

## OFFICE OF COLLECTIVE BARGAINING

- Letter of Preliminary Determination      April 22, 2010
- Agency Response      May 7, 2010
- Letter of Final Determination      May 20, 2010



## EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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April 22, 2010

Marlene A. Gold

*Chairperson*

Office of Collective Bargaining

40 Rector Street, 7<sup>th</sup> Floor

New York, NY 10006

Re: Resolution #10/03-313 Preliminary Determination Pursuant to the Audit of the Office of Collective Bargaining (OCB) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008.

Dear Chair Gold:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

Pursuant to Chapter 35, Section 814(a)(12) of the New York City Charter, the City established the Citywide Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment by city agencies.

The Charter defines city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This letter contains the preliminary determinations of the EEPC pursuant to its audit of compliance by the Office of Collective Bargaining (OCB) during the thirty-six month period

commencing January 1, 2006 and ending December 31, 2008. Requests for corrective actions and/or recommendations are included where the EEPC has determined that OCB has failed to comply in whole or in part with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the 2005 Citywide EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO Policy, which, in accordance with section 815 of the City Charter, holds agency heads responsible for the effective implementation of Equal Employment Opportunity. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women.

The purpose of this audit is to evaluate the agency's compliance with the EEOP, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

### **Scope and Methodology**

Audit methodology included analysis of the OCB's responses to an EEPC Document and Information Request Form. Typically, the EEPC staff would analyze Citywide Equal Employment Database System (CEEDS) data prepared by the Department of Citywide Administrative Services (DCAS) which determines underutilizations and concentrations of targeted groups within the agency's workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. CEEDS data is critical in identifying underutilization in the city's workforce. Where underutilization is revealed within an agency's workforce, auditors determine whether an agency has undertaken reasonable measures for addressing underutilization.

At present, the CEEDS data requires updating in order for the underutilization analysis to provide an accurate measure of the employment practices of city agencies; the DCAS is currently updating this data. Upon completion, the EEPC will review the data and make supplemental recommendations pursuant to this audit, if necessary.

EEPC auditors also conducted in-depth, on-site interviews with the OCB's EEO Officer, the EEO counselor, HR Director, and agency counsel.

A survey of 16 people currently employed by the OCB was distributed. Twelve people (75%) responded. Survey findings are attached. (Appendix 1) One OCB Manager/Supervisor survey was distributed. The survey finding is attached. (Appendix 5)

### **Description of the Agency**

The Office of Collective Bargaining (OCB) is a non-mayoral city agency that provides procedures, including certification of collective bargaining representatives, mediation, impasse panels, and arbitration, for the resolution of labor relations disputes and controversies between the City and its employee organizations and employees.

The Board of Collective Bargaining consists of two city members, appointed by the Mayor, two labor members designated by the Municipal Labor Committee and three impartial members, one of whom shall be Chair of the Board and Director of the Office.

### **Personnel Activity During the Audit Period**

The OCB reports that there were no hires or promotions during the audit period.

The OCB reports that no employees were involuntarily separated during the audit period. Between January 1, 2006 and December 31, 2008, the total number of employees remained at 16. The number of African-American and Hispanic employees both remained at 3. Female employees decreased from 12 to 11. (Appendices 2 and 3)

### **Discrimination Complaint Activity During the Audit Period**

No internal or external complaints were filed against the OCB during the audit period.

### **PRELIMINARY DETERMINATION**

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

#### **Plan Dissemination – Internally**

The OCB is in partial compliance with the following requirements:

1. The agency's EEO Policy, EEO Policy statement, EEO Policy Handbook and addendums were last distributed to all employees in April 2009. In addition, 83% of the respondents to the EEPC's Employee Survey indicated that they had received the EEO Policy Statement and 92% indicated that they had received the EEO Policy Handbook. The policies are also included in the new hire packet and distributed to all new employees. However, the agency's EEO Policy has not been updated since 2004 and does not include all the protected classes under the New York City and New York State Human Rights laws. (i.e. Sexual orientation, gender identity, and victim of a sexual offense or stalking) Corrective action is required.

During the audit exit meeting, the EEPC staff was informed that the OCB had not been advised by the DCAS that the City's EEO Policy was updated in 2005. Since the OCB is a non-mayoral agency, during the time of the 2005 EEOP amendments, the OCB was not kept in the loop as was the mayoral agencies.

Recommendation: The agency's EEO Policy should be revised to include all the protected classes under the New York City and New York State Human Rights Laws.

Recommendation: The revised EEO Policy should be distributed to all current and new employees, and posted on the agency bulletin boards.

The OCB is in compliance with the following requirements:

1. A list of the EEO professionals and their contact information is included in the agency's EEO Policy. In addition, 92% of the respondents to the EEPC's Employee Survey indicated that they know who the EEO Officer is.
2. The agency follows the City's Discrimination Complaint and Reasonable Accommodation procedures.

The OCB is in partial compliance with the following requirement:

The agency's EEO Policy, EEO policy statement, and EEO policy handbook is posted on the agency's bulletin board. The EEO officer continually checks and maintains the board to ensure the EEO information is clearly posted and current. In addition, all of the respondents to the EEPC's Employee Survey indicated that the agency's EEO Policy is posted on the agency's bulletin board or kept in an area otherwise accessible to employees. However, the policy was outdated. Corrective action is required.

Recommendation: The agency should post its revised EEO Policy and EEO Policy Statement on the agency bulletin boards. (Sect.VB, EEOP)

### **Plan Dissemination – Externally**

The OCB is in partial compliance with the following requirement:

All four city-wide job vacancy notices (Labor Relations Trial Examiner, Labor Relations Trial Examiner III, and Labor Relations Trial Examiner IV) submitted by the agency indicate that the City is an Equal Opportunity Employer. Two job advertisements for Attorney positions that the agency posted on the PSLawnet website and the Association of the Bar website indicate that the City is an Equal Opportunity Employer. The four job vacancy notices and two job advertisements do not indicate that the OCB is an Equal Opportunity Employer. Corrective action is required.

Recommendation: All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)

### **EEO and Reasonable Accommodation for Persons with Disabilities**

The OCB is in compliance with the following requirements:

1. The EEO Officer was appointed the agency's 55-a Coordinator. The DCAS Section 55-a Program brochure is included in the agency's new-hire packet and distributed to all employees with the agency's EEO Policy. There are currently no program participants.

2. The agency has formally appointed a disability rights coordinator to handle reasonable accommodation requests. No reasonable accommodation requests were made during the audit period. In addition, 75% of the respondents to the EEPC's Employee Survey indicated that they know who the agency's Disabilities Rights Coordinator is.
3. The agency's response to the EEPC's accessibility for persons with disabilities checklist indicates that its office at 40 Rector Street, 7<sup>th</sup> floor, which is privately-owned, is accessible to, and useable by, persons with disabilities. There is a street accessible entrance, wheelchair accessible elevators, Braille and a bell in elevators, and wide restroom stalls in the bathrooms. In addition, all of the respondents to the EEPC's Employee Survey indicated that the agency's facility is accessible to persons with disabilities.

The OCB is in partial compliance with the following requirement:

The EEO Officer is aware that the City's Discrimination Complaint Procedure and Reasonable Accommodation Procedure are available in alternate formats from DCAS and will provide the appropriate format upon request. The OCB has its EEO Policy and EEO Policy Statement in large print format; however, the Policy has not been updated since 2004. During the audit period, there have been no requests for the policies in alternate formats. Corrective action is required.

Recommendation: The agency should ensure that its revised EEO Policy and EEO Policy Statement are available in alternate formats (i.e., large print, audio tape, and/or Braille). (Sect. VC-2, EEOP)

### **Discrimination Complaint and Investigation Procedures**

The OCB is in compliance with the following requirements:

1. The OCB's EEO Officer and EEO Counselor have attended the basic training course for EEO professionals conducted by the Department of Citywide Administrative Services (DCAS).
2. The OCB appointed two EEO representatives who are not of the same gender (female EEO officer and male EEO counselor) to receive and investigate discrimination complaints.
3. The EEO officer maintains a log of discrimination complaints filed against the agency. No internal and external discrimination complaints were filed during the audit period.

## **EEO Training**

The OCB is in compliance with the following requirement:

The OCB has a plan to train all new and current employees. However, the agency did not conduct agency-wide EEO training during the audit period. The last staff EEO training was conducted in 2004 during the previous EEPC audit. Subsequent to the audit, the OCB's managers and supervisors received DCAS's Computer-Based Training (CBT) in 2009 and the EEO Officer received a refresher EEO training in February 2009. In addition, 50% of the respondents to the EEPC's Employee Survey indicated that they received EEO training during the past 2 years.

## **Promotional Opportunities**

The OCB is not in compliance with the following requirement:

The OCB did not conduct managerial or non-managerial performance evaluations during the audit period. In addition, 92% of the respondents to the EEPC's Employee Survey indicated that they did not receive an annual performance evaluation within the past 12 months. Corrective action is required.

Recommendation: Since the *Personnel Rules and Regulations of the City of New York and DCAS* require that all managerial and non-managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate all employees. (DCAS, Rule 7.5.4(e) of the *Personnel Rules and Regulations of the City of New York*)

## **EEO Officer Reporting Arrangement**

The OCB is in compliance with the following requirements:

1. The EEO officer reports to the agency head and meets with her on EEO matters. Documentation of these meetings is maintained.
2. The EEO officer meets with the EEO counselor periodically to review his work and keep him abreast of EEO developments. Documentation of these meetings is maintained.

The OCB is not in compliance with the following requirement:

Although the EEO Officer reports to the agency head on EEO matters, the agency's organization chart does not show this reporting relationship. The EEO Officer title was absent from the chart. Corrective action is required.

Recommendation: The OCB's organization chart should be revised to indicate that the EEO Officer reports to the agency head on EEO matters. (Section VB, EEOP)

## **EEO Officer Responsibilities**

The OCB is in compliance with the following requirement:

The EEO Officer spends approximately 5% of her time on EEO, 55a Program, and Disability Rights Coordinator matters. No complaints have been filed during or after the audit period; the remainder of her time is spent on her Purchasing Officer duties.

## **SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS**

1. The agency's EEO Policy should be revised to include all the protected classes under the New York City and New York State Human Rights Laws.
2. The revised EEO Policy should be distributed to all current and new employees, and posted on the agency bulletin boards.
3. The agency should post its revised EEO Policy and EEO Policy Statement on the agency bulletin boards. (Sect. VB, EEOP)
4. All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)
5. The agency should ensure that its revised EEO Policy and EEO policy Statement are available in alternate formats (i.e., large print, audio tape, and/or Braille). (Sect. VC-2, EEOP)
6. Since the *Personnel Rules and Regulations of the City of New York and DCAS* require that all managerial and non-managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate all employees. (DCAS, Rule 7.5.4(e) of the Personnel Rules and Regulations of the *City of New York*)
7. The OCB's organization chart should be revised to indicate that the EEO Officer reports to the agency head on EEO matters. (Section VB, EEOP)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

## Conclusion

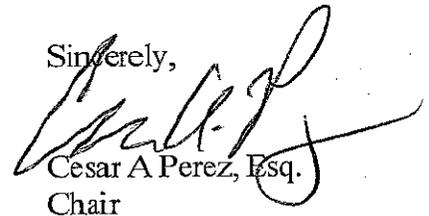
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the OCB's compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's EEO Plan.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cesar A. Perez', is written over the typed name and title.

Cesar A. Perez, Esq.  
Chair

APPENDIX - 1

Office of Collective Bargaining  
EMPLOYEE SURVEY RESULTS

Employees = 16

Survey Respondents = 12

**A. GENERAL OVERVIEW**

1. Equal Employment Opportunity (EEO) guarantees the right of all persons to be accorded full and equal consideration on the basis of merit, regardless of protected group status. Do you agree with this principle?  
Yes (12)                      No (0)
2. Do you know who your agency's EEO Officer is?  
Yes (11)                      No (1)
3. Is the City's EEO Policy posted on your agency's bulletin boards or kept in an area otherwise accessible to employees?  
Yes (12)                      No (0)
4. Each agency head is required to distribute a statement in support of Equal Employment Opportunity to all employees. Were you given your agency's EEO Policy statement?  
Yes (10)                      No (0)                      Do not remember (2)
5. Were you given a copy of the EEO Policy Handbook - About EEO: What You Need to Know?  
Yes (11)                      No (1)
6. Do you believe your agency practices equal opportunity (i.e. ensures fairness in all aspects of employment including hiring, selection, promotions, etc.)?  
Yes (11)                      No (1)
7. Has your manager or supervisor discussed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings within the past year?  
Yes (5)                      No (5)                      Do not remember (2)
8. Has your manager or supervisor discussed employees' right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?  
Yes (4)                      No (5)                      Do not remember (3)
9. When hired, were you advised of the City's EEO policies, and of your rights and responsibilities under such policies?  
If No, please skip to question #11.  
Yes (8)                      No (0)                      Do not remember (4)

**B. EEO COMPLAINTS**

10. Do you know how to file an EEO complaint?  
Yes (10)                      No (2)
11. If you had an EEO complaint, would you bring it to your agency's EEO Office?  
Yes (8)                      No (2)                      Undecided (2)
12. Would you prefer to file an EEO complaint with an office outside your agency rather than your agency's EEO Office?  
Yes (4)                      No (4)                      Undecided (4)
13. During the past 3 years, did you file a complaint with your agency's EEO Office?  
Yes (0)                      No (12)

**SURVEY RESULTS CONTINUED**

14. If yes, what was the basis of your complaint? (Check all that apply)

- |                                    |                                                                |
|------------------------------------|----------------------------------------------------------------|
| Age (0)                            | Partnership Status (0)                                         |
| Alienage or Citizen Status (0)     | Predisposing genetic characteristic (0)                        |
| Arrest or Conviction Record (0)    | Race (0)                                                       |
| Color (0)                          | Sexual Harassment (0)                                          |
| Creed (0)                          | Sexual Orientation (0)                                         |
| Disability (0)                     | Veteran's Status (0)                                           |
| Gender (incl. gender identity) (0) | Victim of Domestic Violence,<br>Stalking, and Sex Offenses (0) |
| Marital Status (0)                 | Other (0)                                                      |
| Military Status (0)                | Not Applicable (1)                                             |
| National Origin (0)                |                                                                |

15. Was your manager or supervisor supportive of your right to file a complaint?

- |         |        |                     |
|---------|--------|---------------------|
| Yes (0) | No (0) | Not Applicable (11) |
|---------|--------|---------------------|

**C. EEO TRAINING**

16. During the past 2 years, did you receive EEO training?

- |         |        |
|---------|--------|
| Yes (6) | No (6) |
|---------|--------|

17. How informative was this training?

- |                            |                          |
|----------------------------|--------------------------|
| Very informative (5)       | Somewhat informative (1) |
| Not really informative (0) | Not Applicable (5)       |

**D. JOB PERFORMANCE/ADVANCEMENT**

18. Were vacant positions advertised on bulletin boards or other areas accessible to employees in a timely manner?

- |          |        |                     |
|----------|--------|---------------------|
| Yes (10) | No (0) | Do not remember (2) |
|----------|--------|---------------------|

19. Did you receive an annual performance evaluation within the past 12 months?

- |         |         |                                   |
|---------|---------|-----------------------------------|
| Yes (0) | No (11) | Employed for less than 12 mos (1) |
|---------|---------|-----------------------------------|

20. Did your evaluation contain recommendations for improving your job performance?

- |         |        |                    |
|---------|--------|--------------------|
| Yes (0) | No (1) | Not Applicable (0) |
|---------|--------|--------------------|

21. Did your evaluation contain recommendations for career advancement with your agency?

- |         |        |                    |
|---------|--------|--------------------|
| Yes (0) | No (0) | Not Applicable (0) |
|---------|--------|--------------------|

22. Do you know the name of the person in your agency that is responsible for providing career counseling?

- |         |        |
|---------|--------|
| Yes (5) | No (7) |
|---------|--------|

**E. SPECIFIC PROTECTIONS**

23. Do you know who your agency's Disability Rights Coordinator is?

- |         |        |
|---------|--------|
| Yes (9) | No (3) |
|---------|--------|

24. The Americans with Disabilities Act requires that public buildings and facilities be accessible to persons with disabilities. Are your agency's facilities accessible to persons with disabilities?

- |          |        |                |
|----------|--------|----------------|
| Yes (12) | No (0) | Don't Know (0) |
|----------|--------|----------------|

25. The City's EEO Policy requires that agencies take appropriate action to reasonably accommodate qualified employees and applicants with disabilities, and those who are victims of domestic violence, sex offenses, or stalking, to enable to them to perform their jobs or enjoy equal benefits and privileges of employment. It also requires agencies to provide reasonable accommodations for the religious observances, beliefs and practices of an employee or applicant. During the past 3 years, did you ask for a reasonable accommodation due to any of the above?

- |         |         |
|---------|---------|
| Yes (2) | No (10) |
|---------|---------|

SURVEY RESULTS CONTINUED

OPTIONAL INFORMATION

26. Race/Ethnicity

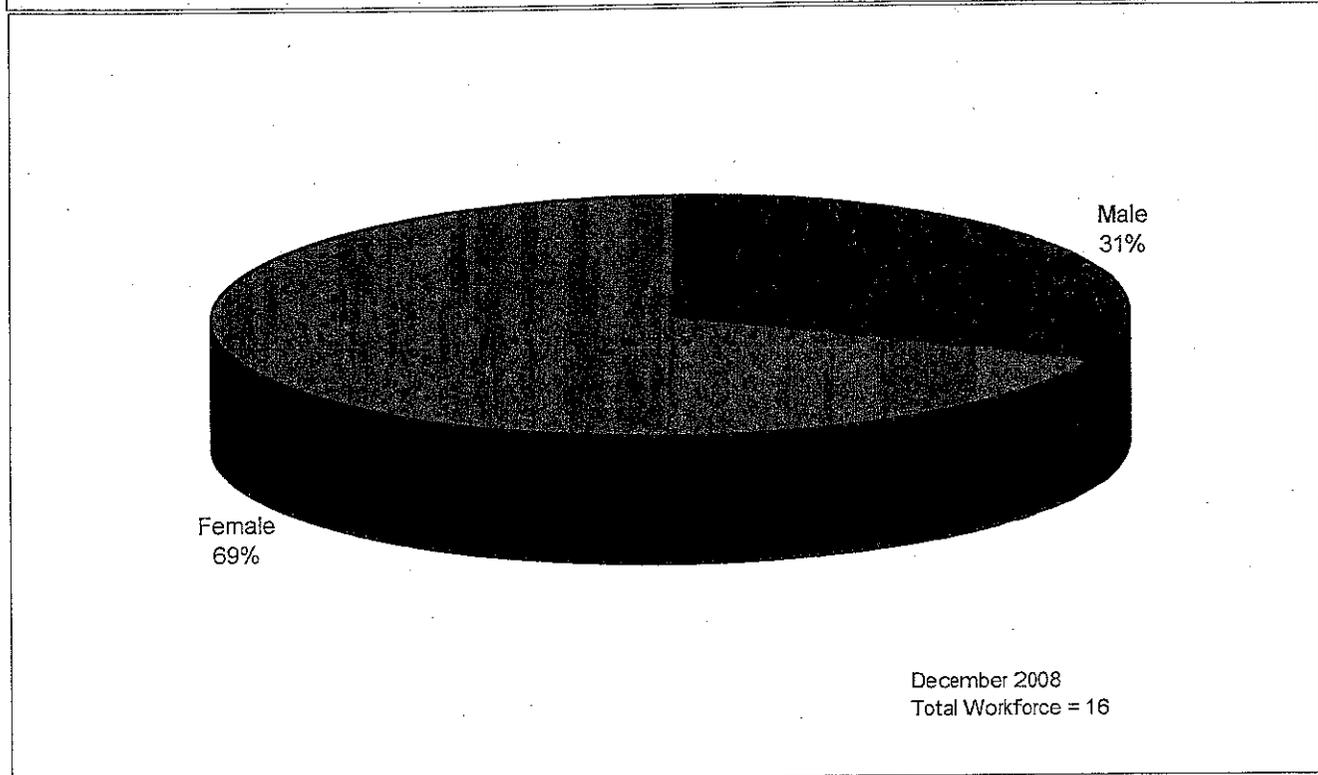
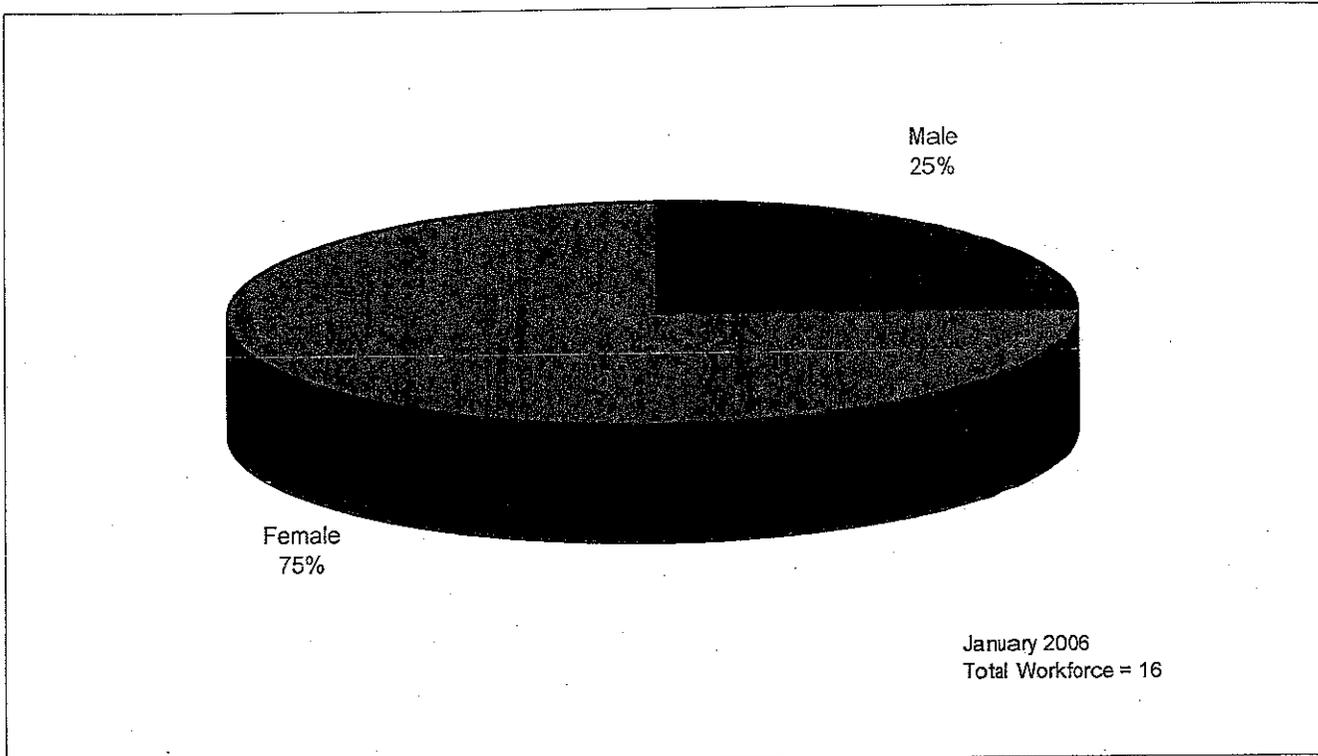
Asian	(0)	Native Hawaiian or Other Pacific Islander	(0)
American Indian or Alaska Native	(0)	White	(4)
Black or African American	(1)	Two or More Races	(0)
Hispanic or Latino	(1)		

27. Gender

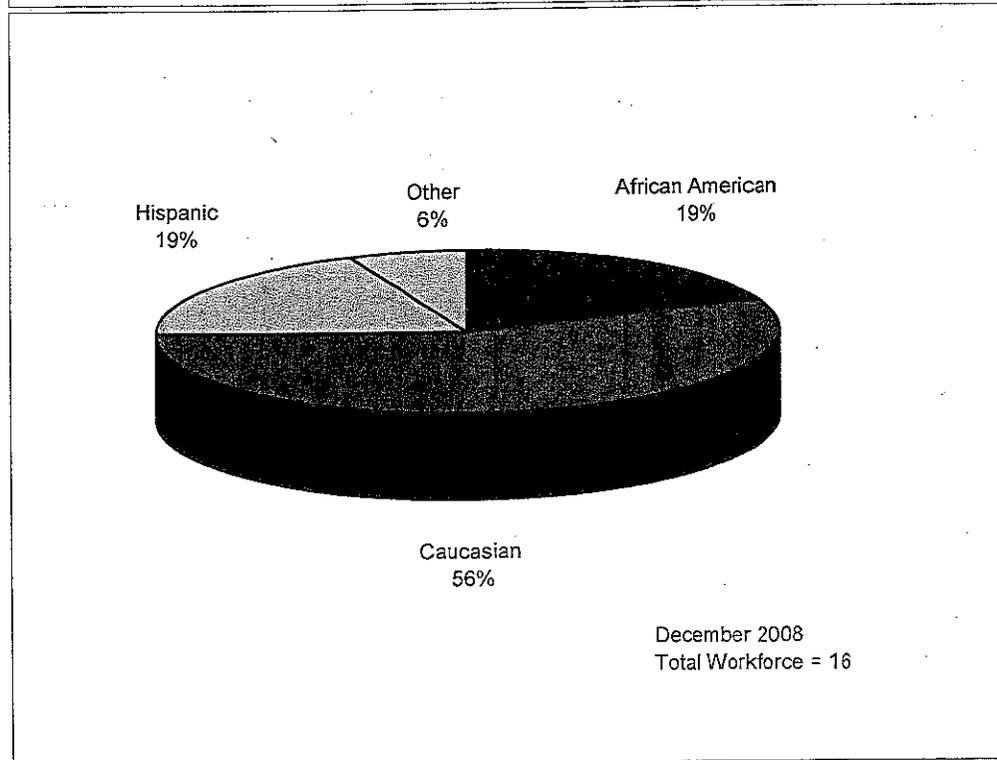
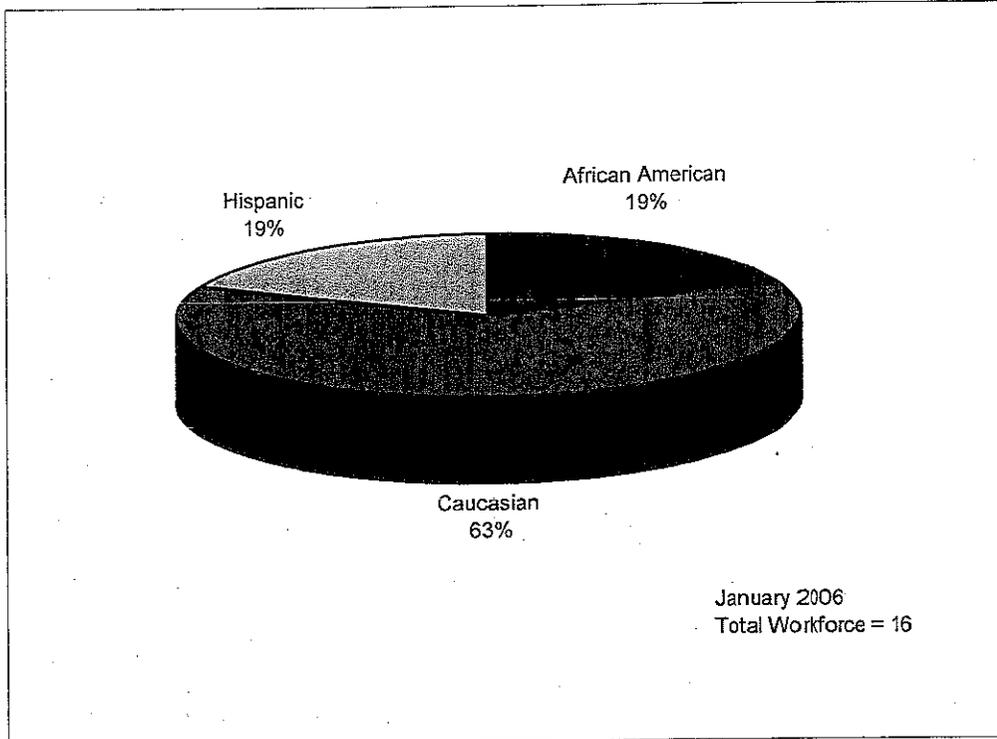
Male	(5)	Female	(7)
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## Appendix - 2

### Office of Collective Bargaining Workforce by Sex



Appendix - 3  
Office of Collective Bargaining  
Workforce by Ethnicity



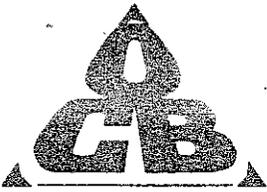
## SUPERVISOR/MANAGER QUESTIONNAIRE RESULTS

Total Supervisors = 1 Completed Questionnaire = 1 (100%)

1. Are you familiar with the City of New York's Equal Employment Opportunity (EEO) Policy?  
 Yes (1) No (0)  
 Provided description (1)
2. Are you aware of your rights as an employee under the City's EEO Policy?  
 Yes (1) No (0)  
 Provided description (1)
3. Are you aware of your responsibilities as a supervisor/manager under the City's EEO Policy?  
 Yes (1) No (0)  
 Provided description (1)
4. What is the name of your agency's EEO Officer?  
 Know (1) Do not know (0)
5. Did the EEO Officer meet with you to discuss the following: (Check all that apply)  
 Your EEO rights as an employee (1)  
 Your EEO responsibilities as a supervisor/manager (0)  
 Neither (0)
6. In your agency, where can the City's EEO Policy be found? (Check all that apply.)  
 EEO Office (0) My work unit (0)  
 HR/Personnel Office (1) I do not know (0)  
 Intranet (1) Other (0)
7. Of the choices indicated above, which is most easily accessible to you?  
 EEO Office (0) My work unit (0)  
 HR/Personnel Office (1) Other (0)  
 Intranet (1)
8. Each agency head is required to distribute a statement in support of Equal Employment Opportunity to all employees. Have you received a copy of your agency's EEO Policy Statement?  
 Yes (1) No (0) Do not remember (0)
9. Do you have access to a copy of the Discrimination Complaint Procedure?  
 Yes (1) No (0) Do not know (0)
10. In your role as a supervisor/manager, have you discussed the agency's commitment to the principal of Equal Employment Opportunity during staff meetings within the past year?  
 Yes (0) No (1) Other (0)
11. In your role as a supervisor/manager, have you discussed with employees their right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?  
 Yes (0) No (1)
12. Did you receive sexual harassment prevention training from your agency's O Office?  
 Yes (0) No (1) Do not remember (0)
13. Did all of the employees that you supervise receive sexual harassment prevention training?  
 Yes (0) No (0) Do not know (1)

QUESTIONNAIRE CONTINUED

14. When you were hired, did you receive an orientation session that included a review of the City's EEO policy?  
Yes (1)                      No (0)                      Do not remember (0)
15. Do you participate in orientation sessions for new employees?  
Yes (0)                      No (1)
16. Do new employee orientation sessions include information on the City's EEO policy?  
Yes (0)                      No (0)                      Do not know (1)
17. Do you interview candidates for positions in your agency?  
Yes (1)                      No (0)
18. If you are involved in interviewing job applicants, did your agency provide you with training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview?  
Yes (0)                      No (1)                      I do not interview applicants (0)
19. When was your last performance evaluation?  
Within a year (0)                      Over a year ago (1)
20. Were you informed that EEO performance will be part of your overall performance evaluation and will be considered in determining your eligibility for promotions and merit increases?  
Yes (0)                      No (0)                      Not Applicable (1)
21. Does your performance evaluation include an EEO component? (A section that rates your ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner.)  
Yes (0)                      No (0)                      I do not receive performance evaluations (0)
22. Do you evaluate your employees annually?  
Yes (0)                      No (1)                      Other (0)
23. Do you believe the agency has provided sufficient training to supervisors/managers on their responsibilities in assisting employees that may complain about discrimination or harassment?  
Yes (1)                      No (0)
24.  
Please share your additional comments or concerns regarding EEO in your agency.  
Comments (0)



## OFFICE OF COLLECTIVE BARGAINING

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CHARLES G. MOERDLER  
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May 7, 2010

Cesar A. Perez, Esq.  
Chair  
Equal Employment Practices Commission  
40 Rector Street, 14<sup>th</sup> Floor  
New York, NY 10006

Dear Mr. Perez:

In response to your Resolution #10/03-313 Preliminary Determination Pursuant to the Audit of the Office of Collective Bargaining's (OCB) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008; following your recommendations described on page 7 (items 1 to 7), below are the corrective actions taken by OCB. Copies of the revised materials are attached for your consideration.

- 1) OCB revised the agency's EEO Policy to include all the protected classes under New York State Human Rights Laws.
- 2) The revised EEO policy was posted on OCB's general bulletin board and distributed to all our current and new employees.
- 3) The revised EEO policy and Statements were posted on OCB's general bulletin board. (Sect. VB, EEOP)
- 4) All Agency recruitment literature will indicate that OCB and the City of New York are an equal opportunity employer. (Sect. IV, EEOP)
- 5) OCB's revised EEO policy and statements are available in large print. ( Sect. VIII, EEOP)
- 6) Under the heading, "Promotional Opportunities," the EEPC found that OCB was not in compliance because it did not conduct performance evaluations for its managerial and non-managerial employees within the past 12 months. The EEPC cited Rule 7.5.4(e) of the Personnel Rules of the City of New York as the source of a requirement that all managerial and non-managerial employees receive annual performance evaluations.

Upon review, OCB notes that Rule 7.5.4(e) of the Personnel Rules of the City of New York, by its own terms, applies only to non-managerial employees. Eleven of the sixteen employees on OCB's staff serve in managerial positions, and are not covered by this rule. In fact, the work of most of the agency's managerial staff is to prepare cases for decision by the OCB's Board at regular monthly meetings. In this regard, the work of these staff members is reviewed and critiqued by the agency head – and the members of the Board – on a monthly basis. It has been the agency's judgment that additional evaluation procedures for these staff members are unnecessary. With respect to promotional opportunities, due to OCB's small size and extremely low rate of turnover, opportunities for advancement occur only rarely. Applicants are informed of this fact before they are hired.

As to OCB's five non-managerial employees, OCB will develop a plan, including a timetable, to evaluate these employees annually in compliance with Rule 7.5.4(e).

- 7) The OCB's organizational chart was revised to indicate that the EEO Officer reports to the agency head on EEO matters. (Section VB, EEOP)

In addition, to the above recommendations, on May 7, 2010 Marlene Gold, Chair, distributed a memorandum to all staff informing them of the updates and enhancements that were implemented to the OCB's EEO program pursuant to the audit. She reaffirmed OCB's strong and continuing commitment to maintaining a fair employment practice for all OCB employees and job applicants.

Sincerely,



Ms. Amy Villafane  
EEO Officer

Enc:(7)

cc: Marlene Gold  
Steven DeCosta



# EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14<sup>th</sup> Floor New York, NY 10006

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*Counsel*

May 20, 2010

Marlene Gold, Chair  
Office of Collective Bargaining  
40 Rector Street, 7<sup>th</sup> Floor  
New York, New York 10006

Re: Final Determination Pursuant to the Audit of Compliance by the Office of Collective Bargaining with its Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008

Dear Chair Gold:

Thank you for your May 17, 2010 Response to our April 22, 2010 Letter of Preliminary Determination pursuant to the Referenced audit.

After reviewing your response our Final Determination is as follows:

## **Agree**

We agree with your responses to the following recommendations pending our review of the supportive documentation during the compliance period.

### Recommendation #1

The agency's EEO Policy should be revised to include all the protected classes under the New York City and New York State Human Rights Laws.

### Recommendation #2

The revised EEO Policy should be distributed to all current and new employees, and posted on the agency bulletin boards.

### Recommendation #3

The agency should post its revised EEO Policy and EEO Policy Statement on the agency bulletin boards. (Sect. VB, EEOP)

### Recommendation #4

All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer. (Sect. IV, EEOP)

#### Recommendation #5

The agency should ensure that its revised EEO Policy and EEO policy Statement are available in alternate formats (i.e., large print, audio tape, and/or Braille). (Sect. VC-2, EEOP)

#### Recommendation #7

The OCB's organization chart should be revised to indicate that the EEO Officer reports to the agency head on EEO matters. (Section VB, EEOP)

#### Disagree

For the following reasons, hereafter identified as *EEPC Rationale* we disagree in part, with your response to the following:

#### Recommendation #6

Since the *Personnel Rules and Regulations of the City of New York and DCAS* require that all managerial and non-managerial employees receive annual performance evaluations, the agency should develop a plan, which includes a timetable, to evaluate all employees. (DCAS, Rule 7.5.4(e) of the Personnel Rules and Regulations of the *City of New York*)

#### Your Response

Under the heading, "Promotional Opportunities," the EEPC found that OCB was not in compliance because it did not conduct performance evaluations for its managerial and non-managerial employees within the past 12 months. The EEPC cited Rule 7.5.4(e) of the Personnel Rules of the City of New York as the source of a requirement that all managerial and non-managerial employees receive annual performance evaluations. Upon review, OCB notes that Rule 7.5.4(e) of the Personnel Rules of the City of New York, by its own terms, applies only to non-managerial employees. Eleven of the sixteen employees on OCB's staff serve in managerial positions, and are not covered by this rule. In fact, the work of most of the agency's managerial staff is to prepare cases for decision by the OCB's Board at regular monthly meetings. In this regard, the work of these staff members is reviewed and critiqued by the agency head – and the members of the Board – on a monthly basis. It has been the agency's judgment that additional evaluation procedures for these staff members are unnecessary. With respect to promotional opportunities, due to OCB's small size and extremely low rate of turnover, opportunities for advancement occur only rarely. Applicants are informed of this fact before they are hired.

As to OCB's five non-managerial employees, OCB will develop a plan, including a timetable, to evaluate these employees annually in compliance with Rule 7.5.4(e).

#### EEPC Rationale

We agree with your response regarding the evaluation of non-managerial employees. However, page 1 of *Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies*, published by the Department of Citywide Administrative Services, Division of Citywide Personnel Services, requires that managerial employees receive annual performance evaluations. Our recommendation is based in part, on this document; its citation was inadvertently omitted.

The Office of Collective Bargaining's position is therefore contrary to the City's Personnel Policy pursuant to the aforementioned publication.

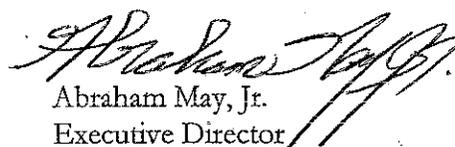
## Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance.

If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel Judith Garcia Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance process.

Sincerely,



Abraham May, Jr.  
Executive Director

c: Judith Garcia Quiñonez, Esq., Counsel/Compliance Director  
Adrienne C. Smith, EEO Auditor/Compliance Office  
Amy Villafane, EEO Officer