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MEMO TO: All Staff

FROM: Darrel Mitchell

DATE: July 5, 1990

SUBJECT: Joint Employers

The attached is for your information. Although some time has passed since this article first appeared, the issue is still timely.

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Attachment

Use and Misuse of Employee Leasing

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A rapidly growing approach to filling labor needs is employee leasing.[1] Generally, employee leasing refers to any arrangement whereby a company obtains a labor supply by contracting for the services of employees on the payroll of another company.[2] The recent popularity of this approach to staffing a work force, and use of the phrase, is to a large degree attributable to passage of the Tax Equity and Fiscal Responsibility Act of 1982.[3] Under TEFRA, employers that otherwise would be required to provide pension benefits to their employees can in certain circumstances avoid this responsibility by leasing employees from a separate company.[4] Employee leasing is particularly attractive to small employers that want to avoid the expense and burden of personnel administration.[5]

Aside from potential administrative and pension advantages, however, employee leasing is often viewed as a means for avoiding union organizational activity or the duty to recognize and bargain with an existing union.[6] As long as a company using leased labor does not qualify as an "employer" under Section 2(2) of the National Labor Relations Act, employee leasing will enable a company to escape any statutory duty to recognize a representative of leased employees.[7] The purpose of this article is to examine the circumstances under which a company

[1] This concept has been a popular subject with journalists in the past few years. See *Newsweek* (May 14, 1984), p. 55; *Venture* (April, 1983), p. 84; and *Inc.* (January, 1983), p. 81.

[2] Temporary personnel services technically are lessors of employees. The focus on this article, however, will be directed to the permanent placement of employees with a company. In many instances, subcontracting of work or use of independent contractors will differ little from what is now often referred to as employee leasing.

[3] Public Law 97-248 (1982).

[4] An employer contemplating the use of leased employees should consider its effect upon tax qualified pension, profit sharing, or stock bonus plans maintained for its employees. Under Sections 401 and 501 of the Internal Revenue Code, trusts holding assets of qualified plans enjoy tax-exempt earnings and can receive deductible contributions by the employer without causing income taxation to the covered employees until the employees' benefits are actually distributed. However, such favorable tax treatment is available only if certain statutory criteria are met concerning operation of the plan. For discussion of considerations concerning employee leasing under the Code, see generally Moreland, "TEFRA Allows Employee Leasing," 24 *Law Office Economics and Management* 380 (1983); "7½% Safe Harbor for Employee Leasing May Not Be That Safe," *Employee Benefits Plan Review* (December 1983), pp. 105-106.

[5] With leased employees, all administrative details concerning employees are the responsibility of the leasing company. During the early 1980s, a handful of employee leasing companies have experienced substantial growth. Among the larger and better known employee leasing companies are Omnistaff, of Dallas, and Contract Staffing of America in Tustin, California. In addition to assumption of administrative details, large leasing companies enjoy an economy of scale that enables them to provide economic benefits, which could not be afforded by small companies, to employees. For this reason, employee leasing is often welcome by workers who are switched to a lease arrangement. CCH HUMAN RESOURCES MANAGEMENT, No. 28, April 24, 1984; *Daily Labor Report*, No. 137, July 17, 1984, p. A-2.

[6] Section 8(a)(5) of the National Labor Relations Act makes it an unfair labor practice for an employer to refuse to bargain in good faith with a representative of its employees. Section 7 guarantees to employees the right to organize, collectively bargain with the employer, and otherwise engage in or refrain from engaging in concerted activities. Under Section 8(a)(1), an employer is prohibited from interfering with the exercise of Section 7 rights by its employees.

[7] A union's petition for an election under Section 9(c) will be dismissed as to the target company if the target company can show that it is not an "employer" of the relevant group of employees. See *Laerco Transportation*, 269 NLRB No. 61 (1984), 1983-84 CCH NLRB ¶ 16,151. See, e.g., *Trade Wind Transportation Co., Ltd.*, 185 NLRB 373 (1970), 1970 CCH NLRB ¶ 22,300 (petition dismissed where alleged bargaining unit employees were actually independent contractors). Lack of employer status may also be asserted by a company as a defense to a charge that it has committed an unfair labor practice. See *The Millcraft Paper Company*, 270 NLRB No. 120 (1984), 1983-84 CCH NLRB ¶ 16,417; *U.S. Steel Corp.*, 270 NLRB No. 206 (1984), 1983-84 CCH NLRB ¶ 16,479.

using leased employees itself qualifies as an employer for purposes of the Act, and to analyze the bargaining obligations of unionized companies that hope to switch to employee leasing. Additionally, the effect of employee leasing on a company's exposure under federal antidiscrimination laws will be briefly discussed.

Joint Employer Test

Whether employee leasing will free a company (subscribing company) from having to deal with organizational activities of its workers will depend on whether the subscribing company and leasing company constitute "joint employers."[8] As applied by the Board and federal courts, the joint employer test is defined as follows. "Where two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment—they constitute a 'joint employer' within the meaning of the NLRA."[9] Factors looked to in applying the test include involvement in: hiring and firing; promotions and demotions; setting wages, work hours, and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job.[10]

In the past few years, several NLRB and federal court decisions have applied joint employer analysis to employee leasing programs.[11] One recent Board decision, *Laerco Transportation*,[12] illustrates the circumstances in which employee leasing will enable a company to avoid being an employer under the Act. In *Laerco*, the Board reversed a Regional Director's order of an election in which he found that Laerco and California Transportation Labor, Inc., constituted joint employers of drivers and warehouse workers supplied by CTL to Laerco.

Laerco, a trucking and warehousing company, obtained its work force through a leasing arrangement with CTL. The agreement provided that CTL would hire drivers assigned to Laerco, negotiate their rates of pay with the International Longshoremen and Warehousemen Union, make all necessary payroll deductions, and supply Laerco with reports and data necessary to enable Laerco to comply with government regulations.[13] On the other hand, the agreement also provided that CTL drivers would perform trucking services under Laerco direction, Laerco would supervise driver qualifications, and Laerco could refuse to accept any driver provided by CTL that did not meet Laerco's qualifications.

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[8] Joint employer analysis was originated with the common law of agency, which focuses on control, or the right of control, over the performance of work. See generally Restatement (Second) of Agency Section 2 (1958).

[9] *NLRB v. Browning-Ferris Industries*, 691 F2d 1117 (CA-3, 1982), 95 LC ¶ 13,832.

[10] See *Boire v. Greyhound Corp.*, 376 US 473 (US SCt, 1964), 49 LC ¶ 18,830; *Ref-Chem Co. v. NLRB*, 418 F2d 127 (CA-5, 1969), 61 LC ¶ 10,453; *Laerco Transportation*, cited at note 7; and *Trend Construction Corp.*, 263 NLRB 295 (1982), 1982-83 CCH NLRB ¶ 15,099. The test is also applied in representation cases arising under the Railway Labor Act. See, e.g., *Ground Services, Inc.* (1980), 8 NMB 112.

[11] For decisions holding a subscribing company and leasing company not to be joint employers, see *NLRB v. Episcopal Community of St. Petersburg*, 726 F2d 1537 (CA-11, 1984), 100 LC ¶ 10,854; *The Millcraft Paper Co.*, 270 NLRB No. 120 (1984), 1983-84 CCH NLRB ¶ 16,416; *U.S. Steel Corp.*, 270 NLRB No. 206 (1984), 1983-84 CCH NLRB ¶ 16,479; *Laerco Transportation*; and *U.S. Contractors*, 257 NLRB No. 152 (1981), 1981-82 CCH NLRB ¶ 18,370. For cases holding a subscribing company and leasing company to be joint employers, see *NLRB v. Browning-Ferris Industries*, cited at note 9; *Industrial Personnel Corp. v. NLRB*, 657 F2d 226 (CA-8, 1981), 92 LC ¶ 12,966, cert denied (US SCt, 1981), 454 US 1148; *Carillon House Nursing Home*, 268 NLRB No. 80 (1984), 1983-84 CCH NLRB ¶ 16,034; *Trend Construction Corp.*, 263 NLRB No. 44, 1982-83 CCH NLRB ¶ 15,099; *C. R. Adams Trucking, Inc.*, 262 NLRB 563 (1982), 1981-82 CCH NLRB ¶ 19,123, enf'd 718 F2d 869 (CA-8, 1983), 99 LC ¶ 10,496; *American Air Filter Company*, 258 NLRB 49 (1981), 1981-82 CCH NLRB ¶ 18,464; and *CPG Products Corp.*, 249 NLRB 1164 (1980), 1980 CCH NLRB ¶ 17,173.

[12] Cited at note 7.

[13] The agreement between Laerco and CTL also provided that CTL would be responsible for firing unsatisfactory drivers and warehousemen. There was testimony, however, that Laerco occasionally requested and obtained removal of CTL employees assigned to it (case note 6).

Despite Laerco's contractual right to direct the work of drivers provided by CTL, the Board found that the leased employees required minimal supervision by Laerco and that all significant on-the-job problems involving leased drivers and warehousemen were handled by CTL.[14] Emphasizing the minimal and routine nature of Laerco supervision over drivers provided by CTL, the Board held that Laerco and CTL were not joint employers.[15]

Effective use of employee leasing to avoid bargaining duties under the National Labor Relations Act is also illustrated by the Eleventh Circuit's 1984 decision in *NLRB v. Episcopal Community of St. Petersburg*.[16] The Board sought enforcement of an order directing the employer to bargain with a union[17] that won a representation election among employees in a unit including all nonprofessional employees at Episcopal Community's Retirement Center in St. Petersburg.[18] Episcopal Community objected to this unit on grounds that it excluded dietary department employees who were retained by Episcopal Community pursuant to a contract with ARA Services, Inc. According to Episcopal Community, it and ARA Services were joint employers of the dietary department employees and it was inappropriate for the Regional Director to exclude these individuals from the bargaining unit.

The circuit court stated that it was unnecessary to resolve the joint employer issue.[19] Nevertheless, it indicated that it agreed with the administrative law judge's finding that Episcopal Community and ARA Services were not joint employers. Supporting the administrative law judge's conclusion were the facts that: the dietary employees were directly supervised by ARA Services' supervisory staff; the contract between Episcopal Community and ARA Services provided that ARA would maintain a professional staff in administration, dietetics, purchasing, and personnel; the parties agreed that neither company would employ supervisory employees of the other company without written permission; and the agreement could be cancelled upon 60 days' advance notice by either party.[20] Additionally, the circuit court noted that dietary employees wore different uniforms than other employees at the retirement center and that it was uncommon for dietary employees to be transferred to other positions at the retirement center.

American Air Filter

In contrast, the Board's 1982 decision in *American Air Filter Company*[21] involved an employee leasing program

[14] As described by the Board: "Day-to-day control over labor relations of CTL-supplied employees is handled in the following manner: The CTL employees assigned to Laerco report to the various Laerco facilities on a daily basis. When a problem concerning an employee provided by CTL arises, Laerco may attempt to resolve it. However, Laerco only attempts to resolve minor problems or employee dissatisfaction as an accommodation to CTL. Otherwise, CTL directly gets involved to resolve the problem. As to any disciplinary warnings or disciplinary actions against CTL employees who are contracted to Laerco, it is policy and practice to contact CTL. Grievances are directed to CTL for resolution."

[15] To establish joint employer status, the Board stated that "Whether an employer possesses sufficient indicia of control over petitioned-for employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction."

[16] Cited at note 11.

[17] United Food and Commercial Workers Local 1776.

[18] The bargaining unit defined by the Regional Director included all nurse's aides, housekeeping, building and grounds, and maintenance employees but excluded all nurses, grounds, and dietary department employees supplied by ARA Hospital Food Management, Inc. (case note 4).

[19] Determination of the joint employer issue was not a necessary finding to the circuit court's decision because it sustained the Board's conclusion that, even if Episcopal Community and ARA Services were joint employers of dietary department employees, a bargaining unit excluding dietary employees was not inappropriate.

[20] Case note 7.

[21] Cited at note 11.

hat did result in a finding of joint employer status. The agreement between American Air Filter and Transport Associates, Inc., was set forth in a series of one-year contracts imposing upon Transport the duty to furnish bonded qualified truck drivers on a cost-plus basis to American Air Filter.

As in *Laerco,* the contract provided that the subscribing company, American Air Filter, could reject drivers referred by the leasing company and would have responsibility for directing and supervising work by the leased employees. Further, the contract reserved to American Air Filter the right to reject drivers referred by Transport, dispatch and direct the activities of drivers supplied by Transport, and "exercise exclusive supervision and control over the entire operation of vehicles and drivers." [22]

The joint employer issue in *American Air Filter* arose as a result of an agreement in 1979 between Transport and International Brotherhood of Teamsters Local Union 89, designating the union as bargaining representative for all Transport truck drivers working for American Air Filter. After learning the details of the agreement between the union and Transport, American Air Filter exercised its right to cancel the employee leasing contract.[23] Nevertheless, the union wrote American Air Filter, requesting that it meet for bargaining with the union. The company responded that it was not the employer of its drivers, and the union filed an unfair labor practice charge alleging that American Air Filter and Transport were joint employers and that American Air Filter unlawfully refused to bargain.

The Board agreed with the union's characterization of the companies as joint employers. Important to the Board's decision were the facts that American Air Filter scheduled the hours of work for its leased drivers, the drivers reported to only one supervisor, who was directly employed by American Air Filter, and upon termination of the lease agreement between American Air Filter and Transport the drivers were no longer employed by either company. Based on its finding, the Board ordered American Air Filter to recognize and bargain with the union and to "make whole" the drivers previously supplied by Transport. Given American Air Filter's unilateral right to terminate the lease agreement with Transport, however, the driver's remedy was limited to interim backpay and did not include reinstatement.[24]

In summary, recent Board and federal court decisions demonstrate that employee leasing is a viable approach to avoiding status as an employer under the Act. To preclude joint employer status, however, a subscribing company must be willing and able to divorce itself from regular control over the work of its leased employees. Thus, as a preliminary to employee leasing, a company should first determine whether it can practicably delegate to a leasing company responsibility for: determination of wages and benefits; scheduling of work days and hours; qualifications of individuals for particular

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[22] The subscribing company in *Laerco* enjoyed many of the same rights granted the subscribing company in American Air Filter. See note 13 and accompanying text. Nevertheless, the Board found in *Laerco* that the employer did not regularly exercise its right of control over leased employees. See note 15 and accompanying text.

[23] Transport did not resist American Air Filter's cancellation of the contract. Consistent with the lease agreement, Transport requested that the leased drivers be instructed by American Air Filter to report back to Transport at the expiration of the lease.

[24] Citing *Mobil Oil Corp.*, 219 NLRB 511 (1975), 1974-75 CCH NLRB ¶ 16,082. The Board rejected American Air Filter's argument that certification of Transport as the employer of drivers operating American Air Filter trucks barred relitigation of the same issue with regard to the latter company. Although it acknowledged that American Air Filter had an interest in the preceding representation hearing involving the drivers and Transport, the Board explained that "questions affecting a joint employer's status in an unfair labor practice proceeding are treated as separate and distinct from such determinations in representation hearings."

jobs; responsibility for discipline; and control and direction of employees on the job. If a company is satisfied that these conditions can be met, it will be well-situated to take advantage of employee leasing without risking joint employers status.

Duty to Bargain

Unionized companies that are considering a switch to employee leasing, that would affect bargaining unit employees, must determine whether they are obligated to bargain with the union over this decision.[25] Sections 8(a)(5) and 8(d) of the Act require employers to bargain in good faith with the representative of employees with respect to "wages, hours, and other terms and conditions of employment." If employee leasing falls within this definition of mandatory subjects of bargaining, failure to exhaust the duty to bargain before implementing a leasing program will be an unfair labor practice.

Operational decisions reducing the availability of work for bargaining unit employees present a difficult issue concerning the duty to bargain.[26] The most recent effort by the Supreme Court to delineate employer bargaining obligations over operational decisions was in *First National Maintenance Corp. v. NLRB*.[27] At issue was an employer's unilateral decision to cancel an unprofitable contract to provide janitorial services to a nursing home. This decision caused the layoff of several employees and, therefore, the union representing the affected employees claimed that the employer could not terminate this phase of its business without giving the union an opportunity to bargain over cancellation of the service contract.[28]

The Supreme Court disagreed with the contention that an economically motivated decision to terminate a phase of business operations is a mandatory subject of bargaining. Rather, the Court reasoned that: "[a]n employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision, and we hold that the decision itself is not part of §8(d)'s 'terms and conditions' over which Congress has mandated bargaining."

FNMC clarified that economically motivated decisions to discontinue a certain phase of business are not subject to the duty to bargain, but it left open the status of other operational changes that do not represent a decision to shutdown part of a business.[29] In trying to fill this gap, the Board explained in *Otis Elevator Company*[30] that management decisions falling short of a partial termination of business will be a mandatory subject of bargaining only if the decision turns upon a reduction of labor costs. The decision at issue in *Otis Elevator* was the employer's decision to transfer a New Jersey research and development operation to an existing facility in Connecticut. Based on evidence that this decision was motivated by a

[25] In the vast majority of management decisions resulting in loss of bargaining unit jobs, the effects of the decision will remain a mandatory bargaining subject whether or not there is a duty to bargain over the decision itself. See *First National Maintenance Corporation v. NLRB*, 452 US 661 (US SCt, 1981), 91 LC ¶ 12,805. See generally "Distinctions Without Differences: Effects Bargaining in Light of *First National Maintenance*," 5 *Indus. Rel. L.J.* 402 (1983).

[26] See generally Naylor, "Subcontracting, Plant Closures, and Plant Removals: The Duty to Bargain and its Practical Implications Upon the Employment Relationship," 30 *Drake L. Rev.* 203 (1980-1981); Fastiff, "Changes in Business Operations: The Effects of the National Labor Relations Act and Contract Language on Employer Authority," 14 *Santa Clara Law* 281 (1974); and Rabin, "*Fibreboard* and the Termination of the Bargaining Unit Work: The Search for Standards in Defining the Scope of the Duty to Bargain," 71 *Colum. L. Rev.* 809 (1971).

[27] Cited at note 25.

[28] The NLRB sustained an administrative law judge's finding that First National unlawfully refused to bargain over a cancellation of the service contract. The Board ordered First National to bargain in good faith with the union over termination of the service contract, pay backpay to affected employees from the date of discharge until an agreement was reached with the union or the duty to bargain exhausted, and offer affected employees reinstatement to the same or equivalent positions.

[29] Case note 22.

[30] 269 NLRB No. 162 (1984), 1983-84 CCH NLRB ¶ 16,181.

re to consolidate research and development operations in a single location, and not simply to reduce labor costs, the Board held that the employer was under no duty to bargain with the union.

Analytically, the closest parallel to employee leasing in Section 8(a)(5) decisions is subcontracting of bargaining unit work.[31] Both decisions result in transfer of work from one group of employees to another but generally do not result in termination of a particular phase of business.[32] The Board historically has considered subcontracting to be a mandatory subject of bargaining regardless of employer motivation,[33] but it announced in *Otis Elevator* that it would no longer adhere to this presumption and would instead focus on the employer's principal reason for considering subcontracting of bargaining unit work.

In light of the dictum in *Otis Elevator*, a switch to employee leasing by unionized employers will not necessarily be contingent on bargaining with the union. Bargaining will be required in the typical case where reduction of labor costs precipitated the change to employee leasing, but there will be many instances where employee leasing is considered primarily to reduce the employer's administrative burden or to eliminate supervision over a particular line of work. Where an employer is motivated by considerations other than reduction of labor costs,[34] implementation of an employee leasing program complete enough to avoid joint employer status is a type of management decision that should not be encumbered by a duty to bargain.

Liability for Unlawful Discrimination

Although most companies genuinely want to comply with federal antidiscrimination laws,[35] many companies are unable to commit administrative resources sufficient to minimize the chances of inadvertently engaging in discriminatory employment practices. To these employers, employee leasing may be attractive as a means for shifting responsibility, and potential liability, for compliance with antidiscrimination laws to a leasing company whose primary function is personnel administration. As with coverage under the National Labor Relations Act, however, employee leasing will be a viable approach to transfer of responsibility under antidiscrimination laws only if the subscribing company and leasing company do not constitute a joint employer.[36]

The test applied for single employer status in discrimination cases is essentially the same as the test applied in cases arising under the National Labor Relations Act.[37] In *EEOC v. Sage Realty*,[38] for

[31] Subcontracting is broadly defined in the labor relations context to encompass most management decisions having the effect of transferring work from one group of employees to another. See generally Naylor, cited at note 26, p. 208. This broad definition of subcontracting encompasses a switch to performance of bargaining unit work by independent contractors. See, e.g., *Perrysville Coal Co.*, 264 NLRB No. 46 (1983), 1982-83 CCH NLRB ¶ 15,244.

[32] As noted by the Board in *Otis Elevator*, there may be circumstances in which subcontracting is extensive enough to result in termination of a particular phase of an employer's business. In discussing its decision in *Adams Dairy*, 137 NLRB 815 (1962), 1962 CCH NLRB ¶ 11,337, enf denied in relevant part 350 F2d 108 (CA-9, 1965), 52 LC ¶ 16,625, cert denied 382 US 1011 (US SCt, 1966), 52 LC ¶ 16,840, the Board stated that it had mistakenly ordered the employer to bargain over a decision to subcontract its dairy products distribution operation since under the circumstances the employer was making a "fundamental change in the scope and direction of the enterprise."

[33] In *Fibreboard Paper Products Corp v. NLRB*, 379 US 203 (US SCt, 1964), 50 LC ¶ 19,384, the Supreme Court held that an employer illegally subcontracted bargaining unit maintenance work to an independent contractor without first bargaining in good faith with the union. The Board viewed *Fibreboard* as a general mandate for bargaining over subcontracting decisions. See generally Naylor, pp. 212-213.

[34] A desire to oust an incumbent union is not a legitimate reason for switching to employee leasing. See, e.g., *United Dairy Farmers Cooperative Association v. NLRB*, 633 F2d 1054 (CA-3, 1979), 89 LC ¶ 12,350.

[35] The primary federal statutes prohibiting discrimination in employment are Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, the Equal Pay Act, and the Age Discrimination in Employment Act.

[36] See notes 9-24 and accompanying texts.

[37] But cf. *Gomez v. Alexian Brothers Hospital*, 698 F2d (CA-9, 1983), 31 EPD ¶ 33,328 (physicians who appeared to be legitimate independent contractors treated as employees of hospital under Title VII).

[38] 507 FSupp 599 (DC NY, 1981), 26 EPD ¶ 32,072.

example, a building management company defended a sex discrimination suit by a female lobby attendant on grounds that the attendant was employed by another company that was under contract to perform cleaning services. The district court rejected this defense, however, emphasizing that the building management company trained plaintiff for her job, established her job duties, and supervised her day-to-day work. Additionally, the court noted that, on at least two occasions during the plaintiff's three and one-half years of employment, the building management company distributed an instruction manual for lobby attendants and other ground floor personnel. With these facts in mind, the court concluded that the management company and cleaning contractor were joint employers of lobby attendants and could both be held liable for discrimination toward the male lobby attendants.[39]

Conclusion

Employee leasing offers small companies an opportunity to provide employee benefits comparable to much larger companies, without having to commit substantial resources to personnel and benefits administration. As an approach to avoiding obligations under the National Labor Relations Act and federal antidiscrimination laws, however, employee leasing is significantly limited by the joint employer doctrine. Accordingly, a company considering employee leasing, for purposes other than obtaining an economy of scale in employee benefits and reducing involvement in personnel administration, must determine whether it is willing and able to delegate most day-to-day control over employees in the affected jobs to an outside company.

[The End]

Committee Reports on Women's Bureau

"The Women's Bureau: Is It Meeting the Needs of Women Workers?" (House Report 98-1145), a report by the House Government Operations Committee, says that the Bureau's efforts need improvement. The Bureau's experimentation with alternative work schedules for its employees has not been cost effective and has impeded the Bureau's ability to fully achieve its goals, the report claims. The report finds that the Bureau has "regrettably" cut back its preparation and dissemination of publications.

The structure of the Bureau is too rigid for it to achieve its mandate most effectively, and the Bureau lacks leadership within the Labor Department, the report maintains. The report says that a misperception exists concerning the Bureau's budget level, which has not been the cause of cutbacks in the Bureau's functions. Not enough emphasis is placed on the problems of low-income, minority, or unskilled women. "There continues to be a need for a strong, active, well-funded, and well-managed Women's Bureau," the report concludes.

[39] Compare EEOC Advice Memorandum No. 75-084 (November 14, 1974), 21 FEP Cases 1769 (contract janitorial service and bank not joint employers). See also *Trevino v. Celanese Corp.* (CA-5, 1983), 31 EPD ¶ 33,489; *Lang v. El Paso Natural Gas Co.* (DC Tex, 1984), ¶ 34,646; and *EEOC v. Wooster Brush Co.* (DC Ohio, 1981), 27 EPD ¶ 32,239.