

## Local and Minority Hiring Practices

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This brief discusses various strategies to ensure a diverse and local workforce at the Canal Side project on Buffalo's waterfront. To make the project as advantageous to the community as possible requires

- the use of exact language in contracts governing the development,
- active participation of local neighborhoods,
- a monitoring system to track efforts made by developers and jobseekers and then distribute the results to the community, and
- civic oversight to hold the businesses accountable and oversee the program for effectiveness.<sup>i</sup>

Canal Side plans to offer over 1 million square feet of space as a shopping district, hotel, and entertainment center, including a Bass Pro shop. The agency developing it promises, among other things, the addition of 1,000 new jobs, \$9.5 million in annual sales,<sup>ii</sup> and the replacement and renovation of Memorial Auditorium and the Donovan building.<sup>iii</sup>

### Local Resources for Hiring Programs

In response to an increasing diverse workforce, New York's Department of Labor has equipped Local Workforce Investment Areas with One-Stop Centers, an initiative aimed at partnering jobseekers with their employers.<sup>iv</sup> One Stop Centers offer training so that jobseekers have the opportunity to grow in their own field. Special programs are available for non-English speakers.<sup>v</sup>

One-Stop Centers use the Metrix Learning System to ensure that employees are qualified for the job by (i) testing of each applicant's skill level to match an occupation, (ii) identifying gaps, and (iii) delivering technology courses or more education to remedy the gaps.

For example, Erie Community College has an employment and training center which helps jobseekers with essential skills needed to succeed: how to write a resume, effective communication skills, and technology classes to enhance computer skills.<sup>vi</sup> The center will, at no cost to the



employer, match local businesses up with job applicants and provide resumes, post job openings, perform screening of applicants, and provide financial incentives for hiring jobseekers.<sup>vii</sup>

Another local One-Stop Center is the Buffalo Employment and Training Center (BETC), which has the goal of bringing together workforce development groups and partner organizations to assist Buffalo's workforce.<sup>viii</sup> The Center provides a database of workers, screening of job applicants, and breakfast clubs where employers can make presentations to jobseekers. BETC also trains and supports youth for employers who want to get involved in mentorship, internship, or part-time positions.<sup>ix</sup>

BETC helps employers to locate highly qualified workers through the following initiatives:

- assessment of each job candidates skill level:
- education, experience, foreign language, and special certification,
- helping the employer understand affirmative action requirements,
- promoting various government sponsored programs such as the WOTC (work opportunity tax credit)<sup>x</sup> –a federal tax credit for businesses who hire from the following groups:
  - member of family that has received long term TANF payments
  - eligible food stamp recipient or member of a family that is receiving food stamps
  - summer youth worker
  - disconnected youth
  - eligible veterans
  - eligible ex-felon
  - 18-39 year old resident from an “empowerment zone,”
  - SSI recipient
  - unemployed veteran, hired before 2011 and after 2008.<sup>xi</sup>

ECC and BETC are both partners in the Buffalo and Erie County Workforce Development Corporation, which unites partners including the Buffalo Municipal Housing Authority, ECC Employment & Training Center, Erie County Department of Social Services, Native American Community Service, New York State Department of Labor-Western Region, Supportive Services, and Vocational and Educational Services for Individuals with a Disability.<sup>xii</sup>

### **Key Components of “First Source Referral System”<sup>xiii</sup>**

A First Source system typically provides for

- a database where job applicants meet employers when the employers are ready to hire.
- a two to three week window where the employer cannot hire from outside sources,

- notice to applicants of job availability with a detailed job description including benefits,
- job readiness programs and training,
- monitoring of the effectiveness of the program through regular reports that lead to follow-up activities as necessary

The First Source model helps the employers with recruitment and lessens turnover. The First Source serves as a conduit to ensure the employer has a steady stream of workers.

## **Examples of First Source Programs: Oakland and Milwaukee**

### **Port of Oakland’s Maritime and Aviation Project**

Port Oakland’s project has set the following goals: low income area residents will work 50% of the total project hours, and 20% of the project work will be low income area residents. Tax credits will be made available to employers who hire, at a minimum, half of their apprentices. The project includes a Social Justice Committee – a body that receives reports, monitors the obstacles so that the disadvantaged can get jobs, and does outreach and recruitment of applicants.

### **Milwaukee Opportunities for Restoring Employment<sup>xiv</sup>**

Another example of best hiring practices is an ordinance created to increase the economic opportunities and job opportunities for the disenfranchised of Milwaukee. The M.O.R.E. ordinance requires contractors on city development projects and public works contracts to use a First Source program run by the Milwaukee Area Workforce Investment Board. In addition, it requires that:

- 40% of all hours on “public works project” must be worked by unemployed or underemployed city residents;
- Emerging Business Enterprise participation must reach certain levels for various types of contracts: Construction: 25%; Purchase of services: 18%; Purchase of professional services: 18%; and Purchase of supplies:18%;
- All contractors must pay prevailing wage;
- The City will identify an appropriate apprenticeship ration for specific trades on each development project;
- Local businesses receive a 5% points bonus in bidding on contracts as long as their bid does not exceed the lowest bid by 5% or \$25,000.

### **Monitoring**

The current database set up by the New York Department of Labor could be a component in of a first source referral system. However, one problem with the database is there is no personnel to monitor it to ensure that the

employers are hiring within the specified hiring window. To ensure that a first source referral system is actually matching up employers with qualified employees is not an easy task. One way to ensure that the developers are in compliance is the use a citizen committee, as in the Oakland example. Another way is to hire a private monitoring firm such as BEVLAR, Inc., a consulting firm located in Rochester with the goal of increasing the number of underrepresented minorities in the workforce.<sup>xv</sup>

### **Local minority hiring practices: goals, not mandates**

Title VII protects an employee against work discrimination, making it against the law to “. . . refuse to hire an individual because of that individuals’ race, color, sex, or national origin.” Title VII was modified in 1991 so that affirmative action plans would place a higher emphasis on an applicant’s skills rather than their race.<sup>xvi</sup>

Affirmative action plans work when they are constructed so that employers hire qualified candidates; if an employer wants to use “race, gender, or ethnicity as a plus factor in hiring, there must be evidence of past segregation or discrimination.”<sup>xvii</sup> A hiring plan or affirmative action plan is acceptable when the plans are based on “goals and timetables,” rather than race based selection.<sup>xviii</sup> In *Williams v. Vukovich*, 720 F.2d 909, 924 (1983) the court approved a minority hiring and promotion plan based on merit, where minority applicants had to pass an entry level examination before they were hired.<sup>xix</sup> Here, the various local hiring programs suggested for Canal Side (such as apprenticeship training, a database or first source referral system, an ordinance with provisions designating amount of hours which must be worked by locals) will pass muster because the applicants will be selected based on demonstrated skill level.

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- <sup>i</sup> Kathleen Mulligan- Hansel, PhD. Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities (2008), *Available at*, <http://www.communitybenefits.org/downloads/Making%20Development%20Work%20for%20Local%20Residents%20Exec.%20Summary.pdf> (last visited April 15, 2010).
- <sup>ii</sup> See Press Release, Governor Patterson Bolsters Commitment to Buffalo's Waterfront Redevelopment Effort (December 12, 2009) at [http://www.house.gov/list/press/ny27\\_higgins/121209\\_WaterfrontAnnouncement.shtml](http://www.house.gov/list/press/ny27_higgins/121209_WaterfrontAnnouncement.shtml).
- <sup>iii</sup> Erie Canal Harbor Development Corp. Project Status, at [http://www.eriecanalharbor.com/project\\_status.asp](http://www.eriecanalharbor.com/project_status.asp) (last visited April 15, 2010).
- <sup>iv</sup> New York State Department of Labor, Fact Sheet, Division of Employment and Workforce Solutions, *available at* [http://www.labor.ny.gov/BIWR/PDF/English/P13DEWS\\_2-09\\_no%20addresses.pdf](http://www.labor.ny.gov/BIWR/PDF/English/P13DEWS_2-09_no%20addresses.pdf) Id.
- <sup>v</sup> Id.
- <sup>vi</sup> Erie Community College Employment & Training Center, available at <http://www.econestop.org/>.
- <sup>vii</sup> Id.
- <sup>viii</sup> Memorandum from the New York Department of Labor. Proposal to Provide Recruitment Services to Local Companies.
- <sup>ix</sup> See id.
- <sup>x</sup> United States Department of Labor, Work Opportunity Tax Credit available at <http://www.doleta.gov/business/incentives/optax/> (last visited April 15, 2010).
- <sup>xi</sup> See id.
- <sup>xii</sup> <http://www.wdcinc.org/member.asp>
- <sup>xiii</sup> See Supra note 1.
- <sup>xiv</sup> Milwaukee Opportunities for Restoring Employment Common Council, available at <http://www.micahempowers.org/MORENew.pdf> (last visited April 18, 2010). See also M.O.R.E ordinance explanation, [www.ci.mil.wi.us/.../MORE/MORE\\_Summary\\_Web\\_Posting\\_08.09.doc](http://www.ci.mil.wi.us/.../MORE/MORE_Summary_Web_Posting_08.09.doc)
- <sup>xv</sup> Bevar & Associates, Inc. Compliance Monitoring and Technical Support Services. *Available at*, [http://www.bevar.net/index\\_files/Page434.htm](http://www.bevar.net/index_files/Page434.htm) (last visited April 15, 2010).
- <sup>xvi</sup> Brad Lindeman. Comment: Diversifying the Work Place Affirmative Action in the Private Sector After 1991 42 S.D. L. REV. 434, 462. (citing to C. Boyden Gray, Disparate impact: History and Consequences, 54 La. L. Rev. 1487, 1504, (1994).
- <sup>xvii</sup> See id., citing to Karl Schurr v. Resorts International Hotel 196 F.3d 486 (3.d. Cir. N.J. 1999); Hill v. Ross, 183 F.3d 586 (7th Cir. 1999 ).
- <sup>xviii</sup> Lara Hudgins, Comment: Rethinking Affirmative Action in the 1990s. 47 Baylor L. Rev. 823 (1995)
- <sup>xix</sup> Id.