CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To Mr. Robert W. Healy
City Manager

Date September 17, 1982

From Birge Albright, Esq. BA
Legal Counsel

Reference

Subject Power of City to Require or Encourage Developers to Employ a Certain Percentage of Cambridge Residents in Construction Projects

MEMORANDUM

FACTS

Article 11.71 of the Cambridge Zoning Ordinance (Employment Plan Compliance Procedure) states:

> ... As part of its economic development program, the City seeks to promote development which will provide expanded job opportunities for unemployed and underemployed citizens of Cambridge....

Article 11.73 provides that: "When applying for a building permit...the applicant...should file with the Superintendent of Buildings a certification from the City Manager...that the applicant has...filed with the City a statement indicating how the proposed development will comply with the most recently adopted Cambridge Citizens Employment Plan."

The Cambridge Citizens Employment Plan provides that a building permit shall be issued after

> The developer signs a formal agreement with the Eastern Middlesex Human Resource Development Authority (EMHRDA)...in which the developer agrees to:
>
> * * *
>
> (f) Set goals and indicate procedures by which Cambridge residents would enter employment in available jobs.

This plan, which may be referred to as the "Cambridge Plan," could be called a "voluntary plan," because the developer is not required to hire a certain percentage of Cambridge residents, but is only required to "set goals and indicate procedures" whereby such residents would be hired.

QUESTIONS

1. Can a City require that a developer employ a certain percentage of Cambridge residents in construction projects, or encourage him to do so through a plan such as the "Cambridge Plan"?

2. If a City can require such employment or encourage it through measures such as the "Cambridge Plan," can this be done through the Zoning Ordinance?

DISCUSSION

I. Power of City

The leading case in this area is Massachusetts Council of Construction Employers v. Mayor of Boston, Mass. Adv. Sh. (1981) 2039, 425 NE2d 346, cert. granted 102 S. Ct. 1273, which held unconstitutional G.L. c. 149, §26, giving preference to Mass. residents in State-funded construction projects, and an executive order of the Mayor of Boston requiring that 50% of the positions on city-funded construction projects be filled with Boston residents. A copy of the decision is attached. This memorandum will deal only with the Mayor's

executive order.

The Executive Order provided:

(1) On any construction project funded in whole or in part by City funds, or funds which...the City expends or administers...the worker hours on a craft-by-craft basis shall be performed...as follows:

(a) at least 50% by bona fide Boston residents;

(b) at least 25% by minorities;

(c) at least 10% by women.

* * *

The only aspect of the Order that was challenged was the guideline mandating the hiring of 50% Boston residents.

In holding the Executive Order unconstitutional under the Commerce Clause, the Court emphasized three points:

FIRST

> ...the implementation of the Mayor's order will have a significant impact on those firms which engage in specialized areas of construction and employ permanent work crews composed of out-of-State residents.

Mass. Adv. Sh. (1981) at 2052.

SECOND

> ...a significant percentage of the funds affected by the order are received from Federal sources.... the presence or absence of substantial funds from nonlocal sources is at the very least an important factor in determining whether the Reeves decision is applicable.

Id. at 2053.

Reeves, Inc. v. Stake, 447 U.S. 429 (1980) had held that South Dakota's policy, during periods of cement shortage,

of confining sales of state produced cement to South Dakota residents, did not violate the Commerce Clause of the U.S. Constitution (Art. I, §8, cl. 3).

THIRD

> ...there is a broadly drawn statute which sweeps far wider than merely favoring unemployed or underemployed local residents.

Mass. Adv. Sh. (1981) at 2053.

This case is presently on appeal to the U.S. Supreme Court.

I note that the "Cambridge Plan" differs from the "Boston Plan" in three respects:

(a) It is oriented specifically toward Cambridge residents who are "unemployed and underemployed." Hicklin v. Orbeck, 437 U.S. 518, 528 (1978), suggests that "a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible...."

(b) It sets "goals" rather than mandatory quotas. Here, it must be observed that the Plan is not completely voluntary, in that the developer must sign a formal agreement.

(c) Whereas the "Boston Plan" applies to "any construction project funded in whole or in part by City funds, or funds which...the City expends or administers," the "Cambridge Plan" applies to all construction described in sections 11.721 and 11.722 of the Zoning Ordinance. In Massachusetts Council of Construction Employers v. Mayor of Boston,

Mass. Adv. Sh. (1981), 2039, 425 NE2d 346, 354, the Court stated:

> ...an attempt by the city to apply the regulations contained in the order to all private construction would fall to (a Commerce Clause) challenge. Simple economic protectionism triggers a "virtually per se rule of invalidity." Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978).

At this time, I am unable to predict whether the Supreme Court will uphold the "Boston Plan" or whether it would uphold the "Cambridge Plan" if it were before them.

II. Use of Zoning Ordinance

Even if the "Cambridge Plan" does not run afoul of the Commerce Clause, I do not believe that it should be part of the Zoning Ordinance, because it would not accomplish any objective for which zoning is authorized.

The chief purpose of zoning is the promotion of the public health, safety, convenience, morals or welfare of the inhabitants. Sinn v. Bd. of Selectmen of Acton, 357 Mass. 606 (1970); G.L. c. 40A, §1A.

Objectives for which zoning might be established include, but are not limited to, the following:— to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate

provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land including consideration of the recommendations of the master plan, if any, adopted by the planning board and the comprehensive plan, if any, of the regional planning agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives. These regulations may include, but are not limited to restricting, prohibiting, permitting or regulating: 1) uses of land, including wetlands and lands deemed subject to seasonal or periodic flooding; 2) size, height, bulk, location and use of structures, including buildings and signs except that billboards, signs and other advertising devices are also subject to the Outdoor Advertising Board; 3) uses of bodies of water, including water courses; 4) noxious uses; 5) areas and dimensions of land and bodies of water to be occupied or unoccupied by uses and structures, courts, yards, and open spaces; 6) density of population and intensity of use; 7) accessory facilities and uses, such as vehicle parking and loading, landscaping and open space; and 8) the development of the natural, scenic and aesthetic qualities of the community. St. 1975, c. 808, §2A.

It seems clear that the "Cambridge Plan" is not relevant (at least directly) to any of these objectives.

CHR General, Inc. v. Newton, 387 Mass. 351, 356-357 (1982), holds that adoption of a city ordinance restricting the conversion of residential rental units to condominium or cooperative ownership was not authorized as an exercise of the city's zoning power. The Court stated (at 356):

> A "fundamental principle of zoning (is that) it deals basically with the use, without regard to the ownership, of the property involved or who may be the operator of the use." 1 A. Rathkopf, Zoning and Planning, §1.04, at 1-21 (4th ed. 1982).

Since "a building composed (of) condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units" (Id. at 356-7), the objectives of the ordinance could not be accomplished under the zoning power.

In 122 Main Street Corp. v. Brockton, 323 Mass. 646 (1949), the Court held that an amendment of the Brockton zoning ordinance, providing that in a defined "central business area" in the heart of the city no building should be erected or altered to a height of less than 27 feet or with less than 2 stories, was invalid, because it had no reasonable relation to any of the objects constituting the bases for zoning ordinances set forth in G.L. c. 40, §25 (since repealed).

The Court stated (at 650):

> It is not within the scope of the (zoning enabling act) to enact zoning regulations for the purpose of assisting a municipality to retain or assume a general appearance deemed to be ideal, or to inflate its taxable revenue....

Enos v. Brockton, 354 Mass. 278 (1968), held that a provision of the Brockton zoning ordinance that apartment houses "be of second class construction" (which was defined, not in the zoning ordinance but in the building code) was not authorized by the Zoning Enabling Act and was invalid as a zoning regulation. The Court stated (at pp. 280-281):

> ...the purposes of operation of zoning laws and building codes are somewhat divergent.... Whereas the main purpose of zoning is to stabilize the use of property and to protect an area from deleterious uses..., a building code "relates to the safety and structure of buildings."...

See 8 McQuillin, Municipal Corporations, §25.10 (Relationship of zoning to other police regulations) (1976); 1 Rathkopf, Law of Zoning and Planning, §2.02(3) (Zoning power as limited by zoning objectives expressed in enabling acts).

Since the "Cambridge Plan" does not regulate the use of land, I conclude that it cannot be accomplished through the Zoning Ordinance.

BA/jl

Enc.

cc: Russell B. Higley, Esq.
Ms. Kathy Spiegelman

MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INCORPORATED et al.[1]

v.

MAYOR OF BOSTON et al.[2]

Supreme Judicial Court of Massachusetts, Suffolk.

Argued May 6, 1981.

Decided Aug. 28, 1981.

Various contractors, builders and labor unions brought action challenging statute and mayoral order giving residents preference in hiring for construction financed by public funds. The single Justice Liacos, County of Suffolk, reported ten questions to the full court. The Supreme Judicial Court, Lynch, J., held that: (1) neither statute nor order were preempted by National Labor Relations Act; (2) statute, which mandates that private contractors on state-funded projects give preference to Commonwealth residents in hiring for certain positions, violated privileges and immunities clause and was not justified on basis of protecting limited resources, i. e., jobs or on ground that state was acting as a market participant; and (3) mayoral order requiring private contractors to fill 50% of positions on city-funded construction projects with city residents ran afoul of the commerce clause.

Questions answered.

1. Labor Relations ⇐45

Neither the Commonwealth nor any subdivision may act in a manner that frustrates federal labor policy. National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; U.S.C.A.Const. Art. 6, cl. 2.

2. Labor Relations ⇐45

Neither statute mandating that private contractors on state-funded construction projects give preference to Commonwealth residents in hiring for certain positions nor mayoral order requiring that private contractors fill 50% of the positions on city-funded contracts with city residents intrude into negotiating process between contractors and unions in a manner conflicting with obligations of unions and employers under National Labor Relations Act so as to be invalid under supremacy clause. M.G.L.A. c. 149, § 26; National Labor Relations Act, § 1 et seq. as amended 29 U.S.C.A. § 151 et seq.; U.S.C.A.Const. Art. 6, cl. 2.

3. Constitutional Law ⇐207(1)

Discrimination against nonresidents violates the privileges and immunity clause where the right at stake is fundamental and there is no showing that the nonresidents are a peculiar source of evil that the legislature was seeking to remedy or that there is a valid justification for the distinction other than the mere fact of nonresidency. U.S.C.A.Const. Art. 4, § 2, cl. 1.

4. Constitutional Law ⇐207(1)

Privileges and immunities clause protects the right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits or otherwise. U.S.C.A. Const. Art. 4, § 2, cl. 1.

5. Constitutional Law ⇐207(2)

Limiting the particular kind of work opportunity because of a person's place of residence impinges on "fundamental right" for purposes of privileges and immunities clause analysis. U.S.C.A.Const. Art. 4, § 2, cl. 1.

6. Constitutional Law ⇐207(2)

A state may not use its control over a resource to create an absolute employment

1. The other plaintiffs are the Massachusetts State Building and Construction Trades Council, AFL–CIO; the Building and Construction Trades Council of the Metropolitan District, AFL–CIO; individual contractors incorporated in Massachusetts; contractors incorporated in Rhode Island; and members of sixteen trade unions.

2. The city of Boston, the Boston Redevelopment Authority, the Economic Development and Industrial Corporation, and the Massachusetts Department of Labor and Industries. The Boston Jobs Coalition, Inc., was allowed to intervene as a defendant.

preference for its own residents without running afoul of the privileges and immunities clause. U.S.C.A.Const. Art. 4, § 2, cl. 1.

7. Constitutional Law ⇐207(2)

Statute mandating that private contractors on state-funded construction projects give preference to Commonwealth residents in hiring for certain positions violates the privileges and immunities clause, and discrimination was not justified on ground of limited resources, i. e., jobs, absent clear demonstration that out-of-state residents were particular source of high level of statewide unemployment or on ground that the state was acting as a market participant as a purchaser of goods and services. M.G.L.A. c. 149, § 26; U.S.C.A.Const. Art. 4, § 2, cl. 1.

8. Constitutional Law ⇐207(1)

Even if a preference may be given to state residents where state-controlled resource is limited, to withstand scrutiny under privileges and immunities clause there must be some evidence that the services or resources, assuming they involve fundamental rights, are overburdened. U.S.C.A. Const. Art. 4, § 2, cl. 1.

9. Commerce ⇐54

Commerce clause does not prevent a State from preferring resident business in purchasing goods or in the distribution of state-produced materials in a shortage situation. U.S.C.A.Const. Art. 1, § 8, cl. 3.

10. Commerce ⇐54

Mayoral order requiring that private contractors fill 50% of positions on city-funded construction projects with city residents ran afoul of the commerce clause; even if city were acting in its proprietary capacity in all activities affected by the order the order swept too broadly and established a strict numerical requirement which was not at all targeted to asserted legitimate interests, including unemployment or underemployment of local residents. U.S.C.A.Const. Art. 1, § 8, cl. 3.

11. Municipal Corporations ⇐217.3(4)

In at least certain kinds of direct hiring, a municipality may employ only residents or may give preference to residents. U.S.C.A.Const. Art. 1, § 8, cl. 3.

Paul J. Kingston, Boston, for plaintiffs.

Gerard J. Clark, Boston, for the Mayor of Boston and others.

E. Michael Sloman, Asst. Atty. Gen. (Carl Valvo, Asst. Atty. Gen. with him) for Massachusetts Dept. of Labor & Industries.

Kurt M. Pressman, Cambridge, for Boston Jobs Coalition, Inc., intervener.

Wayne S. Henderson, Boston, for New England Legal Foundation, amicus curiae, submitted a brief.

Before HENNESSEY, C. J., and WILKINS, ABRAMS, NOLAN and LYNCH, JJ.

LYNCH, Justice.

Before us is a challenge to a portion of G.L. c. 149, § 26,[3] and to an executive order[4] of the mayor of the city of Boston, as well as to a regulation of the Boston Rede-

3. General Laws c. 149, § 26, as amended through St.1967, c. 296, §§ 2, 3, reads in pertinent part: "In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the commonwealth, or by a county, town or district, or by persons contracting or subcontracting for such works, preference shall first be given to citizens of the commonwealth who have been residents of the commonwealth for at least six months at the commencement of their employment who are male veterans as defined in clause Forty-third of section seven of chapter four, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the commonwealth generally who have been residents of the commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or sub-contracting for such works, shall give preference to veterans and citizens who are residents of such county, town or district."

4. The relevant portion of the mayor's order is as follows:

"(1) On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or other

velopment Authority (BRA).[5] The contested section of the statute mandates that private contractors on State-funded construction projects give preference to residents of the Commonwealth in hiring for certain positions.[6] Disputed in the mayoral order is the requirement that private contractors fill fifty per cent of the positions on city-funded[7] construction projects with Boston residents.[8] Originally the action came before a single justice of this court on a complaint for injunctive and declaratory relief. The single justice reserved and reported ten questions to the full court.[9]

wise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed, in accordance with the contract documents established herewith, as follows:

"a. at least 50% by bona fide Boston residents;

"b. at least 25% by minorities;

"c. at least 10% by women.

"For purposes of this paragraph worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions.

"(2) Each department of the City of Boston contracting with any private corporation or person for such construction projects, shall include in all such contracts the provisions of the City of Boston Supplemental Minority Participation and Residents Preference Section to insure compliance with this Executive Order.

"(3) The Equal Employment Opportunity Contract Compliance Office of the City of Boston through the awarding Authority shall be responsible for monitoring and enforcing the provisions of this Executive Order and the contract provisions established in accordance therewith."

5. Section 8 of the Rules and Regulations of the Boston Redevelopment Authority Governing Chapter 121A Projects in the City of Boston reads as follows: "The applicant shall state that the 121A entity or any contractor working for the 121A entity will, to the best of its ability grant preference in hiring to Boston residents during the construction period and during the period of management of the Project. To the extent possible employers under contract to (including subcontractors), or leasing from, the 121A entity will be required to list all job openings with the City of Boston CETA office, ten (10) working days in advance of any public advertisement of the positions. Any employer under 121A, who utilizes the State Division of Employment Security to find job applicants, will be required to specify in this request a preference for City of Boston residents. This requirement shall be consistent with all applicable collective bargaining requirements."

6. There is no challenge to the durational aspect of the residency preference, although the question of the validity of such statutory requirements has been raised in a number of contexts. Compare *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), and *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), with *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975), and *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), aff'd, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971).

7. The funds involved include significant sums supplied by the Commonwealth and the Federal government.

8. No challenge has been made to those aspects of the order setting out hiring guidelines based on race and sex. Such provisions in other cities have been the subject of litigation. See, e. g., *Local Union No. 35, IBEW v. Hartford*, 625 F.2d 416 (2d Cir. 1980), cert. denied, — U.S. —, 101 S.Ct. 3148, 69 L.Ed.2d 997 (1981).

9. The following questions were reported by the single justice:

"1. Is the application of G.L. c. 149, § 26, to construction projects involving Federal assistance invalid because it is in conflict with the Federal statutes (and rules and regulations derived therefrom) authorizing such assistance and/or is such application of the statute invalid under the Supremacy Clause of the United States Constitution?

"2. Does G.L. c. 149, § 26, conflict with the privileges and immunities clause, the due process clause, the equal protection clause, the contract clause and the commerce clause of the United States Constitution, and does it conflict with Articles I, X, and XII of the Massachusetts Constitution?

"3. Does G.L. c. 149, § 26, conflict with the obligations of the plaintiffs under the National Labor Relations Act, and is it therefore invalid under the Supremacy Clause of the United States Constitution?

"4. Is the application of the residency aspects of Executive Order to construction projects involving Federal assistance invalid because in conflict with the federal statutes (and rules and regulations derived therefrom) authorizing such assistance and/or is such application of the Executive Order invalid under the Supremacy Clause of the United States Constitution?

"5. Does the Executive Order, by establishing a residents' preference, conflict with the privileges and immunities clause, the due proc-

A number of issues are raised. Both the statute and the executive order are challenged in their entirety as an interference in labor negotiations in violation of the National Labor Relations Act (NLRA), and thereby in conflict with the supremacy clause of the United States Constitution, art. VI, cl. 2. Both are also said to be invalid because of the Federal constitutional protections contained in the privileges and immunities (art. IV, § 2, cl. 1), due process, contract, and commerce clauses. Analogous provisions in the Constitution of the Commonwealth are also invoked by the plaintiffs, chiefly arts. 1, 10, and 12. The executive order alone is claimed to be an improper exercise of power under the "home rule" provisions of art. 2, as amended by art. 89, of the Amendments to the Massachusetts Constitution, and as beyond the inherent power of the mayor under the city charter. So too the actions of the BRA are claimed to exceed the authority granted by G L. c. 121A. Finally both G.L. c. 149, § 26, and the executive order are challenged in part as they apply to Federal funds. The plaintiffs contend that the Federal statutory and regulatory frameworks for the distribution of these funds forbid the imposition of residency provisions.

We must first consider those statutory arguments which would invalidate the challenged provisions. It is only if the statute and order survive this scrutiny that we need consider constitutional issues. Compare *School Comm. of Springfield v. Board of Educ.*, 366 Mass. 315, 338, 319 N.E.2d 427 (1974) (Quirico, J., concurring), cert. denied, 421 U.S. 947, 95 S.Ct. 1677, 44 L.Ed.2d 101 (1975), with *id.* 366 Mass. at 339 350, 319 N.E.2d 427 (Tauro, C. J., addendum). In the questions before us, only affirmative answers to the questions concerning preemption under the NLRA (questions 3 and 6) would fully resolve the plaintiffs' claims without reaching a constitutional issue. Since we find for the defendants on that issue, we turn to the privileges and immunities clause of art. IV, § 2,[10] and the commerce clause[11] of the United States Constitution, which dictate a decision in the plaintiffs' favor.[12] Finally, we decline to answer question 8, which concerns the residents preference instituted by the BRA, both because we believe the agency may wish to reconsider its regulation in light of this opinion and because the issue has not been adequately argued before this court.

ess clause, the equal protection clause, the contract clause and the commerce clause of the United States Constitution, and does it conflict with Article I, Article [X] and Article XII of the Massachusetts Constitution?

"6. Do the residency aspects of Executive Order conflict with the obligation of the plaintiffs under the National Labor Relations Act, and is it therefore invalid under the Supremacy Clause of the United States Constitution?

"7. Are the residency aspects of Executive Order invalid under Section 6 or Section 7(5) of Article 89 of the amendments to the Constitution of Massachusetts, and/or G.L. c. 43B, § 13 (the Home Rule Procedures Act)?

"8. Does the BRA violate the provisions of G.L. c. 121A by conditioning approval of application for tax status under that Chapter upon an applicant's acceptance of Section 8 of the BRA's 'Rules and Regulations Governing Chapter 121A Projects in the City of Boston'?

"9. Are the residency aspects of the Executive Order invalid as beyond the inherent power of the Mayor under the City Charter?

"10. Is the conditioning of a developer's application for a UDAG [Urban Development Action Grant] upon his agreement to abide by the residency aspects of the Executive Order in conflict with 42 U.S.C. sec. 5301 *et seq.* and/or is such conditioning invalid under the Supremacy Clause of the U.S. Constitution?"

10. Article IV, § 2, cl. 1, of the United States Constitution reads as follows: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

11. Article I, § 8, cl. 3, of the United States Constitution, the commerce clause, reads: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

12. Conceivably, questions concerning the mayoral order could be disposed of on other grounds, but the resolution we reach is intimately related to the questions necessarily discussed in considering G.L. c. 149, § 26.

I. THE CHARACTER OF THE RESIDENTS PREFERENCES.

General Laws c. 149, § 26, provides an absolute preference for residents [13] of the Commonwealth in the positions described. There seems little dispute that a qualified resident of the Commonwealth, if available, must be hired for any job covered by § 26. Although the statute also contains a local preference, the Massachusetts Department of Labor and Industries has chosen not to enforce that provision because of concerns about its constitutionality.[14] The order of the mayor is somewhat broader in its application to all "worker hours on a craft-by-craft basis," but rather than imposing an absolute preference it mandates that fifty per cent of those hours must be contributed by workers who are residents of the city.

To the extent that all workers are hired anew by contractors for every project, these provisions may have little impact on the structure of the industry or its functioning in interstate commerce. In differing degrees many subcontractors do hire for each project. Frequently, however, a contractor will have a regular work crew, particularly in certain specialized fields. If some members of a crew are not residents of the Commonwealth or of the city, it will be necessary that they be replaced or, alternatively, their employer may opt out of bidding on these projects. The defendants acknowledge that both results do occur.

The goals of both G.L. c. 149, § 26, and the executive order are to lessen unemployment in the Commonwealth or in the city and to ensure that the expenditure of local funds results in maximum benefits to the locality where the monies are raised. As an additional reason for the mayor's order the city describes a desire to ensure adequate representation of city residents in construction union jobs and a lessening of racial tensions.[15]

II. PREEMPTION AND THE NATIONAL LABOR RELATIONS ACT.

[1, 2] The plaintiffs suggest that the policy of the National Labor Relations Act (29 U.S.C. §§ 151 et seq. [1976]) preempts the residents preference contained in both the statute and executive order. In effect G.L. c. 149, § 26, and the order are claimed to be invalid as attempts to override or control substantive terms in agreements between unions and contractors. Neither the Commonwealth nor any of its subdivisions may act in a manner that frustrates Federal labor policy. States are forbidden to penalize practices which Congress and the National Labor Relations Board (NLRB) deem to be legitimate economic weapons. *Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976) (State may not penalize union refusal to work overtime when such refusal was allowed under the NLRA); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959) (State may not penalize picketing arguably protected under the NLRA even though the NLRB declines jurisdiction), nor may State law be used to dictate the outcome in an area of mandatory bargaining, *Local 24, Int'l Brotherhood of Teamsters v. Oliver*, 358 U.S. 283, 79 S.Ct. 297, 3 L.Ed.2d 312 (1959) (State antitrust laws may not be used to invalidate an agreement meant to protect negotiated wage scale).

Here, however, it is difficult to imagine how the Commonwealth or the city is intruding into the negotiating process be-

13. For purposes of analysis under the privileges and immunities clause, "residents" and "State citizens" are essentially interchangeable terms. See *Hicklin v. Orbeck*, 437 U.S. 518, 524 n.8, 98 S.Ct. 2482, 2486 n.8, 57 L.Ed.2d 397 (1978).

14. There are a number of other provisions contained in the challenged statute. We consider them to be separable from the residents preference portion of G.L. c. 149, § 26.

15. The city states that if this action came to trial, evidence would be presented to demonstrate that some members of Boston's nonminority population resented attempts to ensure certain minimal levels of minority and female employment on construction projects. The fifty per cent quota was thus established in part to ensure that all segments of the city's population received some of the jobs, thereby alleviating any hostility.

tween contractors and unions. In essence, the plaintiffs argue that the Commonwealth may do nothing that influences any possible condition of a labor contract. This is far too broad a reading of preemption under the NLRA. See *Amalgamated Transit Union, Div. 819 v. Byrne*, 568 F.2d 1025 (3d Cir. 1977) (en banc) (State did not violate NLRA by threatening to withdraw subsidies to private transportation companies which included unlimited cost of living increase provisions in their collective bargaining agreements). Additionally, in this particular instance, it is curious to contend that the negotiating process has been skewed in favor of either party when both unions and contractors are before this court opposing the residents preference. We therefore answer both parts of questions 3 and 6 in the negative.

III. THE CONSTITUTIONAL PROVISIONS AT ISSUE.

The privileges and immunities and commerce clauses act together to provide a free flow of individuals and business activities among the States. The former "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy," *Toomer v. Witsell*, 334 U.S. 385, 395, 68 S.Ct. 1156, 1162, 92 L.Ed. 1460 (1948), while the latter serves as an embodiment of the assumption implicit in the Constitution that "the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523, 55 S.Ct. 497, 500, 79 L.Ed. 1032 (1935) (Cardozo, J.).

Thus, while States are not prevented from favoring their citizens in certain circumstances, *Reeves, Inc. v. Stake*, 447 U.S. 429, 100 S.Ct. 2271, 65 L.Ed.2d 244 (1980) (State may favor its own citizens in selling cement from State-owned plant during shortage); *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978) (States may charge nonresidents substantially higher fees for recreational hunting licenses), there are definite limitations on the methods that may be used, *Philadelphia v. New Jersey*, 437 U.S. 617, 627, 98 S.Ct. 2531, 2537, 57 L.Ed.2d 475 (1978), and cases cited.

IV. THE STATUTE.

[3] Determining whether G.L. c. 149, § 26, violates the privileges and immunities clause requires a two-step analysis. First, is the right at stake "fundamental"? See *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 387, 98 S.Ct. 1852, 1862, 56 L.Ed.2d 354 (1978). Compare *Ostrager v. State Bd. of Control*, 99 Cal.App.3d 1, 5, 160 Cal.Rptr. 317 (1979) (participation in State compensation program for victims of crime not fundamental), with *State v. Nolfi*, 141 N.J.Super. 528, 537–538, 358 A.2d 853 (1976) (out-of-State resident must be allowed to participate in pretrial diversion program for criminal defendants). Second, if the right is found to be fundamental, the discrimination challenged may be justified if there is a showing that nonresidents are a "peculiar source" of an "evil" that the Legislature is seeking to remedy, *Hicklin v. Orbeck*, 437 U.S. 518, 525, 98 S.Ct. 2482, 2487, 57 L.Ed.2d 397 (1978), quoting from *Toomer v. Witsell*, *supra* 334 U.S. at 398, 68 S.Ct. at 1163, or that there is a valid justification for the distinction other than the mere fact of nonresidency, *Hicklin, supra*. See, e. g., *Rubin v. Glaser*, 83 N.J. 299, 305–306, 416 A.2d 382 (1980) (State may treat residents and nonresidents differently for some tax purposes, if such treatment bears a close relation to extra taxes paid by residents in other contexts). Accord, *Lung v. O'Chesky*, 94 N.M. 802, 805, 617 P.2d 1317, 1320 (1980).

A. *Fundamentality.*

Initially the defendants contend that the employment at issue involves no fundamental interest and so the privileges and immunities clause is inapplicable. A certain surface plausibility is lent to this theory because the term "fundamental" has been used to describe several very different concepts in constitutional analysis. *Carchman v. Korman Corp.*, 456 F.Supp. 730, 738 & n.9 (E.D.Pa.1978). Note, Of Interests Funda-

mental and Compelling: The Emerging Constitutional Balance, 57 B.U.L.Rev. 462 (1977). Our attention is directed to cases that hold certain rights fundamental for purposes of the equal protection clause of the Fourteenth Amendment to the United States Constitution, rights which, therefore, can be restricted only upon the showing of a compelling State interest. See, e. g., *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (right to interstate travel); L. Tribe, American Constitutional Law § 16-10 (1978) (discussing fundamental nature of equal access to the ballot). Admittedly, employment opportunities, whether public or private, have not been given this extraordinarily high level of protection.

[4, 5] For purposes of art. IV, § 2, however, from the earliest incorporation of the notion of "fundamentality," the clause has been thought to protect the "right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise," *Corfield v. Coryell*, 6 F.Cas. (No. 3,230) 546, 552 (C.C.E.D.Pa.1823) (Washington, Circuit Justice). This position has been consistently followed. See *Doe v. Bolton*, 410 U.S. 179, 200, 93 S.Ct. 739, 751, 35 L.Ed.2d 201 (1973); *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 430, 20 L.Ed. 449 (1870). Indeed, reconciling the holding in *Baldwin, supra*, which allowed a substantially higher licensing fee to be charged to out-of-State hunters, with the holding in *Toomer v. Witsell, supra*, which negated a substantial differential in license fees for commercial shrimp fishing, is possible because the Court in *Baldwin, supra*, recognized a constitutional difference between recreational activity and the pursuit of a livelihood.[16] See Note, The Privileges and Immunities Clause: A Reaffirmation of Fundamental Rights, 33 U.Miami L.Rev. 691, 693 (1979). Limiting a particular kind of work opportunity because of a person's place of residence does impinge upon a "fundamental" right and thus satisfies the first element of a privileges and immunities analysis.

B. *Possible Sources of Justification for the Discrimination.*

[6, 7] *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), is controlling on this issue because it establishes a clear rule that a State may not use its control over a resource to create an absolute employment preference for its own residents. There, Alaska had attempted to utilize its control over oil leases on State-owned land to require that Alaska residents be given absolute preference in hiring not only in the oil fields, but also in any activity that benefited from the ripple effect of the energy boom. *Id.* at 531, 98 S.Ct. at 2490. The Supreme Court rejected Alaska's claim that ownership of the land in question gave the same authority that any owner might have to place conditions on the lease or sale of a resource. *Id.* at 528, 98 S.Ct. at 2488. A significant factor in the Court's holding was that no evidence was presented that nonresidents were a particular source of Alaskan unemployment. *Id.* at 526, 98 S.Ct. at 2487. Additionally, the statute was suspect because it swept more broadly than necessary to achieve the goal of increased training and employment of Alaska residents, an end better served by a preference aimed at the unemployed or those in training programs.[17] *Id.* at 527-528, 98 S.Ct. at

16. The degree to which "learned professions" may present a different situation is not now before us and we express no opinion on that point except to note that the issue is one on which there is substantial debate. See generally Note, A Constitutional Analysis of State Bar Residency Requirements Under the Interstate Privileges and Immunities Clause of Article IV, 92 Harv.L.Rev. 1461 (1979).

17. It is not totally clear how closely a statute must match means and ends once a substantial State interest in discriminatory treatment has been identified. *Austin v. New Hampshire*, 420 U.S. 656, 663, 95 S.Ct. 1191, 1196, 43 L.Ed.2d 530 (1975), in analyzing art. IV, § 2, cl. 1, as applied to tax matters, describes "a standard of review substantially more rigorous" than that usually applied to State tax distinctions. This has been compared to the intermediate scrutiny apparently applied in cases dealing with illegitimacy and alienage. See Note, A Constitutional

2488–2489. Since *Hicklin* forbids the use of State control over a resource to force an absolute preference in hiring by a private contractor, the residents preference provisions of G.L. c. 149, § 26, must fall.

The defendants would distinguish *Hicklin* on two bases. First, that the regulation at issue merely protects the use of a limited resource (jobs), restricting them to State residents and second, by analogy to certain commerce clause cases, that as a market participant it may act unfettered by the restrictions of the privileges and immunities clause. See *Reeves, Inc. v. Stake*, 447 U.S. 429, 100 S.Ct. 2271, 65 L.Ed.2d 244 (1980); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 96 S.Ct. 2488, 49 L.Ed.2d 220 (1976).

[8] 1. *Limited resources.* There may be a suggestion in older cases that when a State-controlled resource is limited, a preference can be given to residents. See *Toomer v. Witsell, supra* 334 U.S. at 397–398, 68 S.Ct. at 1162–1163. But there must be some evidence that the services or resources, assuming they involve fundamental rights, are overburdened. *Doe v. Bolton*, 410 U.S. 179, 200, 93 S.Ct. 739, 751, 35 L.Ed.2d 201 (1973). The defendants point to a high level of State-wide unemployment. *Hicklin, supra*, however, clearly rejects such an argument without a clear demonstration that out-of-State residents are a peculiar source of high unemployment. *Id.* 437 U.S. at 526, 98 S.Ct. at 2487. Such a showing is not made on the record before us.

Analysis of State Bar Residency Requirements Under the Interstate Privileges and Immunities Clause of Article IV, 92 Harv.L.Rev. 1461, 1479 (1979); Note, The Privileges and Immunities Clause: A Reaffirmation of Fundamental Rights, 33 U.Miami L.Rev. 691, 698–699 (1979). We need not determine the exact standard of review required since we believe *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), is controlling on these facts.

18. Neither party discussed to any substantial degree several older decisions upholding G.L. c. 149, § 26, and similar statutes against challenges based on the exclusion of aliens from public construction employment. See *Lee v. Lynn*, 223 Mass. 109, 111 N.E. 700 (1916) (upholding G.L. c. 149, § 26, against a challenge from Massachusetts residents with foreign citizenship); *Crane v. New York*, 239 U.S. 195, 36 S.Ct. 85, 60 L.Ed. 218 (1915); *Heim v. McCall*, 239 U.S. 175, 36 S.Ct. 78, 60 L.Ed. 206 (1915). The holdings of these cases are at best questionable in light of more recent decisions dealing with constitutional protections for aliens. See generally Note, A Dual Standard for State Discrimination Against Aliens, 92 Harv.L.Rev. 1516 (1979). In any case, *Hicklin, supra* 437 U.S. at 531 n.15, 98 S.Ct. at 2490 n.15, indicates that *Heim* and *Crane* have no weight as precedents in construing art. IV, § 2, of the United States Constitution.

2. *Acting as a market participant.* The defendants' second contention is that a residents preference in hiring for construction financed by public funds is substantially different from a preference based on the fortuitous location of a natural resource within a State's borders. The Commonwealth would thus turn to *Hughes, supra*, and *Reeves, supra*, in determining the extent to which the State, acting as a purchaser of goods and services, is exempt from the restrictions of the privileges and immunities clause.[18]

[9] The Commonwealth is correct that the commerce clause does not prevent a State from preferring resident business in purchasing goods, see *Hughes, supra* 426 U.S. at 810, 96 S.Ct. at 2498, or services, *American Yearbook Co. v. Askew*, 339 F.Supp. 719, 723 (M.D.Fla.) (three judge court), aff'd mem., 409 U.S. 904, 93 S.Ct. 230, 34 L.Ed.2d 168 (1972), or in the distribution of State-produced materials in a shortage situation, *Reeves, Inc. v. Stake, supra* 447 U.S. at 446–447, 100 S.Ct. at 2282–2283. One major weakness in such an analogy is that in none of the cases cited was the use of the State's market power extended beyond granting an initial contract or a first sale. The commerce clause cases suggest that Alaska might quite properly have preferred its own residents in granting initial leases on its oil land, but *Hicklin, supra*, leaves no question that the extension of this power to favor absolutely all State residents in employment was unacceptable. Therefore, the statute before us cannot stand. See *Salla v. County of Monroe*, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399

N.E.2d 909 (1979) (overturning on privileges and immunities grounds a New York statute nearly identical to G.L. c. 149, § 26, as enforced). We thus respond "yes" to the first issue raised in question 2. We need not consider the additional issues raised therein, nor need we answer question 1.

V. THE EXECUTIVE ORDER.

A. *Privileges and Immunities.*

The invalidity of the residents preference contained in the statute does not necessarily dictate a similar result with regard to the mayoral order. The plaintiffs contend that the same privileges and immunities analysis should be applied, but neither on its face, nor in fact, can the order be said to aim solely, or chiefly, at out-of-State residents. The preference is for inhabitants of the city, and its "negative" effect is felt in significant part by other citizens of the Commonwealth, as well as by residents of other States. In such circumstances it may be more difficult to find a violation of the privileges and immunities clause because the discrimination adversely affects citizens of the Commonwealth as well.[19] But see *Construction & Gen. Laborers Local 563 v. St. Paul*, 270 Minn. 427, 431, 134 N.W.2d 26 (1965) (invalidating, partially on privileges and immunities grounds, a city ordinance requiring contractors on public building projects to hire only residents of the county in which the city was located).

B. *The Commerce Clause.*

[10, 11] The commerce clause, however, presents a clear obstacle to the city's order. Neither party would, we think, seriously dispute the proposition that an attempt by the city to apply the regulations contained in the order to all private construction would fall to such a challenge. Simple economic protectionism triggers a "virtually *per se* rule of invalidity." *Philadelphia v. New Jersey*, 437 U.S. 617, 624, 98 S.Ct. 2531, 2535, 57 L.Ed.2d 475 (1978).

The key question is whether the exception for a State (or one can safely say a municipality) as a market participant, discussed *supra*, serves to protect the mayoral order. In addition, we must consider our decisions and those of other courts which have held that in at least certain kinds of direct hiring, a municipality may employ only residents or may give preference to residents. See *Milton v. Civil Serv. Comm'n*, 365 Mass. 368, 312 N.E.2d 188 (1974); *McCarthy v. Philadelphia Civil Serv. Comm'n*, 424 U.S. 645, 96 S.Ct. 1154, 47 L.Ed.2d 366 (1976); *Wardwell v. Board of Educ. of the City School Dist. of Cincinnati*, 529 F.2d 625 (6th Cir. 1976); *Detroit Police Officers Ass'n v. Detroit*, 385 Mich. 519, 190 N.W.2d 97 (1971).

We perceive, however, three key distinctions between the actions upheld in the cases cited by the defendants and the mayoral order. First, given the statement of agreed facts, there is no doubt that the implementation of the mayor's order will have a significant impact on those firms which engage in specialized areas of construction and employ permanent works crews composed of out-of-State residents. The municipal hiring cases are quite different since they affect the permanent domicile of employees rather than discouraging the interstate activities of construction firms. Second, the record indicates that a significant percentage of the funds affected by the order are received from Federal sources. Thus, it is inaccurate to describe the preference as a mere use of city-raised funds to further local interest. The analysis in *Reeves, supra*, which the city cites in defense of the executive order, is distinguishable on this ground. There, the concrete plant operated by South Dakota was an example of State-raised revenues being expended with a genuine risk of failure, the cost of which would have been borne by the State. The Court of Appeals of New York in *Salla, supra* 48 N.Y.2d at 524–525, 423 N.Y.S.2d 878, 399 N.E.2d 909, found this element nearly definitive in justifying the

19. We do not reach the question whether such discrimination is contrary to the Massachusetts Constitution.

invalidation of New York's residents preference in the awarding of public construction contracts. We do not go so far, but the presence or absence of substantial funds from nonlocal sources is at the very least an important factor in determining whether the *Reeves* decision is applicable.

Finally, as in *Hicklin, supra*, there is a broadly drawn statute which sweeps far wider than merely favoring unemployed or underemployed local residents. Although *Reeves, supra*, does indicate that a sympathetic reading under the commerce clause should be given to State or local action in a proprietary capacity, it is doubtful that the city is acting in its proprietary capacity in all the activities affected by the executive order. Even if this were so, the extensive preference for local residents contained in the executive order cannot come within the exception outlined by *Reeves* because it sweeps so broadly. In *Reeves*, the existence of a genuine shortage of concrete necessitated some form of rationing. The State's choice of favoring its own citizens was a rational means of allocation which recognized the special interests of local taxpayers. The executive order before us establishes a strict numerical requirement which is not at all targeted to the legitimate interests which the city has asserted. Given the order's negative impact on interstate commerce linked with this broad application, it must fall. Question 5 is to that extent answered in the affirmative and we therefore need not reach questions 4, 7, 9 and 10.

In summary, we answer questions 3 and 6 "no."

We answer question 2 "yes" to the extent outlined in part IV.

We answer question 5 "yes" to the extent outlined in Section V.

We decline to answer questions 1, 4, 7, 8, 9, and 10.

CAPE COD BANK AND TRUST COMPANY

v.

Constance L. LeTENDRE et al.[1]

Supreme Judicial Court of Massachusetts, Barnstable.

Argued May 8, 1981.

Decided Aug. 28, 1981.

The First District Court, Barnstable County, Welsh, J., granted plaintiff's motion to dismiss a draft report, and defendants appealed. The Appellate Division of the District Courts, Southern District, affirmed, and appeal was taken. The Supreme Judicial Court, Lynch, J., held that rule's provisions requiring that a copy of draft report be furnished to trial judge and opposing counsel in addition to the copy to be filed with clerk were not jurisdictional.

Reversed and remanded.

Appeal and Error ⇨320(3)

District/municipal court rule's provision requiring that a copy of draft report be furnished to trial judge and opposing counsel in addition to the copy to be filed with clerk were not jurisdictional; alleged failure of appellants to furnish judge and opposing counsel with copy of draft report was to be considered by trial judge, with a view to determining how far appellants' failure had interfered with accomplishment of purposes implicit in requirements of the rule and examining extent to which the other side could show prejudice, and, after such an assessment, judge was to decide, in exercise of his discretion, whether the appeal should go forward without more, or on terms, or fail altogether. District/Munici-

1. Yvon J. LeTendre. The remaining defendants, Paul E. Affleck and Yvette D. Affleck, have not joined in the appeal.

ECONOMIC DEVELOPMENT/EMPLOYMENT PROGRAM

The major objective of the Cambridge Employment Plan is to provide Cambridge residents employment in new jobs created through economic development activities. Based on the research done by the Law Department and Community Development there is no legal basis for the City Council to require employers to hire a certain percentage of Cambridge residents. Therefore, the Cambridge Employment Plan must be based on goals not mandates, and the service that is established to meet these goals must benefit both residents and the business community of Cambridge.

I have summarized below the major components that I believe should be incorporated into an economic development program in order to achieve the above stated objectives. Overall, I am recommending that EMHRDA be the primary agency to deliver and oversee the services described below. Certain segments will be provided in conjunction with the Cambridge Chamber of Commerce, EMHRDA Private Industry Council, and the Division of Employment Security.

1. Employer Survey:

   Successful implementation of a Cambridge Employment Plan requires that the new firms moving into Cambridge fully endorse the program. It must be determined what kind of service can be established that will help the business community meet their labor force needs while providing residents access to new job openings. Possibilities can range from a job notification service to providing a one-stop information clearinghouse for new businesses which would disseminate information on job openings, financing, tax credits, and labor force demographics. An extensive business survey is necessary to determine what type of services are needed to meet the needs of new firms.

   Once business needs are determined, a marketing strategy should be developed and a campaign implemented to inform businesses of the new service. This phase of the program is critical; business must take some "ownership" for the program. The two phases described above, should be conducted under the auspices of the EMHRDA Private Industry Council, the Cambridge Chamber of Commerce and the Community Development Department. I am recommending that the City Council appropriate $10,000 for the employer survey and marketing components. Financial support from the private industry will also be solicited. This phase of the program would be conducted during October - December 1982.

2. Scope of Service:

   The present skill level of residents may not meet the needs of employers moving into the area. Some individuals may need a much more comprehensive service than just receiving the necessary information on job openings. Services can range from job referral to providing individuals with resume writing workshops, interviewing skills, and educational and vocational training. The larger the scope of the program the higher the cost to the City.

   I would recommend, at first, offering residents limited services such as assessment, job referral, and resume workshops. This would allow us to assess whether these services sufficiently match Cambridge residents to new jobs. Time is needed to determine whether employers needs warrant larger investments in training and educational services.

I am proposing that we begin the service in January 1983 and continue it, on a trial basis, through September 1983. I am recommending that the City Council appropriate $59,000. which would support a person to corrdinate the service, a screener, assessment counselor, clerical support, advertising costs, and operational costs. This figure is very tentative and should be subject to change since we are not sure how much employers and residents will participate in the program.

I am also trying to obtain financial support from the Division of Employment Security. DES has access to a large number of unemployed Cambridge residents and will have a substantial role and interest in the program. Discussions have taken place regarding DES providing personnel to participate in the program.

3. Resident Eligibility:

The original plan submitted to the Council assumed that EMHRDA would coordinate the various agencies that have access to unemployed residents of Cambridge and would disseminate job information received from new firms to these agencies. At the Employment Subcommittee meeting, Council members indicated that they were interested in establishing a more centralized referral system, that encompassed a broader resident group than just the low-income population. Although I endorse the concept of a less stringent eligibility criteria, I would recommend that the Council maintain income guidelines (possibly HUD standards) and require that individuals who use the service are unemployed for a certain length of time.

4. Administrative Structure:

The delivery of the service described can be accomplished by either establishing a separate employment office in the City or by a contract with EMHRDA stipulating provision of service to residents with incomes in excess of those normally served by EMHRDA. I would recommend to the Council that the City contract with EMHRDA to oversee the program. EMHRDA has a good management capability, they have experience in the employment and training field and the organization has access to a wide array of services other than placement, and has a good linkage, through its Private Industry Council, with private industry.

BUDGET

I.	Employer Survey/Marketing Campaign	$10,000
II.	a. Economic Development Coordinator	$20,000
	b. Screener	14,000
	c. Assessment Counselor (1)	16,000
	d. Clerical Support	12,000
		$62,000
	For 10 month period	$51,000
III.	Other Operational Costs	$ 8,000
IV.	Total Cost	$69,000

(1) I am projecting that two (2) counselors will be necessary; however I will attempt to obtain funding from outside sources for the additional counselor.

CAMBRIDGE CITIZENS EMPLOYMENT PLAN

A Comprehensive Strategy to Promote the Hiring of Cambridge Citizens by Private Industry in Targeted New Development Areas

Cambridge Community Development Department
in cooperation with the Eastern Middlesex
Human Resource Development Authority

Section I - Introduction

The City of Cambridge has embarked on a revitalization campaign which will effect significant portions of its business and commercial areas. Since 1976, comprehensive planning efforts have targeted three underutilized and declining business areas, involving some 500 acres of land. Generous commitments of local, state and federal funds have been made to promote and assist private investment in these areas.

There is good reason to believe that the City of Cambridge will experience a building boom in these areas over the next ten years. As a result of this, it is estimated that 7,000 new jobs will be created by the end of 1984, with an additional 13,000 being created over the next 15 years. There will be both short term construction jobs and more permanent positions in new and expanding businesses. However, increases in total Cambridge employment may not result in increasing the number of jobs held by City residents. Even more importantly, however, it may not result in employment for unemployed or underemployed Cambridge residents. Too often, new development, which was encouraged by the City, failed to meet the job needs of its disadvantaged population.

It is the policy of the City of Cambridge to make every effort to employ residents needing jobs. This policy promotes the utilization of economic development resources via new construction and rehabilitation. Recognizing that coordinated activities between the city's economic development effort and its employment and training programs are vital, the Cambridge Employment Plan is hereby established.

Section II - Applicable Areas

The following areas are established as major economic revitalization districts where the Cambridge Employment Plan is in effect:

1. The Alewife Revitalization District, defined as that area included in the Comprehensive Alewife rezoning petition, filed on November 11, 1979 as revised on February 11, 1980 and as ordained on June 16, 1980.

2. Kendall Square area

3. East Cambridge Riverfront area

4. Cambridgeport Industrial area

5. Massachusetts Avenue Corridor including Harvard Square

Section III - Objectives of the Cambridge Employment Plan

1. To ensure that local resources are wisely invested in development areas where there is maximum promise that the benefits that accrue, including employment opportunities, will be made available to city residents.

2. To maintain and to increase, whenever possible, the current percentage of Cambridge jobs held by Cambridge residents (25%), by promoting the hiring of qualified unemployed and underemployed Cambridge residents.

3. To promote Affirmative Action objectives.

4. To provide employers with a central contact point for disseminating and receiving information on all facets of employment and training resources in the labor market area.

Section IV - Responsibility of the Developer

In any area designated in Section II above as an Applicable Area, the Cambridge Building Department shall issue a building permit for the types of development specified in Section 11.70 of the Cambridge Zoning Ordinance after:

1. The developer signs a formal agreement with EMHRDA, to achieve the objectives set forth in Section III, in which the developer agrees to:

   a. Notify EMHRDA of all job opportunities of which they have knowledge or over which they have hiring control. Jobs include but are not limited to construction, manufacturing, clerical, technician, maintenance, and security jobs.

   b. Place appropriate job announcements in the local news media prior to placing such announcements outside the EMHRDA labor market area.

   c. Notify the firms moving into the development area of the services available through EMHRDA and community development.

   d. Orient each firm or its agent to the objectives and goals of the Cambridge Employment Plan.

   e. Provide EMHRDA with the names of all new firms and a contact person, from each firm moving into the development area, if available.

   f. Set goals and indicate procedures by which Cambridge residents would enter employment in available jobs.

Section V - Responsibility of the City of Cambridge

Recognizing the City's obligation to provide assistance to the private sector under the Cambridge Employment Plan and its commitment to the employment of

Cambridge residents, the City agrees to:

through its Community Development Department:

1. Provide an attractive overall environment to encourage private investment by properly planning and administering economic and urban design improvement strategies in major new development areas.

2. Assist in financing of commercial, industrial and housing development.

and through its job training organization (EMHRDA):

3. Establish a central clearinghouse where developers and new firms can provide job information for dissemination to appropriate agencies and receive a wide array of information on tax credits, training programs and other services pertaining to training and employment needs.

4. Maintain a readily accessible job recruitment and listing system so that eligible Cambridge residents can be quickly placed in available job openings.

5. Commit the necessary resources in the development of appropriate job training programs consisting primarily of "on the job" and "tailored classroom" training.

Section VI - Severability

Should any section, provision of paragraph of this plan be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the plan as a whole or any part thereof, other than the portion so declared to be invalid.

AGREEMENT TO COMPLY

I, _____ of _____

_____ agree to comply with the Cambridge Citizens Employment Plan as written in the preceding section and as further explained by EMHRDA representative _____.

In compliance, the initial goals of my organization will be as follows:

It is my understanding that during the regular consultation meeting with EMHRDA representatives, these goals may be revised or modified as necessary to both serve the interest of _____
Organization
and the citizens of Cambridge.

_____ _____

Signature of Applicant Signature of EMHRDA Representative

_____

Date

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

September 20, 1982

To the Honorable, the City Council:

Information expanding on suggestions for a Cambridge Citizen Employment Plan was requested for the Council at a meeting of the City Council Subcommittee on Economic Development held on Thursday, July 15, 1982. Since that date, I have met with Marlene Seltzer of EMHRDA and Kathy Spiegelman of the Community Development Department to devise a program for carrying out the goals of the plan.

Attached please find memoranda from the City Solicitor's office concerning legal questions raised at the meeting, as well as my recommendation for the implementation of an Economic Development/ Employment Program. Also attached is a copy of the Citizens Employment Plan that was discussed at the July meeting.

Based on the attached items, I recommend to the City Council the establishment of an employment program as described with a comprehensive reporting system to measure how well the goals of the Citizens Employment Plan are being met. The vehicle for establishing the plan could be the enactment of a special ordinance or the formal adoption by the Council of the Employment Plan document. An appropriation would then be required to begin operation of the program.

I request that the City Council refer this package of materials for further discussion in the Economic Development Subcommittee.

Very truly yours,

Robert W. Healy

Robert W. Healy
City Manager

RWH/mbf
Attachments

Agenda Item Number Two 233

Re: additional information regarding a Cambridge Citizen Employment Plan.

Copy sent to the Chairman of the Committee on Economic Development, Manpower + Employment 9/21/82 mk

In City Council,

September 20, 1982

9/20/82

Not Placed on File - Referred to Committee on Economic Development - CKLD