



EMPLOYMENT PRACTICES COMMISSION

City of New York

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July 12, 2007

Bridget G. Brennan
Special Assistant District Attorney
Office of Special Narcotics
80 Centre Street, 6th Floor
New York, New York 10013

Re: Resolution #07/08-906 /Preliminary Determination Pursuant to the Audit of the Office of Special Narcotics (OSN) Equal Employment Opportunity Program from January 1, 2005 to June 30, 2006.

Dear Ms. Brennan:

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).)

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..." The Office of Special Narcotics is funded by the City of New York and is therefore considered a city agency pursuant to Chapter 36, section 831(a) of the New York City Charter.

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 programs for minority group members, women and other protected classes. This audit measures the OSN's compliance 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

Citywide EEO Policy. The relevant sections of these guidelines and documents are cited in parenthesis, where applicable, at the end of each recommendation.

The purpose of this audit is to evaluate the agency's compliance with the standards cited above, 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 OSN's EEO Policy, and a review of responses to an EEPC Document and Information Request Form. EEPC auditors also conducted an in-depth, on-site interview with the EEO Officer.

A survey of 188 people (legal and non-legal) employed by the OSN during the audit period was distributed (this number excludes 28 surveys that were returned as undeliverable.) Fifty-five people (29%) responded. Significant survey findings are attached and discussed in the proceeding pages. (Appendix 1) The survey methodology was established by the EEPC with the assistance of an academic expert from the City University of New York.

Description of the Agency

The Office of Special Narcotics was established pursuant to the New York Judiciary Laws of 1971, Chapter 462 and the District Attorney's Plan. It has Citywide jurisdiction for the investigation and prosecution of felony narcotics law violators. The OSN works with city, state and federal law enforcement to develop and implement effective strategies against narcotics trafficking and related crime.

The Special Narcotic Prosecutor is appointed by the five county district attorneys in New York City. The OSN's staff includes legal (assistant district attorneys) and non-legal employees. The assistant district attorneys are assigned to the OSN by the five New York City District Attorneys.

The EEO Officer informed the EEPC that at the beginning of the audit period approximately 61% of the legal staff was located at the central location (Centre Street), and at the end of the audit period approximately 55% were so located. The balance of the legal staff was assigned at the various county district attorneys' offices.

Personnel Activity During the Audit Period

During the audit period, 8 people were hired: 4 Caucasians, 1 African American, 1 Hispanic, and 2 Asians. All of the hires were female. One person was promoted during the audit period—a Hispanic female. (Appendix 4)

The OSN also reports that during the audit period, 1 employee was involuntarily separated—an African American female. The reason for separation was poor performance.

Between February 1, 2005 and May 31, 2006, the total number of non-legal OSN employees decreased by 3%, from 89 to 86. There was a small percentage decrease for African-

Americans (40% to 37%) and a small percentage increase for Asians (8% to 11%). The percentage for females decreased slightly (61% to 60%). (Appendices 2 and 3)

Discrimination Complaint Activity during the Audit Period

The agency reports that no internal or external discrimination complaints were filed 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 OSN is in compliance with the following requirements:

1. Although the OSN's EEO Policies are not included in the new hire package, they are distributed at new employee orientation sessions.

2. The OSN's EEO Policies are posted on bulletin boards on various floors and outside the personnel office. In addition, the EEO Officer told the EEPC auditors that her Administrative Assistant periodically checks the board to insure posting of the Policies.

The OSN is in partial compliance with the following requirements:

1. The OSN distributed its EEO Policy Statement, Sexual Harassment Policy Statement and Reasonable Accommodation Procedure (three lines included in the EEO Policy Statement) to all employees in July 2005. The Sexual Harassment Policy Statement and the Reasonable Accommodation Procedure were also distributed via the Intranet. In addition, 72% of the survey respondents said that they have a copy of the EEO Policy statement.

The EEO Policies were not re-distributed in 2006; however, the EEO Policy statement was distributed in February 2007. Corrective action is required.

Recommendation: The OSN should distribute all of its EEO Policies to employees at least annually. (Sect. VB, Citywide EEOP)

2. The EEO Officer told the EEPC auditors that the agency does not have a Discrimination Complaint Procedure, but it has the discrimination complaint forms. The EEO Officer also stated that her office is in the process of issuing a procedure. Corrective action is required.

Recommendation: The OSN should follow-up on its pledge and issue a Discrimination Complaint Procedure. (Section VC, Citywide EEOP)

3. Although OSN's EEO Policy includes a "Reasonable Accommodation Procedure" (three lines), the procedure does not inform employees of who to contact to request a reasonable accommodation and how to request one. Corrective action is required.

Recommendation: The OSN should amend its "Reasonable Accommodation Procedure" to indicate who to contact regarding a reasonable accommodation and how to make such a request. (Section VB, Citywide EEOP)

The OSN is not in compliance with the following requirement:

Forty-six percent of the survey respondents said that they have not received Policy Handbook, "*About EEO: What You May Not Know.*" Corrective action is required.

Recommendation: The OSN should distribute the EEO Policy Handbook, "*About EEO: What You May Not Know,*" to all current and new employees. (Sect. VB, Citywide EEOP)

Plan Dissemination – Externally

The OSN is in compliance with the following requirement:

The seven internal job vacancy notices (*Senior Rackets Investigator, three Trial Preparation Assistants, Analyst, Grand Jury Court Reporter, and Investigative Analyst*) submitted by OSN to the EEPC contain the EEO tag line. During the audit period the OSN did not place any external job advertisements.

EEO and Reasonable Accommodation for Persons with Disabilities

The OSN is in compliance with the following requirements:

1. The EEO Officer told the EEPC auditors that the OSN has provided reasonable accommodations to employees who have requested them. For instance, reasonable accommodations were given to employees who, after having major surgery, requested light duty or reduced work schedule. In addition, all four of the survey respondents who asked for an accommodation said that the agency accommodated them.

2. According to the EEO Officer, the Office of Special Narcotics building is maintained by DCAS. She stated that DCAS "probably" conducted a survey of OSN's facilities to assure that they are accessible to, and usable by, persons with disabilities because major renovations were done in the bathrooms. In addition, the OSN has completed its own survey of its facility and submitted an accessibility checklist that indicates the Office of Special Narcotic has a street accessible entrance, curb ramp, wheelchair accessible elevators, wide restroom stalls, grab bars in the restroom, and low sink or bathroom fixtures. The bells and Braille in elevators are "not applicable" because the elevators have operators; they are not automatic. In addition, 69% of the survey respondents said that the agency's facilities are accessible for persons with disabilities. The other 27% "did not know."

The OSN is not in compliance with the following requirements:

1. The EEO Officer told the EEPC auditors that the EEO Policies are not available in alternate formats for use by persons with disabilities. Corrective action is required.

Recommendation: The OSN should follow section VB of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities (e.g., large print, audio cassette or Braille).

2. The EEO Officer told the EEPC auditors that the OSN has not officially appointed a Disability Rights Coordinator. Corrective action is required.

Recommendation: The OSN should officially appoint a Disability Rights Coordinator and notify staff about that individual. (Sect. VB, Citywide EEOP)

3. The EEO Officer told the EEPC auditors that the OSN does not participate in the Section 55-A Program. Corrective action is required.

Recommendation: The agency should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS. (Sect. IIB, Citywide EEOP)

EEO Complaint and Investigation Procedures

The OSN is in compliance with the following requirements:

1. The EEO Officer told EEPC auditors that she investigates complaints according to the DCAS guidelines, other related training she received, as well as guidelines she created (a copy of which was submitted to the Commission).

2. The OSN identifies its EEO Officer in its EEO Policy.

3. The EEO Officer received EEO training for EEO professionals from the Department of Citywide Administrative Services.

The OSN is not in compliance with the following requirements:

1. The EEO Officer, who is a female, told EEPC auditors that during the audit period she was the only EEO professional available and authorized to investigate discrimination complaints. Corrective action is required.

Recommendation: To ensure that there are EEO professionals not of the same gender available to investigate discrimination complaints, the agency should appoint a person of a different gender than the EEO Officer and provide that individual with appropriate EEO training. (Sect. VB, Citywide Policy)

2. The EEO Officer told EEPC auditors that she does not maintain a monthly discrimination complaint log. Corrective action is required.

Recommendation: The EEO Officer should maintain and update a monthly EEO complaint log to indicate the monthly status of internal and external complaints. (DCAS, DCPIG, 1993, Sect. 12(a))

EEO Training

The OSN is not in compliance with the following requirement:

The OSN utilized a trainer from an outside agency (New York County District Attorney's Office) to conduct EEO training in 1999. The training covered basic Federal, State, and City EEO laws and office behavior. The training also included a component on preventing sexual harassment. However, no training was conducted during the audit period. The EEO Officer told EEPC auditors that there is no plan to conduct training in the future. In addition, 51% of the survey respondents said that they did not receive EEO training. Corrective action is required.

Recommendation: The OSN should develop a plan, which includes a timeframe, to train all existing and new employees (supervisors and non-supervisors) on EEO. (Sect. VC, Citywide EEOP)

EEO Officer Reporting Arrangement

The OSN is in compliance with the following requirement:

Although the EEO Officer devotes approximately 3% of her time to EEO matters, she told the EEPC auditors that she has adequate support staff and resources to meet her EEO obligations.

The OSN is not in compliance with the following requirements:

1. The EEO Officer reports to the Executive Assistant District Attorney (a direct report to the District Attorney) on EEO and personnel matters. She did not prepare an agenda for or keep notes of those sessions with the Executive Assistant District Attorney. 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 or direct report to the agency head regarding EEO decisions should be maintained.

2. The EEO Officer informed EEPC auditors that there is no organizational chart available. Corrective action is required.

Recommendation: In order to show the reporting arrangement of the EEO Officer and other staff within the various levels of the organization, the OSN should develop an organization chart. (Sect. VB, Citywide EEOP)

EEO Officer Responsibilities

The OSN is in compliance with the following requirement:

The EEO Officer told the EEPC auditors that, as the Personnel Director, she is involved in developing job recruitment strategies and selecting recruitment media.

Selection and Recruitment

The OSN is in compliance with the following requirement:

The EEO Officer told EEPC auditors that she analyzed the 2005 agency's workforce data to determine if women and/or minorities are underrepresented in particular job categories. She found no underrepresentation of women or minorities.

The OSN is in partial compliance with the following requirement:

The OSN provided structured interview training in May 1999 to personnel involved in the recruitment and hiring process through the DCAS's developmental program. However, no such training has been provided since that date. The OSN's personnel data indicated that 8 people were hired during the audit period. Corrective action is required.

Recommendation: The OSN should develop a plan, which includes a timeframe, to provide structured interview training to personnel involved in the recruitment and hiring process. (Sect. IV, Citywide EEO Policy)

Job Performance/Advancement

The OSN is in compliance with the following requirement:

Fifty-seven percent of the survey respondents said that they did see the agency's job vacancy postings on agency bulletin boards prior to the application deadline. Twenty-two percent said that they do not remember.

The OSN is not in compliance with the following requirement:

During the audit, the agency stated that it did not prepare managerial performance evaluations. In fact the agency stated that it has "no formal evaluation form available." It stated that "evaluations for the audit period were issued verbally." Corrective action is required.

Recommendation: All staff, managerial and non-managerial, should receive an annual performance evaluation. ("Personnel Rules and Regulations of NYC," p.59; "Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies," p. 1; and Sect. VB, Citywide EEOP)

Recommendation: Evaluations for managerial staff should include their EEO performance. (Sect. VB, Citywide EEOP)

Special Problem

The EEO Officer is the agency's director of personnel. To discharge her responsibilities under the OSN's EEO Policy, the EEO Officer must review all personnel policies and practices—including selection and termination policies—to ensure they are non-discriminatory. The EEPC believes that it is an inherent conflict of interest for individuals involved in the development and implementation of such policies to review them for bias. The EEO Officer is also required to investigate and supervise the investigation of discrimination complaints. The potential for conflict of interest is equally obvious in this situation. In typical discrimination cases involving failure to hire or termination, for example, the human resources official provides guidance to the line manager prior to the selection or termination decision. The human resources official, wearing the hat of the EEO Officer, must then determine if the decision by the line manager was non-discrimination. Corrective action is required.

Recommendation: The OSN should appoint an EEO Officer who is not involved in setting or implementing human resources policies.

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The OSN should distribute all of its EEO Policies to employees at least annually. (Sect. VB, Citywide EEOP)
2. The OSN should follow-up on its pledge and issue a Discrimination Complaint Procedure. (Section VC, Citywide EEOP)
3. The OSN should amend its "Reasonable Accommodation Procedure" to indicate who to contact regarding a reasonable accommodation and how to make such a request. (Section VB, Citywide EEOP)
4. The OSN should distribute the EEO Policy Handbook, "*About EEO: What You May Not Know*," to all current and new employees. (Sect. VB, Citywide EEOP)
5. The OSN should follow section VB of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities (e.g., large print, audio cassette or Braille).
6. The OSN should officially appoint a Disability Rights Coordinator and notify staff about that individual. (Sect. VB, Citywide EEOP)
7. The agency should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the DCAS. (Sect. IIB, Citywide EEOP)
8. To ensure that there are EEO professionals not of the same gender available to investigate discrimination complaints, the agency should appoint a person of a different gender than

the EEO Officer and provide that individual with appropriate EEO training. (Sect. VB, Citywide Policy)

9. The EEO Officer should maintain and update a monthly EEO complaint log to indicate the monthly status of internal and external complaints. (DCAS, DCPIG, 1993, Sect. 12(a))
10. The OSN should develop a plan, which includes a timeframe, to train all existing and new employees (supervisors and non-supervisors) on EEO. (Sect. VC, Citywide EEOP)
11. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Officer and the agency head or direct report to the agency head regarding EEO decisions should be maintained.
12. In order to show the reporting arrangement of the EEO Officer and other staff within the various levels of the organization, the OSN should develop an organization chart to delineate its organizational structure. (Sect. VB, Citywide EEOP)
13. The OSN should develop a plan, which includes a timeframe, to provide structured interview training to personnel involved in the recruitment and hiring process. (Sect. IV, Citywide EEO Policy)
14. All staff, managerial and non-managerial, should receive an annual performance evaluation. ("Personnel Rules and Regulations of NYC," p.59; "Managerial Performance Evaluation, Guidelines for Evaluating Managerial Performance in NYC Agencies," p. 1; and Sect. VB, Citywide EEOP)
15. Evaluations for managerial staff should include their EEO performance. (Sect. VB, Citywide EEOP)
16. The OSN should appoint an EEO Officer who is not involved in setting or implementing human resources policies.

In addition to the above recommendations, during the compliance process, the Commission requires that the agency 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

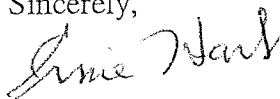
Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the OSN's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Citywide EEO Policy, we respectfully 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. As indicated by your staff during the audit exit meeting of June 14, 2007, some of our recommended corrective actions have already been implemented. Please specify these corrective actions in your response. Please forward your response within thirty days 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 want to 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,



Ernest F. Hart, Esq.
Chair

**OFFICE OF SPECIAL NARCOTICS
EMPLOYEE SURVEY RESULTS**

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (36) No (19)
2. Is your agency's EEO Policy Statement or the Citywide EEO Policy Statement posted on your agency's bulletin boards?
Yes (43) No (11)
3. Were you given the EEO Policy Statement or the Citywide EEO Policy Statement?
Yes (39) No (0) Do not remember (15)
4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know*?
Yes (27) No (23)
5. Do you agree with the principles of equal employment opportunity?
Yes (49) No (4)
6. Do you believe your agency practices equal employment opportunity?
Yes (43) No (9)

B. EEO COMPLAINTS

7. Do you know how to file an EEO complaint?
Yes (31) No (24)
8. If you had an EEO complaint, would you bring it to your agency's EEO Office?
Yes (26) No (9) Undecided (20)
9. Would you prefer to file an EEO complaint with an office outside your agency?
Yes (17) No (18) Undecided (20)
10. Did you ever file an EEO complaint with your agency's EEO Office? If No, please skip to question #14.
Yes (0) No (51)
11. What was the basis of the complaint?

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, Stalking, and Sex Offenses (0)
Marital Status (0)	Other (0)
Military Status (0)	
National Origin (0)	

12. Were you satisfied with the manner in which your complaint was managed?

Yes (0) No (0)

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

Yes (0) No (0) Not Applicable (0)

C. EEO TRAINING

14. Did you receive EEO training? If No, please skip to question #16.

Yes (26) No (27)

15. Did you find this training helpful?

Very (4) Somewhat (18)
Not really (1) Waste of time (3)

D. JOB PERFORMANCE/ADVANCEMENT

16. Did you see your agency's job postings for vacant positions on agency bulletin boards prior to the application deadline?

Yes (31) No (11) Do not remember (12)

E. AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

17. Are your agency's facilities accessible for persons with disabilities?

Yes (38) No (3) Don't Know (13)

18. Did you ever ask for an accommodation for a physical or mental disability?

If No, skip to question #28.

Yes (4) No (50)

19. Did the agency accommodate you?

Yes (4) No (0)

OPTIONAL

20. What is your race/ethnicity?

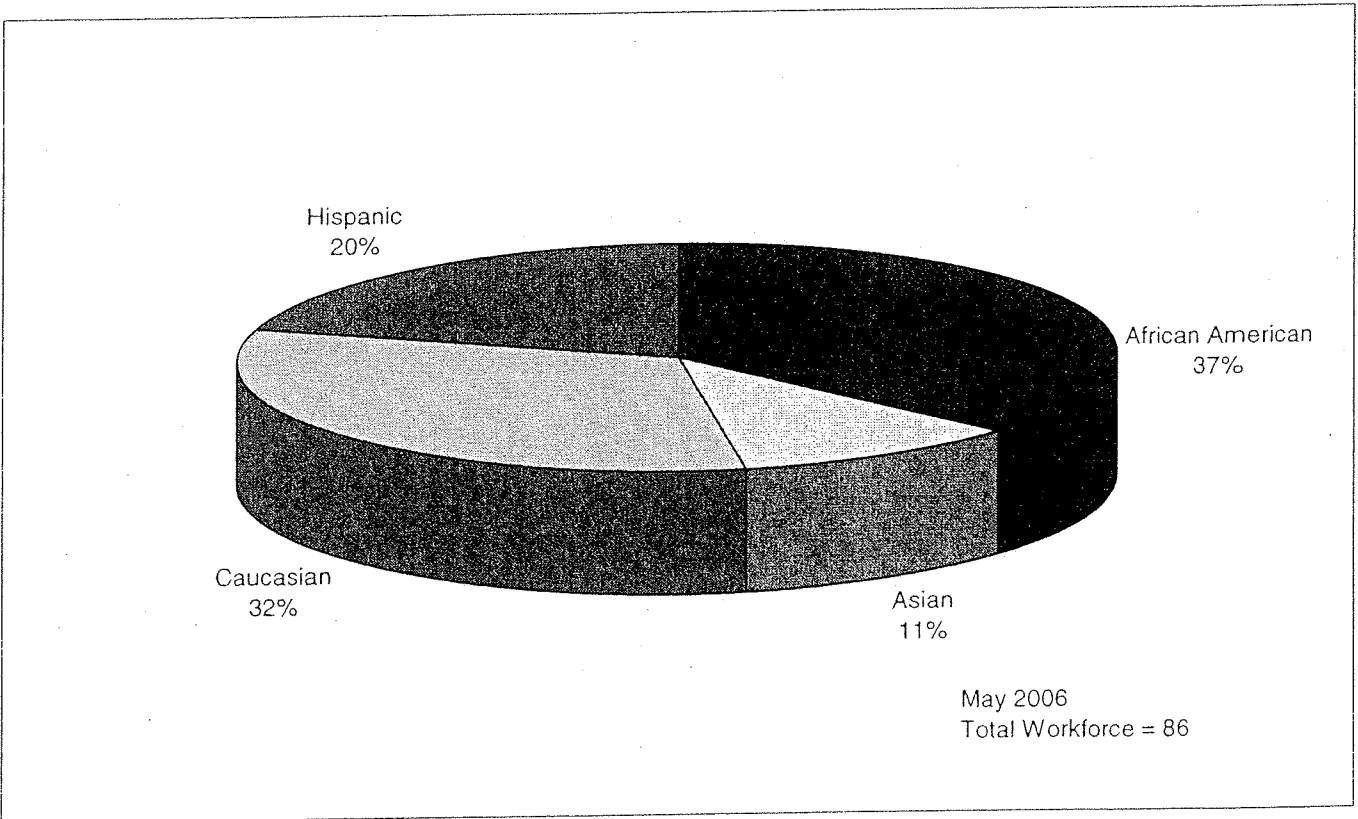
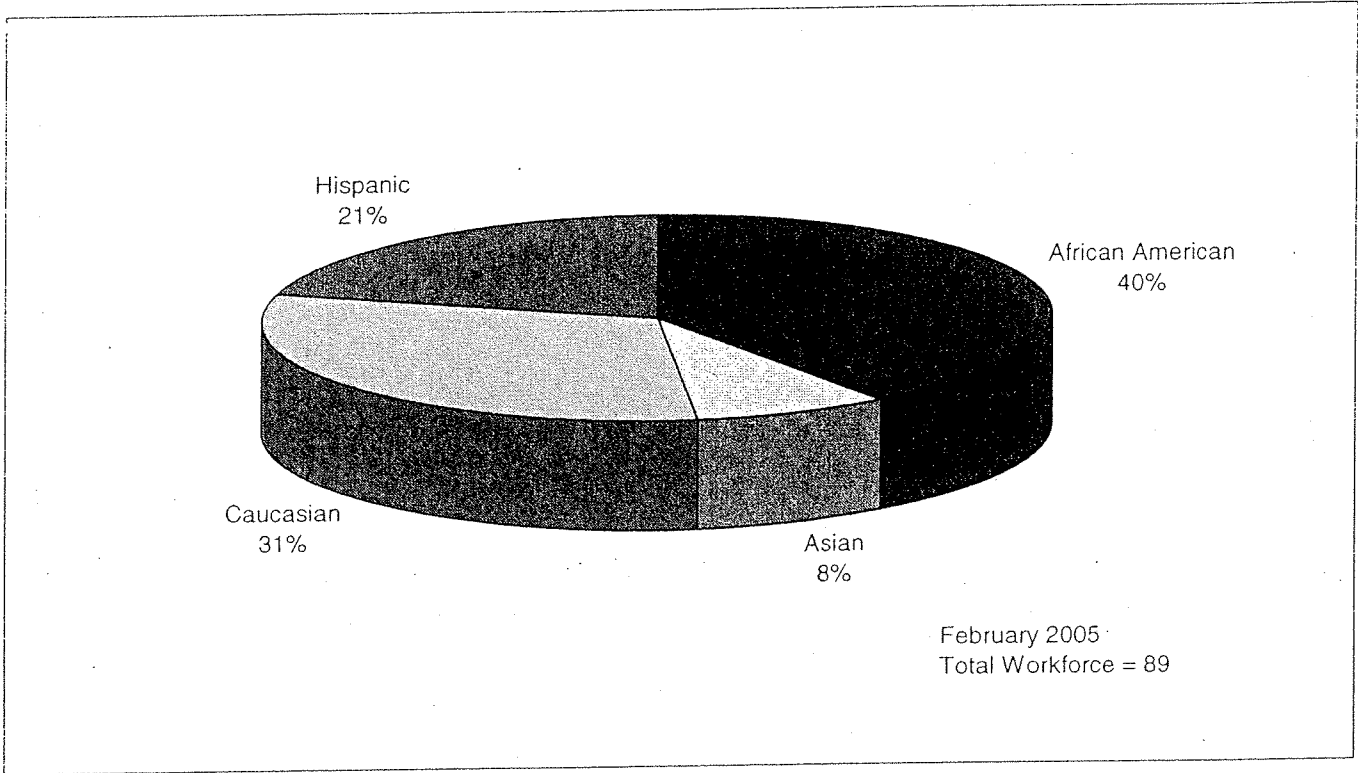
Asian (4) Native American (0)
Black (12) White (19)
Hispanic (2) Other (5)

21. What is your gender?

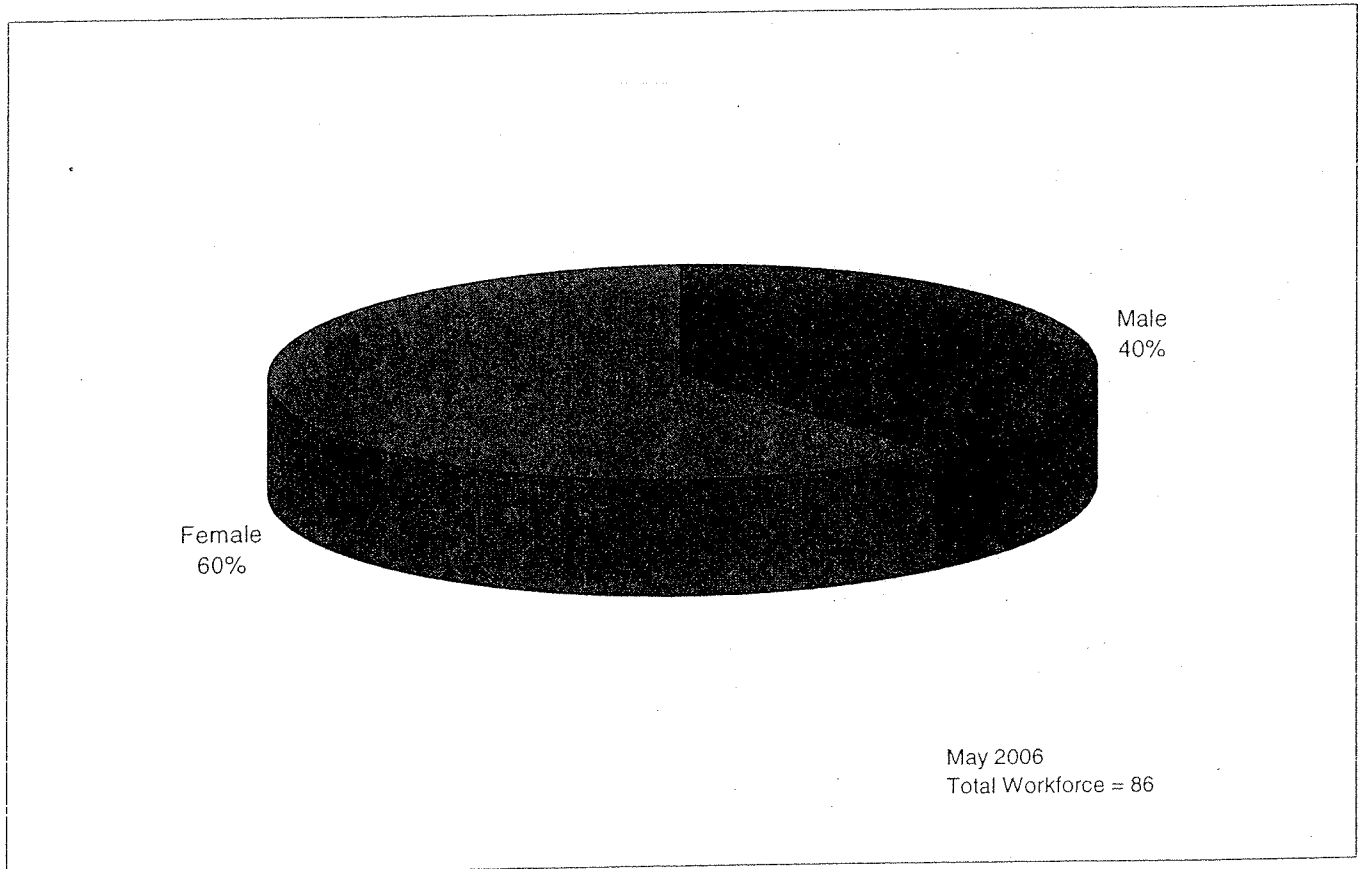
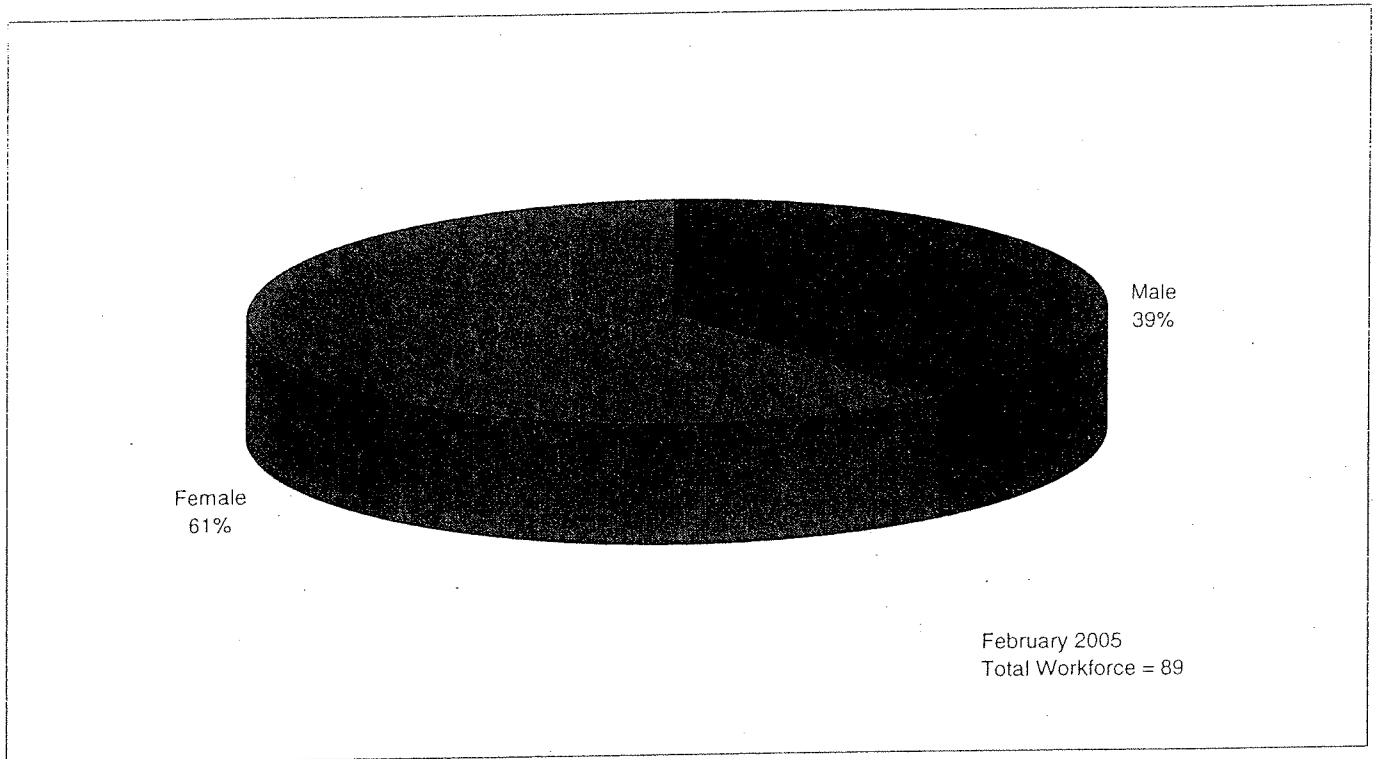
Male (18) Female (28)

Appendix - 2

Office of Special Narcotics Workforce by Ethnicity



Appendix - 3
Office of Special Narcotics
Workforce by Sex



APPENDIX - 4

The following table indicates personnel activity during the audit period, January 1, 2005 through June 30, 2006.

OFFICE OF SPECIAL NARCOTICS

Hires by Sex and Ethnicity

Total Hires: 8

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Total
	8	8	4	1	1	2		8

Promotions by Sex and Ethnicity

Total Promotions: 1

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Total
	1	1			1			1

Source: Audit data supplied by OSN