

EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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October 25, 2007

Meenakshi Srinivasan

Chairperson

Board of Standards and Appeals

40 Rector Street

New York, NY 10006

Re: Resolution #07/23-BSA/Preliminary Determination Pursuant to the Audit of the Board of Standards and Appeals (BSA) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 to December 31, 2006

Dear Chairperson Srinivasan:

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, women and other protected classes. (New York City Charter, Chapter 36, sections 36(d))(2) and (5).)

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 Board of Standards and Appeals (BSA) during the twenty-four month period commencing January 1, 2005 and ending December 31, 2006. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the BSA has failed to comply in whole or in part with the City's 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. Therefore, the Board of Standards and Appeals should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. 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 City's EEO Policy, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the BSA's agency-specific EEO plans for 2005 and 2006. The EEPC auditors also reviewed responses to a Commission Document and Information Request Form. In addition, the EEPC auditors conducted in-depth, on-site interviews with the BSA's EEO officer and EEO counselor.

Description of the Agency

The board has the power to make, amend and repeal rules and regulations with respect to labor law and laws that relate to construction and alteration of buildings and structures or zoning resolution of the City of New York. The BSA consists of five commissioners (one full-time chairperson/commissioner and four fill-time commissioners), each appointed by the mayor for a term of six years. Members shall attend the hearings and executive session of the board, and shall perform such other duties as may be required by the chair.

Personnel Activity During the Audit Period

During the audit period, 7 individuals were hired: 3 Caucasian males and 2 Caucasian females, and two African-American females. There were no promotions or layoffs/firings during the period in review. (Appendix 1)

Between January 1, 2005 and December 31, 2006, the total number of BSA employees increased by 18.7%, going from 16 to 19. There were modest numerical increases for African-Americans (going from 1 to 3), no change for Hispanics, and a decrease of one Asian (declining from 3 to 2). The representation of females increased from 6 to 10 (a 66.6% rise) during the period in review. (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

No discrimination complaints, internal or external, were filed between January 1, 2005 and December 31, 2006.

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

The BSA is in compliance with the following requirement:

1. The Citywide EEO Policy was posted on the agency bulletin board in January 2005.
2. The EEO officer informed the EEPC auditors that the Citywide EEO Policy was not distributed to the BSA employees. During the October 24, 2007 audit exit meeting, though, the BSA executive director stated that the Citywide EEO Policy, along with the Mayor's January 31, 2005 Policy Statement was distributed to the Board's legal, human resources, EEO representatives, supervisors and managers by the DCAS.
3. The EEO Policy Handbook (*About EEO: What You May Not Know*) was distributed to all Board employees by the DCAS.

The BSA is not in compliance with the following requirement:

The agency head last distributed and posted the BSA's own EEO policy statement in 2004—prior to the issuance of the current Citywide EEO Policy. Corrective action is required.

Recommendation: The BSA agency head should send a general EEO policy statement or memo to all employees. This document should reiterate her commitment to EEO; advise employees of the names, location, and phone numbers of the EEO professionals; and may provide an electronic link to the EEO Policy Handbook and Citywide EEO Policy. This document, to be sent as a payroll distribution, should be based on the Mayor's January 31, 2005 policy statement and the model agency head statement that is posted on the DCAS "about eeo" website. (March 2, 2005 memo from Jyll Townes to mayoral agency EEO officers and Sect. VB, EEOP)

Plan Dissemination – Externally

The BSA is in compliance with the following requirement:

The one internal job vacancy notice and one job advertisement (placed in six publications) submitted by the BSA indicate that the agency is an equal opportunity employer.

EEO and Reasonable Accommodation for Persons with Disabilities

The BSA is compliance with the following requirements:

1. The agency made a reasonable accommodation to a person with a disability: an employee with a back injury was provided with an ergonomically correct chair.
2. The BSA distributed the Section 55-A Program brochures to all employees, although there are no participants in that program.
3. The BSA offices (40 Rector Street) are accessible to and usable by persons with disabilities. Among other architectural features, the offices have wide restroom stalls, there are low sink or bathroom fixtures, and there are wheelchair accessible elevators.

The BSA is not in compliance with the following requirement:

The EEO officer informed the EEPC auditors that he was never officially appointed the disabilities rights coordinator. Corrective action is required.

Recommendation: The BSA should officially appoint a disabilities rights coordinator and notify all employees in writing of the name, location, and phone number/email address of that individual. (Sect. VB, EEOP)

EEO Complaint and Investigation System

The BSA is in compliance with the following requirements:

1. The agency appointed two EEO representatives who are not of the same gender (male EEO officer and female EEO counselor) to receive and investigate discrimination complaints.
2. Both the EEO officer and EEO counselor completed the DCAS training session for EEO professionals.
3. The BSA maintains a monthly discrimination complaint log that can be used to record and update EEO complaints. (As mentioned earlier, no such complaints were filed during the audit period.)

EEO Training

The BSA is in partial compliance with the following requirement:

All the BSA employees have not received EEO training. In 2004 (prior to the audit period), the DCAS conducted basic EEO training for nine of the 15-plus employees. Some of those employees subsequently left the agency and were replaced by other employees. In 2006, two additional employees received EEO training from the DCAS. Currently, seven BSA

employees (including the executive director) have not received EEO training. In March 2007, the BSA unsuccessfully requested that the DCAS provide EEO training for several of its managers and commissioners. The EEO officer told the EEPC auditors that he would obtain EEO training for those employees who have not received it—either through the DCAS or another organization. He added that he would not conduct the training. Corrective action is required.

Recommendation: The BSA should follow-up on its pledge to develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. IV, EEOP)

Selection and Recruitment

The BSA is not in compliance with the following requirements:

The agency submitted a job advertisement for the position of commissioner (engineer). (Although the Mayor appoints the BSA commissioners, the BSA recruits for those vacant positions and forwards resumes to the Mayor. The Mayor may select commissioners from those resumes or from other recruitment sources.) For that vacancy—which occurred after the audit period--the BSA advertised in the following five publications, none of which are oriented towards minorities or women: *ENR Magazine*, *Buildings Magazine*, *Career Builder*, *AIA*, and *New York Times*. Corrective action is required.

Recommendation: When discretionary vacancies arise, the BSA should advertise job vacancies in periodicals with large minority and female readership, and send vacancy notices to professional and community organizations serving minorities, women and persons with disabilities. (Sect. IV, EEOP) The BSA may obtain and consult *Making the Most of the City's Recruitment Resources*, the DCAS listing of recruitment sources to create a diverse applicant pool (http://extranet.dcas.nycnet/eo/pdf/apomasterclass_recruitment.pdf)

Promotional Opportunities

The BSA is not in compliance with the following requirement:

The EEO officer informed the EEPC auditors that the BSA has not officially appointed a career counselor. Employees seeking career counseling have been referred to the human resources department of the DCAS—which provides administrative support to the BSA. Corrective action is required.

Recommendation: The BSA should either officially appoint a career counselor or notify employees that career counseling is available from the career counselor of the DCAS. In either case, the agency should notify all employees in writing of the name, location, and telephone number/email address of the individual who will provide the counseling. (Sect. VF, EEOP)

EEO Officer Reporting Arrangement

The BSA is in compliance with the following requirement:

The EEO officer reports to the agency head (the chairperson) on EEO matters and meets with her on an ad hoc basis.

The BSA is not in compliance with the following requirement:

The EEO officer informed the EEPC auditors that he does not prepare an agenda for, or keep notes, of his meetings with the chairperson. Corrective action is required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the agency head regarding EEO program operational decisions should be maintained.

EEO Officer Responsibilities

The BSA is in compliance with the following requirement:

The EEO officer told the EEPC auditors that he devotes approximately one percent of his time to EEO matters; the balance is spent on his duties as deputy director. He has sufficient support staff and resources to discharge his duties as EEO officer.

The BSA is in partial compliance with the following requirement:

The EEO officer told the EEPC auditors that he is not involved in developing recruitment strategies or selecting recruitment media; those are the sole responsibilities of the executive director. The EEO officer suggested to the current executive director that he (EEO officer) be involved in that process, but the executive director disagreed. At the October 24, 2007 audit exit meeting, though, the executive director said that the EEO officer was involved in one recruitment effort: selecting recruitment media and developing recruitment strategy for the vacant commissioner engineering position. Corrective action is required.

Recommendation: The agency head (chairperson) should direct the executive director to include the EEO officer in selecting recruitment media and developing recruitment strategy for all vacancies. (Sect. VC, EEOP)

Supervisory Responsibility in EEO Plan Implementation

The BSA is not in compliance with the following requirement:

The BSA has two managers: the executive director and the deputy director. Neither of those individuals has conducted meetings with their staffs to reaffirm their commitment to EEO. Corrective action is required.

Recommendation: It is the position of the DCAS (“Model Agency EEO Commitment Memo,” http://extranet.dcas.nycnet/eoo/pdf/model_memo.pdf) and the EEOC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency’s EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings should be documented.

Special Problem/Contingency

The BSA is not in compliance with the following requirement:

The EEO Officer informed the EEOC auditors that the agency does not conduct annual performance evaluations. Corrective action is required.

Recommendation: All employees—managerial and non-managerial—should receive annual performance evaluations. (DCAS, Rule 7.5.4(e) of the *Personnel Rules and Regulations of the City of New York* and DCAS, *Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The BSA should send a general EEO policy statement or memo to all employees. This document should reiterate his commitment to EEO; advise employees of the names, location, and phone numbers of the EEO professionals; and may provide an electronic link to the EEO Policy Handbook and Citywide EEO Policy. This document, to be sent as a payroll distribution, should be based on the Mayor’s January 31, 2005 policy statement and the model agency head statement this is posted on the DCAS “about eeo” website. (March 2, 2005 memo from Jyll Townes to mayoral agency EEO officers, and Sect. VB, EEOP)
2. The BSA should officially appoint a disabilities rights coordinator and notify all employees in writing of the name, location, and phone number/email address of that individual. (Sect VB, EEOP)
3. The BSA should follow-up on its pledge to develop a plan, which includes a timetable, to provide EEO training to all employees who have not received it. (Sect. IV, EEOP)
4. When discretionary vacancies arise, the BSA should advertise job vacancies in periodicals with large minority and female readership, and send vacancy notices to professional and community organizations serving minorities, women and persons with disabilities. (Sect. IV, EEOP) The BSA may obtain and consult *Making the Most of the City’s Recruitment Resources*, the DCAS listing of recruitment sources to create a diverse applicant pool (http://extranet.dcas.nycnet/eoo/pdf/apomasterclass_recruitment.pdf)
5. The BSA should either officially appoint a career counselor or notify employees that career counseling is available from the career counselor of the DCAS. In either case, the

agency should notify employees in writing of the name, location, and telephone number/email of the individual available to provide the counseling. (Sect. VF, EEOP)

6. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the agency head regarding EEO program operational decisions should be maintained.
7. The agency head (chairperson) should direct the executive director to include the EEO officer in selecting recruitment media and developing recruitment strategy for all vacancies. (Sect. VC, EEOP)
8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," http://extranet.dcas.nycnet/eoo/pdf/model_memo.pdf) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings should be documented.
9. All employees—managerial and non-managerial should receive annual performance evaluations. (DCAS, Rule 7.5.4(e) of the *Personnel Rules and Regulations of the City of New York* and DCAS, *Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies*, p. 1)

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

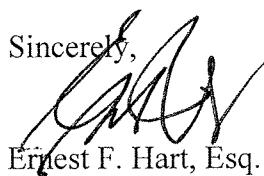
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to the EEPC's audit of the BSA's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Citywide EEO Policy, we respectfully 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 day of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, 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 thank you and your staff for the cooperation extended to the Equal Employment Practices Commission 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 "E. F. Hart", written over the word "Sincerely,".

Ernest F. Hart, Esq.
Chair

APPENDIX – 1

The following table indicates personnel activity during the audit period, January 1, 2005 through December 31, 2006

Board of Standards and Appeals

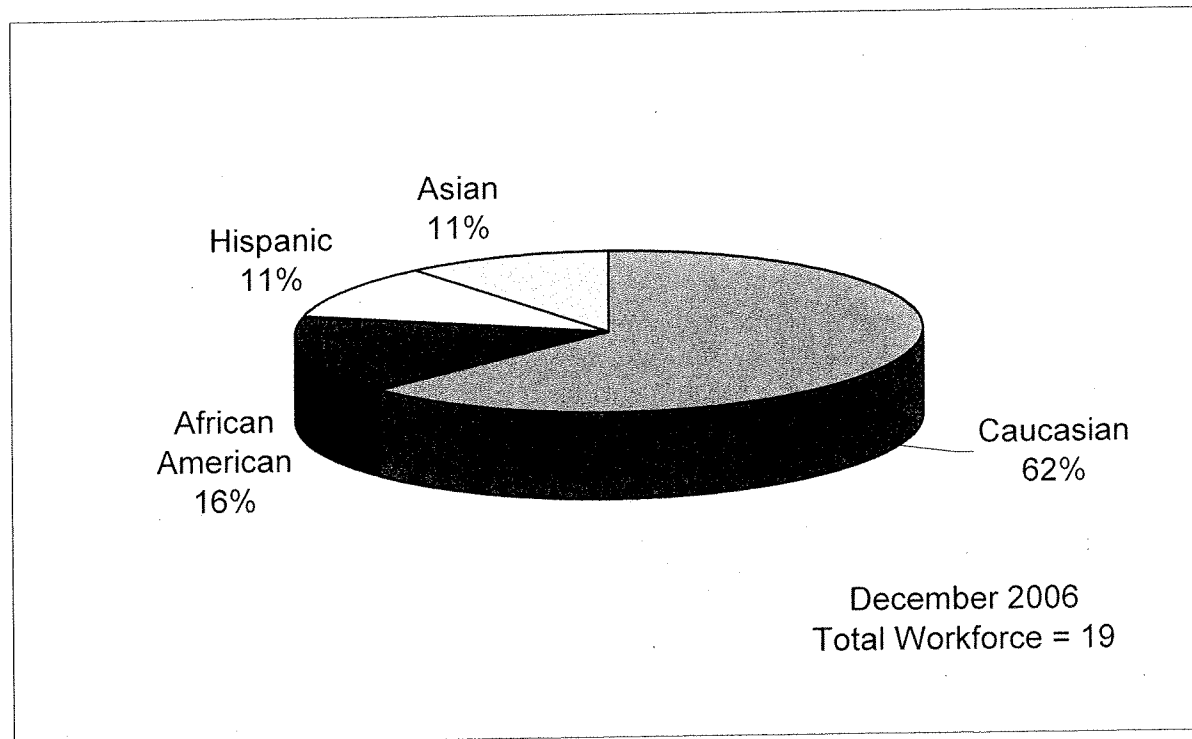
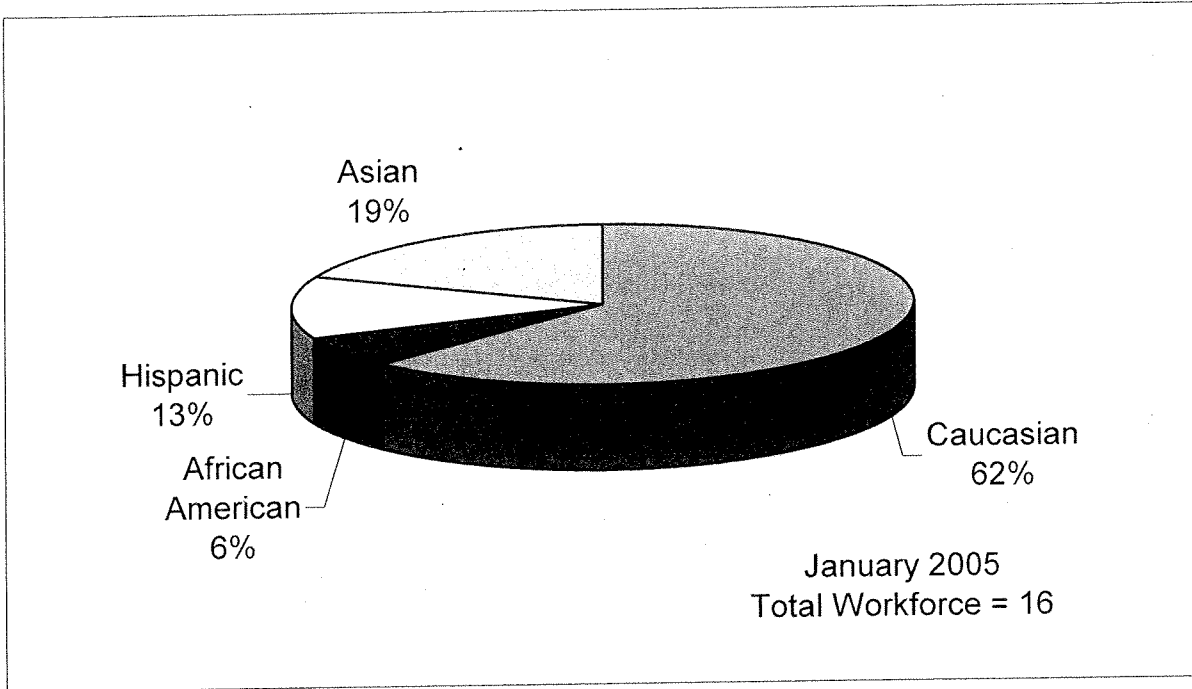
Hires by Sex and Ethnicity

Total Hires: 5

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Total
3	4	7	5	2	0	0	7

Source: Audit data supplied by the Board of Standards and Appeals

Appendix - 2
Board of Standards and Appeals
Workforce by Ethnicity



Appendix - 3
Board of Standards and Appeals
Workforce by Sex

