

AFFIRMATIVE ACTION AT THE  
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

AUGUST 1981

-A report of the Massachusetts Advisory Committee to the U.S.  
Commission on Civil Rights prepared for the information of the  
Commission and the citizens of Massachusetts.

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-A report of the Massachusetts Advisory Committee to the  
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ATTRIBUTION:

The findings and recommendations contained in this report are those of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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## LETTER OF TRANSMITTAL

Massachusetts Advisory Committee to  
the U.S. Commission on Civil Rights

August 1981

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Dear Commissioners:

As part of its responsibility to advise the Commission about civil rights issues within the State, the Massachusetts Advisory Committee submits this report on affirmative action at the Massachusetts Bay Transportation Authority, Metropolitan Boston's public transit system.

The report not only examines the efforts made by the Massachusetts Bay Transportation Authority to achieve equal employment opportunity within its work force, but also analyzes the efforts of the Urban Mass Transit Administration and the Massachusetts State Office of Affirmative Action. These are the Federal and State agencies charged with ensuring that the Massachusetts Bay Transportation Authority complies with relevant affirmative action requirements.

Although in the last few years the Massachusetts Bay Transportation Authority has increased the percentages of minorities and females in its work force, minority males continue to be underrepresented in every occupational category except service/maintenance. White females are underrepresented in every category except clerical, and minority females are underrepresented at all levels.

The Committee found that the Massachusetts Bay Transportation Authority fell short of its 1978-1980 hiring goals in almost every category, in some instances by as much as 95 percent.

Despite the fact that in early 1981 the Massachusetts Bay Transportation Authority had to lay off several hundred employees to cut costs, the Advisory Committee believes that affirmative action remains a legitimate concern. Boston will continue to rely on and require an extensive transit system, and the prospect is that hundreds of hires will be made in the next several years.

In the meantime -- until the T's finances and work force stabilize -- the Committee is concerned that minorities and women are being laid off in disproportion to their representation in the T's work force.

The Federal Urban Mass Transit Administration, which in 1980 provided almost a third of a billion dollars to the Massachusetts Bay Transportation Authority, has yet to complete a compliance review of the MBTA that it began in 1979. The Committee also found that the State Office of Affirmative Action does not even have a procedure in place to determine whether State agencies are complying with their affirmative action plans.

In addition to several recommendations aimed at State officials, the Committee recommends that the U.S. Commission on Civil Rights urge the Urban Mass Transit Administration to release the findings of the compliance review of the Massachusetts Bay Transportation Authority.

We hope that you will support our recommendations to improve the affirmative action posture of the Massachusetts Bay Transportation Authority and the enforcement efforts of the Urban Mass Transit Administration and the State Office of Affirmative Action.

Respectfully,

A handwritten signature in cursive script, reading "Bradford E. Brown".

BRADFORD E. BROWN, Ph.D.  
Chairman  
Massachusetts State Advisory Committee

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FOR IMMEDIATE RELEASE

Federal Civil Rights Panel Says  
Affirmative Action at MBTA Still Important

BOSTON, MASS. -- Despite recent layoffs, affirmative action should remain a legitimate concern of the MBTA. That is one of the conclusions of Affirmative Action at the MBTA, a report issued today by the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights.

Committee Chair Bradford E. Brown points out that "Boston will continue to rely on an extensive transit system, and the prospect is that hundreds of hires will be made in the next several years."

Since the study was initiated in late 1979, the MBTA has been transformed from an agency that had been actively hiring (at least at a level commensurate with the number of resignations and retirements) to one that must reduce its work force. "This situation has obvious and important ramifications for affirmative action," the report notes. Chair Brown adds, "work force concerns, at least for the immediate future, have shifted to questions of layoffs rather than hires." Because of restricted finances, the MBTA was forced to lay off 300 employees in the spring of 1981. He says that until the MBTA reaches the time when its finances and work force stabilize and routine hiring resumes, the Committee's chief concern is that minorities and women are being laid off in disproportion to their representation in the T's work force.

Most of the 40-page report focuses on the efforts made by the Massachusetts Bay Transportation Authority from 1977 through 1980 to

(MORE)

achieve equal employment opportunity within its work force. It also analyzes the efforts of the Urban Mass Transit Administration and the Massachusetts State Office of Affirmative Action -- the Federal and State agencies charged with ensuring that the Massachusetts Bay Transportation Authority complies with affirmative action requirements.

Three years after the MBTA adopted its first comprehensive action plan, white males continue to dominate the MBTA's work force in almost every occupational category. During this period, the MBTA has failed to reach almost all of the hiring goals it established for minorities and women.

The Committee finds that the Federal Urban Mass Transit Administration, which in 1980 provided almost a third of a billion dollars to the Massachusetts Bay Transit Authority, has yet to complete a compliance review of the MBTA that it began in 1979. The Committee also found that the State Office of Affirmative Action does not even have a procedure in place to determine whether State agencies are complying with their affirmative action plans.

In addition to several recommendations aimed at State officials, the Committee recommends that the U.S. Commission on Civil Rights urge the Urban Mass Transit Administration to release the findings of the compliance review of the Massachusetts Bay Transportation Authority.

Copies of Affirmative Action at the MBTA are available from the New England Regional Office of the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, MA 02110.

The U.S. Commission on Civil Rights is an independent, factfinding agency of the Federal Government. It investigates issues related to discrimination or denial of equal protection of the laws because of race, color, religion, national origin, age, sex, and handicap. The Massachusetts Advisory Committee is one of 51 such bodies composed of private citizens who advise the Commission on civil rights developments in their respective States.



## Chapter 1

### INTRODUCTION

The Massachusetts Advisory Committee to the U.S. Commission on Civil Rights has had a long-standing concern about affirmative action in general and in Massachusetts State government in particular. A study of State government employment undertaken by the Advisory Committee in 1974, resulted in over 70 recommendations aimed at improving the State's ability to ensure equal opportunity for both employees and job applicants.<sup>1</sup> In November 1979, a new study was initiated to determine what progress had been made in affirmative action by State agencies, and to participate in a national study of the Federal affirmative action enforcement process undertaken by the Commission.

In 1974, the Advisory Committee focused on the affirmative action efforts of State line agencies, but it did not include a review of public authorities, such as the Massachusetts Bay Transportation Authority (the MBTA or the "T"). As part of its current project, the Committee did collect information on the affirmative action efforts of the MBTA, largely because it receives millions of dollars annually from various government sources and is subject to extensive affirmative action requirements.

The Advisory Committee was also aware of allegations that women and minorities were drastically underrepresented in most segments of the MBTA's work force. The T was allegedly failing to meet the affirmative action hiring goals it had set for itself. In order to look into these allegations and to determine if Federal and State enforcement agencies were fulfilling their responsibilities to monitor the MBTA's affirmative action program for compliance with the law, the Committee undertook this study.

This report covers the MBTA's affirmative action activities on behalf of minorities and women in its employment practices,<sup>2</sup> and the civil rights enforcement efforts of the State Office of Affirmative Action (SOAA) and the Federal Urban Mass Transit Administration (UMTA). The report does not contain information about the MBTA's employment of handicapped or older workers in view of the fact that affirmative action plans on behalf of these groups are not required by law.<sup>3</sup>

Affirmative action is a subject that is often misunderstood. The U.S. Commission on Civil Rights has acknowledged this problem, and in several publications has explained the needs, goals, and practices of affirmative action.<sup>4</sup> According to the Commission: "Affirmative action...encompasses any measure beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination, or to prevent discrimination from recurring in the future."<sup>5</sup> Those steps usually include a survey to identify areas of concentration and underutilization of minorities and women; an analysis of barriers; the development of measures to remove those barriers; the establishment of goals and timetables; and a monitoring system to evaluate progress.<sup>6</sup>

Affirmative action consciously uses race, sex, and national origin as criteria to dismantle the process of discrimination, recognizing that we have to be color (and sex and nationality) conscious before we can be color blind. It addresses the problem of ongoing discrimination and the residual effects of past discrimination.

Discrimination can be either conscious and deliberate, or unconscious and unintentional. An example of the latter: a guidance counselor may have low expectations of minority students and consequently steer them away from academic or technical subjects; this may later place them at a disadvantage in choosing careers. Whether discrimination is intentional or not, the effect is the same -- it denies to victims opportunities that are available to others and perpetuates inequalities. Conduct that employers, teachers, realtors, bankers, and others regard as routine and impartial may nonetheless result in unequal opportunities for minorities and women.

Policies and practices of organizations often favor white males because they perpetuate structures which arose out of past racism or sexism. Such practices may appear to be neutral. For example, seniority provisions that require the layoff of the most recently hired employees work to the disadvantage of minorities and women when applied to jobs that were previously limited to white males. Unless these practices and policies are evaluated and, where necessary, modified or eliminated, they preserve old discriminatory patterns.

Discrimination in one area -- education -- affects other areas such as employment, and in turn, discrimination in employment hinders its victims in obtaining decent housing. Discrimination thus becomes circular and cumulative. Furthermore, disadvantages incurred by one generation are passed on to the next. The result of these interrelated processes of discrimination is manifested in the inferior status of minorities and women.<sup>7</sup> These inequities in turn feed the process which produced them by reinforcing discriminatory attitudes and practices.

The rationale for affirmative action stems from the need to dismantle the self-perpetuating process of discrimination and to eradicate the inequities which result from it. Measures for doing this are usually set forth in an affirmative action plan. Plans are sometimes developed voluntarily and at other times are required by law. There are government agencies at the Federal, State, and local levels whose job it is to enforce the various requirements for affirmative action.

The remainder of this report deals with the affirmative action obligations and activities of one employer, the MBTA. It also focuses on two government agencies, SOAA and UMTA, charged with the responsibility of enforcing affirmative action requirements.

The report also contains a discussion of the MBTA's legal obligations in the area of affirmative action, an employment profile of the MBTA, and a discussion of the T's performance in meeting its legal obligations. The final section of the report presents the Advisory Committee's findings and recommendations relating to the affirmative action practices of the MBTA and their enforcement by the State Office of Affirmative Action and the Urban Mass Transit Administration.

This is the first of two reports to be issued by the Massachusetts Advisory Committee based on its recent study of affirmative action. A second, more comprehensive, report will be issued on the affirmative action efforts of State government as a whole. The U.S. Commission on Civil Rights will publish a national study on this subject.<sup>8</sup>

In order to gather information about affirmative action efforts of the

T and other agencies, the Massachusetts Advisory Committee held a factfinding meeting on March 25 and 26, 1980, at the John F. Kennedy Federal Building in Boston. Representatives of the MBTA, UMTA, and SOAA were included among the more than 65 persons who presented information at this meeting about the affirmative action activities of Federal and State government and private employers. In addition, Advisory Committee members and the staff of the New England Regional Office of the U.S. Commission on Civil Rights interviewed MBTA, SOAA, and UMTA officials and others knowledgeable about the T's employment practices, and the agencies furnished additional information that the Advisory Committee utilized in the preparation of this report.

The Committee is aware of the overwhelming changes in the MBTA which have occurred since the study was begun. After a financial crisis in 1980, which closed down the system for one day (December 6, 1980) the State legislature enacted legislation reorganizing the MBTA.<sup>9</sup> As part of this reorganization package, the T's budget for 1981 was established at a level that not only has curtailed new hiring but has required the layoffs of almost 300 employees.<sup>10</sup>

Thus, during the course of this study the MBTA has been transformed from an agency which had been actively hiring (at least at a level commensurate with the number of resignations and retirements) to one which must reduce its work force. This situation has obvious and important ramifications for affirmative action. Work force concerns, at least for the immediate future, are shifting to questions of layoff rather than hire.

This predicament will not be unique to the MBTA. As a result of Proposition 2-1/2,<sup>11</sup> most of the Commonwealth's municipalities are cutting back their work forces. Experience has shown that layoffs usually affect minorities and females ("the last hired") more severely than they do white males.<sup>12</sup> The Massachusetts Commission Against Discrimination has estimated that a 25 percent reduction in personnel will result in the layoff of 75 percent of all minorities employed by the State's municipalities.<sup>13</sup> This report does not address the effect of a constricting public sector on the employment of minorities and women, but this is a subject of concern to the Committee.

Despite the prospect of a reduction in the T's labor force, routine resignations, promotions, and retirements will require some recruitment and hiring.<sup>14</sup> Thus, compliance with affirmative action requirements remains relevant even in this period of declining public employment.

We hope that this analysis will be helpful to the MBTA, UMTA, and SOAA and to those concerned with equity and the elimination of discrimination in the employment process.

Footnotes -- Chapter 1

1. Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, "Recommendations on Equal Employment in Public Service in the Commonwealth of Massachusetts" (1975).
2. In addition to being required to engage in affirmative action in employment, the MBTA must take affirmative action in doing business with minority- and female-owned businesses. This report does not cover this aspect of the T's affirmative action requirements.
3. There are several State and Federal laws and regulations as well as Executive Orders applicable to the MBTA which prohibit discrimination against the aged and handicapped, but none of these require adoption of extensive affirmative action plans that include measures such as hiring goals.
4. See, for example, U.S. Commission on Civil Rights, Toward Equal Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools (1978); Statement on Affirmative Action (1977); Last Hired, First Fired: Layoffs and Civil Rights (1977); Statement on Affirmative Action for Equal Employment Opportunities (1973);
5. U.S. Commission on Civil Rights, Affirmative Action in the 1980s: Dismantling the Process of Discrimination (1981), p. 6. The description of affirmative action presented here draws heavily on the analysis made in this report.
6. Ibid., p. 36.
7. U.S. Commission on Civil Rights, Social Indicators of Equality for Minorities and Women (1978).
8. The Commission's national study reviews the affirmative action requirements and enforcement efforts of three Federal agencies: the Office of Federal Contract Compliance Programs (OFCCP); the Equal Employment Opportunity Commission (EEOC); and the Office of Personnel

Management (OPM). The Massachusetts Advisory Committee contributed to this effort and is a co-sponsor of the report.

9. Ch. 581, 1980 Mass. Acts. Some of the specific provisions of this law are mentioned on page 17 of this report.
10. John F. Carney, Recruitment Coordinator, MBTA, letter to Mary Lee Walsh, USCCR, New England Regional Office, May 18, 1981.
11. Ch. 580, 1980 Mass. Acts, commonly called Proposition 2-1/2, is a State law passed in November 1980 as a result of a referendum of the electorate rather than through the customary procedure of enactment by the State legislature and concurrence by the Governor. Among other provisions, Chapter 580 requires that municipal property tax be limited to 2-1/2 percent of the fair cash value of the property being taxed. It provides that cities or towns currently imposing taxes greater than 2-1/2 percent of the cash value will have to decrease those taxes by 15 percent each year until the 2-1/2 percent limit is reached. The resulting reduction in property tax revenues is causing the cities and towns of the Commonwealth to cut back municipal services and work forces.
12. The subject of how economic slowdowns and recessions disproportionately affect minority and female employees and how such effects can be ameliorated is treated in a 1977 publication of the Commission. See: U.S. Commission on Civil Rights, Last Hired, First Fired: Layoffs and Civil Rights (1977).
13. Massachusetts Commission Against Discrimination, Press Release, February 12, 1981.
14. For example, during the years 1978, 1979, and 1980 the MBTA hired over 1,900 persons. In this same three-year period the number of people employed by the T increased by only about 500. The other 1,400 new hires were to replace employees who had vacated positions. Thus, even though the MBTA may decrease its work force, it will, at some point, need to do some hiring.

## Chapter 2

THE ROLE OF FEDERAL AND STATE GOVERNMENTA. The Urban Mass Transit Administration

The Urban Mass Transit Administration (UMTA), a Federal agency under the U.S. Department of Transportation, was established by the Urban Mass Transit Act of 1964<sup>1</sup> to provide assistance for the development of comprehensive and coordinated mass transit systems, both public and private. In fulfilling this mandate, UMTA administers the awarding of several different kinds of Federal aid to urban areas for the improvement of their public transportation systems. The two major forms of funding provided to local mass transit systems under this arrangement are capital grants and operating grants. In terms of money dispersed, the capital grant program is by far the largest.<sup>2</sup> Capital grants are used for the construction of new facilities or the improvement of existing ones, or for the acquisition of new equipment. Operating grants are used to assist transit systems to defray those costs of operating the system that are not covered by passenger fares or other methods of local financing. UMTA also awards other types of grants. These involve the provision of funds for research, development, and demonstration projects;<sup>3</sup> technical studies;<sup>4</sup> and personnel training programs.<sup>5</sup>

Like most large mass transit systems, the MBTA applies for and receives through UMTA many millions of dollars in Federal funds annually. In 1978, it received 15 grants for a total of \$256,682,000 in Federal funds.<sup>6</sup> In 1979, the MBTA received 16 grants totaling \$286,831,000, the largest of which was for \$187,598,145,<sup>7</sup> and in 1980, it received 26 Federal grants for a total of \$318,087,000.<sup>8</sup>

1. Civil Rights Requirements

As a condition for receiving Federal money, the MBTA must comply with Federal requirements for affirmative action and nondiscrimination in its employment practices, its business dealings with private contractors and suppliers, and its provision of services. These requirements are rather



complicated and are set forth in a variety of civil rights laws, executive orders, regulations, and guidelines, and in agreements signed between UMTA and a recipient.<sup>9</sup>

When the Urban Mass Transit Act was amended in 1978, the nondiscrimination provisions were strengthened by the addition of a new section.<sup>10</sup> This section specifically covers the employment practices of UMTA grant recipients and requires the Secretary of Transportation to undertake affirmative action to assure compliance with its provisions.

UMTA set forth the requirements for affirmative action in employment applicable to grant recipients in an UMTA circular issued in 1977. These requirements provide that grant recipients having 50 or more employees and receiving more than \$1 million in capital or operating assistance grants in the previous fiscal year submit a written affirmative action plan. UMTA must approve that plan before further grants are awarded. The affirmative action plan must include (1) a "utilization analysis" of existing work force for comparison with minorities and females available for work "in relevant labor market and recruiting areas"; (2) a statement of goals and programs that will be applied to correct any underutilization of minorities and women in the recipient's work force; (3) an assessment of employment practices identifying problem areas; (4) the designation of personnel to implement the affirmative action plan; and (5) the dissemination of a policy statement on equal employment opportunity.<sup>11</sup>

Another important affirmative action requirement is contained in the contracts entered into between UMTA and its grantees upon the approval of applications for funding. Every award of funds results in the execution of a formal written agreement between UMTA and the recipient specifying terms and conditions of the grant. One of the standard provisions in every agreement is an equal opportunity requirement that grant recipients shall not discriminate in any aspect of employment because of race, color, age, sex, creed, or national origin and that the recipients shall take affirmative action to ensure that any inequities are rectified.<sup>12</sup> This provision also requires that the affirmative action plan of grant recipients shall be incorporated into the grant agreement by specific reference, and that failure to carry out the terms of the affirmative

action plan shall be treated as a violation of the contract agreement.<sup>13</sup>

As indicated above, it should be noted that while the Advisory Committee's report focuses only on the employment-related affirmative action obligations, the MBTA is subject to additional civil rights requirements in the areas of minority and female business enterprise and in the provision of services to the public. It must comply with relevant laws, guidelines, regulations, and contractual provisions in these areas as well.

## 2. Procedures

Because of the great number of grant requests which it receives from mass transit systems, UMTA does not conduct complete civil rights compliance or preaward reviews in connection with every application. However, UMTA may at any time review the compliance of grant recipients with civil rights requirements. This effort involves an analysis of the recipient's affirmative action and non-discrimination posture to identify any problems and deficiencies in its compliance with Federal civil rights standards. The initial stages of this review are conducted by the UMTA civil rights officer at the regional level, but final determination of certification status is made by UMTA's Office of Civil Rights in Washington, except where the regional office finds full compliance with all civil rights requirements.<sup>14</sup>

Following a review, UMTA issues a certification of civil rights compliance, if one is warranted.<sup>15</sup> "Certification" is defined by UMTA as "a determination by the UMTA civil rights staff that an applicant has met all applicable civil rights requirements and is eligible for UMTA financial assistance."<sup>16</sup> This certification applies to all areas of civil rights obligations: internal employment practices, minority and female business enterprise programs, and the provision of services.

Three types of findings are possible in compliance reviews: compliance, conditional compliance, or apparent non-compliance. When a recipient is given a conditional compliance certification, it continues to receive grants, provided that it is endeavoring to meet the conditions designated

by UMTA to bring it into full compliance. When apparent noncompliance is found, the recipient is not issued a certification of compliance. Rather, steps are initiated which could result in the termination of funds.

Once a grantee receives a certification of civil rights compliance or of conditional compliance, future grant requests are approved until such time as the certification status is changed. This does not mean that UMTA does not review additional grant applications from recipients who have been issued a conditional or a full compliance civil rights certification under a previous review. While a full compliance review is not usually initiated when an additional grant request is received from a recipient that has either a full or conditional compliance certification, Rosemary Esquivel, the UMTA Civil Rights Officer for the New England Region, states that she does look at every grant application with an eye to compliance with civil rights requirements. She determines whether all required documentation has been supplied and whether the recipient is making efforts to meet the conditions previously specified by UMTA.<sup>17</sup>

Both the Urban Mass Transit Act and the standard grant agreement between UMTA and a grantee provide legal authority for the termination of funds if the recipient is found to be out of compliance with civil rights obligations. The standard agreement deals explicitly with a grantee's failure to implement its affirmative action plan. The agreement provides that any such failure shall be treated as a violation of the agreement, which may then be terminated by UMTA. Furthermore, the agreement stipulates that failure to carry out the affirmative action plan may affect the recipient's ability to obtain grants from UMTA in the future.<sup>18</sup>

Harold Williams, Director of Civil Rights for UMTA, described several options UMTA has in attempting to bring grant recipients into compliance with Federal civil rights standards. Williams stated that termination of the grant contract is a possible sanction, but that this "is a long, drawn-out process" because of the procedural requirements connected with it.<sup>19</sup>

A second sanction involves the withholding of funds on projects in progress. For projects which take several years to complete, such as the

construction of a new rapid transit line, UMTA makes grants periodically as the work progresses, rather than providing a lump sum for the entire project. Williams said that most transit systems have difficulty meeting expenses from one grant payment to the next. They must receive payments promptly or their operations and construction projects will be seriously jeopardized. Thus, UMTA has found that holding up grant payments has some immediate effect upon those recipients who have failed to meet UMTA's standards.<sup>20</sup>

#### B. The State Office of Affirmative Action

The State Office of Affirmative Action (SOAA) is the unit of State government that has the responsibility for ensuring that State agencies comply with State affirmative action requirements in their employment practices. SOAA is under the jurisdiction of the State Secretary of Administration and Finance. According to Leon Brathwaite, who served as State Director for Affirmative Action from July 1977 until March 1981, the primary responsibilities of SOAA are "to ensure that every agency and executive office in the executive branch has an approved affirmative action program and that each meets its affirmative action goals and objectives."<sup>21</sup> Although the MBTA is a public authority and not an official State agency, it is subject to the same affirmative action requirements that apply to the State agencies.<sup>22</sup>

The State's civil rights requirements that concern employment are somewhat less complex than those of the Federal Government. One State law specifically prohibits discrimination in employment on the basis of race, religion, national origin, sex, and age.<sup>23</sup> The Massachusetts Commission Against Discrimination (MCAD) is the State agency charged with enforcing this law.

In addition, there are two executive orders which also concern employment practices. Executive Order 143 promulgated by former Governor Michael S. Dukakis in 1978, which prohibits discrimination against the handicapped and requires equal employment opportunity programs on their behalf, lies beyond the scope of this report. The other, Executive Order

116, contains the principal State requirement for affirmative action in employment. It mandates that the State Commissioner of Administration and Finance promulgate affirmative action standards for State agencies and requires that all State agencies, as well as the MBTA, prepare an affirmative action plan with goals and timetables. Such plans were to have been submitted and approved within 90 days after the date on which the executive order was issued, May 1, 1975.<sup>24</sup>

Executive Order 116 also provides for the appointment of a State Director of Affirmative Action and for appointments of Equal Employment Opportunity Officers in each secretariat and in each State agency. The Equal Employment Opportunity Officers at the cabinet level are responsible for enforcing the affirmative action plans of agencies within their secretariats. The MBTA reports to the Secretary of Transportation and Construction. Authority is given by Executive Order 116 to Equal Employment Opportunity Officers at the agency level "to recommend approval or disapproval of appointment forms and personnel requisitions."<sup>25</sup>

The State Director of Affirmative Action is required under Executive Order 116 to conduct reviews of State agency affirmative action plans to assure that they are being complied with. To this end, each State agency must submit quarterly employment statistics by race and sex to the State Office of Affirmative Action. Under the Executive Order, the Massachusetts Commission Against Discrimination is also authorized to collect information from State agencies for purposes of monitoring compliance with their affirmative action plans.

Executive Order 116 does not provide explicit sanctions for State agencies that are not complying with their affirmative action obligations except to say that a State official's willful failure or refusal to implement an affirmative action plan shall be grounds for termination of employment.<sup>26</sup>

Footnotes -- Chapter 2

1. Urban Mass Transit Act of 1964, 49 U.S.C.A. s.1601 et seq. (1976).
2. Harold D. Williams, Director of Civil Rights, UMTA, Statement before the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Boston, Massachusetts, March 26, 1981, Transcript, p. 494. (Hereafter cited as Transcript.)
3. 49 U.S.C.A. s.1605 (1976).
4. 49 U.S.C.A. s.1607 (Supp. 1980).
5. 49 U.S.C.A. s.1607b (Supp. 1980).
6. Massachusetts Bay Transportation Authority, 1978 Annual Report, p. 19.
7. MBTA, 1979 Annual Report, p. 33.
8. MBTA, 1980 Annual Report, pp. 15-16.
9. The Federal civil rights requirements applicable to the MBTA include Section 15 of the Urban Mass Transit Act of 1964, 49 U.S.C.A. s.1615 (Supp. 1980); Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. s.2000d (1974); Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. s.2000e (1974 and Supp. 1980); the Equal Pay Act of 1963, 29 U.S.C.A. s.206 (1978); the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. s.621 (1975 and Supp. 1981); Sections 503 and 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. s.793, and s.794 (1975); Executive Order No. 11246, 3 C.F.R. 339 (1964-1965 Comp.) as amended by Executive Order No. 11375, 3 C.F.R. 684 (1966-1970 Comp.) and as amended by Executive Order No. 12086, 3 C.F.R. 230 (1978 Comp.); Section 109 of the Urban Mass Transit Agreement -- Terms and Conditions; as well as the many regulations and guidelines promulgated under these laws and executive orders.
10. Section 15, 49 U.S.C.A. s. 1615 (Supp. 1980).

11. U.S. Department of Transportation, Urban Mass Transit Administration, "UMTA Interim Equal Employment Opportunity Policy and Requirements for Grant Recipients," Circular 1155.1 (1977).
12. U.S. Department of Transportation, Urban Mass Transit Administration, "Urban Mass Transportation Agreement, Part II -- Terms and Conditions," s.109(a) (1979).
13. Ibid.
14. U.S. Department of Transportation, Urban Mass Transit Administration "Internal Procedures Implementing Regional Delegation of Authority in Civil Rights," Circular 4710.1 (1978).
15. Ibid.
16. Ibid.
17. Rosemary Esquivel, Civil Rights Officer, New England Regional Office, UMTA, staff interview, Cambridge, Mass., October 7, 1980.
18. U.S. Department of Transportation, Urban Mass Transit Administration, "Urban Mass Transportation Agreement, Part II -- Terms and Conditions," s.109(a) (1979).
19. Transcript, p. 498.
20. Transcript, pp. 498-9.
21. Transcript, p. 130.
22. Alan Dobson, Director of Equal Employment Opportunity/Affirmative Action, MBTA, Transcript, p. 501.
23. Mass. Gen. Laws, Ch. 151B, et seq.

24. Executive Order 116, Governor's Code of Fair Practices (1975), amending and revising Executive Order 74 (1970).

25. Ibid.

26. Ibid.

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## Chapter 3

THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITYA. Background

The MBTA is one of the largest and oldest metropolitan public transportation systems in the United States. Established in its present form by the legislature in 1964, it serves 79 cities and towns in Massachusetts. This system replaced the Metropolitan Transit Authority created in 1947, which covered only 14 cities and towns.<sup>1</sup> The MBTA is unusual in that it still utilizes every mode of public transportation -- subways, streetcars, trackless trolleys, buses, and commuter railroad trains. Annually the MBTA serves over 160 million passengers, and its vehicles travel more than 40 million miles.<sup>2</sup>

The MBTA is administered by a seven-member board of directors appointed by the Governor. As of this writing the board consists of six white males and one black male. Since 1964 only one woman and two blacks have served as board members. There is also an MBTA advisory board, consisting of representatives from each of the 79 municipalities in the MBTA district, whose members are appointed by municipal officials from the city or town they represent. Traditionally, the chairman of the board of directors has served as the chief executive officer of the T. However, a provision of a law passed in December 1980 reorganizing the T requires that the board of directors appoint an executive director whose appointment must be approved by the advisory board.<sup>3</sup> In addition, this 1980 law increased the board of directors from five members to its present size and altered the structure of the advisory board. It also requires that the State Secretary of Transportation serve as the chairperson of the board of directors and strengthens management's authority in the area of labor relations.

Thirty labor unions, representing the majority of the T's 6,500 employees, negotiate collective bargaining agreements with the MBTA. The largest of these, the Carmen's Union,<sup>4</sup> represents about two-thirds of the T's unionized employees<sup>5</sup>. According to Paul Murphy, the Director of Labor Relations for the MBTA, about 93 percent of the employees at the T

are covered by collective bargaining agreements.<sup>6</sup> The strong MBTA unions have negotiated contracts which provide employees with salaries which are higher than those of State employees in similar positions. For example, in 1979, beginning carpenters at the MBTA were paid \$23,290 annually whereas the State paid carpenters only \$10,100.<sup>7</sup>

Originally operated under private ownership, Boston's public transit system has received public funds to finance the difference between its income and expenses since 1918. The MBTA is presently funded by a variety of sources: passenger fares, assessments on the 79 cities and towns served by the T, and aid from the State and Federal governments. In 1980 the cost of operating the MBTA was over \$300 million.<sup>8</sup> Passenger fares account for about one quarter of the annual operating costs.<sup>9</sup> The State and 79 cities and towns served by the T finance most of the rest of the operating expenses. However, the Federal Government through UMTA contributed about \$27.5 million to meet operating costs in 1980.<sup>10</sup> UMTA has provided assistance for this since 1974.<sup>11</sup>

In addition to providing operating assistance funds, the Federal Government through UMTA provides much of the funding for improvement and expansion of MBTA facilities. On federally assisted projects, this amounts to 80 percent of the cost of the project.<sup>12</sup> In 1980, out of the total \$318 million provided by UMTA to the MBTA, over \$290 million was for capital improvements.<sup>13</sup> Some of these capital grants are used for the purchase of new equipment and some are used for modernizing and expanding the T's facilities.

#### B. The MBTA's Affirmative Action Program

Both Federal and State agencies played significant roles in causing the MBTA to develop an acceptable affirmative action plan. As early as 1975, the Massachusetts Commission Against Discrimination (MCAD) began to bring pressure on the T to initiate affirmative action programs in the areas of internal employment, contract compliance, and minority contractor programs. In early 1976, the State Executive Office of Transportation and Construction (EOTC) joined MCAD in this effort. In October 1976,

negotiations between T officials and MCAD and EOTC resulted in the adoption by the T of an affirmative action policy statement and plan.<sup>14</sup> However, review of the plan by MCAD and EOTC revealed significant deficiencies in the MBTA's first attempt to prepare an affirmative action program, and the plan never received approval from the State or from UMTA.

In May 1977, the T began to work on a revised internal employment affirmative action plan that would meet State and Federal guidelines. With the appointment of a new director of the State Office of Affirmative Action in July 1977, that office assumed a major role in the development of the revised plan. For the next several months MCAD, EOTC, and SOAA continued their efforts through meetings with the T Chairman and staff to develop an acceptable affirmative action plan.<sup>15</sup>

Also, in 1977, UMTA became actively involved in these efforts. The Boston branch of the National Association for the Advancement of Colored People (NAACP) had filed a discrimination complaint against the MBTA with UMTA. Among other allegations, the NAACP charged that the MBTA had "no affirmative action plan, no affirmative action officer and no affirmative action measures" and that minorities were "vastly underrepresented" in the T's work force.<sup>16</sup> The investigation prompted by this complaint resulted in UMTA's insistence in 1977 that the MBTA develop and implement a comprehensive affirmative action program.

Thus, in 1977, MBTA officials worked with UMTA, SOAA, MCAD, and EOTC representatives over the details of an acceptable plan and by late October a written plan that met most of the conditions was completed.<sup>17</sup> At the suggestion of UMTA civil rights personnel, modifications and improvements in the T's affirmative action plan and procedures, especially as they pertained to minority and female business enterprise, were made at a later date.<sup>18</sup> This plan covered a two-year period from January 1, 1978, through December 31, 1979, and was conditionally approved by UMTA and fully approved by SOAA.<sup>19</sup>

The MBTA continues to operate under the provisions of this plan even though it was originally designed to apply only through 1979. A second plan, submitted to UMTA and SOAA in the latter part of 1979, has yet to be

approved by either agency.<sup>20</sup> Approval of this revised plan has been delayed pending completion of an UMTA compliance review begun in November 1979.<sup>21</sup> SOAA has reviewed the submitted plan and conducted numerous meetings and discussions with the staff of the MBTA relative to necessary changes prior to approval. SOAA has also met with UMTA about the plan,<sup>22</sup> and is now awaiting UMTA action on the new plan before giving its own approval.

### C. Federal and State Efforts to Achieve Compliance

The compliance review initiated by UMTA in November 1979 resulted from complaints UMTA had received that the MBTA was not making serious efforts to reach its affirmative action hiring goals.<sup>23</sup> Initially UMTA's review was directed only at the internal employment posture of the MBTA. Its scope was later enlarged to include the T's efforts in the areas of female and minority business enterprise and provision of services.<sup>24</sup> Rosemary Esquivel, UMTA's Civil Rights Officer in the New England Regional Office, completed her investigation by February 1980.<sup>25</sup> However, final determination in reviews such as these are made by UMTA's Office of Civil Rights in Washington.

As of July 1981 -- over a year and a half after UMTA began its compliance review of the MBTA and almost a year and a half after UMTA's regional office submitted its findings to UMTA headquarters in Washington -- results of the review had not been announced. Harold Williams, UMTA's Director of Civil Rights, told the Advisory Committee, "Both the T and the Federal Government are committed to try to get this [compliance review] done properly, in a hurry and over with as soon as possible. As soon as possible is probably a much better answer than 30 days."<sup>26</sup>

The State also has a role to play in the implementation and review of the MBTA Affirmative Action Plan. However, for most of the time since its creation in 1975, SOAA has had only two professional staff members and the major effort of the office has been to get approximately 90 State agencies to develop acceptable affirmative action plans.<sup>27</sup>

SOAA does not conduct compliance reviews of State agencies to determine

the extent to which they are complying with the terms of their affirmative action plans. Leon Brathwaite, former director of SOAA and now chairman of MCAD, explained that because of a "number of obstacles and stumbling blocks" in the process of developing affirmative action plans since the inception of Executive Order 116, SOAA was still in the process of trying to get all plans of all the agencies approved and that it was not yet in a position to audit the implementation of these plans.<sup>28</sup>

SOAA does require all agencies under its jurisdiction to submit employment statistics quarterly which show the numbers of minorities and women employed by occupational category.<sup>29</sup> SOAA reviews these quarterly statistics as well as the hiring data generated monthly by the State Division of Personnel Administration.<sup>30</sup>

Alan Dobson, MBTA Affirmative Action Officer, asserted that he does not receive any feedback from SOAA once the T's quarterly statistics are submitted, even though these reports establish that the T is not meeting its affirmative action goals in certain categories.<sup>31</sup>

#### D. Labor Force Statistics

The MBTA service district includes Boston and 78 other cities and towns in eastern Massachusetts. The Boston Standard Metropolitan Statistical Area (SMSA) consists of 92 cities and towns in the same section of the State.<sup>32</sup> Therefore, labor force figures for the Boston SMSA provide an appropriate framework for assessing whether the T's work force is representative of its recruitment region.

Table I gives an overall picture of relevant area labor force statistics and MBTA work force statistics by race and sex. Table I also contains data on the Index of Population Distribution<sup>33</sup> which could be considered the T's long-term hiring goals. The Index was compiled by a complex formula devised by the MBTA. The Index figures established are 10 percent for minority males, 42 percent for white males, 8 percent for minority females, and 40 percent for white females. Table I then compares these two measures (labor force statistics and the T's Index of Population Distribution) with MBTA work force statistics at three significant times

- (1) October 1977, the date the T's affirmative action plan was completed;
- (2) December 1979, the end of the period covered by the two-year Affirmative Action Plan; and (3) December 1980, the most recent statistics.

#### E. Affirmative Action Goals and Timetables

Table 1 shows that in 1977, at the time the affirmative action plan was drawn up, the proportion of white males employed by the T was considerably higher than their proportion in either of the labor force categories or their percentage in the Index of Population Distribution. This pattern holds for the two succeeding years. Correspondingly, the proportion of both white and minority women were much lower than their proportion in the labor force and index figures. The proportion of minority male employees had increased by 1979.

The 1978-80 affirmative action plan was meant to correct some of the imbalances in the employment of women and minorities. A key element in the plan was the establishment of hiring goals which were to be realized by the end of 1979.<sup>34</sup> For the purpose of setting these goals, the MBTA divided its work force into four job categories: Category I, professional and technical; Category II, clerical; Category III, skilled crafts; and Category IV, service and maintenance.<sup>35</sup> A comparison of MBTA work force profile data in these occupational categories with labor force data and the Index of Population Distribution, together with a consideration of anticipated job openings in these categories and the availability of individuals with requisite skills to fill them, all went into establishing the hiring goals.<sup>36</sup> These goals were meant to bring the MBTA work force profile as close to the Index of Population Distribution as possible.<sup>37</sup>

The hiring goals which served as the basis for the MBTA work force projections for December 31, 1979, are set forth in Table 2 along with actual work force data for 1977, 1979, and 1980. A look at Table 2 reveals that, even had the goals for the employment of women been realized, women would have still been drastically underrepresented (7.7 percent of the work force compared to 48 percent in the Index of Population Distribution). As shown in Table 2, progress in the correction of underrepresentation of minorities and women was not very good in most occupational categories. By

the end of 1979, the goals for utilization of women in Categories I, III, and IV were not met. Only in Category II, clerical, did the MBTA reach its hiring goal for females during the term of the Affirmative Action Plan. The MBTA was least successful in reaching its goal for women in Category III, in which it was 95.7 percent short of the goal set for 1979 and then made only slight progress the following year. The hiring of minority men in the first three occupational categories failed to meet the established goals by as much as 78.9 percent. Only in Category IV, service/maintenance, did the MBTA achieve its hiring goals for minority males.

Even though many of the hiring goals set in 1977 for minorities and women have not been met, progress has been made since 1975 in increasing the percentage of minorities and females employed by the MBTA. Between 1975 and 1981 the percentage of minority males in the T's work force increased from 5 to 12 and the percentage of females increased from 3 to 7. Most of the progress can be traced to the increase of minorities and women in jobs filled by a new hiring system utilizing ratios and a lottery; this system is described below.

A closer look at the four occupational categories utilized in the T's affirmative action plan reveals special factors affecting the employment of minorities and women. As of December 1980, 45 percent of the positions classified as clerical (Category II) by the MBTA were filled by males, though traditionally clerical jobs are held by females in virtually every industry. Examples of some of the clerical positions at the MBTA are construction clerk, garage clerk, stock clerk, and office engineer. These positions are situated in train yards, garages, and construction sites,<sup>38</sup> and generally involve record-keeping rather than typing and stenography. The MBTA is placing qualified women in these "outside" clerical jobs, but the historical reliance on males to fill them is a dominant factor in the unusually high percentage of males in the clerical job category.

The paucity of minorities and females employed in skilled craft positions (Category III), is, according to Alan Dobson, the MBTA's Director of Affirmative Action, because the collective bargaining agreements covering those positions give the union the exclusive right to refer their

members for these vacancies.<sup>39</sup> The MBTA is allowed to hire outside the union for craft positions only in situations where the union has no members qualified for a particular vacancy.<sup>40</sup> Paul Murphy, Director of Labor Relations for the T, stated that a primary reason that white males predominate in the skilled craft category is that there are very few women and minorities who are qualified for these positions.<sup>41</sup> When asked whether the T had any programs to train minorities and women for various skilled craft positions, Alan Dobson replied, "We presently do not train individuals for the skilled crafts to come to work at the MBTA."<sup>42</sup>

The MBTA has made the greatest progress in employing minorities and women in the service/maintenance category (Category IV), in large measure because several of the titles in this category have been filled by use of a hiring system involving ratios and a lottery since 1977. The lottery hiring system had its genesis in a race discrimination case filed in Federal court against the MBTA in 1968.<sup>43</sup> The case alleged that the written test used by the T for the selection of bus drivers or operators (the official job title) was discriminatory because it did not test for the skills actually needed to perform the job, and because a disproportionate percentage of minorities failed it. The Judge agreed that the test discriminated against blacks and Hispanics and ordered that a nondiscriminatory device for selecting operators be used. As a result of this case, the MBTA ceased using the written exam and instituted the use of a lottery system until a valid test could be developed. While the MBTA hired drivers, fare collectors, and porters for several years pursuant to a lottery, there was no provision for ratio hiring of minorities and women under the lottery until 1977.<sup>44</sup> From 1977 through 1979, a ratios of two white males to two minority males to one female was used to fill positions subject to the lottery.<sup>45</sup> Tables 3 and 4 show breakdowns of new hires by occupational category in both 1979 and 1980, and demonstrate that a greater proportion of minorities and women are hired into category IV than in the other occupational categories. Table 2 shows the dramatic increase in minorities and women employed in the positions covered by the lottery, i.e., those in occupation Category IV from October 31, 1977 to December 31, 1980.



In 1980 the MBTA ceased using ratio hiring for several titles such as fare collector and car cleaner because the hiring goals for those jobs had been reached, but it has retained ratio hiring for the position of operator.<sup>46</sup> By this time the MBTA had developed a validated written exam for the selection of drivers. Twenty-one hundred persons were selected by a lottery to take this test, which was first administered in February 1980. The group of 2,100 consisted of equal numbers of white males, minority males, and females.<sup>47</sup> A list of those who passed the exam was compiled for each of these three groups, and as vacancies become available, candidates are selected for physical exams and interviews in the order of their original lottery draw number. A new hiring ratio for selection from the three lists was established which would facilitate the meeting of hiring goals set forth in the affirmative action plan. The ratio utilized in 1980 for hiring operators was five white males to two minority males to three females.<sup>48</sup> Fifty-eight operators were employed from the 1980 lottery lists: 27 white males, 14 minority males, and 17 females.<sup>49</sup> The MBTA plans to continue ratio hiring of operators as an affirmative action mechanism. However, it does not plan to institute ratio hiring for titles other than operator in the service maintenance category because most of those jobs are filled through a bidding process established by collective bargaining agreements.<sup>50</sup>

As stated above, Executive Order 116 provides that the affirmative action officers shall have authority to recommend approval or disapproval of new hires and promotions. The MBTA's affirmative action plan also provides that the T's director of affirmative action shall have "signature control over all...hiring authorizations" except for positions covered by the lottery.<sup>51</sup> However, from February 1979 through November 1979, this sign-off authority was "interrupted."<sup>52</sup> In other words, the director of affirmative action was relieved of the authority to sign off on personnel actions before they became effective.

According to the Boston Globe, the MBTA retreated on minority hiring during the period when the affirmative action officer's sign-off power was removed by the then Chairman of the MBTA, Robert Foster.<sup>53</sup> The Globe stated that minorities accounted for only 5 percent of the professional employees hired during the period when the sign-off power was interrupted,

whereas for a similar period one year earlier, minorities accounted for 35 percent of the professional new hires at the T.

During the first quarter of 1981 the MBTA laid off almost 300 employees in an effort to stay within its budget authorization for the year. Of the 293 employees laid off, 201 (or 69 percent) were white and 92 (or 31 percent) were minorities.<sup>54</sup> The MBTA work force at the beginning of 1981 was 14 percent minority and 86 percent white. There were 58 females among those laid off, which is 20 percent of the layoffs.<sup>55</sup> However, at this time females constituted only 7 percent of the T's work force. Thus, these layoffs affected minorities and female workers at the T in disproportion to their representation in the work force.

## F. Statistical Data

TABLE 1  
BOSTON AND BOSTON SMSA LABOR FORCE, AND THE MBTA WORK FORCE

		TOTAL			WHITE			ALL MINORITIES			HISPANIC			BLACK			OTHER MINORITIES			
		Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	
BOSTON SMSA LABOR FORCE 1979		No.	1,406,200	734,680	671,520	1,308,520	689,340	619,180	121,050	58,300	62,750	23,370	12,960	10,410	83,480	38,700	44,780	14,200	6640	7560
		%	100.0%	52.2	47.8	93.1	49.0	44.0	8.6	4.1	4.5	1.7	0.9	0.7	5.9	2.8	3.2	1.0	0.5	0.5
CITY OF BOSTON LABOR FORCE 1979		No.	319,040	149,670	169,370	238,620	112,140	126,480	92,630	43,900	48,730	12,210	6370	5,840	72,750	33,610	39,140	7670	3920	3750
		%	100.0%	46.9	53.1	74.8	35.2	39.6	29.0	13.7	15.3	3.8	2.0	1.8	22.8	10.5	12.3	2.4	1.2	1.2
MBTA INDEX OF POPULATION DISTRIBUTION %			52.0%	48.0		42.0	40.0		10.0	8.0										
BOSTON WORK FORCE October 31, 1977		No.	6195	5933	262	5698	5474	224	497	459	38	22	20	2	469	434	35	6	5	1
		%	100.0%	95.8	4.2	92.0	88.4	3.6	8.0	7.4	0.6	0.3	0.3	0.03	7.6	7.0	0.6	.1	.1	0
BOSTON WORK FORCE December 31, 1979		No.	6629	6196	433	5806	5479	327	823	717	106	31	28	3	762	666	96	30	23	7
		%	100.0%	93.5	6.5	87.5	82.7	4.9	12.4	10.8	1.6	0.5	0.4	.05	11.5	10.0	1.5	0.5	0.4	0.1
BOSTON WORK FORCE December 31, 1980		No.	6710	6214	496	5786	5425	361	924	789	135	34	31	3	860	737	123	30	21	9
		%	100.0%	92.6	7.4	86.2	80.8	5.4	13.8	11.8	2.0	0.5	0.45	0.05	12.8	11.0	1.8	0.5	0.35	0.15

Source: Massachusetts Division of Employment Security, Labor Market Information for Affirmative Action Programs, Boston SMSA, 1980, p.5; Commonwealth of Massachusetts, Division of Employment Security, "Labor Market Information for Affirmative Action Plans, City of Boston," 1980; Massachusetts Bay Transportation Authority, Office of Affirmative Action and Equal Employment Opportunity, Progress Report: 1979, Table 7, Progress Report: 1975-1977, and "Affirmative Action Quarterly Report," for periods ending December 31, 1979, and December 31, 1980.

(Revised May 18, 1981)

TABLE 2

## MBTA WORK FORCE AND HIRING GOALS

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OCCUPATIONAL CATEGORY		WORK FORCE October 31, 1977				HIRING GOALS FOR December 31, 1979				ACTUAL WORK FORCE December 31, 1979				ACTUAL WORK FORCE December 31, 1980				PERCENT DEVIATION FROM 1979 HIRING GOALS* December 31, 1979			PERCENT DEVIATION FROM 1979 HIRING GOALS** December 31, 1980		
		Total	White Males	Minority Males	All Women	Total	White Males	Minority Males	All Women	Total	White Males	Minority Males	All Women	Total	White Males	Minority Males	All Women	White Males	Minority Males	All Women	White Males	Minority Males	All Femal
I. PROFESSIONAL TECHNICAL	No.	710	637	36	37	956	764	96	96	956	813	71	72	1,017	848	73	96	6.4%	-26.0%	-25.0%	4.3%	-28.4%	- 5.
	%	100.0%	89.7	5.1	5.2	100.0	80.0	10.0	10.0	100.0	85.0	7.4	7.6	100.0	83.4	7.1	9.5						
II. CLERICAL	No.	398	210	1	187	438	197	19	222	438	215	3	220	378	171	4	203	9.1%	-78.9%	- .9%	0.6%	-76.5%	6.
	%	100.0%	52.8	0.3	47.0	100.0	45.0	4.4	50.6	100.0	49.1	0.7	50.2	100.0	45.2	1.1	53.7						
III. SKILLED CRAFTS	No.	1,501	1,475	25	1	1,669	1,541	105	23	1,669	1,593	75	1	1,721	1,634	85	2	3.4%	-28.6%	-95.7%	4.9%	-19.8%	-90.5
	%	100.0%	98.3	1.7	0.1	100.0	92.3	6.3	1.4	100.0	95.4	4.5	0.1	100.0	95.0	4.9	0.1						
IV. SERVICE MAINTENANCE	No.	3,586	3,152	397	37	3,566	2,970	428	168	3,566	2,858	568	140	3,594	2,772	629	193	- 3.8%	32.8%	-14.6%	- 7.4%	45.9%	14.7
	%	100.0%	87.9	11.1	1.0	100.0	83.3	12.0	4.7	100.0	80.2	15.9	3.9	100.0	77.1	17.5	5.4						
TOTAL ALL CATEGORIES																							
No.		6,195	5,474	459	262	6,629	5,472	648	509	6,629	5,479	717	433	6,710	5,425	791	494						
%		100.0%	88.4	7.4	4.2	100.0	82.5	9.8	7.7	100.0	81.8	10.8	7.4	100.0	80.8	11.8	7.4	.1%	10.6%	-14.9%	- 2.0%	20.2%	- 4.7

Source: Information provided by Massachusetts Bay Transportation Authority, Office of Affirmative Action

\*Deviation above or below 100%; 100% is full attainment of hiring goal.

\*\*These are the same 1979 goals listed in the third column, only adjusted to 1980 employment figures.

TABLE 3  
MBTA NEW HIRES BY OCCUPATIONAL CATEGORY  
1979

CATEGORY	ALL NEW HIRES			WHITE			ALL MINORITIES			HISPANIC			BLACK			OTHER MINORITIES		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
<b>Non-Lottery Positions</b>																		
I. Administrative	No.	99	88	11	91	81	10	8	7	1	0	0	0	6	6	0	2	1
Professional		100.0%	88.9	11.1	91.9	81.8	10.1	8.1	7.1	1.0	0	0	0	6.1	6.1	0	2.0	1.0
Technical	%																	
Para-Professional																		
II. Office Clerical	No.	43	15	28	40	14	26	3	1	2	0	0	0	3	1	2	0	0
		100.0%	34.9	65.1	83.1	32.6	60.5	6.9	2.3	4.6	0	0	0	6.9	2.3	4.6	0	0
III. Skilled Craft	No.	131	130	1	111	110	1	20	20	0	1	1	0	13	13	0	6	6
		100.0%	99.2	0.8	84.7	83.9	0.8	15.3	15.3	0	0.8	0.8	0	9.9	9.9	0	4.6	4.6
Non-Lottery Positions Sub-Totals	No.	273	233	40	242	205	37	31	28	3	1	1	0	22	20	2	8	7
		100.0%	85.3	14.7	88.7	75.1	13.6	11.3	10.3	1.1	0.4	0.4	0	8.0	7.3	0.7	2.9	2.6
Lottery Positions	No.	233	188	45	132	104	28	101	84	17	2	2	0	99	82	17	0	0
IV. Service Maintenance		100.0%	80.7	19.3	56.7	44.7	12.0	43.6	36.0	7.3	0.8	0.8	0	42.5	35.2	7.3	0	0
Total All Positions	No.	506	421	85	374	309	65	132	112	20	3	3	0	121	102	19	8	7
		100.0%	83.2	16.8	73.9	61.6	12.8	26.1	22.1	4.0	0.6	0.6	0	23.9	20.2	3.7	1.6	1.4

Source: Office of Affirmative Action and Equal Employment Opportunity, Massachusetts Bay Transportation Authority, Progress Report - 1979, Table 5a. (Revised May 18, 1981)

**TABLE 4**  
**MBTA NEW HIRES BY OCCUPATIONAL CATEGORY**  
**1980**

Occupational Categories	ALL NEW HIRES			WHITE			ALL MINORITIES			HISPANIC			BLACK			OTHER MINORITIES		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
<b>Non-Lottery Positions</b>																		
I. Administrative Professional	No. 35	29	6	28	25	3	7	4	3	1	1	0	6	3	3	0	0	0
Technical	% 100.0%	82.9	17.1	80.0	71.4	8.6	20.0	14.8	11.1	2.8	2.8	0	17.2	8.6	8.6	0	0	0
Para-Professional																		
II. Office Clerical	No. 17	2	15	10	2	8	7	0	7	0	0	0	6	0	6	1	0	1
	% 100.0%	11.8	88.2	58.8	11.8	47.0	41.2	0	41.2	0	0	0	35.3	0	35.3	5.9	0	5.9
III. Skilled Craft	No. 174	173	1	157	157	0	17	16	1	1	1	0	15	14	1	1	1	0
	% 100.0%	99.4	0.6	90.2	90.2	0	9.8	9.2	0.6	0.6	0.6	0	8.6	8.0	0.6	0.6	0.6	0
<b>Non-Lottery Position Sub-Totals</b>																		
	No. 226	204	22	195	184	11	31	20	11	2	2	0	27	17	10	2	1	1
	% 100.0%	90.3	9.7	86.3	81.4	4.9	13.7	8.8	4.9	0.9	0.9	0	11.9	7.5	4.4	0.9	0.45	0.45
<b>Lottery Positions</b>																		
IV. Service Maintenance	No. 365	302	63	247	205	42	118	97	21	6	5	1	110	90	20	2	2	0
	% 100.0%	82.7	17.3	67.7	56.2	11.5	32.3	26.6	5.8	1.6	1.4	0.3	30.1	24.6	5.5	0.5	0.5	0
Total All Positions	No. 591	506	85	442	389	53	149	117	32	8	7	1	137	107	30	4	3	1
	% 100.0%	85.6	14.4	74.7	65.8	8.9	25.2	19.8	5.4	1.4	1.2	0.2	23.2	18.1	5.1	0.7	0.5	0.2

Source: Information received from John Carney, Recruitment Coordinator, Massachusetts Bay Transportation Authority, in a telephone interview, February 26, 1981. (Revised May 18, 1981)

TABLE 5  
MBTA NEW HIRES BY MINORITY AND SEX CATEGORIES  
1977 - 1980

		ALL NEW HIRES			WHITE			ALL MINORITIES			HISPANIC			BLACK			OTHER MINORITIE		
		Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
1977	No.	398	322	76	275	226	49	123	96	27	12	11	1	106	81	25	5	4	1
	%	100.0%	80.9	19.1	69.1	57.0	12.0	30.9	24.1	6.8	3.0	2.8	0.3	26.6	20.0	6.0	1.3	1.0	0.
1978	No.	816	675	141	540	456	84	276	219	57	10	9	1	249	198	51	17	12	
	%	100.0%	82.7	17.3	66.2	59.9	10.3	33.8	26.8	7.0	1.2	1.1	0.1	30.5	24.3	6.2	2.1	1.5	0
1979	No.	506	421	85	374	309	65	132	112	20	3	3	0	121	102	19	8	7	
	%	100.0%	83.2	16.8	73.9	61.1	12.8	26.1	22.1	4.0	.6	.6	0	23.9	20.2	3.7	1.6	1.4	
1980	No.	591	506	85	442	389	53	149	117	32	8	7	1	137	107	30	4	3	1
	%	100.0%	85.6	14.4	74.7	65.8	8.9	25.2	19.8	5.4	1.4	1.2	0.2	23.2	18.1	5.1	0.7	0.5	0

Source: Massachusetts Bay Transportation Authority, Office of Affirmative Action and Equal Employment Opportunity, Progress Report: 1979, Tables 5, 5a and 6. (Revised May 18, 1981)

Footnotes -- Chapter 3

1. Massachusetts League of Women Voters, Massachusetts State Government (Cambridge, Mass.: Harvard University Press, 1970), pp. 269-72.
2. Massachusetts Bay Transportation Authority, 1979 Annual Report, p. 5.
3. Ch. 581, 1980 Mass. Acts.
4. Local 589 of the Amalgamated Transit Union.
5. Boston Globe, "Spotlight Series on the MBTA," December 16, 1979.
6. Transcript, p. 508.
7. Boston Globe, "Spotlight Series on the MBTA," December 17, 1979.
8. MBTA, 1980 Annual Report, p. 2.
9. Ibid., p. 25.
10. Ibid., p. 15.
11. MBTA, 1979 Annual Report, p. 51.
12. Urban Mass Transit Act of 1964, 49 U.S.C. s.1604(e) (1976).
13. MBTA, 1980 Annual Report, pp. 14-15.
14. Leon A. Brathwaite, Chairman, Massachusetts Commission Against Discrimination, letter to Jacob Schlitt, Director, New England Regional Office, U.S. Commission on Civil Rights, May 15, 1981 (hereafter cited as Brathwaite Letter). At the factfinding meeting, Brathwaite represented the State Office of Affirmative Action, which he directed at the time.
15. Ibid.



16. Thomas I. Atkins, President, Boston Branch, NAACP, letter to Robert R. Kiley, Chairman, MBTA, September 30, 1975.
17. Brathwaite Letter.
18. Alan Dobson, Director of Equal Employment Opportunity/Affirmative Action, MBTA, Staff Interview, Boston, Massachusetts, March 7, 1980.
19. Alan Dobson, Transcript, pp. 500-1.
20. Alan Dobson, Telephone Interview, July 28, 1981.
21. Alan Dobson, Telephone Interview, February 1981.
22. Brathwaite Letter.
23. Harold B. Williams, Director, Office of Civil Rights, UMTA, Telephone Interview, November 18, 1980.
24. Ibid.
25. Harold B. Williams, Telephone Interview, March 15, 1980.
26. Transcript, p. 501. Williams promised to make the findings of the compliance review available to the Massachusetts Advisory Committee as soon as they are available. As of this writing the Advisory Committee has received no word from UMTA on the results of its compliance review of the MBTA.
27. Leon Brathwaite, Transcript p. 140.
28. Ibid., p. 139.
29. Ibid., p. 135.
30. Brathwaite Letter.

31. Alan Dobson, Staff Interview, Boston, Massachusetts, March 7, 1980.
32. With one exception, all of the 79 municipalities in the MBTA district are included in the 92 municipalities comprising the Boston SMSA. The exception is the town of Maynard, which is included in the MBTA district but is not in the Boston SMSA.
33. As explained in the MBTA's affirmative action plan, this index is based upon a weighted combination of two population figures -- the Boston SMSA population minus that of the city of Boston, and that of the city's population itself. Weighting of these two populations separately (.58 for the SMSA less Boston, and .42 for the Boston population alone) creates an index which gives the city's population greater consideration than its population would warrant as a simple percentage of the SMSA as a whole. This adjustment compensates for a disproportionately high concentration of the T's services and annual assessments in the city of Boston as compared to the other towns in the district. The figures of 42 and 58 percent reflect the city of Boston's assessment for 42 percent of the T's net annual operating deficit, while the other 78 cities and towns in the district pay the remaining 58 percent of the operating deficit.
34. MBTA, Affirmative Action Plan, pp. 22 ff.
35. Ibid., p. 12.
36. Ibid., pp. 10-22.
37. Ibid., p. 21.
38. John Carney, Recruitment Coordinator, MBTA, Telephone Interview, March 3, 1981.
39. Alan Dobson, Staff Interview, Boston, Massachusetts, March 7, 1980.
40. Paul Murphy, Director of Labor Relations, MBTA, Transcript, pp. 504-05.

41. Ibid., 504-05.
42. Ibid., p. 507.
43. Arrington v. MBTA, 306 F. Supp. 1355 (D. Mass. 1969).
44. Joan Kapolchok, Senior Recruitment Administrator, MBTA, Telephone Interview, March 19, 1980.
45. Ibid.
46. Joan Kalpolchok, Telephone Interview, December 2, 1980.
47. Ibid.
48. Alan Dobson, letter to Jacob Schlitt, Director, New England Regional Office, U.S. Commission on Civil Rights, June 11, 1981. According to Dobson, of the 2,100 names drawn in the lottery, 1,761 persons actually took the examination: 608 white males, 603 minority males, and 550 females. Of these, 240 white males, 267 minority males, and 425 females passed the exam.
49. Ibid.
50. Ibid.
51. Affirmative Action Plan, p. 36.
52. Alan Dobson, Transcript, p. 515.
53. Boston Globe, December 14, 1979.
54. John Carney, letter to Mary Lee Walsh, New England Regional Office, U.S. Commission on Civil Rights, May 18, 1981.
55. Ibid.

## Chapter 4

FINDINGS AND RECOMMENTATIONS

After examining the status of minorities and women at the MBTA, the authority's affirmative action activities and the State and Federal enforcement efforts, the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights offers the following findings and recommendations. These findings are the conclusions reached by the Committee after evaluating the information collected. The recommendations constitute the Committee's opinions of steps which could be taken to improve the effectiveness of affirmative action at the T and of the compliance efforts of UMTA and SOAA.

A. FindingsUMTA

UMTA has taken an inordinately long period of time to complete its civil rights compliance review of the MBTA. Its failure to provide information on the findings of its review contributes to the continuation of present practices that may be deficient and creates doubts about the Federal affirmative action review process.

SOAA

SOAA has concentrated its efforts on getting State agencies to develop affirmative action plans, but it does not have a procedure to review the progress State agencies are making in complying with these plans.

MBTA

1. The hiring goals for minority males in the MBTA's affirmative action

plan seem reasonable in comparison with the labor force statistics for this category within the relevant recruitment areas, but seem quite low for women.

2. Hiring goals are established in only two categories: "minority males" and "females."

3. Hispanic, Asian, and Native American persons, both male and female, are significantly underrepresented in the MBTA's work force in comparison to their numbers in the relevant labor forces.

4. Because of the failure of UMTA and SOAA to act upon the MBTA's revised affirmative action plan submitted for approval in November 1979, the T continues to operate under an outdated affirmative action plan with goals that were set for the end of 1979.

5. Despite some progress in increasing the percentages of minorities and females in the T's work force over the last five years, the percentage of white males in the T's work force continues to be significantly higher than their proportion in the relevant labor force.

6. Women of all racial/ethnic groups remained severely underrepresented in all employment categories at the T except clerical. There are almost no females among skilled craft employees.

7. While by December 1980 the proportion of black males employed overall by the T approximated their representation in relevant labor markets, black females continued to be severely underrepresented in all occupational categories.

8. Minority males employed by the T are mainly concentrated in the service/maintenance category, where jobs covered by the lottery are placed. In other job categories they are severely underrepresented. Affirmative action plan goals to correct this were not met in 1979, nor in 1980.

9. The increased hiring rate of minorities (male and female) in the service/maintenance category accounts for most of the increase shown in the rate of minority participation in the total work force.

10. Labor agreements which restrict the skilled crafts positions to those persons referred from the union have the effect of limiting employment of minorities and females in that category.

11. Seniority-based layoffs of MBTA employees disproportionately affect women and minority employees because many of them were hired more recently than their white male counterparts.

#### B. Recommendations

1. In view of the extraordinary length of time the Urban Mass Transit Administration is taking to complete its compliance review of the MBTA and to issue its findings, the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights asks the Commission to call upon UMTA to:

- a. Release immediately its findings and recommendations relative to MBTA's civil rights compliance review;
- b. Develop an appropriate time schedule for periodic reviews of the affirmative action posture of the MBTA;
- c. Make public on a regular basis the results of these reviews so that the outreach efforts of the MBTA's affirmative action program will be more effective and the public's understanding of, and confidence in, the Federal oversight role in equal employment opportunity will be enhanced.

2. The State Office of Affirmative Action should:

- a. Establish a mechanism and timetable for review of the affirmative action efforts of the MBTA that will be coordinated with the Federal review process;

- b. Conduct such reviews and make their results public;
- c. Notify the public when an acceptable affirmative action plan has been approved;
- d. Maintain regular contact with the MBTA affirmative action officer, provide technical assistance as needed, and act as the channel for raising critical concerns (for example, the curtailment of sign-off authority on personnel actions) to higher levels, such as to the Secretary of Transportation and Construction or to the Governor;

3. The Governor of the Commonwealth, the Secretary of Transportation and Construction, and the MBTA Advisory Board should make clear that the achievement of fair and equitable hiring and personnel practices aimed at providing equal opportunity for all is an integral component of an efficient MBTA.

4. The Massachusetts Commission Against Discrimination should annually examine progress of the MBTA in meeting its State-mandated affirmative action and equal opportunity responsibilities, and make the results of the review available to the public.

5. The Board of Directors of the MBTA should issue a clear policy statement and guidelines for equal opportunity in affirmative action in the MBTA.

6. The Massachusetts Bay Transportation Authority should:

- a. Continue to utilize the ratio hiring lottery system which has proved successful in increasing minority male and female representation in its work force, and should carefully monitor the performance of the lottery;
- b. Examine the lottery hiring ratio being utilized for females to ensure that the chosen ratio will enable the MBTA to reach its hiring goals;

- c. Thoroughly review its affirmative action and personnel policies to determine the reasons for the underrepresentation of minorities and women in the professional and skilled craft categories; of minorities in the clerical category; and of females in the service/maintenance category. The MBTA should also seek to assess why it failed to meet its two-year hiring goals in these areas;
- d. Establish, in cooperation with the unions, apprenticeship and training programs to enable minorities and women to qualify for the skilled trades. The virtual absence of women and the underrepresentation of minorities in the skilled craft categories has been attributed by MBTA personnel staff to the lack of qualified individuals and the inability of the union to refer women or minorities for these positions. Minority and women's organizations involved in recruitment and training should be utilized in these efforts.



## THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, sex, age, handicap, religion, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105 (c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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