigned in a branch or local office, and the apprenticeship central unit is notified in writing.*

After testing is complete, the local office or testing unit notifies the apprenticeship sponsor of the test result in terms of high, medium and low. However, the test scores

are only one part of the total assessment process. The maximum number of points allocated to the testing model is 35 points out of 100. In most cases, the average number of points is less than 35. Since the New York State Department of Labor does not indicate to a sponsor how many points should be given for an H, M, or L rating, a sponsor can subtract ten points for an L score. For example, if 35 points are assigned, a sponsor can give ten points for an L score, and actually count testing for 25 points. Thus, an apprenticeship candidate could qualify for a program with an M or even an L score if the apprentice does well in other areas.

Pat Sullivan, New York State Department of Labor, Apprenticeship and Training Council:

We routinely get statistics from the State Department of Labor. I grabbed some from July, 1989, which was just a month I happened to choose. New York City is still running behind statewide statistics in some of those trades. Statewide for all the trades, [women's representation] *is 5.2%. Very low. The City is 3.0%.* [Another paper I've given you] *says "Status of Participants in New York State Apprenticeship Program." Some of those categories are going down in 1989. The situation has not improved; it has worsened.*

[With regard to the battle over trainee programs] *the unions now seem to* [support] *career apprenticeship. I haven't heard them define it yet. If it's solely the training sponsors, the unions, then I'm against pre-apprenticeship. If it's inclusive of those community-based and/or governmental agencies that will keep the best interests of minorities and women, that may be workable. It has not been defined yet.*

The only premise we work under in the NYSDOL is that we cannot certify [an apprenticeship program] *with criteria lower than the existing standards. We can go above it, but we cannot go below it. So it kind of leaves us stuck to whatever the apprenticeable trade is, and its criteria. If we even wanted to set up our own, we'd have to go by the existing criteria, unfortunately. The Governor has appointed a few women and minorities to the State Apprenticeship Council* [within the last few years]. *At the most recent State Apprenticeship Conference* [1990], *we sent the Commissioner of Labor of New York State a resolution unanimously passed that* [states that] *if there are trade unions that have not gotten their EEO program in, they will not be certified and they have a time limit now. I would say about 70 percent* [of the trade unions haven't got EEO programs right now].

[If a trade has discriminatory standards that are not job-related] *we can raise the issue* [with the unions and contractors] *and send it back to the Council for the NYSDOL, and we have done that. We are just an advisory* [body]. *We don't get that many new trades coming in to be certified. I believe* [in] *five years, out of maybe fifty new trades, I think we sent back two. I really don't remember* [who they were. The Apprenticeship and Training Council members did not receive any training on the effects of Title 7 on apprenticeship programs] *in the time I've been there.*

I don't know what the future of organized unions in the building trades is. I can just tell you the percentages of non-union jobs are increasing. Minorities and women are hired by non-union, as well as minority and women contractors, and when you have a minority contractor, you see minorities and women work. When you have a female contractor, the same happens.

State Department of Transportation

Howard Sheffey, State Department of Transportation (DOT):

Once realistic goals are set, the State and local government can apply equal opportunity rules whereby when a person with the skills applies for a job, we can look to the employer's rationale as to whether or not they hired the person with the skills. In the case of the DOT, *with heavy highway construction, there is very little construction that does not require some form of skill.*

To assist in acquiring skilled workers, a new version of apprenticeship programs has been offered in upstate New York called Open Shop Associates [OSA], *which has a State-approved operation engineer program. OSA has submitted programs for operating engineers, ironworkers, carpenters, and cement masons to be used by 25 of the largest non-union contractors in New York State above Westchester county.*

This form of apprenticeship is taken by DOT because DOT had to resort to on-the-job training to get ethnic minorities and females into apprenticeship programs. It is due to the Monarch and the Ivac cases, to which the Department of Labor [DOL] *refused to allow agencies who are building with 100 percent state monies, to use on-the-job training and pay the trainees a differential wage less than that of the prevailing wage. This action caused some difficulty among the contracting industry because contractors do not welcome projects where they pay trainees 100 percent of the prevailing wage.*

NYSDOT has been working with NYSDOL to develop apprenticeship programs that can be universally applied whereby state agencies, as a demonstration, can evaluate and compare their program versus OSA. Basically, DOT's only interest in training programs is that there is a lack of skilled people to accommodate the goals that have been established for DOT projects.

Given the fact that affirmative action goals have not been met, DOT is working with the State Department of Labor to develop apprenticeship programs that can be applied to non-union type jobs. By working with organized labor components, DOT and the State can develop a cooperative agreement whereby the substantial increase in construction [anticipated in Metropolitan New York over the next five to twenty years] *can be taken advantage of.*

It is envisioned that with the increase in the volume of work, recruitment and enrollment of apprentices would be based on a sponsor's gamble that the anticipated amount of work and the number of skilled people would not be oversubscribed. They would put more New Yorkers to work that are now begging for work that people from other states with special authorization are receiving in skilled crafts.

Unfortunately, for many years various people with DOT have believed that the responsibility for civil rights programs rested with the civil rights office and that DOT had neither an interest nor a responsibility or accountability for its enforcement. DOT has found that to ensure that contracts are adhered to, is to fix the primary responsibility for contract compliance on the engineer of the project. The project engineer, along with a compliance specialist, can maintain a cyclical visitation schedule and monitor the contractor. The project engineer would be responsible for daily inspection reports that document who is working on the projects, whether goals are being met, the number of new employees, whether payrolls project Equal Employment Opportunity goals and, if not, whether the project needs additional trainees or apprentices to meet those goals.

This system of monitoring has improved contractor compliance at DOT. Though there are contractors who are still not in compliance, they are doing better without a fight which results in lasting opportunities for minorities and females. We, [DOT], *ought to spend more time developing uniform rules, codes, and applications. This would eliminate the confusion that exists in attempting to interpret a variety of rules. Eliminate the proprietary interest among the city and state agencies, and exchange information, thereby eliminating contractor confusion. An*

example of such cooperation exists with Article 15-A in the law of 1988 in New York State, which created a single office for minority- and women-owned Business Development in the Governor's office: rules emanate from one place, are monitored from one place and the program is applied uniformly.

Another obstacle is that non-union contractors who have apprenticeship programs have to bear the expense of running the classroom-related training aspect that is at least 144 hours by law. It would be reasonable for the State [which imposes the obligation] *to take the responsibility of making available the facilities for the training and all other essentials for the program to non-union contractors.*

By creating demonstration projects in Monroe, Erie, and Duchess Counties, the state can offer non-union apprentices a central location for classroom training. This would be successful in that, above the Westchester County line, most cities and towns are non-union.

In the New York State Department of Labor, we have approximately 200 people involved in some form of training. Most of them need greater opportunities to demonstrate their abilities. Therefore, through an interagency task force, DOT will train more people as well as seek to get the people who sponsor the apprenticeship programs to enroll these trained people using affirmative action techniques, thus increasing the number of minorities and women who are trained and have obtained a "union book." The goal of this program is not to abandon people previously enrolled in other programs, such as on-the-job training or the New York Plan for Training, but the fact remains that neither of those plans were successful and people did not get enhanced skills from the experience.

Thus, the DOL and DOT have recommended that all the people in training programs be evaluated by level of proficiency and slotted into appropriate apprenticeship programs. What we propose is an apprenticeship program for minorities and women on projects that do not have organized labor affiliations. We may encounter difficulties, but things will have to be worked out in a brief period of time.

As apprenticeship becomes something that is narrowly and specifically associated with unions in construction, the only way we are going to train people to have the skills needed to do the work is to take an interest in them. Construction is competitive and constantly moving, therefore the government must ensure continuity in training and eliminate trainees that just sit in a truck or who just hold flags. If we

train people in a skill, somebody has to take that person by the hand from day one and nurture that individual until the day of completion.

If you take on a person, give them the best training, and cut them loose, who is going to maintain the continuity that the trainee gets to the next contract? The government must be willing to undertake the same role as Joint Apprenticeship Councils by monitoring skills development.

1. *Access and Opportunity: Developing a Skilled Construction Labor Force in the Port Authority Region. Thomas Bailey and Roger Waldinger. January, 1989. Pg. 18.*

2. *Ibid. Appendix I, Table 9.*

3 *Equal Employment Opportunity Commission v. Joint Apprenticeship Committee of the Joint Board of Electrical Industry, 84-CV-3373.*

7

Training programs

The New York Plan for Training (the New York Plan) was created in 1970 in reaction to continuing discrimination by unions. Funded by the City and State of New York, together with the Building Trades Association, its aim was to provide an alternate means of attaining journey-level status, a route which would parallel union apprenticeship programs and afford women and people of color greater opportunities to enter the construction trades. While some union programs had not indentured apprentices for years, the trainee program offered open enrollment along with a comparable course of instruction leading to federal certification. In addition to learning in the classroom, trainees would gain on-the-job experience on most public sector job sites and be paid at the same rate as apprentices.[1]

The New York Plan was supported in 1980 by Mayor Koch's Executive Order 50 (EO 50) which mandated that City-assisted construction contractors hire one economically disadvantaged person as a trainee for every four journey-level workers in each trade. As the majority of economically disadvantaged persons in New York City were people of color or women, the intended effect of the Executive Order was to widen the opportunities available to these protected classes. To ensure that companies doing business with the City of New York provide equal employment opportunity to all employees and applicants for employment, the City's Bureau of Labor Services (now the Division of Labor Services) was charged with enforcing EO 50.

These efforts were dealt a severe blow by the 1987 Court of Appeals decision in Monarch Electrical Corp. v. Roberts, which required contractors on public work sites

to pay trainees journey-level wages. The decision was based on NY State Labor Law 220, which recognizes only two classifications of workers—apprentices and journeyworkers—and allows for an employee to be paid apprentice-level wages only when the employee is in an apprentice program registered with the NYSDOL. By requiring the far higher journey-level wages for trainees on state-funded jobs, the Monarch decision has, in effect, made trainee programs unworkable on most construction jobs. While EO 50 is still enforced on all private construction projects that qualify for tax abatements or tax deferral, only about 300 trainees in all the trades are presently working in this program.

Criticism of the New York Plan

The New York State Department of Labor has taken the position that the NY Plan should be phased out, and public agencies should focus their efforts on increasing access to the registered apprenticeship programs for people of color and women. A number of experts at the hearings supported this position. Esmerelda Simmons and Dianne Dixon of the Medgar Evers Center for Law and Social Justice, William Shaw of Urban Affairs, and former General Counsel for DLS Diana Autin contended that the NY Plan is inherently flawed because it diverts attention from the unions and more appropriate efforts to open up joint apprenticeship programs to people of color and women, while giving the impression that a comparable, discrimination-free mode of access into the trades exists.

They argued that the trainee programs should be dismantled because trainee status is a form of second-class apprenticeship, without the benefits of the joint apprenticeship program. Diana Autin, pointing out a flaw in the design of the program, stated:

> *From its inception the training program was funded and controlled by the discriminatory construction industry, not by government. Therefore there was no control by government over the number of trainees in the program, leading to an insufficient number to meet the need.*

Finally, Mr. Shaw explained how trainees are stigmatized by the very nature of the program:

> *When a trainee goes on a site, the other workers perceive him or her as having gotten the job due to special conditions* [trainees must be economically disadvan-

taged. He concluded by saying] *it cannot work that way. Everyone must go in through the same door.*

Furthermore, it is contended by these critics that the New York Plan for Training, even in its diminished capacity, is riddled with operational problems. As Ms. Simmons claimed:

> *[T]rainees have no set training schedule or curriculum, which makes it impossible to determine the adequacy of their skills or the point of completion for their training. Unions do not credit the program. When a trainee intends to enter a particular trade and be member of a union, he or she encounters the same difficulties as somebody who has never been in the training program or has no experience at all. Trainees remain trainees indefinitely; they do short-term projects with no meaningful avenues for advancement. Racial minorities are never seriously considered on the construction sites. They are always seen waving the same flag or carrying the same cardboard carton of coffee.*

According to Florence Moore of NEW and William Shaw, the New York Plan has failed to attract high-calibre trainees because there's no real outreach and no counseling on the part of unions and contractors. Frank Madison of Banana Kelly stated that his organization has a youth services program, at which he is a job developer. He said the youths his organization trains have tremendous difficulty getting work as plumbers, electricians, etc. . . . He blamed this on the scarcity of ALANA* contractors, adding that the contractors that do hire his trainees give them entry-level positions, menial jobs, and no on-the-job training.

Conversely, Mr. Shaw stated that:

> [I]*n many jobs, trainees work an average of between 14 to 20 hours a week. It wasn't because the contractor refused to let him work. It was because that is what he chose to work.*

However, he noted that many workers who are sincerely looking for jobs just don't understand the construction industry. They don't realize that if you don't hook up with a contractor willing to take you from one job to the next, you end up in temporary situations. He also acknowledged that other trainees have excelled in their jobs and gone through the program in a shorter period of time.

* ALANA = African-American, Latino, Asian-American, and Native American people.

Joyce Hartwell of AllCraft and Florence Moore of NEW offered similar criticisms of the New York Plan for Training. Ms. Moore stated:

> [That] *unions fail to make timely and adequate referrals to construction sites, upon request by city contractors to reduce their trainee deficits and contractors unlawfully refuse to place women referred by Nontraditional Employment for Women. For the working poor, especially women with children, it is very difficult to continue training and fulfilling program requirements while receiving a low stipend and low wages; trainees remain trainees indefinitely; they do short-term projects with no meaningful avenues for advancement.*

It was alleged that the programs fail to monitor training provided by the unions/ employers. Mr. Shaw argued that, if a trainee has a problem on a job, there should be a vehicle for that person to go and get some counseling from his or her TAP Center or the New York Plan.

Criticisms of the trainee program aside, several major unions, including Local 3 of the Electrical Workers union and Locals 1 and 2 of the Plumbers union, have terminated or are in the process of phasing out the operation of their federally approved training programs in light of the Monarch decision. In hopes of reviving the program, the Division of Labor Services (DLS) favors amending Labor Law 220 to include the trainee classification, thereby reinstating the application of EO 50 to City-assisted construction projects. Opponents of this amendment, among them the New York State Department of Labor (NYSDOL), believe the training program is counterproductive to efforts to pressure the unions to increase the level of participation of people of color and females in apprenticeship programs. NYSDOL recommends that Labor Law 220 be amended to include pre-apprenticeship, a model program for the entry of people of color and females into the construction trades, which includes the mainstreaming of participants into registered apprenticeship programs.

Ms. Simmons provided empirical evidence to support the argument that the New York Plan training program should be dismantled—if not immediately, then over time. She stated:

> [T]*he trainee program is inherently flawed. We disagree with those that think that an attempt should be made to reform it. It was built to be a short-term remedy, and we are here, twenty years later, looking at statistics that are worse . . . [W]hen the*

New York Plan was created, 21 to 28% were minorities entering the journeyperson status. Since then, that has fallen to 17% in recent years and continues to fall as construction decreases in New York City. In addition, most of these people go into those locals who are under the most pressure, either by consent decrees or by other mandatory affirmative action programs.

Mr. Shaw believes the unions can be convinced that opening up the trades (in the form of expanded apprenticeship programs) is good for their trade, for the community and for this city. He concluded that:

[A]*fter all, if you read Workforce 2000, the trend is changing. Many of the old standard-bearers are frightened like hell because their sons and daughters are no longer wanting to go into the trades that dad was in and to go through the process.*

In defense of the New York Plan

Oliver Gray, Director of DLS, James McNamara of DOE, and David Otto, an attorney from New York Prep, expressed support for preserving the New York Plan for Training Program. According to Oliver Gray, as of 1990 at least 1,000 trainees have gained admission to the unions through the New York Plan. David Otto argued that the trainee classification is a very good means of effectuating equal employment opportunity. He pointed out that contractors can get minorities on the job without having to go through the unions, although the unions do share authority over the Plan. Trainee programs are also more flexible in terms of entry requirements (*e.g.*, high school diplomas and entry exams are not required; maximum age is higher, etc.) and there is continuous enrollment rather than enrollment once or twice a year. In addition, the number of people of color and women who complete the training program compares favorably to the apprenticeship programs.

Mr. McNamara argued that the State legislature should pass a law recognizing the classification of trainee. If this were accomplished, contractors could go back to hiring trainees at the same rates as apprentices. This would require vigorous lobbying since committees in Albany bow to the pressure of the building trades. He argued that the City and State have an obligation to undertake this lobbying effort since the mechanisms for introducing people of color into the building trades have been taken away. He blamed the New York State Department of Labor for the

demise of the New York Plan for Training. According to Mr. McNamara, NYSDOL fined a contractor for having a "minority" trainee on its work site, which to this point had been existing State procedure. The contractor sued, and as a result, a case reached the Court of Appeals in the City of New York, and led to withdrawal of recognition of the trainee program, and penalties for contractors who hired New York Plan trainees. Though the program still exists, it applies only to tax-exempt City (ICIP) sites, not to those on which the City made direct cash outlays to contractors.

ALANA trainees

The trainee program has proven to be somewhat successful in providing people of color with opportunities to enter into skilled construction work and eventually to reach journey-level status. At the time of the hearings (1990 - 1992), the data provided by five of the seven unions operating training programs showed 326 trainees enrolled [See Table 7].

Table 7 - Racial Composition of Trainees Enrolled in Union Trainee Programs - 1990

Trade/Union	White		Black		Hispanic		Asian		Other		Total
	#	%	#	%	#	%	#	%	#	%	#
Plumbers Local 2	70	58.8	-	-	-	-	-	-	49	41.2	119
Electrical Local 3	19	24.3	25	32.0	30	38.4	4	5.1	-	-	78
Oper. Eng. Local 14	2	6.9	22	75.9	5	17.2	0	0	0	0	29
Carpenters DCC	3	4.2	45	63.4	20	28.2	3	4.2	0	0	71
Steamfitters Local 638	2	6.8	18	62.1	9	31.0	0	0	0	0	29
Totals	94	28.8	110	33.7	64	19.6	7	2.1	49	15.0	326

Note: Local 2 put Blacks, Hispanics and Asians in the category "other." Elevator Construction Local 1 and Sheet Metal Local 28 did not provide data on trainee programs.

As expected, ALANA participation is much higher in the training programs: 71.2%, as opposed to 27.5% in the apprenticeship programs. Still, this is a significant decline from the 95% level of participation by people of color in the New York Plan in 1985. The reasons for the decline are not clear.

The largest training program, with 119 trainees enrolled, was operated by Plumbers Local 2. This program, unlike any other, had a majority of white, non-Hispanic train-

ees (58.8%). The other active programs were relatively small, with 71 trainees in the District Council of Carpenters' program, though that organization has 22,000 members. IBEW Local 3's program was disbanded in 1990. Its demise makes the need for increased recruitment of people of color and women in IBEW's apprenticeship program even greater.

Many of the unions still need to expand outreach to Asian-Americans through their training programs, since this group is especially underrepresented in the joint apprenticeship programs.

Female trainees

Only two of the unions, Plumbers Local 2 and Steamfitters Local 638, provided information on the trainees enrolled in their Training Programs, broken down by gender [See Table 8].

Table 8 - Gender Composition of Training Programs

Trade/Union	Males		Females		Total
	#	%	#	%	#
Plumbers Local 2	113	95.0	6	5.0	119
Electrical Local 3	-	-	-	-	78
Oper. Eng. Local 14	-	-	-	-	29
Carpenters DCC	-	-	-	-	71
Sheet Metal Local 28	-	-	-	-	NA
Steamfitters Local 638	24	82.7	5	17.3	29
Totals	137	92.6	11	7.4	148

Note: Gender breakdowns were not supplied by all unions.

The Plumbers, with the largest training program among the unions profiled, included six women (5.0%) in their 119 trainees; the Steamfitters had five women (17.3%) out of 29 trainees enrolled. While enrollment rates for women in trainee programs were generally higher than in apprenticeship programs, the number of women enrolled was still insignificant. At the current rate of enrollment in training programs, female representation in the trades will not increase significantly for many years. There is little opportunity for women to enter the skilled construction trades, and with the demise of training programs, there will be still fewer opportunities.

Graduation and drop-out rates of trainees:

Information on graduates and drop-outs in the training programs was provided by five unions. While people of color comprised 71.2% of trainees enrolled [See Table 8], they constituted 82.7% of the graduates in 1989, and 91.5% of all drop-outs in the programs [Table 9]—an overrepresentation among both drop-outs and graduates.

Given the rolling (*i.e.*, ongoing) admissions of the programs, it may be that people of color often enroll—but stay in the program only briefly. Whites accounted for 17.3% of all graduates, which is low in relation to their representation (28.8%) in the programs. This suggests that whites comprise a larger portion of newer members than a few years ago because of declines in ALANA enrollment. Given that ALANA enrollment in the training program was 95% in 1985, and is down to 71% today, this is quite possible.

Table 9 - Graduates and Drop-outs in Training Programs - 1989

Trade/Union	White Graduates		White Drop-outs		ALANA Graduates		ALANA Drop-outs		Trainees Enrolled
	#	5	#	%	#	%	#	%	#
Plumbers Local 2	4	20.0	4	9.8	16	80.0	37	90.2	119
Electrical Local 3	7	46.7	4	22.8	8	53.3	14	77.2	78
Oper. Eng. Local 14	0	0	0	0	1	100.	14	100.	29
Carpenters DCC	1	3.3	2	4.7	29	96.7	41	95.3	71
Steamfitters Local 638	1	11.1	0	0.0	8	88.9	2	100.	29
Totals	13	17.3	10	8.5	62	82.7	108	91.5	326

Source: Joint apprenticeship committees of each union local. Note: -% indicates the percent of all graduates or dropouts who are white or ALANA.

Figures on female drop-out and graduation rates generally were not provided. Only Locals 2 and 638 included this data. Local 2 did not break its participants down by race, but stated it had one female graduate and four female drop-outs in 1989. Local 638 reported 2 female graduates—1 white and 1 Hispanic—and 1 black female drop-out in 1989.

In sum, the five training programs for which data is provided, graduated 62 people of color and at least three female graduates, as compared to the apprenticeship pro-

grams administered by the same five unions, which graduated 166 people of color and 18 women. (Sheet Metal Workers Local 28 and Plumbers Local 1 provided no information on graduates in either program). Despite the many criticisms of training programs, they have provided an alternative route of entry into the trades, which accounts for 26.1% of ALANA and female graduates from the two programs (trainees and apprentices) combined.

1 *Access and Opportunity: Developing a Skilled Construction Labor Force in the Port Authority Region. A report prepared by the Office of Business and Job Opportunity of the Port Authority of New York and New Jersey. Thomas Bailey and Roger Waldinger. January, 1989. Pg. 18.*

8

The role of contractors

Construction contractors play a critical role in determining the extent of participation of people of color and women in the industry, both through collective bargaining agreements with union locals and through selection of construction crews for specific jobs. Indeed, many of the individual construction workers who testified at the hearings implicated contractors in discriminatory hiring and layoff practices. At the inception of the hearings, the Commission and the Division of Labor Services intended to explore thoroughly the role of contractors and their associations. Like the unions and joint apprenticeship committees, however, contractors and contractors' associations were generally unresponsive to letters of invitation, requests for information and follow-up phone calls.

Ten contractors who were invited to testify were sent questionnaires regarding the racial and gender composition of their workforces. The invited contractors included Triangle Sheetmetal Inc., Otis Elevators Co., Kerby Saunders-Warkol Inc., Nastasi White Inc., Forest Electric, Hydraulic Plumbing & Heating Corp., Atlas Gem Erectors Company Inc., Wener-Dahnz Company, Cipico Construction Inc., and Empire City Iron Works. Of these, Forest Electric was the only contractor to testify before the Commission and DLS regarding its hiring practices and working relationship with a union local. Triangle Sheetmetal Inc., Nastasi White Inc., and Cipico Construction Inc. submitted written materials such as copies of Construction Employment Reports filed with DLS, but, due to scheduling problems, their representatives failed to appear at the hearings.

The four major contractors' associations invited to testify were the Building Contractors' Association (BCA), New York Electrical Contractors' Association (NYECA), General Contractors' Association (GCA), and the Contractors' Association of Greater New York (CAGNY). Four others—the Sheetmetal & A/C Contractors' Association, the Mechanical Contractors Association (MCA), the Association of Electrical Contractors (AEC) and the Association of Contracting Plumbers (ACP)—were invited simply to send responses to written questions. Francis McArdle, president of the General Contractors Association (GCA), was the only representative to testify at the hearings, and GCA also provided a response to the questionnaire and submitted supporting documents. The Association of Electrical Contractors responded to the questionnaire.

Despite the importance of information about the policies and practices of contractors and their associations, it was decided not to subpoena information from those who did not respond to invitations. This allowed the limited resources of the Commission to be applied to subpoenaing unions and JACs, as well as completing an analysis of data gathered from these sources.

Information on the contracting process, as described by the two officials who did appear, is presented here. Additional information from questionnaires and materials submitted is on file at the Commission, and remains available to researchers.

While many workers were critical of union referral practices, the vast majority of unionized construction workers, (the only exception being electrical workers), do not obtain employment through hiring halls. Rather, as Francis McArdle, Managing Director of the General Contractors Association, explained:

> *Contractors tend to hire from* [their] *foreman and* [their] *foreman's book, so to speak, out of a pool of people that* [they] *have aggregated over the years to be* [their] *workforce . . . The foremen are union members, and only hire from unions. That does not, however, allow the unions to dictate who is to be hired.*

In other words, a foreman usually selects a crew of people with whom he has a work history, and when a job ends, the crew usually stays together and is assigned, as a group, to the next job. If a crew is unavailable for a particular job, a contractor usually will assemble a pool of people with whom he has worked in the past year. When additional people are needed, a foreman often relies on this internal pool for referrals

of others within the industry. The informal referral network, then, favors insiders, such as family and friends, over outsiders, thus having an adverse impact on people of color, who are less likely to have such familial and social contacts.

The agencies primarily responsible for enforcing contractor compliance with non-discrimination laws on government-funded projects are the Federal Office of Contract Compliance Programs (FOCCP) within the U.S. Department of Labor; the New York State Department of Labor (NYSDOL); and the Division of Labor Services (DLS) within the New York City Department of Business Services. Every NYC agency that submits requests for bids on projects is empowered by the Procurement Policy Board (PPB) to recommend to the Comptroller's Office that a contractor be de-barred for non-compliance with equal employment opportunity contract provisions. However, this has occurred only in instances involving fraud or prevailing wage violations, not discrimination.

The FOCCP is responsible for enforcing Executive Order 11246 (see Chapter 9), which requires that construction contractors on federal job sites not discriminate in hiring, promotion or provision of benefits to employees. It also sets a 6.9% female journeyperson goal for each of the trades. DLS is charged with enforcing Executive Order 50, which has requirements similar to those contained in EO 11246, but includes more protected classes (*i.e.*, sexual orientation and alienage). DLS reviews construction contractors' employment policies and benefits. Currently contractors are not required to demonstrate to the City that they have an agreement with the union covering rules, regulations and procedures for employee referrals, nor are they required to show that they have policies and programs in place to prevent sexual harassment.

The following testimony was solicited to obtain greater perspective regarding the possible role of contractors in bringing about compliance with non-discrimination laws and regulations pertaining to job referrals, collective bargaining agreements, the contract bidding process, and the administration of apprenticeship programs. It should be noted that several "minority contractors" testified voluntarily about the obstacles they face in the bidding process, but since the hearings which are the focus of this report were limited to employment discrimination against people of color and women, this chapter focuses on the hiring practices and equal opportunity contract compliance records of "non-minority contractors" and contractor associations.

Abstract of testimony

Contractors and contractors' associations

Francis Xavier McArdle, Managing Director, General Contractors Association of New York:

Background on the General Contractors Association (GCA)

I am the Managing Director of the General Contractors Association of New York, an organization that represents 114 members, and some 600 additional industry fund contributors, in the heavy construction industry in New York City. We represent among our members people who do roads, highways, bridges, water mains, sewers, sewage treatment plants, and the like. Our [member contractors] *report to us approximately eleven million hours of employment per year. Some 95 percent of the reported hours we believe, although we have no statistical* [evidence, represent], *work on public works, for public owners. We are not, as an association, affiliated with any of the national trade associations. As a New York City organization, we think of New York as a little different than most other places. We are union contractors. And many of the associations around the country no longer have exclusive union contract membership. But we do.*

Job referrals

We do not have in our industry, with one court-ordered exception, standard referral hiring. We do not have a requirement in the collective bargaining agreements that we negotiate with some fourteen different locals, that people be referred from a hiring hall. [There is] *one court-ordered exception, which is the Lathers, Local 46.* [That order] *goes back well in the 1960s. In some of our collective bargaining agreements we are required to, for example, with the carpenters, employ at least one out of every two carpenters on a job, from the local in the area we are working in. But again, we recognize other than those kind of restrictions, no boundaries as* [to] *the movement of labor within the City. We do not find ourselves bound, as they do in many jurisdictions, to only labor from one location.*

Contractors' hiring practices

Clearly, contractors have the employment relationship, they engage labor. The contractor does the hiring and firing. The right to hire and fire, in our industry,

has been a very well-protected right of the ownership, well-protected in that it has been a strike issue in the past, and will continue to be of major concern to the members of our association. In our industry you tend to hire from your foreman and your foreman's book, so to speak, out of a pool of people that you have aggregated over the years to be your workforce. We want to make that very clear, because we're trying to protect our right to hire and fire, which means that we staff the jobs. We do not have a collective bargaining relationships with unions, other than, again the court-ordered relationship with Local 46. If an employee came to one of our contractors, one of the management, if you can call it that, that person would already be an employee. Companies in our industry are basically able to provide competitive low bids by having a well-coordinated workforce. That means a workforce with experience of working together in a team effort. People tend not to let that workforce get away, because once it does, your ability to predict productivity and production on a job site is diminished. If people in the crew are not available, the first thing [a contractor] *will probably do is try to reunite the crew they had a season before. If they have to add people, they go back to the pool of people you have used over the past five years. They are always mindful that people are measuring the composition of that pool. If a contractor can't find a productive crew* [after seeking people who worked in crews over the past five years], *they may pick people up off the street, literally. At the end of the job in that neighborhood, if those people are good, they may stick with the contractor and stay with him forever. So the pool changes. It is a pool, in some cases, of relatives, you know. There's no question, grandfather, father and grandson working for the same company over time.*

Skill level of GCA contractors' workforce

We tend not to be a big employer of carpenters. We tend not to be a big employer of specialty trades. Most of our people are pretty flexible in that regard. For us, a laborer, who we pay on average $50,000 a year, is not an unskilled person. The laborer may not come in with a lot of skills, but after working with a contractor for a year, they will have a lot of skills. We have many locations where people work without a lot of supervision. Someone comes in as a laborer, they get paid a union wage. Their ability to continue to earn that wage is going to be a function of their contribution to the team. Those who can't perform will be laid off. We estimate that probably a third of the workforce is minority. The Office of Labor Services collects the numbers. Our people only work for public agencies, so their ability to engage in what has been referred to as checkerboarding is substantially limited. From the

point of view of [the higher level of] *minority employment, the heavy construction industry is not something that has a high level of apprenticeable jobs. You get in there, and demonstrate by coming to work every day, that you're able to contribute to the job site.*

Hiring goals

If a company felt that adding female employees allowed them to move closer to the goals that were expected of them, they would hire that person. That person would probably be among their employee pool, as somebody who was a known quantity to them. Much of the hiring is done by referral from foremen, referring others who they know. If you're a foreman and you need to widen your pool, you are likely to turn to people in the pool and say, "Hey, I am looking for a mechanic for my shop. Do you know somebody? Do you have a relative that does that work?"

Since 95 percent of the work is done for public agencies, they are looking at the mix of employees within the pool. Companies that are not meeting their goals are going to get scrutinized with more intensity about the composition of the pool from which they're hiring, and the circumstances under which they hire and lay off. I simply don't know how much raw hiring off the street occurs at job sites. Surveys we have done, they are very informal, suggest that 70 to 75 percent of the workforce in our industry is a permanent workforce, does not get laid off in the course of a year. It would be very interesting to test some of the payrolls that our people provide the Office of Labor Services. Somebody is getting certified payrolls from our people every week. I don't know how many people really study them, but that data pool is there. It is my perception that the pool of minorities in particular rises each year simply because as people are added, and tested, they will stay with the contractor [and refer their friends and relatives for work].

EEO and affirmative action

[With regard to] *affirmative action obligations, as would be the case with hazards communication or safety requirements, it's clearly the contractor who sets the tone for the job.* [The GCA members], *I think DLS might well recognize, have done more than most segments of the construction industry in opening employment to minorities and other nontraditional market entrants over time, and the like. It could be done.*

[Upon questioning by Mr. McNamara, Mr. McArdle couldn't recall any instance of a Federal, State or City contractor ever being rejected as a low bidder because of equal opportunity or affirmative action requirements, nor was he aware of any instance in which an agency took action [*e.g.*, held a hearing, suspended payments or debarred a contractor] for failure to live up to their EEO commitments].

Sexual harassment

To the extent to which there are issues that arise in the area of sexual harassment or any employment relationship, contractors should, and can, on their own, and in concert with the unions with whom we have collective bargaining agreements, participate in training that would move towards reducing that harassment on the job. The success of that is going to be measured in part by the efforts of the contractor over time. I have inquired of our members as to [whether or how they have established guidelines on the issue of sexual harassment]. *We would be more than happy to* [work with the Human Rights Commission to survey our members or send them educational literature on preventing sexual harassment].

This is clearly an issue that our industry will have to deal with over time. We have not developed model procedures for people in a number of areas. And it's something we think we should be doing, not simply in this area, but in a number of others. We have not availed ourselves of national programs, if they, in fact, exist. Increasingly, companies are being asked in regulations to do more than simply post a sign, but to have affirmative training programs. Model procedures become significant in our industry because most of the 114 members and the additional 600 smaller companies that are among our members are small companies, with limited overhead office space. Most of these people work with literally no more than fifteen to twenty people in their office, and almost everybody is out in the field. And there are multiple locations and multiple sites. So [the lack of resources and decentralized nature of the industry] *is an issue.*

We would be happy to work with the City to develop model procedures that make sense, that work, and that would, in fact, reduce the amount of sexual harassment on the job. Contractors that I've spoken to have not had anything reported to them. Then again, I don't know that they have had a lot of female employment. [Even if it occurred], *I don't know that they would have a lot of reports. I believe most of our contractors would react very negatively to harassment on the job. It would be a*

significant issue for them. [As a result of inheritance and the death of a spouse], *we have a substantial amount of female ownership among the companies in the association.*

"Minority" coalitions

The complaints that have been registered in some cases by the so-called coalitions is that the minorities on the job are not their minorities, but, in fact, are minorities of the contractor, and somehow they don't count. We consider that unacceptable.

Collective bargaining

We do [have] *thirty members on the Executive Committee. At least one of our Executive Committee members is female. We have one black member, and two other minority members. I think both are Brazilian. There are 600 contributors to the Heavy Construction Industry Fund. They contribute 13 cents per labor hour worked to the fund, except for the lathers, which contribute 8 cents. The Industry Fund supports the activities of the association, promotes the interests of the industry. We have two full-time professionals who do labor relations. The dues* [paid by the contractor members] *range in size from $360 to $1,560 annually. The association has a standing Labor Relations Committee that negotiates collective bargaining agreements. We bargain with a series of locals. We bargain with two locals of the operating engineers, Local 14 and 15. Local 15 has three categories—the operators; the shop men, Local 15C; and the surveyors, Local 15D. We negotiated with four different locals of the carpenters; we also negotiate with the dock builders, divers, timbermen, and several laborers' locals. The contractors hire the foreman, who is a union member. But that does not allow the union to tell contractors who they hire.*

The Teamsters is the only place where seniority matters. Everywhere else there is no seniority. We do a lot of direct City work, MTA work, Port Authority, direct State DOT work, indirectly assisted work, of course, through both State DOT and State Department of Environmental Conservation. 70% of the work is probably for the City. There is a Building Trades Employers Association, which largely brings together high-rise private sector contractors. But we do not participate in that. They are an association's association.

On the high-rise side of things, you have the Building Contractors Association, who represent general building contractors active here in the City, Mechanical Contrac-

tors Association, that represent the pipefitters, the steamfitters. There's an Electrical Contractors Association. There is a Plumbing Contractors Association. There is an association that employs labor directly, called CAGNY, the Contractors Association of Greater New York. They are construction managers. All of the associations have their own contractors. We do not negotiate with the iron workers, we never have. We do not negotiate with the concrete workers. Some of our projects are as small as a million dollars. We have people who have just taken a $73-million contract, a joint venture on the Williamsburgh Bridge cable job. The Labor Relations Committee doesn't negotiate all GCA contracts.

There is a special committee structure that focuses specific industry segments toward the trade with whom they negotiate. The Tunnel Committee negotiates the tunnel contract. The association itself offers a model contract for people to sign, as opposed to being the signing agency. Contractors adhere to specific contracts by giving the association the right to bargain for them. They are free within our association, as a member, to have us negotiate with everyone, or adhere selectively and not have an agreement with the Teamsters. The operating engineers contract was negotiated by the full [Labor Relations] *Committee. Not all members of the Labor Relations Committee are members of the Executive Committee.*

Joint apprenticeship programs

The GCA does have a say concerning who sits on Operating Engineers Local 15's joint apprenticeship committee [JAC]. *It is the association's paid staff, in the main, who staff the joint committees. We negotiate and sit on the carpenters* [there is only one carpenters apprenticeship program] *and the operating engineers JACs. We do not sit on the lathers because it is court-supervised by Judge Moskowitz. He has a Special Master who manages the program. I don't recall* [if the issue of underrepresentation of people of color and women in the joint apprenticeship programs] *has come up recently as an issue. We certainly had extensive discussions at the Executive Committee level at the time when the Local 15 EEOC case was underway, because we, in fact, were made a party to the case. With regard to Locals 14 and 15, there is a City license requirement. You cannot operate a crane in the City of New York without a license. There's a Catch-22 with the Building Department regulations and the insurance regulations. I am under the impression that the trades with whom we bargain, excluding the license issue, but certainly the carpenters, have had a sufficient tradition of open apprenticeships, such that there are a large number of minorities and women within the carpenters. We don't employ a*

large number of carpenters. We tend to employ dock builders and timbermen. The [latter two trades] *have a history of minority involvement. I think the carpenters have made a major effort over the last decade to enlarge the number of women. I believe, although I would not want to speak authoritatively, that approximately 15 to 20 percent of all their apprenticeable hours in the last four to five years have, in fact, been worked by women. If you are a company in our industry, and 75 percent of your workforce has been with you for five or more years, and constitutes a permanent workforce, you do not make an employment decision for every job. And when you do, you recall the same* [operating engineer].

Many of our contractors do not think that's a new employment decision, because they are in a business where some people work full-time, some people only work 80 percent of the year, some people work 60 percent of the year. I believe a number of routes to membership within the operating engineers are available to people. I believe that the very license that the City, itself, tests for becomes an issue. The employer makes the [financial] *contribution. The specific allocation to any category is determined by the union. I presume all of the reports with respect to the operation of the JACs are reported to the Department of Labor, and are therefore public documents.*

The role of government

I believe that in addition to the funds that are generated by employer payments, there are funds that come from a variety of other sources. I believe there are dollars from the Board of Education for certain kinds of training, and from the State Department of Education. And I think there are some Federal dollars, specific grants, that are made from time to time.

There has been a long tradition, going back to the 1920s, of involvement of public dollars. There is a very vital role that the government can play within apprenticeship programs. And it may not simply be one of dollars. [He went on to cite the role of public education which enabled his uncle to gain credit towards an apprenticeship completion at an earlier age than current laws allow]. *The various agencies of the City of New York are substantial employers of journeyperson labor. One might ask why the City of New York, as an employer of journey-level persons, does not have apprenticeship programs into which people are incorporated, so that the government, as employer, contributes to the apprenticeship funds, but also has*

apprenticeship programs which have goals that would be consistent with that of every apprenticeship program in developing training and skills of people.

There are a lot of reasons why the government in many facets would want to be in the business in more than a regulatory fashion. For example, if, in fact, the City, as a conscious policy, had one apprentice for every four journeyperson carpenters that is employed, and had apprentices who were being trained within the apprenticeship pool, and the City contributed as an employer, then the City, by its own employment practices, could affect that employment. The City would have an effect within that pool. [Mr. McArdle noted that Charles Fanning supports such a City-run apprenticeship program, and McArdle believed that the Operating Engineers Local 14 and 15 would cooperate as well].

Abstract of testimony

Mr. Hirsch, President of Forest Electric:

Our goals are bound by the amount of minorities available in the workforce of Local Union No. 3, which we are members of. It would probably be in violation of my contract [to attempt to recruit outside Local 3]. *Mr. Masterson, who is Forest Electric's Contract Compliance Officer, has reminded me that we have forwarded names from many women's organizations to Local 3 in the past. We have also worked with a progam to help women get through the apprenticeship application process. Job referrals for the last 45 to 50 years have clearly been from the Joint Industry Board.*

Approximately 20-25% of the work we do is for government agencies. We do file an EEO-1 report that does outline our workforce to the Federal Department of Labor, monthly. I assume we file it because we are required to.

We have utilized trainees. We have trainees employed right now. The trainee program used to be administered by Local 3. But as of the last few months, the trainees come from the Joint Industry Board.

Forest Electric is a member of the New York Electrical Contractors Association. It's fair to say that [if someone presented him- or herself to one of our field superintendents who is not yet a member of Local 3, IBEW, but had the requisite skills, we would not be able to put the person on our payroll because of the Joint Industry Board's exclusive hiring hall arrangement].

An electrician is unlike most trades in the construction industry in terms of the technical ability that is needed by a journeyman electrician. There are strict licensing procedures. [Mr. McNamara pointed out that only a small percentage of Local 3 journeypersons are licensed electricians].

I'm a trustee of the Joint Industry Board. The JIB is financed through an assessment from industrial contractors of a percentage of payroll. Management does not have the right to reject someone sent down by the Employment Department of the JIB, except for specific cause [*e.g.*, discipline problems].

In our organization, we leave the decision on foremen and how they are obtained with the superintendent staff of our organization. But for the most part, we try to bring up our people from the apprentice ranks and new journeymen ranks [and give them greater supervisory experience].

The [31-member] *JIB governs the funds of the local union, the men's pension, annuity, medical, and other various funds. There's an equal number of employer and union members on the JIB, and one public member. The Employment Department is there to make sure that members don't have to pay to get jobs, to make sure there's no patronage system. There's 10 minorities on the JIB, five from each side. There's one, maybe two, women on the JIB.*

1959 was the last year of the so-called father and son selection in the electrical industry. About 30 years ago, Harry Van Arsdale, the former Business Manager of Local 3, had taken it upon himself to say that there was a deficiency of minorities in the electrical union, and decided to go from taking in over 200 or 300 apprentices, to taking in 1,000 apprentices. A great deal of those were minorities.

Our union is probably around 20% minority. Among younger members, it's probably greater than 20 percent, higher than any goals ever set by any agencies that I know about. I take offense at the statement that it's harder for minorities to get into Local 3 than other unions because I'm a member of the Joint Apprenticeship Committee, and part of the interviewing process.

What I think is difficult is for us to find people, and mainly women. In the last round of applications for the apprenticeship program, only about 125 women applied out of 5,000 applicants. Probably about 75 were qualified, meaning they had a high school diploma, and were the minimum age.

I seriously doubt the validity of those complaints [concerning sexual harassment, denial of benefits, sick leave, pension]. *There are many different grievance committees. I'm the largest employer. I employ over 10 percent of the people in the Local 3 area, sometimes as high as 15 percent. Not one of those complaints was ever lodged to our company.*

We do use travelers [out-of-town workers] *or permit workers, at least 10 percent of our workforce. The travelers in New York City have always fulfilled the shortage of workers. They are members of IBEW, not Local 3. They are referred to us through the JIB. We don't request a traveler or a nontraveler; we request a journeyman electrician.*

During unemployment, there are lists. What is published is the amount of time an electrician should expect to be out of work if he is unemployed: three days, a week, what have you. If anybody is held out of work for seven or eight weeks and his fellow brother is out of work for five days, yeah, there's something very wrong. There's over 10,000 employees. Things can go wrong. I seriously doubt that there is a conspiracy [to abuse the system and keep people out of work].

Layoffs are a management decision. When a job is winding down, the man is transferred to another job. A worker who is laid off is given a layoff slip indicating the reason they were laid off. A copy goes to the JIB. A worker can appeal a layoff. Appeals are handled by the local union, not by the JIB.

The apprentice-to-journeyperson ratios are the maximum number of apprentices that one can employ on a job. There is no minimum. Putting apprentices on large jobs is not the ideal place to get a well-rounded training for an apprentice. The smaller jobs are really where you would like to see a trainee get a training program.

Apprentices go to school at night besides working during the day [to complete the 144 hours per year required by the Bureau of Apprenticeship Training]. *In addition, they are required to get an Associate College Degree while they are apprentices. You'll find that most people that cannot make it at the college also cannot make the 144 hours mandated curriculum. The college courses are probably easier than the apprenticeship courses.*

The JAC meets once a month, monitoring several different things: They monitor bad layoff slips; excessive absenteeism; tardiness without a bad layoff slip; class

failures in the school program. An individual who is deficient reports to a committee of his peers to explain why he is either late or absent an unusual amount of times. There are a lot of things you have to look for: substance abuse, alcohol abuse. This committee tries to get those troubled apprentices through their apprenticeship. Yesterday we threw out a Business Agent's nephew for abuses. It's a fair committee.

Once an apprentice completes the four year program, they are put in the M Division. They remain in the M Division for a minimum of a year and a half. So it's a minimum of five-and-a-half years before someone is eligible to take the test.

I take offense to someone saying 20% minority participation is low. This is the hardest union to get into. I'm not sure 20% participation by minorities is not considered high. In terms of women, I'm not sure there is anything that anybody can do. I'm not sure women want to become apprentices and go through the rigors of the program. This is a tough industry. It pays high dollars.

Contrary to what you may have heard, there is no system to exclude anybody from this industry. We have made sure that the system that's been instituted prevents that. The testing for aptitude is done by the State. We don't do the testing. It's either you're passing or you're failing. We are not the ones to determine that.

You pass the test, you are entitled to an interview. And then you have to take a look at the numbers after that. Depending upon the employment picture in the industry, applications are made available about once a year, a year and a half sometimes.

We have not had one incident of sexual harassment reported to our company, to my knowledge. I checked that this morning. Our shanties are pornography clear. We are strict about it. JWP, the company that owns Forest Electric, has a written policy about it.

Finding childcare does present a problem for some women. An apprentice is not a very high paid position and they can't afford to get paid help to watch their children, and the so-called easy way out is staying home for the emergency. So it's a problem.

I think there are separate bathroom facilities for men and women on the job sites. There are separate changing facilities. We wouldn't expect a woman to change in a men's locker.

9

The role of government agencies

The hearings brought together a number of government agencies with distinct and sometimes overlapping responsibilities for setting and enforcing policies and procedures designed to promote equality of opportunity in the construction industry. The city, state and federal agencies that participated have jurisdiction over contract compliance (the Division of Labor Services, and the Office of Federal Contract Compliance); enforcement of non-discrimination laws (the NYC Commission on Human Rights; the State Division of Human Rights; and the Equal Employment Opportunity Commission), and monitoring of apprenticeship and trainee programs (the NYS Department of Labor).

Contract compliance agencies

The Office of Federal Contract Compliance Programs

The Office of Federal Contract Compliance Programs (OFCCP) within the US Department of Labor is charged with enforcing Executive Order 11246 of 1965. The equal opportunity clause of EO 11246 applies to any contractor with a federal contract of $10,000 or more. A contractor with a contract volume of $50,000 or more requires the development of a written affirmative action compliance program for each of its establishments. The OFCCP requires that contractors evaluate their utilization of ALANA* personnel, as well as their hiring practices, and report annually on whether

* ALANA = African-American, Latino, Asian-American, and Native American people.

equal employment opportunity is being provided. The OFCCP can bar government contractors who do not implement acceptable affirmative action plans. Prerequisites for program development include the identification and analysis of problem areas inherent in ALANA employment, and an evaluation of opportunities for ALANA personnel. The program should provide detailed and specific steps to guarantee equal employment opportunity to people of color, including the development of specific goals and timetables for the prompt achievement of equal employment opportunity. Each program is expected to state in detail the specific steps it will take to guarantee equal opportunity for, and meet the particular needs of, people of color. When deficiencies are noted, plans must provide goals and timetables for the prompt achievement of equal employment opportunity goals.

The evaluation of utilization of minority group personnel includes:

1) An analysis of people-of-color representation in all job categories;
2) An analysis of hiring practices for the past year, including recruitment sources and testing used, to determine whether equal employment opportunity is being afforded to people of color in all job categories;
3) An analysis of upgrading, transfer and promotion activity for the past year, to determine whether equal employment opportunity is being afforded;
4) A report of the results of the affirmative action compliance program to be compiled annually and made available to OFCCP upon request.

All contracts with the federal government must include an equal opportunity clause which contains Section 202 of Executive Order 11246. This section specifies the responsibility of contractors to not discriminate in hiring and in all solicitations of advertisements for employees placed by or on behalf of the contractor; and the responsibility to send to each labor union a notice advising it of the contractor's commitments under this section. The notice must be posted in conspicuous places accessible by employees and applicants for employment.

The clause goes on to state that "in the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965."[1]

In the late 1970s the Order was updated to include guidlines for evaluating the utilization of women. (See Lola Snyder's testimony below).

Violations of EO 11246 may be found by the OFCCP based upon:

1) The results of a complaint-based investigation;
2) Analysis of an affirmative action program;
3) The results of an on-site review of contractor compliance with the order and implementation of regulations;
4) A contractor's refusal to supply records or other information required by these regulations or applicable construction industry guidelines, the OFCCP may conduct administrative enforcement proceedings to enjoin the violations; seek appropriate relief; and/or impose appropriate sanctions.

Abstract of testimony

Office of Federal Contract Compliance Programs

Suzanne Lynn, Attorney General's Office:

While the state and local government can do much towards combating systematic discrimination, it is the federal government that has the overriding responsibility to use its powers to combat discrimination in the construction trade. The [Reagan-Bush] *administrations and their well-publicized hostilities toward affirmative action only help foster a climate that condones those exclusionary practices. The federal government, in formulating policy, should take notice of the grit and determination of these women and minorities who are trying to improve the construction trade by considering supporting state and local government power to set race- and sex-conscious goals and timetables for apprenticeship programs, and continuing to believe that carefully practiced race-and sex-conscious programs are an appropriate relief, to combat discrimination.*

Lola Snyder, Non-traditional Employment for Women:

In 1978, women were promised the moon, Executive Order 11246; and the Bureau of Apprenticeship Training promised 6.9% of every trade would be female. By today's formula, we should comprise 23% of every apprenticeship class. Executive Order 11246 requires that the contractor, where possible, assign two or more

women to each construction project. Contractors must take aggressive affirmative action to ensure that women are hired. It is the contractor, not the union and not the community-based organization, who is responsible for implementing the goals. OFCCP was charged to safeguard the rights of women against discriminatory practices. They were the agency that was to monitor and ensure that the goals were met. OFCCP has the power to sanction contractors who are out of compliance, by withholding or withdrawing federal contracts and money.

Mr. Shaw, Urban Affairs:

Despite civil rights legislation in the 1960s, and affirmative action, people generally don't think discrimination is wrong, because they think affirmative action and EEO laws give people of color and women a free ride. It's like a subsidy program to some people. In fact, affirmative action is the only vehicle that minorities have had to get into the game. On private sector jobs, I take the Wall Street application program and modify it, and try to build up a pool of people. I refer them to the contractors, and gradually there's an increase in minority participation. The government regulations certainly play a role in terms of the involvement of the private sector. They give me leverage. Because I do federal work, I am subject to Executive Order 11246 on all of my jobs. That definitely has an impact on the type of workforce composition I am going to have. While the goal-oriented programs like 11246 provide me with leverage, I would still beat the federal goals in many instances, even if I wasn't ordered to.

State agencies

Most state agencies, such as the State Department of Transportation (DOT), Metropolitan Transportation Authority (MTA), and Port Authority have their own contract compliance units which enforce equal employment opportunity on state-funded construction projects. Much of the witness testimony regarding the effectiveness of contractor compliance with EEO guidelines at the state level focused on the fact that trainees participating in the New York Plan—most of whom are people of color—can no longer be used on state-funded projects as a result of the Monarch decision, thus decreasing the number of ALANA workers on state projects.

According to Howard Sheffey of the State Department of Transportation, state and local governments have abdicated their responsibility for creating viable EEO programs. He argued that the State ought to develop a system whereby goals affixed to

projects are reasonable and obtainable. Mr. Sheffey acknowledged that, from the late 1970s until about 1987, the DOT wasn't interested in taking responsibility for enforcing civil rights programs. However, he asserted that the State DOT has within its grasp the ability to ensure that contracts are adhered to based on the fact that the low bidder—the prime contractor—has agreed to perform the contract as prescribed in the bid proposal book. DOT has fixed primary responsibility for contract compliance not with the contractor, but with its project engineer and its compliance specialist, who maintains a cyclical site visitation schedule.

According to Mr. Sheffey:

> [T]*hey are responsible for recording who is on the project, whether there were goals met, new people coming on-board, whether the payrolls are annotated to know whether or not the EEO goals have been met, and whether trainees or apprentices will be hired if the EEO goals have not been met with skilled people.*

DOT has yet to terminate a contract for non-compliance, but Mr. Sheffey contended that monitoring and enforcement have improved. He argued that government officials at the federal, state and local levels ought to develop uniform rules and codes and apply them in a standardized way. This, he stated, would resolve the following problems:

> *Number one, you would get rid of the confusion that exists in trying to interpret the variety of rules; number two, there would not be this proprietary interest of "mine is better than yours, so we can't cooperate"; and number three, when I took an action against a contractor at DOT with uniform system information exchanged, the people at the New York City Department of Transportation would know this activity was going on, and we wouldn't have these people who would kill one agency while they're doing good somewhere else.*

He cited the example of Article 15-A of the New York State Executive Law, which in 1988 created a single office for ALANA and women business development in the Governor's Office (within the State's Department of Economic Development), known as the Division of Minority and Women Business Development (DMWBD). The DMWBD administers a program of assistance for "minority- and women-owned businesses" (MWBEs).

In 1989, a lawsuit was brought against the State Department of Transportation (DOT) in Harrison and Burrows v. DOT. It claimed that the DOT's goals program for ALANA and female contractors was unconstitutional, based on the Croson decision. The judge issued a temporary restraining order, after which the State suspended enforcement of participation goals in the Article 15-A Program, leading the judge to throw the case out as moot. In 1992, the DMWBD issued an MWBE availability and utilization study[2] which was designed to meet the standards set forth in the Croson case, and which provided for "minority" and female goals to be implemented by all state agencies. The State DOT let its first contract based on the study's goals program on September 9, 1993. The DOT anticipates a legal challenge to its new post-Croson goals program.

NYC Division of Labor Services

The Division of Labor Services is responsible for enforcing Executive Order 50 (EO 50) which, similar to EO 11246, prohibits discrimination—in the case of EO 50, on the basis of race, gender, religion, national origin, sexual orientation and a number of other bases—by construction contractors, as well as suppliers and service providers doing business with New York City government. Although EO 50 is not a goal-oriented program, DLS does enforce federal goals, for example, the 6.9% female journeyperson employment goal set by the USDOL on federally-funded jobs.

The Division of Labor Services currently reviews contractors and subcontractors, when contract value exceeds $100,000, before contracts are awarded. All City contracts contain a non-discrimination provision. According to Robert Lemieux, former director of the NYC Office of Construction, DLS reviews a contractor's workforce prior to the registration of a contract with the Comptroller. Sanctions for those contractors found to be in violation of the non-discrimination provision include contract default and/or three years of contractor exclusion from City work.

Numerous experts and advocates, including a former DLS General Counsel, stated that DLS has never denied a contract because of failure to comply with the City's non-discrimination policy. Many expert witnesses called for a system of incentives and disincentives based on contract compliance. Speakers—including Florence Moore of NEW, Stan Mark of the Asian-American Legal Defense Fund, Ken Kimmerling of the Puerto Rican Legal Defense Fund, Barbara Trees of New York

Tradeswomen, Simone Charlop of NOW-NYC, Miriam Frank, a Labor Historian at CUNY, and Cynthia Long of Women in Construction—called for barring those contractors whose records consistently indicate underutilization of people of color and women from bidding on future contracts with the City of New York. Other speakers, including Merrick Rossein of CUNY Law School, and Cynthia Long, suggested using increases in tax abatements and tax credits as a means of providing incentives for contractors who provide equal opportunity and offer employees parental leave and child care benefits. Other speakers leaned toward disincentives, suggesting that discriminatory contractors be given monetary penalties, or even be barred from bidding lists.

Testimony also indicated the problems facing those who review contractor's employment reports. Finding a contractor in violation of a non-discrimination clause is extremely difficult.

Contractor employment reports

Since 1980, contractors on City-funded jobs have been required to submit an Employment Report to DLS, containing brief information about workforce composition, including race, gender and skill level of journeypersons and apprentices; employer hiring; salary practices; employment policies; and equal employment opportunity programs.

DLS performs a standard statistical underutilization analysis comparing the contractor's workforce in each trade with the available labor pool in the appropriate geographical area, by race and sex. If DLS' pre-award review or post-award monitoring identifies underutilization of people of color or women, contractors are required to make "good faith efforts" (*i.e.*, sending letters to referral sources such as NEW, corresponding with the union hall, etc.) to increase their participation in the underutilized trades.

Former DLS General Counsel Diana Autin argued that this approach allows contractors to "explain away" their failure to reach the federal goal of creating a representative workforce, simply by indicating they have engaged in unsuccessful attempts to hire women or workers of color. She noted that, since most contractors are union contractors, and therefore can hire apprentices only from approved apprenticeship programs, and skilled workers through union hiring halls, where women and work-

ers of color are underrepresented, contractors are unlikely to obtain significant numbers of women and workers of color despite any number of good faith efforts. She argued that the focus should be on substantive achievements, rather than attempts.

According to Pam Elam of then-City Comptroller Elizabeth Holtzman's Office, DLS can require employment update reports as well. She contended that such reports are crucial to assessment of a contractor's progress in providing equal employment opportunity, and should be required for every construction contract, without exception. Most employment reports filed by construction contractors under this provision show an underrepresentation of women, people of color or both. Yet, as long as a good faith effort is shown, no action can be taken.

The City Charter provides that an equal opportunity program may be imposed by DLS to "ensure equal employment, including but limited to remedying underutilization of minorities and women in the contractor's or subcontractor's workforce . . ." (Chapter 13-B, Sec. 352). Consequently, Ms. Elam argued, DLS can begin to require contractors to establish and implement equal employment opportunity programs if they are found to be underutilizing these groups, to ensure that the program is being followed before future contracts are signed.

The ability to require contractors to focus on and affirmatively affect the situations of female workers and workers of color (as well as applicants) can be a powerful tool in the effort to eliminate discrimination against people of color and women in the industry. This is especially true when a contractor's failure to comply with such a program provides grounds for contract termination. Prior employment programs implemented by DLS included sending notices of job openings to community organizations, women's groups, newspapers with people-of-color readerships, and so forth, noting that the contractor is an equal opportunity employer. She agreed that these notices are important, but said they aren't enough.

Ms. Elam stated that, in addition to contacting community organizations, DLS should hold an open forum on opportunities within the industry, and supply information on union apprenticeship programs. In addition, she said that contractors should be required to interview graduates of pre-apprenticeship programs for laborer jobs before or after the awarding of contracts. Many expert witnesses recommended that the contractor review process be streamlined, because it is too

complicated and time-consuming; that the type of workforce information requested in employment reports be further refined; and that the database be computerized for easier access.

Diana Autin argued that current regulations require a complicated and time-consuming process for reviewing contracts, providing contractors more than sufficient due process, and making a finding of non-compliance extremely difficult. The only way contractors not in compliance can be barred from future contracts is through at least two hearings and a de-barment finding by DLS' Board of Responsibility. Given that DLS has been chronically understaffed, it cannot provide the kind of individualized attention required, nor can it provide the level of detailed documentation required to prove non-compliance.

Sara Burns of NOW Legal Defense and Education Fund suggested DLS use a more realistic measure of ALANA and female availability in order to determine whether women and people of color are "underutilized" when reviewing employment reports. She suggested the following factors be included in the employment report review process:

1) Contractor's sexual harassment policy;
2) The percentage of employed foremen who have been trained to enforce the sexual harassment policy and eliminate this behavior;
3) The number of bathrooms and changing facilities provided for female employees at each of the contractor's sites.

Stan Mark of the Asian-American Legal Defense Fund recommended that when screening contractors, DLS obtain copies of the collective bargaining agreement and detailed hiring/referral hall rules agreed upon by contractor and union locals.

Merrick Rossein of CUNY Law School and Ken Kimmerling of the Puerto Rican Legal Defense Fund called on DLS to computerize its database, allowing for a more thorough review and improved enforcement. Both expert witnesses suggested coding workforce records by race, ethnicity and gender on a project-by-project basis. Mr. Rossein suggested using contractor payroll records, while Mr. Kimmerling advocated using contractor and union welfare and pension plans. They asserted that the creation of such a database would enable DLS to better monitor the underrepresentation of people of color in construction projects funded by the city.

Pam Elam of the Controller's office, Sarah Burns of NOW Legal Defense Fund, and Florence Moore of NEW recommended that DLS visit one or more of the contractor's sites, whether or not they are city-funded, prior to the pre-award conference in order to check on the accuracy of the contractor's statements concerning employment. This would help ensure that checkerboarding is not taking place, and would allow for the monitoring of working conditions of women and people of color. They suggested periodic confidential interviews with female workers and workers of color to monitor employment situations.

Numerous speakers noted the lack of cooperation among city agencies who let the construction contracts and who see DLS as an obstacle to prompt, efficient construction. Common problems include agencies failing to include EO 50 contract language in agreements with developers, failing to inform DLS when projects are commencing, and allowing projects to commence without the submission of appropriate documents to DLS and/or without DLS approval.

Given the unique and transient nature of construction employment, it is a complex industry to monitor effectively, especially because of the minimal resources DLS possesses. For instance, DLS has only one inspector who makes site visits to monitor contract compliance.

Numerous advocates argued that DLS and the Commission have not coordinated their efforts. William Shaw, a contract compliance officer for Urban Affairs, believes that city agencies mandated to enforce non-discrimination laws should play a leading role in bringing contractors, unions and all concerned parties together to resolve many of the problems facing the industry.

Many advocates and experts believed that the strongest measure the Mayor and DLS could take to make it clear to contractors that the City of New York is serious about remedying discrimination within the construction industry would be to establish goals and timetables for ALANA and female employment on city-funded jobs.

Lola Snyder of Nontraditional Employment for Women argued that this approach has been effective in other cities. She pointed out that, in Vermont, when the City of Burlington enacted a Women in Construction Trades Ordinance which stated that all construction jobs coming through the city would have to include 10% females in each trade, the majority of contractors met or exceeded the goal. The key factor for com-

pliance was that contractors were apprised of the existence of a strong enforcement policy. The following year Burlington passed another ordinance, increasing the goal for women's representation to 20%.

Procurement Policy Board

The Procurement Policy Board (PPB) was established by the revised City Charter in 1990 to set rules for, among other things, the methods for soliciting bids and awarding contracts, and the manner in which agencies administer and oversee the performance of contracts and contractors. The Comptroller appoints two of the PPB members, and the Mayor appoints the other three.

A number of witnesses made recommendations concerning the need for the PPB, when developing contracting rules, to take into consideration whether contractors provide sufficient employment opportunities for female workers and workers of color. Pam Elam stated that adequate equal employment opportunity provisions, including provisions to enhance subcontracting opportunities for businesses owned by women or people of color, and the sanctions for failing to comply with them, are appropriate areas for the PPB to consider. The City Charter also provides that the Director of DLS consult with the PPB in drafting and adopting contractor rules designed to ensure equal opportunity for people of color and women, and she stated that her appointees to the Board will give this area high priority. Then-Comptroller Holtzman's office asserted that it would direct its two representatives on the Procurement Policy Board (PPB) to consider whether provisions should be made in the rules, stating that a firm's poor track record in ensuring female or people-of-color participation as employees or subcontractors is grounds for finding that a firm is not a responsible contractor—or even grounds for initiating suspension or de-barment proceedings. Merrick Rossein of CUNY Law School recommended that the PPB include a contractual provision in all City contracts that requires affirmative hiring by the contractor at all its construction projects, based on goals and timetables, and the mandate to report the relevant statistics at both its private sector and public construction sites. He recommended that contractors be required to provide information about and access to both city and private sector workforces on construction sites.

The Buildings Department

The Buildings Department issues licenses to construction-related trades such as plumbers, electricians, welders, boiler operators, riggers and hoisting machine operators. Susan Delasandro of Women in Construction stated that contractors are required to obtain various permits and licenses as they progress through a construction job (*e.g.*, operating engineering permits, plumbers licenses, electrical licenses), all of which come before the Buildings Department for review. She suggested that the Buildings Department should be able to access the contractors' and unions' EEO records in terms of discrimination and sexual harassment before issuing permits and licenses.

Enforcement of employment non-discrimination laws

New York City Commission on Human Rights:

New York City's Human Rights Law empowers the City Commission on Human Rights to investigate charges of discrimination in terms and conditions of employment (*i.e.*, unlawful firing, disparate earnings for identical work, sexual harassment, etc.), and if a finding of discrimination is made by the Commission's administrative tribunal, the plaintiff may be entitled to back pay; monetary compensation for decreased earnings in subsequent years, resulting from termination; compensation for mental anguish; and other remedial measures. The Commission has jurisdiction over all employers in New York City who employ four or more workers, regardless of whether they receive public or private contracts. The Commission also has jurisdiction over unions as employers. The Commission is empowered to initiate its own complaints of employment discrimination and gather information about discrimination through depositions and public hearings.

Numerous expert witnesses urged the Commission to put pressure on the City Council and other relevant agencies to provide better enforcement of human rights laws and regulations. Elvia Arriola, a legal historian, and Miriam Frank, a CUNY labor historian, called upon the Commission to improve law enforcement by creating a special unit to address the unique problems of discrimination in the construction industry. They called for development of a complaint process which is both safe and discreet for the employee. They contended that this is absolutely essential to adequate enforcement of the law.

As Ken Kimmerling of the Puerto Rican Legal Defense Fund pointed out:

> . . . [T]*here has to be protection for those that complain and those that assist those who complain. People who complain get blackballed and get retaliated against, consistently. The union controls employment. It's an easy system in which favorites benefit and those that aren't favorites aren't hired, aren't given the juicy jobs. It's very easy to do, and therefore very few people complain—only those who are at the point where there's nothing else to lose. It's very important for the Commission to be very vigorous in responding to complaints of retaliation, to quickly go in and investigate and seek remedies. Otherwise people will not come forward."*

A number of advocates testified that the New York City Commission on Human Rights must make a finding that intentional discrimination still exists in the construction industry and advise the Mayor to adopt meaningful goals and timetables for women and workers of color on City construction projects and projects allocating tax abatements and other incentives. The Commission was urged to work closely with the State Division of Human Rights to aggressively investigate union practices with regard to both apprentice and journey-level workers, including the admission of skilled women and workers of color into unions, and access to job opportunities once admitted. They called on the Commission on Human Rights and the State Division of Human Rights to perform a comprehensive review of construction collective bargaining agreements to identify potentially discriminatory provisions.

Samuel Lopez, President of United Third Bridge, urged that the Commission hold hearings again in two years to see if any of the recommendations have been implemented. He suggested that the transcripts of this hearing be turned over to the Justice Department, the Labor Committee in Congress, the State Legislature, and City Council so that federal, state and city officials can see that nepotism and discrimination are rampant in the construction industry. Mr. Lopez suggested that the Commission work with DLS to investigate union officials such as Local 3's business manager and executive officers to find out how many of their family members are employed in IBEW Local 3, and for how long. James Houghton, President of Harlem FightBack, stated that the Commission can play a crucial role in publicizing the issues of discrimination and corruption in the building trades in New York City.

Several advocates recommended that the Commission on Human Rights adopt regulations which set forth model job referral rules and be the agency charged with

enforcing union and contractor compliance (the proposed job referral system is discussed in detail in Chapter 4). According to Susan Jennick of AUD:

> [U]*nions that do not use the model rules should be presumed to be discriminating in job referrals, and contractors that seek employees from discriminatory job referral systems should be presumed to be discriminating, and should be subject to immediate and certain penalties."*

Stan Mark of Asian-American Legal Defense Fund called on the NYC Commission on Human Rights to request a GAO briefing report from New York's Congressional delegation with regard to discrimination in the construction industry. Merrick Rossein of CUNY Law School stated that city, state and federal civil rights law enforcement units must investigate discriminatory policies and practices of construction trade unions and challenge these actions through all available administrative and judicial forums.

State Division of Human Rights:

The State Division of Human Rights, like the City Commission on Human Rights, has jurisdiction over both contractors and unions with regard to employment practices. Lawrence Kunin of the State Division argued that one of the obstacles to enforcing civil rights in the construction industry has been the lack of continuity within agencies mandated to monitor the industry. He called for a stronger commitment to enforcing the Human Rights Laws and maintaining a database that depicts the underutilization of people of color and women, and sharing information about individual discrimination cases with all local, state and federal enforcement agencies.

Introductory statement

Lawrence Kunin, State Division of Human Rights:

> *I have been a witness to the failure of the human rights attempt to make secure inroads into the construction industry, which includes the State Division of Human Rights. The failure is not due to lack of action; hearings have been held, cases have been brought and won, and experts for civil rights agencies and organizations have landed and lasted a while. The builders and contractors have told me that they would do anything, but that the unions are in the way. They may tell you horror stories of how they are for equal opportunity, but must contend with the reality that*

unions bring home to them. The unions may repeat to you that business is bad and that they cannot afford to further dilute the workforce. Every case we've had was defended by the industry, tooth and nail, up to the highest courts.

I advise you to secure every victory you achieve. Institutionalize it, create standards for cases which become so cliche that even the courts cannot cooperate with the voice of retreat. Report every incident that comes to civil rights offices and to the Office of Federal Contract Compliance. Encourage a kind of consciousness which makes action habitual, obvious and of high priority. Force the creation of lasting instruments to deal with issues of human rights, and work with the major premise that civil rights issues will not succeed until factored into the nature of the industry. Years ago, the State Division of Human Rights conceived the idea of a human rights impact statement to be required in construction projects on an individual basis. To continue that approach would help institutionalize a consciousness of civil rights considerations in each job.

Given the statistics showing underemployment of certain minority groups and women, it would be legitimate under state law to develop a statistical view of civil rights as did the City Commission [on Human Rights] *on "private clubs" that prevented minorities and women from participating in city commerce. Another method of enforcing human rights compliance is to promote continuity and eliminate the frustration in the communities that are underrepresented as employees in the industry, by providing additional hearings and litigation. Eliminate agency apathy. In most agencies, such as the State Division of Human Rights, the only continuity is the civil servant who works with the agency, yet that continuity is altered with each changing administration. With the change in administration, the impetus of the agency in terms of priorities changes to the point that even a viable case begins to wane. Caseloads became labeled "backlogged," agencies became concerned with budget cuts, yet caseloads increase without appropriate attention.*

The possible solution rests in the Human Rights Law, which has law enforcement language and is the responsibility of the state to enforce. The state must develop the institutionalized programs within this human rights establishment, as well as be cognizant of the entire consensus relationship between the state and the people. The state needs to be aware of its available pool of workers, by gathering material as to who applies for jobs or are accepted to programs and involve affirmative action where necessary. Unfortunately, the bottom line to the success will be available money, but continuity is a viable alternative.

1 *A Practical Guide to Equal Employment Opportunity; Walter B. Connally, Jr., Michael J. Connally. Volume II. Law Journal Seminars - Press, Inc., NYC, NY 1982. Pg. I-A-1.*

2 *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State. Issues by the NYS Division of Minority and Women's Business Development of the Department of Economic Development.*

3 *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, U.S. Department of Labor. p.113.*

4 *Ibid. pg. 101.*

10

The impact of the Richmond v. Croson decision on municipal affirmative action programs

Since 1980, affirmative action in construction contracts in New York City has been governed by Executive Order 50. This order attempts to ensure employment opportunity for people in classes protected by the City's Human Rights Law through requiring that every contracting agency include equal employment opportunity provisions in its contracts. In addition, it requires those agencies to provide on-the-job training for economically disadvantaged people. (In most cases, the trainee provision of EO 50 is presently unenforceable because of the Monarch decision, discussed in Chapter 7).

Though, under EO 50, contracting agencies must submit a report containing, among other things, statistics on the numbers of women and people of color employed, agencies are not required to meet employment goals. Instead, they must demonstrate that they are making good faith efforts to recruit workers in those groups. Though contracts can be terminated if agencies do not continue these good faith efforts, contracts are not terminated for failure to employ a predetermined number of women or people of color. One purpose of the construction project was to explore the possibility of strengthening this affirmative action plan by including employment goals and timetables for people of color and women.

The United States Supreme Court decision in the case of The City of Richmond v. J.A. Croson (1989) created a detailed and stringent set of standards on which set-

aside programs for contractors must be based. One assumption of experts when the Commission/DLS hearings were being planned was that the decision would have ramifications for employment goals as well. An attempt was made in these hearings to assess the possibility of having an affirmative action plan with goals and timetables for employing women and people of color against the standards set forth in Croson. In most instances, the testimony summarized below applies the Croson decision to employment of construction workers, although some testimony deals only with its implications for contracts.

Several legal and industry experts were invited to speak about the impact of the Supreme Court's holding in the 1989 case of The City of Richmond v. J.A. Croson on any remedial plans which the CCHR and DLS may propose as a result of the conclusions reached after these hearings. The legal experts, which included Charlotte Rutherford of the NAACP Legal Defense Fund, Donna Lieberman of the NYC-ACLU, Samuel Rabinove of the American Jewish Committee, and Darryl Greene, Managing Partner of Green and Associates provided a concise history of recent Supreme Court rulings on affirmative action plans dealing with race and gender, and gave assessments of the requirements which a New York City affirmative action plan for the construction industry would have to meet in order to survive the Court's new "strict scrutiny" standard.

There was consensus that, while the Court has made it more difficult for local governments to create affirmative action plans, the plans are still valid if designed correctly. Affirmative action plans will have to be developed in light of the strict scrutiny standards which the Richmond case has established. These standards include the following: 1) Statistical evidence that discrimination based on race or gender existed in that particular industry would have to be presented by the local government; 2) The evidence would have to demonstrate more than the simple fact that disparity exists: the causal relation would have to be clearly documented; 3) The scope of injuries suffered by the community (of ALANA* and female construction workers) as a result of discrimination should be identified, and the remedy necessary to cure its effects should be detailed; 4) It should be determined whether race-neutral alternative methods of increasing ALANA representation in the construction industry are sufficient to redress the present effects of identified discrimination before race-

* ALANA = African-American, Latino, Asian-American, and Native American people.

conscious affirmative action is pursued; 4) A race-conscious plan would have to be narrowly tailored to address the discriminatory practices. It should be the least onerous method of redressing the identified discriminatory impact.

Aside from the strict scrutiny standard, the Richmond decision raised a basic methodological problem for municipalities seeking to redress the legacy of discrimination in the construction industry by setting goals which balance *employment* of people of color with their *availability* in the working-age population. The Court rejected Richmond's 30% "minority" contractor goal, which aimed at awarding construction contracts to people of color in proportion to their presence in the city (based on census data) rather than studying the availability of contractors in Richmond. The Court reasoned that use of statistical comparisons which rely on broad population data are inappropriate where the discrimination in question occurs in employment areas which require specialized skills, licensing or capabilities.

Experts at the hearings argued that there are no *reliable* sources of data on availability of "minority" construction workers. The Division of Labor Services bases its availability figures on the United States Census. However, there are several problems with using the Census. First, census data figures for the New York metropolitan area have been shown to undercount the population overall and, in particular, people of color. In addition, the numbers of people in various occupations, as recorded in the Census are, of necessity, a reflection of past discrimination which has discouraged untold numbers of people of color from gaining the skills necessary to enter the trades. To rely on census figures when developing goals and timetables would, then, only perpetuate their underrepresentation. Roger Waldinger testified earlier that based on his research for the Port Authority, women and people of color are not included in apprenticeship programs in proportion to their population numbers. The reasons for this could range from insufficient outreach by the unions, to having low expectations about career opportunities within the construction industry.

It is difficult to obtain the information which would make it possible to determine whether discrimination exists. In the first place, figures on race, ethnicity, and gender of union membership are often unavailable. Only those unions which have exclusive hiring halls or are under court orders are required to keep and make available such information. Thus, in several cases, unions which testified at the Commission/DLS hearings provided incomplete data or none at all on the number of women and

people of color in their journey-level membership. Even in those cases where it was provided, there was no way to confirm its accuracy independently. In addition, figures on union membership don't indicate the number of hours ALANA and female union members are working in comparison to whites. As a result of these gaps in data, it is difficult to determine whether unions are discriminating against the groups which were the subject of the hearings, in terms of making them members or referring them for work.

It is also difficult to determine whether contractors in New York City engage in discriminatory practices related to the employment of women and people of color. DLS maintains data on the number of people of color and women employed by subcontractors. Still, the typical subcontractor on a given site often employs less than 20 workers, which raises the problem that the figures, even when they indicate disparities, may not be statistically significant to prove discrimination.

Charlotte Rutherford, NAACP Legal Defense Fund:

Croson did not put an end to affirmative action. Remedial race-conscious affirmative action and set-aside plans are still permitted. In fact, the Supreme Court stated in unequivocal terms that a state or local subdivision has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.

But Croson marked a clear departure from the level of review which the Supreme Court had applied in earlier challenges to legal actions. For the first time, a majority of the Court agreed that a "strict scrutiny" standard of review will be applied to determine the constitutionality of affirmative action programs challenged under the Equal Protection Clause of the 14th Amendment to the United States Constitution. That "heightened" standard will now be applied to government measures which include racial classifications—whether their purpose is to remedy prior discrimination or perpetuate it.

Ms. Rutherford's testimony focused on the aspects of the Croson decision which the Supreme Court has found are essential before a locality's race-conscious remedial plan will be found constitutional. But first she gave a brief summary of the facts of the Croson case.

In 1983, the Richmond City Council adopted an ordinance which established the Minority Business Utilization Plan. The Plan required prime contractors to whom

the City awarded construction contracts to subcontract at least 30% of the dollar amount of the contract to one or more minority business enterprises (MBEs). MBEs were defined in the plan to include a business from anywhere in the United States, at least 51 percent of which is owned and controlled by black, Spanish-speaking, Oriental, Indian, Eskimo or Aleut citizens.

The Plan was challenged by a prime contractor who was unable to meet the 30% minority subcontractor requirement. In assessing the constitutionality of the Plan, the Supreme Court focused on the reasons and methods used to justify it.

The Plan in Richmond was adopted after a public hearing, out of which four primary elements emerged: 1) There was a statistical study indicating that although the city's population was 50% Black, less than 1% of its prime construction contracts had been awarded to minority businesses in the previous 5 years; 2) There were virtually no minority businesses among the memberships of contractors' associations in the area; 3) Testimony from a City Councilman stating that racial discrimination and exclusionary practices were widespread in the area and the state; 4) Testimony from the City's Legal Counsel that the proposed ordinance was legal under the Supreme Court decision in Fullilove v. Klutznick, a Supreme Court case which upheld the Federal Government's 10% set aside program for minority contractors under the Public Works Employment Act of 1977.

The Court requires that evidence of prior discrimination serve as a predicate for a set-aside plan. The locality must show that there is evidence of a prima facie *case of a constitutional or statutory violation that justifies the set-aside program. In so doing, the locality may rely upon a statistical analysis showing that there is a significant imbalance between the proportion of available minority contractors, and the proportion of the dollar value of contracts, or the proportion of contracts going to minority contractors. Evidence of specific instances or practices of discrimination may be presented as well.*

It is sufficient for a city to show that it had, essentially, become a "passive participant" in a system of racial exclusion practiced by elements of the local construction industry. The Court noted that local governments "have many legislative weapons at their disposal both to punish and to prevent discrimination, and to remove arbitrary barriers to minority advancement."

In appropriate circumstances, set-asides and affirmative action programs are included among those weapons. But evidence of specific discrimination within the

locality must be shown. These hearings have provided some of that evidence through the testimony of about seventy individuals who have faced continuous frustration and outright discrimination in their efforts to enter the trades.

The local government must include as beneficiaries of the set-aside program only those groups for whom there has been the requisite showing of discrimination. The Court requires local government to narrowly tailor the remedy to the identified prior discrimination that provides the justification for the existence of the plan in the first place. Once the reason for the plan is removed, the plan must end.

A statistical analysis identifying the shortfall between the expected number of a city's minority contractors based upon the availability of minority contractors and the actual number, may serve to establish the logical and constitutionally permitted stopping point. Since the 30% figure in the Richmond plan was not based on any demonstrated assessment of the availability or potential availability of minority businesses, it was criticized by the Court as not being narrowly tailored to any goal except outright racial balancing.

The Court also criticized Richmond for not having considered alternatives. A locality, therefore, should institute a set-aside plan only if it considers alternatives and rejects these alternatives for sufficient reasons, such as, that the alternatives are ineffective or too costly.

Finally, a government should build flexibility into the plan and provide for individual consideration in the selection process. The Richmond plan focused solely on the availability of MBEs. A waiver provision, evidently, must be broader than the one provided in the Richmond plan. To some extent, it must permit taking into account individual circumstances other than the race of the owners of the business.

Any report that this body produces should include an analysis which compares the available and qualified numbers of men of color and all women, with the actual numbers that have been accepted into apprenticeship programs or employment in the trades of New York City. This statistical comparison ought to establish, overwhelmingly, sufficient evidence for a prima facie *Title 7 pattern or practice plan.*

One problem with this approach is the question of whether there have been enough individuals accepted into apprenticeships to make such a showing statistically significant. If this is the case, it will probably be more relevant to show the actual number of journey-level workers in New York City who have to be imported from

out of state to work on particular projects. The question is whether the number of available trade workers and apprenticeships has been limited artificially.

Testimony from union representatives on how many apprenticeship positions have been filled over a period of years, and the frequency of their need to import workers from out of state would further the factual development which you are undertaking. This body would be well served to include in its record, past attempts to eliminate discrimination in the New York City construction trades.

The histories of lawsuits against the Sheet Metal Workers International Association and Joint Apprenticeship Committee, Local 28, and the Wood, Wire and Metal Lathers Union should be made part of the record.

[Ms. Rutherford, during questioning by the panel noted that] *the "intermediate level of scrutiny" is used for gender cases rather than the "strict scrutiny" standard being applied to race cases. To be on safe ground, it is best to use the strict scrutiny standard for both race and gender.*

Since Croson, the only set-aside program being reviewed, as far I know, is the Choral Construction Company v. King County which is at the District Court level in Washington's Western District. Now that the Supreme Court has finally gotten enough votes to agree upon the level of scrutiny they are going to apply, it is going to apply it wherever you have any kind of race conscious legislation, whether it is for set-aside programs, employment contracts, affirmative action, whatever.

There has been discussion in the Congress about an omnibus sort of provision that will cover everything that has affirmative action, as opposed to doing it one statute at a time, but it hasn't yet made it to the floor. [As for the Atlanta and Chicago plans, Ms. Rutherford hadn't yet reviewed the criteria used in putting them together.) *But one other issue that has to be looked at is that of "discouraged" workers not counted in the workforce. You've got to factor in what Justice O'Connor referred to as short-term and long-term goals for women, because of the issue of societal discrimination. Just looking at the workforce in total might not be enough for them. You might want some interim goals, especially for women in the construction trades, to try to compensate for societal discrimination, in addition to outright discrimination.*

Esmeralda Simmons, Director,
Center for Law and Social Justice, Medgar Evers College:

The regulatory oversight of OLS [now called the Division of Labor Services, or DLS] *should be increased by incorporating race conscious factors into the process of determining contractor compliance with the relevant federal, state and local non-discrimination laws. A "Croson acceptable" regulation might consist of measuring compliance by requiring contractors and subcontractors to increase the number of people of color and women they employ each year to the same percentage these groups represent in the labor pool. Other regulations could be developed by establishing a commission or committee with the explicit mandate of studying this issue and formulating specific recommendations for implementation.*

City of Richmond v. J.A. Croson makes it more difficult for state and local government to enact affirmative action plans aimed at redressing past discrimination. Any remedy developed to combat discrimination in the New York City construction industry which does not have race-conscious legislation as a component, will fail just as readily as have all past efforts. One example of a frozen acceptable regulation might consist of measuring compliance by requiring contractors and subcontractors to increase the number of people of color and women they employ each year by the same percentages these groups are represented in the labor pool. This labor pool would include not only those who are union members, but also those who can demonstrate that they have the necessary skills to be in the trade. The relevant group will be the people who possess the specialized qualifications or training which the particular position involves.

Donna Lieberman, New York Civil Liberties Union:

The Commission's inquiry is particularly appropriate in light of the recent decision of the US Supreme Court in City of Richmond v. J.A. Croson Co. In that case the court ruled by a 6-3 margin that a Richmond, Virginia plan for minority set-asides in city construction contracts was unconstitutional. Richmond dealt a severe blow to the cause of equality and to the availability of affirmative action to remedy discrimination. But the City must figure out how and to what extent affirmation action programs can be utilized to redress the problems of discrimination. Accordingly, the City must identify and document discrimination with clarity and precision, and develop meaningful solutions that meet the objections articulated by the Supreme Court and avoid the pitfalls that doomed the Richmond plan. To develop a remedy for discrimination in the local construction industry, the City must pin-

point the source and manifestation of discrimination in the industry and tailor a plan that will meet the concerns articulated by the Supreme Court in Richmond.

Richmond patterned its plan on the one incorporated in the federal Public Works Employment Act of 1977. The Congressional plan, upheld by the Supreme Court in 1980 in Fullilove v. Klutznick, required that 10% of every grant to state and local governments for public projects under the act "be expended for minority business enterprises." It is noteworthy, therefore, that at the same time the Court rejected the Richmond plan, it reaffirmed its previous approval of the federal 10% set-aside in Fullilove. These apparently conflicting results can be attributed in part to the Court's adoption of a more rigorous "strict scrutiny" standard for state and local affirmative action set-asides and in part to the differing circumstances in the two cases.

The Court held that Richmond failed to justify the plan with a sufficient record of racial discrimination in the Richmond construction industry. Neither statistically nor via individual examples did Richmond meet its burden. Notwithstanding local anti-discrimination laws, Richmond offered no examples of specific constitutional or statutory violations by anyone in the Richmond construction industry.

Although the Court acknowledged that a proper statistical case of discrimination could theoretically justify a racial set-aside, it rejected Richmond's effort to do so. Richmond's data was too vague and insufficiently related to the affirmative action plan to withstand scrutiny. As the Court had previously held in Bakke, generalized societal discrimination was not sufficient to justify affirmative action. To base its plan for a 30% minority subcontracting set-aside on statistical disparities, Richmond would have had to have shown a disparity between the number of minority contractors in the Richmond construction industry and the total value of all city construction contracts—including subcontracts—awarded to minority contractors. Hence, on both sides of the equation Richmond's approach failed. On one hand, the plan created a minority set-aside for subcontracting, but without data on the value of previous minority subcontracts.

On the other, the claimed disproportion was based on reference to the African-American population in general, not on the number of minority contractors qualified for such work. Since construction requires specialized skills, the Court, relying not on the new strict scrutiny standard, but on the precedent in Hazelwood (1977) and Wygant (1986), rejected Richmond's comparison with the African-American population in general as a constitutionally insufficient basis upon which to con-

clude racial discrimination in the Richmond construction industry and thereby justify the Richmond affirmative action set-aside for minority subcontracts.

The Richmond Plan was also too broad for the Court because it included Eskimos and Aleuts in the minority population although there was no evidence of their presence in Richmond. The plan was deemed inflexible because it rejected a waiver from the 30% rule in this case, after no minority contractors responded to the initial request to bid on the project within the bidding deadline.

The Richmond case undeniably makes it more difficult to develop a valid state or local affirmative action plan. In the brief period since this decision, we have already seen the invalidation of an Atlanta plan, and we have heard the calls for "re-evaluation in light of Richmond" in New York City and elsewhere. However, notwithstanding the extreme anti-affirmative-action stance of Justices Kennedy and Scalia, the Court has not shut the door on affirmative action completely—at least not in theory. There are ways to distinguish the Richmond plan from other cases.

Perhaps the most promising route around Richmond is through the adoption of flexible plans that do not rely on quotas, but rather involve goals and timetables, or provide for the consideration of race as one of many factors. For example, in the 1987 case, Johnson v. Santa Clara, the Court (including a majority of those Justices now sitting) upheld a voluntary local affirmative action plan which had resulted in the promotion of a qualified woman over a slightly more qualified man pursuant to a plan characterized by flexible goals and timetables. The Court upheld the plan based on a "statistical disparity sufficient to support a prima facie *claim under Title VII by the employee beneficiaries of the affirmative action plan of a pattern or practice of discrimination." Ironically, Santa Clara lends credence to the notion that the Court's retreat from the strict scrutiny standard of Frontiero for sex-based classifications may indeed generate broader latitude for affirmative action with regard to sex than for race or national origin.*

The validity and viability of [an affirmative action] *program for the construction industry in New York City will depend on whether the City carefully and fully identifies and fully documents discriminatory acts and practices in the industry to create a record that supports the affirmative action program. Moreover, the use of statistical comparisons which rely on broad population data are inappropriate where the discrimination to be remedied occurs in areas of employment that required specialized skills, licensing or capabilities. In addition, the City must be*

careful to fashion a narrowly tailored, but flexible remedy of limited duration that seeks to enhance the opportunities for those who have traditionally been excluded, without unduly burdening innocent third parties. This Commission, the New York State Human Rights Division and the EEOC, which are equipped to collect such information and to process formal complaints, will be quite useful in compiling and interpreting evidence of discrimination.

Darryl E. Green, Managing Partner,
Green and Associates:

In order to better understand the ramifications of the Supreme Court's decision in City of Richmond v. JA Croson, as it relates to those standards which municipalities and states must meet in the formulation and drafting of affirmative action policies, one should first examine some of the earlier case law upon which various municipalities and states based their policies.

Prior to the Court's decision in Richmond, most municipalities and states assumed wide latitude in determining when affirmative action policies were required, what races and ethnic groups would be targeted, what businesses and industries would be affected, and to what level and degree programs such as Minority Business Enterprise Programs (hereafter referred to as MBE programs) would be implemented. Municipalities and states determined that they had such wide latitude in setting standards based in large measure upon the Supreme Court's decision in Fullilove v. Klutznick, Sec. of Commerce (1980). In Fullilove, the Court ruled that the criteria and standards set by the Federal Government in determining which ethnic and racial groups were entitled to the benefits of MBE programs did not violate the equal protection component of the due process clause of the 5th Amendment. The case further established that based upon the broad powers which are inherent in Congress, pursuant to Section 5 of the 14th Amendment, Congress was within its rights when it passed the affirmative action legislation which was at issue.

States and municipalities, when drafting their own MBE legislation and programs, tended to design such programs using the same standards and criteria which the Federal Government set. It appears, in so doing, states and municipalities failed to take into consideration the fact that the equal protection clause of the 14th Amendment provided for a much stricter level of scrutiny when state and municipal action is being reviewed.

New York State became one of the first states in which state and municipal affirmative action policies started to come under closer scrutiny. Under the administration of then Mayor John Lindsay, the City of New York promulgated what at the time was considered to be an extremely aggressive affirmative action program, which dealt with minority worker participation in skilled construction trades and established training requirements for minorities seeking to enter those trades. One factor that distinguished this program was that the City attempted to establish goals and standards which were higher than those that the Federal Government set as maximum requirements on federally-funded or -assisted construction projects.

The issue as to whether a municipality or state could set standards and goals higher than those set by the Federal Government, was decided in New York City's favor in the case of The City of New York v. Henry L. Diamond. In this case the Court held that a municipality could set standards higher than those set by the Federal Government as long as those standards do not act as an obstacle and impediment to the goals and objectives of the federal laws.

However, New York City's affirmative action program was successfully challenged and struck down in the case of Broderick v. Lindsay, (1976) in which the court ruled that the promulgation of preferential programs employing numerical goals required legislative authorization and was not a valid exercise of executive power. A second attempt, this time by then Mayor Beame, was made to put into effect an affirmative action hiring policy. This program, unlike the earlier one established by the Lindsay administration, attempted to promulgate a preferential program without technically setting numerical goals. However, this program, just like the earlier one, was successfully challenged and struck down in the case of Fullilove v. Beame, (1979), which was joined with the case of Fullilove v. Carey (1976) in which a similar State program was challenged.

As in the earlier Broderick case, the court never addressed the issue of whether the affirmative action programs designed by New York City and New York State were permissible or desirable. Instead, as in Broderick, the court struck down both programs on the grounds that the power to authorize affirmative action policy rests with the legislative branch. The Court ruled that neither the Mayor nor the Governor had been authorized by their respective legislatures to impose the affirmative action policies that were at issue.

[With regard to the Richmond decision], *it appears that a multi-discipline approach to affirmative action programs development is now required by state and*

municipal governments in order to meet the constitutional parameters set forth in the Richmond case. What is required is a series of findings which should include the following:

1) *A study to determine if disparity exists;*
2) *If disparity does exist, a determination that this disparity is the result of race- or ethnic-group-based discrimination;*
3) *A study to determine if present effects of discrimination can be remedied by means not related to racial or ethnic group classifications, or a less onerous solution than a race or ethnic-group-based (goal-oriented) solution.*

The Court in the Richmond *case did not set forth a specific description of the evidence which it would consider as satisfying the "strict scrutiny" standard when reviewing MBE program challenges arising out of its decision. However, certain points seem to be indicated by the Court's decision.*

1) A statistical disparity alone shall not be construed as prima facie *evidence of discrimination. For example, it would have to be demonstrated that, if it were not for past discriminatory practices, minorities would seek out skilled construction jobs in the same proportions as do non-minorities;*
2) The mere testimony of a certain number of individuals appears to be insufficient to meet the requirements of the "strict scrutiny test." Public hearings, consequently, appear to be of limited value. Statistical research and analysis, although vital, cannot be construed as the driving force. Although important, such research serves mainly to set the stage for the even more important segment which must seek to elicit from the [ALANA and female construction worker] *communities the kind of personal and anecdotal information which shall serve as evidence in the courts of past patterns of exclusion based on race or ethnic group discrimination.*

Mr. Greene went on to outline the issues that would have to be addressed by a municipality in a study of alleged discrimination against women and minority contractors in the construction industry. He emphasized that a study must cover only the jurisdiction of the proposed affirmative action plan, that availability of qualified companies must be measured within each individual ethnic group which will be covered by the plan, and that there is a disparity between that availability and contracts received. Further, he emphasized that evidence demonstrating actual exclusion of those businesses from contracts in the local area—exclusion of each specific ethnic group—would have to be gathered. The evidence of discrimination could be anec-

dotal evidence, case histories or any other technique which would eliminate any other explanation for the disparity. Finally, he described the need for the study to explore remedies, especially race-neutral remedies.

Samuel Rabinove, American Jewish Committee:

In City of Richmond v. J.A. Croson Co., the Supreme Court struck down a Richmond, Virginia law that channeled 30% of public work funds to minority-owned construction companies. The court said that governmental contract hiring programs could be justified only if they served a compelling state interest of redressing identified discrimination, whether by the government itself or by private parties. Societal discrimination alone would not suffice.

Justice O'Connor argued that statistical disparities in Richmond fell short of proving specific acts of discrimination had occurred. While the case was a setback for municipalities designing goals and objectives, it did not invalidate all government-sponsored affirmative action programs. Nor did the justices even necessarily bar the particular kind of affirmative action that was at issue in this case: minority set-asides. It did mean that all racial classifications are equally suspect and subject to strict scrutiny. Thus, any law that gives preference to one race over another must be tailored as narrowly as possible to meet the compelling state interest of remedying past discrimination in order to survive a Constitutional challenge.

William Shaw, Urban Affairs:

As a vice-president and officer of a company that deals with contractors and developers, I have seen people come through their affirmative action program and get jobs. I know it works. Affirmative action, which was having very positive results in the 1960s and 1970s, has been challenged in the 1980s. The Supreme Court has been part of that challenge. The Croson decision asserted that affirmative action and EEO programs have incorporated segments of people that really have not been discriminated against. If it can be statistically demonstrated that certain ethnic groups have been excluded, then they should be incorporated into the program.

APPENDIX A

In 1990 and 1991, the Commission and the Division of Labor Services sent letters to sixteen local unions, asking them to participate in the hearings by testifying, and by completing and returning a questionnaire. Seven of the locals cooperated, but nine did not, some ignoring as many as three written requests. Of the nine, the Commission subpoenaed six locals, along with their joint apprentice committees, to provide both documents and testimony. Two of the unions, Locals 40 and 361, moved to quash the subpoenas, but were ordered to comply by the New York State Supreme Court.

Cooperating unions:

1) The New York District Council of Carpenters completed and returned the Commission's questionnaire. Charles P. Fanning, Director of Apprenticeship Training, testified on April 26, 1990.

2) Local 1 of the Elevator Constructors Union did not return the questionnaire. John B. Green, President, testified on April 26, 1990. As part of Mr. Green's testimony, he stated that he never received the Commission's questionnaire.

3) Local 3 of the International Brotherhood of Electrical Workers completed and returned the questionnaire. Thomas Van Arsdale, President, testified on April 26, 1990.

4) Local 2 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada completed and returned the questionnaire. Peter N. Salzarulo, President, testified on July 10, 1990.

5) Local 14-14B of the International Union of Operating Engineers completed and returned the Commission's questionnaire. Thomas Gleason, Director of Training, testified on July 10, 1990.

6) Local 638 of the Enterprise Association of Steamfitters completed and returned our questionnaire. Edward Malloy, President, testified on July 10, 1990.

7) Local 363 of the Teamsters Union was represented at the hearings by Thomas J. Carlough, Director of Apprenticeships and Training, on April 3, 1991.

Unions which were subpoenaed:

1) Local 1 of the United Association of Plumbers and Gas Fitters did not respond to the Commission's requests. Both the Local and the Joint Apprenticeship Committee were subpoenaed and subsequently submitted the requested documents. Joseph Santoro, Director of Apprenticeship Training, testified on March 6, 1991. As of November 1992, because of scheduling problems, no one had testified on behalf of the Union.

2) Local 15/15-A-D of the International Union of Operating Engineers did not respond to requests. Both the Local and the Joint Apprenticeship Committee were subpoenaed and subsequently submitted the requested documents. Joseph Conaty, Director of the Apprenticeship Program and member of the Union's Executive Board, testified on May 16, 1991. Thomas P. Maguire, President and Business Manager, testified on November 13, 1992.

3) Local 28 of the Sheet Metal Workers Union did not respond to requests. Both the Local and the Joint Apprenticeship Committee were subpoenaed and subsequently submitted the requested documents. Joseph Casey, Recording Secretary and Director of Apprenticeship Training, testified on behalf of Arthur Moore, President, on May 13, 1991. Murray Liebowitz, Administrator of Training, testified on May 17, 1991.

4/5) Locals 40 and 361 of the Structural Iron Workers Union did not respond to requests. Both the Unions and the joint apprenticeship committee (shared by the two Locals) were subpoenaed. The unions moved to quash the subpoenas but were ordered to comply by the State Supreme Court (the ruling was upheld by the Appellate Division of the State of New York). The Unions and the JAC then provided the subpoenaed documents. Edward J. Cush, Co-Chairman, Joint Apprenticeship Committee, Locals 40 and 361; Local 40 union official James Mullett, Business Manager and Financial Secretary-Treasurer; Local 40, Co-Chairman, Joint Apprenticeship Committee, Locals 40 and 361; and John G. Kelly, Coordinator, Joint Apprenticeship Committee, Locals 40 and 361, testified on November 4, 1992.

6) Local 580 of the Ornamental Iron Workers Union did not respond to requests. Both the Union and the joint apprenticeship committee were subpoenaed and subsequently submitted the requested documents. No representative of Local 580 agreed to appear at the hearings until after the ruling on the motion by Locals 40 and 361 to quash the subpoenas. After the subpoenas were upheld by the Appellate Division, Brian Kaufman, President, testified on behalf of both the Union and the JAC on November 4, 1992.

Unions which did not appear or submit information:

1) The District Council of Iron Workers did not respond to three written requests.

2) Local 46 of the Metallic Lathers & Reinforcing Ironworkers Union did not respond to a written request.

3) Local 371 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada did not respond to a written request.

Contractor associations invited to attend:

In 1990 and 1991, the Commission and the Division of Labor Services sent letters to four contractors' associations, asking them to participate in the hearings by testifying, and by completing and returning a questionnaire. To those contractor associations that failed to respond to the first letter, the Commission sent a follow-up letter requesting only the completion of the questionnaire. Of the four contractor's associations contacted, one complied.

1) The Building Contractors' Association did not respond to written requests.

2) The Contractors' Association of Greater New York did not respond to written requests.

3) The General Contractors' Association completed and returned the Commission's questionnaire. Managing Director Francis X. McArdle testified on March 6, 1991.

4) The New York Electrical Contractors' Association did not respond to written requests.

Additional contractors' associations invited to submit information:

In 1991, the Commission and the Division of Labor Services sent letters to four additional contractors' associations, asking that they complete and return a questionnaire. No follow-up letter was sent to those associations which did not respond. Of the four contacted, one complied.

1) The Association of Contracting Plumbers did not return the questionnaire.

2) The Association of Electrical Contractors, Inc. completed and returned the questionnaire.

3) The Mechanical Contractor's Association of New York State did not return the questionnaire.

4) The Sheet Metal & A/C Contractors' Association did not return the questionnaire.

Contractors invited to attend:

In 1990 and 1991, the Commission and the Division of Labor Services sent letters to ten contractors, asking them to participate in the hearings by testifying and providing a number of documents concerning their organization. Because of time constraints and the focus of the hearings, no follow-up letters were sent to non-responding contractors. Of the ten contacted, two complied.

1) Atlas Gem Erectors Company, Inc. did not respond to a written request.

2) Cipico Construction, Inc. provided the information requested, but, as of November 1992, no representative was scheduled to attend the hearings.

3) Empire City Iron Works did not respond to a written request.

4) Forest Electric Corporation provided the information requested. Mr. Hirsch, Secretary of the Joint Industry Board, and representing Forest Electric, testified on July 11, 1990.

5) Hydraulic Plumbing & Heating Corp. did not respond to a written request.

6) Kerby Saunders-Warkol, Inc. did not respond to a written request.

7) Nastasi White Inc. did not respond to a written request.

8) Otis Elevator Company did not respond to a written request.

9) Triangle Sheet Metal Works, Inc. did not provide the information requested, and declined to attend the hearings, citing its compliance with requirements imposed on Local 28 of the Sheet Metal Workers Union by Federal Court Order in 1979.

10) Wener-Dahnz Company did not respond to a written request.

APPENDIX B

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Sally Hernandez-Pinero	Deputy Mayor for Finance, Office of the Mayor, NYC	3/12/90 - Public official
Justice William Booth	Former Commissioner, NYC Commission on Human Rights	3/12/90 - Public official
Dennis deLeon	Commissioner/Chair NYC Commission on Human Rights	3/12/90 - Chair.
Oliver Gray	Director, NYC Office of Labor Services	3/12/90 - Public official
Dr. John E. Brandon	Former Commissioner, NYC Commission on Human Rights	3/12/90 - Chair.
Florence Moore	Executive Director, Nontraditional Employment for Women	3/12/90 - Advocate
Miriam Friedlander	NYC Councilperson	3/12/90 - Public official
James Houghton	FightBack	3/12/90 - Advocate
Ruth Messinger	Manhattan Borough President	3/12/90 - Public official
Roger Waldinger	Associate Professor of Sociology, CUNY	3/12/90 - Expert
Susan D'Allesandro	Former Chairperson, Local 30, International Union of Operating Engineers	3/12/90 - Worker/Advocate
Samuel Lopez	President, United Third Bridge, Inc.; Journeyperson, Local 3, IBEW	3/12/90 - Worker/Advocate
Wing Lam	Executive Director, Chinese Staff and Workers Association	3/12/90 - Worker/Advocate

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Sarah Burns	Legal Director, NOW Legal Defense and Education Fund	3/12/90 - Advocate
Herman Benson	Treasurer, Association for Union Democracy	3/12/90 - Advocate
Judith Schneider	President, Association for Union Democracy	3/12/90 - Advocate
Samuel Rabinove	American Jewish Committee	3/12/90 - Advocate
Portia Walton	Former Shape Leader, Nontraditional Employment for Women	3/12/90 - Worker
Charles Calloway	Journeyperson, Local 3, International Brotherhood of Electrical Workers; Exec. Officer United Third Bridge	3/12/90 - Worker
Feliciano Felix	Electrician, Local 3, International Brotherhood of Electrical Workers	3/12/90 - Worker
Shirley Hemmings	Journeyperson Carpenter, Local 608, NYC District Council of Carpenters	3/12/90 - Worker
Mary Swinson	Electrician, Local 3, International Brotherhood of Electrical Workers	3/12/90 - Worker
James Brown	Member, Local 608, NYC District Council of Carpenters	3/12/90 - Worker
Tulio Porrata	Chairman, Latino Democratic Caucus of Bronx County	3/12/90 - Advocate

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Arnold Brown	Electrician, Local 3, International Brotherhood of Electrical Workers	3/12/90 - Worker
Richard Martinez	Electrician, Local 3, International Brotherhood of Electrical Workers	3/12/90 - Worker
David Martinez	Electrician, Local 3, International Brotherhood of Electrical Workers	3/12/90 - Worker
Leola Pitman	Laborer	3/12/90 - Worker
Clarence Elliot	Journeyperson Electrician, Local 76, International Brotherhood of Electrical Workers	3/12/90 - Worker
Jerome Meadows	Laborer; Member of FightBack	3/12/90 - Worker
Aubrey Mitchell	Member, Local 59 Masons and Tenders Union	3/12/90 - Worker
Gladys Lopez	Journeyperson Electrician, Local 3, IBEW; Member, United Third Bridge, Inc.	3/12/90 - Worker
Antonio Cancel	Journeyperson Electrician, Local 3, IBEW; Member, United Third Bridge, Inc.	3/12/90 - Worker/Advocate
Samuel Lopez	President, United Third Bridge, Inc. Journeyperson Electrican, IBEW	3/12/90 - Worker/Advocate
William Blackwell	Journeyperson Steamfitter, Local 638, Enterprise Association of Steamfitters	3/12/90 - Worker

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Raymond Tirado	Laborer; Member of FightBack	3/12/90 - Worker
Michael E. Murphy	Journeyperson Carpenter, Local 17, NYC District of Carpenters	3/12/90 - Worker
Simabal Leites	Laborer; Member of FightBack	3/12/90 - Worker
Spencer Meeks	Journeyperson Carpenter, Local 17; Member of FightBack	3/12/90 - Worker
Anthony Clements	Carpenter	3/12/90 - Worker
Sarah Starret	Legal Intern, NOW Legal Defense and Education Fund	3/12/90 - Advocate
Tradeswoman A	Laborer	3/12/90 - Worker
Witness Audio A	Tradeswoman	3/12/90 - Worker
Chan Kam	Construction Worker	3/12/90 - Worker
Young Shi Lee	Construction Worker	3/12/90 - Worker
Ezekial Gray	Journeyperson, Local 28, Sheet Metal Workers International Association	3/12/90 - Worker
Eustus Mason	Member, Local 17, NYC District Council of Carpenters	3/12/90 - Worker
Joe Wright	Member, Local 48, Masons and Tenders Union	3/12/90 - Worker
L.B. Griffin	Minority contractor	3/13/90 - Contractor
James Rudd	Spokesperson, United Black Enterprise, Inc.	3/13/90 - Contractor

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Paul Henry	Brevard Construction Corp.	3/13/90 - Contractor
Michael Sabatel	Member, District Council 9, International Union of Painters	3/13/90 - Worker
Cynthia Long	Journeyperson Electrician, Former member, Local 3, International Brotherhood of Electrical Workers	3/13/90 - Worker
Witness Audio B	Union Carpenter, Local 531	3/13/90 - Worker
Alan Marshall	Electrician; Former Member Local 3, International Brotherhood of Electrical Workers	3/13/90 - Worker
Ray Lopez	Construction Worker, College student	3/13/90 - Worker
Sam Degans	Former Member, Laborers' Union (Formerly of Locals 48, 59, 6A, 18, and 29)	3/13/90 - Worker
Earl Galbreath	NY State Association of Minority Contractors; Westchester Minority Commerce Association; Black Workers and Contractors Assoc.	3/13/90 - Contractor
Claire Ervin	Foreman New York General Contractor	3/13/90 - Contractor
Tradeswoman E	Construction Worker	3/13/90 - Worker
Tradeswoman F	Trainee Electrical Worker	3/13/90 - Worker

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Tradeswoman G	Former Carpenter's Apprentice	3/13/90 - Worker
Witness Audio CL1	Journeyperson Electrician	3/13/90 - Worker
Debra Jones	Apprentice, Local 28, Sheet Metal Workers International Association	3/13/90 - Worker
Witness Audio A	Bricklayer	3/13/90 - Worker
Elaine B. Ward	Journeyperson, Local 2, United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry	3/13/90 - Worker
Audio XLA	Journey-level Tradeswoman	3/13/90 - Worker
Brenda Stokely	Former Employee, Nontraditional Employment for Women	3/13/90 - Worker
Anonymous E	Construction Worker	3/13/90 - Worker
Frank Hogan, Jr.	Apprentice seeking employment	3/13/90 - Worker
Anna Palmer	Former vocational school student	3/13/90 - Worker
Anonymous Witness 1	Union Laborer, Carlton Construction Co.	3/13/90 - Worker
Anonymous Witness 2	Electrician, Local 3, International Brotherhood of Electrical Workers	3/13/90 - Worker
Anonymous Witness 3	Construction Worker	3/13/90 - Worker
Dennis deLeon	Commissioner/Chair. NYC Commission on Human Rights	4/24/90 - Chair

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Pam Elam	Representing then-Comptroller Elizabeth Holtzman	4/24/90 - Public Official
Robert Easlim	Representing Virginia Field, NYC Councilperson	4/24/90 - Public Official
William Horsak	Representing Assemblyperson Hector Diaz	4/24/90 - Public Official
Susan Jennik	Executive Director Association for Union Democracy	4/24/90 - Advocate
Joyce Hartwell	AllCraft	4/24/90 - Advocate
James McNamara	NYC Department of Employment	4/24/90 - Expert
Frank Madison	Banana Kelly	4/24/90 - Advocate
Diana Autin	Former General Counsel, Office of Labor Services	4/24/90 - Expert
James Houghton	Harlem FightBack	4/24/90 - Advocate
Leroy McCullough	Member, Local 3, International Brotherhood of Electrical Workers; United Third Bridge	4/24/90 - Worker
David Otto	Deputy Director and Counsel, PREP, Inc. (Preparation and Recruitment Employment Program)	4/24/90 - Worker
Mary Scardina	Former member, Local 1298, Heavy Construction Laborers; denied entry to Local 138, Operating Engineers	4/24/90 - Worker

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Pat Sullivan	National Chair, PREP, Inc.	4/24/90 - Worker
Cheryl Smyler-George	Recruiter, PREP, Inc.	4/24/90 - Worker
Sarah Burns	Legal Director, NOW Legal Defense and Education Fund	4/24/90 - Advocate
Akil Luqman	Member, Union of Carpenters and Joiners, Nassau County	4/24/90 - Worker
Wing Lam	Chinese Staff and Workers Assoc.	4/24/90 - Advocate
Ken Kimmerling	Attorney, Puerto Rican Legal Defense Fund	4/24/90 - Advocate
Lola Snyder	Director of Education and Technical Assistance, Nontraditional Employment for Women	4/24/90 - Advocate
Samuel Lopez	President, United Third Bridge; Electrician,Local 3, International Brotherhood of Electrical Workers	4/24/90 - Worker/Advocate
Darryl Green	Managing Partner Darryl Green & Associates	4/24/90 - Expert
Charlotte Rutherford	Staff Attorney, NAACP Legal Defense Fund	4/24/90 - Expert
Gilbert Lopez	Former Member, Local 3, International Brotherhood of Electrical Workers	4/24/90 - Worker
Carlos Roman	Former Plasterer, NYC Housing Authority	4/24/90 - Worker

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Juan Colon	Member, Local 28, Sheet Metal Workers International Association	4/25/90 - Worker
Merrick Rossein	Associate Professor of Law, City University of Law, Queens College	4/25/90 - Expert
Virgil Hodges	Deputy Commissioner for Employment and Training, NYS Department of Labor	4/25/90 - Government
Donald Grabowski	Director of Employability Services, NYS Department of Labor	4/25/90 - Government
Richard Wong	Principal Employment Consultant for Testing, NYS Dep't of Labor	4/25/90 - Government
Lawrence Kunin	General Counsel NYS Division of Human Rights	4/25/90 - Government
Howard Sheffey	Director, Office of Equal Employment Opportunity Development, NYS Department of Transportation	4/25/90 - Government
Esmeralda Simmons	Director, Center for Law and Social Justice of Medgar Evers College	4/25/90 - Advocate
Dr. Miriam Frank	Researcher of Union Democracy, Professor of Continuing Education New York University	4/25/90 - Expert
Suzanne Lynn	Chief of Civil Rights Bureau, International Brotherhood of Electrical Workers	4/25/90 - Government

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Cynthia Long	Journeyperson Electrician, Local 3, IBEW; President, Women in Construction	4/25/90 - Worker/Advocate
K.C. Wagner	Independent consultant on sexual harassment; formerly of Working Women's Institute	4/25/90 - Expert
Denice Holmes	Apprentice, Local 84 Stone Setters Union	4/25/90 - Worker
Barbara Trees	Member, Local 135, International Brotherhood of Carpenters	4/25/90 - Worker
William Shaw	Urban Affairs	4/25/90 - Advocate
Linda Leday	Carpenter	4/25/90 - Worker
Charles Fanning	NYC District Council of Carpenters Director of Labor Technical College and JAC	4/26/90 - Union
Susan D'Alessandro	Former member of Local 30; member of Women in Construction	4/26/90 - Advocate
Russell Pearce	General Counsel NYC Commission on Human Rights	4/26/90 - Chair.
Mitchell Langbert	Ph.D. candidate, Columbia Business School	4/26/90 - Expert
Dr. Simone Charlop	National Organization of Women	4/26/90 - Advocate
Altimond Clarke	Contractor, Rising Sun Construction & Realty Corp.	4/26/90 - Contractor

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Elvia Arriola	Doctoral candidate in American Legal History, NYU	4/26/90 - Expert
Thomas Van Arsdale	President, Local 3, International Brotherhood of Electrical Workers	4/26/90 - Union Official
Peter Dooley	Member, Local 608, affiliate of NYC District Council of Carpenters	4/26/90 - Worker
John Green	President/Business Manager, Local 1, International Union of Elevator Constructors	4/26/90 - Union Official
Lanere Rollins	Member, Teamsters Union	4/26/90 - Worker
Eileen Soloway	Civil Service Carpenter; member NYC District Council of Carpenters	4/26/90 - Worker
Edward Malloy	Member, Local 638, Enterprise Association of Steamfitters	7/10/90 - Union Official
Peter Salzarulo	President, Local 2, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry	7/10/90 - Union Official
Thomas Gleason	Director of Training, Local 14/14B, International Union of Operating Engineers	7/11/90 - Union Official
Joseph Hirsch	Forest Electric, Electrical Contractor	7/11/90 - Contractor
Donald J. Grabowski	Director of Employability Development, NYS Department of Labor	7/11/90 - Government

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
Joseph Santoro	Director of Apprenticeship Training, Local 1, Plumbers Joint Apprenticeship Committee	3/6/91 - JAC Official
Gil Rivera	Attorney for Frank Panico, CIPICO Construction	3/6/91 - Attorney for Contractor
Francis Xavier McArdle	Managing Director, General Contractor Association of NY	3/6/91 - Contractor
Thomas J. Carlough	Director of Apprenticeship Program, Local 363, Teamsters Union	4/3/91 - JAC Official
Joseph Casey	Recording Secretary, Local 28 Sheet Metal Workers' International Association	5/13/91 - Union Official
Joseph Conaty	Director, Apprenticeship Program Local 15, International Union of Operating Engineers	5/16/91 - JAC Official
Robert Brady and Frank Petramalo	Counsel for Local 15, International Union of Operating Engineers	5/16/91 - JAC Attorneys
Murray Liebowitz	Training Administrator, Local 28, Sheet Metal Workers Joint Apprenticeship Committee	5/17/91 - JAC Official
William Rothberg	Counsel for Local 28, Sheet Metal Workers Joint Apprenticehip Committee	5/17/91 - JAC Attorney

WITNESS	TITLE/AFFILIATION	DATE/CAPACITY
James Mullett	Business Manager and Financial Secretary-Treasurer, Local 40, Bridge, Structural and Ornamental Iron Workers, Local 40	11/4/92 - Union Official
John G. Kelly	Coordinator, Joint Apprentice Committee of Bridge, Structural and Ornamental Iron Workers Locals 40 and 361	11/4/92 - JAC Official
Edward J. Cush	Co-Chairman, Joint Apprentice Committee of Bridge, Structural and Ornamental Iron Workers, Locals 40 and 361	11/4/92 - Union/JAC Official
Brian Kaufman	President, Local 580, Bridge, Structural and Ornamental Iron Workers; Trustee, Apprentice Joint Education Fund	11/4/92 - Union Official
Thomas P. Maguire	President and Business Manager, Local 15, International Union of Operating Engineers	11/13/92 - Union Official

Appendix C

New York City Commission on Human Rights Sexual Harassment Guidelines

Introduction

These Sexual Harassment Guidelines are issued pursuant to Administrative Code Section 8-107 13(e) and (f). An employer found liable for sexual harassment based solely on the conduct of an employee, agent or person employed as an independent contractor, who pleads and proves that these Guidelines have been implemented and complied with at the time of the unlawful conduct, shall not be liable for any civil penalties or punitive damages which may be imposed pursuant to Chapter Four or Five of Title Eight of the Administrative Code. Further, the demonstration of compliance with and enforcement of these Sexual Harassment Guidelines shall be considered in mitigation of the amount of civil penalties to be imposed by the Commission pursuant to Chapter Four of Title Eight, or in mitigation of civil penalties or punitive damages which may be imposed pursuant to Chapter Four or Five of Title Eight and shall be among the factors considered in determining an employer's liability under Administrative Code Section 8-107 13(b)(3). If these Guidelines have not been followed by a respondent employer, the employer shall be ineligible to mitigate the imposition of civil penalties, punitive damages or avoid the imposition of liability pursuant to Chapters Four and Five by reason of Sections 8-107 13(e) and (f) of the Administrative Code.

The New York City Human Rights Law makes it unlawful for an employer to discharge an employee or to discriminate against an employee in the terms, conditions and privileges of employment because of that individual's sex. Pursuant to this mandate, sexual harassment in all forms is prohibited in the workplace and an "employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent." However, the Law provides that employers may mitigate or avoid liability for the conduct of an employee, agent or independent contractor by demonstrating that they established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices. The purpose of these regulations is to establish a model policy which employers may use to implement sexual harassment policies at their work sites.

A. Statement of prohibited conduct

All individuals have the right to work in an environment free from sexual advances, discriminatory intimidation, ridicule, and insult based on their sex. The employer, as well as every manager, supervisor and employee has an affirmative duty to observe the law. Those who engage in prohibited conduct must be subject to disciplinary proceedings and possible termination.

Quid pro quo sexual harassment, where employees are forced to accept sexual advances or lose their job, as well as the maintenance of a hostile work environment against one sex, are forms of prohibited conduct. For example, it is illegal for a person to subject any employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical acts of a sexual or sex-based nature where: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) an employment decision is based on an individual's acceptance or rejection of such conduct; or (3) such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

The acts underlying sexual harassment need not be sexual in nature or take the form of overt sexual advances. Prohibited harassment also may consist of intimidation and hostility toward an individual because of sex. Illegal behavior may be asexual, but directed at and motivated by animus against one sex, or it may consist of conduct that is more offensive or demeaning to one sex, although not expressly directed at a particular group or individual.

The most common image of sexual harassment is that of a female secretary who is propositioned by her employer, refuses and is fired. While this accurately reflects one common experience, sexual harassment can take many other forms. Examples of some of the conduct that would be considered sexual harassment, or related retaliation, are set forth below. These examples are provided to illustrate the type of conduct proscribed by the Code; the list is not exhaustive.

1. Physical assaults of a sexual nature, such as:

    (a) Rape, sexual battery, molestation, or attempts to commit such assaults; and

(b) Physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, poking or brushing against another employee's body.

2. Conduct of a sexual nature which, whether intended or not, humiliates or offends a reasonable person, including:

(a) Unwanted sexual advances or propositions; or sexually-oriented gestures, noises, remarks, jokes, anecdotes or comments about sexuality or sexual experience;

(b) Hazing or shunning that is based upon sex or is sexually oriented, or that is undertaken because a person has resisted or complained about sexual harassment, discrimination or retaliation;

(c) Soliciting an employee to engage in sexual activity;

(d) Preferential treatment or the promise of preferential treatment for submitting to sexual conduct;

(e) Detrimental treatment or the threat of detrimental treatment for failing to submit to sexual conduct; or

(f) Subjecting an employee to unwelcome sexual attention or conduct, or intentionally making performance of the employee's job more difficult, because of the employee's sex.

3. Sexual or discriminatory displays or publications anywhere in the workplace, such as:

(a) The display of pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic; or

(b) Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning, or pornographic.

4. Retaliation for sexual harassment complaints, such as:

   (a) Disciplining, changing the work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with, any employee because the employee has complained about or resisted harassment, discrimination or retaliation.

The prohibited conduct described above is harassment of anyone at whom it is directed. Such conduct is also harassment of any other individual who is subjected or exposed to it, even if the conduct is not directed at the individual, as long as it creates or contributes to a discriminatory atmosphere. All types of work relationships and situations can spawn sexual pressure, with devastating economic and psychological repercussions. Often, sexual harassment involves relationships of unequal power, and contains elements of coercion—as when compliance with requests for sexual favors becomes a criterion for promotion. However, sexual harassment also may involve relationships among equals—as when a co-worker's repeated sexual advances or demeaning verbal behavior has a harmful effect on an employee's ability to work.

The following are examples of sexual harassment prohibited in the work environment. They illustrate that misconduct can occur at all levels of work relationships:

1. A woman works at night and is fearful of the sexual propositions of a male co-worker who is the only other person working that shift.

2. A sales representative works for an employer who condones her being subjected to ogling, propositions or sexual remarks by clients.

3. A waitress is forced to wear a sexually revealing uniform and to tolerate sexual remarks made by patrons.

4. A female construction worker's access to a restroom is purposely blocked by co-workers.

5. An employer fails to provide single-sex congregate restrooms or, where necessary, locker rooms.

6. A female nurse's employer condones the behavior of a male patient who pinches her when she approaches his bed in the course of her work.

7. There is a Friday afternoon ritual where co-workers show X-rated videotapes at the office.

8. There is generalized use of epithets, comments and jokes of a sexual nature.

9. Workers refer to members of the opposite sex in derogatory terms such as "bitch" and "girl."

10. A job applicant is asked questions about sexual or social availability.

11. A supervisor retaliates against a supervisee after a consensual romantic relationship ends.

12. Pornographic photographs are placed at the job site—this includes locker rooms and restrooms.

13. A victim of sexual harassment is transferred because he or she has complained about the matter to management.

14. A co-worker propositions another and refuses to "take no as an answer."

B. Schedule of penalties for misconduct

Sexually-oriented acts and sex-based conduct have no legitimate business purpose. Accordingly, an employee who engages in such conduct must be made to bear full responsibility for his or her illegal act(s). Following is a schedule of penalties for sexual harassment. A written record of each penalty imposed on an employee will be placed in the employee's personnel file and included in his or her evaluation.

1. Assault

Any employee's first proven offense of assault or threat of assault of a sexual nature will result in dismissal.

2. Other acts of harassment by co-workers

An employee's first proven offense of sexual harassment, other than assault, will result in nondisciplinary counseling, the issuance of a verbal and written reprimand, and a written warning. A second proven offense will result in a change of schedule, transfer, demotion, suspen-

sion, or discharge, depending upon the nature and severity of the misconduct.

3. **Other acts of harassment by supervisors and managers**

A supervisor's first proven offense of sexual harassment, other than assault, will result in counseling and/or the issuance of a verbal and written reprimand, change in schedule, transfer, demotion, suspension and/or discharge, depending upon the nature and severity of the misconduct. Any subsequent proven offense will result in suspension or discharge.

4. **Retaliation**

Alleged retaliation against a sexual harassment complainant will result in nondisciplinary oral counseling. Any form of proven retaliation will result in suspension or discharge upon the first proven offense, depending upon the nature and severity of the retaliatory acts, and discharge upon the second proven offense.

5. **Failure to cooperate with a sexual harassment investigation or failure to implement remedial measures**

Employees who fail to cooperate with a sexual harassment investigation, or who fail to implement remedial measures, may be sanctioned by the issuance of a verbal and written reprimand; and/or change in schedule, transfer, demotion, suspension, and/or discharge, depending upon the nature and severity of the misconduct.

C. Procedure for filing complaints

An employer must provide its employees with convenient, confidential, and reliable mechanisms for reporting incidents of sexual harassment and retaliation. Accordingly, an employer should designate at least two employees in supervisory or managerial positions at each of its sites to serve as investigative officers in alleged sexual harassment cases The purpose of having several persons to whom complaints may be made is to avoid a

situation where an employee is faced with filing a complaint with the very person who is the subject of the complaint, or a close associate of that person. The names, responsibilities, work locations and phone numbers of each sexual harassment investigator will be routinely communicated to employees in a continuous and convenient manner which apprises employees of these matters in an anonymous and inconspicuous manner.

Complaints of acts of sexual harassment or retaliation in violation of the sexual harassment policy will be accepted in writing or orally. Anonymous complaints will be taken seriously and investigated. Any employee who has observed sexual harassment or retaliation should report it to the designated investigative officer. All supervisors and managers who become aware of sexual harassment in the workplace must immediately report such knowledge in writing to the investigative officers.

Except when required by law, the employer shall not release information regarding a complaint or investigation to anyone, except when necessary for the completion of an investigation or the prosecution of charges brought against the alleged harasser. Where it is necessary to release information regarding the subject matter of the complaint or investigation, every effort shall be made to protect the identity of the complainant, the alleged target of the harassment (if a different individual than the complainant), and the alleged harasser. The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of all incidents of sexual harassment, and to protect the reputation of an employee wrongly charged with sexual harassment.

If the allegations involve assault, or threatened assault, of sufficient severity that the target of harassment reasonably believes that his or her safety is threatened, the employer must take all necessary steps to protect the target. These actions can include changing the alleged harasser's schedule, transferring the alleged harasser, or suspending the alleged harasser pending the outcome of the investigation.

All individuals contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect, and that any retaliation

or reprisal against the complainant or anyone assisting in the investigation is unlawful and will not be tolerated. Retaliation includes any discipline; change in working conditions; refusal to cooperate with; hazing, shunning, or other acts initiated because an employee has resisted or complained about sexual harassment, or has cooperated in the investigation.

D. Procedure for investigations

Each investigative officer shall receive thorough training about sexual harassment, these regulations, and about their obligation to provide a fair and impartial investigation. The investigative officer has the responsibility for investigating complaints expeditiously or, upon the complainant's request, the responsibility to attempt to resolve the complaint informally.

Before commencing an investigation, the alleged harasser will receive written notice of the allegations and the name of the complainant. An investigation of the complaint normally will involve interviews with the complainant, the alleged target of the harassment (if a different individual), the alleged harasser, named witnesses, if any, and other employees who may have knowledge of the harassment. The investigative officer shall take contemporaneous notes summarizing each of the interviews. Interviews should be completed within fourteen days of the submission of the complaint. All employees shall be protected from coercion, intimidation, retaliation, interference, or discrimination for assisting in the investigation.

Without more, the alleged harasser's denial of the allegations will not be sufficient to conclude an investigation and close the case. Instead, such denial will be carefully weighed in light of the complainant's statement and any additional evidence. It is not necessary that a complainant name additional witnesses. If the complainant's statement is credible, given all the circumstances, this will be considered sufficient to find that sexual harassment occurred.

Within seven days of completing the interviews, the investigative officer will produce a written report which, together with the investigative file, will be submitted to the employer. The investigative officer is empowered to recommend remedial measures based upon the results of the investigation.

The individual filing the complaint, the alleged target of the harassment (if a different individual), and the alleged harasser shall be informed of the results of the investigation and permitted to review the written report and investigative file. These individuals will be permitted to submit comments regarding the completeness of the investigation and the results of the investigation, within seven days. These comments will be considered by the employer to determine if any additional investigation is necessary or if the recommended remedial or disciplinary action should be modified in any manner.

The employer shall consider and act upon the written recommendation of the investigative report within seven days of its submission. The complainant, the alleged target of the harassment (if a different individual), and the alleged harasser will be notified in writing of the employer's action. If it is determined that the alleged harasser has engaged in conduct which constitutes sexual harassment, the harasser shall be subject to immediate discipline designed to stop the harassment and prevent its recurrence.

E. Education and training

Education and training for employees at each level of the workforce is critical to the success of a policy against sexual harassment. The employer's sexual harassment policy must be conspicuously posted in the workplace.

Education and training must include the following:

1. All employees

Each employee will be given a copy of the sexual harassment policy and will be requested to read it and sign a receipt. After the first year of implementation, the policy will be distributed in the same form to each newly hired employee during orientation. This procedure assures that employees are given notice of expected standards of behavior. In addition, supervisory and managerial staff will orally explain the employer's policy, stress the employer's commitment to eliminating sexual harassment in the workplace, and state the penalties for engaging in prohibited conduct, and the procedure for reporting violations.

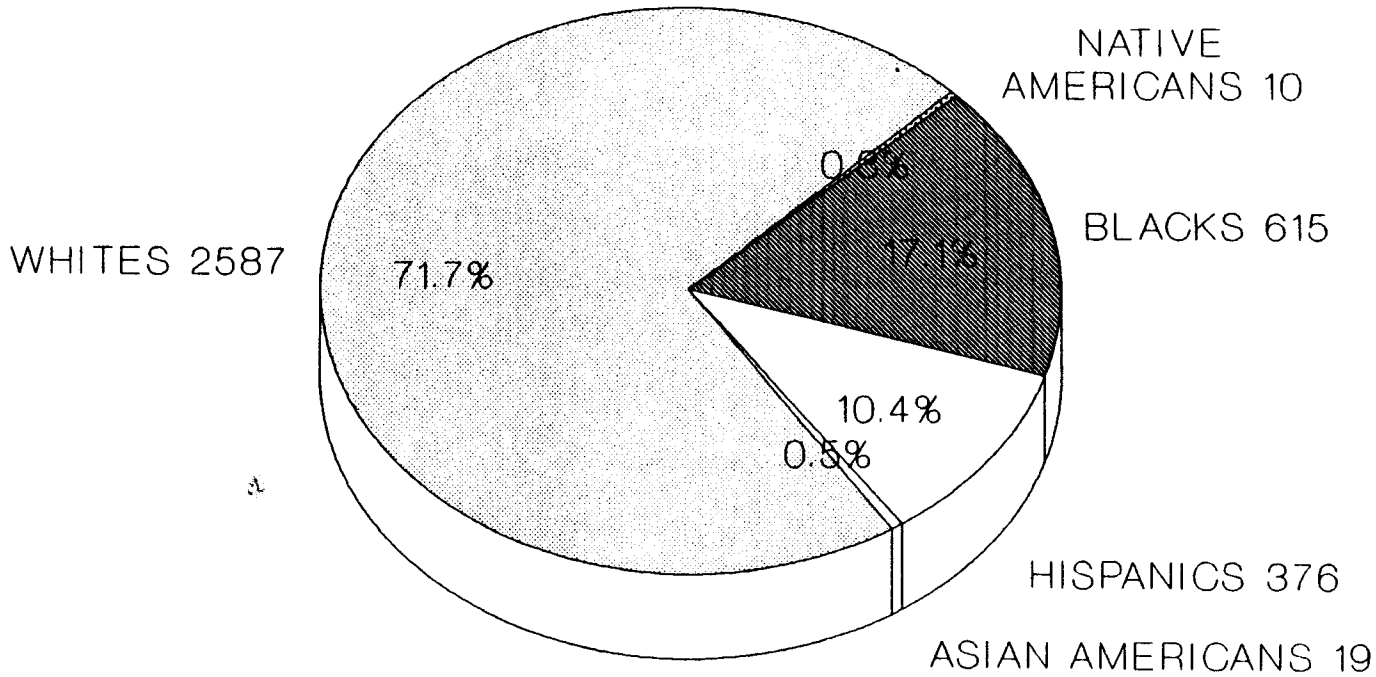
2. **All supervisory and managerial employees**

All supervisory and managerial staff will participate in an annual training session on sexual harassment. At least one-third of each session will be dedicated to education about workplace sexual harassment, including training as to what types of remarks, behavior, and pictures will not be tolerated.

3. **All investigative officers**

The investigative officers will attend an annual training seminar conducted by experienced sexual harassment educators and/or investigators to educate them about the problems of sexual harassment in the workplace and to suggest techniques for investigating, mediating and stopping it.

DISTRICT COUNCIL OF CARPENTERS
RACIAL COMPOSITION OF APPRENTICES: 12/89

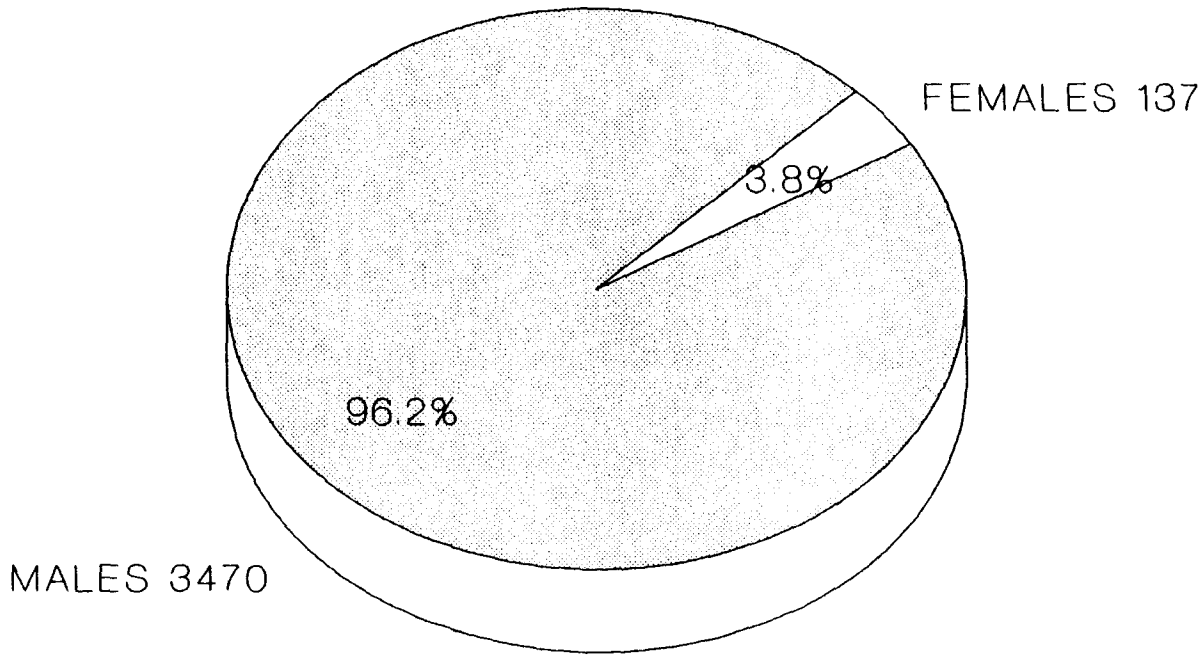


3,607 APPRENTICES AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - JAC QUESTIONNAIRE RESPONSE 4/90

FIGURE 1

DISTRICT COUNCIL OF CARPENTERS
GENDER COMPOSITION OF APPRENTICES: 12/89

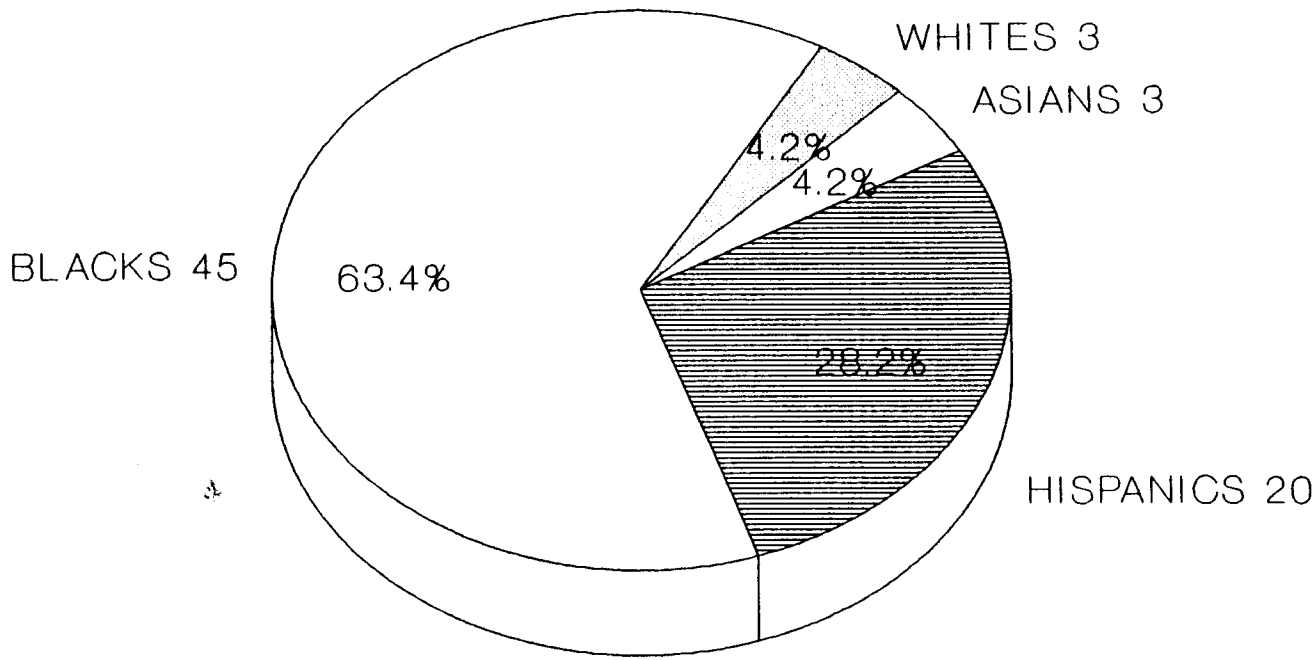


3607 APPRENTICES AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - JAC QUESTIONNAIRE RESPONSE 4/90

FIGURE 2

DISTRICT COUNCIL OF CARPENTERS
RACIAL COMPOSITION OF TRAINEES - 12/88

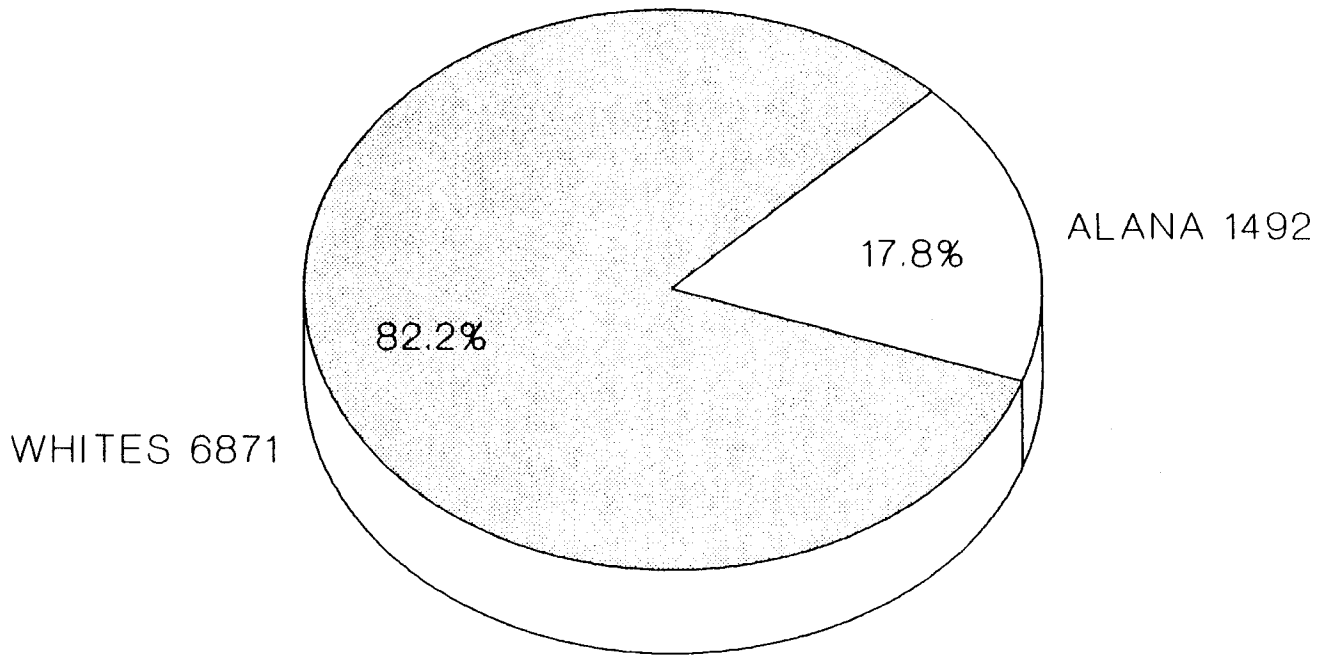


71 TRAINEES AS OF 12/88

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - JAC QUESTIONNAIRE RESPONSE 4/90

FIGURE 3

LOCAL 3 - ELECTRICAL WORKERS (IBEW)
RACIAL COMPOSITION OF JOURNEY PERSONS

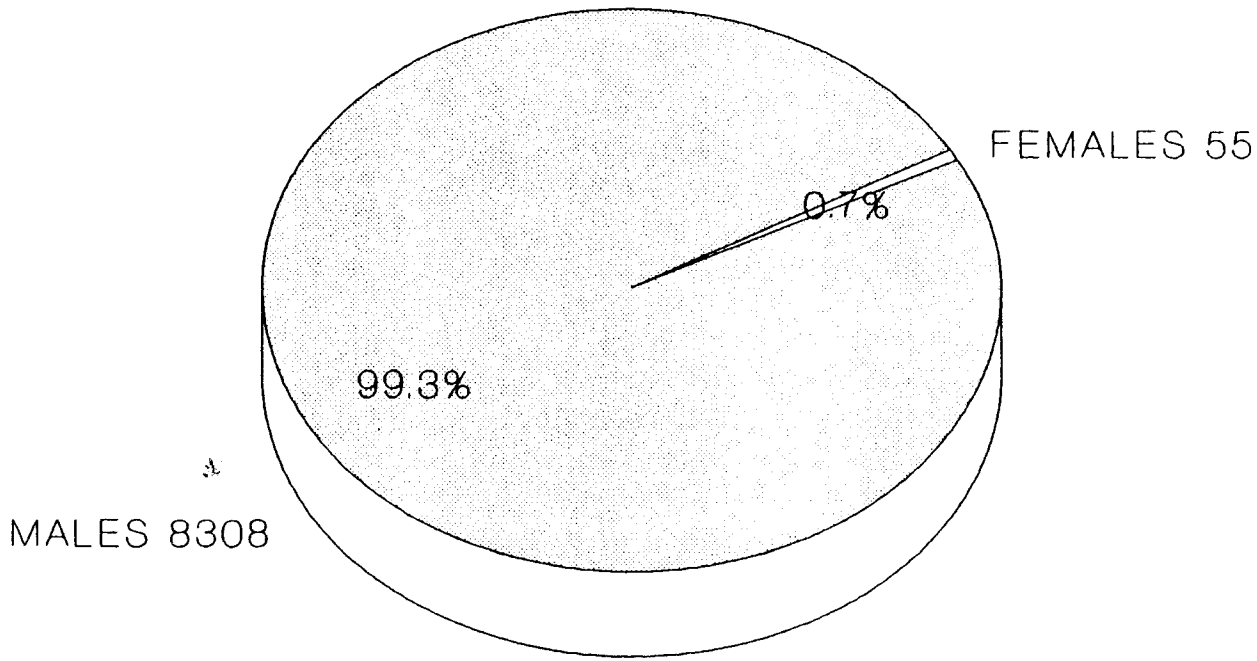


8,363 JOURNEY PERSONS AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 4

LOCAL 3 - ELECTRICAL WORKERS (IBEW)
GENDER COMPOSITION OF JOURNEY PERSONS

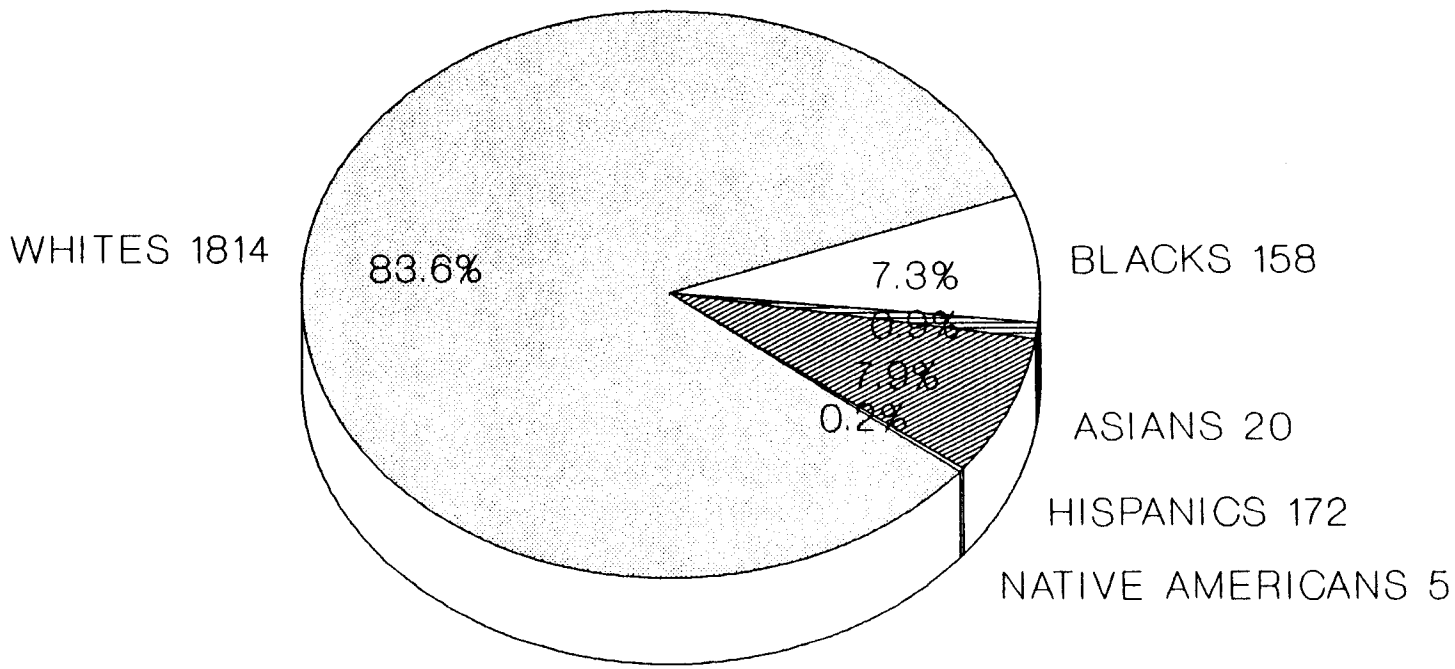


8,363 JOURNEY PERSONS AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 5

LOCAL 3 - ELECTRICAL WORKERS (IBEW)
RACIAL COMPOSITION OF APPRENTICES

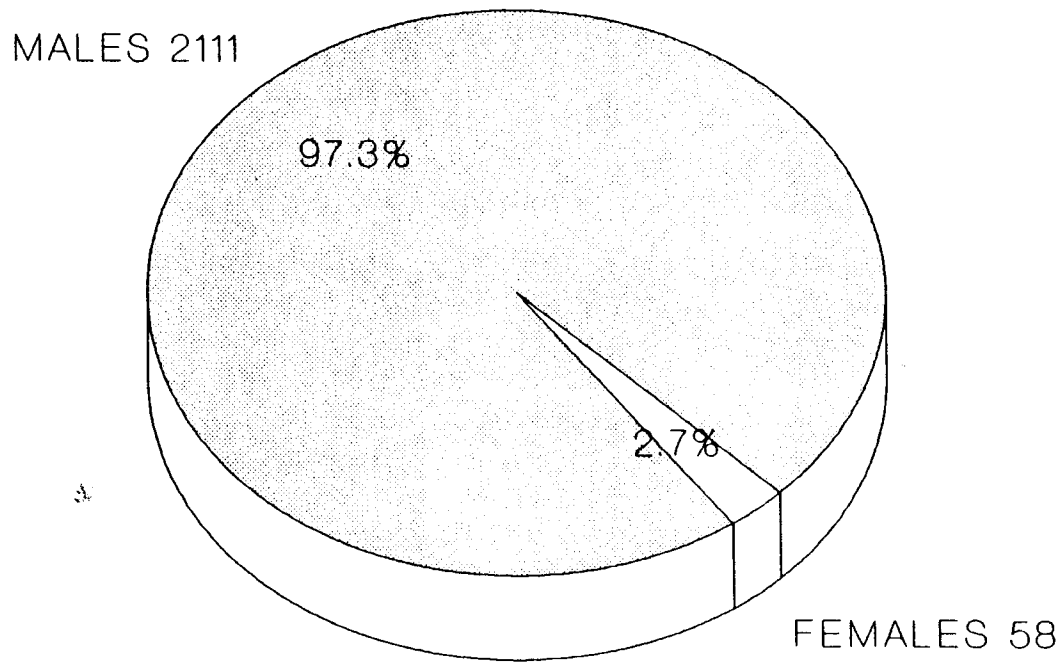


2,169 APPRENTICES AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 6

LOCAL 3 - ELECTRICAL WORKERS (IBEW)
GENDER COMPOSITION OF APPRENTICES - 1989

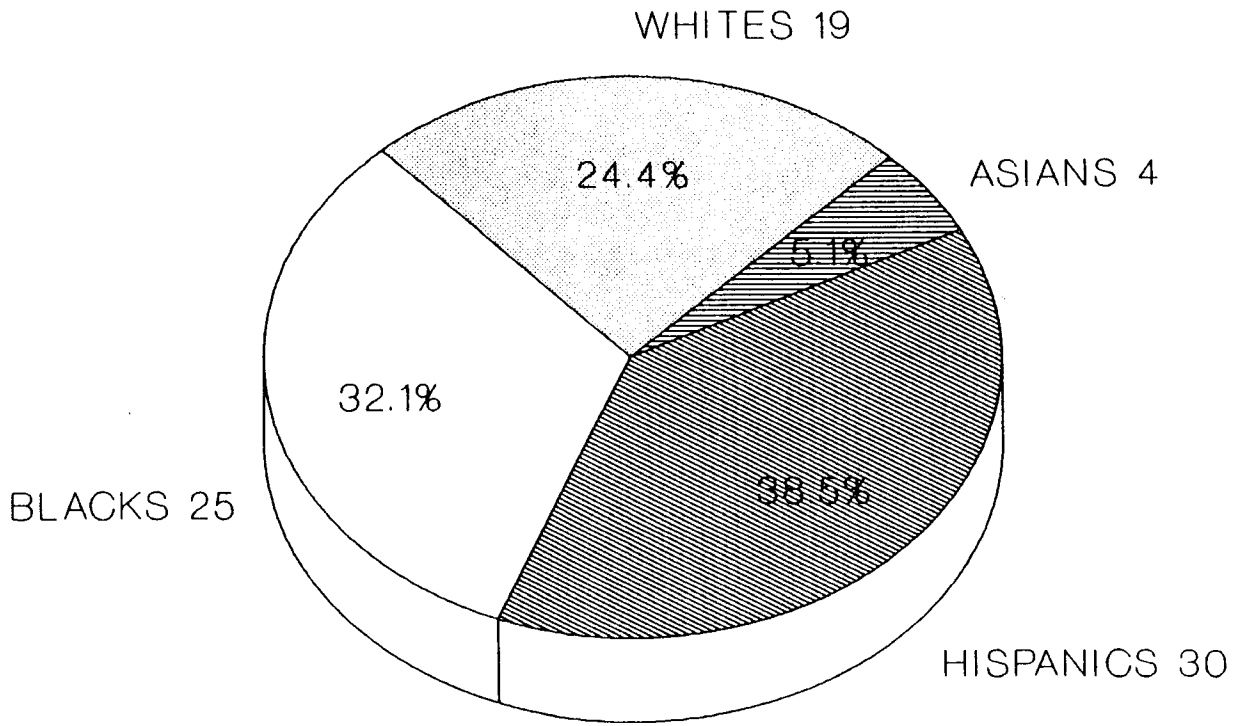


2,169 APPRENTICES AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 7

LOCAL 3 - ELECTRICAL WORKERS (IBEW)
RACIAL COMPOSITION OF TRAINEES

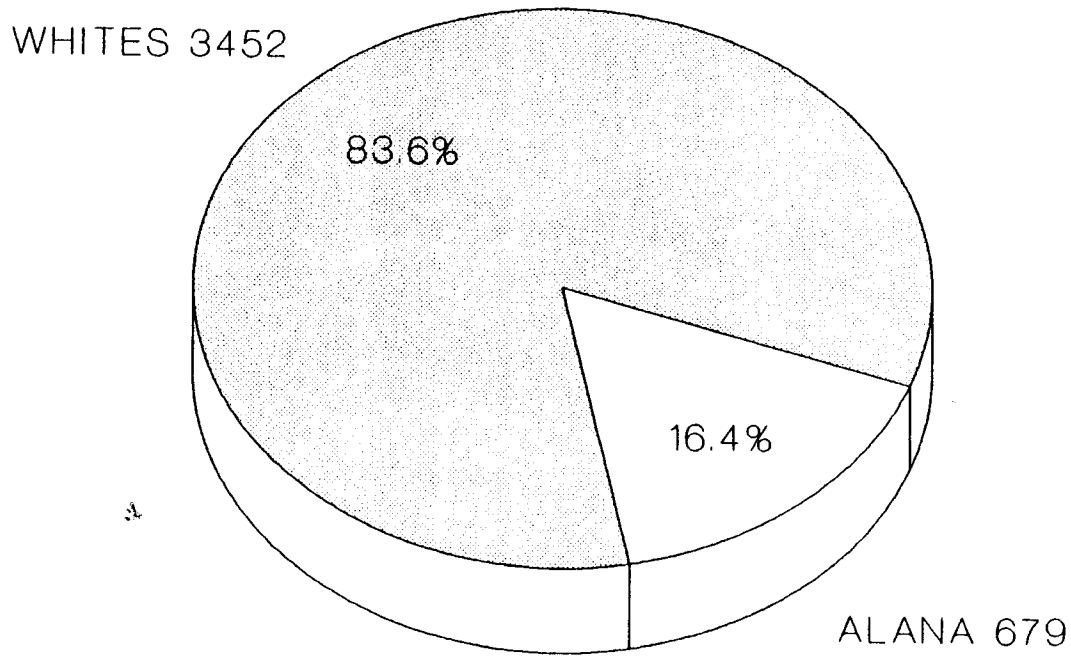


78 TRAINEES AS OF 12/89

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 8

LOCAL 28 - SHEETMETAL WORKERS
RACIAL COMPOSITION OF JOURNEY PERSONS

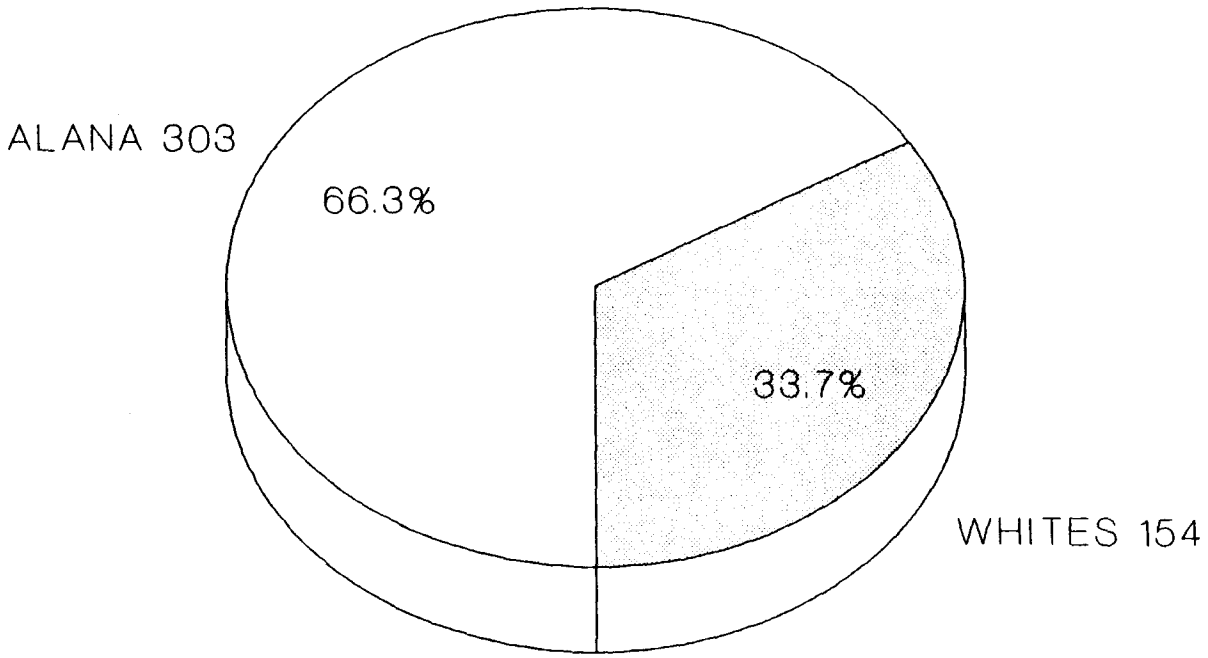


4,131 JOURNEY PERSONS AS OF 2/91

JURISDICTION - N.Y.C., LONG ISLAND AND NORTHERN NEW JERSEY
SOURCE - LOCAL 28 COUNSEL, EDMUND D'ELIA

FIGURE 9

LOCAL 28 - SHEETMETAL WORKERS
RACIAL COMPOSITION OF APPRENTICES: 3/91

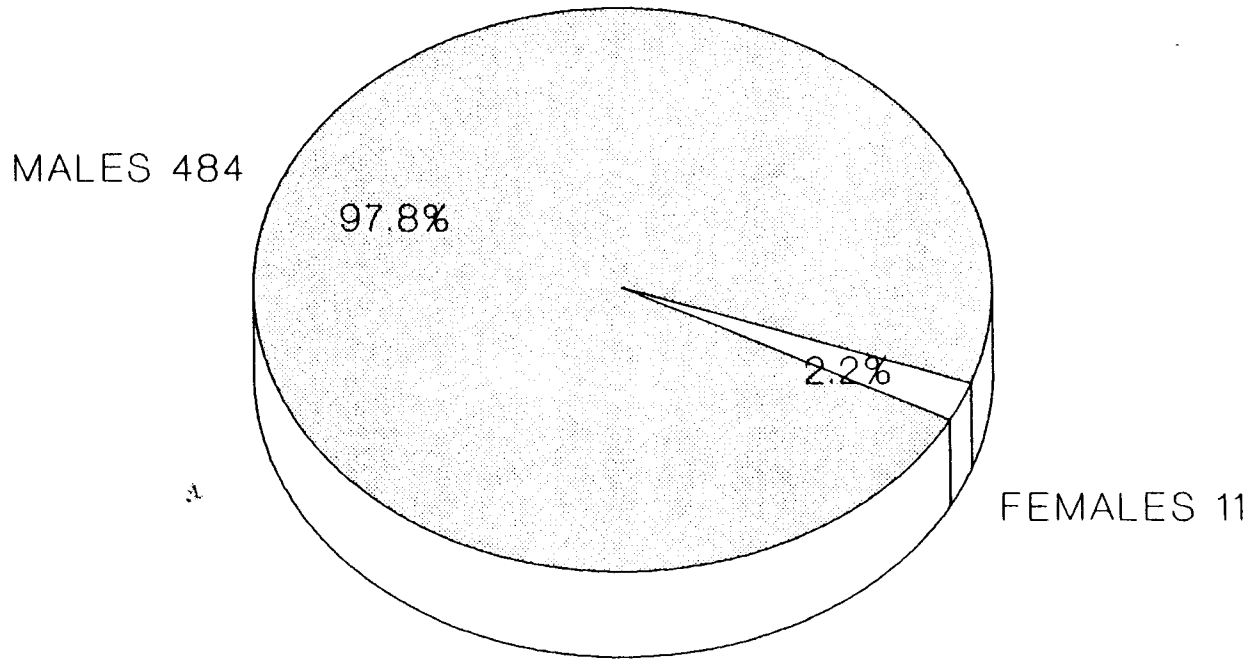


457 APPRENTICES AS OF 3/11/91

JAC JURISDICTION - N.Y.C., L.I. & NORTH
SOURCE: LOCAL 28 AFFIRMATIVE ACTION PLAN

FIGURE 10

LOCAL 28 - SHEETMETAL WORKERS
GENDER COMPOSITION OF APPRENTICES

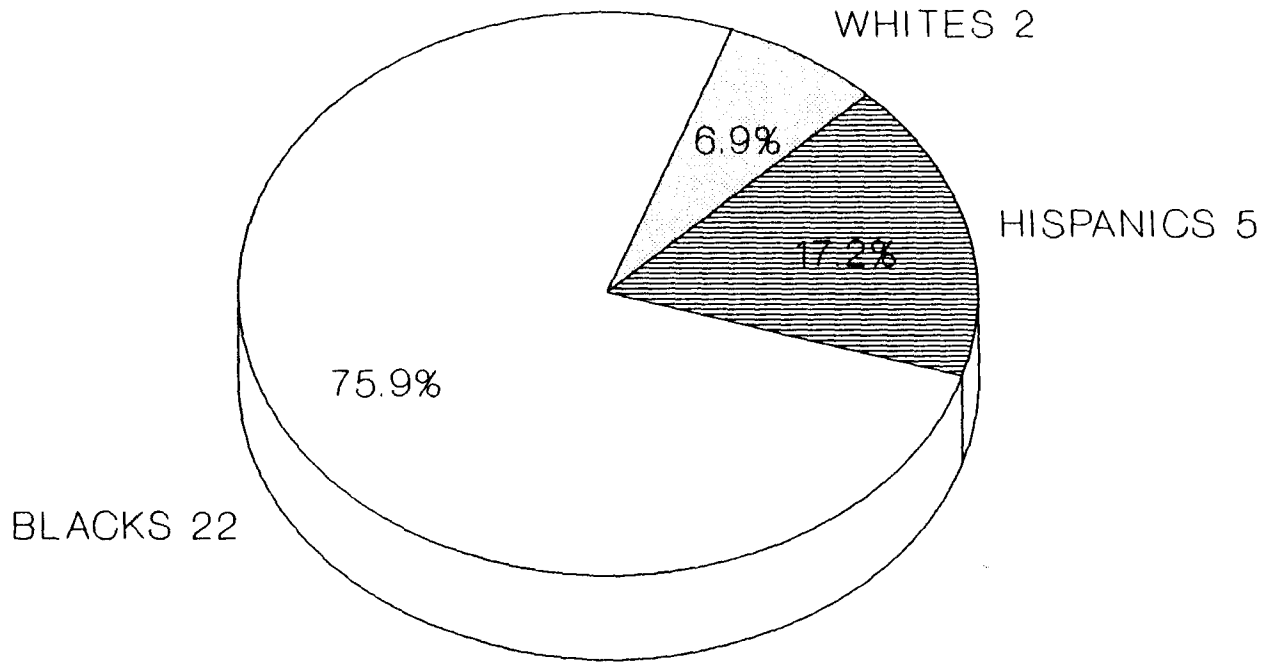


495 APPRENTICES AS OF 4/90

JURISDICTION - N.Y.C., LONG ISLAND
AND NORTHERN NEW JERSEY
SOURCE - PROGRAM STATUS REPORT - 4/19/90

FIGURE 11

LOCAL 14 - OPERATING ENGINEERS
RACIAL COMPOSITION OF TRAINEES - 12/88

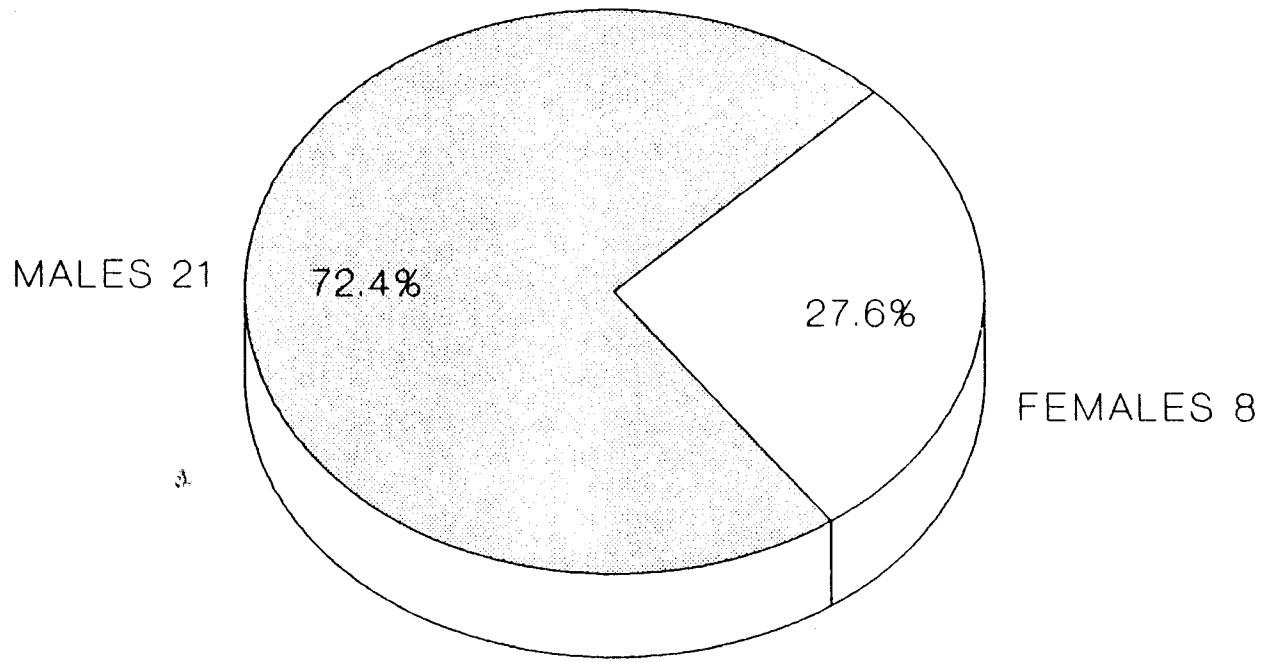


29 TRAINEES AS OF 12/88

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 12

LOCAL 14 - OPERATING ENGINEERS
GENDER COMPOSITION OF TRAINEES - 12/88

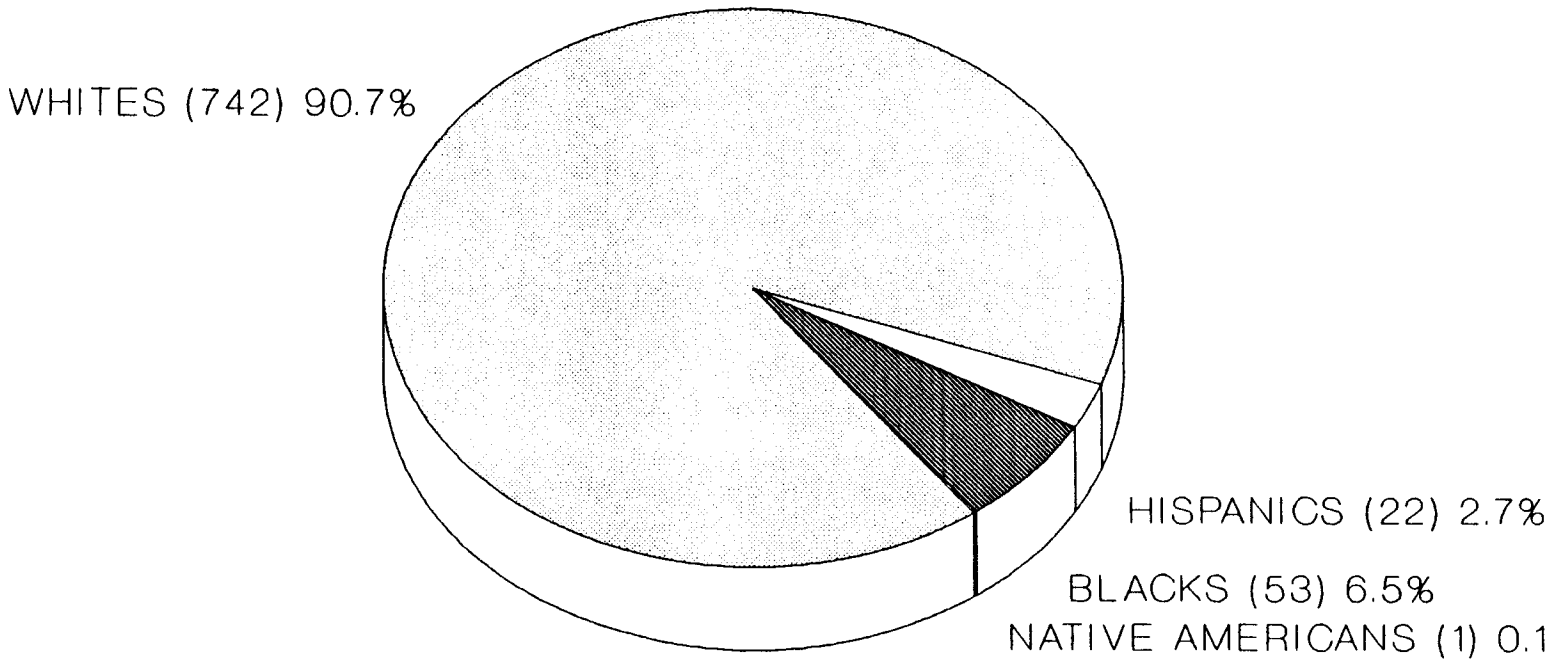


29 TRAINEES AS OF 12/88

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 13

LOCAL 14 - OPERATING ENGINEERS
RACIAL COMPOSITION OF JOURNEY PERSONS

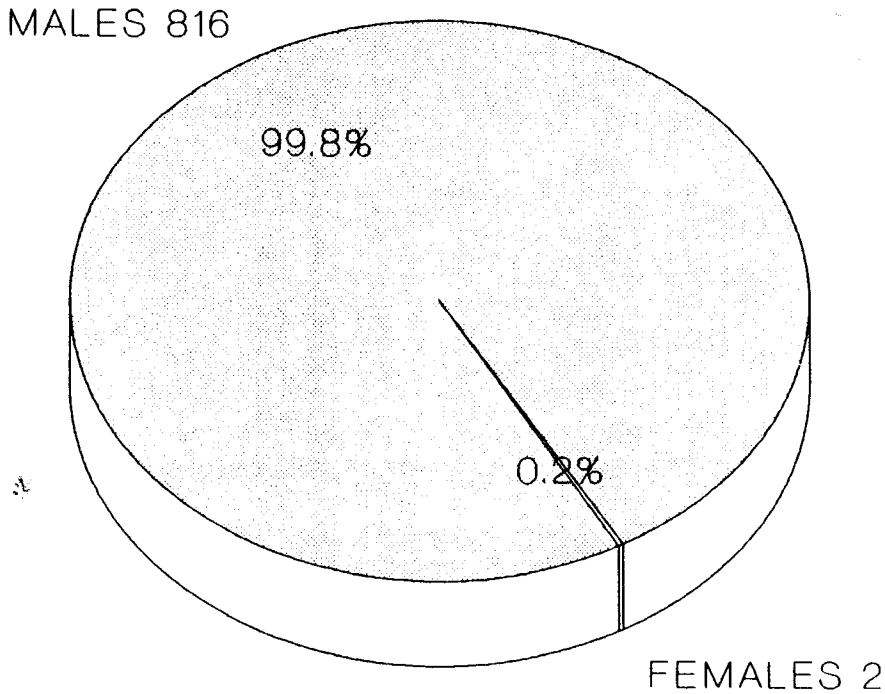


818 JOURNEY PERSONS AS OF 12/88

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - UNION QUESTIONNAIRE RESPONSE

FIGURE 14

LOCAL 14 - OPERATING ENGINEERS
GENDER COMPOSITION OF JOURNEY PERSONS

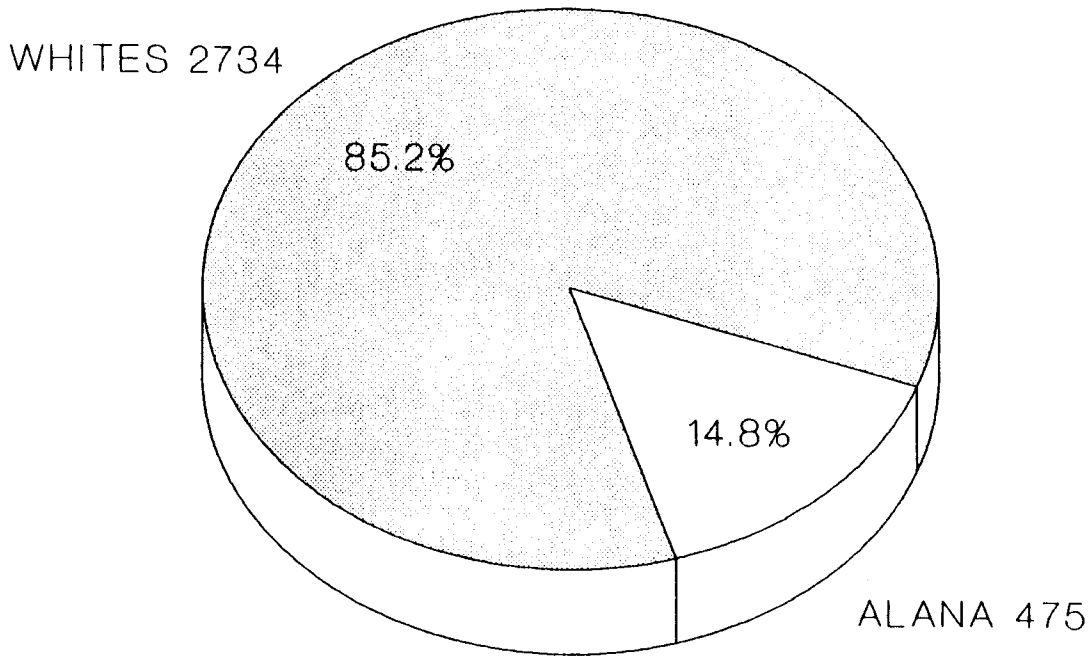


818 JOURNEY PERSONS AS OF 12/88

JURISDICTION - ALL OF NEW YORK CITY
SOURCE - QUESTIONAIRRE RESPONSE - 6/90

FIGURE 15

LOCAL 15 - OPERATING ENGINEERS
RACIAL COMPOSITION OF JOURNEY PERSONS

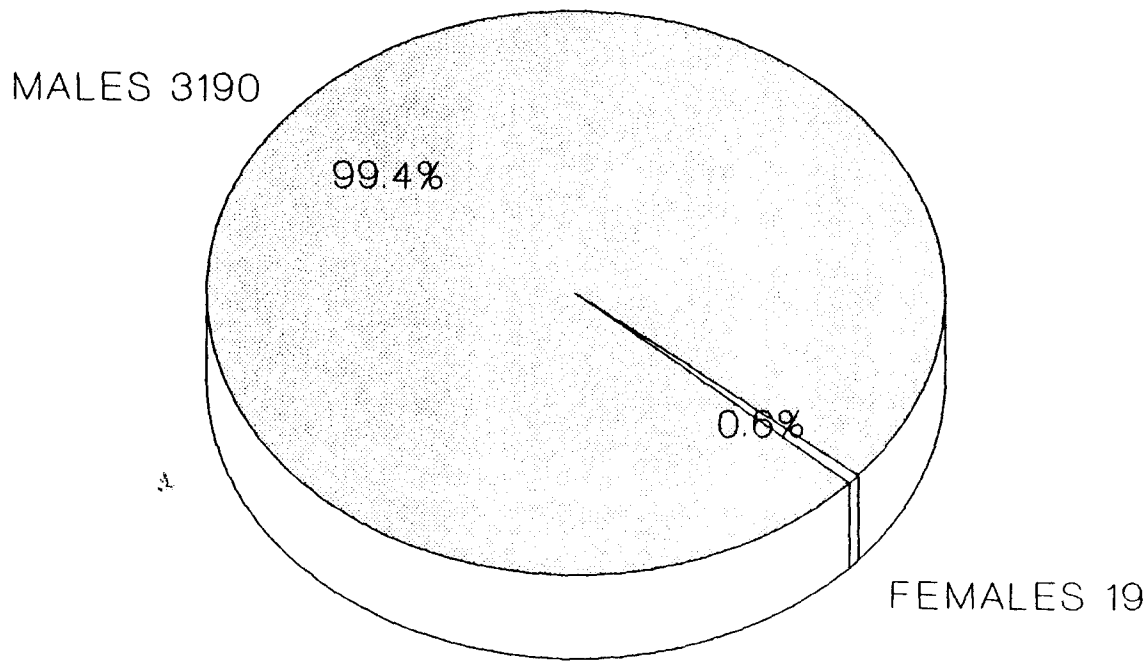


3,209 JOURNEY PERSONS AS OF 12/90

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - RESPONSE TO SUBPOENA - 2/28/91

FIGURE 16

LOCAL 15 - OPERATING ENGINEERS
GENDER COMPOSITION OF JOURNEY PERSONS

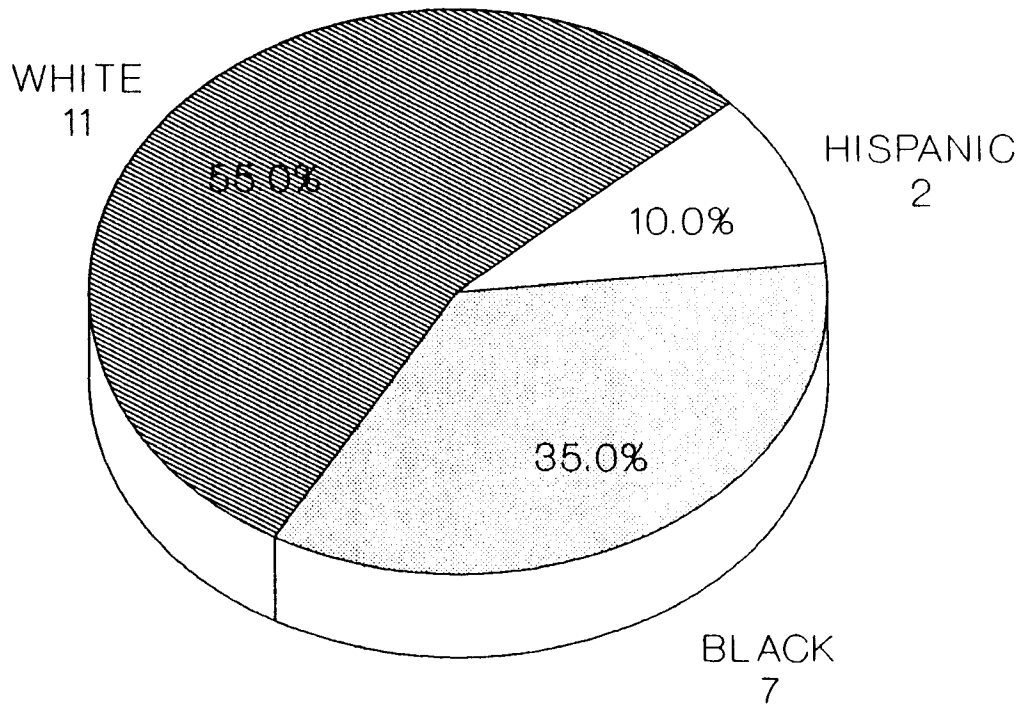


3,209 JOURNEY PERSONS

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - RESPONSE TO SUBPOENA - 2/28/91

FIGURE 17

LOCAL 15 - OPERATING ENGINEERS
RACIAL COMPOSITION OF APPRENTICES: 1989

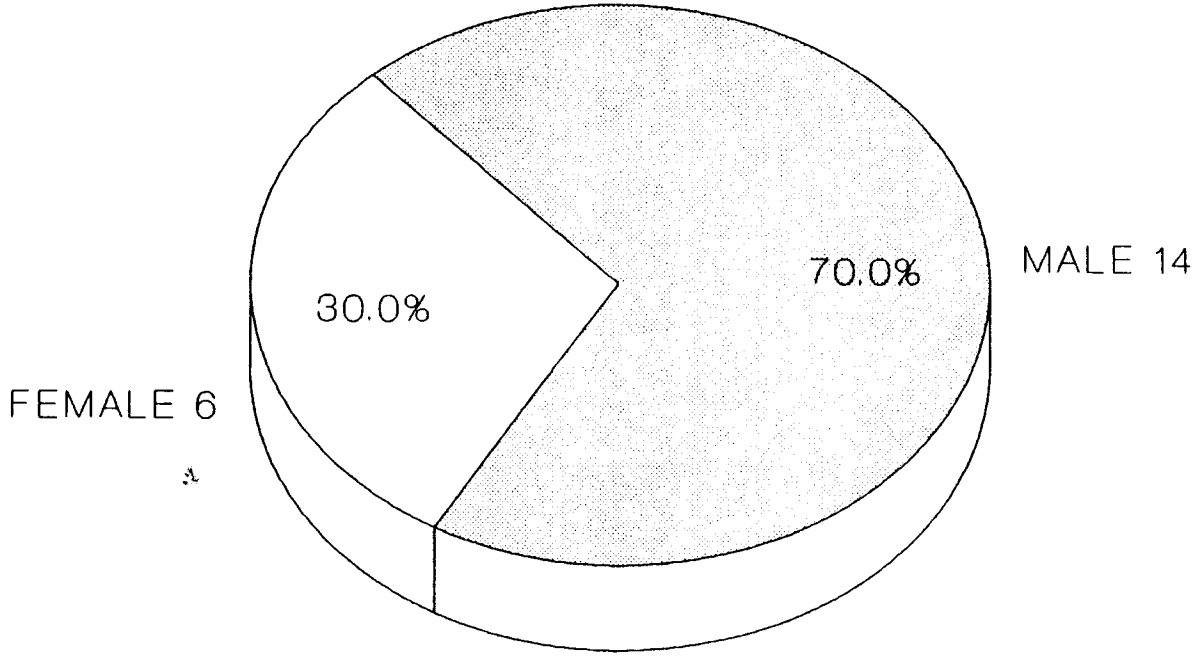


20 APPRENTICES AS OF 12/89

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - AFFIRMATIVE ACTION PLAN - 1/90

FIGURE 18

LOCAL 15 - OPERATING ENGINEERS
GENDER COMPOSITION OF APPRENTICES: 1990

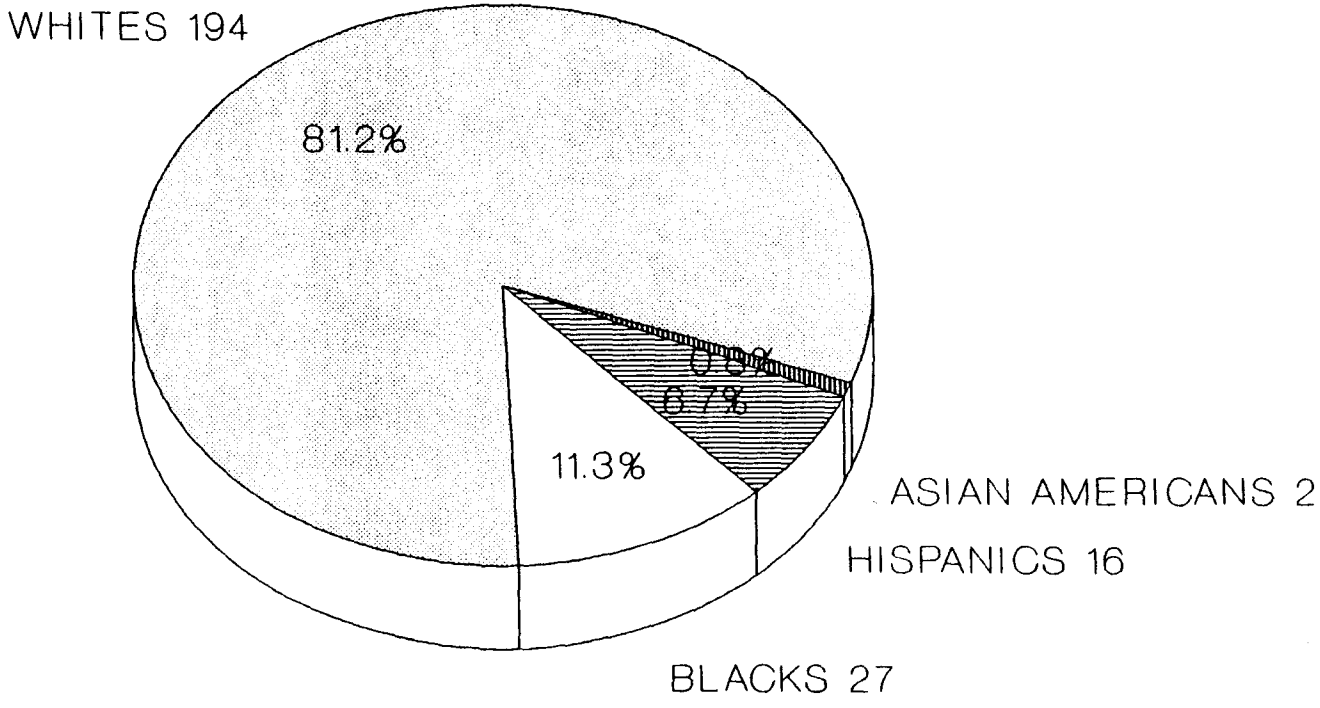


20 APPRENTICES AS OF 12/89

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - AFFIRMATIVE ACTION PLAN - 1/90

FIGURE 19

LOCAL 638 - STEAM FITTERS
RACIAL COMPOSITION OF APPRENTICES

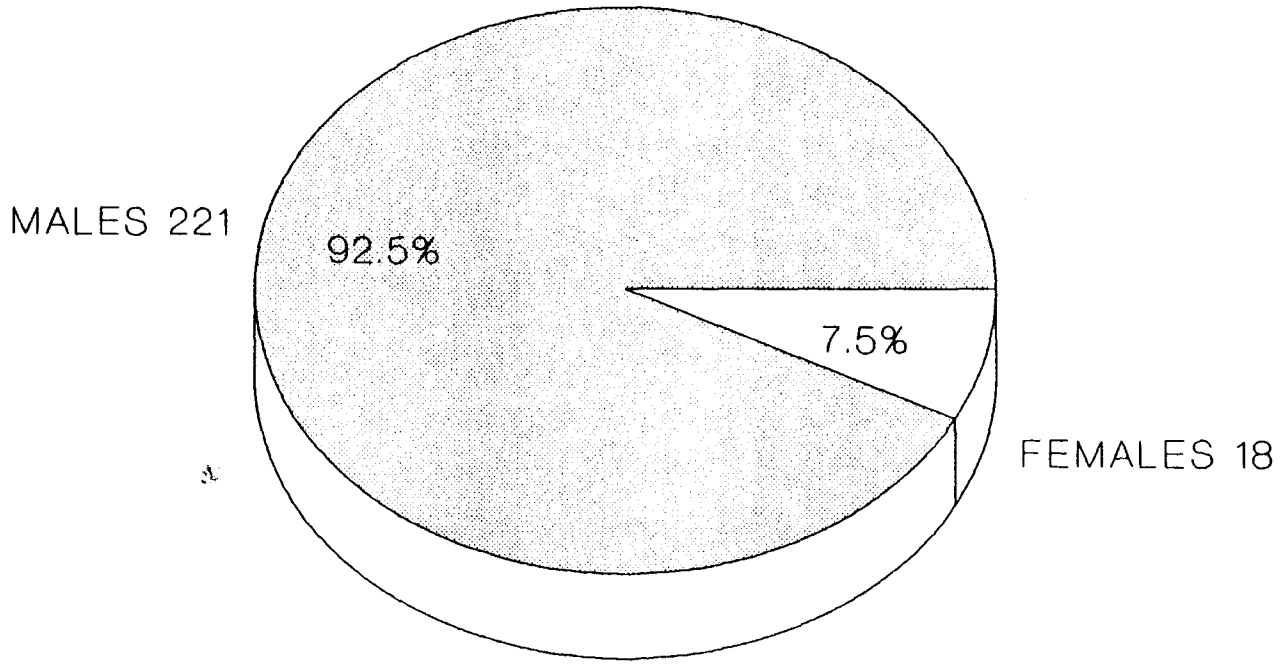


239 APPRENTICES AS OF 12/89

JURISDICTION - N.Y.C. AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 20

LOCAL 638 - STEAM FITTERS
GENDER COMPOSITION OF APPRENTICES

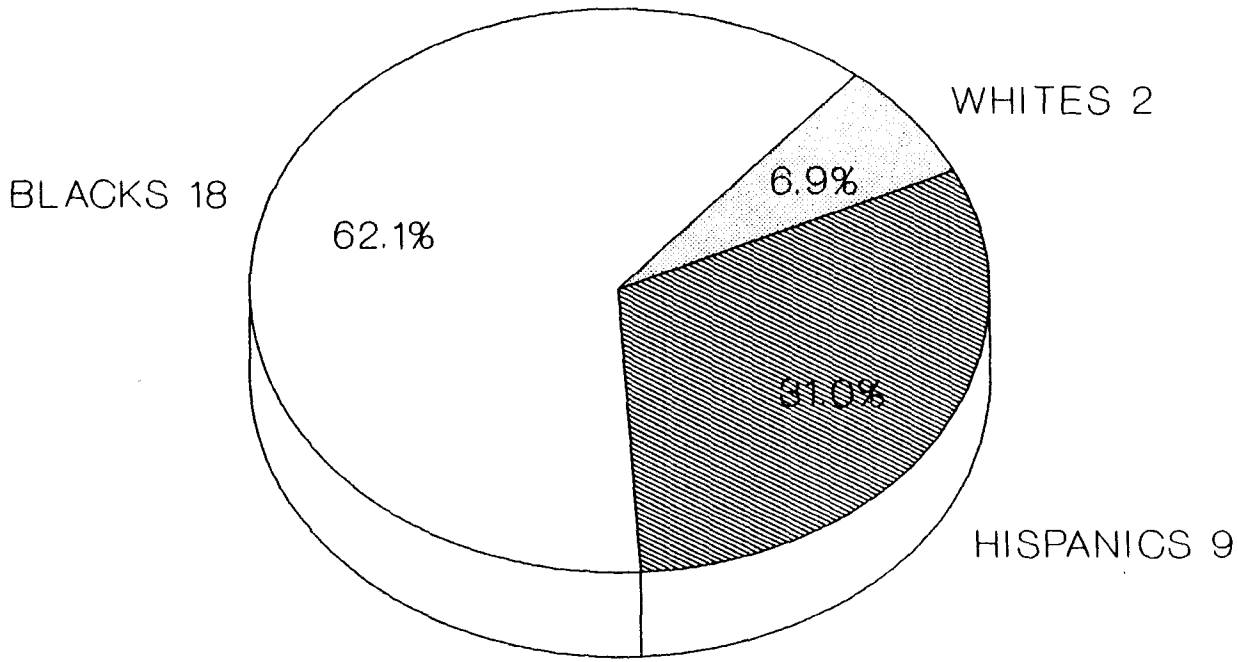


239 APPRENTICES AS OF 12/89

JURISDICTION - N.Y.C. AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 21

LOCAL 638 - STEAMFITTERS
RACIAL COMPOSITION OF TRAINEES

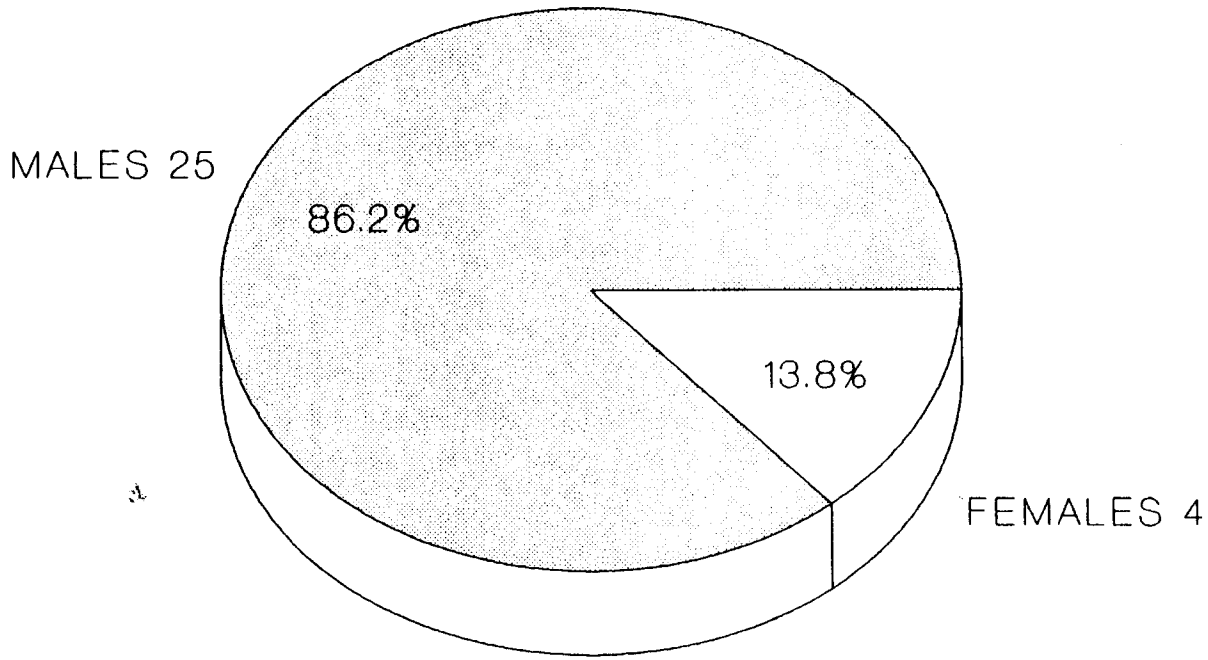


29 TRAINEES AS OF 12/88

JURISDICTION - N.Y.C. AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 22

LOCAL 638 - STEAMFITTERS
GENDER COMPOSITION OF TRAINEES

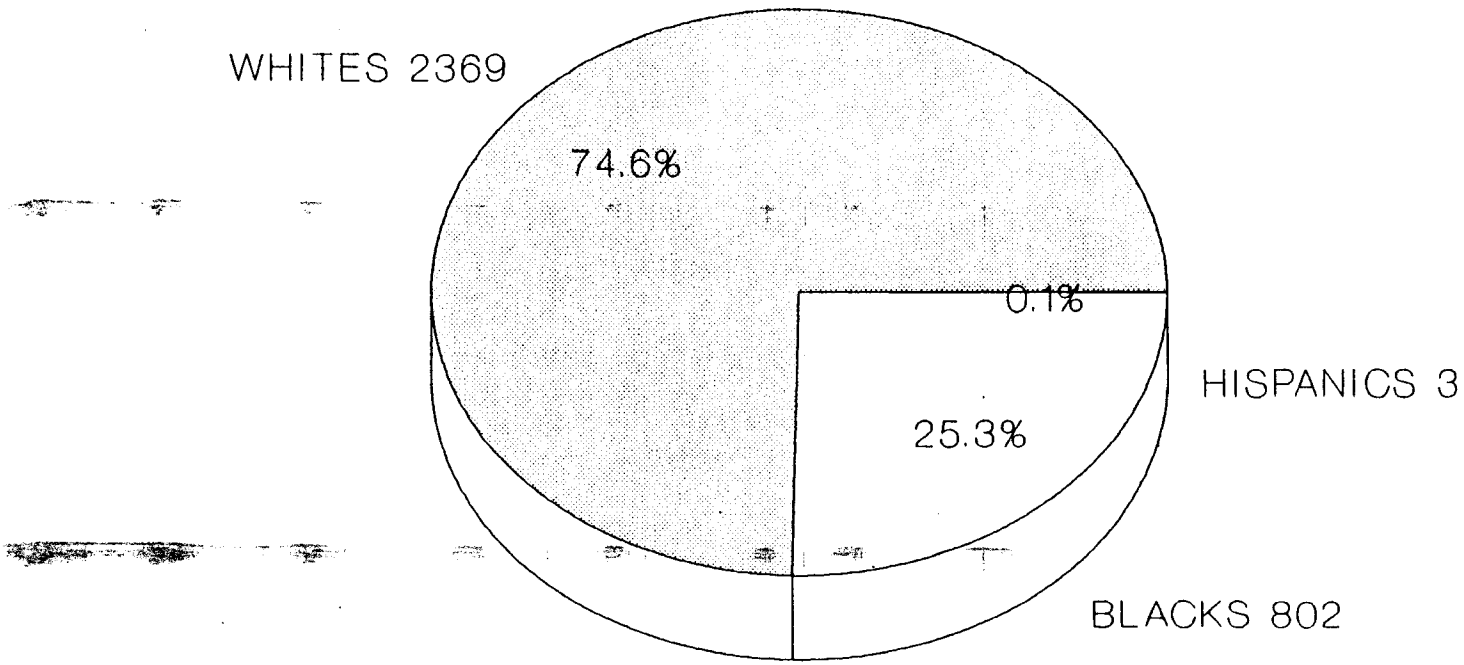


29 TRAINEES AS OF 12/88

JURISDICTION - N.YC.C AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 23

LOCAL 638 - STEAM FITTERS
RACIAL COMPOSITION OF JOURNEY PERSONS

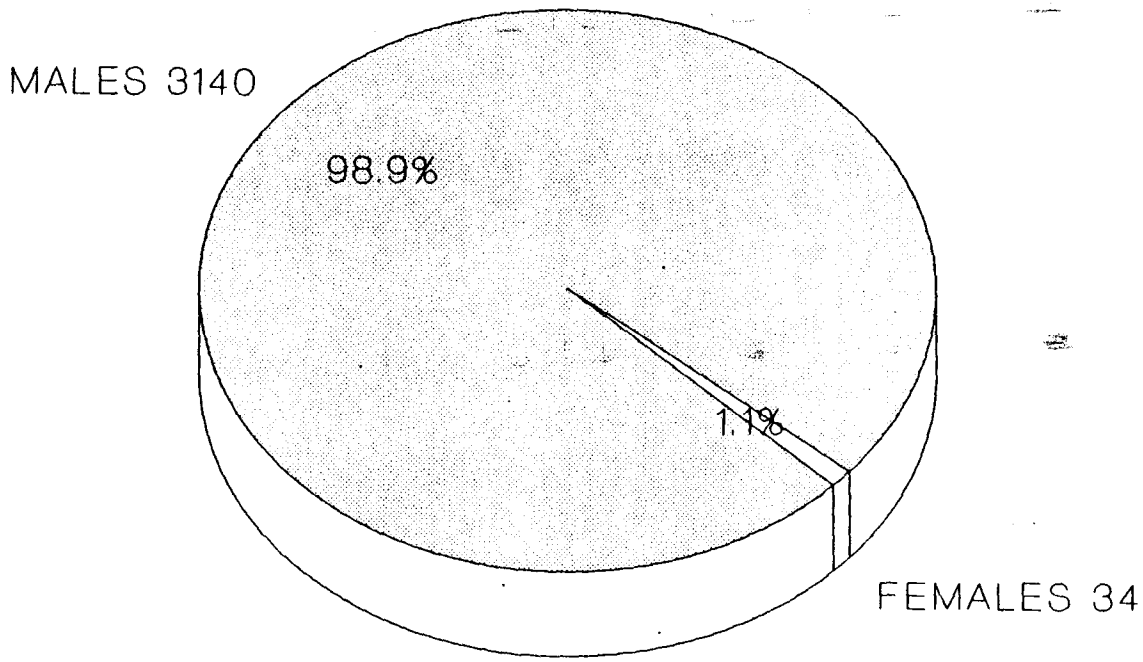


3,174 JOURNEY PERSONS AS OF. 12/89

JURISDICTION - N.Y.C. AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 24

LOCAL 638 - STEAM FITTERS
GENDER COMPOSITION OF JOURNEY PERSONS

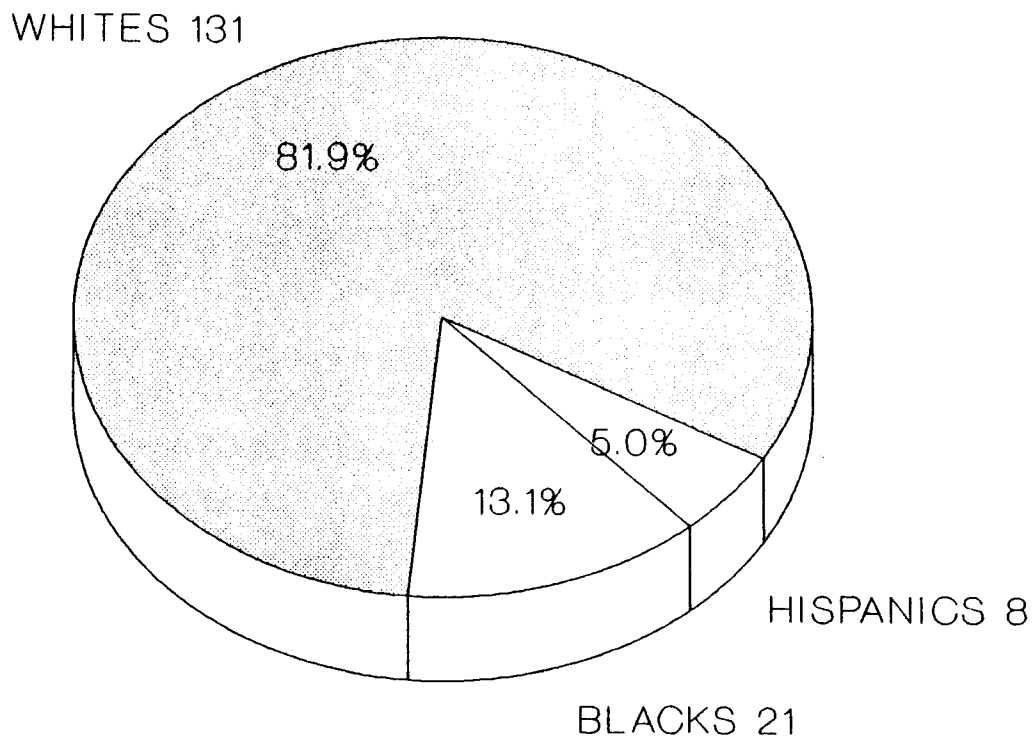


3,174 JOURNEY PERSONS AS OF 12/89

JURISDICTION - N.Y.C. AND LONG ISLAND
SOURCE - QUESTIONNAIRE RESPONSE - 4/90

FIGURE 25

LOCAL 1 - PLUMBERS AND GAS FITTERS
RACIAL COMPOSITION OF APPRENTICES

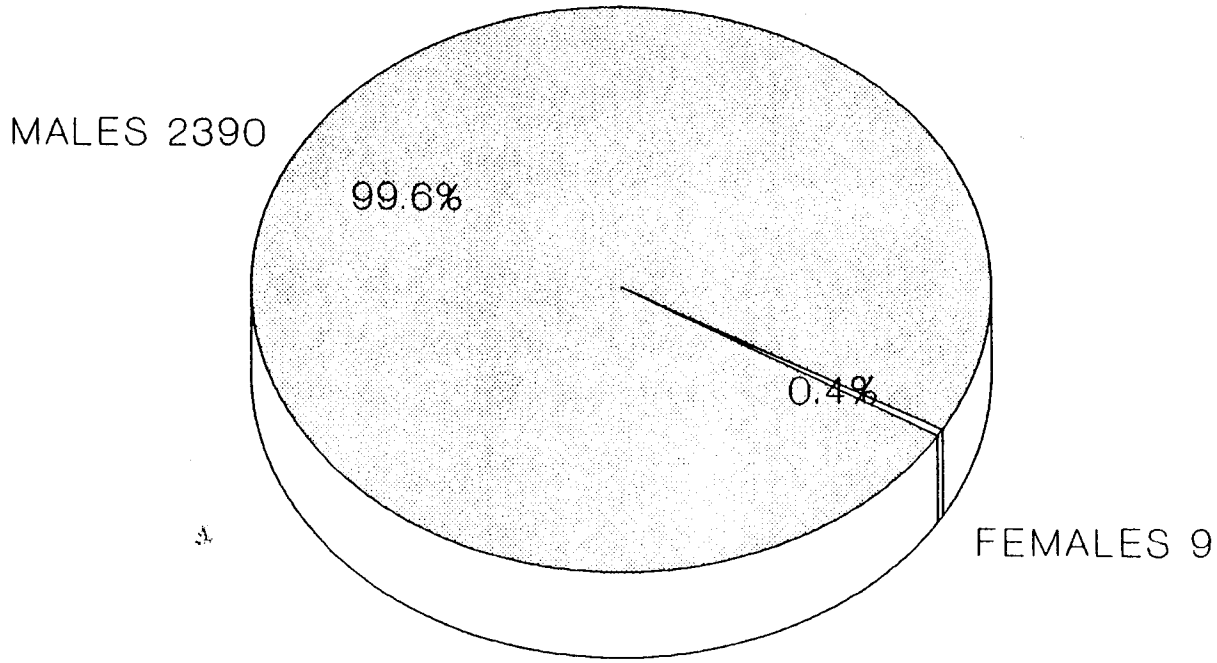


160 APPRENTICES AS OF 5/89

JURISDICTION - BROOKLYN AND QUEENS
SOURCE - AFFIRMATIVE ACTION PLAN - 5/89

FIGURE 26

LOCAL 2 - PLUMBERS AND PIPE FITTERS
GENDER COMPOSITION OF JOURNEY PERSONS

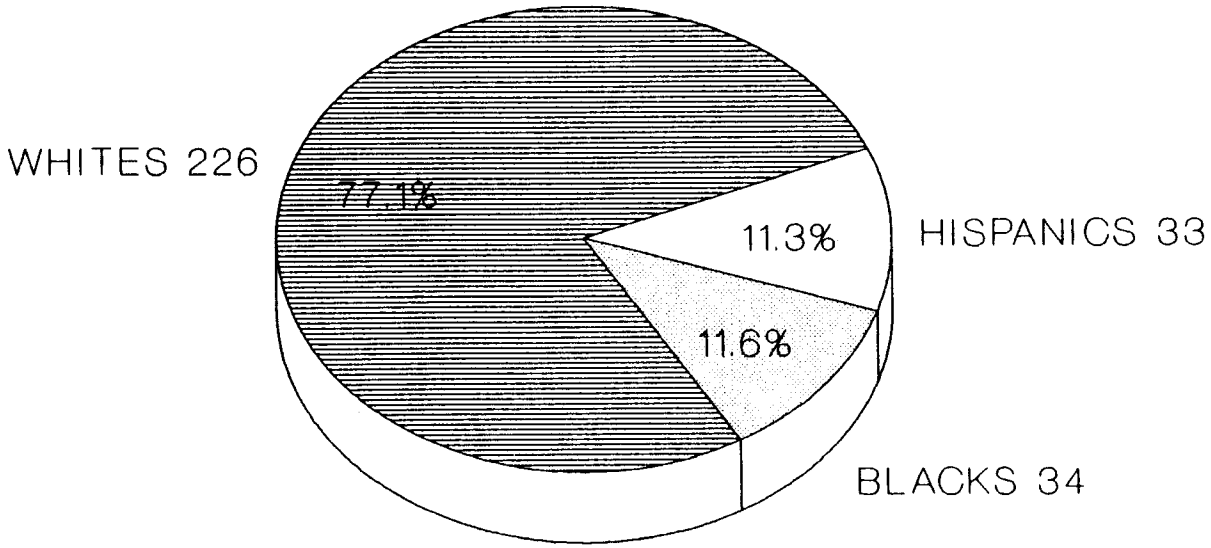


2,399 JOURNEY PERSONS AS OF 12/89

JURISDICTION - MANHATTAN AND THE BRONX
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 27

LOCAL 2 - PLUMBERS AND PIPE FITTERS
RACIAL COMPOSITION OF APPRENTICES: 12/89

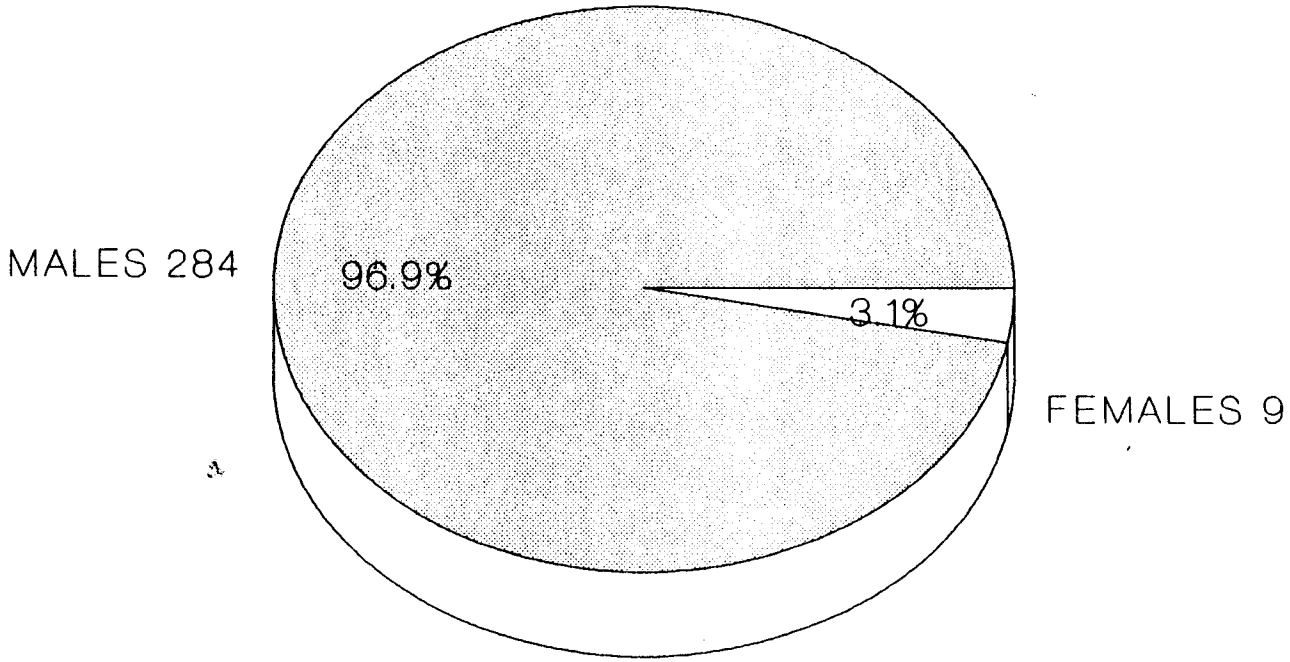


T = 293 APPRENTICES

JURISDICTION - MANHATTAN AND THE BRONX
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 28

LOCAL 2 - PLUMBERS AND PIPE FITTERS
GENDER COMPOSITION OF APPRENTICES

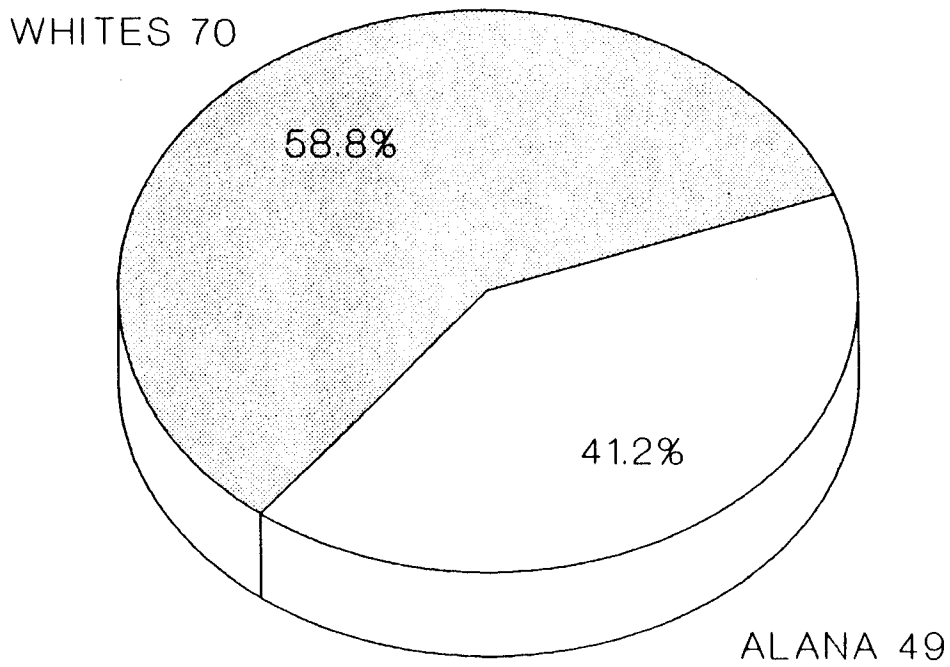


293 APPRENTICES AS OF 12/89

JURISDICTION - MANHATTAN AND THE BRONX
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 29

LOCAL 2 - PLUMBERS AND PIPE FITTERS
RACIAL COMPOSITION OF TRAINEES

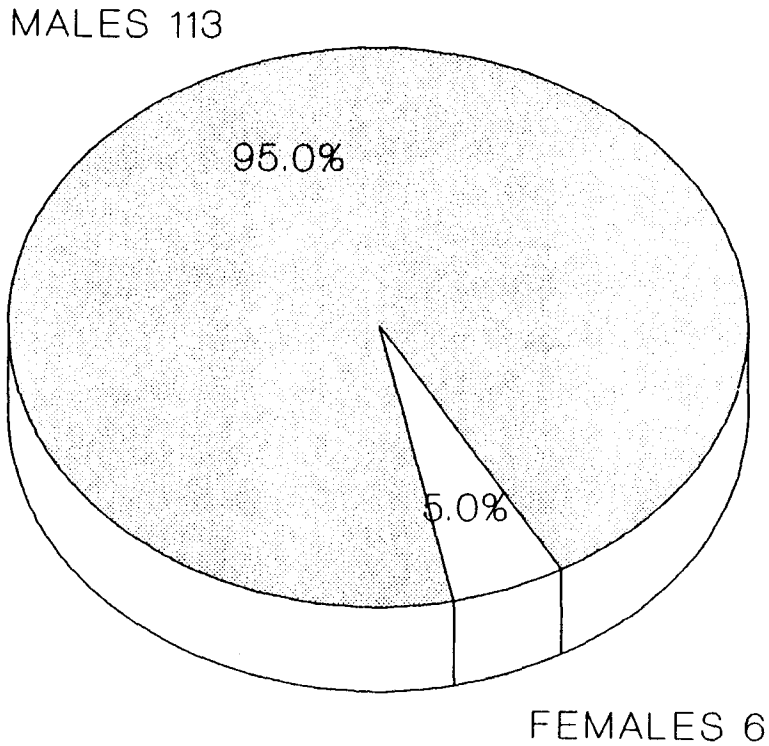


119 TRAINEES AS OF 12/88

JURISDICTION - MANHATTAN AND THE BRONX
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 30

LOCAL 2 - PLUMBERS AND PIPE FITTERS
GENDER COMPOSITION OF TRAINEES

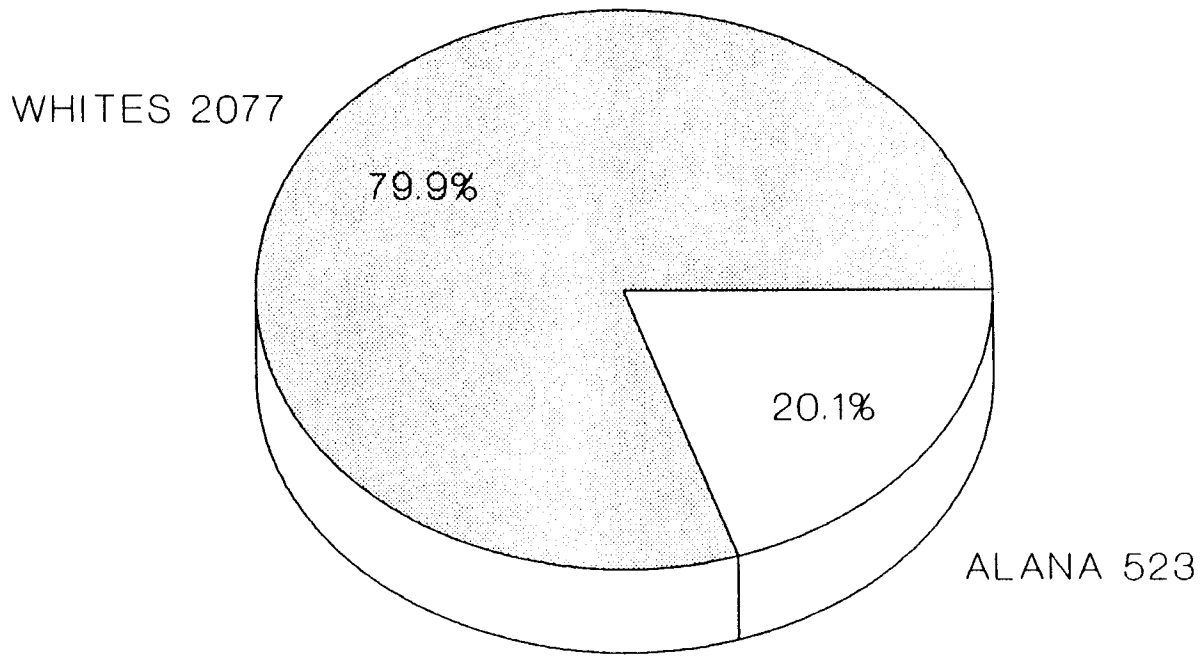


119 TRAINEES AS OF 12/88

JURISDICTION - MANHATTAN AND THE BRONX
SOURCE - QUESTIONNAIRE RESPONSE - 6/90

FIGURE 31

LOCAL 1 - ELEVATOR CONSTRUCTORS
RACIAL COMPOSITION OF UNION MEMBERS

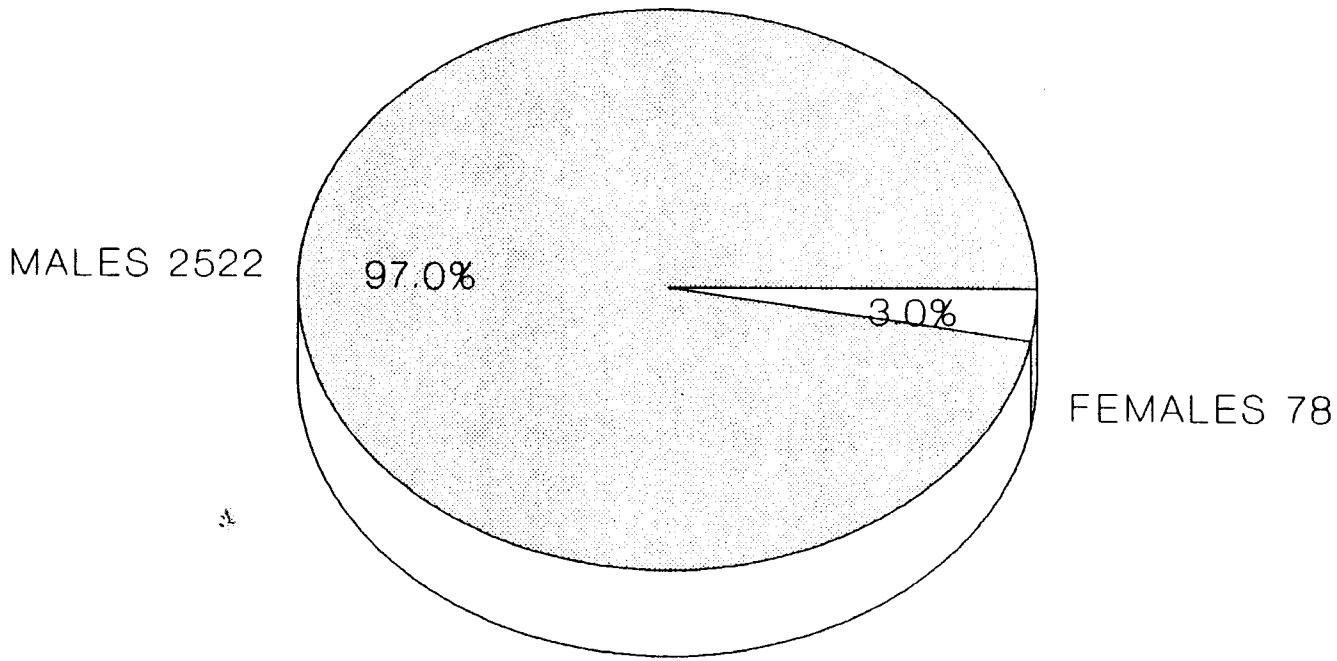


(APPROX) 2,600 UNION MEMBERS AS OF 4/90

JURISDICTION - N.Y.C., LONG ISLAND AND NORTHERN NEW JERSERY.
SOURCE - TESTIMONY OF UNION PRESIDENT

FIGURE 32

LOCAL 1 - ELEVATOR CONSTRUCTORS
GENDER COMPOSITION OF UNION MEMBERS

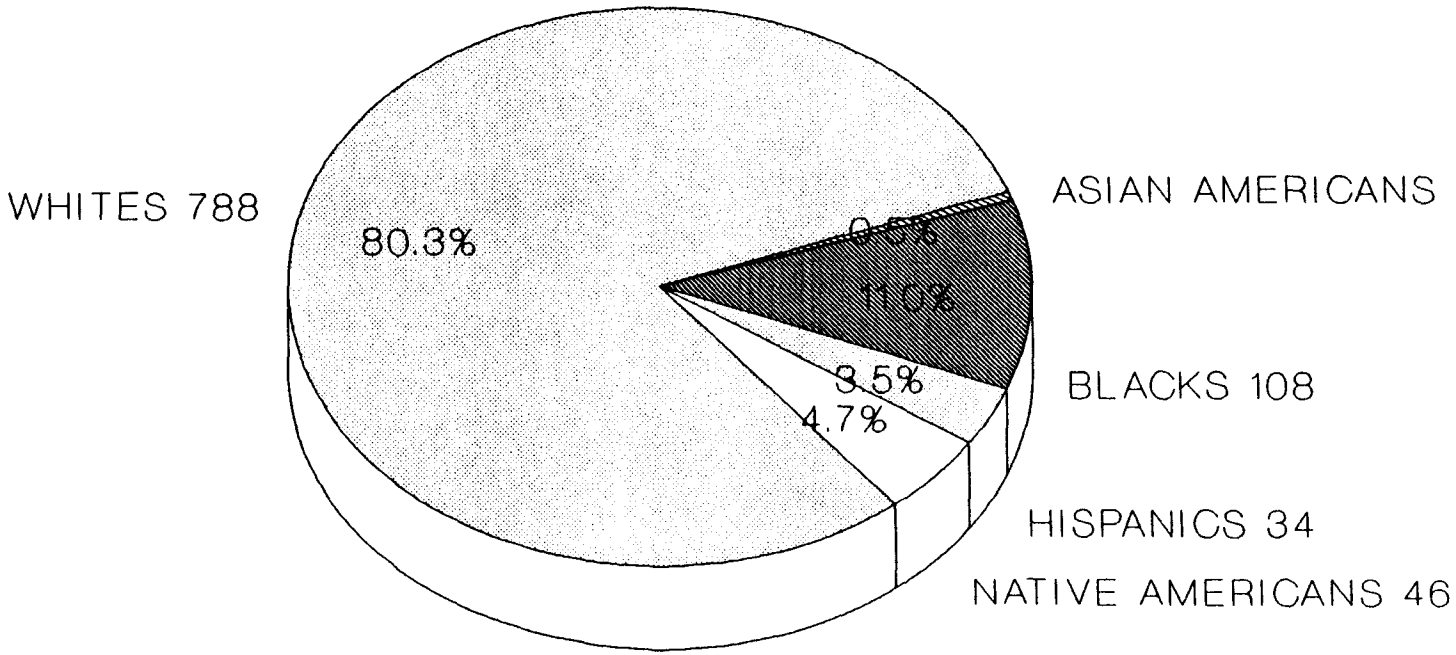


(APPROX) 2,600 UNION MEMBERS AS OF 4/90

JURISDICTION - N.Y.C., LONG ISLAND AND NORTHERN NEW JERSERY.
SOURCE - TESTIMONY OF UNION PRESIDENT

FIGURE 33

LOCAL 40 - STRUCTURAL IRON WORKERS
RACIAL COMPOSITION OF UNION MEMBERS

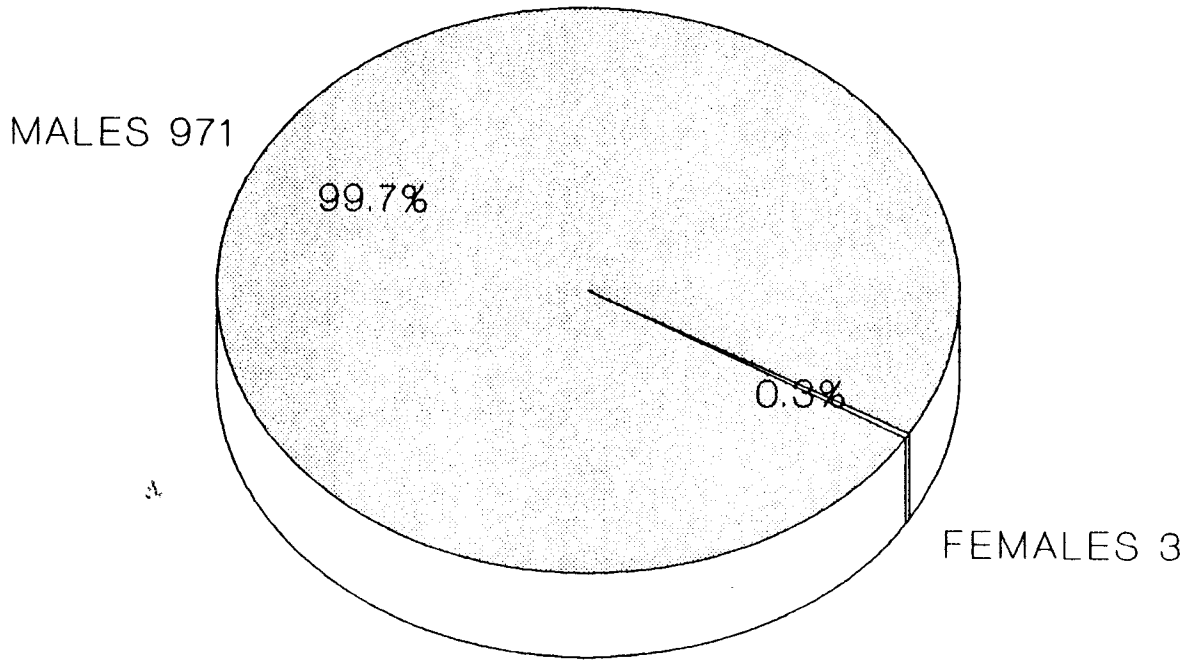


974 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 34

LOCAL 40 - STRUCTURAL IRON WORKERS
GENDER COMPOSITION OF UNION MEMBERS

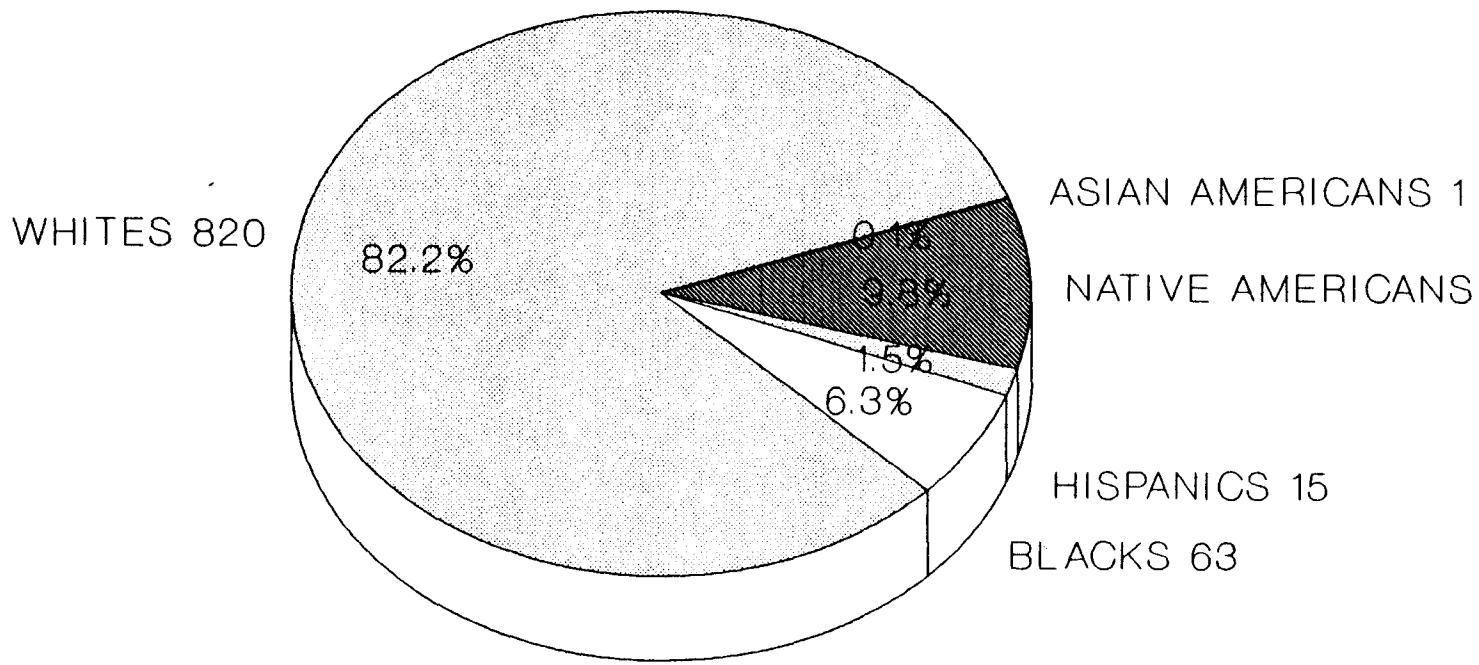


974 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 35

LOCAL 361 - STRUCTURAL IRON WORKERS
RACIAL COMPOSITION OF UNION MEMBERS

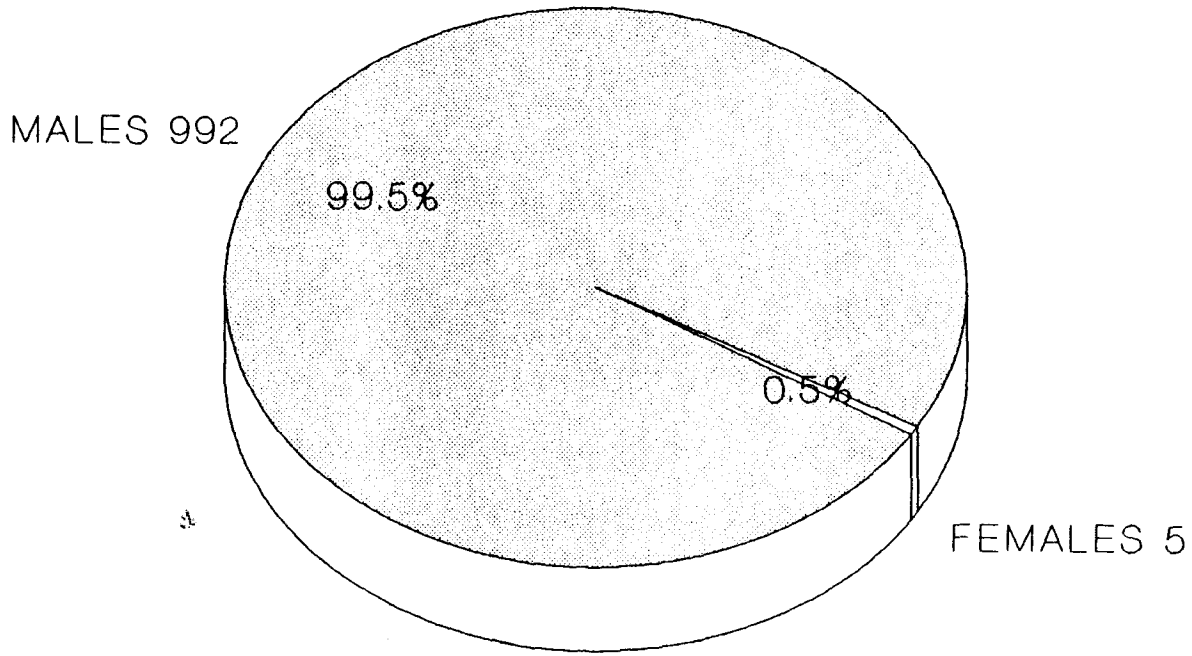


997 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 36

LOCAL 361 - STRUCTURAL IRON WORKERS
GENDER COMPOSITION OF UNION MEMBERS

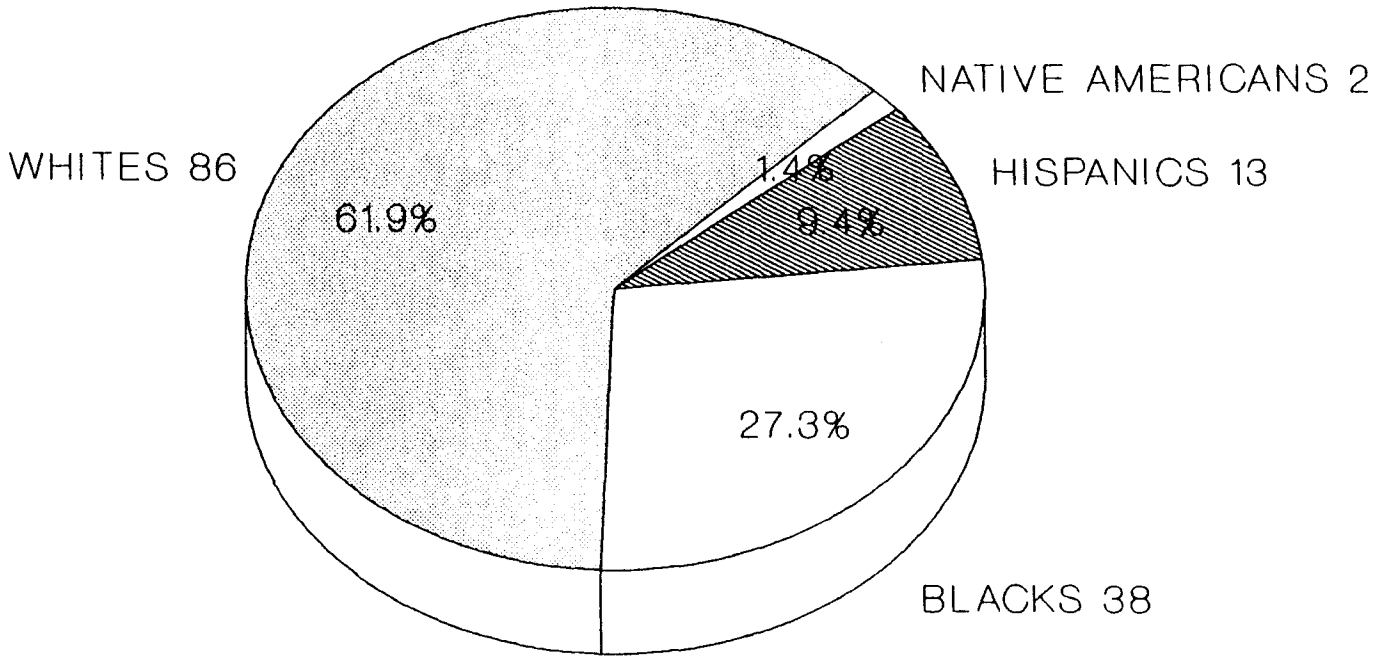


T = 997 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 37

LOCAL 40/361 - STRUCTURAL IRON WORKERS
RACIAL COMPOSITION OF APPRENTICES

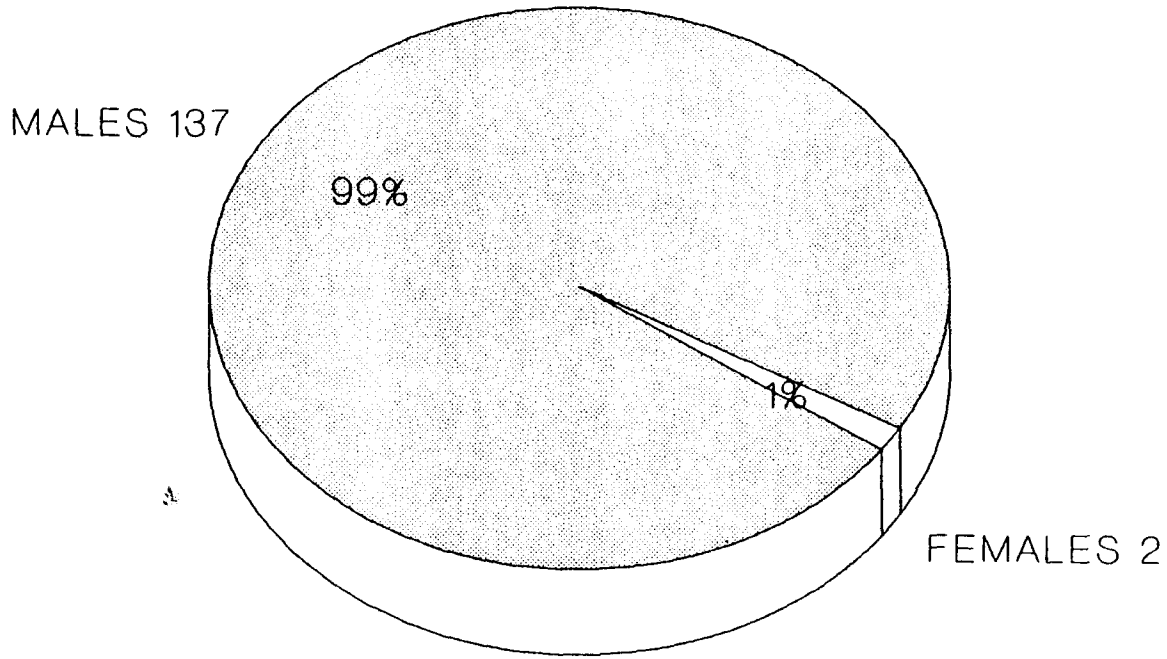


139 APPRENTICES

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 38

LOCAL 40/361 - STRUCTURAL IRON WORKERS
GEMDER COMPOSITION OF APPRENTICES

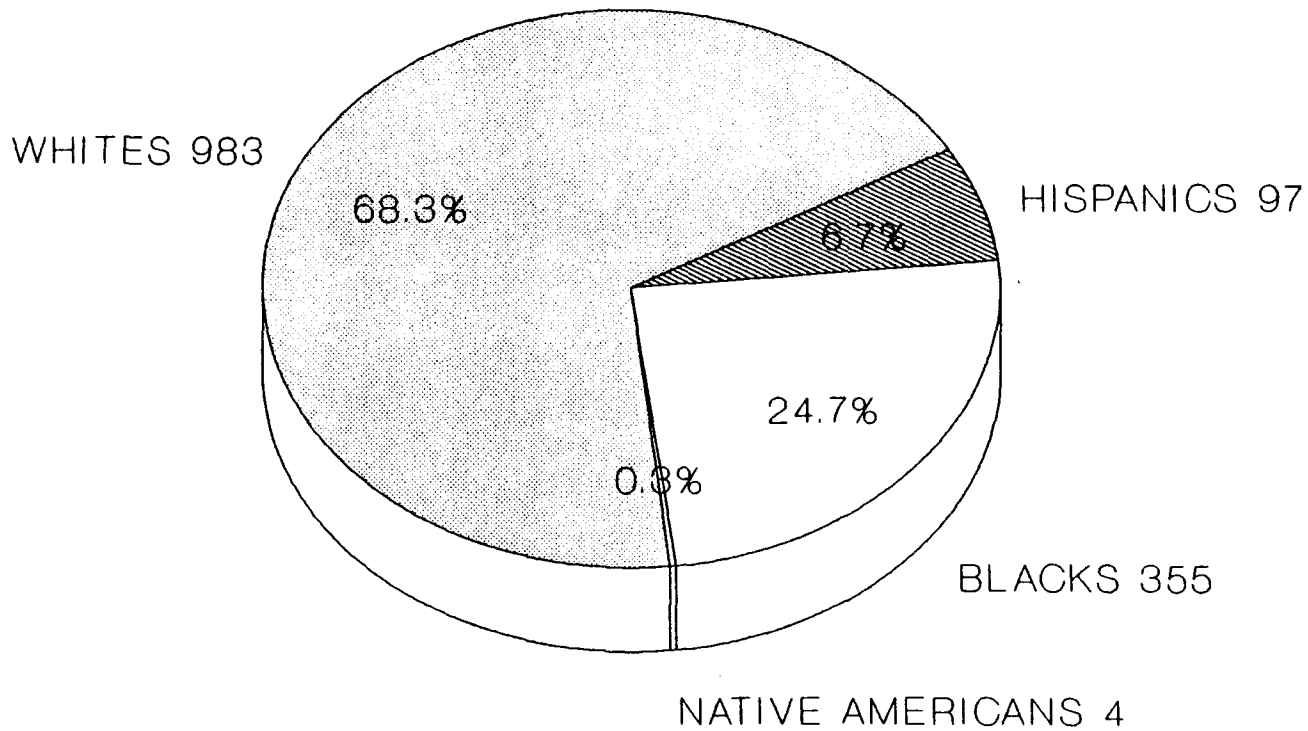


139 APPRENTICES

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 39

LOCAL 580 - STRUCT & ORN IRON WORKERS
RACIAL COMPOSITION OF UNION MEMBERS

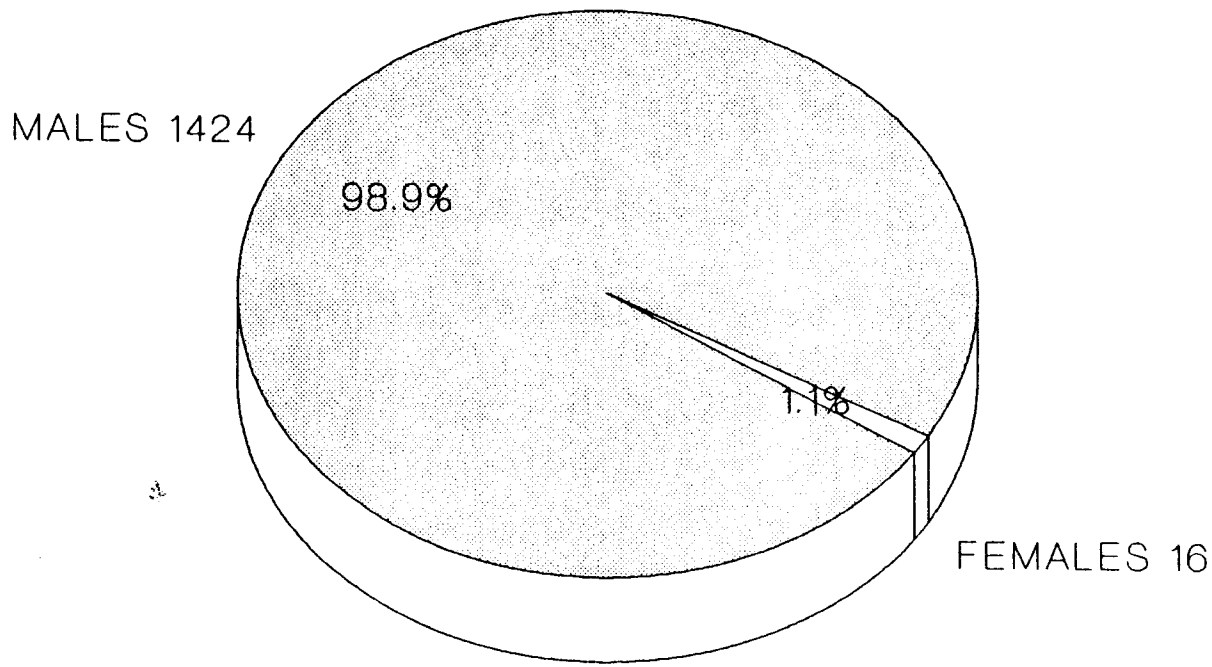


1,440 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 40

LOCAL 580 - STRUCT & ORNMNT IRON WORKERS
GENDER COMPOSITION OF UNION MEMBERS

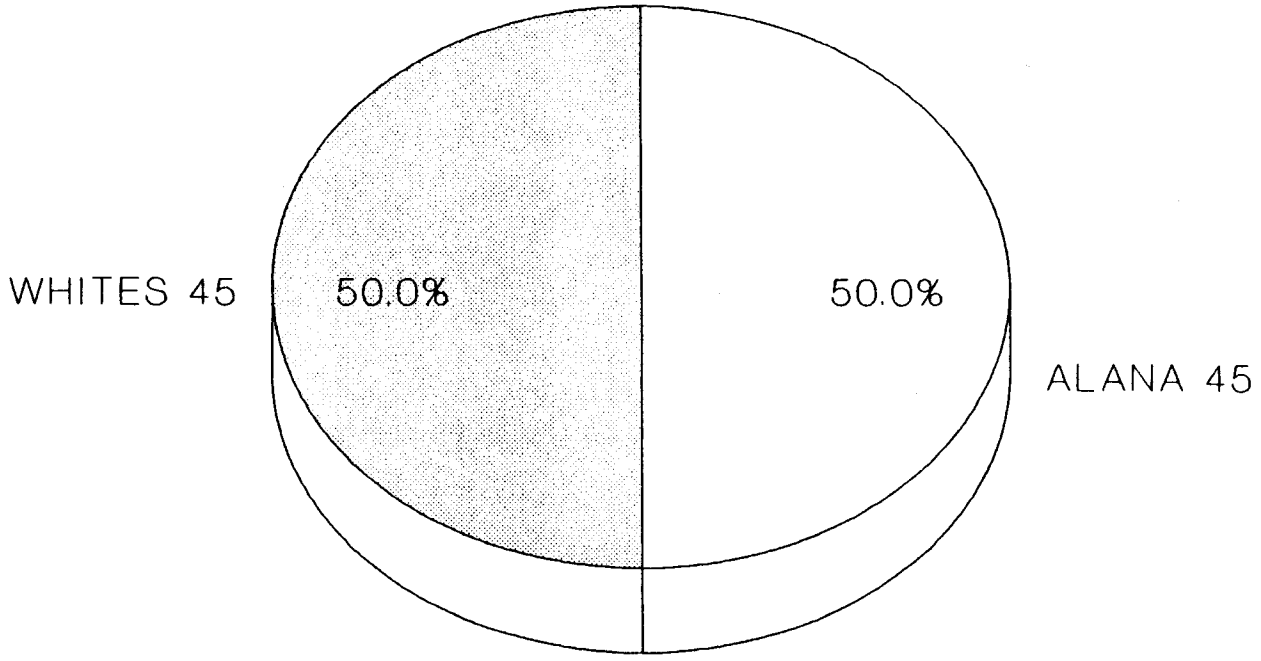


1,440 UNION MEMBERS
(JOURNEYPERSONS & APPRENTICES)

JURISDICTION - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 41

LOCAL 580 - STRUCT & ORNMNT IRON WORKERS
RACIAL COMPOSITION OF APPRENTICES



(APPROX) 90 APPRENTICES AS OF 11/92

JURISDICITON - N.Y.C., LONG ISLAND AND WESTCHESTER
SOURCE - UNION OFFICIAL TESTIMONY, 11/92

FIGURE 42