

ANNUAL REPORT OF THE  
ALASKA STATE COMMISSION FOR HUMAN RIGHTS

1981

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## HUMAN RIGHTS COMMISSION

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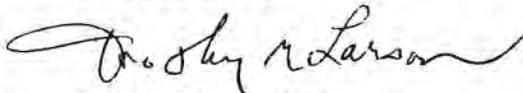
February, 1982

Dear Governor Jay Hammond,  
Members of the Alaska Legislature,  
and fellow Alaskans,

The Alaska State Commission for Human Rights is pleased to present its 1981 Annual Report. In it we summarize the civil rights issues we encountered during the year just ended.

Alaskans can be proud that their legislators and Governor support the Commission as a forum in which issues of discrimination can be resolved peacefully. We believe the present intergroup climate in Alaska is highly favorable. The issues before us are challenging, but we at the Commission are confident of our ability to face them squarely and work even-handedly toward their resolution.

Sincerely,



Dorothy Larson  
Chairperson

IN MEMORIAM  
ZELLA BOSEMAN

The Alaska State Commission for Human Rights mourns the death of a valued staff member, Zella Boseman, Assistant Director for the Southcentral Region. Ms. Boseman's death was a tragedy, not only in the circumstances which took her from us, but also in the deep sense of loss experienced by her family, her friends, and her community.

It is often difficult to believe that such a small lady could occupy such a large place in our lives. Yet, from the moment she interviewed for the job as investigator in Fairbanks in 1977 to the last day in her office, she offered warmth, compassion, dedication, perseverance, and justice with the lightest of touches. We admired her ability to make the hardest work palatable. We appreciated her ambition to take on more and more responsibility. We loved her sense of humor and she loved us back.

What she gave to co-workers and neighbors in the communities she lived in is irreplaceable. Her work with the Commission, and with groups such as the Black Caucus and Displaced Homemakers, serves as a model for tired and frustrated bureaucrats. Her individual accomplishments as a capable professional woman, as a loving single parent, as a creative businesswoman, and as a responsible community member were exemplary. That she could do all this and still have a smile and a touch for everyone would be incredible, if it hadn't been Zella.

We miss her. However, whenever the work gets too hard and things seem to be going wrong, we remember the day she danced on her desk to cheer us and then sat down and wrote up the toughest case in her workload. She is still here with us. She always will be.

Alaska State Commission  
for Human Rights

1981 Annual Report

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STATEWIDE

by  
Niel Thomas  
Executive Director

1981 was the last of my seven years with the Commission, so I will use this space briefly to comment on human rights in Alaska on a more general level than the program director reports which follow.

I first discussed with Commissioners how to implement their human rights policies late in 1974. From my experience in this field since 1968 I had come to the belief that civil rights agencies follow a predictable pattern of development. I discussed these steps with Commissioners:

Civil rights efforts by the government usually begin with a measure of skepticism as to whether it is possible to "legislate morality". The enabling legislation, when it does pass, establishes an agency like the Human Rights Commission. The agency usually begins its program with an emphasis on "social work", a term best describing an official tendency to work toward harmonious intergroup relations through methods other than cases and legal compulsion.

The second stage of agency development is "activism". Agency officials begin to conduct themselves as people do in non-governmental public interest organizations.

The first ten years of activity at the Alaska Human Rights Commission, through 1974, were characterized by social work and activism.

The current theme in human rights agencies is "enforcement". It is rooted in the understanding that the Human Rights Commission is the only entity (besides the courts) which has the power to identify and eliminate discrimination as defined by law.

To arrive at this conclusion, agency Commissioners usually first experience the limitations of social work and activism. They then come to the official conclusion that no matter how well their agency plays these roles, they will miss the point of their legislative mandate if they fail to enforce the law. As students of effective management say: "It's not just a matter of doing things right that counts; it's doing the right things".

To establish an effective enforcement program the agency must

- be competently staffed with law-oriented professionals;

- build a body of case precedent in court to ratify the agency's procedures and substantial decisions; and
- achieve a concensus of "political" support among the groups it serves, as symbolized by the legislature.

The Alaska State Commission for Human Rights can report with pride that it has taken these initial steps successfully. Its staff is experienced, well-trained and competent -- but not so smug as to fail to understand the need for continued professional growth. The courts have supported Commission decisions and procedures. Our report last year reviewed those cases in detail and included the Commission's first index to Commission and court decisions. Only the 1981 McDaniel v. Cory decision, reported elsewhere in these pages, is adverse and requires legislative attention.

Finally, the Commission has a broad base of support, if the dominant attitude in the Legislature is an indicator. The Legislature has reviewed and constructively criticized the Commission, and we have taken these recommendations to heart and made valued improvements. Equally important, the Legislature has accepted, or is actively considering, most Commission recommendations and has passed several progressive bills on its own initiative. During this same seven years the Legislature (with the Governor's support) has increased funding to a level which has led the Commission to conclude that no additional staff is required for the next budget year.

The Human Rights Commission now can credibly state that it offers a valued and necessary public service and carries out its functions fairly, forcefully and competently. Individuals who believe they have been discriminated against will continue to use the Commission. So will those seeking information on how to comply with the law. At the same time the Commission has the technical, legal and administrative capacity, competence and ability to raise and resolve issues of discrimination on its own initiative.

As we move farther into the 1980's, Alaskans can bridge even more intergroup gaps. I am honored to have been part of building the foundation for these future efforts.

## SYSTEMIC PROGRAM REPORT

by

Daveed A. Schwartz  
Assistant Director

The Systemic Unit continued work on the civil rights problems in 1981 which surfaced in 1980. No effort will be made here to repeat what appears in last year's annual report. However, two additional 1981 issues merit some discussion: (1) the importance of compliance reviews, and (2) recordkeeping requirements.

### Compliance Reviews

The Commission staff frequently negotiates legally binding contracts, or settlement agreements, with respondents (i.e. - employers, unions, government agencies, landlords, financial institutions, and others subject to the human rights law) as a way of resolving discrimination complaints. These settlement agreements contain one or more remedial provisions such as backpay, policy and procedural changes, recruitment and advertising plans, affirmative action hiring/contract goals, job offers, and/or reporting requirements.

Most settlement agreements negotiated by the Commission staff provide relief for individual complainants who receive benefits shortly after an agreement is finalized. However, settlement agreements which resolve class action complaints alleging large-scale discrimination usually obligate respondents to a series of systemwide remedial programs lasting over a period of several years. When this happens, the Commission staff must conduct indepth compliance reviews on a periodic basis to ensure that respondents are meeting their legal obligations.

Such compliance reviews are vitally important and involve a major expenditure of staff resources. They require substantial independent verification of facts through collection and analysis of large amounts of documentation as well as through interviews of respondent officials and other witnesses. In this sense, conducting a compliance review of a major Commission agreement closely resembles the comprehensive fact collection and analysis which often occurs at the investigative stage prior to the signing of a settlement agreement.

Compliance reviews of major systemic agreements have sometimes resulted in determinations of non-compliance. In such circumstances, compliance is subsequently achieved either by further conciliation efforts, by arbitration, or by enforcement in Superior Court.

The Systemic Unit is currently responsible for monitoring compliance with three major Commission agreements involving the following:

1. The requirement that one-third of all Alaska State Trooper and Fish and Wildlife Protection Officer vacancies since 1976 be filled with minorities and women (specifically including Alaska Natives and Blacks);
2. The implementation of an affirmative action plan designed to achieve specific contract dollar goals for minority business enterprise participation in contracts let by the State Department of Transportation and Public Facilities; and
3. The implementation of an affirmative action plan for employment and the payment of backpay and nominal damages to former applicants of an Anchorage employment agency on whose behalf an executive director complaint alleged were either never referred for job interviews with employer clients on the basis of their race, or were denied employment opportunities with the staff of the employment agency on the basis of race and/or sex.

#### Recordkeeping Requirements

Although the subject of recordkeeping was mentioned in the Systemic Unit section of last year's annual report, it is being addressed here in a slightly different context. During 1981, an executive director complaint raised the issue of whether Alaska's human rights laws and regulations require an employer to tabulate applicant flow data by race and sex or to arrange workforce data by organizational unit and geographical location. Employers are currently required to make and keep records relevant to the determination of discrimination complaints; (these records may include application forms, records of the race, age, and sex of applicants, position descriptions, classification studies, payroll data, personnel files, performance appraisals, etc.). The staff determined that although it may be desirable and useful for employers to compile such data in a variety of formats, employers who simply maintain relevant records in untabulated form are in compliance with existing regulations. This staff determination is to be reviewed by Commissioners in 1982 with an eye to possibly strengthening the regulations at issue.

## RURAL PROGRAM REPORT

by

Jerry L. Woods  
Assistant Director

October of 1981 signified the first anniversary of the creation of the Commission's Rural Program. In years preceding 1980, the Commission's rural activities were, for the most part, limited to serving only a few rural areas at a time due to the lack of sufficient funding. The Commission, to remedy this inequity, submitted as part of its 1979 Annual Report to the Governor and the Legislature, a recommendation that funding be approved to create such a program within the Commission in order to meet its longstanding commitment to serve rural Alaska more effectively. As a result of this legislative approval, the Commission, for the first time, included a section in its 1980 Annual Report stating the goals and objectives it intended to implement in rural Alaska in the upcoming year. The information following describes the activity and direction of the Rural Program, since its creation late in 1980.

The Rural Program, with a staff of one (1) full time program director, continues to implement a comprehensive state-wide human rights delivery system for rural Alaska in addition to providing a comprehensive program of education to rural residents concerning rights and remedies of the Human Rights Law. The Rural Program also coordinates its program with other Commission operating units, the three (3) field offices, the systemic and hearing units to ensure that the activities oriented toward investigation and resolution of discrimination complaints affecting rural Alaskans are equally addressed. Initial planning and policy recommendations concerning activities in this area require prior approval by the Executive Director with the concurrence of the Human Rights Commissioners. During the last 14 months that the program has been in existence, the program director has travelled approximately 13,957 air miles with a total of 45 travel days on 14 separate trips to 15 rural communities between October, 1980 and December, 1981. Throughout this period the program director continued to establish and maintain an open line of communication with representatives from communities throughout rural Alaska. A number of new discrimination charges, in addition to several inquiries from rural Alaska have been received as a result of the Rural Program's activity. Several major issues have surfaced to which the Commission has been asked to respond.

## Indian Preference/Native Non-Profit Issue

1. Research and identify present and past cases of discrimination currently pending before the Commission which raise a jurisdictional issue of either: A) accepting a charge by a non-Alaskan Native/American Indian applicant against an Alaskan Native Regional non-profit human services corporation or association that is currently exercising its federal civil right (section 703, subparagraph (i) of the Civil Rights Act of 1964) of giving employment preference to Alaskan Native or American Indian applicants; or B) accepting a charge against an Indian-owned Alaskan Native tribal entity, profit or non-profit, that is required by the Alaska Native Land Claims Settlement Act of 1971 to incorporate under the laws of Alaska, but may violate state anti-discrimination law by giving employment preference to either Alaska Natives or American Indians over qualified non-Native or non-Indian applicants; or C) more recently, a practice by a majority of the Native Regional Corporations, profit and non-profit alike, by going one step further beyond giving preference to Alaskan Natives by openly advertising that preference will be given to shareholders/ stockholders over Alaskan Natives or American Indians enrolled either to another village and/or regional corporation.

The rural program has spent a number of months identifying present and past cases in which some claim has been or might have been made that the Commission could not deal with an issue in which a non-Native claimed discrimination because of some employment action which favored a Native. Two types of cases create this possible problem. In the first, the organization which was the employer may be in a position to claim that it is exempt from state law because it is "non-profit" within the meaning of the AS 18.80 definition of "employer" (an issue which the Commission is dealing with by regulation). The second argument for an organization being exempt is that it is exempt because it is some kind of Federally recognized entity over which the State of Alaska does not have jurisdiction. (The Metlakatla Indian Community, a federally-recognized tribe, might be an example.)

The second type of "Indian preference" problem does not center on the status of the organization, but on an employment policy. In this type of case, the organization claims that either because of its own policies or because of some Federal regulation, it is justified or required to grant preference to an Alaska Native over a Caucasian. In this type of situation, the Commission may not have authority to question the decision if a Federal requirement actually exists. However, the mere assertion of a "Native Preference Policy" may violate State law if the organization is subject to the Commission's jurisdiction, and if no Federal authority requires such a preference.

After considerable discussion and examination of the sample cases gathered by the Rural Program, the consensus emerged that the Commission's staff should make these jurisdictional decisions on a case-by-case basis. We reached this conclusion in part on the recommendation of our Assistant Attorney General who said that Department of Law training sessions she has attended have stressed that no simple rules can be easily applied to all case situations in this extremely complicated field. We will therefore recommend that no single opinion of the Attorney General be requested. The Commission recognizes, however, that as opinions are received addressing each individual issue, a collective decision can be rendered.

Another activity of the Rural Program has been to provide technical assistance and training to Rural Alaska Employment Rights Office programs currently receiving funding under the U.S. Equal Employment Opportunity Commission (EEOC). Until recently, EEOC refused to provide such funding to Rural Alaska Native Employment Rights Office programs (similar to "lower 48" Tribal Employment Rights Office program that are operated on Indian Reservations) because of not having a land base. Federal funding, however, for Alaskan Rural Employment Rights Office programs has occurred recently due to the successful efforts of Senator Stevens. The Rural Program is expected to be concentrating most of its time during this quarter providing the necessary assistance to these programs as they materialize. Efforts are also being taken by the Commission's Rural Program to assist these organizations to obtain funding from the state for the purpose of matching federal funds that were recently cut back drastically.

The Rural Program Director and other Commission staff members participated in several meetings during this last year with the U.S. Office of the Federal Inspector and assumes that this coordinating effort will continue. The major concern that rural Alaskans have consistently raised throughout the State is that during the TAPS project, most rural residents were denied employment opportunities on the project because of the artificial barrier created by most unions. Rural Alaskans state that because these unions still refused to provide a mechanism for rural dispatching they will be denied job opportunities during the gasline project. I am presently discussing this particular problem with rural community organizations and members of ANERPC. A Commission study and possible Executive Director's charge might be the next step.

### Other Rural Community Activities

Recently, the Rural Program director was asked to complete the assignment of identifying the current number of state governmental positions within the Executive Branch that exist in Rural Communities. The Rural Program director will be coordinating with other Commission operating units, in targeting the number of rural communities that should be included in this project.

## NORTHERN REGION REPORT

by  
Cathi Carr-Lundfelt  
Assistant Director

It has been a tough year in the Northern Regional Office. There were a number of things which contributed to the problems experienced in this office. However, the two with the greatest impact were the death of a dear friend and colleague named Zella Boseman and the incredible turnover in our investigative staffing. Yet, now that we have gotten through the worst of those problems, we can say that it has been a good year for us in many ways, too.

We encounter Zella's quality as an investigator day by day in the cases she worked on while she was here. We have found that she lives on in each one of us who had the opportunity to work and laugh with her. We also know that we would not be as good at our job of enforcing discrimination law, if we had not worked with her. So, now and then, we pay quiet homage to what she was, and what she continues to be, in all of us.

We also found that we could survive as a productive investigative unit in spite of the high turnover. Although we produced fewer case resolutions than we have since this office was staffed with full-time investigators in 1975, we tackled the most difficult and complex caseload we have even been responsible for and reduced it to fewer than 80 open cases. Our dedicated senior employees, one investigator and two clerical workers made this possible and three talented temporary investigators helped make it reality. This team worked so well and so professionally together that their efforts have given us a model to strive for in the months to come.

As a result, the staff was able to substantially reduce the ratio of older cases to incoming cases. We were also able to negotiate a number of settlements and to send another group of cases to the Hearing Unit for further action. Our filing rate continued at the same level and we kept pace with the incoming cases to keep from developing a 1981 backlog.

There were things, of course, that we were unable to do. We did not eliminate the backlog, as we had wanted to do. Nor were we able to offer much in the way of public education and outreach. We eagerly took advantage of trips made by the Assistant Director for Rural Programs, however, and he assisted us in a number of investigations. We look forward to the time when our staff can afford to travel for investigative and outreach work, both in terms of time and budget.

Views on subsistence use of resources and poor economic conditions dominated the news media during 1981. Interior sportsman's groups are spear-heading the initiative to repeal the current State law protecting subsistence use of fish and game.

Although Native groups have organized politically to oppose the change, the initiative will go on the ballot during the general election.

Unemployment is still high in the region. There is, however, some evidence of increased economic activity, particularly in the oil exploration and production sector. It is not clear whether this activity will benefit women and minorities who are seeking work. Many of them dropped out of unions during this period of limited employment opportunities. In addition, reports from company officials, from news articles, and from street sources suggest that major employers are relying on a core group of former employees who are laid off and rehired as required. Reports also suggest that most of these persons being hired or rehired are traveling from other states to work in Alaska. There are rumblings of the same resident/non-resident antagonism that was present during construction of the Trans Alaska Pipeline System.

We anticipate that the subsistence issue and high local unemployment will continue to command public attention, particularly since this is an election year. We plan to make the best use of those resources available to us to work the current caseload, to respond to new constituent complaints, and to seek out and identify the problems of discrimination in the Northern Region. We had hoped to share that responsibility with the City of Fairbanks Commission on Human Rights. However, the City Commission lost its funding as of December 31, 1981. There is a committee composed of City Council representatives and of City Commission members studying the situation, but there is some question about whether the Commission will have paid staffing in the future. As a consequence, the Northern Regional staff will have to plan to handle local concerns, as well as those in the outlying areas and in Prudhoe Bay and the Naval Petroleum Reserve. It promises to be another busy year.

## SOUTHCENTRAL REGION REPORT

by  
G. V. Winslow  
Assistant Director

Approximately 1200 inquiries were directed to the Southcentral Regional office in 1981, questioning the application of the Human Rights Law to individual circumstances. The majority of the contacts were initiated by telephone, while unscheduled personal appearances and written inquiries constituted significant, but lesser, totals.

The numbers of public inquiries have declined during the last quarter of 1981, which ultimately affected the number of charges filed. There is evidence that increasing numbers of business entities and governmental agencies are contacting the Commission prospectively for interpretations of Commission statutes and to inquire about proposed changes in personnel policies and procedures. I must conclude that discriminatory activity has not declined, it has become less overt, less visible.

The Southcentral office received substantially the same number of inquiries during 1981 as were received during the calendar year 1980. The ratio of filed charges to inquiries has declined in the Southcentral offices during 1981. A statistical survey reveals that the screening procedures currently in use are, in all probability, specifically identifying only meritorious charges for processing.

The Commission's processing relationship with the Equal Employment Opportunity Commission has been affected by the closer attention to detail required for acceptance of cases submitted to EEOC. A definite trend toward earlier resolution of newly filed charges has emerged in the last quarter of 1981, due to a greater emphasis on an expanded Resolution Conference effort and use of investigator counseling methods at the time charges are filed.

The efforts of Southcentral's four (4) investigators are directed specifically toward case processing, but an appreciable amount of investigative resources is directed toward accepting and resolving new complaints.

The first quarter of 1982 will provide a significant opportunity to improve the Commission's relationship with the Anchorage Equal Rights Commission and the ability to process cases at an accelerated rate.

## SOUTHEASTERN REGION REPORT

by  
Janet L. Bradley  
Assistant Director

Case resolutions decreased during 1981 as the result of staff turnover. Assistant Director Frank A. Peratrovich who was to serve as regional manager during Janet Bradley's tour of duty with the Equal Employment Opportunity Commission (EEOC) in Washington, D.C., resigned in late July to return to Anchorage. Investigator Cara Peters was promoted to Southeastern Regional Director until Bradley resumed her regular duties on October 26. Because of other staff changes including the loss of a CETA Investigator Trainee funded by Tlingit and Haida, former EEOC Investigator Patsey Fletcher was employed on a temporary basis to improve production. Another experienced investigator, former staff member Sandra Harbanuk, rejoined the Juneau office in September. Finally in late fall with full staffing the Southeastern docket of cases began to move. Of the 51 charge resolutions for the year, 27 were produced in the last quarter.

A decline in filing of complaints is another concern for the region, probably a reflection of the sluggish economy and the lack of outreach caused by staff vacancy. With increased case resolutions, concerted efforts to reach constituent groups, and greater public visibility, it is anticipated that greater numbers of citizens needing help will again utilize the services of the Commission.

### INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENT

Designed to meet the special needs of federal, state and local governments, the Intergovernmental Personnel Act enabled the Equal Employment Opportunity Commission to contract with the Alaska Commission for the services of Southeastern Regional Director Janet Bradley for a year's assignment at EEOC Headquarters in Washington, D.C.

John E. Rayburn, Jr., Director of EEOC's State and Local Division, utilized Bradley on a number of projects where her field experience provided a special perspective beneficial to EEOC. Planning the annual National EEOC-FEPA Conference, developing principles for the implementation of contracts for processing age discrimination charges, and the final phase-in of the certification program were among the most challenging assignments. On her part, Bradley returned to the Alaska Commission with first hand knowledge of the charge resolution contracts between EEOC and the Commission as well as the new procedures affecting Alaska as a certified agency.

## HEARING UNIT

by  
William H. Jacobs  
Hearing Attorney

The status of each case in the hearing unit during the year 1981 is described at the end of this report. During this period the Commissioners have rendered seven hearing decisions. Three cases were closed and four more were remanded to field offices for further preparation prior to hearing. Two cases were settled, for a total of \$74,052.48 in damages awarded to Complainants. The total dollar amount of damages awarded Complainants in the seven cases closed by virtue of commission final orders was in the amount of \$124,838.16

A number of important legal precedents were set in the 1981 commission decisions. In Moore v. City and Borough of Juneau School District, the Commission ruled that it has the authority to award attorney's fees against the Commission and in favor of a prevailing Respondent under certain circumstances. Those circumstances would only exist if the matter had been taken to hearing on a basis which was frivolous, unreasonable, and without foundation in law or in fact.

In Orr v. Municipality of Anchorage, the Commission found unlawful discrimination and awarded damages in the amount of \$5,765.55 plus interest. It is interesting to note that the attorney's fees and costs awarded against Respondent amounted to \$13,572.38. It can fairly be said that Respondent's refusal to settle this case resulted in Respondent having to pay a total amount more than triple the Complainant's damages.

In Wallace v. Fluor Alaska, Inc. the Commission found Complainant had established a prima facie case of retaliation which Respondent failed to rebut. The Commission reaffirmed its earlier holding, pursuant to a ruling of the Alaska Supreme Court, that statistical evidence pertaining to treatment by a Respondent of members of a Complainant's class is not allowed as part of the individual's prima facie case. The Commission further held that to establish a prima facie case of retaliation, the Complainant must show that he opposed a forbidden practice; that the employer knew of this opposition; and that the discharge followed so soon after the protected activity as to suggest a retaliatory motive or that there is other evidence to suggest a relationship between the activity and the discharge. In this case, while the possible time span of approximately two weeks between protest and adverse action could technically be sufficient to meet the requirements of his prima facie case, such timing was not the basis relied upon by the Commission in finding an inference of retaliation. Instead, the Com-

mission found six other factors which, taken together, gave rise to a prima facie case of reprisal by the Respondent. The Commission further found that Respondent had failed to establish by clear and convincing evidence that Complainant's discharge was not the result, in part, of retaliation for protected activities.

In Powell v. Jack's Food Mart, the Commission reaffirmed its holding that costs and attorney's fees would only be awarded against the Commission if the complaint was brought to hearing for reasons found to be frivolous, unreasonable, or unfounded. In this case the Commission held that Complainant failed to meet her burden of proof showing her termination was a product of illegal discrimination where the evidence was equally balanced in favor of both sides to the litigation. In effect the Commission applied the same standard as used in civil litigation in the state trial courts, that the party seeking relief must show entitlement thereto by a preponderance of the evidence. Thus, where the evidence is equally balanced, a preponderance of the evidence does not exist in favor of Complainant.

In Mercer v. O'Neill Investigations, the Commission reaffirmed its earlier holdings that in order to prove a prima facie case of discriminatory lay-off and refusal to rehire the Complainant must show: that he belongs to a protected class; that he was qualified for the position in question; that despite his qualifications he was laid off and refused consideration for rehire; and that others not within the protected class were retained and hired.

In Jenkins v. Pipeliners Union 798, United Association, the Commission explicitly adopted the conclusions of law reached in the "Pipeliners" class actions to be discussed infra. Here the Commission followed the Supreme Court decision which recognizes that employment discrimination does not always follow the model delineated in McDonnell-Douglas Corporation v. Green, 411 U. S. 472 (1973). The Commission held that the critical transgression committed by Respondent was not failure to dispatch Complainant per se, but rather Respondent's unlawful discrimination occurred when it failed to provide Complainant with specific information regarding the procedures for signing up on the Tulsa out-of-work list, since that list constituted the source of many, if not most, of the Respondent's dispatches. The Commission found Respondent's rebuttal to Complainant's prima facie case was insufficient and/or pretextual and awarded Complainant damages.

In Thomas v. Pipeliners, Local 798, the Commission's rulings of law were in several areas; in the class actions the Commission ruled on Respondent's dispatching practices and practices relating to allowing individuals to obtain membership, finding Respondent had violated the anti-discrimina-

tion statute in both respects. The Commission further found unlawful discrimination with respect to the six individual named Complainants and awarded them damages. The Commission further entered an order specifying the precise parameters of the injunctive relief to be imposed upon the Union. The Commission's final order on injunctive relief requires the union in its dispatching activities to dispatch not less than 2.2% Blacks and not less than 7.6% females, with the proviso that these percentages should be altered to reflect new data from the 1980 census and/or state statistical sources once such information is available. The Commission's order further insures that women and Blacks will not be given the latest, shortest-term jobs. As to membership, the Commission recognizes it can not tell the Union precisely how it should admit new members to its ranks. The Commission did affirm its power and duty to enjoin the Union from discriminating against Blacks and women in Alaska who seek membership. The Commission's order requires the Union to take steps to insure applications for such persons are available; to declare inapplicable to such persons any recommendations, requirements or other subjective practices which serve to perpetuate the effects of past discrimination; and to require that any Black or female applicant who meets the Union's legitimate membership requirements and who applies to the Union for membership be admitted at any time that the Union is accepting new members. The Commission's order further requires the Union to preserve applications in the order received so that compliance with the Commission's order can in the future be monitored. The Commission further ordered that records identifying new members by race, sex, date of application, and date of admission have to be maintained for future inspection by any Complainant or the Commission.

The Commission's orders discussed above resulted in the following awards to Complainants:

Orr	-	\$ 5,765.55	
		13,572.38	(costs and attorney fees)
Wallace	-	20,252.69	
Jenkins	-	1,639.57	
Davenport, Jr.	-	3,227.46	
Davenport, Sr.	-	1,154.48	
Bennett	-	19,621.10	

Adams	-	36,880.52
Henderson	-	<u>22,724.41</u>
Total		\$124,838.16

In Livingway v. Alaska Airlines, Complainant alleged age discrimination by imposition of a rule excluding persons older than age 35 from employment as airline pilots. Respondent maintains that age is a bona fide occupational qualification in this particular employment. Complainant elected to accept a settlement offer of \$2,500 in light of the fact that in the past few months two different federal circuit courts of appeals have arrived at precisely opposite decisions on the question of whether age is or is not a bona fide occupational qualification for airline pilots. The Washington, D.C. circuit found that it is and the sixth federal circuit court of appeals found it is not.

In Burgo v. Fairbanks North Star Borough Transit System Complainant alleged racial discrimination in failure to hire Complainant as a busdriver. Shortly prior to public hearing the Respondent agreed to pay Complainant his full damages plus interest for a total amount of \$71,552.48.

Three cases were dismissed for administrative reasons: Respondent's discharge in bankruptcy; entry of an amended finding of no substantial evidence; filing by Complainant of a separate action in Superior Court. At the beginning of the year there were twelve cases in the hearing unit backlog. At the end of 1981 there were two cases in the backlog.

Because the hearing unit does not have sufficient staff to initiate litigation simultaneously on all cases arriving at the hearing unit, the Commissioners earlier directed that a priority system be devised to determine the timing and the order of certification of conciliation failure in each case. A rank order for certification of conciliation failure and proceeding with litigation has been determined by the relative weight for each case of the following considerations: large number of persons impacted (present and future); legal issue clarified or developed; multiple issues; repeat respondent; establish Commission presence in geographical area; establish Commission presence in major industry; serious harm to Complainant; retaliation; overt discrimination.

	DT OPENED	DT CLOSED
<u>Allen v. Laborers Union</u> Remanded for class certification by Superior Court. Hearing examiner's proposed order May 18, 1981 denying motion for certification and motion for attorney's fees. Hearing examiner determined that the statistical evidence presented did not satisfy the numerosity requirement of the administrative code. Commission decision pending.	01/24/80	
<u>Bleukens and Jordan v. Associated Green</u> Consolidated cases alleged race discrimination in terms and conditions of employment. Public hearing on June 9-13/80. Briefing completed 10/29/80. Awaiting decision by hearing commissioners.	10/26/79	
<u>Burgo v. Fairbanks North Star Borough</u> Complaint alleges failure to hire qualified black constitutes overt racial discrimination. Complainant accepted settlement of backpay - \$71,552.48.	08/80	
<u>Fitzgerald v. GVEA</u> Complaint alleges discriminatory termination based on sex. Conciliation failure 12/30/81.	12/30/81	
<u>Fortier v. Kachemak Bay Seafoods</u> Alleged sex discrimination in failure to hire/termination. Public hearing on December 18, 1980. 09/25/81 recommended decision finding discrimination received. 12/05/81 - Hearing Commissioners convened and order circulating for signature.	05/20/80	
<u>Gage v. City of Fairbanks</u> Alleged race discrimination in hiring procedures and atmosphere. Complainant personally suffered no damages. Settlement has been agreed upon in principle requiring training and policy establishing atmosphere free of bias. However, Complainant refuses to accept full relief so case will be administratively dismissed.	09/08/80	
<u>J. Jenkins v. Pipeliners Union 798</u> Alleged race and sex discrimination in failure to dispatch. Consolidated with <u>Pipeliners Union</u> case. Order finding discrimination and awarding backpay signed 11/23/81 - \$2,380.82.	05/21/80	12/21/80

<u>Johnson v. State of Alaska, Dept. of Fish &amp; Game</u> Alleged race discrimination in closure of surf fishing on Alsek River at Yakutat. Complainant class has filed action in Superior Court. Hearing reset for 4/19/82.	3/24/81	
<u>Jordan v. Alascom &amp; Teamsters</u> Complaint alleges religious discrimination because Respondent failed to accommodate Complainant's religious practices. Conciliation failure 12/30/81.	12/30/81	
<u>Kouzes v. S.O.A. - Division of Public Assistance</u> Alleged age and handicap discrimination in atmosphere and handicap discrimination in termination. Hearing held December 15-16, 1980. Hearing examiners proposed decision finding no discrimination dated August 21, 1981.	06/03/80	
<u>Livingway v. Alaska Airlines</u> Commissioners/examiners appointed - 04/30/81. Sixth Federal Circuit has found age not a BFOQ for airline pilots. Washington, D.C. Circuit has found age to be BFOQ for airline pilots. Complainant has accepted Respondent's settlement offer of \$2,500.	04/22/81	
<u>Mercer v. O'Neill Investigations</u> Alleged race discrimination in termination and failure to re-hire. Decision released 07/81.	01/03/79	07/08/81
<u>Nicholson v. O'Neill Investigations</u> Complaint alleges individual failure to hire qualified female applicant as a security guard because of her age and sex. Conciliation failure 12/30/81.	08/80	
<u>Oumak v. Universal Services, Inc.</u> Complaint alleges discriminatory failure to consider or hire based on physical handicap. Conciliation failure 12/30/81.	12/30/81	
<u>Pax v. City &amp; Borough of Juneau</u> Complaint alleges discriminatory termination of employment by reason of race and/or national origin. At the same time case arrived in hearing unit Complainant employed private counsel to file a suit in Superior Court. Case closed pursuant to 6 AAC 30.920.	07/81	08/18/81

<u>Pederson v. H. S. Earthmovers, JV</u> Complaint alleges sexual harassment and discriminatory termination. Conciliation failure 12/30/81.	12/30/81	
<u>Thomas v. Hotel, Motel, etc., Union Local 879</u> Final documents forwarded to Attorney General's office to reduce settlements and orders to judgment.	02/00/75	
<u>Thomas v. Ketchikan Gateway Borough School District</u> Examiner ordered discovery on extent and nature of class. Discovery continues.	09/23/80	
<u>Thomas v. SOA, DHSS &amp; Department of Administration</u> This case involves a sizeable number of named Complainants and may be certified a class action. Complainants are public health nurses who allege sex discrimination by reason of unequal pay for comparable work. They are nurses who allege that their work is comparable to and should be compensated equally with that of male physician's assistants. Hearing examiner appointed 07/81. Hearing is set for 07/19/82.	07/30/81	
<u>Thomas, et al. v. Pipeliners Union (race)</u> Alleged racial discrimination in failure to dispatch or allow blacks into union membership. Class action plus six individual Complainants. Recommended decision, issued April 7, 1981, Commission order 11/21/81 finding discrimination and ordering backpay and injunctive relief. Executive Director's motion to reconsider quota relief for Blacks filed 12/21/81.	09/12/78	12/21/81
<u>Thomas, et al. v. Pipeliners Union (sex)</u> Alleged sex discrimination in failure to dispatch or admit women into union membership. Class action plus three individual Complainants. Recommended decision issued April 7, 1981, in circulation to Commissioners. Commission order 11/21/81 finding discrimination and ordering injunctive relief	09/12/78	12/21/81
<u>Vaughn v. University of Alaska - Anchorage</u> Alleged age discrimination in termination. Settlement signed and implemented. Case closed September 30, 1981.	05/20/80	09/30/81

DT OPENED DT CLOSED

Wallace v. Fluor

Complaint alleges National Origin discrimination in termination.

Commission decision for Complainant 3/24/81.  
\$20,252.69.

9/20/79

3/24/81

Willets v. Fluor Alaska

Complaint alleges sexual harassment, discriminatory lay-off and retaliation. Conciliation failure 12/30/81.

08/81

## ANNUAL LITIGATION REPORT

### Summary and Update

#### SUPREME COURT, Decided

City of Fairbanks Police Department v. Presley & Alaska State Commission for Human Rights (ASCHR): Court affirmed ASCHR's decision that the employer's subjective oral interview had a discriminatory impact on female applicants for patrol officer. Individual complainant awarded \$74,000 in back pay and interest.

McDaniel v. Cory: The court held that the ASCHR lacks the statutory authority to award compensatory or punitive damages to victims of discrimination.

#### SUPREME COURT, Pending

ASCHR v. Petersburg Public School District: Whether the unequal application of the employer's subjective hiring standards raised an inference of sex discrimination. Submitted for decision on 10/81.

Alaska U.S.A. Federal Credit Union v. ASCHR: Whether the employer's reasons for not promoting complainant were mere pretexts for discrimination where the same standards were not applied to its male employees. Submitted for decision on 11/80.

Borkowski v. Snowden, ASCHR Chairperson: Whether a dissatisfied complainant may appeal ASCHR's dismissal of her complaint where there was insufficient evidence to show she was a victim of discrimination. Notice of Appeal filed 1/82.

United States Jaycees v. Richardet: Whether the Alaska public accommodations statute prohibits a public nonprofit organization offering the opportunity for individual growth to discriminate in the sale of its membership services. Amicus brief filed 1/82.

#### SUPERIOR COURT, Appeals

Fluor v. ASCHR & Wallace: Whether complainant's discharge was in retaliation for his informal opposition to the employer's alleged discriminatory practices and whether the employer's stated reasons for the discharge are mere pretexts for retaliation. Oral argument scheduled for 3/82.

Orr v. ASCHR & Municipality of Anchorage: Whether there was substantial evidence to support the ASCHR's order dismissing Orr's discrimination complaint and whether the ASCHR abused its discretion in awarding attorney's fees and costs.

#### SUPERIOR COURT, Civil

Adams & Associates v. ASCHR: Suit for injunctive relief against ASCHR's investigation and conciliation process. The court held that the employer was not entitled to ASCHR's

confidential files. The case was returned to ASCHR where the parties voluntarily conciliated.

ASCHR v. Fairbanks Police Department: Injunctive relief for failure to comply with ASCHR order to hire qualified females as patrol officers. The parties settled amicably and immediate vacancies were filled by females.

ASCHR v. Municipality of Anchorage: Contempt action for failure to comply with ASCHR's request for production of applications submitted by successful job applicants. The parties settled amicably and the employer agreed to provide comparative hiring information on all future complaints against the employer.

Thomas v. Anchorage Telephone Utility: Whether an indemnification contract excusing an employer from intentional discriminatory conduct violates the public policy of A.S. 18.80 that employment discrimination be eradicated. Amicus brief filed 12/81.

Yellow Cab v. ASCHR: Execution on Yellow Cab for \$5,200 in attorney's fees.

#### FEDERAL COURT

In re New England Fish Co., Bankrupt: Claim for back pay owed to females paid less than males disallowed. The bankrupt's assets are so inadequate that the ASCHR cannot economically litigate this case in the State of Washington where the bankruptcy proceedings are being conducted.

#### OTHER

The Commission has monitored the progress of twelve civil actions being litigated by private counsel pursuant to A.S. 18.80 et seq. In one of those cases, Thomas v. ATU, supra, the ASCHR has filed an amicus brief to assist the court in deciding a human rights issue of major impact.

STATE EQUAL EMPLOYMENT OPPORTUNITY PROGRESS REPORT

by  
Daveed A. Schwartz  
Assistant Director

A law passed during the 1978 Legislative session requires the Human Rights Commission to:

make an overall assessment, at least once every three years, of the progress made toward equal employment opportunity by every department of State government. Results of the assessment shall be included in the annual report made under Section 150 of this chapter. [A.S. 18.80.060(a)(6)]

This report is the Commission's second EEO progress assessment written pursuant to the above statute, the first one having been published in the Commission's 1979 Annual Report.

I. General Statistics by Race and Sex

The statistics in this report span a three-year period, from December 31, 1978 through December 31, 1981. They are arranged according to four general formats: 1) Overall Percentages, 2) Salary Range Groupings, 3) EEO - 4 Categories, and 4) Departmental Percentages.

Examined together, these formats provide an overall indication of the state's EEO profile and allow for some general conclusions concerning the location and distribution of state employees by race and sex over a period of time.

A. Overall Percentages

The statistics in this section examine overall minority and female employment levels for the executive branch of state government at various points in time from December 31, 1978 through December 31, 1981. The executive branch accounts for approximately 90% of all state employees, the remaining 10% being located in the court system and the legislature. The following groups of personnel are included in the executive branch statistics: Ranges 5-30 (regular salary structure), Ranges 50-60 (Labor, Trades and Crafts), Ranges 70-80 (Alaska State Troopers), Range 90 (Shipboard Personnel of Marine Highway System), and Range 98 (exempt and/or elected persons not in the salary structure). The term "minority" is defined by the federal Uniform Guidelines on Employee Selection Procedures at 29 CFR 1607 as including these four standard race/ethnic categories: Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native.

TABLE I.

Overall Minority and Female Percentage Comparison:  
December 31, 1978 - December 31, 1981

<u>Date</u>	<u>Minority Employees</u>	<u>Female Employees</u>	<u>Total Employees</u>
December 31, 1978 <sup>(a)</sup>	909 (9.28%)	4220 (43.08%)	9,795
December 31, 1979 <sup>(b)</sup>	877 (8.91%)	4220 (42.90%)	9,836
December 31, 1980 <sup>(c)</sup>	962 (9.12%)	4568 (43.35%)	10,537
December 31, 1981 <sup>(d)</sup>	1,079 (9.37%)	5017 (43.58%)	11,511

Sources of Raw Data for Table I.

- (a) State EEO Division Printout R01-AEO-3605, 12/31/78  
 (b) State EEO Division Printout R01-AEO-3605, 12/31/79  
 (c) State EEO Division Printout AEO-3600-R02, 12/31/80  
 (d) State EEO Division Printout AEO-3600-R02, 12/31/81

Note: The "Total Employees" column includes statistics from the "unknown race" category contained in raw data sources (a) through (d).

Table I reflects a relatively constant overall minority percentage for the executive branch between December 1978 and December 1981. There are no marked increases or decreases in minority and female employment levels during this period.

TABLE II.

Comparison of Overall Percentages by Individual Minority Group  
December 31, 1978 - December 31, 1981

<u>Date</u>	<u>Alaska Native Employees</u>	<u>Black Employees</u>	<u>Hispanic Employees</u>	<u>Asian Employees</u>	<u>Total Employees</u>
12/31/78	490 (5.00%)	218 (2.22%)	90 (.91%)	111 (1.13%)	9,795
12/31/79	462 (4.69%)	207 (2.10%)	84 (.85%)	124 (1.26%)	9,836
12/31/80	505 (4.79%)	210 (1.99%)	92 (.87%)	155 (1.47%)	10,537
12/31/81	539 (4.68%)	252 (2.18%)	103 (.89%)	185 (1.60%)	11,511

Note: Raw data sources are identical to those listed in Table I.

Table II reflects a slight decline in the overall percentage of Natives, Blacks, and Hispanics in December 1981 as compared with the overall percentage for these three groups in December 1978. However, a comparison of the December 1978 percentages with the December 1981 percentages for Asians reveals a slight increase in the overall percentage for this minority group.

#### B. Salary Range Groupings

Data regarding the distribution of state employees by race, sex, and salary range are one valid indicator of EEO progress. Such data provide a very general indication of (1) the salary levels at which minority and female state employees tend to be compensated, and (2) the internal availability of minorities and women for promotional purposes. Tables III and IV contain statistics for workers employed in Ranges 5-30; (this group represents about 75% of all executive branch employees). Table III shows the percentage of minorities employed in various salary range groupings. Table IV shows overall female percentages in Ranges 5-30 as well as the percentages of females employed in various salary range groupings.

TABLE III.

#### Comparison of Minority Percentages by Salary Group (Ranges 5-30 of Executive Branch)

Date	All Ranges	Range 20 and above	Ranges 15-19	Ranges 12-14	Range 11 and below
12/79 <sup>(a)</sup>	8.48%	3.22%	5.40%	8.44%	13.42%
12/81 <sup>(b)</sup>	8.67%	3.29%	6.12%	9.44%	12.99%

(a) Data Source: State EEO Division Printout R01-02W-3700, 01/08/80

(b) Data Source: State EEO Division Printout R01-02W-3700, 12/31/81

Table III reflects that minority employees tend to be represented at a greater percentage in the lower salary ranges. Minority employees have registered slight gains in the higher salary range groupings for December 1981 as compared with December 1979.

TABLE IV.  
Comparison of Female Percentages by Salary Group  
(Ranges 5-30 of Executive Branch)

Date	All Ranges	Range 20 and above	Ranges 15-19	Ranges 12-14	Range 11 and below
12/79 <sup>(a)</sup>	52.20%	15.14%	30.99%	58.10%	83.22%
12/81 <sup>(b)</sup>	51.84%	16.70%	34.46%	55.21%	81.98%

- (a) Data Source: State EEO Division Printout R01-02W-3700, 01/08/80  
 (b) Data Source: State EEO Division Printout R01-02W-3700, 12/31/81

Table IV reflects heavy female representation in the lower salary ranges. There has been a 1.56% increase in female participation in salary ranges 20 and above for December 1981 as compared with December 1979, and a 3.47% increase in salary ranges 15-19 for the same period.

#### C. EEO-4 Categories

The federal government requires state and local governments to report annually on the racial and sexual composition of their workforce according to eight generic job categories known as EEO-4 categories. State and local governments are given a certain amount of flexibility in assigning individual job classifications to specific EEO-4 categories. Appendix A compares year-end minority employment levels in each of the eight EEO-4 categories from 1978 through 1981; Appendix B does the same for female employment levels.

One aspect of data arranged by EEO-4 category bears repeating: such data are very general in nature. As a result, so are the conclusions that are to be drawn from such data. Each EEO-4 category combines statistical data from numerous and varied job classifications. Job classifications which are similar in terms of such factors as job content, level of compensation, degree of responsibility, and general level of knowledge, skill and ability are combined to form what are referred to as "job groups". There are approximately 1,300 job classifications in the executive branch workforce, grouped into two or three hundred job groups. In order to meaningfully identify specific strengths and weaknesses in the state's minority and female employment levels, it is necessary to conduct a more detailed analysis of the racial and sexual composition of the many job groups within each EEO-4 category, and further to compare those figures with the availability of minorities and women for such job groups. The subject of availability is discussed in detail in section II. of this report.

In comparing the December 1978 figures contained in Appendix A with the December 1981 figures in the same chart, one observes relatively minor statistical increases and decreases in minority employment levels among each of the eight EEO-4 categories. A similar pattern holds true for female employment levels as reported in Appendix B, with the notable exception of the officials/administrators category in which females experienced a 6.5% increase between December 1978 and December 1981.

#### D. Departmental Percentages

The pattern of minority employment levels by department for four different points in time between December 31, 1978 and December 31, 1981 is displayed in Appendix C. The 15 state departments in Appendix C are ranked according to overall minority percentage as of December 1981 from highest to lowest.

The most improvement in overall minority percentage between December 1978 and December 1981 was observed in the Department of Community and Regional Affairs which increased its level of minority employment from 14.19% to 24.13%, an increase of 9.94%. During the same time frame, improvement also occurred in the Department of Military Affairs (a 3.78% increase), the Office of the Governor (a 3.05% increase) and the Department of Law (a 2.13% increase). Eight other departments experienced marginal increases over the same time period.

Minority percentages declined over the three year period in the Department of Labor (a 1.93% decrease), the Department of Administration (a 1.45% decrease) and the Department of Environmental Conservation (a .87% decrease). Five of the 15 departments employed minorities at a double-digit percentage as of December 31, 1981.

## II. Availability of Minorities and Women for State Jobs

Is the state employing sufficient numbers of minorities and women in relation to their availability in the Alaskan workforce? There is no definitive answer at present to this crucial and complex question. Availability will vary from one job group to the next. One must know for each of the state's two to three hundred job groups within the executive branch of state government the racial and sexual composition of the pool of the available workers who meet valid job qualifications. The Division of EEO is currently developing and refining a procedure to make such determinations.

In recent years, the state has engaged in an on-going process of refining its assessment of the availability of minorities and women for state jobs. In 1979, the state set overall goals for minority and female employment based initially on general labor force participation rates, and then on general working age population figures. In 1980 and 1981, the state set availability levels based on 1970 census working age population figures for each EEO-4 category.

The state has announced that 1982 departmental affirmative action plans will employ a "factor analysis" method of computing utilization standards for minorities and women by job group. This method is similar in some respects to the eight factors which the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) requires federal contractors, except state and local governments, to consider when determining availability levels for minority and female employment. Each department will be responsible for determining availability percentages for its own job groups.

The success or failure of this "factor analysis" method will depend on the relative weight assigned within each job group to the various factors. Availability computations which rely too heavily on existing employment patterns of government and private enterprise employers and/or detail census occupational data will tend to perpetuate past inequities and therefore greatly hinder EEO progress. This is true because, in general, minorities and women have historically been unfairly excluded and/or restricted from jobs involving higher pay and responsibility. OFCCP's experience with federal contractors over the years has shown that minorities and women are most likely to be underutilized in such general job categories as officials and managers, professionals, and technicians. In addition, women are most likely to be underutilized in skilled and semi-skilled craft jobs. Careful guidance and supervision by the Division of EEO can help the state avoid the potential pitfall of placing an unwarranted amount of weight on these existing employment patterns. The 1982 departmental affirmative action plans have not yet been completed and approved by the Division of EEO as of the date of this publication; therefore, it is not possible to comment yet on the manner in which the "factor analysis" method has been used by the various departments.

### III. Non-Statistical Measures of Progress

A number of policy, recordkeeping, and procedural developments have improved the organizational structure of the state's EEO program since the Commission's 1979 Annual Report was published. On June 20, 1980, Governor Jay S.

Hammond issued Administrative Order No. 59, a detailed and comprehensive policy statement which clarified and strengthened the role of the Division of EEO in regard to the development and implementation of departmental affirmative action plans. Among other things, the Order gives the director of the Division of EEO the authority for final approval or disapproval of departmental affirmative action plans. It also requires departments to submit updated affirmative action plans to the Division of EEO on an annual basis and requires the Commissioner of each department to select an official of the department at the level of director or above to supervise the development and implementation of the departmental plan.

In July 1980, the Division of EEO issued an updated and improved set of affirmative action plan guidelines in a publication entitled, "State of Alaska Affirmative Action Workbook". This workbook served as the basis of a three-day affirmative action workshop held July 23 through July 25, 1980, and in addition to being utilized by departmental EEO staff was widely distributed to Alaska employers as requested. The Division of EEO 1981 Annual Report states that Administrative Order No. 59, the affirmative action workbook and the workshop were all instrumental in getting each department to develop comprehensive and technologically improved affirmative action plans for 1981. The affirmative action workbook was updated in January 1981 as part of the state's affirmative action plan and more substantially revised recently for dissemination to departments, and to other Alaska employers on request.

As of the end of December 1981, the Division of EEO had developed a computerized applicant flow report. It is important for the state to tabulate by race, sex, and job title the number of applicants it receives annually. This applicant flow data will enable it to identify at what stage or stages in the selection process minorities and women may be getting unfairly screened out. The state has informed the Commission that accurate application data from this applicant flow system will be available for use by executive departments in their affirmative action plans for 1983. The EEO Division is also continuing to develop new methods of collecting workforce data and labor market data. The Division of EEO has sought further funding to allow for the collection and tabulation of computerized data on employee promotions, transfers, terminations, and disciplinary actions.

In March 1981, the Governor issued a policy directing departmental hiring authorities to use a new procedure developed by the Divisions of Personnel and EEO. The purpose of this procedure is to improve the EEO profile of job classes in which it is believed that minorities and

women are being underutilized. This procedure has been referred to as the Affirmative Action Certification Procedure (AACP or "5 + 5") which allows state hiring authorities to consider the top 5 minority and female applicants in addition to the top 5 names on the computerized lists of eligible applicants whenever a vacancy occurs in a job class where underutilization exists. The hiring authorities' use of this procedure (i.e. - requesting additional names for consideration, and selecting a minority or female from among those additional names) is optional in its entirety. It is unclear as of this date how frequently the expanded certification procedure has been utilized by state hiring authorities.

#### IV. ASCHR Recommendations

The Status of Women Commission expressed its belief during testimony at the November 19, 1981 meeting of the legislative Blue Ribbon Commission on the State Personnel Act that this potentially effective affirmative action tool has not been used with meaningful frequency despite the opportunity to do so. To increase the impact of the "5 + 5" procedure on the state's EEO profile, hiring authorities should consider additional names from an expanded certification list in all cases where underutilization has been documented. Furthermore, when a minority or female applicant is not selected despite the presence of underutilization, hiring authorities should be required to provide written justification for their decision not to select a minority or female. Adoption of this recommendation would still allow hiring authorities the flexibility to select a non-minority and/or male applicant; however, a written explanation would be required to accompany such an action.

Federal affirmative action regulations administered by OFCCP strongly advise federal contractors to evaluate the work performance of company supervisors on the basis of their equal employment opportunity efforts and results, as well as on the basis of other job performance measures. The Human Rights Commission staff recommended in November 1980 that the state devise and implement specific written standards by which the EEO performance of state managers and supervisors can be meaningfully assessed in personnel evaluations, including the granting and denial of merit increases. This concept has been incorporated into the latest version of Senate Bill 248 which deals with equal employment opportunity in the executive branch of state government.

The Commission staff has made a number of other suggestions over the past two years concerning steps to improve the state's EEO program. Whether or not in direct response to those suggestions, the state has taken action in

some of these areas. The Division of EEO has informed the Commission that it is receptive to staff recommendations and has urged the Commission staff to work with the Division of EEO towards the development and implementation of such recommendations. The Division of EEO has also pointed out in this regard that it must operate under budgetary and human resource restraints.

#### V. Conclusion

In terms of statistical measures, the executive branch of state government has been unable to significantly change its profile of minority and female employment since December 1978. The state is in the process of refining even further its procedure for determining the availability of minorities and women for each of the several hundred job groups in the state workforce. Once this process of determining availability has been more fully developed, the state will be able to identify with precision and accuracy the strengths and weaknesses in the EEO profile of each division of each department within state government.

The executive branch has made significant policy, record-keeping, and procedural improvements since the Commission's first assessment. All indications are that these types of improvements will continue to be made. However, until actual availability levels have been determined, it is the Commission's recommendation that greater emphasis be placed on the use of such potentially effective affirmative action tools as the expanded certification procedure mentioned earlier in this report as well as the development of fair and reasonable standards for evaluating the work performance of the state's supervisors and managers with respect to equal employment opportunity efforts and results. Emphasis in these areas is necessary in order to ensure a properly balanced EEO profile.

APPENDIX A

Minority Percentage by EEO-4 Category: 12/31/78 - 12/31/81

	12/31/78	12/31/79	12/31/80	12/31/81
A. Officials/Administrators	4.08% (8/196)	3.52% (8/227)	3.46% (9/260)	4.05% (12/296)
B. Professionals	4.79% (160/3338)	4.64% (152/3272)	5.07% (180/3548)	5.13% (202/3934)
C. Technicians	10.08% (58/575)	10.65% (77/723)	9.52% (74/777)	10.44% (89/852)
D. Protective Services	10.01% (97/969)	8.73% (86/984)	8.95% (87/971)	9.50% (102/1073)
E. Para-Professionals	15.74% (60/381)	15.76% (58/368)	16.49% (79/479)	16.72% (91/544)
F. Office/Clerical	12.47% (299/2396)	11.49% (265/2306)	11.75% (291/2475)	11.63% (306/2630)
G. Skilled Craft	10.82% (122/1127)	10.84% (121/1116)	11.47% (132/1150)	10.92% (132/1208)
H. Service/Maintenance	16.33% (98/600)	17.75% (103/580)	17.65% (101/572)	18.44% (107/580)
* Exempt	5.55% (7/126)	4.54% (7/154)	4.45% (9/202)	12.96% (38/293)

\* Exempt - Exempt and/or elected persons not in salary structure.  
 Note: Raw data sources are identical to those listed in Table I.

APPENDIX B

Female Percentage by EEO-4 Category: 12/31/78 - 12/31/81

	12/31/78	12/31/79	12/31/80	12/31/81
A. Officials/Administrators	13.77% (27/196)	18.06% (41/227)	18.84% (49/260)	20.27% (60/296)
B. Professionals	30.55% (1020/3338)	30.01% (982/3272)	30.29% (1075/3548)	30.98% (1219/3934)
C. Technicians	47.82% (275/575)	48.82% (353/723)	47.74% (371/777)	47.30% (403/852)
D. Protective Services	18.26% (177/969)	18.59% (183/984)	17.71% (172/971)	18.17% (195/1073)
E. Para-Professionals	69.29% (264/381)	65.21% (240/368)	70.35% (337/479)	68.01% (370/544)
F. Office/Clerical	86.22% (2066/2396)	86.94% (2005/2306)	86.54% (2142/2475)	86.38% (2272/2630)
G. Skilled Craft	2.12% (24/1127)	2.59% (29/1116)	2.34% (27/1150)	2.56% (31/1208)
H. Service/Maintenance	45.50% (273/600)	45.86% (266/580)	44.40% (254/572)	48.27% (280/580)
* Exempt	41.26% (52/126)	44.15% (68/154)	45.04% (91/202)	47.78% (140/293)

\* Exempt - Exempt and/or elected persons not in salary structure.  
 Note: Raw data sources are identical to those listed in Table I.

APPENDIX C

Overall Minority Percentage Comparison by Department: 12/78 - 12/81

<u>Department</u>	<u>12/31/78</u>	<u>12/31/79</u>	<u>12/31/80</u>	<u>12/31/81</u>
1. Community and Regional Affairs	14.19% (22/155)	12.24% (18/147)	16.55% (25/151)	24.13% (49/203)
2. Military Affairs	11.95% (11/92)	12.08% (11/91)	11.57% (11/95)	15.73% (14/89)
3. Health and Social Services	14.74% (255/1729)	14.70% (255/1734)	15.33% (272/1774)	14.84% (290/1953)
4. Office of the Governor	11.17% (37/331)	12.89% (45/349)	15.02% (35/233)	14.22% (36/253)
5. Labor	13.34% (89/667)	11.96% (76/635)	11.97% (74/618)	11.41% (67/587)
6. Education	9.48% (35/369)	7.14% (27/378)	7.94% (32/403)	9.55% (41/429)
7. Administration	10.69% (74/692)	10.03% (65/648)	10.34% (77/744)	9.24% (85/919)
8. Public Safety	8.39% (66/786)	6.94% (54/777)	8.15% (64/785)	8.61% (76/882)
9. Transportation	7.94% (224/2820)	7.84% (225/2867)	8.25% (248/3005)	8.46% (261/3083)
10. Revenue	7.01% (19/271)	8.24% (24/291)	6.76% (22/325)	7.86% (25/318)
11. Commerce	6.71% (19/283)	5.82% (17/292)	6.11% (20/327)	7.69% (30/390)
12. Law	3.28% (7/213)	3.44% (7/203)	3.98% (10/251)	5.41% (15/277)
13. Natural Resources	3.75% (21/559)	3.26% (21/644)	4.18% (31/740)	5.00% (45/899)
14. Environmental Conservation	5.21% (6/115)	6.25% (7/112)	4.09% (7/171)	4.34% (9/207)
15. Fish and Game	3.36% (24/713)	3.74% (25/668)	3.72% (34/913)	3.52% (36/1022)

Note: Raw data sources are identical to those listed in Table I. Total employees by department include statistics from the "unknown race" category contained in the raw data sources. Departments are ranked according to December 1981 overall minority percentage from highest to lowest.

CASE PROCESSING STATISTICS  
1981

A. Analysis of new cases filed in 1981

RACE OF PERSONS FILING CHARGES

Race	Number	Percentage
1. Caucasian	116	50%
2. Black	49	21%
3. Alaska Native	29	12%
4. Hispanic	12	5%
5. Asian	10	4%
6. Other/Unknown	18	8%
<hr/>		
TOTAL	234	100

SEX OF PERSONS FILING CHARGES

Definitions	Amount of Cases	Percentages
1. Female	136	58%
2. Male	93	40%
3. Director's Charges and Multiple Charging Parties	5	2%
<hr/>		
TOTAL	234	100%

REASONS ALLEGED BY COMPLAINANT

Definition	Amount of Cases	Percentages
1. Race	69	30%
2. Sex	55	24%
3. Multiple Reasons	50	21%
4. Other (Religion, Pregnancy, Parenthood)	17	7%
5. National Origin	5	2%
6. Age	16	7%
7. Physical Handicap	17	7%
8. Marital Status/ Changes in Marital Status	5	2%
<hr/>		
TOTAL	234	100%

TYPE OF UNLAWFUL PRACTICE ALLEGED

	Total Number of Cases	Percent of Total Cases
1. Employment A.S. 18.80.220	217	93%
2. Government Practices A.S. 18.80.255	3	1%
3. Retaliation/Coercion A.S. 18.80.200/A.S. 18.80.260	5	2%
4. Public Accommodations A.S. 18.80.230	3	1%
5. Housing A.S. 18.80.240	5	2%
6. Finance A.S. 18.80.250	1	1%
<hr/> TOTALS		100%

B. Closing Actions

REASONS CASES WERE CLOSED  
JANUARY - DECEMBER 1981

	Number of Cases	Percentages
1. No Probable Cause	79	31%
2. Conciliation/Settlement	78	31%
3. Administrative Dismissal*	82	33%
4. Hearing Results	13	5%
<hr/> TOTALS		100%

\* Includes withdrawals, failure to complete filing process, lack of jurisdiction, untimely filings, failure of complainants to proceed, complainants not available, and complainants in court.

C. Analysis of unresolved cases as of December 31, 1981

STATUS OF UNRESOLVED CASES

Status	Number	Percentage 12/31/81	Percentage 12/31/80
1. Not Yet Assigned for Investigation	97	24%	31%
2. Under Investigation	234	58%	47%
3. Settlement/Concilia- tion Being Negotia- ted	26	7%	17%
4. Conciliation Failed/ Awaiting Hearing	30	7%	.5%
5. Appeal Pending	2	1%	.5%
6. Hearing Held/Await- ing Order	12	3%	4%
<hr/> TOTAL	401	100%	100%

Great decrease in proportion of cases unassigned since  
December 31, 1977 when this figure was 57%!

D. Age of Unresolved Cases

Filing Time Period	Total	Percent
1976-1977*	32	8%
January - June 1978	12	3%
July - December 1978	22	6%
January - June 1979	44	11%
July - December 1979	29	7%
January - June 1980	49	12%
July - December 1980	65	16%
January - June 1981	66	17%
July - December 1981	82	20%
<hr/> TOTAL	401	100%

\* Cases filed in 1977 and earlier are mostly in court or at  
hearing.

E. SUMMARY OF CASES PROCESSED BY REGION

January - December 1981

<u>Region</u>	<u>Cases Unresolved on 01/01/81</u>	<u>New Filings 1981 (1980)</u>	<u>Cases Resolved 1981 (1980)</u>	<u>Cases Unresolved on 12/31/81</u>
Southcentral	168	127 (150)	94 (171)	201
Systemic Office	3	1 ( 2)	2 ( 2)	2
Northern Office	107	60 ( 54)	89 (116)	78
Southeastern	87	43 ( 69)	51 ( 64)	79
Hearing Unit/Other	54	3 ( 3)	16 ( 25)	41
<b>TOTALS</b>	<b>419</b>	<b>234 (278)</b>	<b>252 (378)</b>	<b>401</b>

F. QUARTERLY CASE PRODUCTION ANALYSIS

1978 - 1981

