



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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May 8, 2003

John J. Murphy
Executive Director
NYC Employees Retirement System
335 Adams Street
Brooklyn, NY 11201

Re: Preliminary Determination Pursuant to the Audit of the New York City Employee Retirement System's (NYCERS) Equal Employment Opportunity Program from January 1, 2000 through June 30, 2002

Dear Mr. Murphy:

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 "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 New York City Employee Retirement System 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.

The audit measures NYCERS' compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in city guidelines. 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 a review of NYCERS' Equal Employment Opportunity Policy and a review of responses to a Commission Document and Information Request Form. EEPC auditors also conducted in-depth, on-site interviews with the current EEO Officer/Deputy General Counsel and the General Counsel. In addition, EEPC auditors interviewed twelve supervisors to determine awareness of their rights and responsibilities under the agency's EEO Policy. The results of these interviews are attached. (Appendix 1)

A survey of 373 people employed by NYCERS was distributed. (This number excludes 22 surveys returned as undeliverable). Sixty-three people (16.9%) responded. Significant survey findings are discussed in the proceeding pages (See also Appendix 6).

Description of the Agency

The prime function of NYCERS is to administer the statutory pension benefits of its members, retirees, and beneficiaries. To accomplish its mission, the agency performs the following: administers pension checks, drafts loans, provides disability protection, refunds unvested contributions, keeps current on legislation impacting retirement plans, conducts member presentations, and maintains a Call Center and a Customer Service Center. NYCERS is administered by a Board of Trustees chaired by a representative appointed by the Mayor. The Board of Trustees appoints an Executive Director of the Retirement System.

Personnel Activity During the Audit Period

During the audit period, 136 people were hired: 48 Caucasians, 57 African-Americans, 12 Hispanics, and 19 Asians. Eighty hires were women and 56 were men. One hundred and twenty-nine people were promoted during the period in review: 48 Caucasians, 51 African-Americans, 7 Hispanics, and 23 Asians. Eighty-seven of those promoted were female and 42 were male. (Appendix 4). NYCERS reports that 23 employees (8 Caucasians, 7 African-Americans, 1 Hispanic, 4 Asians, 3 Unknown, and 11 women) were terminated or resigned in lieu of termination during the audit period.

Discrimination Complaint Activity During the Audit Period

Three internal discrimination complaints were filed during the audit period: one complaint was based on sexual harassment, one on race, and one on gender. NYCERS reports that two complaints received a "probable cause" determination and one received a "no probable cause" determination. Three external complaints were filed between January 1, 2000 and June 30, 2002: two were based on age and one on disability. Of the three complaints, one was dismissed by the New York City Human Rights Commission, one was settled by the Equal

Employment Opportunity Commission (EEOC), and one “never pursued litigation” (after filing with the EEOC).

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

NYCERS is in compliance with the following requirements:

1. During the audit period, NYCERS issued an EEO Policy Manual, which included a general EEO Policy Statement, a Sexual Harassment Policy Statement, and a Discrimination Complaint Procedure.
2. All current and new employees received a copy of, and signed a receipt for, the EEO Policy Manual.
3. The EEO Policy Manual was stored on each employee’s computer.
4. After the audit period, NYCERS reissued the EEO policies and included them in the *Employee Handbook*. The *Handbook* is distributed and discussed at several forums: at weekly seminars for all employees; at orientation sessions for new employees; and at “Understanding NYCERS Operations” sessions for all employees. In addition, the EEO policies are stored in each employee’s computer and employees sign for receipt of the *Handbook*.

NYCERS is not in compliance with the following requirements:

1. Neither the previous nor current EEO policies have been posted on agency bulletin boards. Corrective action is required.

Recommendation: NYCERS should follow Section VIII of the Citywide EEO Policy and post its EEO policies and complaint procedures on agency bulletin boards.

2. Although the Discrimination Complaint Procedure in effect during the audit period contained the name, location, and telephone number of the EEO Officer, the current Procedure does not contain that information. (The current Procedure refers to a “List of Important Contacts,” stored in employee computers, for the name of the EEO Officer.) Corrective action is required.

Recommendation: The current Discrimination Complaint Procedure should be revised to include the name, location, and telephone number of the EEO Officer.

3. The agency’s EEO policies are not available in alternate formats for use by persons with disabilities. Corrective action is required.

Recommendation: The agency should follow Section VII of the Citywide EEO Policy and ensure that its EEO policies are available in formats accessible to applicants and employees with disabilities, e.g., audio cassette and Braille.

Plan Dissemination – Externally

NYCERS is in partial compliance with the following requirement:

All five of the agency's most recent job advertisements (which appear in the *Chief-Leader* and *New York Law Journal*) contain the EEO tag line. One of the agency's five job advertisements on the Monster.com website (for Director of Information Resources Management), however, does not contain the EEO tag line. Corrective action is required.

Recommendation: All agency recruitment literature, including website job advertisements, should indicate that NYCERS is an equal opportunity employer. (Sect. VI, Citywide EEO Policy).

Affirmative Action and Reasonable Accommodation for Person with Disabilities

NYCERS is in compliance with the following requirements:

1. A Reasonable Accommodation Procedure is included in the agency's *Employee Handbook*.

2. During the audit period, one individual requested and received a reasonable accommodation: an employee with a temporary physical injury was granted a temporary part time schedule.

3. The EEO Officer informed EEPC auditors that the NYCERS building at 335 Adams Street, Brooklyn, is completely accessible to and usable by persons with disabilities. The building was erected in 2000 and meets the stringent accessibility requirements of Local Law 58. The building, for example, has raised lettering on doors for the visually impaired, and all bathroom doors and stalls are wide enough to accommodate wheelchairs.

NYCERS is not in compliance with the following requirement:

NYCERS does not participate in the Section 55-A Program. The Citywide 55-A Program Coordinator (Department of Citywide Administrative Services) told EEPC auditors that all city agencies—including non-mayoral agencies—that have competitive city titles are eligible to, and should participate in, this program. The Coordinator also indicated that a number of non-mayoral agencies (including the Staten Island Borough President's Office) are participating in that program. Corrective action is required.

Recommendation: NYCERS should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the Department of Citywide Administrative Services.

EEO Complaint and Investigation System

NYCERS is in partial compliance with the following requirement:

Audit responses indicate that only one of the three EEO Officers during the audit period received DCAS' training for EEO professionals. NYCERS is unable to determine from its records if the first EEO Officer (a paralegal) received EEO training. According to a written response to an EEPC query, the second EEO Officer (an attorney) "received legal training"; there is no indication in that response, however, that it included EEO training. The third—and current—EEO Officer (Deputy General Counsel) attended the DCAS training for EEO professionals in February 2003.

NYCERS is not in compliance with the following requirement:

1. NYCERS has not appointed EEO Counselors—prior or subsequent to the audit period. The EEO Officer, however, informed EEPC auditors that her agency is in the process of identifying and selecting a male EEO Counselor. Corrective action is required.

Recommendation: To insure that persons of both sexes are available to receive and investigate discrimination complaints, NYCERS should follow-up on its pledge to appoint a male EEO Counselor. (Sect. VII(A)(1), Citywide EEO Policy)

2. The following relates to complaint files 2000-1 and 2001-16. Although the EEO Officer's final reports were directed to the agency head, there is no indication in the files that the reports were actually reviewed, or the recommendations approved, by the agency head. Corrective action is required.

Recommendation: The agency head should sign each EEO investigator's report containing findings and recommendations. (Department of Citywide Administrative Services, Discrimination Complaint Procedures Implementation Guidelines, sec. 12b (1993).)

3. The following relates to complaint files 2001-1 and 2002-1. The complaint files do not contain copies of notification letters to the parties to the complaints. Corrective action is required.

Recommendation: The EEO investigator should inform all parties in writing of the outcome of the investigation. (Department of Citywide Administrative Services, Discrimination Procedures Implementation Guidelines, sec. 12b (1993).)

EEO Training

NYCERS is in compliance with the following requirement:

During the audit period (2002), the Office of Citywide EEO (DCAS) conducted EEO and sexual harassment prevention training for all NYCERS employees. (NYCERS submitted copies of the attendance sheets of those sessions.) In addition, all new employees receive a one and one-half hour EEO training session--which includes a slide presentation on EEO laws, preventing sexual harassment, discrimination complaint procedures, and NYCERS EEO policies-- from the EEO Officer. Eighty percent of survey respondents and 92 percent of supervisors interviewed by EEPC auditors indicated they had received preventive sexual harassment training from NYCERS.

EEO Officer Reporting Arrangement

NYCERS is in partial compliance with the following requirement:

The EEO Officers during the audit period reported to the General Counsel who, in turn, reported to the agency head. The EEO Officers, however, did not have agendas or keep notes of those meetings. The current EEO Officer also reports to the General Counsel on EEO matters, but she (EEO Officer) keeps agendas and notes of those meetings.

EEO Officer Responsibilities

NYCERS is not in compliance with the following requirement:

Prior and subsequent to the audit period, the EEO Officers have not been involved in developing recruitment strategies or selecting recruitment media; those are the sole responsibilities of the human resources department. Corrective action is required.

Recommendation: The EEO Officer should be involved in developing recruitment strategies and selecting recruitment media, including newspapers and other publications. (Sect. VII, Citywide EEO Policy)

Special Problems

1. The former EEO Officers spent less than 5% of their work time on EEO matters. The current EEO Officer, who also serves as Deputy General Counsel, devotes the same percentage to EEO duties. Corrective action is required.

Recommendation: During previous audits, the Commission found numerous EEO program deficiencies in agencies that did not have full-time EEO Officers. For this reason, the Commission has adopted the position that agency EEO Officers should devote 100% of their time to EEO matters.

2. The EEO Officer also serves as the Deputy Counsel. It is the EEPC's position that the Deputy Counsel should not be functioning as the EEO Officer since she represents the agency in all legal matters and therefore cannot be a neutral arbiter of internal complaints. Corrective action is required.

Recommendation: To avoid the appearance or reality of conflict of interest, the agency should appoint an individual other than the Deputy Counsel to serve as EEO Officer.

3. Sixty-six percent of survey respondents indicated they do not know who is the EEO Officer. Corrective action is required.

Recommendation: All employees should receive written notification of the identity, location, and telephone number of the agency's EEO Officer. (Sect. VIII, Citywide EEO Policy)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. NYCERS should follow Section VIII of the Citywide EEO Policy and post its EEO Policies and Discrimination Complaint Procedures on agency bulletin boards.
2. The current Discrimination Complaint Procedures should be revised to include the name, location, and telephone number of the EEO Officer.
3. The agency should follow Section VII of the Citywide EEO Policy and ensure that its EEO Policies are available in formats accessible to applicants and employees with disabilities, e.g., audio cassette and Braille.
4. All agency recruitment literature, including website job advertisements, should indicate that NYCERS is an equal opportunity employer. (Sect. VI, Citywide EEO Policy)
5. NYCERS should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by DCAS.
6. To ensure that persons of both sexes are available to receive and investigate discrimination complaints, NYCERS should follow-up on its pledge to appoint a male EEO Counselor. (Sect. VII(A)(1), Citywide EEO Policy)
7. The agency head should sign each EEO investigator's report containing findings and recommendations. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, sec. 12b (1993))
8. The EEO investigator should inform all parties in writing of the outcome of the investigation. (DCAS, Discrimination Procedures Implementation Guidelines, sec. 12b (1993))
9. The EEO Officer should be involved in developing recruitment strategies or selecting recruitment media, including newspapers and other publications. (Sect. VII, Citywide EEO Policy)

10. The agency EEO Officer should devote 100% of his or her time to EEO matters.
11. To avoid the appearance or reality of conflict of interest, the agency should appoint an individual other than the Deputy Counsel to serve as EEO Officer.
12. All employees should receive written notification of the identity, location, and telephone number of the agency's EEO Officer. (Sect. VIII, Citywide EEO Policy)

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 heads 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 EEPD's audit of NYCERS' compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in City guidelines, 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 you informed us during the exit meeting of May 5, 2003, you have already implemented some of our recommended corrective actions. Please specify those corrective actions in your response. Please forward your response within thirty days of receipt of this letter.

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,



Frank R. Nicolazzi
Vice Chairman

APPENDIX - 1

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM SUPERVISOR INTERVIEW RESULTS

1. Do you supervise at least one employee?
[12] Yes [] No [] NA
2. Are you familiar with your agency's EEO policies?
[9] Yes [3] No [] NA
3. Have you received your agency's EEO and Sexual Harassment Policy Statements?
[9] Yes [3] No [] NA
4. Are your EEO and sexual harassment policies available on your computer?
[9] Yes [3] No [] NA
5. If so, did you find accessing the policies difficult?
[] Yes [7] No [5] NA
6. If you have been employed for less than 5 years, did you receive a new employee orientation session?
[4] Yes [2] No [6] NA
7. Did the new employee orientation session include information on your agency's EEO policies?
[3] Yes [1] No [8] NA
8. Did you hold meetings with your staff to discuss your agency's EEO policies?
[1] Yes [11] No [] NA
9. Do you know who your agency's EEO Officer is? What is his/her name?
[6] Yes [6] No [] NA
10. Did the EEO Officer meet with you, either as an individual or in a group setting, to discuss your agency's EEO policies?
[3] Yes [9] No [] NA
11. Did your agency provide you with training and a structured interview guide for interviewing new hires?
[2] Yes [5] No [5] NA

YCERS Supervisor Interview Results Continued

12. Have you been evaluated on your EEO performance in your annual evaluation/appraisal?

[2] Yes [8] No [2] NA

13. Have you received preventive sexual harassment training from your agency?

[11] Yes [1] No [] NA

14. Did all the employees in your unit receive preventive sexual harassment training?

[11] Yes [1] No [] NA

15. Do you have a copy of your agency's discrimination complaint procedures?

[10] Yes [2] No [] NA

16. Have you discussed the agency's discrimination complaint procedures with your staff?

[] Yes [12] No [] NA

17. Do you feel you have enough training to respond knowledgeably to an employee who complains about discrimination or harassment?

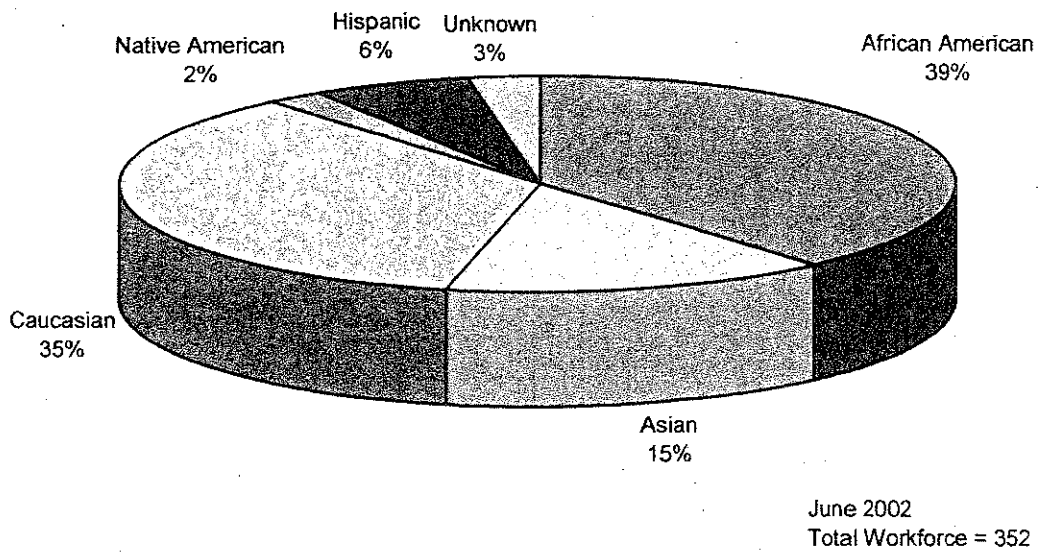
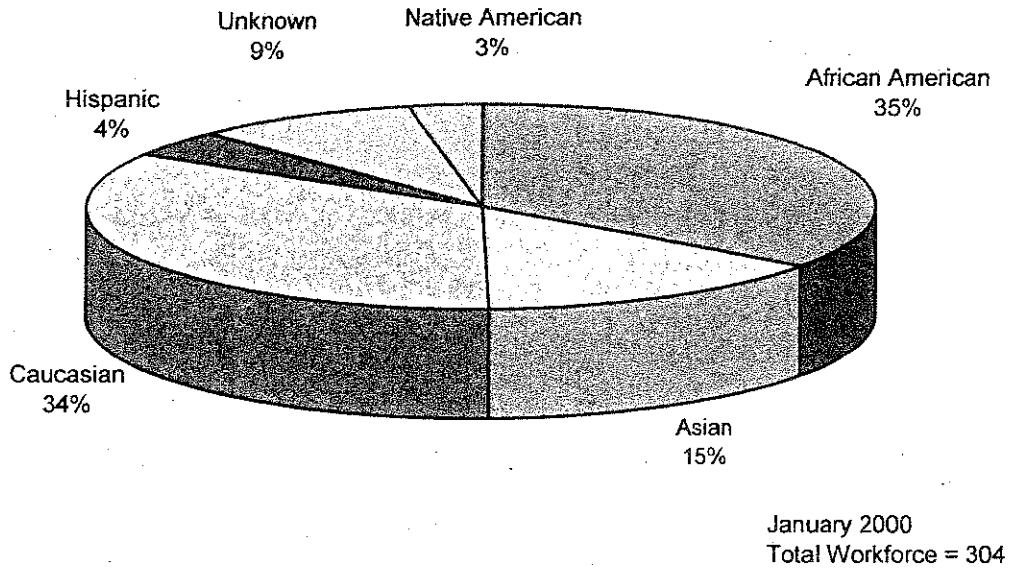
[2] Yes [5] No [] NA

18. Do you have any additional comments about EEO in your agency?

[6] Yes [6] No [] NA

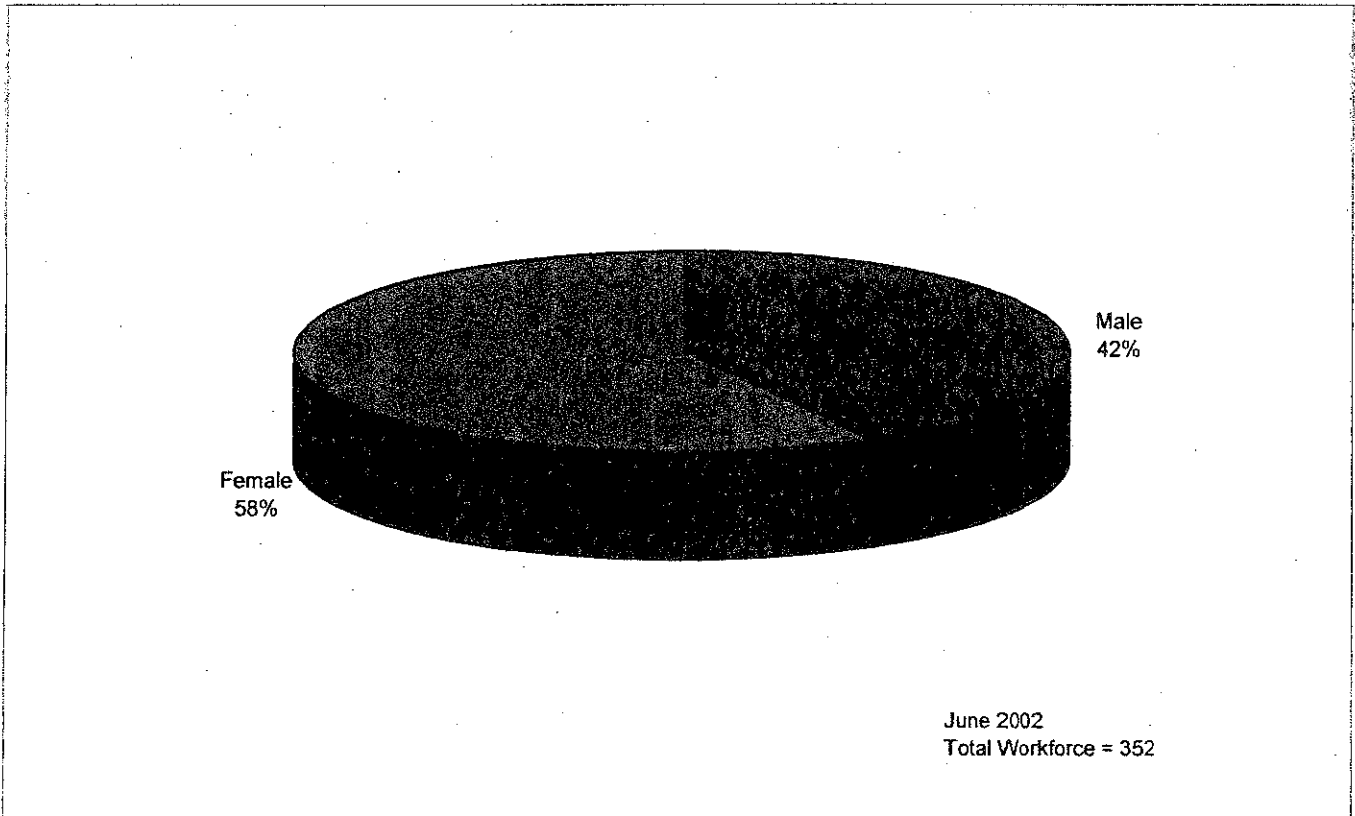
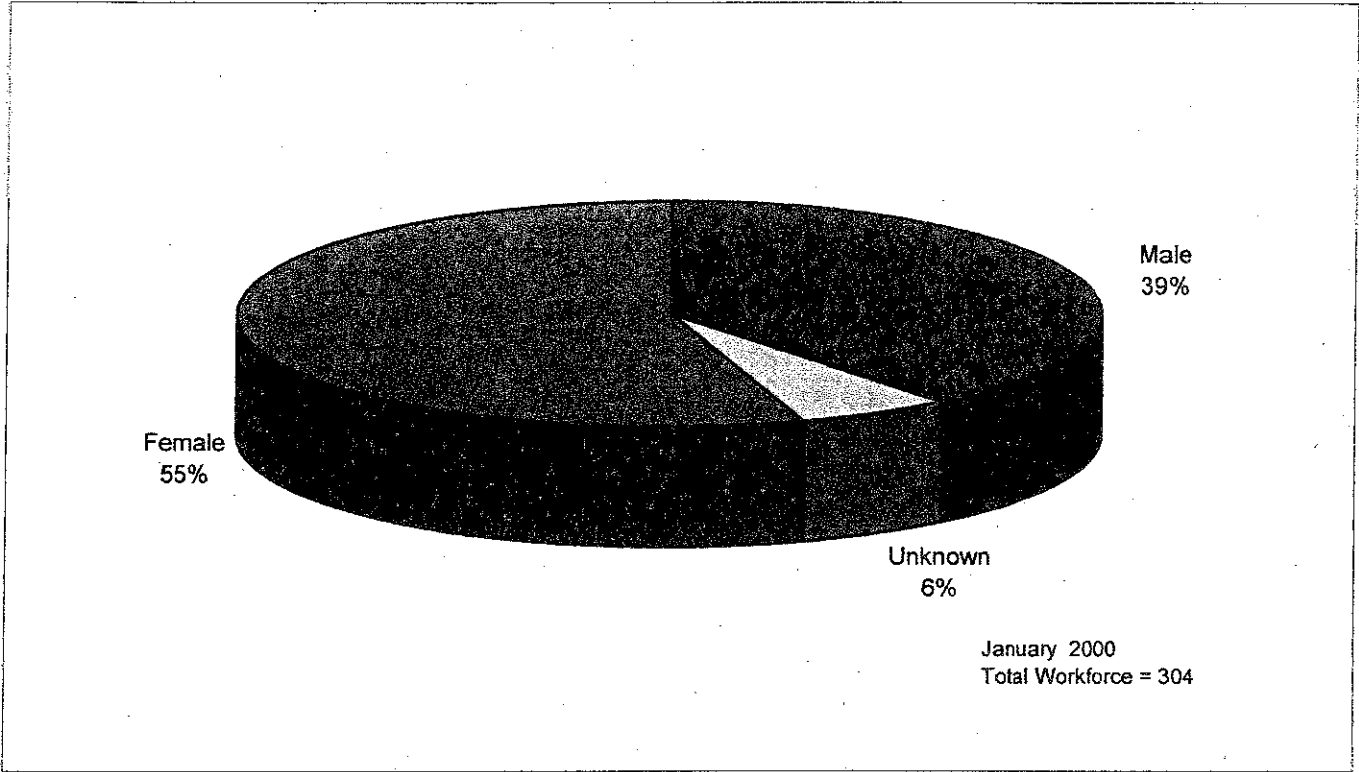
APPENDIX - 2

New York City Employees' Retirement System Workforce by Ethnicity



APPENDIX - 3

New York City's Employees' Retirement System Workforce by Gender



APPENDIX – 4

The following tables indicate personnel activity during the audit period, January 1, 2000 through June 30, 2002.

NYCERS Hires by Sex and Race

Total: 136

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
56	80	136	48	57	12	19	136

NYCERS Promotions by Sex and Race

Total: 129

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
42	87	129	48	51	7	23	129

Source: Audit data supplied by NYCERS

APPENDIX - 5

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (20) No (40)
2. Is your agency's EEO policy statement posted on the agency bulletin boards?
Yes (21) No (38)
3. Is your agency's Sexual Harrassment Policy Statement posted on the agency bulletin boards?
Yes (21) No (37)
4. Were you given the EEO Policy Statement?
Yes (45) No (2) Do not remember (16)
5. Were you given the Sexual Harassment Policy Statement?
Yes (49) No (2) Do not remember (11)
6. Do you have a copy of the Discrimination Complaint Procedures?
Yes (38) No (10) Do not remember (14)
7. Do you agree with the principles of Affirmative Action?
Yes (44) No (13)
8. Do you know what your agency's EEO Plan is?
Yes (20) No (41)
9. Do you know how to obtain your agency's EEO Plan?
Yes (37) No (25)
10. Did your supervisor hold meetings with staff to discuss the agency's EEO policies?
Yes (16) No (37) Do not remember (9)

B. EEO COMPLAINTS

11. Do you know how to file an EEO Complaint?
Yes (38) No (24)
12. If you had a discrimination complaint, would you bring it to your agency's EEO Officer?
Yes (31) No (12) Undecided (19)
13. Did you ever file a discrimination complaint with the EEO Office?
(If No, please skip to question #17)
Yes (7) No (55)
14. What was the basis of the complaint? _____

15. Were you satisfied with the manner in which your complaint was managed?
Yes (2) No (5)

16. Was your manager or supervisor supportive of your right to file a complaint?
Yes (1) No (2) N/A (6)

C. SEXUAL HARASSMENT

17. Did you receive Sexual Harassment Prevention training? (If No, please skip to question #19)
Yes (48) No (12)

18. Did you find this training helpful?
Very (17) Somewhat (24)
Not really (5) Waste of time (3)

19. Would you prefer to file a sexual harassment complaint with an office outside your agency instead of your agency's EEO office?
Yes (34) No (21)

D. JOB ADVANCEMENT

20. Do you see job postings on agency bulletin boards for vacant positions prior to the application deadline?
Yes (52) No (8) Do not remember (3)

21. Do you believe your agency practices equal employment opportunity?
Yes (34) No (25)

AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

22. Has your agency made facilities accessible for persons with disabilities?
Yes (45) No (9)

23. Did you ever ask for an accommodation for a physical or mental disability?
Yes (2) No (58)

24. If so, did the agency accommodate you?
Yes (1) No (1)

OPTIONAL

25. What is your race/ethnicity? _____

26. What is your sex?
Male (18) Female (28)