



WISCONSIN LEGISLATIVE COUNCIL

AFFIRMATIVE ACTION

Milwaukee Public Schools Central Administration Building
5225 W. Vliet Street
Milwaukee, Wisconsin

May 4, 2007
10:00 a.m. – 4:00 p.m.

[The following is a summary of the May 4, 2007 meeting of the Special Committee on Affirmative Action. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Grothman called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Glenn Grothman, Chair; Sen. Lena Taylor; Reps. Tamara Grigsby and Fred Kessler; and Public Members Jean Abramowski, Rose Alcala-Ament, Rudy Binter, Raymond Camosy, Jeffrey Dziedzic, Robert Gregg, Fred Mohs, Maria Monteagudo, Kate Wagner, Vicki Washington, and Noel Williams.

COMMITTEE MEMBERS EXCUSED: Rep. Scott Suder; and Public Members Chi Sather, Kamal Shah, and Jeremy Wick.

COUNCIL STAFF PRESENT: Mary Matthias, Senior Staff Attorney; and Scott Grosz, Staff Attorney.

APPEARANCES: Jean Abramowski, A Compliance Connection, Burlington and Raymond Camosy, Camosy, Inc.

Approval of the Minutes of the January 11, 2007 Meeting

Fred Mohs moved, second by Noel Williams, to approve the minutes of the January 11, 2007 meeting of the committee. The motion passed on unanimous voice vote.

At the invitation of Chair Grothman, the two new committee members, Representative Fred Kessler and Rose Alcala-Ament, introduced themselves to the committee.

Senator Taylor made a motion that the committee be dissolved. Chair Grothman refused to entertain the motion. Senator Taylor questioned why the agenda included speakers from Milwaukee Public Schools (MPS), when the committee was charged to study state, not local, policy. She said the committee had already heard a sufficient amount of testimony and that further testimony, and a meeting in June, would be redundant. She said that continuing to take testimony was denying committee members the opportunity to voice their opinions.

Chair Grothman responded that he had scheduled the meeting in Milwaukee at Senator Taylor's request and said that after hearing the scheduled testimony, the committee would have adequate time to discuss possible recommendations.

Representative Grigsby stated her support for Senator Taylor's motion to dissolve the committee. Chair Grothman said it would be unfair to take a vote on dissolving the committee when not all committee members were present.

In response to a question from Representative Kessler, Chair Grothman said that no bill drafts had been circulated to the committee but they would be circulated prior to the next meeting of the committee. Senator Taylor commented that the committee had not followed usual Legislative Council committee protocol, under which drafts are developed and discussed over the course of a number of meetings rather than only at the final meeting of the committee.

Mr. Dziedzic commented that he would not have agreed to serve on the committee if he had thought the goal of the committee was to end affirmative action in Wisconsin.

Ms. Washington said it appears that the committee was created to legitimize a predetermined conclusion--the elimination of affirmative action in the state.

Mr. Gregg commented that the committee should allow the chairperson to determine the process to be followed by the committee and pointed out that just because a bill may have been drafted does not mean the committee has to approve it.

Chair Grothman agreed that there was no predetermined outcome for the committee recommendation and said that any member could have bill drafts prepared by staff and present them to the committee for its consideration at the next meeting. He described several ideas he had for bill drafts, such as requiring the University of Wisconsin to establish a definition of diversity for admission purposes and limiting consideration of diversity in admissions to applicants who are experiencing financial difficulties. He said that understanding local affirmative action policies is important, as are the views of the Department of Veterans Affairs.

Mr. Mohs stated that the topic of affirmative action needs a thorough airing. He said race should not be used to categorize people, and pointed out that when put to a vote, a majority of voters in three blue states -- California, Washington, and Michigan -- voted in favor of eliminating affirmative action.

Ms. Washington commented that affirmative action is a remedy and that the questions posed to voters on referenda in other states mischaracterized affirmative action and used scare tactics. She reiterated that affirmative action does not grant racial preferences.

The committee engaged in a lengthy discussion regarding the process that should be followed by the committee and whether absent members should be allowed to vote on any motions take up by the committee. Noel Williams agreed with the suggestion of Ms. Abramowski that the committee listen to the scheduled testimony with an open mind and then have a reasoned discussion in an attempt to reach a consensus.

Representative Grigsby expressed her doubt that the committee could have a fruitful discussion based on what had happened so far in the meeting. She also said that the one hour allotted for discussion on the agenda was insufficient.

Chair Grothman moved, seconded by Mr. Gregg, to permit absent committee members to submit a vote by mail or email on any item voted on by the committee for a period of 72 business hours after the close of the meeting. The motion failed on a vote of Ayes, 7 (Sen. Grothman; and Public Members Alcala-Ament, Binter, Camosy, Gregg, Mohs, and Williams); Noes, 8 (Sen. Taylor; Reps. Grigsby and Kessler; and Public Members Abramowski, Dziedzic, Monteagudo, Wagner, and Washington); and Absent, 4 (Rep. Suder; and Public Members Sather, Shah, and Wick).

Representative Kessler moved, seconded by Representative Grigsby, to receive limited testimony at the current meeting; terminate all further committee proceedings; and report to the Joint Legislative Council that the committee was unable to reach a consensus and therefore has no recommendations to transmit. The motion failed on a vote of Ayes, 7 (Sen. Taylor; Reps. Grigsby and Kessler; and Public Members Gregg, Monteagudo, Wagner, and Washington); Noes, 7 (Sen. Grothman, and Public Members Abramowski, Alcala-Ament, Binter, Camosy, Dziedzic, and Mohs); and Absent, 5 (Rep. Suder; and Public Members Sather, Shah, Wick, and Williams).

Ms. Monteagudo pointed out that the time listed on the agenda for her presentation to the committee had passed and since she had to leave for an appointment she would be unable to provide testimony. Chair Grothman told her he would send her written questions.

Representative Kessler said the committee should vote on which items staff would be directed to draft for review at the next meeting. Chair Grothman said there would be an hour of discussion time for the committee to flesh out the drafting requests. He said all drafts would be sent out to committee members prior to the next meeting so members would have time to review them. Representative Kessler said he would prefer that the committee work on the language of those drafts at the current meeting.

Ms. Washington questioned the utility of hearing testimony from MPS. Ms. Monteagudo agreed and said that the affirmative action policies of the MPS are essentially the same as those of the City of Milwaukee, which she already described to the committee at a prior meeting.

Ms. Washington moved, seconded by Senator Taylor, to remove from the current meeting agenda the speakers from the Milwaukee Public Schools and to add Public Member Ray Camosy to the agenda. The motion passed on a vote of Ayes, 9 (Sen. Taylor; Reps. Grigsby and Kessler; and Public Members Abramowski, Camosy, Dziedzic, Gregg, Mohs, and Washington); Noes, 3 (Sen. Grothman; and Public Members Binter and Wagner); and Absent, 7 (Rep. Suder; and Public Members Alcala-Ament, Monteagudo, Sather, Shah, Wick, and Williams).

Invited Speakers

Raymond Camosy, President and CEO, Camosy, Inc.

Mr. Camosy told the committee that his family's construction company was founded in 1910. He said he supported providing opportunities for minorities even before affirmative action was mandated by law, by using contacts he had in the Urban League. Mr. Camosy commented that in his experience, under current affirmative action law, if a company does the paperwork correctly, they do not actually have to meet their affirmative action hiring goals.

Mr. Camosy described difficulties he faced trying to bid for federal construction contracts in the past. He described the 5% set aside for construction for minority firms under Wisconsin law. Mr. Camosy said he much prefers the plan described by the Department of Transportation (DOT) at the committee's first meeting. He also said he prefers the federal law procedure of prequalification of minority businesses because it prevents competitors from coming up with a "ringer." Under this method, a general contractor must use a certain percentage of minority subcontractors.

Mr. Camosy said that although there are problems in the implementation of affirmative action law, whatever is wrong can be fixed. He suggested that if the lowest bidder loses a bid to a minority firm that had a higher bid, the low bidder could be compensated by the state in an amount equal to 1% of the project cost, which he said is about equivalent to the amount of profit that would have been made on a typical project. He said that not compensating the lowest bidder denies him of his civil rights. He said that firms can spend thousands of dollars preparing bids.

In response to a question from Chair Grothman, Mr. Camosy said that sometimes a firm will put a minority person in a 51% ownership position in order to take advantage of minority set-asides. However, he said federal law now requires proof that a firm is owned and controlled by a minority person in order to be eligible for a set-aside.

Ms. Washington asked staff to obtain data from the Department of Administration (DOA) on the number of state contracts that are given out to minority firms under the set-aside provisions of state law.

Mr. Mohs commented that as minority firms become experienced and can compete without special treatment, the set-aside programs become unfair. Representative Kessler said that minority firms are not competing in an even playing field. For example, he said they typically have higher insurance costs because they are located in higher risk areas. Senator Taylor added that white-owned businesses have valuable connections to other well-established white businesses which also gives them an advantage over minority businesses.

Mr. Camosy suggested that when the annual sales of a minority business reach a certain threshold, the business should no longer be eligible for the set-asides.

Mr. Dziedzic asked how many minority contractors Mr. Camosy was aware of in southeast Wisconsin. Mr. Camosy replied that he was aware of only one.

Jean Abramowski, A Compliance Connection, Burlington

Ms. Abramowski explained that she is the owner of a company that prepares affirmative action plans for businesses that are required to have such plans in order to contract with the state and federal government. She said most of her clients need plans for purposes of federal law. She said that contrary to what most people believe, the law does not allow, much less require quotas. Rather, the law requires employers to set goals.

An employer is not penalized for not meeting its goals if it has taken reasonable steps aimed at reaching its goals, such as advertising open positions in minority-based newspapers and interviewing minority applicants who meet minimum job requirements. An employer must show that it evaluates minority job applicants on the same basis as non-minorities and that if a minority applicant is not hired, it was because of a job-related nondiscriminatory reason. Goals cannot be attained to the detriment of male or Caucasian applicants. Goals are set by job group rather than job title.

Ms. Abramowski explained how employment goals are set, by analyzing the available workforce as determined by the U.S. Census Bureau and comparing it to the incumbent workforce.

Senator Grothman asked whether an employee is required to self-identify as a minority. Ms. Abramowski responded that if an employee does not self-identify, the employer may make a visual observation. In response to more questions from Chair Grothman, Ms. Abramowski said the federal law recognizes five racial groups: Caucasian, Black, Hispanic, Asian/Pacific Islander, and American Indians/Alaskan natives and said that non-U.S. citizens who are legally employed are considered on the same basis as other employees for purposes of affirmative action. She also explained that the census distills all jobs down to about 500 different occupations. A job group includes all occupations that require similar skills to perform. She said she charges about \$1,500-1,800 per year to prepare and maintain an affirmative action plan for a company with 50 employees.

Senator Taylor commented that for the Marquette Interchange Project, DOT was required to use data from a 20-year old census. Ms. Abramowski responded that Executive Order 11246 requires use of the most recent census data for affirmative action programs.

In response to another question, Ms. Abramowski said that the terms of a labor contract always take precedence over an affirmative action plan unless the labor contract is blatantly discriminatory.

In response to a question from Senator Taylor, Ms. Abramowski said that Wisconsin law requires an affirmative action plan for any employer with 25 or more employees that contracts with the state for more than \$25,000. She said that compared to other states, Wisconsin's affirmative action law is one of the weakest and is relatively easy to comply with.

Discussion of Committee Assignment

Chair Grothman commented that most of the ideas discussed thus far would not result in long or complicated drafts. He asked committee members for their drafting ideas.

Mr. Mohs commented that the committee had heard from only one person that the Wisconsin affirmative action law is relatively weak. He said he would like time to study this issue to see if he agrees with that assessment.

Ms. Washington asked staff to obtain information on whether there are any financial thresholds such as net worth or income that apply for eligibility as a disadvantaged business.

Representative Kessler moved, seconded by Senator Taylor, to direct staff to prepare a bill draft that would conform Wisconsin's affirmative action law to federal law pertaining to service and supply contracts. The motion passed on a vote of Ayes, 12; Noes, 0; and Absent, 7 (Rep. Suder; and Public Members Alcala-Ament, Monteagudo, Sather, Shah, Wick, and Williams).

Chair Grothman expressed interest in a bill draft that would require persons who identify themselves as a minority group member to provide evidence that they are at least half that minority by ancestry.

Ms. Washington stated that she found that suggestion insulting and appalling. She said racial prejudice is based on how others perceive a person. Chair Grothman responded that people who defend the current system of affirmative action are essentially defending a system that treats people differently based on race. He said that over time as the races intermingle, more and more people will not be of one race by ancestry but will be mixed race. He said there will be a point at which a person of mixed race should no longer be entitled to claim the benefits of belonging to a certain minority group.

Representative Grigsby responded that this proposal is inappropriate because people are denied access based on others perceptions of them, regardless of their actual racial ancestry.

Ms. Abramowski stated that the proposal was an archaic and offensive idea.

Mr. Camosy offered an anecdote about a man he knew with the last name "Latino" who was not Latino but actually Italian, and could have been dishonest about his heritage if he had chosen to.

Mr. Gregg said that federal law does have a mechanism for verifying contractors' claims to be eligible for minority programs. He said there are many cases of contractors having contracts revoked when found to be out of compliance. He commented that in America's history, minorities were discriminated against even if they had only a small amount of nonwhite ancestry. Conversely, when having nonwhite blood might confer an advantage, whites want to narrow the definition of minority in a way to deny them that advantage. He also commented that race is determined by appearance and perception, not genetics.

Chair Grothman withdrew his drafting request.

Senator Taylor suggested that the entire June 1 meeting be devoted to discussion of the committee recommendation and no further testimony be taken at that meeting. Chair Grothman responded that the speaker scheduled for the June 1 meeting, Dean Frank Wu of Wayne State Law School, was specifically requested to appear before the committee by Vicki Washington as a counterpoint to Ward Connerly, who addressed the committee at its December 19, 2006 meeting.

After considerable discussion, there was general consensus that Dean Wu would be contacted to determine whether he could cancel his trip to Madison without incurring any financial loss. If he were able to cancel his trip without financial loss, he would not appear at the June 1 meeting. However, if he would incur financial losses, he would remain on the agenda.

The committee directed staff to prepare a bill draft that would change DOA's minority contracting requirements to match those utilized by DOT.

Ms. Washington asked for information regarding the definition of disadvantaged minority and whether any financial thresholds apply to this definition.

Chair Grothman encouraged committee members to forward any remaining bill draft ideas to the staff so they could prepare drafts for the committee's consideration at the next meeting. He said that staff would prepare a constitutional amendment similar to Proposition 209 in California as well.

Other Business

There was no other business brought before the committee.

Adjournment

The meeting was adjourned at 4:00 p.m.

MM:ty