

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 3/21/02
Department Name: County Administrator
Department No.: 012
Agenda Date: 4/2/02
Placement: Departmental
Estimate Time: 1 hour
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: James Laponis
568-3400

SUBJECT: County Affirmative Action Program

Recommendation:

That the Board of Supervisors: Receive an update on the County Affirmative Action Program and provide direction as determined appropriate.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

This report provides updated information about the County's Affirmative Action Program, including:

- County employment data (the number and percentage of County employees in specified job groups by Federal EEO categories regarding race, ethnicity and gender).
- Comparisons of the current County workforce distribution by race, ethnicity and gender with the same workforce distribution statewide and within our major recruitment areas.
- Information about the impact of Proposition 209 (passed in 1996) effectively restricting affirmative action programs.
- An outline of projects currently being undertaken regarding diversity and affirmative action within the County organization.
- Finally, and perhaps most importantly, an introduction of Claudia Lujan, the County's newly appointed Equal Opportunity Manager.

County Employment Data

The Participation Rates Consolidated Summary (Attachment A) provides a numeric count and percentage of the County workforce by job groups and Federal EEO race, ethnicity, and gender categories. In order to provide context to the data, graphical representations (Attachment B) are included, illustrating the County's workforce distribution in selected job groups by the Federal EEO categories compared to workforce availability statewide and in major County recruitment areas. The job groups illustrated include Executives, Managers, the three largest groups (Law Enforcement Deputies, Office Clerical-Typist, and Paraprofessionals) and Skilled Craft-Equipment Workers, a group with underutilizations.

By way of explaining the graphs, the Managers Job Group graph shows that the County's workforce distribution as of January, 2002 was 48% female and 10% Hispanic (male and female). This compares to the 1990 Census data (2000 Census data to be available in 2003) indicating that 45% of the "available managerial workforce" statewide was female, and 12% was Hispanic (male and female). In summary, the Countywide workforce data indicates that although some job groups have an underutilization of females and/or certain minorities, most job groups do not have such underutilizations. Naturally, the EEO office will focus its efforts on those job groups which have the greatest degree of underutilization.

Proposition 209: Impact on Affirmative Action Programs

In January of 1998, a County Counsel memorandum concluded that the County's affirmative action policy was valid under Proposition 209. The policy, which remains unchanged, has three main features.

1. Recruitment and outreach activities to attract underrepresented minorities and women.
2. The gathering of statistical data regarding the composition of the County's work force.
3. The consideration of race and gender as a factor in selecting among substantially similarly qualified applicants for hiring and promotion when there is a demonstrated statistically significant disparity between the County's work force and the relevant labor market in regard to the position in question.

In September of last year, *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16 was published. The opinion analyzed various statutory schemes relating to affirmative action programs under the provisions of Proposition 209. In construing the terms of Proposition 209, the court relied on its prior interpretation of Proposition 209 in *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537.

In sum, the *Connerly* court's analysis of Federal constitutional law and Proposition 209 resulted in the following conclusions.

- Both the Supreme Court's *Connerly* opinion and its opinion in *Hi Voltage* struck down narrowly focused recruitment efforts but failed to clearly describe the permissible limits of recruitment and outreach programs that may emphasize recruitment of minorities or women. However, recruitment and outreach efforts that are designed to broaden the pool of potential applicants without reliance on impermissible race or gender classifications are not constitutionally forbidden under either the equal protection clause of the Federal Constitution or under Proposition 209. If, however, these efforts rely

upon race or gender classifications they are prohibited by Proposition 209 as they grant “preferential treatment” to individuals or groups based upon race or gender.

The *Connerly* court also stated that, in this regard, goals and quotas contained in recruitment or outreach policies are indistinguishable and impermissible. Thus, any recruitment and outreach efforts that contain a “hiring goal” of any sort are likely invalid. Under *Connerly*’s analysis, such “focused outreach” programs appear to be generally impermissible as they run afoul of Proposition 209’s proscription of preferential treatment.

- The gathering of statistical data is permissible under Proposition 209 since the determination of the underutilization of minorities and women can serve legitimate and important purposes. For example, under Federal law, governmental entities remain under a duty to eliminate the vestiges of segregation and discrimination. Such data is useful in identifying the effects of past or present discrimination that may trigger a corresponding duty, under Federal law, to enact remedial measures to redress past discrimination.

However, such data must not automatically trigger any efforts to achieve goals to overcome any identified underutilization of minorities and women in County departments. The intertwining of a statistical gathering program with an outreach, recruitment or hiring program is likely to be held to be in violation of Proposition 209.

- The use of statistical data alone as a basis for establishing remedial hiring goals is impermissible under both Proposition 209 and Federal equal protection law. Statistical data may serve as valuable evidence of prior discriminatory hiring practices but is not, in itself, conclusive evidence of past discrimination. Such data, however, may trigger the need for more investigation to determine whether there has been specific prior discrimination in hiring practices in order to determine whether Federal law might require remedial actions. Proposition 209 is more restrictive and forbids preferential hiring schemes even if designed to remedy past discrimination. However, if the failure to remedy past discrimination is required by Federal law, rather than merely permitted, or if it would result in the loss of Federal funds, then Proposition 209 does not forbid remedial measures.

In regard to reconciling the provisions of Proposition 209, which does not allow the remediation of past discrimination, and Federal constitutional requirements requiring the remediation of past discrimination, *Connerly* held that, to the extent that the Federal Constitution or Federal law requires remedial action or preferential hiring, it is permitted under Proposition 209. However, where Federal law only permits, but does not require, preferential treatment to individuals on the basis of race or gender, Proposition 209 precludes such action. The court defined “preferential treatment” as “‘a giving of priority or advantage to one person...’”

The County, however, as a Federal contractor, must, under Federal Executive Order 11246, develop a written affirmative action plan and require the inclusion of non-discrimination clauses in its contracts. In order to comply with the Executive Order, an affirmative action policy must include, among other things, a statistical compilation and analysis of the utilization of minorities and women in the work force, and the establishment of goals in the event that the statistical analysis reveals an underutilization of minorities or women in the workforce. These elements are contained in the current County affirmative action policy. To the extent that the County’s affirmative action policy is required by Executive Order 11246 in order to maintain Federal

funding, it is not prohibited by Proposition 209. A requirement to comply with the County's antidiscrimination ordinance, and State and Federal nondiscrimination laws, is incorporated by reference in standard County contracts.

In sum, the County's current affirmative action plan complies with Proposition 209 except to the extent that it may be read to trigger focused recruitment efforts solely on the basis of statistical anomalies. However, under Executive Order 11246, the elements of the current affirmative action plan are required to maintain Federal funding, and thus are not prohibited by Proposition 209.

Current Affirmative Action Projects

In addition to producing this report and assessing progress toward reducing underutilization of minorities and women as part of annual Department Director performance reviews, our office has been working on the following affirmative action-related matters:

- Administrating the Board-appointed Affirmative Action Commission (Alan Kasehagen from the Public Health Department has served as interim EEO Manager since David Medrano left in October).
- Recruiting and hiring Claudia Lujan, Equal Opportunity Manager, who started work on March 18.
- Developing a Diversity Appreciation Program to help County employees better understand and appreciate the value of diversity in the workplace. Managing this project is Keith Davis, Human Relations Commission Administrator.
- Evaluating recruitment and selection procedures and the impact they have on minorities and women. Managing this project is Claudia Lujan, EEO Manager working with Theresa Duer, Deputy Director of the Human Resources Department.
- Formulating an outline for a Leadership Development program to help County line employees become supervisors, supervisors become managers, and managers become executives. The County Administrator; Ann Goodrich, Human Resources Director; and Bill Chiat, Director of Organizational Effectiveness, are managing this project.
- Analyzing the impacts of Proposition 209 has been addressed by Gustavo Lavayen, Deputy County Counsel (analysis included in this report).
- Developing current County data related to affirmative action (analysis included in this report). Freya Schultz, Staff Analyst in the Social Services Department, who was on loan from the Social Services Department for four weeks, managed this project.
- Responding to the League of United Latin American Citizens (LULAC) to honor their request for certain affirmative action-related information, and potentially work with them on ways to enhance County employment opportunities for underutilized groups, especially Hispanics. Jim Laponis, Deputy County Administrator, is managing this project.
- Developing a new County Affirmative Action Plan in accordance with Federal guidelines, Proposition 209 and County workforce data. Claudia Lujan, EEO Manager, will manage this project.

Naturally, staff will keep the Board apprised of progress on each of these matters with periodic reports.

Mandates and Service Levels:

Although certain aspects of affirmative action are mandated by Federal law, there are no mandates or service level impacts directly related to the recommendation.

Fiscal and Facilities Impacts:

There are no fiscal or facilities impacts directly related to the recommended actions.

Concurrence:

Santa Barbara County Department Directors

Claudia Lujan, EEO Manager

Alan Kasehagen, Interim EEO Manager

Keith Davis, Human Relations Commission Administrator

Freya Schultz, Staff Analyst, Social Services

Theresa Duer, Deputy Director of Human Resources

Gustavo Lavayen, Deputy County Counsel

Bill Chiat, Director of Organizational Effectiveness

Affirmative Action Commission

Department Affirmative Action Coordinators

David M. Rodriguez, Far West Region Advisor, Civil Rights, League of United Latin American Citizens (LULAC)