

USCCR

A SUMMARY REPORT OCTOBER 1988

*Public Sector
Efforts to
Promote Employment
and Business
Opportunities for
Minorities and
Women in Milwaukee*

*Wisconsin Advisory Committee
to the U.S. Commission on
Civil Rights*

This summary report of the Wisconsin Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of

the Commission. Statements and viewpoints in the report should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the

community forum where the information was gathered.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957 and reestablished by the Civil Rights Commission Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the laws; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the Civil Rights Commission Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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LETTER OF TRANSMITTAL

Wisconsin Advisory Committee to the
U.S. Commission on Civil Rights
October 1988

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The Wisconsin Advisory Committee voted without dissent to approve submission of this report on employment discrimination and opportunities for minority- and women-owned businesses in Wisconsin. The report is based on two forums, one held in Milwaukee on July 1, 1987; the other held in Madison on August 20, 1987.

Especially in Milwaukee there was severe unemployment that had a disproportionate impact on minorities. Although the proximate causes of a high rate of minority unemployment may not be discriminatory, a review of the history of minority employment opportunities suggested that historical patterns of discrimination played a part in the present high rates of unemployment and underemployment of minorities.

The Advisory Committee heard about a range of affirmative action efforts to remedy minority unemployment. These were limited by the general economic climate. But, overall, the private sector seemed to have a better thought-out program than the public. Public efforts were more successful at the county than at the city level, at least in the minds of minority leaders. Yet much clearly remained to be done in both private and public sectors before equal opportunity could be achieved.

One way to increase minority employment is to increase utilization of minority business enterprises (MBE) which in turn hire minority workers. Such efforts are controversial. The Advisory Committee heard about a range of efforts by the State to increase its use of such companies. The success of such efforts varied. The city's efforts were limited by controversy surrounding an MBE utilization ordinance. There were disputes about what the city had been able to accomplish in the past, what the ordinance mandated and what could realistically be expected.

Finally, although the State of Wisconsin has conscientiously sought to enhance minority enterprises, still more could be achieved. Specifically, State funds to promote economic development could also increase minority employment by providing capital to companies that would promote job opportunities that would benefit minorities. It proved extraordinarily difficult to determine the extent to which such funds did benefit minorities. In some cases the benefits were clear; in others they were not.

This report should not be considered an exhaustive review of issues pertaining to the subject, but the Committee hopes that the information assembled will assist the Commission in its program planning for FY 1989 and beyond. The Committee will use the information in its own program planning effort.

Respectfully,

JAMES L. BAUGHMAN, Acting Chairperson
Wisconsin Advisory Committee

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*No longer a member of the Advisory Committee.

**Was not a member at the time community forum was held.

ACKNOWLEDGEMENTS: This report was written by Malcolm J. Barnett of the Central Regional Division of the U.S. Commission on Civil Rights. Support services were provided by Jo Ann Daniels. The report was prepared for publication by the publications unit of the Commission. The work of the Central Regional Division on this project was supervised by then-Division Director Melvin L. Jenkins, Esq.

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1. INTRODUCTION

In keeping with its responsibility to monitor developments in the State, the Wisconsin Advisory Committee to the U.S. Commission on Civil Rights in 1987 examined the role of city, county, and State agencies in recruiting minorities and aiding minority businesses. The Committee also reviewed the affirmative action policies of some major Milwaukee-based companies. The following is a summary of the information gathered by the Advisory Committees at forums held in Milwaukee and Madison.

At its meeting in Milwaukee on July 1, 1987, the Advisory Committee heard presentations from: Michael Rosen of the Hunger Taskforce; Shirley Harrison, Affirmative Action Officer of Miller Brewing Company; Margaret Crawford, Affirmative Action Officer of the City of Milwaukee; Brother Pooker Ashe, Chairperson, Milwaukee Commission on Community Relations; Judy Jones, Director, Minority Business Enterprise Program of the City of Milwaukee; Gordon Reid, a consultant on minority business for the Milwaukee Urban League; Curtis Harris, Executive Director of the Milwaukee Business Development Corporation; William Lawrence, Vice President of the Wisconsin Minority Contractors Association; Richard Snow, Executive Vice President of the Associated General Contractors; and Alderman and President of the Milwaukee Common Council John Kalwitz and Alderman Marvin Pratt, of the City of Milwaukee.¹

At its meeting in Madison on August 20, 1987, the Advisory Committee heard presentations from: Hermetta Williams, Director of Minority Business of the Wisconsin Department of Administration; Larry Eisenberg, Director of Procurement of the Wisconsin Department of Administration; Jerald D. Slack, Division Director, Facilities Division of the Wisconsin Department of Administration; David Manning, Disadvantaged Business Program Officer of

the Wisconsin Department of Transportation; Harry Lindberg, Director of the Wisconsin Roadbuilders Association; Robert Winn, Director of Minority Business Development of the Wisconsin Department of Development; Barbara Livingston, Staff Specialist of the Wisconsin Department of Development; Michael Wolff, Economic Development Analyst of the Wisconsin Housing and Development Authority; and Tom Krajewski, Executive Director of the Wisconsin Community Development Finance Authority.²

Demographics

As of 1986, the Wisconsin Department of Industry, Labor and Human Relations (DILHR) reported the population of the State was 4,723,250 persons. Of these, 93.0 percent were white, 4.1 percent were black, 1.6 percent were Hispanic, 0.7 percent were American Indian, and 0.7 percent were other minorities. Women comprised 50.9 percent of the population. The unemployment rate overall was 7.7 percent. The rates for each ethnic group were: white--7.2 percent, black--16.6 percent, Hispanic--14.3 percent, Indian--20.3 percent, other minority--8.5 percent. The rate for women was 6.6 percent.³ The population of Dane County (the labor market area for Madison) was 337,465 persons. Of these 95.2 percent were white, 1.7 percent were black, 1.2 percent were Hispanic, 0.3 percent were American Indian, and 1.6 percent were other minority. Women comprised 50.9 percent of the population. The overall unemployment rate was 4.7 percent. The rates for each ethnic group were: white--4.5 percent, black--12.3 percent, Hispanic--9.0 percent, American Indian--8.3 percent, other minority--3.6 percent. The rate for women was 4.7 percent.⁴

Tables 1 and 2 show the basic demographics and labor force utilization of minorities and women in Milwaukee County, the labor market area for Milwaukee. Of the population of 923,130 persons, 22.7 percent were

minority (17.1 percent, black; 3.8 percent, Hispanic; 0.7 percent, Indian; 1.1 percent, other). The overall unemployment rate was 6.7 percent in 1986. The rates for minorities were: 16.5 percent, black; 11.4 percent, Hispanic; 13.5 percent, Indian; 8.4 percent, other.

Notes

1. The proceedings of this meeting are cited hereinafter as SAC Meeting Notes, July 1, 1987.
2. Proceedings of this meeting are hereinafter cited as SAC Meeting Notes, Aug. 20, 1987.
3. DILHR, Affirmative Action Data for Wisconsin, 1986 (n.d.), p. 6.
4. Id., p. 38.

2. EMPLOYMENT

John Kalwitz, President of the Milwaukee Common Council, commented that as a city, Milwaukee has been reluctant to recognize the problem of what to do about the minority population who were unemployed.¹ Melvin Kinlow of the Urban League believed that the unemployment rate for black adults in Milwaukee is in excess of 29 percent. The rate for minority youth, he believed, is about 61.9 percent.² Alderman Marvin Pratt noted that not only were those people unemployed, but they had no hope of employment.³ He hoped that efforts begun by Alderman Michael McGee and continued by the Common Council and Greater Milwaukee Committee would help remedy the problems.⁴

Much of the problem is structural. Howard Fuller, of Milwaukee Area Technical College, noted that in the 1950's the packing plants left Milwaukee, cutting off a primary source of well-paid semi-skilled and unskilled jobs.⁵ Thereafter, Michael Rosen of the Hunger Taskforce noted, the city lost many more jobs when the foundries closed and there were cutbacks in social service and government jobs.⁶ Mr. Kinlow pointed out that over the past 10 years the city has lost 70,000 jobs in manufacturing. Some of these were replaced, but the new jobs were often part time and had minimum wage and minimum benefits. Thus, minorities who relied on low-skill jobs lost out.⁷ Despite a recent revival in the downtown area, Michael Rosen reported, these jobs were low skill and paid minimum wage.⁸ Statewide the pattern was similar. Michael Rosen stated:

The roots of the crisis facing Wisconsin's black residents can be found in the tremendous economic changes transforming the State's economy. The manufacturing sector, long the backbone of Wisconsin's economy, has suffered a significant decline in the past six years. Between December 1979 and December 1985, the State's manufacturing employment level declined by 82,000 jobs. Employment in construction also has been reduced by 15,000 jobs. Most severely affected were unskilled and semi-skilled production workers (23 percent of all black workers are concentrated in these jobs) whose jobs are the easiest to automate and/or move overseas. In fact 13 Wisconsin firms have established manufacturing facilities employing more than 5,000 workers in Mexico under the "maquiladora program," a program that encourages U.S. manufacturers to take advantage of Mexico's cheap labor by setting up production facilities there.

At the same time, Wisconsin's service sector increased its total number of jobs by 61,900 and retail trade grew by over 20,000. Finance, insurance, and real estate increased by 10,500; government by 6,600, transportation, communication, and public utilities by 5,100; and wholesale trade by 2,500. In a six-year period the State of Wisconsin's aggregate number of jobs has only increased by 12,600.

Even more alarming than the fact that so few new jobs were created is the shift in earnings that have accompanied these industry changes. According to the Wisconsin Department of Industry, Labor and Human Relations, 90,000 jobs were lost in industries with wages significantly above average. Only 17,000 new jobs were created in industries paying close to an average wage, while 85,500 jobs were added in industries with earnings much below average.

As a result of this economic restructuring there is a growing population of displaced workers--experienced workers who have become unemployed and will not be called back to jobs they had expected to last all their lives. There are presently 28,000 dislocated workers in the State. Wisconsin ranks tenth in the number of displaced workers even though its workforce is ranked fifteenth in size. Because black workers are disproportionately concentrated in unskilled and semi-skilled manufacturing jobs (23 percent of all black workers as opposed to only 11 percent of all whites), it can reasonably be concluded that they have been disproportionately and adversely affected by the decline in the Wisconsin's manufacturing sector. As a report by the Office of Technology Assessment, entitled "Technology and Structural Unemployment: Reemploying Displaced Adults" concluded "Less skilled and less educated workers are more likely to be displaced, and more likely to have trouble finding a new job...minority workers are at a disadvantage in finding new jobs and are more likely to be displaced. Forty-one percent of black dislocated workers are unemployed in January 1984 compared to only 23 percent of all white dislocated workers."

Additional studies cited in the report indicated that unemployment was especially severe among blacks, even though they were younger and about as well educated as whites; that when black workers found new jobs they took bigger pay cuts than whites and that after retraining

they were less likely than whites to find jobs using the skills they had learned. A study by the Industrial Union Department reiterated the point when it noted that: "Joblessness fell harder on displaced black workers, a group having 24 to 26 more jobless weeks than similar white workers, indicating that plant closings and mass layoffs have contributed to the widening disparity between white and black unemployment and income."

Mr. Rosen provided a graphic description of the impact on residents of Milwaukee.

The plight of black Milwaukeans has clearly been particularly severe. Fifty percent of all black people in Milwaukee County are on some type of assistance. The median black income in Milwaukee is only \$12,187, 58 percent of the median white income. According to recently released figures from the Bureau of Labor Statistics, Milwaukee's black unemployment rate of 25.9 percent [metro area] was the second highest in the country for the second consecutive year. Only the Buffalo-Niagara Falls, N.Y., rate of 26.7 percent was worse in 1986. Within the city of Milwaukee alone, moreover, black unemployment in 1986 was 27.1 percent, the highest among the 13 central cities for which the Bureau keeps statistics.

The city of Milwaukee was also clearly the worst among 37 large metropolitan areas in the disparity between black and white unemployment. Black people were 5.1 times as likely as whites to be unemployed in 1986, a significant increase over Milwaukee's 1985 ratio of 4.7...and significantly worse than the second poorest showing recorded in Chicago with a disparity rate of 4 times. Discrimination in employment negatively affects the entire quality of black life in Milwaukee. A 1986 American Demographic magazine study, using such variables as income, homeownership, and values of homes found Milwaukee to be in the third worst metropolitan area for black people to live in. Only Buffalo, N.Y., and Newark, N.J., were rated worse. A Milwaukee Journal analysis of U.S. Census data reinforced this view. Only 2.5 percent of the area's black residents live in the suburbs, the lowest percentage among 16 similarly-sized metropolitan areas. This figure incidentally is inflated by the inclusion of black inmates residing at the House of Correction in Franklin. The black infant mortality rate of 18 per 1,000 is twice the white rate.¹⁰

Karl Gee of Opportunities Industrialization Center (OIC), a training expert and a member of the County Civil Service Commission, felt that minorities had difficulty in the private sector because they were entering hostile environments. Often minorities were hired only to meet quotas. He believed that there was discrimination, although it was impossible to prove.¹¹

Getting information about the private sector proved difficult. The Chamber of Commerce was reluctant to discuss the subject. Eventually, it was possible to obtain impressions of efforts by Delco Electronics and Miller Brewing. Neither company is currently doing much hiring.

Lillian Wesley, a personnel officer at Delco, noted that currently Delco is in a "downsizing mode." It has been successful in doing so by attrition and early retirement so that the jobs of workers are protected.¹² She noted that in 1985 the plant made 100 percent of its goals for both minorities and women and that in 1986 it made 100 percent of its goals for women and between 80 and 90 percent of its goals for minorities. She believed the plant had been particularly successful in bringing both minorities and women into skilled trades areas. She noted that the plant had just hired its first female electricians, despite minimal hiring activities. More important, in view of the constraints on hiring, promotions had been equivalent for minorities and women. The plant has goals for transfers and has met them.¹³

The primary source of new employees at Delco is its training programs. This brings in people who will be trained for skilled jobs in the workforce. Delco believes that this program has been successful in increasing its pool of minorities and women.¹⁴

The Delco personnel officer dismissed the widely expressed concern that absence of transportation makes it hard for central city minorities to get jobs in the suburbs. She noted that carpools were widely used and Delco had never had any difficulty hiring minorities when jobs were available.¹⁵

Miller Brewing's affirmative action officer, Shirley Harrison, noted that Miller was one of the best employers in the area in utilizing

minorities and women.¹⁶ The company has taken a "pro-active" stance. It has a "moral commitment" to keep affirmative action at the forefront.¹⁷ To do so it has tied performance appraisals to success in promoting affirmative action. Despite a management layoff in 1984, the proportions of minorities and women in management increased.¹⁸

When hiring was possible, the company used a variety of means to increase minority and female representation. It had a special recruitment department with two to three recruiters engaged full time in finding qualified candidates. This unit was always able to find qualified candidates using a range of sources from personal contacts to the national and regional minority recruitment agencies. It also advertised in publications likely to reach minorities.¹⁹ The company does not believe the excuse "they are not there" is a valid one, although it acknowledges that the effort takes time, energy, and money.²⁰

Even now, when only limited hiring is taking place, efforts persist. The company encourages networking with other corporations to ensure identification of minorities at mid-level for potential executive positions. It also encourages existing minority workers to provide referrals of potential employees. The primary focus is on career development. There is an extensive in-house management and sales training program. There is also a tuition reimbursement program. Mentoring schemes have been established. Minorities and women are encouraged to participate in all of these. Progress is regularly monitored.²¹

Milwaukee County has generally a good record for utilization of minorities and women at all levels.²² Karl Gee stated that 15-17 percent of the county workforce was minority. He noted that the reason for this was that county executive Bill O'Donnell saw the need to increase minority

and female participation and took an aggressive stance on the issue. Thus, among other senior posts filled by minorities was the position of director of the county hospital. This was possible because the county executive ordered that there be a deliberate search for qualified minority candidates. He believed that though the city had a higher proportion of minorities, the county had done better by ensuring a wider distribution across the employment categories. He believed the mayor of Milwaukee could achieve the same if he wanted to.²³

The city of Milwaukee has an extensive affirmative action program. This consists of annually developing an affirmative action plan, annual collection of data on accomplishments, and monitoring of the plan and data by the city human relations commission. The 1985 plan was the first citywide plan, superseding plans developed on an annual basis by individual departments.²⁴ The ultimate goal of the city is a workforce that reflects the population statistics.²⁵ The plan states:

As part of the establishment of short-term goals based on labor market statistics, occupational job groups will be identified and the availability of protected group members in the relevant labor markets will be analyzed. Then availability data will be compared to the City's workforce data to determine those job groups with an underrepresentation of minorities and/or females and the reasons for this underrepresentation. Thus, goals will be set based on the degree of underutilization in the various jobs groups.

The City's commitment to affirmative action is founded on the belief that a deliberate, concerted course of action is necessary to overcome the effects of unintentional discriminatory employment practices and policies and to attain a balanced workforce. Equal employment opportunity, alone, will not reverse the effects of past discrimination. Therefore, the 1986-1987 Affirmative Action Plan establishes the following targeted areas of emphasis:

Recruitment and Selection

--Considerable efforts will be aimed at increasing the number of minority and female appointments, with special emphasis on upper level Official and Administrator positions.

--When necessary, nationwide executive search recruitment shall be employed to locate qualified minority and female candidates capable of assuming these positions.

--Renewed efforts will be made to place minorities and females in engineering, other technical, skilled craft, and non-traditional positions.

--The "Women in Workboots" support program will be used to increase and retain the representation of women in non-traditional positions. As part of this program, special recruitment efforts to place females in City Laborer positions shall be conducted.

Training

--In 1986 and 1987, the "Working Colleagues Workshops" will continue to offer City workers the opportunity to explore human relations issues and their impact upon the working environment. In 1985, four times the number of employees previously trained annually received human awareness training through these workshops.

--Sexual Harassment Prevention Training shall continue to be offered in conjunction with the Milwaukee Commission on Community Relations.

Goal Setting and Evaluation of Personnel Activities

--Efforts shall increase in 1986-1987 to identify areas of deficiency and the processes that contributed to minority and female underrepresentation. This information will be used to initiate remedial steps.

--Selected departments will be targeted for special affirmative action recruitment and monitoring efforts.

--The Affirmative Action Unit will advise the Finance and Personnel Committee of affirmative action goal considerations prior to committee review of departmental vacancy requests.

--Departments, in conjunction with the Affirmative Action Unit, will continue to establish interim goals based on their anticipated vacancies.

The City of Milwaukee has doubled its affirmative action efforts at a time when the Federal government through the Department of Justice has asked many State and local jurisdictions to voluntarily eliminate hiring and promotion goals. The success of the City's affirmative action efforts is measured by the representation of minorities and females in the workforce. Positive gains will be achieved by mindful attention to all aspects of personnel decision making and through steadfast commitments by City policymakers, managers and employees to achieve the program's goals.²⁶

The long-term goals are indicated in Table 3. The largest unattained goals are in the areas of officials, professionals, and technicians. The city has more minorities than the goals would require in office/clerical, skilled craft, and service maintenance.²⁷ The city acknowledges that movement into official ranks has been slow for both minorities and women.²⁸

Table 4 shows the utilization of minorities and females by department

compared to the long-term goal. While some departments are close to meeting the goal or exceed it, many others are far below the goal.²⁹ The city estimated it would have 260.5 vacancies for 1986-87 of which 142 would be used to fill goals--16 black, 13 Hispanic, 21 women, and 92 either minority or female.³⁰ Department heads are to be evaluated on their success in meeting their departmental goals.³¹ A variety of nonquantitative goals are also established. These include developing a roster of minority and female candidates for career ladder or promotional training and developing procedures for accurate monitoring of affirmative action efforts.³² The city reported that all its examinations were content valid in accordance with Federal guidelines and that adverse impact analysis was conducted.³³ The city also reported an ability to monitor promotions, transfers, and exits.³⁴

The latest available monitoring report was for 1985.³⁵ The commissioners reported that "more departments are taking an active role...to successfully identify and hire minority and female employees."³⁶ There were efforts to develop career ladders.³⁷ The report noted significant increases in employment of women in skilled crafts and blacks as officials and administrators.³⁸ The personnel department conducted new examinations where existing lists contained too few minorities and women.³⁹ Applicants flow analysis (tracking of employment applications) was being developed during the reporting period but had not yet been implemented.⁴⁰ There was a slight increase in the number of departments exceeding employment goals for blacks in 1985 over 1984.⁴¹ The commissioners continued to be concerned about disciplinary actions wherein blacks were disproportionately represented.⁴² They were also concerned about the concentration of blacks in a limited number of departments.⁴³ For 1986, the commissioners urged improved tracking of disciplinary

actions, utilization of career ladder development, and keeping employment statistics current.⁴⁴ The balance of the report reviews the individual efforts of each city department, showing what they have done well and what remains to be done.⁴⁵

The Chairman of the Milwaukee Commission on Community Relations, Brother Booker Ashe, commented that departments now know what they have to do "to look good--they know how to snow us." This, he believed, made the task of accurately monitoring progress more difficult.⁴⁶

Franklin Words, a president of a black employee association, stated that minorities still received greater punishments than whites for similar rules infractions in the city community development and water departments.⁴⁷

John Kalwitz, President of the Milwaukee Common Council, commented that the council has regularly pushed the various departments to meet their goals. He thought the private sector was not doing as well as the city.⁴⁸

Margaret Crawford, the city's affirmative action officer, described a variety of measures used by the city to increase minority and female representation. She noted that additional funds had been allocated to nationwide recruitment, the result of which was that two minorities were hired at a high level. She asserted that minorities were included on rating boards whenever possible. She noted efforts to cultivate in-house talent, including the promotion of a black to the number two spot in the waterworks department. She described the "selective certification" process whereby rather than hiring the top-ranked candidate, a department could interview and consider for appointment minorities or women in the top three or five slots on the selection list. She also noted that the city conducted training seminars on equal opportunity matters. She expressed

satisfaction that despite a declining city workforce, the proportions of minorities and women had risen. But she noted a decline in the proportions of minorities in official/managerial jobs.⁴⁹

Notes

1. Interview with John Kalwitz, May 20, 1987.
2. Interview with Melvin Kinlow, Research and Development, Milwaukee Urban League, Apr. 30, 1987 (hereinafter cited as Kinlow Interview).
3. Interview with Marvin Pratt, May 21, 1987.
4. Id.
5. Interview with Howard Fuller, MATC, Apr. 23, 1987.
6. Interview with Michael Rosen, Hunger Taskforce staff, Apr. 23, 1987 (hereinafter cited as Rosen Interview).
7. Kinlow Interview, supra note 1.
8. Rosen Interview, supra note 6.
9. SAC Meeting Notes, Michael Rosen, July 1, 1987.
10. Id.
11. Interview with Karl Gee, Opportunities Industrialization Center, May 1, 1987.
12. Interview with Lillian Wesley, May 27, 1987.
13. Id.
14. Id.
15. Id.
16. Interview with Shirley Harrison, May 19, 1987, and SAC Meeting Notes, Shirley Harrison, July 1, 1987.
17. Id.
18. Id.
19. Id.
20. Id.
21. Id.
22. Interview with George Gerhardt of the Milwaukee Social Development Commission, Apr. 28, 1987.

23. Interview with Karl Gee, May 1, 1987.
24. City of Milwaukee, Blueprint for Change: 1986-87 City of Milwaukee Affirmative Action Plan (hereafter cited as Milwaukee AAP), p. vii.
25. Id., p. 1.
26. Id., pp. 1-2.
27. See Table 3.
28. Milwaukee AAP, p. 7.
29. See Table 4.
30. Milwaukee AAP, p. 10.
31. Id., p. 12.
32. Id., pp. 14-17.
33. Id., p. 21.
34. Id., p. 24.
35. Milwaukee Commission on Community Relations, Commissioners Report: City of Milwaukee Departmental Affirmative Action Hearings 1985 (December 1985).
36. Id., p. 7.
37. Id.
38. Id., p. 9.
39. Id., p. 10.
40. Id., p. 11.
41. Id., p. 13.
42. Id., p. 16.
43. Id.
44. Id., p. 19-21.
45. Id., pp. 35-123.

46. Interview with Brother Booker Ashe, May 21, 1987.
47. Interview with Franklin Words, May 13, 1987.
48. Interview with John Kalwitz, supra note 2.
49. SAC Meeting Notes, Margaret Crawford, July 1, 1987.

3. MINORITY AND FEMALE BENEFITS FROM PUBLIC CONTRACTING ACTIVITIES OF THE STATE AND CITY OF MILWAUKEE

An important way by which minorities and women can gain employment is as employees or contractors on publicly financed projects. The former has not been especially controversial. The efforts of Federal, State, and local governments to further the role of minorities and women as public contractors have been a source of controversy.

Contract Compliance Activities

The State is a major contractor and runs a contract compliance program. The program is operated by the State Department of Administration; its contract compliance officer is Patricia Kramer. The program is statutory, covering general procurement when contracts total \$10,000 per year and the contractor has 10 employees or for construction \$30,000 per year and 30 employees.¹ The contract compliance officer is directly responsible for the contracting activities of the Wisconsin Department of Administration and sets the parameters under which other agencies with contracting authority conduct their program. Staff for the program consists of one professional and a part-time secretary.²

The provisions governing contract compliance are contained in Wisc. Stat. 16.765 and Adm. 50.³ The statute requires the State to include in every contract a requirement for nondiscrimination based on age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation, and national origin and requires affirmative action on all bases except sexual orientation.⁴ The agreement not to discriminate covers employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.⁵ But agencies can waive the requirement to meet "special

requirements or emergencies."⁶ The head of each contracting agency is responsible for implementation.⁷ The department of administration is authorized to investigate complaints of violations (or may delegate this responsibility). When a violation is determined the department is to inform the violating party of the violation, direct that the violator take action and provide a remedy to anyone hurt by the violation, and direct the violator to take measures to prevent repetition of the violation.⁸ In the event of further violations, the contract is to be completed by the violator who then is put on an ineligible list, making it ineligible for State contracts until the department determines the violator is in compliance with the law.⁹

The requirements used to implement the statute are contained in Adm. 50.¹⁰ Under this the contractor is required to agree to make every reasonable effort to develop a balanced workforce either for its total workforce or the project related workforce. Balance means that the workforce is reflective of the available labor force as reported by State or Federal agencies that prepare labor force estimates. If a contractor is allocating its workforce in a manner which circumvents the intent of the statute, the State Department of Administration may require the contractor to attempt to create a balance in its total workforce.¹¹ Within 15 days after award of contract, the contractor must submit an affirmative action plan for review by the contract compliance officer or evidence that such a plan has been approved within the preceding 12 months by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).¹² The contractor is to include the provisions of Wisc. Stat. 16.765(2) (a) and Adm. 50.04 in all subcontracts so that they will be binding on the subcontractors.¹³ The contractor is to ensure that all

advertisements include appropriate equal opportunity messages.¹⁴ The affirmative action plan is to include a policy statement, a means of disseminating the policy, an analysis of the workforce, development of goals and objectives (covering a period of between six months and two years), and a method for internally monitoring to ensure compliance.¹⁵ The department is authorized to review contractors to determine compliance.¹⁶ Written complaints are to be investigated within 30 days of receipt.¹⁷

Patricia Kramer, director of the contract compliance office of the Wisconsin Department of Administration, stated that her office provides forms and advice to contractors to assist them in complying.¹⁸ Ms. Kramer noted that the primary problem she had was getting plans that included prohibitions of discrimination based on sexual orientation. At any one time only about nine contractors are on the ineligible list. Usually her office will make two requests for corrective action on plans. In the second it will warn that if a plan is not submitted and found acceptable the contractor will be declared ineligible.¹⁹

City of Milwaukee contract compliance efforts are very sparse. They are primarily the responsibility of the city departments of public works, city development and community development.

David Lewis, the contract compliance officer for the Milwaukee Department of Public Works, stated that on city contracts if the city received an affirmative action complaint from an employee on a project it would investigate but that there had been no such complaint in the past seven years. He noted that the city had no affirmative action requirements in its contracts. On Federal contracts the contractor would be briefed on Federal affirmative action requirements but monitoring was the responsibility of the Federal agency.²⁰

Brenda Brimage, contract compliance officer for the Milwaukee Department of Community Development, noted that her agency had a minority business enterprise (MBE) coordinator who was responsible for assuring the bona fides of MBEs and women-owned business enterprises (WBEs). Since HUD instructed that tenants of public housing projects should be employed to the maximum extent possible, her office had a program to promote this and had done so with some success. But she did not know of any monitoring in her agency on affirmative action requirements, either on Federal or city contracts.²¹

Glenn Lewinski, contract compliance officer for the Milwaukee City Development Agency, stated that on Federal-funded contracts it includes in subgrantee contracts all EEO requirements such as Title VII²² and Executive Order 11246.²³ The agency requires subgrantees to submit an EEO-1 form which it reviews. Generally that serves the minority population as it assures that subgrantees employ minorities. Subgrantees that served nonminority portions of the city were encouraged to try to get employees from minority neighborhoods.

B. Efforts to Promote Minority- and Women-Owned Business Participation in Public Contracts

In 1982 Wisconsin had 2,057 businesses owned by blacks.²⁴ In 1977 there were 697 Hispanic and 128 Indian firms.²⁵ Minority-owned businesses in 1980 were 1.3 percent of all such businesses.²⁶

State purchases from MBEs are governed by Wisconsin Act 390 of 1983. This provides that the State will attempt to ensure that .5 percent of the total amount expended in the State's purchasing program will be awarded to minority businesses. The State operates a certification program through

the Department of Development and through the Department of Transportation. Those certified receive a 5 percent bid preference if they submit a copy of their certification with their bid (that means they can be 5 percent higher than the lowest bidder and get the contract).²⁷ The Wisconsin Department of Transportation is under a separate mandate via the Federal Surface Transportation Assistance Act to ensure that 10 percent of its contracts go to disadvantaged businesses (as a result of a recent amendment, disadvantaged businesses now include women-owned businesses).²⁸

Wisconsin Stat. 16.75 provides for the bid preference and sets the statewide goal. It encourages emphasis on minority businesses that are incorporated in or have their principal place of business in the State.²⁹ Departments are required to report semiannually to the Department of Administration on their efforts.³⁰

To determine whether a contractor is eligible to bid on State contracts, the Wisconsin Department of Development's minority business office sends out an application for certification, including a check list of supporting documents that will be required.³¹ These include a corporate bank signature card, sufficient evidence to identify the ethnicity of owners and managers, certificates of stock ownership, and articles of incorporation. When the file is complete staff does an on-site visit to determine the accuracy of the data provided. The on-site reviewer checks the physical layout of the facility, looks at payroll records, and documents the customer list to ensure that the contractor is doing business with buyers other than the State. The point of this is to determine the bona fides of the company's claim to be an MBE and its claim to be performing a useful function (that is, not merely serving as a broker or conduit for a non-MBE). If everything is in order the contractor will be

certified. The program will accept the certificates of other States or local or Federal programs if the contractor is too far away for the State to do its own on-site review. Although it would accept an Illinois or city certificate from the Chicago area, often the State of Wisconsin will send its own reviewer. As a general rule, the program discourages out-of-State MBEs from seeking certification if there are already certified a number of in-State MBEs that provide the same services. But it will conduct a certification review and provide a certificate for any MBE that is actually awarded a contract even if it is not currently certified. Robert Winn, director of the Wisconsin Department of Development's minority business office, stated that they had not had any great difficulty with sham companies. In general, his office takes a strict view of the 51 percent requirement for MBE ownership and control and will not provide variations although he acknowledges that some legislators have urged a more lenient view.³²

A major utilizer of MBEs is the State Department of Transportation (DOT), which is required to do so as a condition of receiving Federal funds under the Surface Transportation Assistance Act. David Manning, the department's disadvantaged business program officer, reported assigning goals for disadvantaged business enterprise (DBE) utilization of 15 to 20 percent in areas of minority concentration but it allows good faith exemptions where goals cannot be met and sets appropriate goals elsewhere. DOT conducts its own certification program, since it must also certify women and others who may be eligible under the Federal disadvantaged business definitions. The department uses a joint certification form developed by it, Illinois, Indiana, Michigan, and Minnesota. Respondents must say when the business was established and when the current owners

assumed majority control. Each owner must provide a resume of work history and state the dollar value of assets used to obtain ownership and the number of years owned. Owners must specify who is responsible for financial decisions, estimating, hiring and firing, supervisory field operations, contract signing, office management, marketing, purchase of major equipment, or who serves as field superintendent, indicating that person's race and sex. They must show whether these people work for other companies as well. They must list outside providers of services or supplies. They must provide income statements, balance sheets, copies of U.S. Small Business Administration (SBA) and DBE certificates, and information on any denials of certification. They must specify what kind of work they can do.³³

For Wisconsin a separate, somewhat less detailed form also must be submitted. This asks for information on jobs completed.³⁴ Both forms must be sworn.³⁵ The principal specialties were asphalt paving, concrete construction, consulting, general construction, sewer and water, steel erection and metal fabrication, suppliers, and trucking.³⁶

Since October 1986 the Department of Development's minority business office had decertified 60 firms--mostly by their own failure to keep certificates current and denied certification to 25 companies.³⁷ There were three mentor-protege relationships. These are initiatives to encourage and develop disadvantaged business and women business in the contracting industry. The mentor-protege program permits prime contractors to provide certain types of assistance to these subcontractors on highway construction projects.³⁸ It reported that in 1982, 1.65 percent of contracts went to disadvantaged business, 13.6 percent in 1986, and 13.7 percent in 1987. (The MBE portion of total contracts were 1.65 percent in 1982, 10.1 percent in 1986, and 10.1 percent in 1987.) Once the department

receives an application for certification and the necessary financial data, it does an on-site review. It also does field monitoring during a contract to ensure the MBE is using its own people and own equipment on the job. If the contractor runs into difficulties, the MBE office will provide technical assistance. The department has found the mentor-protége relationship a successful vehicle for increasing MBE participation.

On highway contracts bonding, normally a problem for MBEs, has not been an issue, since the State requires the prime contractor to carry a bond for his subcontractors, charging them a pro-rata share. Financing has been a problem for MBEs. There was discussion of establishing a \$300,000 revolving loan fund to help MBEs with temporary cash flow problems, but this has not proceeded. The main reason for such a fund is to make it possible for larger subcontractors to become prime contractors in this highly capital intensive business. In a highly unionized State such as Wisconsin, union rules can also be a barrier. DOT has taken the position that Federal law and regulations prohibit a contractor from asserting lack of an available MBE union contractor as an excuse to avoid MBE participation.³⁹

The department's disadvantaged business program officer, David Manning, noted several unfinished goals:

1. Ways to develop minority firms as prime contractors capable of bidding on projects and competing with other prime contractors on an equal footing.
 2. Ways to promote an increase in the numbers of minority employees.
- He reported minority legislators were frustrated that they pass highway projects with significant minority participation in the contract but few minorities on the job.

3. Ways to provide more technical and managerial assistance to new and existing minority firms. The legitimate firms need access to the tools for survival.

4. Ways to provide much needed working capital to DBEs both for new and inexperienced firms and for those who have trouble receiving traditional financing.

5. Use the mentor-protégé system to expand the range of DBE companies so that they are not concentrated in trucking, traffic control, and landscaping. This will allow DBE subcontracts to be awarded over a broader range and not virtually force selection of DBEs in the low capital area, locking out majority contractors in this field.⁴⁰

An active participant in the effort to ensure adequate MBE/WBE participation in transportation work is the Wisconsin Roadbuilders Association. Its director, Harry Lindberg,⁴¹ shared the general Associated General Contractors/National Roadbuilders Association view that there was a shortage of available MBEs/WBEs and that Federal law should have provided funding for training of such contractors and working capital to allow MBEs to purchase the expensive equipment they needed. While he did not believe the program had been easy to work with or 100 percent successful, he was generally satisfied with what had been done. The State had helped by recognizing good faith efforts rather than insisting on mechanical compliance with a 10 percent allocation for each contract. This had made his members far more accepting of the program and reduced the incentives to establish shams. He noted that DOT had decertified about 40 firms in 1986 as shams. He noted the program had been helped by the existence of a joint committee of his members, MBEs, and State DOT and Federal Highway Administration staff that met periodically to resolve problems and air

grievances. He was concerned that the number of State MBEs had actually declined over the years, partly because they have been unable to get bank financing. He commented that even large DBEs had cash flow problems.⁴²

Nontransportation procurement is largely (though not entirely) directed by three people in the Wisconsin Department of Administration. Jerald D. Slack, director of the division of facilities management, is responsible for construction work. Under the supervision of Ralph Hollmon, division administrator of State agency services, are Hermetta Williams, Director of the Minority Business Office, and Larry Eisenberg, Director of Procurement, who is responsible for the procurement of nonbuilding items. Mr. Hollmon also supervises the contract compliance office whose work was discussed earlier.

Mr. Slack, director of facilities management,⁴³ described the efforts of his unit in meeting the requirement of Wisconsin law. He noted there were no difficulties in meeting the goals in the area of consulting as opposed to construction contractors. His agency uses engineers and architects. These contracts are not awarded by bid and the MBE officer sits on the committee that reviews proposed contracts. In the State fiscal year 1985-86, 6.6 percent of such awards went to MBEs. There are, however, difficulties in meeting the State's goal for construction contract awards. Despite the 5 percent preference given to MBEs, it was still difficult to find MBE low bidders on State construction contracts. In the State fiscal year 1985-86, 0.7 percent of contract dollars went to MBEs. And despite requirements for MBE participation as subcontractors to the extent possible, he was dissatisfied with the level of MBE participation. He noted a variety of measures that his office had undertaken to seek to remedy the deficiency. In some cases he had broken single bids into

components--general, electrical, plumbing, mechanical, and sometimes even been able to break out smaller components such as elevators and heating. But the State lacked the staff to manage multiple contractors, so this could not be done often. And his office could not bar contractors for failure to use as many MBEs as his office thought might be available. He noted that on smaller contracts it was possible for his office to waive the bonding requirement because the State did not pay until the job was done. He had not noted that MBEs had any difficulty in getting insurance for their work. His office had held outreach conferences around the State to try to get minorities to bid and help them in the bidding process. He thought that the new administration's interest in small business might lead to a return to construction management which would provide opportunities for the smaller MBEs.⁴⁴

Mr. Eisenberg⁴⁵ noted that in 1986 his agency had achieved an MBE procurement goal of only 0.7 percent, as against the 5 percent goal. To be an eligible bidder, a vendor completes a "Bidder List Application" that shows whether or not the firm is a WBE or MBE and what products or services it offers. This is separate from the MBE certification process described elsewhere. Mr. Eisenberg's office used a wide variety of means to try to improve on its record. It conducted five regional workshops which were well attended by MBEs. It conducted a special marketplace workshop in Milwaukee to familiarize MBEs with State needs and State buyers with MBE capabilities. It avoided using brand name specifications except where absolutely necessary. It managed to break out such contracts as gasoline into smaller components of which MBEs could get a portion. It held regular purchasing seminars to advise buyers on the capability of MBEs and ways to assist them. The department of administration's MBE officer reviewed

individual purchases to see if MBEs were available to participate in bidding. But he noted that many MBEs had a problem with cash flow because of the reluctance of suppliers to extend credit on the basis of a State contract due to slow payment by State agencies.⁴⁶

In April 1987 the State modified its bidding procedures in a move it hoped would increase MBE participation. Whereas prior to modification of the procedures "Best Judgment" awards could be made only on contracts under \$100, now they can be made on contracts up to \$500. (In this procedure the purchasing agent can select a vendor and accept what he/she determines is a reasonable price.) All agencies' purchasing agents were asked to make a special effort to place such contracts with small and certified MBEs. For contracts of \$500 to \$5,000, the system was changed from written quotes (\$500-\$3,000) and sealed bids (\$3,000-\$5,000) to simplified bids where quotes were given orally and only the low bidder had to submit written verification. Over 90 percent of State contracts were valued at less than \$3,000.⁴⁷

Mr. Eisenberg stated that up to \$5,000 all agencies using bidding Requests for Proposals (RFPs) or sole source procurement could handle their own acquisitions of goods and services. The State Departments of Health, Social Services, Natural Resources, and Revenue and the State University could award service contracts up to \$10,000, award goods contracts under RFP or sole source up to \$10,000 and award by bid up to any amount. This made it incumbent on MBEs to make themselves known not only to the Wisconsin Bureau of Purchasing but also to the purchasing agents of the various departments.⁴⁸

Hermetta Williams, the Director of the Wisconsin Department of Administration's Minority Business Enterprise Office, described the

activities of her office.⁴⁹ Her job is to monitor efforts to achieve the 5 percent goal, to find sources, and to ensure MBEs sought certification. She noted that in many instances MBEs were not bidding on contracts which they could accomplish. Her job was to check specifications in Requests for Proposals and eliminate restrictions that would prevent MBE participation. She also was charged with efforts to break contracts into components on which MBEs could bid--such as the hauling contract on a salt procurement. She also was active in seeking pieces of other activities, such as advertising or banking for MBEs. She expressed concern about the reluctance of suppliers to extend credit based on State contracts. The consequence was that MBEs sometimes had to ask to be released from State contracts because they were unable to buy the quantities the State needed. Her office also provided technical assistance to MBEs who held State contracts and served as their advocates with lenders and bonders. She noted that her office consisted of one person and there were limits as to what could be done. She expressed concern that the State failed to publish contract notices in minority newspapers. She also expressed concern that whereas MBEs got continuous notice on procurement contracts, they did not get similar notice on construction contracts.⁵⁰

MBE/DBE opportunities became controversial in Milwaukee because of opposition by the mayor, some unions, and the Associated General Contractors to a city contract participation ordinance.⁵¹ The most recent developments in that were the defeat of the ordinance in a referendum held in April 1987 and the appointment of a taskforce to draft a new ordinance. The crux of the debate centered around Charter Ordinance No. 555, passed Dec. 20, 1985, vetoed that same day by the mayor and his veto overridden that same day by the Milwaukee Common Council.⁵²

The ordinance cited 1977 data from the Bureau of the Census as to the availability of DBEs. It cited city expenditures in 1983 by the central board of purchases (supplies and services) noting 0.49 percent went to minorities and 1983 expenditure by the Department of Public Works, noting that 1.4 percent went to minority contractors. The ordinance cited hearings by several common council committees on the need for additional participation and the common council finding of a persistent pattern of racial and sexual discrimination which has prevented minority business enterprises from gaining a fair share of contracts and subcontracts. The council also found that bonding and financing were problems.⁵³ The operative clauses required establishment of a committee to monitor DBE efforts.⁵⁴ Its duties were to develop "appropriate rules, regulations and procedures for assuring participation," monitoring and enforcement, and prepare quarterly reports.⁵⁵ A three-year goal of awarding 28 percent of all contracts for construction and purchase of services and supplies was established, to be achieved one-third at a time.⁵⁶ If the goal could not be reached, explanations were to be provided.⁵⁷ In addition, if a minority bidder's bid did not exceed the low bid by more than 5 percent, the minority bidder could be awarded the contract.⁵⁸ The bill required certification of minority business enterprises.⁵⁹ It also provided sanctions such as withholding payment, termination, suspension or cancellation of contract, and denial of access to future contracts for misrepresentation of MBE status as well as penalties for misrepresentation of between \$1,000 and \$5,000.⁶⁰ While the ordinance did provide for joint ventures, it did not provide goals for subcontracting.⁶¹

One source, Milwaukee Business Journal, suggested that in 1986 the rates of procurement from MBEs had risen to 4.6 percent by the Milwaukee

Central Board of Purchases and 9.6 percent by the Milwaukee Department of Public Works.⁶² The Business Journal argued that it would be impossible to meet the goals of the ordinance. It also believed that the system would require subcontracting to out-of-city minority firms and encourage establishment of "shams."⁶³ The Milwaukee Journal favored the ordinance, noting that the goals did not have to be met if there were no minority contractors. It argued the ordinance was the only way to ensure a fair share to minorities.⁶⁴ The Milwaukee Sentinel recommended a no vote, despite its feeling there was a need to assist MBEs. It objected to "quotas." It also was concerned that "fronts" might proliferate.⁶⁵

The campaign on the referendum was very contentious. A variety of employer and union groups opposed the ordinance, which they had put on the ballot with the intention of defeating. Opponents wanted an open bidding system. Proponents argued this discriminated against minorities. Opponents attacked the 5 percent margin; proponents alleged it was optional whether the city wished to grant it, contract by contract, and in any case did not apply to subcontracts. Opponents argued there were not enough minority businesses to meet the goals; proponents argued that the city was ready enough to bring out-of-city bidders in when they were majority contractors.⁶⁶ One leaflet, published by the Plumbing and Mechanical Contractors Association, mailed to white voters stated that the ordinance would raise taxes and allow Chicago-style corruption.⁶⁷ A letter in the Milwaukee Sentinel from a purchasing agent and the commissioner of the Milwaukee Department of Public Works argued that minorities simply were not available for more contracts than they had received and that the city was aggressive in increasing minority participation without goals.⁶⁸ In a leaflet mailed to city employees, the city's minority business coordinator

attempted to correct impressions about the ordinance, an effort called "misleading" by opponents.⁶⁹

The ordinance was defeated in the April 9, 1987, election. Milwaukee became the first community to reject, by referendum, such an ordinance.

A variety of obstacles face MBEs seeking to do business with the city. Some were discussed in presentations to the Advisory Committee.

One major problem affecting MBEs, Gordon Reid, a consultant on MBEs for the Urban League, stated, is their lack of union affiliation in a community where union shops are common. There are many reasons for this. Minorities were not let into apprenticeship programs for many years. MBEs are frequently nonunion because they cannot afford to pay union scale on the jobs they are given. Moreover, the unions will not grant temporary status for companies that can get some prevailing wage work. Bigger companies maintain two shops, union and open, to deal with this. Smaller ones, such as MBEs, cannot afford the paperwork. Moreover, some MBEs complain that the people sent from union hiring halls are incapable of doing the jobs and that they must get nonunion help to do the work.⁷⁰ Bill Lawrence, an MBE owner, complained that while now the unions were prepared to take in MBEs, they had not done so when such help was needed. Now, he argued, there was no reason for MBEs to affiliate.⁷¹ John Bowles, President of the Wisconsin Minority Contractors' Association, agreed that not being unionized caused conflict.⁷²

Union officials disagreed. James Elliott, President of Milwaukee Building and Construction Trades Council, stated that there had been an active Joint Apprenticeship Program for 12-14 years that had recruited and worked to retain minorities.⁷³

A more significant problem is financing and bonding. These are at the core of many of the barriers to MBE participation. Melvin Kinlow, of the

Urban League, pointed out that many of the MBEs have only started recently. Because they have limited track records they appear unbondable to local bonding agencies.⁷⁴

Richard Snow, Executive Vice-President of the Associated General Contractors, stated that access to adequate working capital is a problem for both minority and majority firms. He believed that both had difficulty in getting adequate working capital or bonding.⁷⁵

Mr. Lawrence stated that the banks refused to provide sufficient working capital for MBEs.⁷⁶ One consultant on minority businesses alleged that majority companies had threatened to put out of business any local bonding company that provided bonding for an MBE.⁷⁷ The local minority business development council was viewed as a not helpful source of capital because it wanted too large a share of a company and would not take significant risks.⁷⁸

A third sort of obstacle is the bidding process. Curtis Harris, Executive Director of the Minority Business Development Corporation, described a variety of ways by which minority firms were effectively barred from participation, whether in public or private contracts. He noted that majority prime contractors frequently evaded participation requirements by alleging that they could not find minorities willing to subcontract. Often, he believed, primes would ask MBEs to quote in areas outside their own specialization and refuse to allow them to bid in areas where they could do the work. Another technique was to modify the contract after bid so that the MBE was no longer low bidder.⁷⁹ Gordon Reid described yet another technique, to require multiple re-bids which would cost minorities too much. The result of this was that when MBEs dropped out of the bidding they could be declared nonresponsive.⁸⁰ A version of this was to allow the

MBEs to bid on the supplies, which had a low profit, but not on installation (of items such as doors) on which there was a high profit.⁸¹ Yet another technique is to ensure ignorance of available contracts. Judy Jones, Milwaukee's MBE Program Director, noted that it was necessary for the MBE to find out what the city was buying and get to know the buyer if they wanted to participate in the city's many unadvertised supplies and services contracts. Moreover, dealing with the city was risky because the city would choose which supplies they would accept from a list, taking from each contractor those with the lowest price.⁸²

Finally, Gordon Reid stated that minority skilled craftsmen who had been successful foremen or workers for majority companies sometimes found they were no longer considered qualified when they established themselves as subcontractors or were asked to work for far less than they had been paid as skilled laborers.⁸³

C. Why An MBE Program Was Needed

The obstacles to participation only partially explain the need for an MBE program. The obstacles show the various ways by which MBEs could be excluded from participation in city contracts. But to what extent were MBEs excluded?

The counterpoint to the city's efforts were those of the county which, Curtis Harris stated, was doing a good job in getting MBE participation on its contracts.⁸⁴ But the local sewer district was accused by Gordon Reid of allowing fronts to take contracts and the U.S. Environmental Protection Agency was accused of failure to act on complaints about this.⁸⁵ The city housing authority and its economic development department were both allowed by U.S. Department of Housing and Urban Development to exclude MBEs who could not get in-State bonding while other Federal agencies required their grantees to accept out-of-State bonding. One contractor who was low bidder

on a major housing rehabilitation project was thus excluded. On an urban rehabilitation project the MBE was told his bids were too high but was never told what the acceptable bids were. The MBE thought he had a fair sense of the market and suspected bids were set unreasonably low in the expectation of subsequent post-award raising of the contract price.⁸⁶

The city's MBE officer, Judy Jones, noted that there were many MBEs in the community that ought to be capable of participation in city contracts but did not seem to get any.⁸⁷

One MBE, William Lawrence, complained that many of the supposed MBEs utilized by the city actually were fronts.⁸⁸

The President of the Milwaukee Building and Construction Trades Council, James Elliott, stated that there were not enough minority contractors in Milwaukee to meet the goals.⁸⁹ He thought the appropriate solution was to help bring minority contractors into the mainstream by providing bidding and bonding assistance and mentor relationships. He also thought that minority contractors were concentrated in too few crafts--painting and carpentry--and that an effort to expand the range of MBEs would be appropriate.⁹⁰

Richard Snow of the Milwaukee Association General Contractors (AGC) shared many of these views. He noted that the city was doing better than the ordinance had suggested. He thought the goals as established would not be realistic, though lower goals might be. He thought the main need was for development programs that he did not see in the ordinance. He thought to give MBEs, or any small company, too much work too fast was to risk putting them out of business.⁹¹

AGC was particularly concerned about the 5 percent preference. Mr. Snow noted that on one State contract where a similar rule applied the seventh lowest bidder got the contract.⁹²

Notes

1. Interview with Patricia Kramer, July 2, 1987.
2. Id.
3. Wis. Admin. Code Sec. [Department of Admin.] 50 (1981).
4. Wis. Stat. Ann. Sec. 16.765(1) (West 1986).
5. Id. at (2).
6. Id. at (3).
7. Id. at (5).
8. Id. at (6) and (7).
9. Id. at (8) and (9).
10. Administrative Code, supra note 3.
11. Wis. Admin. Code Sec. [Department of Admin.] 50.04 (1981).
12. Wis. Admin. Code Sec. [Department of Admin.] 50 (1981).
13. Wis. Admin. Code Sec. [Department of Admin.] 50.04 (1b), (7) (1981).
14. Wis. Admin. Code Sec. [Department of Admin.] 50.04 (2) (1981).
15. Wis. Admin. Code Sec. [Department of Admin.] 50.05 (1981).
16. Wis. Admin. Code Sec. [Department of Admin.] 50.06 (1981).
17. Wis. Admin. Code Sec. [Department of Admin.] 50.08 (2) and 50.09 (1) (1981).
18. Letter from Patricia Kramer to CRD staff, July 6, 1987.
19. Interview with Patricia Kramer, July 2, 1987.
20. Interview with David Lewis, Aug. 27, 1987.
21. Interview with Brenda Brimage, Aug. 27, 1987.
22. 42 USC 2000e, et seq. (1983).
23. Exec. Order No. 11246, 3 C.F.R. 339 (1964-1965 Comp.).
24. Wisconsin Department of Development, A Statistical Profile of Minority Population, Employment and Business Ownership in Wisconsin (May 1986), p. 18.

25. Id., p. 15.
26. Id.
27. State of Wisconsin, 1983 Wisconsin Act 390 (May 1984).
28. Federal Surface Transportation Assistance Act, Pub.L. 97-424 (1983).
29. Wis. Stat. Ann. Sec. 16.75 (3m) (b) (West 1986).
30. Id. at Sec. 16.75 (3m) (c) (2).
31. Interview with Robert Winn, Director of Minority Business Development of the Wisconsin Department of Development, July 6, 1987, and SAC Meeting Notes, Robert Winn, Aug. 20, 1987.
32. Id.
33. 1987 Region 5 Certification Application: DBE/MBE/WBE (n.d., n.p.).
34. WDOT, 1987 DBE/WBE Disadvantaged/Women Business Enterprise Application for Certification.
35. Id.
36. WISDOT MBE Program Update, June 23, 1987, p. 2.
37. Id., p. 3.
38. Id., p. 8.
39. Id., p. 8.
40. SAC Meeting Notes, David Manning, Aug. 20, 1987.
41. Interview with Harry Lindberg, July 6, 1987, and SAC Meeting Notes, Harry Lindberg, Aug. 20, 1987.
42. Id.
43. Interview with Jerald Slack, July 6, 1987, and SAC Meeting Notes, Jerald Slack, Aug. 20, 1987.
44. Id.
45. Interview with Larry Eisenberg, July 6, 1987, and SAC Meeting Notes, Larry Eisenberg, Aug. 20, 1987.

46. Id.
47. Id.
48. Id.
49. Interview with Hermetta Williams, July 2, 1987, and SAC Meeting Notes, Hermetta Williams, Aug. 20, 1987.
50. Id.
51. City of Milwaukee, Charter Ordinance No. 555 (Dec. 20, 1985).
52. City of Milwaukee, Charter Ordinance No. 555 (Jan. 14, 1986) (hereafter cited as DBE Ordinance).
53. Id.
54. Id., Chap. 37, para. 37.03.
55. Id., para. 37.04.
56. Id., para. 37.06.
57. Id., para. 37.06.
58. Id.
59. Id., para. 37.07.
60. Id., paras. 37.08 and 37.09.
61. Id., para. 37.06.
62. Milwaukee Business Journal, no date, on file at Central Regional Division.
63. Id.
64. Milwaukee Journal, Apr. 3, 1987 (article on file at Central Regional Division).
65. Milwaukee Sentinel, Apr. 2, 1987 (article on file at Central Regional Division).
66. Milwaukee Journal, Mar. 31, 1987 (article on file at Central Regional Division).

67. Milwaukee Journal, Apr. 3, 1987 (article on file at Central Regional Division).
68. Milwaukee Sentinel, Apr. 4, 1987 (article on file at Central Regional Division).
69. Edward A. Witkowski and David A. Kuemmel, Milwaukee Sentinel, Apr. 6, 1987 (article on file at Central Regional Division).
70. Interview with Gordon Reid, consultant to Urban League, Apr. 29, 1987 (hereafter cited as Reid Interview).
71. Interview with Bill Lawrence, Vice President, Wisconsin Minority Contractors' Association, May 12, 1987 (hereafter cited as Lawrence Interview) and SAC meeting Notes, Gordon Reid, July 1, 1987.
72. Interview with John Bowles, Apr. 27, 1987 (hereafter cited as Bowles Interview).
73. Interview with James Elliott, May 11, 1987 (hereafter cited as Elliott Interview).
74. Kinlow Interview.
75. Interview with Richard Snow, May 11, 1987 (hereafter cited as Richard Snow Interview).
76. Lawrence Interview.
77. Reid Interview.
78. Id.
79. Interview with Curtis Harris, Apr. 30, 1987, and SAC Meeting Notes, Curtis Harris, July 1, 1987.
80. Reid Interview.
81. Id.
82. Interview with Judy Jones, Apr. 27, 1987 (hereafter cited as Jones Interview), and SAC Meeting Notes, Judy Jones, July 1, 1987.

83. Reid Interview.
84. Interview with Curtis Harris, Apr. 30, 1987.
85. Id.
86. Reid Interview.
87. Jones Interview.
88. Lawrence Interview.
89. Elliott Interview.
90. Id.
91. Snow Interview.
92. Id.

4. THE ROLE OF ECONOMIC DEVELOPMENT PROGRAMS

The State, either through its own resources or as a conduit for Federal funds, disperses considerable sums to promote economic development. The primary administrators of these funds are the Department of Administration, the Wisconsin Housing and Economic Development Authority and the Community Development and Finance Authority. The Advisory Committee wanted to know to what extent these State and Federal expenditures produced benefits either in contracts or jobs for minorities and women.

Barbara Livingston, a staff specialist for the Department of Development,¹ reported that her department had good data on the small cities community development block grant program which it administers for the Federal Government. But on other programs, such as the Wisconsin Customized Labor Training Fund and Technology Development Fund, it lacked comparable data that would allow it to determine the extent of minority participation or benefit. On all its activities it required an affirmative action plan if the grant and recipient were large enough. But it did not do very much monitoring. It had no data at all on the Small Employer Ownership Funds. It had no information about entitlement communities.²

Another major funder is the Wisconsin Housing and Economic Development Authority. Richard Longabaugh, the Director of the authority, described it as an autonomous quasi-State agency. It has provided \$30 plus million through its SEED (Small Enterprise Economic Development) program. It relies on tax-exempt industrial revenue bonds. Its primary mission is the construction of low and moderate income housing. SEED is a recent addition to its activities. The authority is composed of six public members appointed by the Governor with the consent of the Senate, the Secretary of

the Wisconsin Department of Development and four legislators--one from each party in each house. It had no way to determine the numbers of minority or female employees of beneficiaries. Its only data was that it had saved about 1,000 jobs. It did not require recipients to have an affirmative action plan, nor did it ask them to provide data on the sex and racial make-up of their workforces.³ Its housing programs beneficiaries included 1.12 percent who were minority and 82.29 percent who were single females, Michael Wolff, an economic analyst for the agency stated.⁴

But WHEDA did have one program that benefited minorities--LINK (Linked Deposit Loan Program). This provided \$2,055,190 of State funds to be used as certificates of deposit at banks willing to make low interest loans to MBEs/WBEs. LINK had resulted in 39 loans of up to \$99,000 each and about 99 jobs created and 29 jobs retained. The program is targeted to minorities and women.⁵

One program that has successfully reached MBEs is the Community Development Finance Authority.⁶ This operates as a technical assistance agency and provides financing via a nonprofit private agency, the Wisconsin Community Capital Corporation. In part its success was because the program is targeted to areas that are distressed which inevitably contain large numbers of minorities. It is primarily concerned with job creation and retention. The program works through community based organizations which either form companies on their own to provide employment or make agreements with entrepreneurs who will do so. In the past five years it estimates it has used its capital of \$600,000 to leverage \$10-\$12 million and provide 641 jobs, at a cost per job of about \$2,500. It provides loans or makes equity investments of up to \$200,000 to businesses that can create or retain 10-15 jobs within a two-year period. It has been successful in

reaching minorities and women because it maintains a close link with the various community based organizations, many of which it has helped to establish. It has assisted 120 businesses of which about one-third are MBE. It has made eight direct investments, three to Opportunities Industrialization Center of Milwaukee, one to a black entrepreneur, and one to a women's cooperative.

Notes

1. Interview with Barbara Livingston, July 2, 1987, and SAC Meeting Notes, Barbara Livingston, Aug. 20, 1987.
2. Id.
3. Interview with Richard Longabaugh, Director, and Michael Wolff, Program Analyst, WHEDA, July 6, 1987, and SAC Meeting Notes, Michael Wolff, Aug. 20, 1987.
4. WHEDA, Wisconsin Housing and Economic Development Authority, 1985, and 1986 (n.d.), p. 20, and SAC Meeting Notes, Aug. 20, 1987.
5. Interview with Richard Longabaugh, July 6, 1987; and, SAC Meeting Notes, Michael Wolff, Aug. 20, 1987.
6. Interview with Tom Krajewski, Executive Director, Wisconsin Community Development Finance Authority, July 7, 1987, and SAC Meeting Notes, Tom Krajewski, Aug. 20, 1987.

SUMMARY

As noted, this report summarizes information received in preparation for community forums conducted by the Wisconsin Advisory Committee in Milwaukee and Madison, and from those who participated in it. It should not be considered an exhaustive review of the issues pertaining to the topic discussed. Rather, it provides a cursory look at issues and concerns which the Advisory Committee may decide merit further investigation and analysis.

The Advisory Committee received information on a range of affirmative action efforts to remedy minority unemployment. Of particular interest were several innovative plans from the private sector for the utilization of minorities and women. These were limited by the general economic climate. The Committee also received information about utilization of minority business enterprises. Such efforts were controversial. Finally, the Advisory Committee heard about State efforts to promote economic development. The Committee hopes that the information contained in the report will assist the Commission in its program planning activities.

Table 1: BASIC DEMOGRAPHICS

		Milwaukee CO.					Other Minority
	Total	White Nonminority	Total Minority	Black	Hispanic	American Indian	
Population	923130	713595(723)	209535(227)	157928(17.1)	34944(3.8)	6232(0.7)	10431(1.1)
Women pop.	483720	373291	110429	84386	17175	3296	5572
Labor Force	484300	399911	84389	65132	12842	2681	3734
Women L.F.	226633	185015	41618	32949	5657	1214	1798
Unemployment	32448	19561	12887	10747	1464	362	314
Women Unemp.	12691	7294	5397	4580	520	110	187
Unemp. Rate	6.7%	4.9%	15.3%	16.5%	11.4%	13.5%	8.4%
Women Rate	5.6%	3.9%	13.0%	13.9%	9.2%	9.1%	10.4%
Labor Force Pct.	100.0%	82.6%	17.4%	13.4%	2.7%	0.6%	0.8%
Women L.F. Pct.	46.8%	38.2%	8.6%	6.8%	1.2%	0.3%	0.4%

Handicapped in the Labor Force 18892

Source: Wisconsin Job Service, 1986. Percentages calculated by Central Regional Division.

Table 2: Labor Force Utilization: Milwaukee County

	Total	%	White Nonminority	%	Black	%	Hispanic	%	American Indian	%	Other Minority	%	Women	%
Executives, administrators & Mgr.	42140	8.9	39105	9.7	2258	4.0	452	4.0	110	4.7	215	6.6	13333	6.0
Professional	54336	11.4	48929	12.2	3664	6.5	840	7.4	148	6.4	755	23.3	27228	12.0
Engineers, Architects, Surveyors	6690		6307		134		87		5		157		397	
Math & Computer Scientists	2192		1961		139		25		0		67		644	
Health Diagnosing	2858		2531		95		75		0		157		311	
Health Assessment & Treating	9069		8521		429		53		13		53		7866	
Teachers, Postsecondary	3113		2776		123		71		11		132		1356	
Teachers, Exc. Postsecondary	14479		12775		1428		169		15		92		10177	
Other Professional	15935		14058		1316		360		104		97		6477	
Technicians	14801	3.1	13108	3.3	1148	2.0	213	1.9	75	3.2	257	7.9	7183	3.1
Health Technicians	5966		5188		600		106		45		97		5147	
Other Technicians	8835		7990		548		107		30		160		2036	
Sales	44501	9.4	41207	10.2	2577	4.6	450	3.9	105	4.5	162	5.0	24175	11.3
Supervisors & Proprietors	5722		5345		285		54		5		33		1764	
Sales Representatives	12907		12204		566		96		5		36		3411	
Sales Workers	25779		23565		1726		300		95		93		18907	
Sales Related	93		93		0		0		0		0		93	
Admin. Support, Incl. Clerical	88788	18.7	77385	19.2	8811	15.7	1717	15.0	368	15.8	507	15.6	68542	32.0
Supervisors, Admin. Support	5057		4668		302		44		11		32		2611	
All Other Support	83731		72717		8509		1673		357		475		65931	
Private Household Workers	1449	0.3	1034	0.3	356	0.6	33	0.3	12	0.5	14	0.4	1405	0.7
Protective Service Workers	8141	1.7	7029	1.7	865	1.5	152	1.3	81	3.5	14	0.4	1058	0.5
Serv, Excl. Pri. Household & Protect.	59121	12.4	45536	11.3	11183	19.9	1459	12.8	356	15.3	587	18.1	38782	18.1
Farming, Forestry, Fishing	2182	0.5	1818	0.5	307	0.5	48	0.4	9	0.4	0	0.0	347	0.2
Precision Production, Craft Repair	53300	11.2	46993	11.7	4519	8.0	1294	11.3	294	12.6	200	6.2	4756	2.2
Mechanic & Repairer Supervisors	496		477		7		0		6		6		24	
Mechanic & Repairer, Excl. Supervrs.	15165		13496		1260		264		90		55		683	

Source: 1980 Census

Source: Wisconsin Job Service, 1986. Percentages calculated by Central Regional Division. Percentages are by column.