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ABSTRACT

The effects of the 1974-75 economic recession on the effort to ensure equal employment opportunity for the Nation's minority groups and women are examined in the first section of this report, which documents the layoff of disproportionately large numbers of minority and female workers during the recession, generally resulting from the fact that many were only recently hired and thus had earned little seniority. It is concluded that the recession seriously eroded affirmative action gains of recent years, frustrating the intent of Title VII of the Civil Rights Act of 1964, Executive Order 11246, as amended, and other programs enacted to help minority and female workers narrow the historic economic gap between them and white male workers. The likelihood of continuing high unemployment and future economic slowdowns, which threaten not only vulnerable minority and women workers with low seniority, but many white males, particularly youths, as well, is analyzed. The social costs of such unemployment, particularly that involving job losers and discouraged workers are described. Two sections of the report discuss layoffs and seniority and review the legality of layoffs by seniority when disproportionate numbers of minorities or women are affected. Alternatives to layoffs are explored in the fourth section, some of them already widely practiced in Western Europe and by some industries in the U.S. (e.g., reduction of hours, early retirement, rotation of layoffs, cuts in cost other than wages). In the concluding section suggestions are made for explicit Federal guidelines by the Equal Employment Opportunity Commission with regard to the "last hired, first fired" conflict based on the principle that all seniority-based layoff policies should be invalid as they apply to any work force that does not mirror the relevant labor market and the composition of which cannot be explained successfully by the employer. (JT)

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LAST HIRED, FIRST FIRED: LABORERS and Civil Rights

A Report of The United States Commission on Civil Rights

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February 1977

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman

Stephen Horn, Vice Chairman

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

John A. Buggs, Staff Director

Last Hired, First Fired: Layoffs and Civil Rights

ERRATA

1. Notes to Section 1 beginning on page 5 should number from 1 - 43 rather than 3 - 45.
2. Citation for Franks v. Bowman in note 1, page 43, should be 96 S. Ct. 1251 (1976) rather than 44 U.S.L.W. 4356 (Mar. 24, 1976)
3. Note 7 on page 44 should be Id. at 1263 rather than Id. at 4363.
4. "Employment Act of 1964" should be "Employment Act of 1946" on page 60.

LETTER OF TRANSMITTAL

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report examines the effects of the 1974-75 economic recession on the effort to ensure equal employment opportunity for the Nation's minority groups and women. The layoff of disproportionately large numbers of minority and female workers during the recession generally resulted from the fact that many were only recently hired and thus had earned little seniority. The recession, therefore, seriously eroded affirmative action gains of recent years, frustrating the intent of Title VII of the Civil Rights Act of 1964, Executive Order 11246, as amended, and other programs enacted to help minority and female workers narrow the historic economic gap between them and white male workers.

The likelihood of continuing high unemployment and future economic slowdowns threatens not only vulnerable minority and women workers with low seniority, but many white males, particularly youths, as well. The social costs of such unemployment, particularly that involving job losers and discouraged workers, constitute a continuing national tragedy.

This report reviews the legality of layoffs by seniority when disproportionate numbers of minorities or women are affected and explores alternatives to layoffs already widely practiced in Western Europe and by some industries in our own economy. We believe that the findings in this study provide important, practical, and fair.

means for ameliorating the vexing conflict between layoffs by seniority and vital affirmative action programs in employment.

We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

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The report was prepared under the overall supervision of William T. White, Jr., Assistant Staff Director, Office of National Civil Rights Issues.

Final edit and review was conducted by Bonnie Mathews. Preparation for publication was the responsibility of Vivian Washington, Deborah Harrison, Vivian Hauser, and Audree Holton under the supervision of Bobby Wortman, Publications Support Center, Office of Management.

Introduction

Since its creation in 1957, the United States Commission on Civil Rights has investigated and analyzed the national problem of employment discrimination as well as other types of bias. Commission reports and investigative hearings have documented how minorities and women have been systematically deprived of their fair share of economic benefits as a result of discrimination in employment. (1.)

Although Federal, State, and local statutes and Presidential orders have dictated that discriminatory employment practices be eliminated, many of the Nation's women and members of minority groups continue to face serious barriers in the job market. One of these is the "last hired, first fired" policy that has disproportionately affected minorities and women, particularly during the Nation's periodic economic recessions. The long and extensive use of this policy by employers is one reason why income remains consistently lower and unemployment rates higher for these groups than for the labor force as a whole.

Some economic gains were made by minorities and women in the 1960s, but even before the 1974-75 recession took hold, economic disparities between these groups and white

males remained serious. The recession has reversed much of the limited progress that had been achieved by triggering massive layoffs of new minority and women employees. So severely have layoffs affected many of these new workers that the usual basis for such layoffs, seniority, has become the target of lawsuits alleging it a discriminatory employment practice. The conflict between affirmative action responsibilities and contractual seniority agreements has been brought before the United States Supreme Court which, in a recent decision, noted the "vast" importance of seniority in the national labor market. (2.)

As a new year begins, the prospect for continuing high unemployment and for future recessions appears strong. Disproportionately high rates of job loss and discouragement among minority and female workers therefore seem likely. Because of this bleak outlook, some interest has developed in techniques such as worksharing, already known both in Western Europe and the United States, that may minimize or forestall layoffs and keep people working while allowing employers to reduce production costs. The potential virtues of such alternatives lie not only as a means to ameliorate the seniority-affirmative action conflict but also as a logical way to encourage more humane and efficient use of all the Nation's human resources.

Furthermore, the conviction has grown among many Americans that the time has come for the Federal Government to guarantee a decent job opportunity to every citizen who is willing and able to work. Legislation creating such a policy has been introduced in the Congress.

The Commission on Civil Rights is deeply disturbed by the tragic impact this recession has had on vital affirmative action efforts in employment and also by the profound inequities it has raised for millions of jobless Americans, regardless of race, ethnicity, or sex. In this brief study, the Commission addresses the issues of seniority, layoffs, and worksharing and some fundamental civil rights aspects of national economic policy. It must be emphasized that the discussion of seniority relates only to its use as the basis for laying off workers and not to its role in other personnel matters, such as promotion or transfer.

Notes to Introduction

1. See, e.g., U.S. Commission on Civil Rights: 1961 Statutory Report, book 3, "Employment"; Jobs and Civil Rights: The Role of the Federal Government in Promoting Equal Opportunity in Employment and Training (1969); The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975); Twenty Years After Brown: Equality of Economic Opportunity (1975). In this report the term "minority" or "minorities" refers generally to all blacks, persons of Spanish origin, Asian Americans, and Native Americans. The term "nonwhite" refers to all such persons except persons of Spanish origin. "Minority" is, therefore, more inclusive. It should be noted that the lack of separate data on persons of Spanish origin has limited adequate documentation of their economic problems which, it is now clear, are similar to those of black Americans.

2. Franks v. Bowman, 96 S. Ct. 1251, (Apr. 15, 1976). The Court noted that "[s]eniority systems and the entitlements conferred by credits earned thereunder are of vast and increasing importance in the economic employment system of this Nation." Id. at 1265.

I. Minorities and Women in the American Labor Market

Despite their substantial numbers, minorities and women historically have played a subservient role in the labor market of the Nation. They have suffered higher unemployment rates than white male workers, and when hired, they have held jobs of lower status and earned less than white males.

Their position marginal even in the best of times, minorities and women repeatedly have been hard hit by downturns of the business cycle. During the depression of 1921, for example, black unemployment rates in Detroit were five times as high as those of native white workers and twice as high as those of foreign-born whites. (3.) "Colored workers are the last to be hired, and first to be fired," the superintendent of the Colored Branch of the New York State Employment Bureau declared in February 1921. "Always discriminated against by some employers, the present condition of unemployment is causing great suffering among the colored people." (4.)

When the Great Depression of the 1930s subsided and war production expanded job opportunities, the economic gap persisted. In the early years of the Second World War:

the percentage of Negroes in manufacturing was lower than it had been 30 years before. Although every tenth American is Negro, only 1 Negro in 20 was in the defense industry. Every seventh white American was a skilled craftsman; only 1 Negro in 22 had a skilled rating. Many trade unions had constitutional barriers to Negro membership.... (5.)

As the war ended, war industries cut back production. Blacks and women, many of whom were the most recent newcomers in these industries, were the first to lose their jobs. (6.) In 1954 nonwhite family income was still only 56 percent that of white family income. (7.) Median female income was less than half that of median male income--this was true for white females vis-a-vis white males and for nonwhite females vis-a-vis nonwhite males. (8.)

In 1946 the Federal Government committed itself for the first time to policies that would promote conditions of full employment. The Employment Act of 1946 stated, among other things, that it was "the continuing policy and responsibility of the Federal Government...to promote maximum employment, production, and purchasing power." (9.) Implicit in the act was the vision of the Nation with jobs and opportunity for all who are able, willing, and seeking to work. Consistent with this goal, the Federal Government in 1962 created the first comprehensive Federal manpower

training program. (10.) In 1964 the Civil Rights Act was enacted, Title VII of which outlawed employment discrimination. (11.)

During the decade of the 1960s minorities improved their economic status. Tables 2 and 2A show that nonwhite and Spanish-origin Americans registered gains in white collar employment. The unemployment rate among nonwhites 20 years of age and over dropped from approximately 11 percent in 1961 to less than 5 percent in 1969. (See table 3.) There was also a sharp decline in unemployment rates for the Spanish-origin population between 1960 and 1969, as table 3A reveals. The traditional gap in income between nonwhites and whites also began to narrow, as shown in table 4.

The traditionally limited role of women in the labor market has also undergone a change. Many women continued to work following their work experience during the Second World War. With more women attending college than ever before and with inflation requiring a second wage earner in many families, women have continued to enter the labor market in large numbers. Their rate of participation in the labor force increased from 33.9 percent in 1950 to 44.7 percent in 1973. (12.) Employment of women in government and manufacturing has increased, and women have entered other

industrial sectors, such as finance and transportation, in growing numbers. (13.)

Despite these changes in economic activity, however, the overall employment situation of minorities and women in 1974--at the outset of the recession--had changed little, and these groups found themselves in essentially the same inferior position they have always occupied in the labor market. As figure 1 shows, the nonwhite unemployment rate and the 2-1 ratio of nonwhite to white unemployment were the same in 1973 as in 1954. The unemployment rate among persons of Spanish origin was 7.5 percent in 1973, lower than that for blacks but substantially higher than that for whites. (14.) As table 3 reveals, women at all age levels still had considerably higher rates of unemployment than males of the same race and age group.

Further, both minorities and women still lagged far behind white males in the proportion holding high-paying, high-status jobs and were overrepresented in lower-paying, less-skilled jobs. (15.) The occupational distribution of Americans of Spanish origin resembled that of blacks. (16.) The narrowing of the income gap between minorities and women, on the one hand, and white males, on the other, also halted. In 1973 black median income stood at 58 percent of white median income, leaving about the same gap that existed

in 1954. (17.) Women's earnings were only 58 to 60 percent of men's earnings in 1973. (18.)

A particularly serious unemployment problem continues to plague black youth. Since 1971 the unemployment rates for black teenagers have averaged more than 30 percent, roughly 2 1/2 times the rate for white youths. Teenage black women suffer the highest unemployment rates of any group classified by age, race, or sex. (19.)

In addition to the startlingly high unemployment rates among black youth, another disturbing trend that had developed prior to the recession is the widespread poverty among the growing number of female-headed households. The number of such households has been increasing considerably; while 1 out of 10 families was headed by a women a decade ago, the ratio in March 1973 was 1 out of every 8 families. (20.) Fewer than 1 out of every 10 male-headed families had incomes below the poverty threshold (\$4,254 for a family of four) in 1972, but more than 5 out of every 10 female-headed families fell in that category. (21.) Sixty-six percent of families headed by Mexican American women lived in poverty in 1972. (22.)

Finally, a marked increase in the gap between nonwhite and white male participation in the labor force occurred between 1964 and 1974, with a 7 percent decline in the

participation rate of the former. (See table 5.) Among the reasons for nonparticipation in the labor force are poor health, home or family responsibility, and discouragement over job prospects. (23.)

The Impact of the 1974-75 Recession on Minorities and Women

The 1974-75 recession has sharply aggravated the longstanding employment problems of minorities and women and directly undermined the affirmative action efforts of the past decade. As the recession took hold in late 1974 and 1975, unemployment increased and labor force participation dropped. The Department of Labor reported in April 1975, "recently hired workers, including many women and minority group members, have become early casualties of the economic downturn." (24.)

The unemployment rate for adult women rose steadily from 5.9 percent in the last quarter of 1973 to 8.5 percent in the second quarter of 1975. (25.) Jobless rates reached 14.3 percent for nonwhites, 12.4 percent for workers of Spanish origin, and 8.2 percent for whites by mid-1975. (26.) For black teenagers the jobless rate climbed to 39.8 percent in the first quarter of 1975 compared to 18.0 for white teenagers. (27.)

In late 1974 it was reported that 845,000 labor force nonparticipants wanted jobs but were not looking for work

because they thought their search would be in vain. (28.) By the third quarter of 1975, this number had increased to 1,150,000. (29.) The largest group of "discouraged" workers was women, who accounted for two-thirds of the total discouraged in 1975. (30.) These women, together with male teenagers and elderly men, accounted for 85 percent of all discouraged workers.

At this point, some perspective is needed on these two large groups of the unemployed--those who hold jobs but involuntarily lose them and discouraged workers. The current recession has, of course, increased the numbers in both categories, but the fact remains that both groups represent permanent problems in the Nation's economy that have not yet been adequately addressed.

Job Losers:

The unemployed include three subgroups--those who lose their jobs, those who leave their jobs, and those who enter the labor market as new entrants and reentrants. As figure 2 shows, job losers usually constitute the largest group of the unemployed; in September 1975 they constituted over 58 percent of the total unemployed. (31.) Historically, unemployment by job loss is the most cyclically sensitive, rising and falling in accordance with the ups and downs of the business cycle. (32.) Although the level of unemployment

nearly doubled between the last quarter of 1973 and the second quarter of 1975, unemployment from job loss nearly tripled. (33.)

As noted, job loss is an integral part of the employment pattern for many nonwhite and female workers, regardless of the overall conditions of the economy. When the current recession struck, it hit these vulnerable workers disproportionately hard. Table 6 shows that job loss unemployment--layoffs--rose most sharply during the current recession in those blue-collar occupations where minorities are employed in greater numbers. Table 7 shows the overrepresentation of black male workers among the recent job losers. In early 1975 blacks accounted for about 18 percent (725,000) of the job loss unemployment, though they were only 11 percent of the total labor force. (34.)

For women, job loss has generally been less widespread during the current recession than for nonwhite male workers, but total unemployment among women, as noted, has been high. Although women made up nearly one-half of the unemployed (47 percent in 1974), they generally account for only one-third of the unemployed from job loss. (35.) This reflects, in large part, their concentration in industries such as trade and services where the cyclical changes in employment are less sharp than in the goods producing industries. The

impact of recessions on women "is not reflected so much in their unemployment rates as in the retardation of their growing labor participation." (36.) Nonetheless, where women have begun to be employed in nontraditional jobs, such as on the assembly lines of automobile plants or as patrol officers on police forces, they have been heavily affected by job loss.

It is well to remember that job losers are workers who want to work and had jobs. They are more likely to have dependents and family responsibilities. (37.) Most job losers have not willingly left their jobs. In addition to the material loss involved, there is evidence that job loss may well have a heavy physical and psychological effect on the victim. Studies have shown a correlation between job loss and high blood pressure, lower ego resilience and self-esteem, increased hospitalization for mental illness, alcoholism, child abuse, and even suicide. (38.)

The Discouraged Worker

Another group of Americans adversely affected by the recession are the "discouraged workers." (39.) While the recession has generated discouragement and frustration among people who have lost their jobs and have given up looking for a new one, discouraged workers also include those who

may not have worked for some time even before the recession began.

Discouragement over job prospects for many Americans is not a problem connected solely with economic downturn. For minorities and women in particular, it is a constant problem that simply spreads and intensifies during recessions. (40.)

In the main, blue-collar jobs tend to be more tenuous and unstable than white-collar jobs, even in times of economic prosperity. Many minority members and women work in manufacturing industries which have been experiencing a steady decline for years. Because inadequate job training opportunities and the prohibitive costs of higher education hinder retraining for other more stable jobs, many of these workers in the "wrong" jobs have little realistic hope of switching to positions with a more promising future. As one study observed of nonwhites in this group of discouraged workers:

They earn less than whites, are forced to work irregularly, have trouble finding jobs, and are more frequently discouraged from even looking. Low earnings, intermittent employment, discouragement, unemployment, and falling labor participation all interact. (41.)

The recent recession has further discouraged these Americans from participating in the labor force and added

many others to their ranks. Discouraged workers, like job losers, are disproportionately nonwhite and still another group that bears the brunt of economic deprivation whether it results from structural or recession-induced unemployment.

In addition to increased job loss unemployment and discouragement among minorities and women, the Commission finds several other sources of concern about the labor market and overall economic position of these groups at the present time. The first is inflation which has been particularly severe in basic areas such as food and energy prices. The effects are clearly most harmful for low-income families, and when low-income workers lose their jobs, inflation is all the more devastating.

The second is the particularly heavy burden recessions and layoffs place on young workers, including not only minorities and females but white males as well. Contraction of the labor market denies them opportunities to develop skills and blocks career planning. In 1975, 16- to 19-year olds accounted for only one-tenth of the Nation's labor force but for one-fourth of the unemployed. (42.) While teenage unemployment is highest in central city areas, it is also a problem in rural areas. (43.) It is ironic that a society is unable to provide so many young people with

decent job opportunities after it has committed billions of dollars to educate them for future participation in that society. The consequences of this failure, in such areas as family strength, crime, and drug abuse, seem obvious.

Third, the prospects for rapid economic recovery and a return to work of the jobless are questionable. The Congressional Budget Office has reported, "even if production and employment continue to rise after the initial rebound, the recession has been so deep that unemployment will remain high for some years." (44.) The Chairman of the Federal Reserve Board has suggested that the United States economy may be in a new "long cycle" of sluggishness in which recessions will be deeper than earlier in the postwar period, unemployment greater, and recoveries will not carry upward as high. (45.) The Chairman noted that the present long cycle may be the contemporary equivalent of the depressed 1930s. The spark of hope that was kindled among minority and female workers in the 1960s, a period of economic expansion when important efforts were made to improve equal employment opportunity, may soon be virtually extinguished.

Notes to Section I

1. Philip S. Foner, Organized Labor and the Black Worker (New York: Praeger, 1974), p. 132.
2. As quoted in New York Call, Feb. 14, 1921, cited in Foner, Organized Labor, pp. 132-33.
3. U.S., Fair Employment Practices Committee, Final Report, (1947), cited in 1961 U.S., Commission on Civil Rights Report, p. 9.
4. Although some blacks had been upgraded to semiskilled and skilled jobs during the war, the vast majority of black workers had not risen above the unskilled categories, which were quickly eliminated as the war industries declined. Foner, Organized Labor, p. 269. See also U.S., Commission on Civil Rights, Women and Poverty (1974), p. 10.
5. See table 4. Comparative income data for other minority groups, such as Americans of Spanish origin, are not available for this time period.
6. Twenty Years After Brown: Equality of Economic Opportunity, p. 58.
7. 15 U.S.C. §§1021 (1970).
8. Manpower Development and Training Act (MDTA), Act of Mar. 15, 1962, Pub. L. 85-415, title I, §101, 76 Stat. 23, as amended 15 U.S.C. §2571-2574, 2581-2587, 2601-2603, 2610-2628 (Supp. IV, 1974).
9. Act of July 2, 1964, Pub. L. 88-352, title VII, §701, 78 Stat 253 (codified in 42 U.S.C. §2000e et seq. (1970), as amended, 42 U.S.C. §2000e et seq. (Supp. IV, 1974).
10. U.S., Department of Labor, Manpower Report of the President, (1975), p. 57 (hereafter cited as Manpower Report of the President).
11. Ibid., pp. 60-61.
12. Roberta V. McKay, "Employment and Unemployment Among Persons of Spanish Origin," Monthly Labor Review, April 1974, p. 15.

13. With regard to nonwhites, see table 2. While black workers constituted almost 9 percent of the employed population, they represented almost twice the percentage of all services workers and nonfarm laborers. As for women, the Department of Labor has observed that "The great majority...are still concentrated in the stereotypical feminine jobs, working as secretaries and typists, retail clerks, bookkeepers, teachers, and waitresses." Manpower Report of the President, p. 32.

14. Monthly Labor Review, April 1974, p. 15. See Table 2-A.

15. See U.S., Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1974 (July 1975), p. 2. For a recent, detailed discussion of this income gap, see Dr. Andrew F. Brimmer, Harvard University Graduate School of Business Administration, "Income Distribution and Economic Equity in the United States," Speech before 1976 annual meeting of the American Association for the Advancement of Science, Feb. 23, 1976.

16. Women and Poverty, p. 5.

17. Manpower Report of the President, pp. 34, 62.

18. Howard Hayghe, "Marital and Family Characteristics of the Labor Force in March 1973," Monthly Labor Review, April 1973, pp. 24-25.

19. Manpower Report of the President, p. 70. Once again, the problem is most acute for minority women. Black female family heads, for example, had median earnings in 1972 averaging \$3,370, only three-fourths that of white female heads and \$844 below the poverty threshold for a four-person non-farm family headed by a woman.

20. Women in Poverty, p. 9. For families headed by Puerto Rican females, the figure was 65 percent, and for families headed by black females, the figure was 54 percent. Ibid.

21. Manpower Report of the President, p. 32.

22. Ibid., p. 62. The Labor Department found a "much more rapid deterioration in the job situation of blacks than of whites" in late 1974. Ibid., p. 34.

23. Stephen M. St. Marie and Robert W. Bednarzik, "Employment and Unemployment during 1975," Monthly Labor Review, February 1976, p. 12.
24. Ibid., pp. 12, 16.
25. Social and Economic Status of the Black Population, p. 2.
26. Manpower Report of the President, p. 34.
27. "Labor Month in Review," Monthly Labor Review, December 1975, p. 2. Blacks accounted for 28 percent of the total discouraged. Ibid.
28. U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings, January 1976, p. 151.
29. U.S., Department of Labor, Bureau of Labor Statistics, The Employment Situation: January 1976, Feb. 6, 1976, table A-5.
30. Curtis L. Gilroy, "Job Losers, Leavers, and Entrants: Traits and Trends," Monthly Labor Review, August 1973, pp. 3-15; and Curtis L. Gilroy and Robert J. McIntyre, "Job Losers, Leavers, and Entrants: A Cyclical Analysis," Monthly Labor Review, November 1974, pp. 35-39.
31. St. Marie and Bednarzik, "Employment and Unemployment," p. 17.
32. U.S., Department of Labor, Bureau of Labor Statistics, "Job Loss and Other Factors Behind the Recent Increase in Unemployment," Report 446, June 1975.
33. Ibid. p. 2. The Labor Department noted:

Although men have accounted for the bulk of the increase in unemployed job losers among blue-collar workers, the relative increase in job loss unemployment among women blue-collar workers has been greater (149 percent vs. 112 percent). This may reflect the sharp reductions in employment in the textile and apparel industries, where women are employed in relatively large numbers, as well as the

relative lack of seniority on the part of the women employed as blue-collar workers in other industries. Ibid., p. 3.

34. Ralph E. Smith, Jean E. Vanski, and Charles C. Holt, "The Recession Outlook for the Employment of Demographic Groups" (Washington, D.C.: Urban Institute, Nov. 26, 1974).

35. See St. Marie and Bednarzik, "Employment and Unemployment," and U.S., Department of Labor, Bureau of Labor Statistics, Unemployment Among Household Heads, Report No. 443, May 1975.

36. See, e.g., D.D. Braginsky and B.M. Braginsky, "Surplus People: Their Lost Faith in Self and System," Psychology Today, August 1975; M. Harvey Brenner, Mental Illness and the Economy (Cambridge, Mass.: Harvard University Press, 1973); Daniel S. Hamermesh and Neal M. Soss, "An Economic Theory of Suicide," Journal of Political Economy, (January-February 1974); Stanislav Kasl and Sidney Cobb, "Blood Pressure Changes in Men Undergoing Job Loss: A Preliminary Report," Psychosomatic Medicine, No. 1, 1970, and "Changes in Serum Uric Acid and Cholesterol Levels in Men Undergoing Job Loss," Journal of American Medical Association, Nov. 11, 1968; Berkeley Rice, "Mental Stress in the Economic Crunch: The Worry Epidemic," Psychology Today, August 1975; and Rachel B. Warren, Helping Networks in the Urban Community, (Univ. of Michigan Institute of Industrial and Labor Relations, 1975).

The link between unemployment and crime is examined in Llad Phillips, Harold L. Votey, Jr., and Darold Maxwell, "Crime, Youth, and the Labor Market," Journal of Political Economy, May-June 1972; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and its Impact--an Assessment (1967); and Report of the National Advisory Commission on Civil Disorders (New York: Bantam Books, 1968).

37. The Labor Department defines discouraged workers as those persons who: "have looked for work in the past but could not find a job; think there is no work available; feel they lack the necessary skills or education; have some other personal handicap; believe they would be considered too old or too young by employers." Manpower Report of the President, p. 32.

38. In 1972, for example, blacks made up one-ninth of all persons of working age outside the labor force but one-fourth of all discouraged workers. Paul O. Flaim, "Discouraged Workers and Changes in Unemployment," Monthly Labor Review, March 1973, p. 13. In 1974, on the average, blacks accounted for 20 percent of the unemployed and 24 percent of the discouraged workers, although they made up only 12 percent of the population of working age. Julius Shishkin and Robert L. Stein, "Measuring Unemployment," Monthly Labor Review, August 1975, p.8.
39. Sar A. Levitan, William B. Johnston, and Robert Taggart, Still A Dream: The Changing Status of Blacks Since 1960, (Cambridge: Harvard University Press, 1975), p. 74.
40. U.S., Department of Labor, "Youth in the Labor Force: An Area Study," Monthly Labor Review, July 1976, p. 4.
41. Ibid.
42. Congressional Budget Office, Recovery: How Fast and How Far? Sept. 17, 1975, p. 1. In August 1976, the budget office noted, "In spite of recent improvement, the problems are still formidable...the coexistence of high inflation and high unemployment continues to be a dilemma challenging policy makers." Congressional Budget Office, Sustaining a Balanced Expansion, Aug. 3, 1976, p. ix.
43. Leonard Silk, "The Man at the Money Throttle," New York Times Magazine, Aug. 10, 1975, p. 34. A former chairman of the Council of Economic Advisers wrote that "the forthcoming 'recovery' like the four previous 'recoveries' from recessions since 1953, will leave us at its peak with more unused manpower and other productive resources than at the peak of the immediately previous recovery, and on the way toward another stagnation and then another recession." Leon H. Keyserling, "Planning for Full Employment," Current, September 1975, p. 34.

Such concern was also recently expressed by Dr. Charles C. Killingsworth, professor of Economics and Labor and Industrial Relations, Michigan State University, "Unemployment in 1976," statement presented at hearing of Joint Economic Committee, Mar. 4, 1976. See also "Why Recovering Economies Don't Create Enough New Jobs," Business Week, Mar. 22, 1976, pp. 114-120.

II. Layoffs and Seniority

Layoffs in the United States economy are generally based on seniority, or "the last hired, first fired" principle. (1.) Seniority involves a set of rules which gives workers with longer years of continuous service a prior claim to a job over others with fewer years of service. (2.) What is referred to here is "competitive status seniority" as opposed to "benefit seniority." Competitive status seniority determines priorities for promotion, job security, shift preference, and other employment advantages. By contrast, benefit seniority, earned without regard to the status of other employees, determines the eligibility for certain types of fringe benefits, such as paid vacations or sick leave. (3.)

In applying competitive status seniority, companies differ as to the unit within which seniority operates. In some, length of service may be measured by total length of employment with employer ("plant" or "mill" seniority). In others, length of service in a department ("department" seniority) or length of service in a job ("job" seniority) are the units used for applying seniority. (4.)

By itself a seniority system is racially and sexually nondiscriminatory. (5.) It applies equally to whites and nonwhites, men and women, allocating jobs on the length of service in the unit in which seniority operates. Indeed, it is the "facially neutral" feature that gave rise to its introduction. Unions demanded the establishment of the seniority system to replace the foreman's complete authority over promotion and layoff. Seniority is one of the union organizer's principal and more effective appeals in unionizing a plant's work force. (6.)

For union officials or nonunion employers, the length-of-service seniority rule is an objective internal device for allocating job opportunities among members. It helps to immunize the union or the employers from the criticisms of disgruntled employees denied promotion or laid off. (7.) Yet seniority systems have been significant instruments of racial and sex discrimination, as part III of this report will demonstrate.

A 1975 survey of major collective bargaining agreements in the United States found that 90 percent contained layoff provisions; in 85 percent of these contracts, seniority was a factor. (8.) More than 42 percent of the agreements provided for layoffs based on seniority alone, (9.) and 30 percent provided for seniority as the "determining factor"

in layoffs (i.e., more senior employees are retained during a reduction in force only if they are qualified for available jobs). Other factors are given equal consideration with seniority in less than 1 percent of the contracts. Seniority is the sole or determining factor in at least two-thirds of the contracts in all manufacturing industries except printing and in most nonmanufacturing industries except maritime, services, construction, and insurance and finance. (10.)

Most agreements also provide for eventual loss of seniority and recall rights in a long layoff. Seniority retention periods may last from 6 months or less to 5 years; 1 year is the most common term. (11.)

Always a vital concern, seniority becomes decisive during periods of economic downturn when jobs are scarce. In an industrial or other employment setting, a worker's place in the seniority "pecking order" can mean the difference between having a job and being unemployed.

The implications of the "last in, first out" rule for new workers, whether minorities, women, or youth generally, are obvious. The disproportionately high rates of job loss among minorities have already been noted. (12.) In some areas where minorities represented only 10 to 12 percent of the work force, they accounted for 60 to 70 percent of those

being laid off in 1974. (13.) Many companies which had only recently hired significant numbers of minority and women employees have laid off workers. A Business Week survey of companies that have undergone layoffs failed to find a single employer who refrained from using the "last in, first out" approach in order to retain minority or women workers. (14.)

For example, at the Norton Company, an abrasives manufacturer in Worcester, Mass., the percentage of minority workers on the firm's total work force dropped from 3.7 percent in 1973 (up from 1.9 percent in 1971) to 2.7 percent in 1974--"a countrywide pattern that varies only in timing and degree" (15.) Elsewhere:

A Pittsburgh-based conglomerate that recently followed seniority in laying off 15% of its 30,000 member work force reports that 26% of its black employees and an even larger percentage of its women lost their jobs. In the auto industry...layoffs of 215,000 out of 750,000 production workers have removed large numbers of minority workers from some plants and all women from others. (16.)

Layoffs of employees by State and local government agencies have also been based on "last in, first out," with disparate effects on minorities and women. For example, layoffs in mid-1975 of 371 female officers appointed since January 1973 by the New York City Police Department ended their brief tenure with the previously overwhelmingly male

police force.(17.) Over half of all Hispanic city workers in New York lost their jobs between July 1974 and November 1975.(18.) In a number of school districts in California and the Southwest, Mexican American teachers were disproportionately threatened by layoffs because of their low seniority.(19.) Some 300 Asian American employees of the California Department of Transportation faced layoffs in September 1975. A spokesperson for these workers described the problems created for this minority group:

There is an extraordinary multiplying effect when Asians are laid off...not only does it affect their families so much more by creating unmanageable financial hardships, but you have to consider how much harder it is for them to find new jobs. Asians aren't as mobile as Caucasians, many have a language difficulty, (and) recent affirmative action policies have been so delayed that few have the seniority to hold on to positions....(20.)

While seniority does generally determine which employees are to be laid off first, it is not uniformly or always given exclusive weight. In 11 percent of labor contracts, seniority is a secondary factor to be considered only when factors such as ability and physical fitness are equal.(21.) Forty-six percent of the contracts allow for exceptions from seniority in layoffs, and union representatives are given superseniority for layoff purposes in more than three-fourths of these provisions.(22.) About 19

percent of layoff provisions in manufacturing contracts afford similar protection to specially skilled employees whom management desires to retain. (23.) Still other contracts exclude older or handicapped workers from the seniority provisions for layoffs. (24.)

Some agreements provide for payment of supplemental unemployment benefits (SUB) to buttress unemployment compensation for job losers. Contracts providing such plans differ as to the amount a worker can receive and the duration of such payments. (25.)

These are the mechanics of layoffs by seniority. The Commission wishes to stress the fact that while seniority usually determines who is to be laid off first, there are various exceptions to "last hired, first fired"-- applied to groups or categories of workers.

Notes to Section II

1. This is true both in union and nonunion industries. See Cooper and Sobol, Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion, 82 Har. L. Rev. 1598, 1601-1602 (1969) (hereinafter referred to as Cooper and Sobol); "Seniority Squeezes Out Minorities in Layoffs," Business Week, May 5, 1975, p. 67; National Jewish Community Relations Advisory Council, "Seniority and Affirmative Action," in Joint Program Plan 1975-76 (1975) p. 27; BNA, Equal Employment Opportunity Programs and Results, March 1976, p. 6.
2. Benjamin W. Wolkinson, Blacks, Unions, and the EEOC (Lexington, Mass: D.C. Heath Co., 1973), p. 17.
3. Cooper and Sobol, supra note 1, at 1601-1602.
4. Id. at 1602.
5. Wolkinson, p. 18.
6. Ibid. In view of the job protection it affords, it is not surprising that seniority is regarded as being "at the root of a local union's internal affairs." Gould, Employment Security, Seniority and Race: The Role of Title VII of the Civil Rights Act of 1964, 13 How. L. J. 1, 3 (1967).
7. Wolkinson, p. 18.
8. Bureau of National Affairs, Basic Patterns in Union Contracts, Apr. 24, 1975, p. 60:1. In 1974 some 21.6 percent of all workers in the United States were union members. Excluding agriculture, the figure was 25.7 percent. U.S., Department of Labor, Bureau of Labor Statistics, press release, Aug. 12, 1975.
9. Basic Patterns in Union Contracts, p. 60:1. This figure compares to 30 percent in 1970.
10. Ibid.
11. U.S., Department of Labor, Bureau of Labor Statistics, Characteristics of Major Collective Bargaining Agreements (1974), p. 66.

12. See table 7.
13. Newsweek, Dec. 2, 1974, p. 72.
14. Business Week, May 5, 1975, pp. 66, 67.
15. Ibid.
16. Ibid. In 1974, General Motors laid off nearly all of the 500 women who worked on the assembly lines at GM's Fremont, Calif., plant and all 350 women hired since 1970 at its Linden, N.J., plant. Bales v. General Motors Corp., 9. FEP Cas. 234 (N.D. Cal. 1975).
17. In June 1974, before the layoffs took effect, only 680 of the 25,930 officers with the department were female. Ken Gordon, attorney, Murray A. Gordon, New York, telephone interview, Sept. 16, 1975.
18. New York City, Commission on Human Rights, City Layoffs: The Effect on Minorities and Women, April 1976, p. 17.
19. Michael Bailor, Mexican American Legal Defense and Education Fund, San Francisco, Calif., telephone interview, Apr. 30, 1976.
20. Statement by Lincoln Chu, chairman, Concerned Caltrans Employees, reported by Bradford Woo, "Caltrans Workers Protest Layoffs," East West: The Chinese American Journal, Sept. 10, 1975, p. 1.
21. Basic Patterns in Union Contracts, p. 60:1.
22. Ibid. Under these provisions, union stewards and local officials are the last employees to be laid off.
23. Ibid.
24. U.S., Department of Labor, Major Collective Bargaining Agreements: Layoff, Recall, and Worksharing Procedures (1972), p. 43.
25. See AFL-CIO, Industrial Union Department, Comparative Survey of Major Collective Bargaining Agreements, Manufacturing and Non-Manufacturing (1974), pp. 123-29. The United Auto Workers negotiated supplemental unemployment

benefits, which provide laid-off workers who have, at least a year's seniority, 95 percent of their regular wages in SUB and unemployment insurance. The SUB funds are inadequate, however, to cover all auto workers put out of work during the recent recession. Harry Fleischman, director, National Labor Service, American Jewish Committee, letter to George Meany, president, AFL-CIO, Mar. 31, 1975.

In 1975 the number of jobless persons who had exhausted their eligibility for the Federal Supplemental Benefits program, the program of "last resort" for those who have used up their eligibility under regular and extended unemployed benefits programs, was 1.1 million. The estimate for 1976 is 1.8 million. A disproportionately large number of exhaustees are women. Killingsworth, "Unemployment in 1976," supra, sec. I, note 43, pp. 2, 8.

III. Layoffs by Seniority and the Law

Extensive layoffs by seniority of minorities and women in both private and public sectors during this recession have precipitated court action on the grounds that these layoffs violate Title VII of the Civil Rights Act of 1964. The legal arguments involved are extremely complex and have been presented at length in numerous cases.(1.) The lower courts have not agreed on a resolution of the conflict, however, and the United States Supreme Court therefore has been called upon to settle the issue.

In its recent decision in Franks, the Supreme Court did not directly address the question of whether seniority-based layoffs constitute an employment practice that may be discriminatory(2.) under Title VII (3.) of the Civil Rights Act of 1964. Rather, the Court concerned itself with the scope of relief that may be granted to identifiable victims of illegal hiring discrimination, and it ruled that retroactive or "constructive" seniority may be granted these workers as an important part of such relief.(4.) Hence, a Federal district court may award an employee, who has suffered unemployment or denial of transfer because of illegal employment practices, seniority status that the employee would have earned but for the illegal

discrimination. The seniority expectations of white workers do not bar the granting of this relief.(5.)

Although the decision did not deal directly with the legality of layoffs by seniority,(6.) it did strongly uphold the power of the courts under Title VII to end employment discrimination. The Court said:

[I]n enacting Title VII of the Civil Rights Act of 1964, Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex, or national origin,...and ordained that its policy of outlawing such discrimination should have the "highest priority." (7.)

The Court has held that "one of the central purposes of Title VII is 'to make persons whole for injuries suffered on account of unlawful employment discrimination.'" (8.)

For this purpose, the courts were given "wide discretion exercising their equitable powers to fashion the most complete relief possible...." (9.) The Court noted that the legislative history of the 1972 amendments to the Civil Rights Act of 1964 indicates that "rightful place" was the intended objective of Title VII and the relief accorded thereunder.(10.) In this regard, "rightful place seniority, implicating an employee's future earnings, job security, and advancement prospects, is absolutely essential to obtaining

this congressionally mandated goal." (11.) (Emphasis in the original)

The Supreme Court also reiterated its holding that "employee expectations arising from a seniority system may be modified by statutes furthering a strong public policy interest." (12.) It observed that the issue of seniority relief "cuts to the very heart of Title VII's primary objective of eradicating present and future discrimination...." (13.) Reaffirming that the courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future," (14.) the Supreme Court stated:

...[D]enial of seniority relief to identifiable victims of racial discrimination on the sole ground that such relief diminishes the expectations of other, arguably innocent, employees would if applied generally frustrate the central "make-whole" objective of Title VII....- "If relief under Title VII can be denied merely because the majority group of employees, who have not suffered discrimination, will be unhappy about it, there will be little hope of correcting the wrongs to which the Act is directed." (15.)

The court observed that "adequate protection of Negro rights under Title VII may necessitate...some adjustment of the rights of white employees." (16.) The Court therefore regarded its decision in Franks as establishing that "a sharing of the burden of past discrimination is

presumptively necessary" and "entirely consistent with any fair characterization of equity jurisdiction." (17.)

These significant holdings aside, the Supreme Court in Franks was not presented with the question whether retroactive seniority is to be awarded to a person who was denied a job on the basis of race, ethnic origin, religion, or sex before the enactment of Title VII or to a person who did not initially apply for a job because it was well known in the community that the employer did not hire minority or female workers. One question that remains, therefore, is what can and should be done to "make whole" and put in their "rightful place" those minority or female workers who might fit into these categories.

Both of these groups should fall within the "affected class" entitled to constructive seniority and other relief. To be sure, equitable relief will depend upon the particular facts of each case. It should not turn, however, on when the discrimination occurred. (18.) Discrimination is no less harmful because it occurred in 1963 rather than in 1965. Nor should the courts require that discriminatees previously attempt to obtain employment in the trade in order to be included within the affected class. There is little question that an employer's discriminatory reputation will discourage application. (19.)

Excluding date of discrimination and whether employment was applied for, two fair and reasonable criteria can be used for defining the affected class. First, members of the class should be limited to incumbent employees who are old enough to have been hired during the pre-Title VII period. (20.) Second, residence in the areas of employment should be required. (21.) Minority or female workers who meet these two criteria, and are, therefore, broadly qualified for an existing employment opportunity which was discriminatorily denied before or after 1964, should be eligible for inclusion in the class of discrimination victims who are entitled to full relief.

In any case, Franks has settled the question whether retroactive seniority may be granted victims of discrimination since 1964. It has not yet, however, resolved the question of whether seniority-based layoffs are an employment practice that is discriminatory under Title VII when minority or female workers are disproportionately affected. Further, if it is discriminatory, what is a fair and logical remedy for this widespread employment practice?

That the practice of layoffs by seniority is "facially neutral," as discussed earlier in this report, is irrelevant. What matters, in judging such practices under Title VII, is their consequences or effects, rather than

their intent. (22.) If a business practice, such as employment testing, results in a disproportionately higher percentage of minority persons or women being excluded from employment opportunities, Title VII is violated unless the practice can be justified as actually job-related, (23.) as required by business necessity, (24.) and if no less discriminatory alternatives are available. This principle applies to any employment practice that continues the effects of past discrimination.

Layoffs by seniority "lock in" the effects of past discrimination by continuing the advantage white males gained in employment by not having to compete with women and minorities. Since layoffs by seniority perpetuate the white male advantage in the labor market, the Commission believes that a fair application of Title VII law would require some limitations to that practice.

Apart from the irrelevant consideration of intent and of majority male workers' seniority expectations in determining whether seniority-based layoffs may violate Title VII, the only stumbling block to a finding that such layoffs may be unlawful appears to be the legislative history of Title VII, specifically Section 703 (h), (25.) which purportedly places seniority systems beyond the purview of Title VII. Some courts (26.) have relied upon

certain portions of the Congressional Record(27.)
surrounding the adoption of Title VII in 1964 to support
this conclusion.

The Supreme Court in Franks did not directly affirm or deny this interpretation, although it did rule, as noted, that nothing precludes the granting of retroactive seniority along with other relief in cases involving hiring discrimination. The Commission, however, does not find persuasive the contention that seniority systems are exempted from Title VII coverage. Given the clearly discriminatory past, present, and, no doubt, future effects of the use of seniority for layoff purposes, that specific aspect of seniority systems must be modified or replaced in some instances.

The reasons why the legislative history does not appear to offer a clear and forthright exemption of seniority systems from coverage of Title VII have been stated convincingly and at length elsewhere.(28.) The Commission will limit itself here to the following points:

First, section 703(h) concerns only "bona fide" seniority systems. As the Federal district court in Quarles ruled, "Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the act...and obviously one

characteristic of a bona fide seniority system must be a lack of discrimination." (29.) If there has been past discrimination, layoffs based on seniority must perpetuate that discrimination by placing women and minorities at a disadvantage in employment. Hence, such layoffs are not operating as part of a bona fide seniority system and are illegal.

Second, some of the legislative history appears to be moot. The history to which some courts have alluded, it should be noted, was made prior to the introduction of section 703(h), as it is now stated, and so should have little bearing since it pertains to debate on an earlier version of Title VII that was rejected in the Congress. (30.) Furthermore, the dispute addressed by these materials as to what effect the Civil Rights Act of 1964 should have had was finally reconciled in a substitute bill that, in regard to the 703(h) seniority amendments, "imposed the requirement of bona fide seniority and the proviso for differences resulting from an intention to discriminate." (31.)

Third, in reviewing the legislative history of Title VII, including the history of the 1972 amendments to Title VII, one can be left with no doubt about the strong desire of Congress to enact broad and powerful public policy with respect to ending employment discrimination, including the

type of ostensibly neutral, systemic discrimination that Griggs outlawed and that seniority-based layoffs represent. (32.) Taken as a whole, Title VII "represents, in large part, a response to Congressional concern over the depressed economic status of the Negro in American society." (33.) The Senate, as the Supreme Court noted in Franks "manifested an explicit concern with the 'earnings gap' presently existing between black and white employees in American society." (34.) Another analysis suggests that "Title VII was designed to be a powerful force in alleviating minority unemployment." 35. The clear intent of Congress, therefore, was to end those traditional employment practices that unfairly created and perpetuated the economic gap dividing minorities and women from white American males.

It is therefore reasonable to conclude that "Congress chose to leave the resolution of the problems posed by seniority to the courts rather than codify in the Act the concerns expressed in the Senate debates." (36.) The Commission agrees that:

In enacting Title VII, Congress provided the tools, at the Federal level, for the elimination of racial discrimination in employment, but it left to the Equal Employment Opportunity Commission and the courts the determination of the specific practices that constitute racial discrimination. Congress made little effort to list or otherwise predetermine the specific conduct that would be illegal under the Act.

Thus, courts must base many of their judgements on the broad policies of the statute. Congress seems to have contemplated the judicial development of a "common law" of unfair employment practices. In the absence of an unequivocal expression of congressional intention to depart from this policy, therefore, and particularly in the absence of evidence that Congress itself evaluated the discriminatory potential of seniority systems, the courts should be reluctant to find that seniority issues have already been settled legislatively. (37.)

In Watkins (38.) and Jersey Central (39.) Federal district courts considered the apportionment of layoffs among whites and blacks on the basis of the proportion of each group to the total (plant) work force. Watkins also suggested the use of separate seniority lists in recall policies. (40.) These decisions were reversed on appeal by the fifth and third circuit courts respectively, and a similar plan was rejected by the second circuit court in Chance v. Board of Examiners, (41.) a case involving layoffs of Puerto Rican and black school principals and supervisors in New York City.

The Commission fully endorses the layoff approach proposed by the district courts in Watkins, Jersey Central, and Chance as a fair and equitable temporary remedy for the discrimination inherent in the defendant's last hired, first fired policies. (42.) But the Commission also believes that another remedy applies, and that this remedy, discussed at

length in the next section, is appropriate and desirable
legally as for other very important reasons.

Notes to Section III

1. The first case challenging the validity of a seniority system in the context of layoffs concerned the layoff of workers at the Continental Can Company in Harvey, La. *Watkins v. Steelworkers Local 2369*, 369 F. Supp. 1221 (E.D. La. 1974), rev'd, 516 F. 2d 41 (1975).

Until 1965, the only blacks who had been hired at the company were two hired during World War II. The company hired one black in 1966, some in 1967 and 1968, and more thereafter. Beginning in 1971, however, the company cut back employment pursuant to a contract requiring layoffs to be made on the basis of total employment seniority and recalls accomplished in the reverse order, i.e., senior employees recalled first. The layoffs reached back to employees who were hired as early as 1951. As a result, all of the blacks but the two hired during the war were laid off, and the first 138 persons on the recall list were white. Id. at 1223-24.

The court noted that the prior exclusion of blacks from the work force prevented them from acquiring sufficient seniority to avoid layoff. Applying the principle that present neutral practices which perpetuate the effects of past discrimination are prohibited, the court ruled that the use of seniority to allocate layoffs violated Title VII. Id. at 1226.

Other cases which allude to the Watkins rationale are: *Delay v. Carling Brewing Co.* 10 FEP Cases 164 (N.D. Ga. 1974) appeal docketed No. 76-3221, 5th Cir., Aug. 13, 1976;; *Cox v. Allied Chemical Corp.*, 382 F. Supp. 309 (M.D. La. 1974); Cf. *Loy v. City of Cleveland*, 8 FEP Cases 617 (N.D. Ohio 1974); But See *Bales v. General Motors Corp.* 9 FEP Cases 234 (N.D. Calif. 1974); *Jersey Central Power and Light Co. v. IBEW Local 327*, 508 F.2d 687 (3rd Cir. 1975), cert. granted jdq. vacated and remanded, sub nom *EEOC v. Jersey Central Power and Light Co.*, 96 S. Ct. 2196 and cert. denied sub nom *Jersey Central Power and Light Co. v. EEOC*, 96 S. Ct. 2215; *Acha v. Beame*, 531 F. 2d 648 (2nd Cir. 1976); *Chance v. Board of Examiners*, 534 F.2d 993 (2nd Cir. 1976), aff'd in pt. and modified in pt. on rehearing, 534 F.2d 1007 (2nd Cir. 1976). See also *Dawkins v. Nabisco, Inc.*, 7 FEP Cases 535 (1973); *Water v. Wisconsin Steel of International Harvester Co.*, 502 F.2d 1309 (1974) cert. denied, 96 S. Ct. 2214 (May 24, 1976).

Cases dealing with seniority in contexts other than layoffs include *Quarles v. Philip Morris, Inc.*, 279 F. Supp.

505 (E.D. Va. 1968) (promotions); Local 189, United Papermakers and Paperworkers v. United States, 416 F. 2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970) (measurement of seniority: "plant" v. "job" seniority); Robinson v. Lorillard Corp., 444 F. 2d 791 (4th Cir. 1971) (departmental seniority); and Franks v. Bowman, 44 U.S.L.W. 435 (Mar. 24, 1976) (retroactive seniority). See Bureau of National Affairs, Laying Off Employees Pursuant to a Seniority System, Feb. 21, 1975, for a summary of many of these cases. A recent law review analysis of these cases is found in Summers and Love, Work Sharing as an Alternative to Layoffs by Seniority: Title VII Remedies in Recession, 124 P.L. Rev. 893 (1976).

2. As the Court noted, "The underlying legal wrong (here) is not the alleged operation of a racially discriminatory seniority system but of a racially discriminatory hiring system. Petitioners do not ask modification or elimination of the existing seniority system, but only an award of the seniority status they would have individually enjoyed under the present system but for the illegal discriminatory refusal to hire." Franks, 96 S. Ct. at 1261.

3. Title VII states that "It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a) (1964).

4. Franks, 96 S.Ct. at 1263-65. In a class action, black applicants who had applied for and were denied over-the-road (OTR) truck driver positions prior to January 1, 1972, sought back pay and seniority status retroactive to the date of individual application for an OTR position. The district court refused unnamed members of the class action either form of relief, and the court of appeals, while ordering the award of back pay, upheld the district court's refusal to order seniority relief. Id. at 1251-52.

5. See Blumrosen and Blumrosen, The Duty to Plan for Fair Employment Revisited: Work Sharing in Hard Times, 28 Rutgers L. Rev. 1082 (1975), which argues that layoffs which adversely affect recently hired minorities and women are prohibited by Title VII. Id. at 1091-1092.

6. The Court also did not address the question of whether a court could award retroactive seniority status to plaintiffs who had suffered illegal employment discrimination prior to the effective date of the 1964 Civil Rights Act. In Franks, only "post-Act victims of racial discrimination" were members of the class bringing suit against Bowman Transportation Company. 96 S.Ct. at 1261 and n. 10.

7. Id. at 4363.

8. Id. at 1264 citing Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975).

9. Id. at 1264, citing Section by Section Analysis of H.R. 1746, accompanying the Equal Employment Opportunity Act of 1972, Conference Report, 118 Cong. Rec. 7166, 7168 (1972).

10. Id. at 1264 n. 21, citing S. Rep. no. 415, 92d Cong., 1st Sess., 6 (1971) and H.R. Rep. no. 238, 92d Cong., 1st Sess., 4 (1971).

11. Id. at 1264 n. 21. While plaintiffs in Franks were black, Title VII clearly covers other minorities and women as well.

12. Id. at 1271, citing Tilton v. Missouri Pacific Railroad Co., U.S. 169 (1964); Fishgold v. Sullivan Drydock and Repair Corp., 328 U.S. 275 (1946).

13. Id. at 1266 n. 28 (Emphasis added).

14. Id. at 1267, quoting Albemarle, 422 U.S. at 418.

15. Id. at 1269, quoting United States v. Bethlehem Steel Corp., 446 F. 2d 652, 663 (2d Cir. 1971).

16. Id. at 1269 n. 35, quoting Volger v. McCarthy, Inc., 451 F.2d 1236, 1238-1239 (5th Cir. 1971).

17. Id. at 1270.

18. See Quarles v. Philip Morris, Inc., 279 F. Supp. 505 (1968), in which the court held that a racially discriminatory departmental seniority system established before the effective date of the 1964 Civil Rights Act was not a bona fide seniority system under §703(h) of the act. Id. at 517, 518.

19. Numerous cases have recognized that the fact of application is irrelevant in determining the membership of the class to be remedied. See Note, Last Hired, First Fired Layoffs and Title VII, 88 Harv. L. Rev. 1544, 1557 (1975); Bing v. Roadway Express, Inc., 485 F. 2d 441, 451 (5th Cir. 1973); United States v. Sheet Metal Workers Local 36, 416 F. 2d 123, 131-132, 133 (8th Cir. 1969). In Acha v. Beame, 551 F. 2d 648, 656 (1976), the second circuit suggested that plaintiffs either have applied for employment, have written a letter complaining about the hiring policy early during the period of discrimination, or offered some other proof that they were deterred, against their expressed desire to work for the employer, by the discriminatory practice barring females. The Commission believes this burden of proof placed upon the plaintiffs violates the spirit of Title VII and is contrary to the Supreme Court's burden of proof allocation principles enunciated in Franks, 96 S. Ct. at 1268 and n. 32.

20. See Note, supra note 19, at 1558.

21. Id.

22. Griggs v. Duke Power, 401 U.S. 424, 432 (1971). The Supreme Court stated that "good intent or absence of discriminatory intent does not redeem employment procedures...that operate as 'built-in headwinds' for minority groups...." This was consistent with the lower court decision in Quarles which stated that "Present discrimination may be found in contractual provisions that appear fair upon their face, but which operate unfairly because of the historical discrimination that undergirds them." Quarles, 279 F. Supp. at 518.

23. Griggs, 401 U.S. at 436. In Griggs, the Court prohibited the use of general intelligence tests in hiring because they were not job related and "demonstrably a reasonable measure of job performance." Id. The Court further stated that "any tests used must measure the person for the job and not the person in the abstract." Id.

24. In *Robinson v. Lorillard*, 444 F.2d 791, 798 n. 7 (4th Cir. 1971), the Court observed that:

The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe efficient operation of the business. Thus, the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the business purposes advanced, or accomplish it equally well with a lesser differential racial impact.... - It should go without saying that a practice is hardly necessary if an alternative practice better effectuates the intended purpose or is equally effective, but is less discriminatory. (Emphasis added).

25. See 42 U.S. §2000e-2(h) (1970). This provision, in pertinent part, reads as follows:

Notwithstanding any other provisions of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority ... system... provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex or national origin.

26. *Waters*, 502 F. 2d at 1318-1319; *Jersey Central*, 508 F. 2d at 707-710.

27. The Congressional Record contains a Justice Department memorandum [110 Cong. Rec. 7207 (1964)] (remarks of Senator Joseph Clark), a brief question and answer session between Senators Clark and Everett Dirksen [110 Cong. Rec. 7217 (1964)], other memoranda submitted by Senator Edward Long, [110 Cong. Rec. 6996-6999 (1964)] and jointly by Senators Clark and Clifford Case [110 Cong. Rec. 7212 and 7215 (1964)], and other comments by Senators Hubert Humphrey [110

Cong. Rec. 6549 (1964)] and Thomas Kuchel [110 Cong. Rec. 6564 (1964)], which indicated that seniority rights would not be affected by Title VII.

28. See Cooper and Sobol at 1611-1614; Comment, Last Hired, First Fired Seniority, Layoffs, and Title VII: Questions of Liability and Remedy, 11 Colum. J. L. and Soc. Prob. 343, 369-371 (1975); Meadows v. Ford Motor Co., 9 EPD 9907 (6th Cir. 1975); Watkins v. Steelworkers Local 2369, 369 F. Supp. 1221, 1227-29 (E.D. La. 1974) rev'd 369 F. Supp. 1221 (E.D. La. 1974); Jersey Central Power and Light Co. v. IBEW Local 327, 508 F. 2d 687, 712 (3rd Cir. 1975) (Concurring opinion). See also Schaefer v. Tannian, 9 EPD 10,142 at 7648 (E.D. Mich. 1975).

29. Quarles, 279 F. Supp. at 516-517. See Rowe v. General Motors Corp., 457 F.2d 348, 358 (5th Cir. 1972); United States v. Bethlehem Steel Corp., 446 F.2d 652, 659 (1971); Allen v. City of Mobile, 331 F. Supp. 1134, 1148 (S.D. Ala. 1971), aff'd per curiam, 446 F.2d 122 (5th Cir. 1972); and Local 189, 416 F.2d at 988.

30. The above materials were introduced Apr. 8, 1964. What is now 703(h) of the act was first introduced on May 26, 1964. It was on this basis that Judge Cassibry in Watkins decided that the statements of Clark and the Justice Department were not interpretations of Section 703(h). Watkins, 369 F. Supp. at 1228 n. 5; Comment, supra note 28 at 369.

31. These statements had not appeared in the Clark statement. Comment, supra note 28, at 370 n. 133.

32. "Employment discrimination as viewed today is a...complex and pervasive phenomenon. Experts familiar with the subject now generally describe the problem in terms of 'systems' and 'effects' rather than simply intentional wrongs." S. Report No. 415, 92d Cong., 1st Sess., 5 (1971). See also H. R. No. 238, 92d Cong., 1st Sess., 8 (1971).

33. Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv. L. R. 1260, 1262, (1967).

34. Franks, 96 S. Ct. at 1264 n. 21, quoting S. Rep. No. 415, 92d Cong., 1st Sess., 6 (1971).

35. See Cooper and Sobol at 1676.

36. Note, supra note 19, at 1550. This analysis concluded that "[I]n situations where courts have found that strict adherence to the legislative history of Title VII would thwart the goal of nondiscrimination, the legislative history has been disregarded." Id. at 1551.

37. Cooper and Sobol at 1614. It is arguable that regardless of the language of Title VII §703(h), a means to redress the often discriminatory effects of such policies can be found independently in §1981 of the Civil Rights Act of 1866, 42 U.S.C. §1981 (1974). Under this section, the complainant need only show that discrimination is the result of the employer's actions. Having to prove the element of intent, as under §703(h), is unnecessary under §1981. A thorough analysis of how §1981 may work as a remedy for employment discrimination is found in Larson, The Development of Section 1981 as a Remedy for Racial Discrimination in Private Employment, 7 Harv. Civ. Rights - Civ. Lib. L. Rev. at 90-95.

38. Watkins, 369 F. Supp. at 1232-1233.

39. 8 BNA FEP Cases 959, 960-961 (D. N.J. 1974) (Supplemental memorandum).

40. Watkins, 369 F. Supp. at 1232.

41. Chance v. Board of Examiners, supra, note 1.

42. The district court in Loy v. City of Cleveland, supra, note 1, while dismissing the action for mootness, did note that should the city ever proceed with its proposed layoff plan and complainants' cause of action accrue, it would consider the Watkins approach.

IV. Avoiding or Minimizing Layoffs

The controversy over seniority obscures the basic fact that employee layoffs themselves, regardless of the mechanism by which they are implemented, may be forestalled or minimized by various means. Some of these approaches are well-known in Western Europe, (1.) where "a range of efforts are applied both in periods of severe recession as well as in more normal economic circumstances to achieve low levels of unemployment...." (2.)

In the United States, some collective bargaining agreements provide that prior efforts must be made to preserve the employment of those who would otherwise be laid off or terminated. The 1975 Bureau of National Affairs survey of major collective bargaining agreements found that 20 percent of the agreements--24 percent of manufacturing contracts and 12 percent of nonmanufacturing contracts--provide for "worksharing" (spreading the available work or hours of work) (3.) and restrictions on work schedules, on subcontracting, and on new hires. Some agreements also protected regular employees by initially restricting layoffs to probationary, temporary, part-time, or other specific worker categories.

The most common worksharing practice is reduction in hours. (4.) A limitation frequently exists on the duration of this procedure, for example, 4 weeks in any 1 year. Other worksharing provisions provide for the rotation of short, specific periods of layoffs among employees, rather than having all employees working reduced schedules at the same time. Still other worksharing provisions require equal division, not of time, but of the available work. (5.)

Restrictions on overtime and subcontracting to be applied specifically during slow or layoff periods are also present in some agreements. (6.) Further, more than one-third of the agreements limit hiring of new employees in slack periods to workers with special skills. Almost one-third of agreements also place indirect limits on hiring by requiring that employees scheduled for layoff be placed in or considered for any existing vacancies. It is likely that this is the practice under many other agreements although not specifically required by the contract. (7.)

Provisions were rare requiring labor force reduction through attrition, not replacing those employees who resign or retire--the normal practice in the Federal Government and common in railroad industry agreements. Fewer than 1 percent of all agreements in 1971 contained such provisions. (8.)

Employers, unions, and employee groups are increasingly considering these devices and other efforts to keep people working. (9.) Worksharing agreements implemented during the recent recession have, in fact, helped to reduce layoffs in some cases. In the private sector, a major example of worksharing experiments involves the Amalgamated Clothing Workers of America, where some units in the West have divided work to avoid layoffs. (10.) Employees of the Washington Star News and Buffalo Courier Journal accepted a temporarily reduced work week in order to avoid layoffs. (11.) A Teamsters Union local in Chicago voted to limit its hours of work to 50 per week. Many members were working 60 or more hours, but 1,000 of the 15,000 union workers were unemployed. (12.) The New York Telephone Company and its union agreed to a 4-day week for 4 days' pay rather than have 400 operators lose their jobs. (13.)

Other unions and employers "using or proposing" varieties of layoff alternatives during the recent recession were the Rochester, New York, Building Trades Council; the Communications Workers; Burlington Industries; Silvercup Bakeries; the American Paper Institute; Hewlett-Packard; and Pan American Airways. (14.)

New York City's human rights commission proposed layoff guidelines for both private employers (15.) and city

agencies(16.) to minimize layoffs of minorities and women. The commission urged employers to plan in advance for reductions in labor cost by layoffs as only one possible method of trimming. The layoff option would be weighed against potential EEO liability if it resulted in adverse impact upon protected employees. (17.) Shorter work weeks and payless holidays were among the alternatives to layoffs cited by the commission.

In another example of layoff alternatives in the public sector, a public clash between black and white police officers in Detroit over proposed layoffs of 825 officers, including black and female officers hired since 1974, ended with a plan involving payless workdays. Despite an initially negative reaction from white officers, that plan "has certainly worked out for us," a police department spokesman reported, and "the city is saving money." (18.)

A task force appointed by the Governor of New York has considered subsidizing workers who accept a 4-day week by supplementing their wages with unemployment insurance benefits for the fifth day. (19.) For example, any worker, whether public or private, who regularly earns \$150 a week would get 4 days' pay of \$120 under such a plan, plus an unemployment insurance benefit--half his or her regular pay rate--of \$15.

Since the unemployment benefit is tax-exempt, the worker would pay lower Federal, State, and city taxes, for a savings of \$4 or \$5 per week. Additional savings would result from a reduction in work-related expenses such as transportation and food. The Governor's task force estimated that the average worker's week would thus have a value of at least \$141--and the worker would have an extra day off.

The proposal would avert layoffs that under usual seniority rules disproportionately affect younger persons, minorities, and women and enable employers to hold their regular forces instead of having to recruit new employees when their business improved. (20.) During 1974-75 the introduction or improvement of such compensation for partial unemployment permitted a fairly widespread resort to part-time work in several industrial nations as a means of spreading a reduced volume of employment among the work force. (21.)

Several recent studies have evaluated this type of layoff alternative in detail and found it both highly desirable and feasible for use in the United States. (22.) One commentator suggested that worksharing "might be just the thing" to provide a fair and effective solution to the last hired, first fired problem. (23.) In addition to the

proposed use of unemployment insurance to compensate those who work a reduced work week, another suggested incentive for worksharing efforts is tax relief for employers who maintain full benefits for workers who work less than full time under a worksharing plan. (24.) It has also been suggested that the U.S. Department of Labor provide worksharing information and technical services to employers and labor representatives in the face of impending layoffs. (25.)

It must be emphasized that worksharing and other alternatives to layoffs are by no means permanent cure-alls for the problem of layoffs. As one study observed, "Where business conditions require a drastic cut in work force size," and in an industry suffering long-term and apparently irreversible decline, the use of alternatives "will serve only to minimize or delay the impact of layoffs." (26.)

Nonetheless, as a 1975 conference in New York revealed, some form of worksharing is particularly well-suited for pieceworkers, hourly workers, salaried employees, and in manufacturing, service industries, and nonprofit settings such as universities and public employment. (27.) These include the industries and occupations employing relatively large numbers of minorities and women.

In addition to helping protect affirmative action gains, there is some evidence that worksharing arrangements help to improve employee morale and productivity among the entire work force, white as well as nonwhite, male and female. (28.) The New York conference concluded generally that worksharing:

...can diminish the number of jobholders whose work-lives are disrupted and who become dependent on public support... (and) decrease antisocial behavior that always rises with unemployment... providing continuity of work experience for the greater number, especially for those who would bear the brunt of layoffs, can more than offset any temporary hardship. Worksharing can heighten the attachment to a job, to the union, or to an employer among those segments of the labor market (including)... the younger workers, members of minority groups, and women. Frequent and involuntary periods of unemployment, coupled with the necessity for job-changing, is damaging to career orientation and to job satisfaction. Worksharing, if it reduces the impact of unemployment on these groups, could have longer range benefits to the work ethic, productivity, and the competitive position of the American economy. (29.)

Notes to Section IV

1. See Edith F. Lynton, "Alternatives to Layoffs, based on conferences held by the New York City Commission on Human Rights, Apr. 3-4, 1975," September 1975, pp. 2-3; National Commission for Manpower Policy, Recent European Manpower Policy Initiatives, November 1975; and Beatrice Reubens, The Hard to Employ: European Alternatives (N.Y.: Columbia Univ., 1970) for a discussion of such practices in Europe.
2. Interim report to the Congress of the National Commission for Manpower Policy: Public Service Employment and Other Responses to Continuing Unemployment, June 1975, p. 18.
3. Basic Patterns in Union Contracts, p. 60:5. Five industries---communications, primary metals, apparel, machinery (except electrical), and transportation equipment---account for about half of all worksharing clauses and three-fourths of the workers covered by them. Most large national unions, except those in the construction industry, have negotiated worksharing clauses. These include the Steelworkers, Auto Workers, Ladies' Garment Workers, and Communications Workers. (Major Collective Bargaining Agreements, p. 3).
4. Winston Tillery, "Layoff and Recall Provisions in Major Agreements," Monthly Labor Review, July 1971, p. 44. The usual minimum of hours worked on this basis is 32.
5. Ibid. These are usually found in agreements covering workers on piecework, particularly in the apparel industry.
6. Ibid., p. 45.
7. Ibid., p. 46.
8. Ibid.
9. See Appendix B for a list of examples of layoff alternatives which was presented at a worksharing conference in New York City in April 1975. See also Bureau of National Affairs, "Economic Pressures and Employee Relations Programs," Bulletin to Management, Aug. 14, 1975.
10. Kandel, "Current Developments in EEO," 1 Employee Relations Law Journal 185 (1975).

11. Michael Stuart, Local Representative, Washington-Baltimore Newspaper Guild, telephone interview, Sept. 16, 1975.
12. Harry Fleischman, director, Nat'l Labor Service, Amer. Jewish Comm., letter to George Meany, president, AFL-CIO, Mar. 31, 1975.
13. This system, according to management, has worked "superbly" as an alternative to layoffs, and no time limit has been placed on it. (Kenneth Brendstrup, assistant vice president of personnel, New York Telephone Company, telephone interview, Oct. 2, 1975.)
14. Eleanor Holmes Norton, commissioner, New York City Commission on Human Rights, letter to Hon. Hugh Carey, Governor, State of New York, June 10, 1975.
15. Eleanor Holmes Norton, commissioner, New York City Commission on Human Rights, memorandum to all trade associations, Dec. 16, 1974.
16. Eleanor Holmes Norton, commissioner, New York City Commission on Human Rights, memorandum to agency heads and equal employment opportunity officers, New York City, Nov. 25, 1974, and June 6, 1975.
17. The commission stated that whenever layoffs are deemed unavoidable, the employer should "analyze the proposed layoffs to establish whether they will result in an adverse impact on minorities and women, and determine whether there are acceptable alternatives which would accomplish the objectives as well with a lesser differential impact." Ibid.
18. Martin J. Mitton, 2nd deputy chief, Detroit Police Department, telephone interview, Sept. 16, 1975. There is no reason, in Deputy Chief Mitton's view, why such a plan could not work in other cities facing similar economic problems.
19. Lillian L. Poses, Governor's Task Force on Unemployment, "Work Sharing Proposal---A Summary," May 1975. Legislation to amend the State labor law to permit such use of unemployment insurance was introduced in the New York State Assembly Mar. 30, 1976.

20. One study found that, as of 1972, it was 3 percent more costly for the auto industry to hire back an experienced worker as opposed to working an active-status worker time and a half. S. Martin Nemirow, unofficial paper, U.S., Department of Labor, Notes on the General Approach of the Poses Worksharing Plan, Nov. 14, 1975, p. 3.

21. For many years statutory unemployment insurance or assistance schemes in France, Germany, Great Britain, and Sweden have contained provisions covering payments for partial unemployment. Japan introduced such payments in 1975. U.S., Department of Labor, Bureau of Labor Statistics, "Unemployment Compensation in Eight Industrial Nations," Monthly Labor Review, July 1976, pp. 21-22.

22. See Lund, Bumstead, and Friedman, "Inverse Seniority: Timely Answer to the Layoff dilemma?" Harvard Business Review, September-October 1975, pp. 65-72; Lynton, Alternatives to Layoffs; and Blumrosen, Layoff or Work Sharing: The Civil Rights Act of 1964 in the Recession of 1975, Employee Relations Law Journal, Feb. 20, 1975. See also National Commission on Manpower Policy, issue paper, The Private Sector's Manpower Role, March 1970, as well as that Commission's Proceedings of a Conference on the Role of the Business Sector in Manpower Policy, November 1975, including the views on worksharing expressed therein by William H. Kohlberg, Assistant Secretary for Employment and Training, U.S., Department of Labor, p. 11, and Jerome Rosow, manager, Public Affairs Planning, Exxon Corporation, pp. 17-18.

This approach should also remove a major obstacle to union support for worksharing, namely the loss of pay that would be involved without this compensation. See International Union of Electrical Workers, "Memorandum on Opposition to Mandatory Work Sharing," Bureau of National Affairs Daily, Daily Labor Reports, Apr. 3, 1975.

23. Poplin, Fair Employment in a Depressed Economy: The Layoff Problem, 23 U.C.L.A. Rev. 177, 221 (1975); See also Cooper and Sobol, supra, sec. II note 1 at 1635, Colum. J. L. and Soc. Prob., supra, sec. III, note 28 at 398-400, and Edwards and Zaretsky, Preferential Remedies for Employment Discrimination, 74 U. Mich. L. R. 1 (1975).

24. Lynton, Alternatives to Layoffs, p. 54.

25. Ibid., p. 52.

26. Ibid., p. 7. For example, despite their tradition of worksharing, the International Ladies Garment Workers and the Amalgamated Clothing Workers have suffered "mass" layoffs, primarily as a result of declining demand and public preference for imports. A. E. Raskin, "For Organized Labor, What Replaces More?" New York Times, Sept. 1, 1975.

27. Lynton, Alternatives to Layoffs, p. 18. Rosow estimates that the 4-day week with worksharing could preserve 10 percent of jobs that might otherwise be lost. Proceedings of a Conference on the Role of the Business Sector in Manpower Policy, p. 17.

28. The 4-day week in the textile and automobile industries has shown increases in the rate of output and decreases in absenteeism. Lynton, Alternatives to Layoffs, p. 22.

29. Ibid., pp. 23-24. Nemirow noted that worksharing would also sharply increase purchasing power and spending, particularly important to counter economic recession. Nemirow, p. 11.

V. Conclusion

Despite the Employment Act of 1964, the Civil Rights Act of 1964, and new Federal job training and affirmative action programs established during the past 15 years, equal employment opportunity remains unrealized for many of the Nation's minority members and for women. One of the most serious obstacles to achieving this goal is the high rate of unemployment among minorities and women. Securing a job is just the first hurdle for many of these citizens--the ability to hold a job and develop tenure is equally critical. Even in good times unemployment rates in the occupations they tend to hold are high. Cyclical hiring and layoffs, usually based on seniority, perpetuate this unemployment.

The recent recession has had a critical impact on minorities and women. Many had only recently obtained their first promising jobs. Increasing numbers had begun to penetrate employment areas of great importance in our society, such as State and local government. Because they have not had time to acquire adequate seniority, however, minority members and women have been affected disproportionately by the personnel cutbacks occasioned by

this recession, and much of their limited progress has thereby been obliterated. In light of dismal predictions of slow economic recovery and continuing high unemployment, this recession threatens to lock these groups into place as a permanent, expendable economic and social underclass.

Such an appalling prospect would stand as a clear and direct repudiation of efforts by all branches of government at Federal, State, and local levels to ensure equal employment opportunity for minorities and women for the first time in the history of this Nation. The continuing implementation of layoffs by seniority inevitably means the gutting of affirmative action efforts in employment and the scrapping of the guarantees explicit in Title VII of the Civil Rights Act.

Layoffs by seniority and the problems they pose for affirmative action under Title VII are therefore a critical issue facing this society. The Commission disagrees with the reasoning that would allow rigid adherence to the policy of layoffs by seniority or to any employment practice, no matter how venerable or purportedly neutral in intent it may be, when such a policy has a disparate effect on minorities or women and freezes past discrimination. Such a policy must not be allowed to stand in the way of the entire thrust of this Nation's efforts to improve equal employment

opportunity for all Americans, regardless of race, ethnicity, or sex.

The question of an equitable remedy in a conflict that, as in Detroit, may publicly and violently pit worker against worker for scarce jobs is complex and difficult. For the short term, at least, much wider resort to layoff alternatives of the type discussed in this report is, in the Commission's view, both feasible and urgent.

Some major collective bargaining agreements will expire in 1977, and it is certainly to be hoped that both labor and management will renegotiate these contracts to provide alternatives to layoffs solely by seniority and the opportunity for all employees to choose their preference among these alternatives should a layoff situation arise. (1.) To encourage modification of layoff clauses along such lines, there must be incentives. Revision of State unemployment insurance laws to provide tax-free compensation for employees choosing to work a reduced work week would provide one essential incentive. (2.) Federal legislation should impose this requirement as a minimum standard for an approved State unemployment system. (3.)

While such voluntary measures are desirable, they are unfortunately, unlikely to suffice. The conflicting views as to the importance of the stipulations of union contracts

and the nondiscrimination obligations of employers may now well have become so intense as to render this kind of local compromise and negotiated worksharing improbable. (4.)

The Commission therefore believes that the "last hired, first fired" conflict mandates explicit Federal guidelines by the Equal Employment Opportunity Commission in accordance with its authority and responsibility under Title VII. (5.)

These guidelines should be based on the principle, explicitly stated, that all seniority-based layoff policies should be invalid as they apply to any work force that does not mirror the relevant labor market and the composition of which cannot be explained successfully by the employer. Accordingly, they should stipulate that where an employer is compelled to reduce production costs, this must be done by means which do not adversely impact on minorities or women. Reduction of hours, early retirement, rotation of layoffs, cuts in costs other than wages, and other techniques discussed earlier in this report should be designated as practices which may be applied in this regard.

If an employer can demonstrate that these layoff alternatives will not adequately reduce costs for reasons deriving from the productive process, a means to lay off workers must be implemented that will not disproportionately affect minorities and women. One such means would be

inverse seniority, (6.) or permitting the most senior person to accept a temporary layoff instead of the most junior worker. The senior employee would receive compensation while on layoff and would claim the right to return to the previous job. This system would allow retention of more people in the junior ranks, where minorities and women are likely to be clustered.

Separate seniority lists for layoff purposes--one for minorities, one for women, and one for nonminority males--should be designated as another possible technique. (7.) No employee would be placed on more than one list; minority women, for example, would be placed on either the minority or female list, whichever had the fewest employees. Layoffs would proceed in reverse order of seniority by the percentages in the employer's work force existing at the time layoffs begin. Under this plan, if the employer's work force was 10 percent women, 10 percent minorities, and 80 percent nonminority males, the first 10 employees laid off would be the 8 nonminority males with the least seniority and one each of the women and minority males with the least seniority. (8.)

EEOC guidelines should also make clear the affirmative action requirements of recall policies. As noted, factors other than seniority are often used in layoffs although

seniority remains the dominant method. There is no reason why nonseniority factors cannot also be used in recalls, nor is there any reason why the same basic principle involved in guidelines on layoffs should not guide recall policies as well. An employer's equal employment obligation does not become inoperative during recalls, to resume only if and when new hiring commences. Rather, an employer's recall policy must be designed to restore proportional minority and female employment or to create such representation if it did not exist previously, unless it can be successfully explained why such representation cannot be obtained.

Similar layoff and recall guidelines should also be issued immediately by the Office of Federal Contract Compliance Programs (OFCCP), consistent with Executive Order No. 11246.(9.) As we have noted, apart from the unsettled issue concerning the legislative history of Title VII, there appears to be little doubt about the widespread disparate and exclusionary effects of seniority-based layoffs on minorities and women. As that legal controversy has no bearing on the substance and thrust of Executive Order No. 11246,(10.) OFCCP guidelines should be prepared for release as a matter of the highest priority.

In light of the affirmative ruling of Franks concerning constructive seniority, both EEOC and OFCCP need to provide

directions for employers with respect to their potential liability for class relief. Guidelines should be issued putting employers on notice that constructive seniority, as well as financial relief, may be owed to victims of discrimination. These guidelines should also set forth the age and residency requirements that form the criteria for determining who may be included in the class of workers eligible for that relief. (11.)

The nub of the conflict over seniority, as far as layoffs are concerned, is, in the Commission's view, not determining liability or legality where such layoffs clearly perpetuate past discrimination, but rather the problem of a remedy. (12.) The key tests to be applied in determining Title VII remedies are practicability, feasibility, and flexibility. As the Supreme Court observed in Franks, "In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests." (13.) In remedying the discrimination inherent in layoffs by seniority, the Commission believes that no legal restraints tie the hands of the courts, and that where some lower courts have ordered modification of the layoff by seniority practice, they have done so consistent with the spirit and

the letter of the law, as elaborated in Title VII and Griggs.

These recommended steps, consistent with the district court's approach in Watkins and the Supreme Court's decisions in Griggs and Franks, would do much to eliminate seniority-based layoff problems for minority and female workers and thereby make meaningful the full thrust of Title VII. They will not, it should be clear, mean the destruction of the seniority system as it determines so many job rules other than layoff and recall.

Another point is in order. Much of the focus on seniority alone during the current controversy over layoffs to a very real extent begs a larger question. That larger question concerns layoffs per se--regardless of the means by which they are implemented. That layoffs are so integral and frequent a part of our economic life is a fact which, in the Commission's view, this Nation has tolerated too long.

Layoffs are not mandated by the workings of an inscrutable fate. Layoffs often result from manmade policies--official macroeconomic Government policies designed to force up unemployment rates as a traditional means to "cool" the economy and reduce inflation.(14.) Because layoffs are often viewed as a regrettable but natural and necessary response to the fluctuations of the

business cycle, many older white male breadwinners, as well as minority and female workers, are relegated to the unemployment lines, and younger workers are denied the opportunity to plan careers and futures. Steps have been taken to cushion the impact of layoffs, but layoffs nonetheless are engineered as a part of national fiscal and monetary policies.

The Commission believes that deliberate plans that lead to the disturbing spectacle of minority and female workers fighting white male workers for scarce jobs are not tenable in light of the repeated commitments of Congress and the courts to nondiscrimination and full employment. There is simply no equity at all for millions of Americans of all racial, ethnic, and sexual groups who are laid off work when such commitments have been made and when layoff alternatives are available.

The crippling of civil rights efforts is not the only detrimental result of national economic policy in this regard. Such a policy conflicts with the broad public interest in other ways. For example, job training efforts may be undermined by layoffs. (15.) Layoffs also mean increased public costs for unemployment compensation systems and increases in welfare payments. (16.) Our society discourages reliance upon the welfare "dole," although

government policy often forces Americans to turn to it or to the unemployment "dole." Layoffs thus generate an incalculable social cost in terms of money as well as frustration and alienation.

Worksharing and other layoff alternatives represent only one response to the manifold problems of layoffs. These practices can clearly keep people working and thereby help overcome the civil rights problems connected with layoffs and also reduce the host of other fundamental and longstanding economic and social problems touched upon in this report.

The 1974-75 recession and past recessions and the continuing wide gaps in income and unemployment (17.) in the United States continue to mock the most well-intentioned equal employment efforts. The Commission, therefore, urges endorsement by both the President and the Congress of the goal of full employment and an integrated work force. The economic experience of recent years demonstrates the need for a new full employment policy that will achieve the goal of maximum job opportunities for all those willing and able to work. (18.) A commitment to minimum unemployment must be the major priority of economic policy. Far more substantial and carefully designed programs of manpower training and public service employment, (19.) as well as worksharing,

should be created in support of this goal. Inflation must be fought in other ways than by deliberately created or tolerated unemployment.

In the last analysis, what at first seems to be a legal issue involving the civil rights of minority and female workers, upon closer reflection, turns out to be a vital matter affecting the human rights of all Americans. Layoffs are not solely a question of economics but of economic justice. American citizens--human beings--have become lost in economic abstractions and statistics. An adult's self-image depends to a considerable extent on his or her work activity. A person finds self-expression in work, whereas unemployment provokes doubt about an individual's place in society. The psychological pressure induced by such a feeling, even on the unemployed person's children, can be devastating. Just as a child may suffer a loss of self-esteem from the knowledge that he or she is being consigned to a segregated, inferior school, so the job loser may carry an intangible stigma--in the eyes of himself or herself, family, or friends--a sense of worthlessness and helplessness which no unemployment check can allay.

It is time to recognize the right to a job as a moral claim, as a precondition for avoiding an intolerable social degradation of millions of Americans and an outrage against

human dignity. Official and concrete recognition of this right by both the President and the Congress is an essential first step toward shaping economic and employment policies that meet the requirements of law and the legitimate interests of workers--whatever their race, ethnicity, and sex--as well as the broad interests of our society as a whole.

Notes to Section V

1. Lynton, Alternatives to Layoffs, p. 52.
2. Under most State laws, no unemployment benefits are paid for any week in which a person works 3 days or more. U.S., Department of Labor, Comparison of State Unemployment Insurance Laws, (January 1975), pp. 3-41. See also Wettick, Modifying Unemployment Compensation Acts to Remove Obstacles to Worksharing, 15. Lab. L.J. 702 (1964).
3. Summers and Love, supra, sec. III, note 1, at 930.
4. Stacy, "Title VII Seniority Remedies in a Time of Economic Downturn", 28 Vand. L.R. 517 (1975).
5. EEOC has, in fact, considered layoff guidelines but has not issued them. 88 Lab. Rel. Rep. 313 (1975).
6. Lund, Bumstead, and Friedman, Harvard Business Review, p. 65. The concept of inverse seniority was raised 16 years ago and was held likely to become an important factor in labor relations in the future. Sumner H. Slichter, James E. Healey, and E. Robert Livernach, The Impact of Collective Bargaining on Management (Washington, D.C.: Brookings Institution, 1960), pp. 176-77. The United Auto Workers proposed it in 1969. Business Week, Mar. 29, 1969, p. 82.
7. The Washington State Human Rights Commission approved the use of dual layoff systems in order to preserve then current proportions of female and black workers. 1 Wom. L. Rep. 1.186, Apr. 1, 1975.
8. See, e.g., Loy, supra, sec. 3, note 1. As noted, the Commission is aware that several courts have ruled against this approach. The Commission believes, however, that those decisions deviated from well-established Title VII principles and did not provide justifiable equity where a disproportionate adverse impact on minorities or women was clear. While white males are entitled to protection, that protection can never supersede the right of minorities and women to their "rightful place." One commentator states that "[e]very circuit court which has considered the matter so far has endorsed the rightful place solution, without hesitation and virtually without dissent. Poplin, supra, sec. IV, note 22 at 205-206 n. 121.

9. Exec. Order 11246 prohibits discrimination in employment by Federal Government contractors and subcontractors on the basis of race, creed, color, or national origin and requires these contractors to take affirmative action to ensure that equal opportunity is provided. Exec. Order No. 11246, 3 C.F.R. 339, 340 (1964-1965 comp.). In 1967, sex was added as a prohibited basis of discrimination by Exec. Order 11375. Exec. Order No. 11375, 3 C.F.R., 1966-1970 (comp.).
10. Cooper and Sobol, supra, sec. II, note 1, at 1631.
11. See the discussion of these factors in sec. III of this report.
12. "It is fair to say that the real sticking point in all this controversy has not been the violation but the remedy." Poplin, supra, sec. IV, note 22, at 194.
13. Franks 98 S. Ct. at 1270 n. 39.
14. See Keyserling, Current, p. 34, and Killingsworth, "Unemployment in 1976," on this point.
15. The continuing implementation of layoffs by seniority inevitably forces out of work those disadvantaged employees only recently hired and trained at considerable cost to government and private employees. The costs of work and training programs sponsored by the Department of Labor and the Department of Health, Education, and Welfare amounted to more than \$3 billion in fiscal year 1973. Lund, Bumstead and Friedman, Harvard Business Review, at 71. See also Tillery, Monthly Labor Review, July 1971, p. 46 on this point.
16. Lund, Bumstead, and Friedman, pp. 71-72.
17. In October 1976, amidst growing evidence of economic stagnation, the unemployment rates among blacks continued to be twice as high as among whites. The jobless rate for black workers was 13.5 percent, while the rate for white workers was 7.3 percent. U.S. Department of Labor, Bureau of Labor Statistics, "The Employment Situation: October 1976," Nov. 5, 1976.

18. See U.S., Commission on Civil Rights, Civil Rights Digest, Winter-Spring 1976, which included four articles on the subject of full employment.

19. See the recommendations of the National Commission for Manpower Policies in that commission's reports, Proceedings of a Conference on Public Service Employment (1975), and Public Service Employment and Other Responses to Continuing Unemployment (1975).

APPENDIX A
TABLES 1 to 7 and
FIGURES 1 and 2

Table 1. Total Labor Force Participation Rates, By Age, Sex and Race

July 1976

Age and Sex	Black and Other Races	White
MEN		
Total, 16 years and over	74.9	81.4
16 and 17 years.....	57.4	70.7
18 and 19 years.....	65.2	88.8
20 to 24 years.....	84.3	92.8
25 to 34 years.....	91.7	96.3
35 to 44 years.....	91.5	95.9
45 to 54 years.....	83.7	92.7
55 to 64 years.....	61.9	75.4
65 years and over.....	21.6	19.9
WOMEN		
Total, 16 years and over	51.9	47.4
16 and 17 years.....	43.5	56.3
18 and 19 years.....	50.6	72.9
20 to 24 years.....	63.4	68.4
25 to 34 years.....	64.9	54.4
35 to 44 years.....	60.8	54.5
45 to 54 years.....	57.1	53.5
55 to 64 years.....	40.7	40.1
65 years and over.....	9.6	7.7

Note: The labor force participation rate is the proportion of the total noninstitutional population that is in the labor force.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, August, 1976, Vol. 23, No. 2, pp 21-22, Table A-3.

Table 2

RELATIVE OCCUPATIONAL DISTRIBUTION OF WHITES AND NONWHITES
1950*, 1958, 1970, 1972, 1973
(annual averages)

Occupation and race	1950	1958	1970	1972	1973
<u>Nonwhites</u>					
<u>TOTAL</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
Professional, technical	3.4	4.1	9.1	9.5	9.9
Managers, officials	2.0	2.4	3.5	3.7	4.1
Clerical and kindred work	3.5	6.1	13.2	14.4	14.9
Sales	1.3	1.2	2.1	2.2	2.3
Craft workers and blue-collar worker supervisors	5.2	5.9	8.2	8.7	8.9
Operatives	18.6	20.1	23.7	21.3	22.2
Nonfarm laborers	15.7	14.7	10.3	9.9	9.7
Private household	14.6	15.4	7.7	6.8	5.7
Service, except private household	15.1	17.1	18.3	20.5	19.6
Farmers, farm managers	9.3	3.7	1.0	0.6	0.7
Farmworkers and farm-worker supervisors	9.7	8.8	2.9	2.4	2.1
<u>Whites</u>					
<u>TOTAL</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
Professional, technical	9.3	11.8	14.8	14.6	14.4
Managers, officials	9.7	11.7	11.4	10.6	11.0
Clerical and kindred work	13.2	15.4	18.0	17.8	17.5
Sales	7.6	6.9	6.7	7.1	6.9
Craft workers and blue-collar worker supervisors	14.8	14.3	13.5	13.8	13.9
Operatives	20.0	17.9	17.0	16.0	16.3
Nonfarm laborers	5.0	4.5	4.1	4.6	4.6
Private household	1.2	1.7	1.3	1.2	1.1
Service, except private household	6.8	7.7	9.4	10.6	10.6
Farmers, farm managers	7.5	5.0	2.4	2.2	2.1
Farmworkers and farm-worker supervisors	3.7	3.0	1.6	1.6	1.6

* Occupations not reported in 1950 were 1.3 percent for whites and 1.5 percent for nonwhites. Data for 1950 include persons 14 years old and over; data beginning with 1958 refer to persons 16 years old and over. Data for 1950 are based upon occupational information for 1 month of each quarter and are not exactly comparable to data for 1958 forward.

Source: Computed from data in U.S., Executive Office of the President, Office of Management and Budget, Social Indicators, 1973 table 4/14; U.S., Department of Commerce, Bureau of the Census, 1950 Census of Population, vol. II, part 1; U.S., Department of Labor, Manpower Report of the President, 1973, and Manpower Report of the President, 1974.

TABLE 2A
 RELATIVE OCCUPATIONAL DISTRIBUTION OF SPANISH ORIGIN POPULATION,
 UNITED STATES, 1960-1975[†]
 (annual averages of those reporting occupation)

Occupation and Sex	1960	1969	1970	1971	1972	1973	Males & Females	
							1974	1975
<u>Males</u>								
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Professional, technical	3.9	7.9	6.0	7.2	6.8	6.9	6.5	8.7
Managers, officials	4.3	7.4	5.0	6.4	6.5	6.4	5.7	5.5
Clerical & kindred work	5.5	6.7	7.5	6.9	6.8	6.3	14.7	14.7
Sales	3.4	3.3	4.0	2.7	3.0	3.3	3.4	4.1
Craft and blue-collar worker supervisors	15.6	18.5	19.7	18.2	19.6	18.4	12.1	11.8
Operatives	27.7	28.6	27.2	27.6	27.0	27.2	28.2	26.7
Nonfarm laborers	13.9	11.8	11.0	12.1	11.6	11.7	7.7	8.2
Private household Service, except priv. household	0.1	--	0.1	13.6	--	--	14.9	16.8
Farmers, farm managers	9.8	10.5	12.0	0.3	12.9	13.9	0.2	0.1
Farmworkers & supervisors	1.9	0.6	0.7	0.3	0.4	0.3	5.7	3.4
Farmworkers & supervisors	14.0	4.8	6.6	5.0	5.4	5.6		

Females

TOTAL	100.0	100.0	100.0	100.0	100.0	100.0		
Professional, technical	5.4	8.6	7.5	*	6.9	*		
Managers, officials	2.3	1.7	2.2	*	3.3	*		
Clerical & kindred work	19.8	25.6	28.3	*	26.2	*		
Sales	6.8	5.0	5.8	*	4.7	*		
Craft & blue-collar worker supervisors	1.5	1.1	2.3	*	0.9	*		
Operatives	36.7	32.8	26.7	*	27.0	*		
Nonfarm laborers	1.1	0.8	1.4	*	1.2	*		
Private household	8.8	6.4	4.5	*	5.7	*		
Service, except priv. household	14.2	17.1	18.9	*	19.8	*		
Farmers, farm managers	0.2	0.8	0.1	*	--	*		
Farmworkers & supervisors	3.1	--	2.4	*	1.5	*		

-- Represents zero or rounds to zero

* Data not available

† For 1960 and 1970, data refer to composite of Spanish surname in southwestern States (Arizona, California, Colorado, New Mexico, Texas) and the U.S. population of Puerto Rican birth and parentage. For other dates, data refer to composite of persons self-identifying as of Mexican or Puerto Rican origin, with "other" Spanish included, due to the predominantly Southwest Hispanic and Mexican origin of persons selecting this alternative.

Sources: 1960 U.S. Census of the Population--Persons of Spanish Surname (PC(2)1B) and Puerto Ricans in the U.S. (PC(2)1D), 1970 U.S. Census of the Population--Persons of Spanish Surname (PC(2)1D) and Puerto Ricans in the U.S. (PC(2)1E), U.S. Dept. of Commerce: Bureau of the Census Current Population Reports--Population Characteristics, Series P-20, Nos. 213, 221, 224, 250, 264, 280, 290.

Table 3

UNEMPLOYMENT RATES, BY AGE, SEX, AND RACE, 1954-1974
(annual averages)

	16 to 19 years old				20 years old and over			
	White		Nonwhite		White		Nonwhite	
	Male	Female	Male	Female	Male	Female	Male	Female
1954	13.4	10.4	14.4	20.6	4.4	5.1	9.9	8.4
1955	11.3	9.1	13.4	19.2	3.3	3.9	8.4	7.7
1956	10.5	9.7	15.0	22.8	3.0	3.7	7.4	7.8
1957	11.5	9.5	18.4	20.2	3.2	3.8	7.6	6.4
1958	15.7	12.7	26.8	28.4	5.5	5.6	12.7	9.5
1959	14.0	12.0	25.2	27.7	4.1	4.7	10.5	8.3
1960	14.0	12.7	24.0	24.8	4.2	4.6	9.6	8.3
1961	15.7	14.8	26.8	29.2	5.1	5.7	11.7	10.6
1962	13.7	12.8	22.0	30.2	4.0	4.7	10.0	9.6
1963	15.9	15.1	27.3	34.7	3.9	4.8	9.2	9.4
1964	14.7	14.9	24.3	31.6	3.4	4.6	7.7	9.0
1965	12.9	14.0	23.3	31.7	2.9	4.0	6.0	7.5
1966	10.5	12.1	21.3	31.3	2.2	3.3	4.9	6.6
1967	10.7	11.5	23.9	29.6	2.1	3.8	4.3	7.1
1968	10.1	12.1	22.1	28.7	2.0	3.4	3.9	6.3
1969	10.0	11.5	21.4	27.6	1.9	3.4	3.7	5.8
1970	13.7	13.4	25.0	34.4	3.2	4.4	5.6	6.9
1971	15.1	15.1	28.9	35.4	4.0	5.3	7.2	8.7
1972	14.2	14.2	29.7	38.4	3.6	4.9	6.8	8.8
1973	12.5	13.3	28.2	34.9	2.9	4.3	5.7	8.2
1974								

(third quarter averages, seasonally adjusted):

Nonwhite men, 20 years of age and over..... 6.3 percent
 Nonwhite women, 20 years of age and over..... 8.1 percent
 Nonwhite men and women, 16-19 years of age...33.0 percent
 White men, 20 years of age and over..... 3.4 percent
 White women, 20 years of age and over..... 5.0 percent
 White men and women, 16-19 years of age.....14.1 percent

Source: U.S., Department of Labor, Bureau of Labor Statistics Employment and Earnings, vol. 19, no. 8 (Oct. 1974), table A-43, p. 51, and U.S., Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1973, Current Population Reports, series P-23, no. 48 (1974), table 30. Also, U.S., Department of Labor, Manpower Report of the President, 1974, table A-17.

TABLE 3A

UNEMPLOYMENT RATES FOR SPANISH ORIGIN POPULATION,
UNITED STATES, 1960-1975*
(annual averages for ages 16 and older)

YEAR	MALE	FEMALE
1960	8.3	10.0
1969	5.1	7.5
1970	6.2	8.6
1971	8.6	9.2
1972	7.4	10.1
1973	6.7	7.7
1974	7.2	9.8
1975	13.1	12.2

* Composition of the population is the same as in Table 2A.

Sources: 1960 U.S. Census of the Population--Persons of Spanish Surname (PC(2)1B) and Puerto Ricans in the U.S. (PC(2)1D), 1970 U.S. Census of the Population--Persons of Spanish Surname (PC(2)1D) and Puerto Ricans in the U.S. (PC(2)1E), U.S. Dept. of Commerce: Bureau of the Census, Current Population Reports--Population Characteristics, Series P-20, nos. 213, 221, 224, 250, 264, 280, 290.

Table 4

NONWHITE MEDIAN INCOME AS PERCENTAGE OF WHITE MEDIAN INCOME
 BY FAMILY AND SEX, 1954-1974
 (1972 dollars)

Year	Nonwhite Family Percentage of White Family Income	Nonwhite Male Percentage of White Male Income	*Nonwhite Female Percentage of White Female Income
1954	56%	50%	54%
1955	55	53	52
1956	53	52	57
1957	54	53	58
1958	51	50	59
1959	54	47	62
1960	53	53	62
1961	53	52	67
1962	53	49	67
1963	53	52	67
1964	56	57	70
1965	55	54	73
1966	60	55	76
1967	62	59	80
1968	63	61	81
1969	63	59	85
1970	64	60	92
1971	63	61	90
1972	62	62	96
1973	60	--	--
1974	62	--	--

* It is important to note that white female income traditionally has been lower than either white or nonwhite male income, and the income of nonwhite females has been the lowest of all. (See the discussion of this point in U.S., Commission on Civil Rights, Twenty Years After Brown: Equality of Economic Opportunity, July 1975, p. 64.)

Source: Computed from data in U.S., Department of Commerce, Bureau of the Census, Social and Economic Status of the Black Population in the United States, 1972, 1974 series P-23, nos. 46 and 54, and series P-60, annual issues.

TABLE 4A

HISPANIC ORIGIN MEDIAN INCOME AS PERCENTAGE OF WHITE MEDIAN INCOME,
 UNITED STATES, 1968-1974
 (Current Dollars)

YEAR	FAMILY	MALE	FEMALE
1968	65.3	*	*
1969	*	*	*
1970	71.4	88.7	117.3
1971	71.2	76.8	92.2
1972	70.9	74.0	101.2
1973	69.2	73.3	93.9
1974	71.6	74.0	98.7

Data not available

Source: U.S. Dept. of Commerce: Bureau of the Census U.S. Dept. of Commerce: Bureau of the Census, Current Population Reports--Population Characteristics, Series P-20 nos. 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Table 5. CIVILIAN LABOR FORCE PARTICIPATION RATES, BY AGE, SEX, AND RACE, 1964, 1970, and 1974

(Annual averages)

Age and Sex	1964		1970		1974	
	Black and Other Races	White	Black and Other Races	White	Black and Other Races	White
MEN						
Total, 16 years & over	80.0	81.1	76.5	80.0	73.3	79.4
16 and 17 years.....	37.3	43.5	34.8	48.9	34.6	53.3
18 and 19 years.....	67.2	66.6	61.8	67.4	62.4	73.6
20 to 24 years.....	89.4	85.7	83.5	83.3	82.1	86.5
25 to 34 years.....	95.9	97.5	93.7	96.7	93.2	96.3
35 to 44 years.....	94.4	97.6	93.2	97.3	90.9	96.7
45 to 54 years.....	91.6	96.1	88.2	94.9	84.7	93.0
55 to 64 years.....	80.6	86.1	79.2	83.3	70.2	78.1
65 years and over.....	29.6	27.9	27.4	26.7	21.7	22.5
WOMEN						
Total, 16 years & over	48.5	37.5	49.5	42.6	49.1	45.2
16 and 17 years.....	19.5	28.5	24.3	36.6	24.2	43.3
18 and 19 years.....	46.5	49.6	44.7	55.0	44.6	60.4
20 to 24 years.....	53.6	48.8	57.7	57.7	58.2	63.8
25 to 34 years.....	52.8	35.0	57.6	43.1	60.8	51.1
35 to 44 years.....	58.4	43.3	59.9	49.9	61.5	53.7
45 to 54 years.....	62.3	50.2	60.2	53.7	56.9	54.3
55 to 64 years.....	48.4	39.4	47.1	42.6	43.5	40.4
65 years and over.....	12.7	9.9	12.2	9.5	10.0	8.0

Source: U.S., Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1974, Current Population Reports, Series P-23, No. 54 (1975), table 34

Table 6

INCREASE IN THE NUMBER OF JOB LOSERS BY MAJOR OCCUPATIONAL GROUP
(not seasonally adjusted)

Occupational group and sex	Change from 1974 to 1975	
	Thousands	Percent
Total		
White-collar	494	88
Professional and managerial	166	87
Sales and clerical	328	89
Blue-collar	1,901	120
Craft and kindred workers	536	119
Operatives	1,055	130
Laborers	309	94
Services and farm	159	45
Male		
White-collar	241	98
Blue-collar	1,417	112
Services and farm	87	53
Female		
White-collar	252	80
Blue-collar	485	149
Services and farm	70	45

Source: U.S., Department of Labor, Bureau of Labor
Statistics, "Job Loss and Other Factors Behind the Recent
Increase in Unemployment" (June 1975).

Table 7 Proportions of Civilian Labor Force and Job-Loss Unemployment Accounted for by Black and White Men and Women

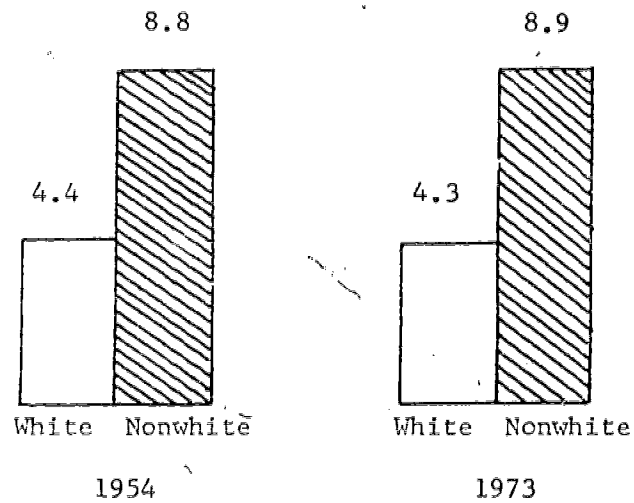
Color and Sex	1973		1974				1975
	III	IV	I	II	III	IV	I
Total civilian labor force (1,000's).....	88,980	89,823	90,467	90,644	91,396	91,785	91,810
Total job losers (1,000's)....	1,597	1,648	1,999	1,966	2,095	2,816	4,072
White male							
% of job losers.....	50.7	54.1	52.7	51.6	54.7	53.1	54.0
% of labor force.....	54.7	54.6	54.6	54.4	54.2	54.3	54.0
White female							
% of job losers.....	29.2	28.4	27.8	27.8	29.4	28.7	28.1
% of labor force.....	33.9	34.0	34.0	34.2	34.5	34.3	34.7
Black male							
% of job losers.....	12.6	10.9	12.9	12.5	10.6	12.0	11.8
% of labor force.....	6.3	6.3	6.4	6.4	6.2	6.2	6.2
Black female							
% of job losers.....	8.0	6.8	6.6	7.0	6.2	6.6	6.0
% of labor force.....	5.1	5.1	5.1	5.1	5.1	5.1	5.1

Source: U.S., Department of Labor, Bureau of Labor Statistics, "Job Loss and Other Factors Behind the Recent Increase in Unemployment," June 1975. Data for Americans of Spanish origin are not available.

* Roman numerals refer to seasonally adjusted quarterly averages.

Figure 1

UNEMPLOYMENT RATES OF WHITES AND NONWHITES
(annual averages)



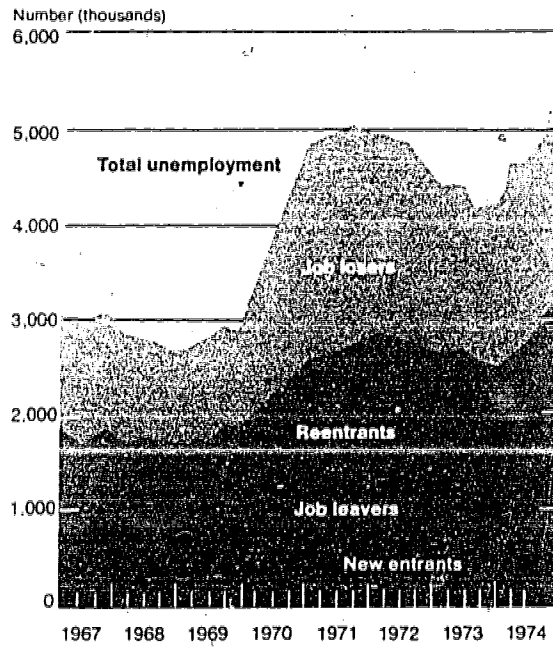
Note: The unemployment rate is the percentage of the civilian labor force that is unemployed.

Source: U.S., Department of Commerce, Bureau of the Census, Social and Economic Status of the Black Population in the United States, Current Population Reports, series P-23, no. 48 (1974), table 28.

FIGURE 2

THE NUMBER OF JOB LOSERS SURGED UPWARD TOWARD THE END OF 1974.

Unemployment by reason, 1967-74



Note: Quarterly data are seasonally adjusted.
Source: U. S. Department of Labor, *Manpower Report of the President*, April 1975, p. 29.

APPENDIX B

TEMPORARY OPTIONS FOR REDUCING LABOR COSTS OTHER THAN THROUGH LAYOFFS

Reduction of Work Hours

- * plant/office shutdown for specified time per month
- * shorter work week
- * shorter work day
- * elimination of overtime
- * rotation layoffs
- * furloughs

Solicitation of Individuals for Voluntary Reduction in Force or Hours

- * unpaid leave of absence
- * short work day or work week
- * rescheduled vacations
- * early retirement with or without incentives

Voluntary Reduction of Compensation

- * voluntary wage cuts - evenly applied or graduated on basis of salary
- * voluntary deferral of raises, cost of living increases, merit increases, bonuses, automatic increases

Voluntary Reduction of Fringe Benefits

- * medical disability and life insurance - reduced level of benefits, increased employee contributions, increased deductible, elimination of dental, eye, or other such coverage, etc.
- * vacation days reductions
- * modification of profit-sharing plans
- * reduced or deferred contributions to union welfare funds

Reduction or Elimination of Miscellaneous Benefits/Privileges

- * company subsidized cafeteria
- * tuition refund programs
- * staff training and development programs
- * expense accounts
- * travel/relocation reimbursements
- * executive benefits and privileges

Source: Bruno Stein, Professor, Institute of Labor Relations,
New York University

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