EVALUATION OF
THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

January 23, 1981

PROGRAM EVALUATION DIVISION
Office of the Legislative Auditor
State of Minnesota

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OFFICE OF THE LEGISLATIVE AUDITOR
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PREFACE

In June 1980, the Legislative Audit Commission directed the Program Evaluation Division to conduct an evaluation of the Department of Human Rights. Commission members were particularly concerned with the apparent inability of the department to investigate charges of discrimination within a reasonable period of time.

Our evaluation of the Department of Human Rights is reported here. We found that while the department has improved its productivity in recent years, the number of charges filed each year continues to exceed the number closed. The department's inventory of open cases now numbers over 2,600 and continues to grow. We view the size of the department's accumulated caseload and long delays in case processing as alarming, especially since the situation continues to worsen.

We have concluded that the department and the Legislature should identify what steps are necessary to enable the department to process all charges it accepts in a timely manner. This may require that difficult decisions be made concerning the scope of the department's activities and the resources required to carry them out.

Our study has benefited from the full cooperation of the department's management and staff. It is our hope that the difficulty of the agenda facing the Department of Human Rights will be recognized and that this report will help focus the debate over what administrative and legislative actions are necessary.

This study was conducted by Elliot Long (Project Manager) and Allan Baumgarten.

James Nobles
Deputy Legislative Auditor
for Program Evaluation

January 1981

PROGRAM EVALUATION DIVISION

The Program Evaluation Division was established in 1975 to conduct studies at the direction of the Legislative Audit Commission (LAC). The division's general responsibility, as set forth in statute, is to determine the degree to which activities and programs entered into or funded by the state are accomplishing their goals and objectives and utilizing resources efficiently. A list of the division's studies appears at the end of this report.

Since 1979, the findings, conclusions, and recommendations in Program Evaluation Division reports are solely the product of the division's staff and not necessarily the position of the LAC. Upon completion, reports are sent to the LAC for review and are distributed to other interested legislators and legislative staff.

Currently the Legislative Audit Commission is comprised of the following members:

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EXECUTIVE SUMMARY

The principal function of the Human Rights Department (HRD) is to provide a prompt and thorough investigation of allegations of illegal discrimination against Minnesotans on the basis of race, sex, and other characteristics. The HRD operates with a staff complement of 55 and a biennial budget of about $2.6 million.

Our study of the HRD addressed the following questions relating to the investigation and resolution of charges of discrimination:

- Is the HRD able to offer Minnesotans a prompt and thorough investigation of charges of discrimination?
- How much time elapses between filing of a charge and case closure?
- What are the typical results of filing a charge with the HRD?
- Are all types of discrimination charges treated equitably?

We also examined the department's contract compliance program and conducted a review and evaluation of management practices in a number of areas. Our major findings and recommendations are summarized below.

A. CASE PROCESSING

Historically and to the present day, the department has not been able to investigate and resolve charges of discrimination in a timely fashion.

- More charges are filed with the department than are closed each year.
- There is now an accumulated inventory of over 2,600 open cases in the department.
- A person filing a charge can expect to wait a long time before his or her case will be acted upon and closed. Delays of several years are not uncommon.

While the number of cases closed each year has increased from about 650 to 1,000 per year in the last three years, about 1,200 new charges are filed with the department annually. As a result, and despite all efforts to keep abreast of incoming cases, the inventory of open cases is large and continues to grow.

The magnitude of the existing inventory can be suggested by the fact that at the present rate of case processing it would take at least two and one-half years to close the outstanding cases filed with the department even if no new charges were filed.

The average elapsed time between filing and closure for charges filed with the department in recent years is lengthy and will continue to grow if current trends persist.

- Considering cases closed in fiscal 1980, 549 days or 1.5 years elapsed on the average between filing and closure.
- For cases closed in fiscal 1979, the average elapsed time between filing and closure was 511 days or 1.4 years.
- As of October 1980, 138 cases filed before July 1976 were still open, at which time these cases were 5.2 years old.
- And 305 cases filed during fiscal 1977 were still open in October 1980; by this time these cases were 3.7 years old.

With some exceptions, charges are investigated in the chronological order in which they are filed so that even cases that are relatively easy to close through voluntary settlement or dismissal may remain open for a long period of time.

B. CASE OUTCOMES

The great majority of charges filed with the HRD do not ultimately result in an award of money or other relief to the charging party.

- Most cases are withdrawn, dismissed, or settled prior to a formal determination by the HRD of whether or not probable cause exists to believe that an illegal act of discrimination was committed.

Considering cases closed in fiscal 1980:

- A total of 18.3 percent were withdrawn by the charging party, of which about a third were withdrawn to pursue the case in district court;
- 6.8 percent were dismissed because the charging party could not be located;
- 2.1 percent were dismissed because the HRD discovered, after accepting the charge, that it lacked jurisdiction over the case;

- 28.5 percent were settled voluntarily by the parties to the case prior to a determination on the merits of the charge by the HRD;

- 39.3 percent resulted in a determination of no probable cause; and

- Only 5 percent resulted in a probable cause determination and were subsequently settled voluntarily or through further administrative proceedings or litigation.

C. MONETARY AWARDS AND OTHER REMEDIES

While about 1,200 charges are filed annually with the HRD, relatively few result in an award of money to the charging party as a result of a voluntary predetermination settlement, a negotiated settlement reached subsequent to a probable cause determination, or an award ordered by a hearing examiner after a contested case hearing.

- Incomplete data indicate that money was awarded in about 20 percent of the cases closed in recent years, with an average award of about $2,000.

The long time delays that characterize HRD case processing operations contribute to the low rate at which monetary or other relief is awarded to those filing a charge with the department.

- While more than half of the cases closed within an average of three months after filing involve a remedy to the charging party, only about a quarter of the cases closed within an average of 21 months involve a remedy and only 12 percent of those closed within an average of 42 months involve a remedy to the charging party.

For this reason and others, it is essential that the department and the Legislature take steps to assure that the department will process charges of discrimination in a timely fashion:

- The quality of investigation suffers when there are significant delays since principals become more difficult or impossible to locate and testimony, if available, is subject to increased errors because of the passage of time.

- The possibility of compensation for actual discrimination is lessened with the passage of time, both because irreparable damage may be done, and because the awarding of back pay or other kinds of restitution may become financially impossible for certain respondents. Also, the stakes may become too high and respondents may be encouraged to fight cases they would otherwise be willing to settle.

- Significant department resources are consumed in fielding inquiries concerning the status of cases during the period of delay. People filing charges are understandably suspicious that delays they encounter are due to the exercise of favoritism or other unfair practices.

- To the extent that the department achieves a reputation for ineffectiveness, victims of discrimination are discouraged from filing a charge in the first place. Also, the department faces a disincentive to carrying out an aggressive educational and outreach program which might acquaint citizens of Minnesota with the services offered by the department, lest these activities increase the volume of charges the department then has to deal with.

- The fundamental purpose of the HRD is not well served because the primary function of the HRD is to provide a source of relief to victims of illegal discrimination that is quicker and more accessible than district court.

D. EQUITABILITY OF CASE PROCESSING

Perhaps as a result of long delays in case processing, some people filing charges suspect that the HRD does not treat all charges equally. In order to address this question we examined the rate at which cases of varying kinds were closed and the time elapsing between filing and closure for different types of cases.

The HRD's general policy is to process cases in the chronological order in which they are filed with the department and not to give priority treatment to particular cases or types of cases. There are significant exceptions to this policy, however:

- The HRD negotiates a contract each year with the U.S. Equal Employment Opportunity Commission (EEOC) and agrees to investigate a specified number of charges in return for a fee which is currently about $412 per case closed. In 1980, as in earlier years, the HRD has given cases eligible for EEOC reimbursement higher priority than other charges filed with the department.

- HRD management decided in October 1979 to assign 720 cases to an inactive backlog status in order to be able to process the remaining cases in a more timely fashion. One consequence of this decision is to process certain cases out of chronological order.

The department will occasionally give priority to cases where it feels there is immediate chance of irreparable harm in the absence of a prompt investigation. The department also assigns priority to charges initiated by the Commissioner of Human Rights.

We found a high degree of consistency in the rate at which varying kinds of cases are closed, indicating that there is no strong preference being exercised by the HRD for cases of a particular type or cases brought by members of particular protected groups.

Despite this general conclusion there are some relatively minor differences in both closure rates and in the average time elapsed between filing and closure in different types of cases.

- Cases involving a charge of sex discrimination are closed at a higher than average rate. The same is true of cases involving a charge of racial discrimination and generally true for charges of discrimination on account of national origin.

- On the other hand, cases involving charges of discrimination because of age, disability, and marital status are closed at below average rates for most periods.

Our analysis shows that the primary cause of these differences is the priority given to cases eligible for reimbursement from EEOC. Age discrimination cases and cases alleging discrimination because of disability or marital status do not qualify for EEOC contract credit.

Thus the HRD gives priority treatment to cases that help meet its obligation to EEOC. In return, federal funds finance 14 positions in the department and enable the HRD to operate a larger program than would otherwise be possible. But EEOC reimbursement covers less than half of the cost of processing each case, so the use of state money as well as federal money is affected by the acceptance of the EEOC contract and, as a result, the HRD deviates from equal treatment of all types of discrimination charges.

E. QUALITY OF CASE WORK

Long delays and quantitative problems in case processing mean that the quality of investigations is compromised. Data on time delays between filing and closure indicate that a significant number of charges were dismissed by the HRD because it couldn't locate the charging parties when their cases finally came up for action by the HRD. Otherwise, long delays mean that witnesses will be hard to locate and that memory of events will be diminished.

However, having made these points there are a number of indications that despite this handicap, the HRD has paid a good deal of attention to maintaining standards of quality:

- Our review of a sample of case files indicates that they are complete and the investigations they summarize seem thorough and orderly.

- A careful multi-stage review process exists in the HRD. The mechanisms are in place to assure that a case reaching the commissioner's desk meets high standards of quality.

- The EEOC reviews the work performed on cases that it refers to the HRD and its recent approval rate of cases processed by the HRD is 100 percent.

- We examined data on appeals and reversals of HRD decisions. The rate at which cases are appealed is low and reversals are rare.

F. CONTRACT COMPLIANCE

A 1969 amendment to the Human Rights Act prohibits state agencies from awarding contracts to any firm or person not holding a certificate of compliance issued by the Commissioner of Human Rights (Minn. Stat. §363.073). The effectiveness of the certification program depends on:

- Whether the HRD is properly issuing certificates and publishing lists of certificate holders for the use of contracting agencies;

- Whether state contracts are being awarded only to certificate holders as is required by law.

We found that the law is being haphazardly enforced by the HRD and state agencies.

We selected four samples of recently awarded contracts and found that most contractors who should hold a certificate do not in fact hold certificates.

- For example, more than two-thirds of the firms who were recently awarded construction contracts by the Procurement Division of the Department of Administration do not hold current certificates.

The Department of Human Rights has not administered the certification program effectively. The HRD has not produced a list of certificate holders since 1978 and does not effectively monitor compliance with the law by state agencies.

The department has assigned a low priority to the certification program because it views the issuance of certificates as an ineffective tool for eliminating discrimination and promoting equal employment opportunity. A certificate can be obtained by virtually anyone

and can be denied only under very limited circumstances. As a practical matter no certificates have been denied in recent years.

Our report offers several recommendations for improving the current program; however, we believe that the current program is meaningless and wasteful. The Legislature and the HRD may wish to replace it with either:

- A new program which will effectively encourage state agencies to contract with firms making a serious effort to promote equal employment opportunity; or

- A simplified program eliminating the issuance of certificates that will accomplish everything now being accomplished by the certification program.

G. MANAGEMENT PRACTICES

We reviewed various aspects of management responsibility including recruitment and staffing decisions, development and documentation of department policies and procedures, and the exercise of supervisory control and technical leadership.

In general, we found that the HRD is managed effectively and is actively trying to solve its problems. However, there are managerial tasks, some urgent, that remain to be carried out.

- We found HRD staff to be competent and motivated, on the whole. We conclude that the inability of the department to process cases in a timely fashion is not due to problems of staff motivation or morale.

- At present the procedural rules of the department (last amended in 1975) are incomplete and obsolete and regardless of whether a positive impact on case processing will result, this situation must be remedied if the HRD is to be in compliance with the Administrative Procedure Act.

- Beyond this, department policies and procedures relating to case processing and other operations are insufficiently documented.

- Supervisory control and technical leadership are effectively exercised although at the cost of a relatively high ratio of supervisors to staff, an absence of specialization in case processing, and a somewhat cumbersome multi-stage review of each case prior to closure.

H. STRATEGIES FOR IMPROVING PERFORMANCE

The HRD is unable to investigate and resolve charges of discrimination in a timely fashion. The department is swamped by a large inventory of open cases and continues to fall further behind each day. The continuing existence of this large case inventory has numerous negative effects on the HRD and its clientele, including a reputation for ineffectiveness, and problems with maintaining a high quality of casework.

As we have argued, this situation is unacceptable and the Legislature and the department should take whatever action is necessary to ensure timely processing of discrimination charges.

As we see it, the following options should be considered:

- Increasing the size of the case processing staff of the HRD;
- Implementing a basic change in the HRD's approach to case processing emphasizing a higher degree of selectivity in accepting cases for investigation;
- Screening charges at intake or during the early stages of investigation;
- Increasing the use of existing resources and the availability of new resources outside the department; and
- Placing a greater emphasis on predetermination settlements.

These options are discussed in Chapter V.

INTRODUCTION

The Program Evaluation Division of the Office of the Legislative Auditor has conducted an evaluation of the Department of Human Rights. In recent years, legislators and others have expressed concern over the size of the department's case inventory and the department's ability to investigate charges of illegal discrimination in a timely manner. We sought to identify the extent of these problems and to determine what might be done about them.

This report presents the results of our study. Chapter I provides descriptive information on the history, authority, functions, and finances of the Department of Human Rights. Chapter II presents a detailed examination of the department's case processing program and answers questions about the volume of charges filed with the HRD, how charges are resolved, and how long it takes to close charges. Chapter III examines how effectively the department is carrying out its contract compliance responsibilities. In Chapter IV, we review management practices in a number of areas, including staffing, supervision, administrative support, and policy development. Chapter V presents a number of alternative strategies for consideration by the department and the Legislature which we believe offer some potential for improving the department's performance. A description of the HRD's case processing procedure is appended to this report.

I. THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS: HISTORY, FUNCTIONAL ORGANIZATION, AND FINANCES

This chapter provides a brief history of civil rights enforcement in Minnesota and describes the organization, functions, and finances of the Department of Human Rights. Evaluation findings, conclusions, and recommendations are presented in subsequent chapters.

The Minnesota Human Rights Act (Minnesota Statutes, Chapter 363) declares that "It is the public policy of the state to secure for individuals in this state, freedom from discrimination." The Department of Human Rights, as established by that act, has two basic functions: it enforces rights created under Chapter 363, by accepting and processing individual charges of unlawful discrimination; and works to eliminate discrimination through public education and other programs. The Department of Human Rights operates with an authorized staff complement of 55, and a biennial budget for 1979-1981 of about $2.6 million.

A. HISTORICAL BACKGROUND

Forty years ago, the principal activity of Minnesota state government in the field of civil rights was to promote harmonious intergroup relations through the Governor's Inter-racial Commission. The state's efforts have evolved since that time as statutes have been enacted banning discrimination, and as executive branch agencies have been created to enforce those laws.

1. FAIR EMPLOYMENT PRACTICES COMMISSION

The first steps toward creating remedies and enforcement tools against discrimination in Minnesota came in 1955 with the passage of the Fair Employment Practices Act and the establishment of the Fair Employment Practices Commission (FEPC). Under that act, it was unlawful for employers, unions, or employment agencies to discriminate in employment on the basis of race, color, creed, religion, or national origin. The law emphasized the commission's duty to "eliminate unfair employment practices by means of education, conferences, conciliation, and persuasion."

The commission was also empowered to hold hearings on charges of unlawful discrimination, to make findings, and, where discrimination was found, to issue orders to cease and desist the discriminatory practice and to take affirmative remedial actions. The commission could also enforce its orders by initiating a proceeding in district court.

Between 1955 and 1961, 183 formal charges were filed with the FEPC. Virtually all of the cases meeting the probable cause standard were disposed of through "persuasion and conciliation." In only one case did the FEPC hold a public hearing, after failing to conciliate the matter.

2. STATE COMMISSION AGAINST DISCRIMINATION

In 1961, the Legislature banned discrimination in housing (though with many exceptions) and expanded the duties of the commission to include processing charges of unlawful discrimination in the sale or rental of real property. The title of Chapter 363 was changed to the State Act Against Discrimination and the FEPC became the State Commission Against Discrimination (SCAD).

The number of discrimination charges filed increased steadily from 1962 to 1967. During that period, 811 charges were received by SCAD. Only a handful of those cases reached the hearing stage; virtually all charges found to have merit were closed by the SCAD through conciliation and persuasion. A 1965 amendment to the Act incorporated an existing ban on discrimination in public accommodations.

3. DEPARTMENT OF HUMAN RIGHTS

Minnesota was one of the first states to create a department level civil rights agency in the executive branch of government. In 1967, the Legislature amended Chapter 363, substantially broadening its coverage, and created a Minnesota Department of Human Rights as the successor to SCAD. The 1967 amendments added discrimination in public services and in education to the list of activities to be banned. Some of the exceptions in the area of housing discrimination were removed. The charge processing procedure was modified to create a two-stage process in which the department would first investigate a charge and determine if there was probable cause to believe that discrimination had occurred. If a probable cause determination was made, the commissioner would issue a complaint to be heard in an administrative hearing. The hearing examiner or panel would make findings and issue orders in the case which the department could enforce in district court.

The 1967 amendments created a division on women's affairs within the department and an advisory committee on women's affairs. Both were dissolved in 1976 when the Legislature created the Council on the Economic Status of Women.

Since 1967 there has been a steady increase in the number of groups protected under the Human Rights Act. Discrimination in certain areas has been banned on the basis of sex, marital status, status with regard to public assistance, disability, age, and familial status, and the Legislature continues to consider the addition of other

protected classes, such as students and veterans. Table 1 shows how the scope of the department's responsibilities has increased since 1969, while Table 2 depicts the current status of groups protected and practices prohibited under the Act.

As the coverage of the Act was broadened (and for other reasons) the caseload of the department has increased dramatically. In 1970, 187 formal charges were filed; in 1974, there were 780 charges filed; and in fiscal 1980, 1,234 charges were filed. As early as 1966, more cases were accepted by the agency than were closed in a year. As in other civil rights enforcement agencies, a backlog of unprocessed cases began to accumulate and the amount of time before a charge would be completely investigated began to increase.

At the end of fiscal 1979, 2,383 cases were open. A decision was made in October 1979 to freeze 720 cases, some of which were several years old, in an inactive backlog that was to be reduced over the next several years.[1] The remainder of the open cases and all new charges were assigned within the department. More than 2,600 cases were open at the end of fiscal 1980, including those in the inactive backlog.

A number of the charges pursued by the HRD have resulted in precedent-setting court decisions with far-reaching consequences. Through litigation brought by the department, the Minnesota Supreme Court has ruled that under the Minnesota Human Rights Act:

- It is sex discrimination for an employer to exclude only pregnancy related disabilities from an otherwise comprehensive benefits plan;[2]
- Sexual harassment in the workplace is sex discrimination when the employer knows about the conduct and fails to take action;[3]
- It is discrimination on the basis of marital status for an employer to maintain a rule denying full time employment to spouses of current employees, unless it is absolutely necessary for the job.[4]

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[1]The department distinguishes cases in the inactive backlog from cases that are assigned within the HRD, but which are not being actively investigated at this time. The inactive backlog has been reduced to 577 cases, as of December 1980.

[2]Minnesota Mining and Manufacturing Company vs. State of Minnesota, 289 N.W. 2d 396 (1979).

[3]Continental Can Company vs. State of Minnesota, 297 N.W. 2d 241 (1980).

[4]Kraft, Inc. vs. State of Minnesota, 284 N.W. 2d 386 (1979).

TABLE 1

DEPARTMENT OF HUMAN RIGHTS
ADDED DUTIES, 1969-1980

1969	o	Sex added as protected class in employment.
	o	Certificates of compliance for bidders on public contracts.
	o	Ban on "blockbusting" in real estate sales.
1973	o	Ban discrimination in credit, housing, public accommodations, public service, education on basis of sex.
	o	Marital status, status with regard to public assistance, and disability added as protected classes.
1974	o	Ban discrimination in lending related to geographic area (redlining).
1975	o	Disability with regard to public accommodations and public services added as protected class.
	o	School discrimination in athletics.
	o	Ban discrimination in credit on basis of marital status.
1977	o	Age in employment, education added as protected class.
	o	Interference with pension rights banned.
	o	Ban discrimination in disability benefits because of pregnancy.
	o	Approval of affirmative action plans for domed stadium contractors.
1980	o	Familial status with regard to housing added as protected class.

TABLE 2

COVERAGE OF MINNESOTA STATUTES CHAPTER 363
UNLAWFUL ACTS OF DISCRIMINATION AND PROTECTED CLASSES

	Employment	Housing	Education	Public Accommodations	Public Services	Credit
Race	X	X	X	X	X	
Color	X	X	X	X	X	
Creed	X	X	X	X	X	
National Origin	X	X	X	X	X	
Sex	X	X	X	X	X	X
Marital Status	X	X	X			X
Public Assistance	X	X	X		X	X
Disability	X	X	X	X	X	
Age	X		X			
Familial Status		X				

B. FUNCTIONAL ORGANIZATION OF THE DEPARTMENT

The powers of the Department of Human Rights are stated very broadly in Chapter 363.[1] Besides having authority to manage the department, the Commissioner of Human Rights is also charged with:

- enforcing the Human Rights Act; and
- attempting to eliminate discrimination and intergroup conflict "by means of education, conference, conciliation, and persuasion."

More specifically, the Commissioner is directed to:

- develop plans and programs to assist women;
- assist Indian citizens "to assume all the rights, privileges, and duties of citizenship;"
- conduct research and develop data about the extent of discriminatory practices and compliance with the Human Rights Act in the state; and
- create and support local and statewide advisory groups to aid in the work of the department.

Thus the department has a dual role as a law enforcement agency and as an advocate of the rights of protected classes.

The department operates two major programs. First, through the enforcement program, HRD accepts and processes charges of unlawful discrimination and also certifies bidders on state contracts. Second, the department's planning and public information program carries out public education and information activities, operates a case tracking and management information system, and supports management decisionmaking in policy analysis and program development. Figure 1 is an organizational chart of the department showing the number of staff members assigned to each major organizational unit.

1. ENFORCEMENT

The Enforcement Bureau is headed by an Assistant Commissioner who supervises the work of its five units. An individual who feels that he/she has been discriminated against or who has questions about his/her rights under the Human Rights Act will usually first

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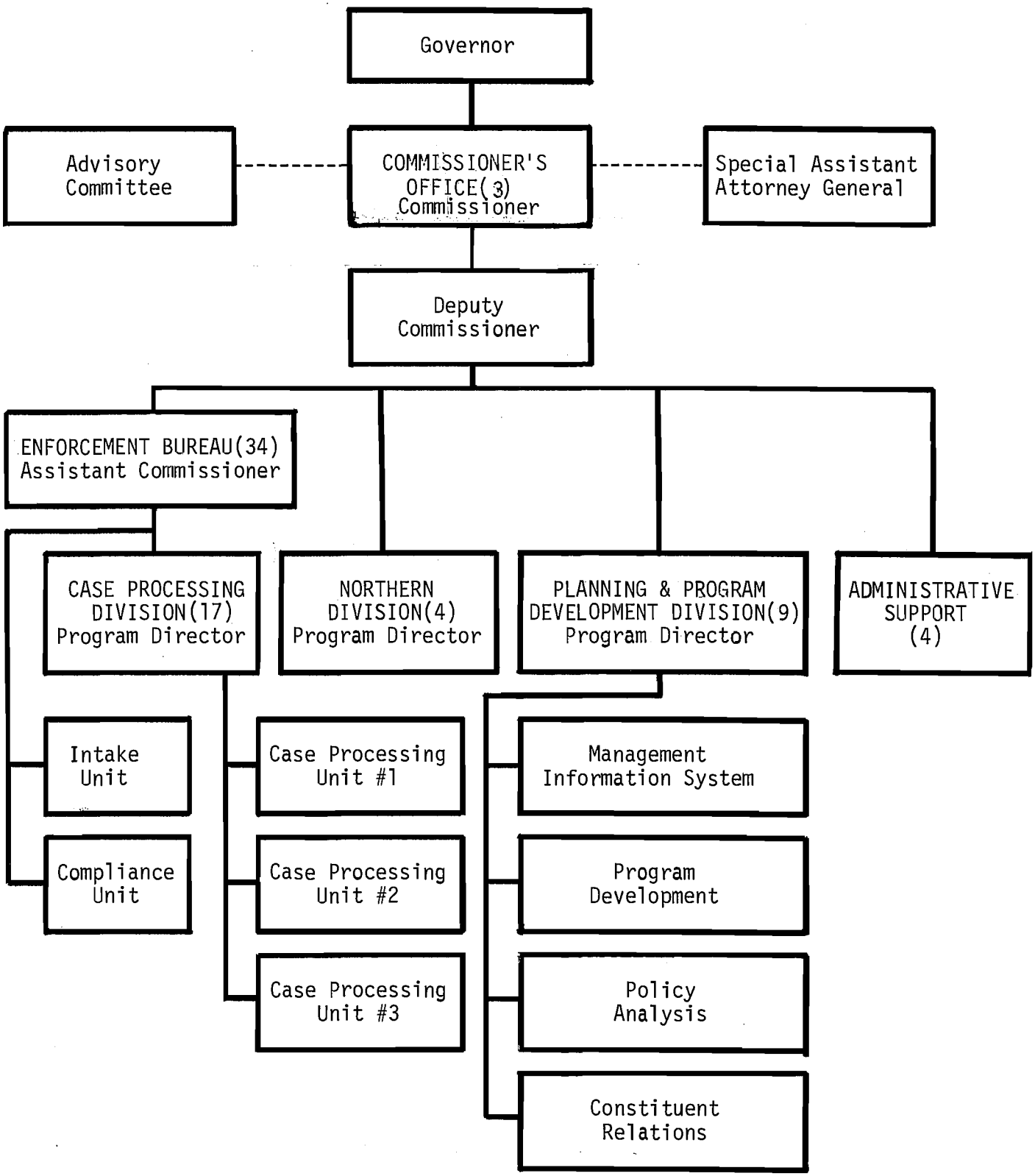
[1] Minn. Stat. §363.05.

FIGURE 1

DEPARTMENT OF HUMAN RIGHTS
ORGANIZATIONAL CHART



contact the Intake Unit.[1] This unit handles individual questions, interviews potential charging parties, and draws up any formal charges to be filed. The unit currently prepares 100-125 charges and responds to as many as 1,000 inquiries each month. Staff in the unit also work with local human rights commissions on a no-fault grievance procedure and are working on a pilot project to identify and resolve discrimination charges that are amenable to early resolution.

Once a formal charge has been accepted the Case Processing Program Director assigns it to one of the three Case Processing Units (CPUs) for investigation. Each unit includes a supervisor, one intermediate and two entry level Human Rights Enforcement Officers (HREOs), and several part time law students, who are employed through the federally funded college Work Study Program. One clerical worker is also attached to each CPU. The charges are then assigned to HREOs who gather and analyze the evidence, and then recommend a determination of whether or not there is probable cause to believe that unlawful discrimination has occurred.

The department's general policy is that cases are handled in the chronological order in which they are filed and that no priorities among cases are assigned, except in very limited situations. The exceptions to this rule are discussed in Chapter II of this report.

The department attempts to maintain a neutral, fact-finding position in all cases until it reaches a determination on the merits of the charge. If the commissioner makes a determination of probable cause, the department then changes roles and becomes an advocate on behalf of the charging party. In these cases the Special Assistant Attorneys General assigned to the department then prepare and argue the case in an administrative hearing and in any appeals.

The organization of investigators in CPUs is a recent development. Prior to 1979, the work was divided between separate units of conciliators and investigators, and the cases would pass between the two units. The department considers the unified CPU organization, under which responsibility for a case is assigned to and remains with one administrative unit, to be a major improvement in case processing. There are no specialists among the HREOs, although the department will sometimes utilize the experiences or language skills of particular HREOs on certain cases.

The Human Rights Act also permits the commissioner to file charges of discrimination. A commissioner's charge can be used for situations where systemic discrimination is alleged and many potential charging parties are involved, or in other situations where it is determined that the commissioner is the best charging party. Commissioner's charges are investigated by the CPUs, on a priority basis. About a dozen commissioner's charges are currently under investigation.

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[1] A more extensive description of case processing appears as Appendix A of this report.

The Compliance Unit performs several activities. The unit receives applications for, and issues certificates of compliance to bidders on state contracts. About 2,200 certificates were issued in fiscal 1979 and fiscal 1980. This program is described and discussed in more detail in Chapter III. The compliance staff is responsible for reviewing the affirmative action plans of all bidders on contracts for construction and operation of the domed stadium, and for monitoring the employment practices of successful bidders. About 207 plans were reviewed during fiscal 1980, and staff members have conducted some site reviews of contractor activities.

The unit also monitors compliance with settlements reached on charges of discrimination, when the terms of the settlement require some future action by the parties. The responsibility for investigating charges of discrimination in rental housing on the basis of familial status has been placed with the Compliance Unit, which will also certify and monitor those apartments that are exempted from the statute.[1] Staff members are also available to provide technical assistance to companies who are examining their hiring practices and affirmative action plans.

2. PLANNING AND PUBLIC INFORMATION

The Planning Division operates the department's case tracking/management information system, which maintains records on all charges received by the department and generates standardized letters to the parties at different milestones during the investigation of a charge. More than 4,750 cases filed since 1976 and more than 70 different letters are now in the system's data base. The system produces a variety of periodic and ad hoc research and status reports for department managers and staff, and also for private organizations or governmental units that periodically request statistical information.

Public information and education activities are also conducted by the Planning Division. Staff members produce and circulate brochures and other materials about the department and the Human Rights Act, and they also conduct workshops for community organizations, potential charging parties, and potential respondents. The division issues press releases and serves as a liaison with 15 community organizations that are concerned with civil rights. In addition, planning staff conduct research on the programs of the department and on discimination problems and analyze legislation affecting the department.

3. NORTHERN DIVISION

The department has operated an office in Duluth since 1969. The Northern Division office has four staff members and exists to

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[1]The familial status enforcement function was placed in the Compliance Unit so that HRD could identify its costs and because the Compliance Unit staff operates certification programs.

provide departmental services in northern Minnesota. Since a reorganization in April 1980, the office has performed two major duties. The Northern Division assists American Indians on seven reservations in northern Minnesota in protecting their civil rights. The office has recently embarked on a program of encouraging the establishment of human rights commissions on the reservations to serve the needs of Indian people. The HRD hopes to see three commissions by June 30, 1981.

The Northern Division also answers inquiries about the Human Rights Act and takes in charges of discrimination. About 200 inquiries are handled and eight to ten formal charges are filed each month. After a charge is formally drawn up, it is sent to the Saint Paul office for processing and investigation. A recently initiated pilot program allows the Duluth intake staff to identify charges that can be quickly resolved, and with the approval of the Intake Unit supervisor, to investigate and recommend determinations on those charges.

4. LOCAL HUMAN RIGHTS DEPARTMENTS AND COMMISSIONS

The cities of Saint Paul and Minneapolis both have human rights ordinances and human rights departments with enforcement powers similar to those of the state Department of Human Rights. The HRD has entered into work-sharing agreements with those agencies, so that many charges arising under both the Human Rights Act and the local ordinance are referred to the local department for investigation. For example, 105 cases were referred to the Saint Paul Human Rights Department during 1979.

About 60 cities in Minnesota have established human rights commissions, although some of them are no longer active. These commissions generally work to promote good intergroup relations and to eliminate discrimination but have no formal powers to resolve conflicts or to enforce laws against discrimination. The Department of Human Rights maintains contact with local commissions and has recently initiated a program in which local commission members would operate a no-fault grievance procedure. This program is designed to resolve disputes before they rise to the level of a formal charge of discrimination. Members of 16 local commissions participated in training for the program during fiscal 1980.

C. BUDGET AND FINANCES

The Department of Human Rights is currently funded from two sources. Three-fourths of the department's budget for the 1979-1981 biennium is funded by legislative appropriations from the general fund. The department receives the remainder of its budget from the U.S. Equal Employment Opportunity Commission (EEOC), with which the department has had work sharing contracts since 1977. As shown in Table 3 the Federal portion of the budget has recently increased.

TABLE 3

DEPARTMENT OF HUMAN RIGHTS BUDGET DATA, 1977-1983
(Dollars in Thousands)

Source of Funds	State Fiscal Year						
	1977	1978	1979	1980	1981(est)	1982(req)	1983(req)
State	$ 721.5 (68.4%)	$ 785.0 (75.5%)	$ 864.5 (81.2%)	$ 935.2 (77.7%)	$1,078.6 (75.2%)	$1,497.0 (80.6%)	$1,503.2 (80.5%)
Federal	$ 332.6 (31.6%)	$ 254.0 (24.5%)	$ 199.6 (18.8%)	$ 268.4 (22.3%)	$ 356.2 (24.8%)	$ 361.1 (19.4%)	$ 363.6 (19.5%)
TOTAL	$1,054.1	$1,039.0	$1,064.1	$1,203.6	$1,434.8	$1,858.1	$1,866.8

Program Expenditures	Fiscal Year						
	1977	1978	1979	1980	1981(est)	1982(req)	1983(req)
Enforcement	$ 832.3	$ 678.9	$ 657.4	$ 667.4	$ 793.2	$1,139.4	$1,138.9
Planning	$ 221.8	$ 360.1	$ 406.7	$ 536.2	$ 641.6	$ 718.7	$ 727.9
TOTAL	$1,054.1	$1,039.0	$1,064.1	$1,203.6	$1,434.8	$1,858.1	$1,866.8

Source: Proposed Biennial Budget, 1979-1981, 1981-1983.

TABLE 4

EEOC WORK SHARING CONTRACTS
1979 - 1981

Federal Fiscal Year	Number of Cases*	Payment Per Case	Total
1979	606	$350.00	$212,100.00
1980	606	350.00	212,100.00
1981	759	412.50	313,087.50

*Under the 1980 contract, the HRD agreed to close 300 new cases--that is those filed as of October 1979--and 306 cases filed before that date. The 1981 contract called for 609 new cases and 150 older cases.

Under the EEOC contract, the HRD agrees to process a number of charges that have been filed by individuals with EEOC and the HRD under both Title VII of the 1964 Civil Rights Act and the Human Rights Act. The details of the contracts appear in Table 4. The federal money received in 1980 supported 14 positions in the department. For the current contract year, the HRD will receive $375 per case--the EEOC's standard rate--plus an additional 10 percent "bonus" for having met EEOC's four principal standards for work sharing contracts. The HRD's accounting officer has estimated that the average cost of processing a charge is $850, or twice the amount of EEOC reimbursement.

No fees are charged to clients of the department. The HRD is currently investigating other potential sources of funding, including grants from the U.S. Department of Housing and Urban Development for the enforcement of fair housing laws in Minnesota.

The department's budget for the 1979-1981 biennium is just over $2.6 million, about 55 percent of which is spent on the Enforcement Program. The bulk of the department's annual expenditures, about 75 percent, is for salaries. Table 3 summarizes the program funding of the department since 1977.

II. CASE PROCESSING

The principal function of the Human Rights Department (HRD) is to provide a prompt and thorough investigation of allegations of illegal discrimination against Minnesotans on the basis of race, sex, or other characteristics.

The purpose of this chapter is twofold: to provide basic descriptive information on the discrimination charges filed with the HRD and investigated and resolved by the department, and to evaluate the performance of the HRD in case processing.

We address the following questions:

- What is the volume of charges investigated and resolved by the Human Rights Department?
- What kinds of charges are being filed? Are there meaningful trends in the number and kinds of charges filed?
- How much time elapses between filing and closure? Are cases processed in a timely fashion?
- What are the typical results of filing a charge with the HRD?
- Are all types of discrimination cases treated equitably?
- How carefully and effectively are charges of discrimination investigated by the HRD?

A. CHARGES FILED, CASES CLOSED, AND CASES OPEN

Historically and to the present day, the Human Rights Department has been unable to close as many cases as are opened each year. Table 5 presents a count of charges filed and cases closed in recent years and the number of cases remaining open at year's end. As Table 5 shows, the number of cases remaining open at the end of the fiscal year has increased steadily in recent years, growing from 1,703 cases open at the end of fiscal 1977 (June 30, 1977) to 2,626 at the end of fiscal 1980.[1] The growth of the department's inventory of unclosed cases has occurred despite the fact that

[1]The data presented in this chapter come from the HRD's computerized management information system. These tabulations were computed during September and October 1980 and may differ slightly from tabulations made at a different time since information on a few cases is added or changed from time to time.

TABLE 5

CHARGES FILED, CASES CLOSED, AND CASES OPEN
AT THE END OF THE FISCAL YEAR

1976 - 1980

	Charges Filed	Cases Closed	Cases Open at Year End
FY 1976	NA	NA	666*
FY 1977	1,232	195	1,703
FY 1978	1,034	641	2,096
FY 1979	1,218	932	2,383
FY 1980	1,231	990	2,626

NA: Not available

*Incomplete count

there has not been a significant change in the annual number of charges filed between 1977 and 1980 and despite the fact that the number of cases closed each year has increased over the period.[1]

In our view the size of the inventory of unclosed cases is the major problem facing the HRD. The situation has been long in the making and continues to worsen as more cases are filed than closed each month. The existence of a large inventory of open cases has numerous negative ramifications for the HRD and its clientele, including negative effects on the department's public image, on the quality of its casework, and on employee morale. These problems are discussed more extensively in Chapter V along with proposals for legislative and administrative action aimed at solving the problems. The magnitude of the existing inventory of open cases can be suggested by the fact that at the present rate of case processing it would take at least two and one-half years to close the outstanding cases filed with the department even if no new charges were filed.

The shortfall in case processing is of such magnitude that we have concluded that no realistic improvements in productivity or minor policy or organizational changes can be expected to solve the problem. Action must be considered to increase the resources allocated to case processing, or to implement changes in the HRD's case processing policies and procedures.

B. DESCRIPTION OF THE CASELOAD

In this section we examine the caseload of the HRD to obtain an overview of the types of cases processed by the department.

The Human Rights Act as amended defines various grounds for filing a charge of illegal discrimination. A charge may be filed if a person believes he or she has been discriminated against on the basis of:

- race,
- color,
- creed,
- sex,
- age,
- physical disability,
- mental disability,
- marital status,
- national origin,
- religion,
- status as a recipient of public assistance, or
- familial status.

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[1]The number of charges filed between July and December 1980 is somewhat higher than in past years.

We examined data on charges filed in recent years to learn what kinds of charges are being brought and to learn the outcome of HRD action on these charges. We sorted the charges filed with the department into five groups: charges filed prior to fiscal year 1977 (filed before July 1976), and charges filed during fiscal years 1977, 1978, 1979, and 1980.

Table 6 presents a description of these cases. Information on cases filed prior to July 1976 is described by the HRD as sketchy and incomplete. As the final column of Table 6 shows, the number of charges filed during the last four years has remained fairly constant at a little over 1,200 per year. Charges of sex discrimination (about 95 percent of which are brought by women) made up the largest single type of complaint and large numbers of charges alleged discrimination on the basis of race or disability. Together these three categories constitute approximately 75 percent of the charges filed with the department.

As Table 6 shows, the remaining one-fourth of cases is scattered across various categories; the largest remaining category is that of age discrimination which accounts for about 9 percent of all cases opened in fiscal 1980 and 13 percent in 1979.

The growth of age discrimination as a source of charges and offsetting declines in sex and race discrimination cases are the only discernible trends in the kinds of charges filed during the last few years. Age discrimination was first defined as illegal in Minnesota in 1977 and there has been a noticeable growth in such cases since that time.

The Human Rights Act defines various jurisdictional areas. As Table 7 shows, cases related to employment have accounted for between 75 and 80 percent of all cases in recent years. Housing complaints are the next largest group, accounting for between 5 and 7 percent of all cases. Allegations of reprisal for pursuing a discrimination charge is the next largest category, also ranging between 5 and 7 percent of all cases. The substantive nature of the original charges is not indicated in these data.

Most discrimination charges are filed by women. In the last four years, women filed between 54 and 60 percent of all charges. Finally, most allegations of illegal discrimination are brought by whites rather than racial minorities. Table 8 shows that whites have filed between 61 and 71 percent of all charges during the periods reviewed. Blacks filed between 19 and 25 percent of all charges, and Indians between 2 and 4 percent. Minnesota's overall percentage of minority group members is between 3 and 4 percent. Of the state's minority groups, blacks are the most frequent users of the case processing services offered by the HRD.

TABLE 6

CHARGES FILED BY PRIMARY REASON FOR FILING*

(Percentage Distribution)

Date Filed	Sex	Race	Physical Disability	Age	Marital Status	National Origin	Reprisal	Religion	Public Assistance	Mental Disability	Color	Familial Status	TOTAL Percent	TOTAL Number
Before July 1976	39.3%	33.3%	11.2%	- %	5.8%	4.5%	0.1%	1.8%	2.2%	0.6%	0.4%	- %	100%	669
FY 1977	41.6	31.7	13.1	0.1	5.4	3.9	-	2.1	1.7	1.1	0.2	-	100%	1,232
FY 1978	39.3	25.5	16.8	5.3	4.1	5.1	0.1	0.9	1.7	1.1	0.1	-	100%	1,034
FY 1979	36.1	24.0	19.5	12.6	2.4	2.5	-	1.1	0.9	0.8	0.1	-	100%	1,218
FY 1980	35.8	24.3	14.9	8.9	5.8	3.4	4.1	1.1	0.6	1.0	-	0.3	100%	1,231

*Basis of discriminatory act alleged by charging party

TABLE 7

CHARGES FILED BY JURISDICTION CATEGORY

(Percentage Distribution)

Dated Filed	Employment	Housing	Public Accomodations	Reprisal	Public Service	Education	Aiding and Abetting	Credit	TOTAL Percent	TOTAL Number
Before July 1976	79.5%	5.7%	3.7%	2.8%	4.6%	3.0%	0.3%	0.3%	100%	669
FY 1977	74.8	6.8	3.1	7.6	3.8	2.2	0.7	0.9	100%	1,232
FY 1978	80.0	6.7	3.2	6.0	2.5	1.4	0.2	0.1	100%	1,034
FY 1979	77.7	4.8	4.1	5.0	2.6	1.0	4.6	0.2	100%	1,218
FY 1980	81.3	5.6	3.4	5.0	1.9	1.1	0.9	0.6	100%	1,231

TABLE 8

CHARGES FILED BY RACE

(Percentage Distribution)

Date Filed	White	Black	Indian	Hispanic	Other	TOTAL Percent	TOTAL Number
Before July 1976	61.4%	28.6%	5.2%	3.6%	1.8%	100%	669
FY 1977	63.0	24.7	3.8	3.5	5.0	100%	1,232
FY 1978	70.5	21.4	2.1	2.5	3.5	100%	1,034
FY 1979	74.5	18.9	2.3	2.0	2.4	100%	1,218
FY 1980	71.4	18.8	3.0	3.7	3.0	100%	1,231

C. CLOSURE OF CASES

1. ELAPSED TIME BETWEEN FILING AND CLOSURE

Predictably, in light of the information reviewed above, the time required to close human rights cases is lengthy, and on the average, it has been increasing in recent years.

Table 9 shows that the average elapsed time between filing and closure for cases closed in fiscal 1980 is 549 days, or about 1.5 years. Elapsed time between filing and closure has been growing; the average was 403 days or 1.1 years between filing and closing for cases closed in fiscal 1977.

Table 10 presents data on the elapsed time between filing and closure for charges filed in five time periods, and information on the average age of cases that are still open. This table, in our view, presents a more accurate picture of how long a person filing a charge with the HRD can expect to wait, since the figures in Table 9 reflect the policy of the HRD to close certain recently filed charges rather than investigating all cases in strict chronological order. As Table 10 shows, the average age of cases not yet closed is 732 days or about two years, and there were 2,380 cases filed through June 1980 still open in October 1980. Table 10 makes it clear that there are sizeable numbers of cases filed three or more years ago which are not yet closed. For example, there are 138 cases that were filed prior to July 1976 that have not yet been closed, and an additional 305 cases filed prior to July 1977 are not yet closed.

It is obvious that the HRD cannot assure those filing a charge of illegal discrimination a timely investigation and disposition of their charge. The consequences of this situation and possible remedies to it are discussed more fully in Chapter V, however we believe the figures just reviewed call into question whether the basic purpose of the Human Rights Department is being well served. Rough calculations suggest that three to five days of case processing unit staff time is required, on the average, to close a case. While it is quite possible that built-in delays will require many cases to remain open during a six month period and even longer in some cases, the time delays experienced in recent years are unacceptably high by any reasonable standard.

Since human rights charges are investigated in the approximate order in which they are filed with the department, long time delays may be involved even when a case is easy to settle or close. The next section of the report will examine the closure rate achieved by the HRD for various types of cases and how time required for closure varies by type of closure.

2. CLOSURE RATE

Consistent with what we have just observed, the rate at which cases are closed is fairly low even after cases are several years

TABLE 9

AVERAGE ELAPSED TIME BETWEEN FILING AND CLOSURE
FOR CASES CLOSED IN FISCAL YEARS 1977-1980

Year Closed	Number of Cases Closed	Average Elapsed Time Between Filing and Closure (days)
1977	195	403
1978	641	460
1979	932	511
1980	990	549

TABLE 10

AVERAGE AGE OF CASES CLOSED AND CASES STILL OPEN
FOR CHARGES FILED BEFORE JULY 1976 AND
DURING FY 1977-1980*

Date Filed	Number of Cases Closed	Average Elapsed Time Between Filing and Closure (days)	Number of Cases Still Open	Average Age as of October 1980 (days)
Before July 1976	533	901	138	1,908
FY 1977	927	630	305	1,340
FY 1978	572	431	462	1,021
FY 1979	649	260	569	625
FY 1980	328	192	906	267
All Cases	3,009	513	2,380	732

*The age of open cases was computed on October 6, 1980.

TABLE 11

RATE OF CLOSURE OF CHARGES FILED BEFORE JULY 1976
AND DURING FISCAL YEARS 1977, 1978, 1979 AND 1980

Date Filed	Total Cases Filed	Percentage of Cases Closed*
Before July 1976**	669	78.6%
FY 1977	1,232	74.9%
FY 1978	1,034	55.2%
FY 1979	1,218	52.8%
FY 1980	1,231	24.5%

*As of mid-September 1980

**Incomplete count

old. Table 11 presents data on the rate of closure for charges filed during five periods: before July 1976, and during fiscal 1977, 1978, 1979, and 1980. As Table 11 shows, the overall rate at which cases are closed ranges from 78.6 percent for cases filed before July 1976 to 24.5 percent for cases filed in fiscal 1980.

While it can be debated, within limits, what constitutes an acceptable closure rate over a given period of time, again we conclude that the experience of the HRD is far from satisfactory. A few cases cannot be closed within one year or longer because they are either difficult to close or involve extensive fact finding and litigation Nevertheless, the vast majority of cases should be closed well within a year because the natural delays in the process do not require a longer time.

Thus, the figures reviewed here reflect the fact that the HRD has been unable to act on its caseload rather than the presence of unavoidable delays in case processing.

D. OUTCOME OF CASE PROCESSING

We have reviewed data showing that the department is unable to investigate and close cases in a timely fashion. Several issues remain:

- What is the outcome of cases that are closed?
- Are all types of cases processed in an equitable fashion?
- Does the casework performed by the department meet necessary standards of quality?

1. TYPES OF CLOSURES

We examined the outcome of human rights cases filed during five separate periods and cases closed during the last three fiscal years to obtain a general picture of what happens to charges filed with the HRD and how much time it takes to dispose of charges in various ways. These data are presented in Tables 12 and 13.

Cases may be closed in the following ways:[1]

1. Charging Party Withdraws (CPW)
   The charging party (CP) voluntarily withdraws because he or she decides not to pursue the case.

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[1]The charge processing procedure is more fully described in Appendix A.

TABLE 12

CASES CLOSED BY TYPE OF CLOSURE*

Date Closed	CPW	PRA	DCL	DLJ	PDS	NPC	PCSA	PCOTH	All Cases Closed Percent	All Cases Closed Number
FY 1978	16.4%	6.1	18.1	2.7	15.9	29.2	7.6	4.1	100%	641
FY 1979	9.2%	9.1	26.7	2.7	31.1	15.5	2.1	3.6	100%	932
FY 1980	12.6%	5.7	6.8	2.1	28.5	39.3	1.1	3.9	100%	990

AVERAGE ELAPSED TIME IN DAYS BETWEEN FILING AND CLOSURE

Date Closed	CPW	PRA	DCL	DLJ	PDS	NPC	PCSA	PCOTH	Average Days	Number of Cases
FY 1978	292	370	519	518	289	520	554	1,048	460	641
FY 1979	409	539	594	477	362	565	657	1,065	511	932
FY 1980	502	409	757	336	375	631	735	1,061	549	990

*See text of the report for a full explanation of this typology.

CPW: Charging party withdraws
PRA: Charging party withdraws to pursue the case in court
DCL: Dismissed, can't locate charging party
DLJ: Dismissed, HRD lacks jurisdiction
PDS: Predetermination settlement
NPC: Determination of no probable cause
PCSA: After a probable cause determination, satisfactory agreement reached
PCOTH: Probable cause determination, other closures

TABLE 13

CASES CLOSED BY TYPE OF CLOSURE* FOR CASES FILED BEFORE JULY 1976
AND DURING FISCAL YEARS 1977, 1978, 1979 AND 1980

	PERCENTAGE DISTRIBUTION								ALL CASES CLOSED	
Date Filed	CPW	PRA	DCL	DLJ	PDS	NPC	PCSA	PCOTH	Percent	Number
Before July 1976**	10.1%	4.3	18.9	2.6	8.3	36.8	5.8	13.1	100%	533
FY 1977	13.4%	9.7	28.0	1.4	13.8	27.6	3.3	2.6	100%	927
FY 1978	13.1%	5.6	13.1	3.0	35.5	25.9	2.6	1.2	100%	572
FY 1979	11.9%	7.2	5.7	5.8	38.5	29.7	2.4	2.9	100%	649
FY 1980	16.2%	4.6	2.1	1.8	35.7	39.6	--	--	100%	328

	AVERAGE ELAPSED TIME IN DAYS BETWEEN FILING AND CLOSURE								ALL CASES CLOSED	
Date Filed	CPW	PRA	DCL	DLJ	PDS	NPC	PCSA	PCOTH	Elapsed Time	Number of Cases
Before July 1976	747	785	824	1,247	958	789	887	1,383	901	533
FY 1977	491	636	613	572	642	679	650	927	630	927
FY 1978	320	356	458	242	371	608	220	608	431	572
FY 1979	196	239	245	241	200	353	303	524	260	649
FY 1980	168	148	190	144	163	235	--	--	192	328

*See key on Table 12 and text of the report for a full explanation of this typology.

**Statistics are incomplete for this period.

2. Private Right of Action (PRA) The CP chooses to pursue the case in court which he or she is free to do 45 days after filing with the HRD.

3. Dismissed, Can't Locate (DCL)
The case is dismissed by the HRD because the CP couldn't be located.

4. Dismissed, Lack of Jurisdiction (DLJ)
The case is dismissed because it is discovered (despite earlier screening) that the HRD lacks jurisdiction.

5. Predetermination Settlement (PDS)
Both parties agree to a voluntary settlement prior to an HRD determination on the merits of the charge.

6. No Probable Cause (NPC)
Upon investigation, the HRD determines that a case does not merit further litigation either through administrative proceedings or in court.

7. Probable Cause, Satisfactory Agreement (PCSA)
After a determination of probable cause, parties to the dispute reach an agreement.

8. Probable Cause, Other Closures (PCOTH)
This group of cases includes all that have been closed after a probable cause finding and further administrative or judicial hearings.

Data presented in Table 12 and 13 show that relatively few of the charges filed with the HRD actually result in a formal determination of whether or not probable cause exists to believe that an illegal act of discrimination was committed. More often cases are voluntarily withdrawn, administratively closed, or settled prior to a formal determination by the HRD. The data in Table 12 indicate that:

- In fiscal 1980, 12.6 percent of cases closed were closed because the charging party withdrew the charge, and an additional 5.7 percent withdrew the case from the HRD to pursue a case in court.

- Between 7 and 27 percent of all closures over the last three years represent cases dismissed because the charging party couldn't be located. In addition, two or three percent of cases were closed because the HRD discovered that it lacked jurisdiction over the case.

- Predetermination settlements ranged between 16 and 31 percent of all cases closed over the three years for which data are reported.

- Between 16 and 39 percent of closures during the last few years have been determinations of no probable cause, meaning that the weight of the evidence does not justify further litigation.

- Finally, between 5 and 12 percent of closures have included a determination that probable cause does exist to believe that an illegal discriminatory act was committed. These cases may result in a monetary award or other remedy for the charging party.

The second panel of Table 12 shows the average amount of time elapsed between filing and closure for cases closed in each specified way. Examination of these data yields the following points:

- No matter how cases are closed, case processing takes a long time. Even predetermination settlements (usually reached prior to completing a full investigation) took, on the average, a year to reach considering cases closed in fiscal 1979 and 1980.

- CPs who voluntarily withdrew their charges did so only after waiting for a long period of time. For cases closed in 1980, CPs waited an average of 502 days before withdrawing for unspecified reasons and waited 409 days, on the average, before withdrawing to pursue their case in court. By law, those wishing to pursue a court case must wait 45 days; clearly a significant proportion are waiting much longer than the minimum time required by law.

- Cases closed in 1980 because the CP could not be located were also closed, on the average, more than two years after the cases were filed. Clearly, long time delays increase the likelihood that a CP will move away or will otherwise be hard to locate.

- Cases which remain open until a determination on the merits of the charge is made generally take longer to close than cases that are closed prior to determination. This makes sense because these cases require a complete investigation, and, in the case of probable cause determinations, often require subsequent activity.

Table 13 presents a different and in some ways a clearer picture of what happens to charges filed with the HRD over time. Table 13 presents information on cases closed by type of closure for charges filed in five specified time periods, and the average elapsed times between filing and closure for each category of cases closed. Some of the oldest group of cases are not yet closed so a complete picture of how a group of cases is ultimately settled cannot be put together.

The information presented in Table 13 supports the generalizations noted above:

- Most cases are withdrawn, dismissed, or settled prior to a formal determination by the HRD of whether the weight of evidence supports litigation of the charge. For example, only 27.6 percent of cases filed in fiscal 1977 resulted in a determination of no probable cause, and only 6 percent resulted in a determination of probable cause.

- On the average, hundreds of days elapsed between the time a charge was filed and it was withdrawn, dismissed, or settled. For example, for charges filed during fiscal 1977, the elapsed time between filing and closure was 491 days for charges withdrawn for unspecified reasons, 636 days for charges withdrawn to pursue the case in court, about 600 days for charges dismissed, 532 days for cases settled before determination, and 679 days for cases where a determination of no probable cause was made. For all cases, an average of 630 days elapsed between filing and closure. And, as noted earlier, some charges filed in fiscal 1977 are still not closed.

2. MONETARY AWARDS AND OTHER REMEDIES

Charging parties can receive monetary awards as a result of a predetermination settlement, conciliation achieved after a probable cause determination, or a hearing examiner's order.

While about 1,200 charges are filed annually with the HRD, relatively few result in a monetary award. Table 14 shows the percentage of cases closed during the last three fiscal years resulting in a monetary award to the charging party and the average amount of money awarded for all cases and for several subgroups where the number of cases is sufficient to compute meaningful figures. These data on monetary awards are not complete and are presented for descriptive purposes only.

Table 14 shows that monetary awards were made in 18.4 percent of the cases closed in fiscal 1978, in 21.6 percent of the cases closed in fiscal 1979, and in 24.2 percent of the cases closed in fiscal 1980. Over this time the average amount of money awarded ranged between $1,477 and $2,453.[1] Average awards for three groups are shown in Table 10.

The major points to be taken from the review of data on monetary awards just presented are:

- Only a small percentage of the charges filed with the HRD result in an award of money to the charging party.

- The amount of money that a charging party is likely to receive is modest, although in individual cases the award of back pay, especially in cases that take a long time to close, can be sizeable.

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[1]For cases closed in fiscal year 1978 and fiscal year 1979, the figures generally include only the amount of any cash award or settlement. However, during fiscal year 1980, the department began calculating the value of certain remedies (reinstatement, promotion, hiring) and adding those amounts in with the other data, so that the data are not strictly comparable.

TABLE 14

MONETARY AWARDS MADE IN CASES CLOSED DURING FISCAL YEARS 1978, 1979, AND 1980

Date Closed	Number of Cases Receiving Awards	Percent of All Cases Closed During Year	Average Amount of Award			
			All Cases Receiving Awards	Employment Cases	Race Discrimination Cases	Sex Discrimination Cases
1978	118	18.4%	$2,453	$2,782	$2,123	$2,450
1979	201	21.6%	$1,477	$1,645	$1,632	$1,301
1980	240	24.2%	$2,168	$2,329	$3,099	$1,155

Most monetary awards are made in employment cases and remedies involve the awarding of back pay or wages, though a few involve payment of differential pay, severence pay, or legal fees. The Human Rights Act restricts punitive damages that can be awarded to $500 ($1,000 starting July 1, 1980). Thus unless an actual monetary loss is experienced, monetary recovery is extremely limited.

In addition to cash awards, a charging party may also receive other remedies, such as hiring, reinstatement, or promotion. Only sketchy data are available showing these other remedies.

As a practice, in settling cases the respondent signs a standard agreement form and promises to change his policies and practices leading to the discrimination charge in the first place. For cases closed in fiscal 1980, 300 standard agreements were signed. As Table 14 shows, 240 cases involved monetary awards.

E. EQUITABILITY OF CASE PROCESSING

1. DEPARTMENT POLICY AND PRACTICE

The issue addressed in this section is whether cases of varying kinds and cases brought by members of different protected groups are given equal treatment by the HRD.

It is the general policy of the HRD to investigate and decide cases in the chronological order in which they are filed with the department, and not to give priority treatment to particular cases or types of cases. But, the HRD deviates from strict chronological processing of cases in two important ways.

First, the department negotiates a contract annually with the U.S. Equal Employment Opportunity Commission (EEOC) and agrees to investigate a specified number of charges of illegal employment discrimination defined under Title VII[1] in return for a fee, which is currently about $412 per case closed. In 1980, as in earlier years, the HRD has had to concentrate its resources on meeting the quota of cases it agreed to investigate. By doing so it assigned such cases, in effect, a higher priority than cases not eligible for federal reimbursement.

The current administration also decided in October 1979 to assign 720 cases to an inactive backlog in order to free resources to process the remaining cases in a more timely fashion. Again, one consequence of this decision is to investigate some cases out of chronological order.

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[1]The HRD will investigate only those Title VII charges that were initially jointly filed at the department. EEOC will not ask the HRD to investigate charges that were originally filed at EEOC offices.

Aside from these major exceptions, the department will occasionally give priority to cases where there is clear danger of irreparable harm in the absence of a prompt investigation, but this is defined very narrowly since, according to the HRD, many cases have this potential.

Finally, commissioner's charges are given priority. There are a handful of such charges, described elsewhere, where the commissioner of HRD is the charging party.

A large number of cases are assigned to case processing units (CPUs) and individual HREOs at any given point in time. Even though they are assigned to CPUs in chronological order the potential would appear to exist in the absence of supervisory control that certain types of cases could be investigated and closed more frequently because of the preferences of investigative staff. Also, certain types of cases may simply be more difficult to close than others, and, in effect, these receive lower priority in an environment where there is always a large number of cases to choose from.

HRD management believes that it has instituted procedures that guarantee equitable treatment of all charges (with the exception of the priorities noted above). An important element in controlling the investigation of cases is the current practice of maintaining accountability within each case processing unit for cases assigned to the unit. In the past cases could be transferred between units specializing in investigation and conciliation, and the HRD acknowledges that this sometimes resulted in a loss of accountability and allowed units to pass the buck on difficult cases.

In our review of case processing practices--which included interviews with management, case processing unit supervisors, and staff--we found no evidence that the policy and practice of the department supports unequal treatment of various types of cases, again with the exceptions noted above. Indeed, the department strongly argues that the Minnesota Human Rights Act does not permit prioritizing cases even on grounds that might make sense given the fact that the department is unable to handle its caseload. We discuss this question further in Chapter V.

However, the final test of whether varying types of cases receive equal treatment depends on an examination of actual case outcomes. For this reason, we examined the rate at which cases of different kinds are closed.

No matter how we sorted cases we found a high degree of consistency in closure rates, indicating that there is no strong preference being exercised by the HRD for cases of a particular type or for cases brought by particular protected group members.

Despite this general conclusion there are some relatively minor differences in both closure rates and average time elapsed between filing and closure between types of cases. We believe these reflect either the conscious policy of the department to favor closing cases eligible for reimbursement by EEOC, or the intrinsic differences in the time required to close different types of cases.

2. CLOSURE RATE BY BASIS OF CHARGE

Table 15 presents closure rates (for cases filed in five time periods) for various types of charges. Overall closure rates vary from 24.5 percent for charges filed in fiscal 1980 to 78.6 percent for charges filed before July 1976. Table 15 shows that cases involving a primary charge of sex or race discrimination are closed at a somewhat higher than average rate for all periods except the earliest. Charges of discrimination because of national origin are also closed somewhat faster in all years except one.

On the other hand, cases involving charges of discrimination because of age, physical disability and marital status are closed at below average rates for most periods.

As discussed above, the HRD has assigned a high priority to closing cases eligible to be counted toward meeting the conditions of its contract with EEOC. Money from EEOC funds 14 positions in the department. Title VII defines illegal employment discrimination less broadly than Minnesota law and EEOC does not defer cases involving discrimination by age, physical disability, and marital status as grounds for a complaint. These are precisely the types of cases that are shown by Table 15 to be closed less promptly than cases alleging discrimination by race, sex, and national origin.

We wanted to determine if the apparent priority given to cases of racial discrimination and discrimination by sex is due to the fact that EEOC cases are given priority or due to other department practices. Therefore we examined data to test the hypothesis that favoring EEOC cases results in giving cases of sex and race discrimination, and certain other kinds of cases a higher priority than cases of age and disability discrimination.

Table 16 presents a comparison of all cases to EEOC deferrals. It examines the type of cases closed by fiscal year and compares all cases closed which were eligible for EEOC reimbursement.

Table 16 shows that EEOC cases constitute 50 to 60 percent of all closures during the last three years. And as Table 16 makes clear, there are differences between EEOC cases and cases in general. For instance, cases of sex discrimination constitute 52.6 percent of EEOC deferrals closed but only 40.3 percent of all discrimination cases closed in 1980. (The figures for all cases include EEOC cases.) And cases of racial discrimination constitute 37.1 percent of EEOC deferrals closed in 1980, but only 27.9 percent of all cases closed during the same year. These differences appear in data for 1978 and 1979 as well.

In summary:

- Charges based on the grounds for discrimination defined by Title VII are, in effect, given priority by the HRD. These, in short, are employment cases involving charges of discrimination based on sex, race, color, religion, and national origin.

TABLE 15

CLOSURE RATE* FOR CASES FILED BEFORE JULY 1976
AND DURING FISCAL YEARS 1977, 1978, 1979, AND 1980
BY REASON FOR FILING**

Date Filed	Sex	Race	National Origin	Reprisal	Marital Status	Physical Disability	Age	Mental Disability	Public Assistance	Religion	Average for All Cases
Before July 1976	77.2%	77.1%	96.7%	-- %	84.6%	76.0%	-- %	-- %	-- %	-- %	77.6%
FY 1977	76.2	78.0	87.5	--	65.2	68.3	--	--	--	61.5	74.9
FY 1978	60.3	53.8	52.8	--	33.3	51.7	45.5	--	--	--	55.2
FY 1979	60.0	58.2	83.3	--	48.3	49.4	25.3	--	--	--	52.8
FY 1980	30.2	26.4	26.2	22.0	18.3	15.8	15.6	--	--	--	24.5

*Figures represent the percentage of cases filed in each specified time period that have been closed as of mid-September 1980.

**Table 1 presents information on the number of cases filed in each category. A few charges of discrimination by creed, color, and familial statues are not separately labeled but are contained in the averages for all cases appearing in the final column.

--Denotes a category containing fewer than 25 cases.

TABLE 16

PERCENTAGE DISTRIBUTION OF CASES CLOSED BY TYPE OF CASE
COMPARISON OF EEOC REFERRALS TO ALL CASES
FOR CASES CLOSED IN FY 1978, 1979, AND 1980

Date Filed	Sex	Race	National Origin	Religion	Color	Disability	Age	Marital Status	Public Assistance	Reprisal	TOTAL Percent	TOTAL Number
1978												
All Cases	39.0%	30.0%	5.0%	1.2%	0.5%	13.8%	1.4%	5.9%	2.5%	-- %	100%	641
EEOC Referrals	55.6	32.4	6.6	1.5	0.6	0.9*	--	2.1*	0.3*	--	100	333
1979												
All Cases	44.3	27.4	3.6	1.4	0.1	16.4	2.6	3.4	0.6	0.1	100	932
EEOC Referrals	58.8	33.6	3.6	1.4	0.2	1.1*	0.2*	1.2*	--	--	100	563
1980												
All Cases	40.3	27.9	4.9	1.4	--	14.9	4.7	3.6	1.8	0.3	100	990
EEOC Referrals	52.6	37.1	7.3	1.9	--	0.4*	0.2*	0.4*	--	0.2	100	534

*Charges based on allegations solely in these areas are not eligible for EEOC credit. These cases are either miscoded in the HRD's data files or include other allegations.

- Cases not defined as eligible for reimbursement (discrimination because of age and disability are the two major categories) receive lower priority.

In addition to the considerations discussed above, there is no reason why all types of cases should take the same amount of time to settle; for reasons which are not necessarily obvious, some kinds of cases may naturally take longer to settle than others. Age discrimination was banned relatively recently and since the HRD lacks experience in handling such cases they may take longer. Elsewhere we discuss the absence of administrative rules and other policy statements covering the definition of disability, and possibly these cases take longer to settle because of the absence of either policy guidelines or established practice with this type of case.

3. VARIATION IN CLOSURE RATES BY RACE

Table 17 presents closure rates for charges filed in five time periods by the race of the person bringing the charge. Comparison of the rates for specific racial or ethnic minorities to that for whites and the overall average shows, for cases filed in the five specified time periods, that the closure rate for cases brought by whites is very nearly the same as the overall average. Cases brought by blacks are also closed near the average or slightly above it. Cases brought by Indians are closed at a below average rate in each year, indicating a possible problem especially in 1979 and 1980, although the number of charges filed by Indians (37 in 1980 and 28 in 1979) is too small to be certain that these results are statistically significant. It is also possible that charges brought by Indians, for either systematic or random reasons, take longer to close than others. This interpretation is made more likely by the fact that only small differences in closure rates between Indians and others exist prior to 1979. All in all we believe the similarities in the closure rates for the various racial and ethnic groups reported in Table 17 outweigh the differences.

4. TWIN CITIES VERSUS OUTSTATE LOCATION

We examined the differences between cases filed against respondents in the seven county Twin Cities metropolitan area versus the balance of the state to see if the location of the HRD in St. Paul had any effect on its ability to process cases originating outstate.

Most discrimination charges (77 to 80 percent in each of the last few years) are brought against respondents in the Twin Cities area.[1] It is to be expected that a majority of discrimination charges would be filed against Twin Cities area respondents since the metro area is a center of employment, public services, and public accommodations as well as being the residential location of certain racial,

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[1] These data are reported by the location of the respondent's headquarters. In fact, the charging party may live outside the Twin Cities area and the alleged practice may have occurred outstate.

TABLE 17

CLOSURE RATE BY RACE/ETHNICITY OF CHARGING PARTY*

Dated Filed	Black	Indian	Hispanic	White	Other	All Cases
Before July 1976	77.0%	77.1%	100.0%	78.1%	87.5%	78.6%
FY 1977	81.6	68.1	81.4	71.4	87.1	74.9
FY 1978	57.9	54.5	38.5	55.7	41.7	55.2
FY 1979	63.5	43.0	62.5	49.9	58.6	52.8
FY 1980	28.4	18.9	23.9	24.0	18.9	24.5

*This table presents the percent of cases closed as of mid-September 1980 for cases filed during five specified time periods.

religious, and ethnic minorities. However, the 4:1 ratio of charges filed in the Twin Cities area to cases filed elsewhere suggests the possibility that the HRD is not equally serving all areas of the state, since only about half of the state's population resides in the Twin Cities metro area.

We found no real difference in the closure rate of recently filed charges. However, for charges filed prior to July 1977, the closure rate for outstate cases is 13 percent lower than the rate for metro area charges. We conclude that if there ever was a material difference by location in the attention received by cases, it has been corrected.

5. VARIATION IN CLOSURE RATES BY SEX OF THE CHARGING PARTY

We found that charges brought by females were closed at a somewhat higher rate than charges brought by males. In each of the five time periods we examined, there is a small to moderate difference in favor of women. For example, 26 percent of the charges filed by women in fiscal 1980 were closed as of October 1980 compared to 22.6 percent of the charges brought by men, and 59.1 percent of the charges filed by women in 1979 were closed compared to 45.4 percent of the charges filed by men as of mid-September 1980.

Do these data indicate that charges filed by women receive priority treatment by the HRD? A comparison of all cases filed with EEOC deferrals shows that proportionately more cases eligible for reimbursement from EEOC are filed by women. In 1979, 64 percent of EEOC charges were brought by women compared to 54 percent of charges in general (including EEOC charges). In 1980, 69 percent of EEOC cases were filed by women compared to 57 percent of cases in general.

Thus the decision to contract with EEOC for a relatively large number of cases (compared to the total HRD caseload) is responsible for the fact that somewhat more cases brought by women are processed by the HRD than cases brought by men. In addition the HRD suggests that the unusually large difference between closure rates for charges brought by men and women in 1979 is due to a court decision defining disability benefits for employed pregnant women which permitted a number of cases to be settled at once.

To sum up, the HRD maintains a general policy of processing cases in the order in which they are filed. Policies and procedures are in place which ensure equitable processing of all types of cases. However, the HRD's decision to process a substantial number of cases referred by EEOC means that not all cases filed under the Minnesota Human Rights Act have an equal chance for investigation and disposition within a given period of time:

- Charges brought by women, employment cases meeting EEOC criteria, and charges of discrimination by sex and race receive priority treatment.

- Cases of discrimination in housing, jurisdictional areas other than employment, and employment charges that do not meet EEOC criteria receive, in effect, a lower priority.

Of course, the EEOC reimburses the HRD for processing EEOC referrals, and the total number of charges which can be processed annually by the HRD is larger than it would be otherwise. But EEOC reimbursement for each case covers only about half the cost of processing each case, so the use of state money is, in fact, distorted by acceptance of the EEOC contract. This may or may not be viewed by the HRD, the Legislature, or others as a problem.

F. QUALITY OF CASE PROCESSING

Our study stopped short of a detailed examination of the quality of the casework performed by the HRD for several reasons:

- Such an examination is not necessary to conclude that the quality of casework suffers from the inability of the HRD to handle the volume of charges filed with it.

- Data on time delays between filing and closure indicate that a significant number of charges were dismissed by the HRD because it couldn't locate the charging parties when their cases finally came up for action by the HRD.

- Generally, long delays mean that witnesses will be hard to locate and that their memory of events will be diminished.

- Long delays and quantitative production problems mean that the quality of investigations is compromised and the ability of the HRD to perform its essential function is called into question.

However, having made these points there are a number of indications that despite this handicap, the HRD had paid a good deal of attention to maintaining standards of quality:

- Our review of a sample of case files indicates that they are complete and the investigations they summarize seem thorough and orderly.

- A careful multi-stage review process exists in the HRD. The mechanisms are in place to assure that a case reaching the commissioner's desk meets the department's standards of quality.

- The EEOC reviews the work performed on cases that it refers to the HRD and its recent approval rate of cases processed by the HRD is 100 percent.

- We examined data on appeals and reversals of HRD decisions. The rate at which cases are appealed is low and reversals are rare.

Table 18 presents information on how many cases closed in each of the last three fiscal years were appealed and how many appeals resulted in a reversal of the determination. Table 18 simplifies the appeals process somewhat and omits data on how many cases were remanded for reinvestigation rather than summarily reversed or reaffirmed. A full description of the appeals process is presented in Appendix A.

As shown in Table 18, the rate of reversal is extremely low, and the rate of appeals of no probable cause determination (probable cause determination cannot be appealed as such) is also low. Considering cases closed in fiscal 1980 only one of 77 probable cause determinations was reversed, and only 76 of 395 no probable cause determinations were appealed and none of these were reversed on appeal. Although the appeals process is not independent of the HRD, it is independent of the case processing staff who were responsible for the initial determination, and we believe that the data support a conclusion that the quality of case processing is high and that the correct determination is usually reached. Finally, we interviewed all supervisors and managers and half of the case processing workers in the HRD. In our judgment the people performing investigations are qualified for the work they do, and they are also closely supervised.

In short, all indications point to a conclusion that the thoroughness and correctness of HRD casework is not a major problem.

As noted, the problem which urgently requires resolution is the number of cases closed by the HRD. However efforts to increase the rate of closures and reduce the time required for case processing almost certainly will pose a difficult challenge to maintenance of high standards of quality.

TABLE 18

CASES CLOSED, CHARGE DETERMINATIONS, APPEALS, AND REVERSALS
FOR CASES CLOSED IN FY 1978, 1979 AND 1980

Date Closed	Number of Cases Closed	PROBABLE CAUSE DETERMINATIONS		NO PROBABLE CAUSE DETERMINATIONS		
		Total	Reversed	Total	Appealed	Reversed
FY 1978	642	113	3	187	22	1
FY 1979	932	81	4	147	33	0
FY 1980	990	77	1	395	76	0

III. CONTRACT COMPLIANCE ACTIVITY

The Department of Human Rights performs two contract compliance functions. It issues certificates of compliance to bidders on state contracts and reviews the affirmative action plans of bidders on contracts for construction and operation of the new domed stadium. In this chapter, we describe the HRD's contract compliance activities and report our findings on how well they are carried out.

A. CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS

A 1969 amendment to the Human Rights Act prohibits state departments and agencies from awarding contracts to any firm or person not holding a certificate of compliance issued by the Commissioner of Human Rights. (Minn. Stat. §363.073) That amendment authorized the commissioner to promulgate rules for issuing certificates to bidders on public contracts[1] and to issue the certificates.

Rules for a certificate of compliance program were adopted in 1970, but the program was not actually staffed or implemented until 1974. The rules limit the certificate requirement to bidders on contracts estimated to exceed $2,000. If the firm or person applying for a certificate has recently performed on a public contract, then the commissioner may review the applicant's business operations. If the applicant is not working on a public contract, the certificate is issued immediately. Once a certificate is issued, the commissioner may review the operations of the firm with respect to its performance on any public contract.

In applying for a certificate, an applicant must certify that he will "abide by the terms and conditions of the certificate of compliance, and will agree to comply with the Act and rules adopted pursuant thereto with respect to public contracts."[2] Certificates are issued for one year and must be renewed.

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[1]Public contract is defined as "any contract for or on behalf of the state or its political subdivisions, including any county, city, borough, town, township, school district, or any other district in the state." (Hum Rts 8) Thus, while the certificate is required only for bidding on state agency contracts, the past performance on a broader group of contracts may be examined. It was also hoped that local governments would look for certificates in awarding contracts.

[2]Minnesota Department of Human Rights, Contractor Application Form for Certificates of Compliance. Revised, 1977.

A certificate can be denied, suspended, or revoked in only one situation. If, after hearing a complaint issued by the Commissioner of Human Rights, a hearing examiner finds that the applicant or certificate holder has committed an unlawful discriminatory practice with regard to a public contract, he may order the denial, suspension, or revocation of a certificate. Thus, while the commissioner can issue a certificate of compliance, only a hearing examiner (employed by the Office of Administrative Hearings) can take it away. Loss of a certificate disqualifies a company from bidding on state agency contracts until it complies with the hearing examiner's order, but any other public contracts awarded to the company before the commissioner made the determination of probable cause are unaffected.

As described by HRD staff, the purposes of the certificate of compliance program are as follows:

- The state should do business only with companies that promise to obey the Human Rights Act;
- Companies which violate the Act should be penalized by being disqualified for future state contracts; and
- The Department of Human Rights should have the opportunity to review the operations of state contractors and to offer advice and technical support aimed at improving the utilization of protected class members.

The department established a Compliance Unit in 1974 which issued 1,123 certificates in fiscal 1979 and 1,072 in fiscal 1980. The certificates are issued immediately after receipt of a completed application form. According to HRD staff, no crosscheck is made between applicants and department records of those companies who were found to have committed unlawful discrimination in respect of a public contract, which are the only parties to whom a certificate could be denied.

Larger employers are required to provide certain details about the composition of their work force and their hiring practices. Where the application indicates that the company may be underutilizing protected class members, department staff will sometimes contact the company to discuss hiring practices and to offer technical assistance in improving its employment of minorities and women. Occasionally (perhaps three times in the last year), staff will conduct a more intensive review of the hiring practices of a company doing business with the state.

We reviewed the HRD's certificate of compliance program in order to learn:

- Whether the certificate requirement is being uniformly enforced by state agencies;
- Whether the HRD is properly issuing the certificates and circulating listing of certificate holders to contracting agencies; and

- Whether state contracts are being awarded only to certificate holders, as is required by law.

We found that:

- The certificate of compliance requirement is enforced haphazardly.

First, the certificate requirement is not imposed on a large portion of state agency contracting. State agencies (and apparently the HRD) read the statute and program rules to mean that the certificate requirement applies only to bidders on contracts awarded through competitive bidding, and not those technical, professional, consultant contracts that are negotiated by the parties. The Department of Administration Office of Contract Management and Division of State Building Construction do not require certificates on the professional consulting contracts that they award. Furthermore, the Real Estate Management Division does not require certificates from prospective landlords, and the Information Services Bureau does not require certificates when it contracts for consultant services or software packages. The contracts awarded by these offices do not contain a specific non-discrimination clause, but only a general requirement to comply with all relevant state and federal laws.

In order to learn if only certificate holders were receiving contracts, we constructed four different samples of recent contracts and contractors and then tested to see if the contractors did, in fact, hold current certificates. Under the rules of the department, the department is supposed to maintain and distribute on request current lists of certificate holders.[1]

We found that:

- The department has not assembled or distributed lists of current certificate holders since 1978.

We therefore compared our sample lists of contractors to the department's files of certificate holders.

The first sample included construction contracts awarded by the Department of Administration Procurement Division between June 2 and October 14, 1980. There were 60 contracts in this group, held by 57 different contractors. We found that:

- Eighteen of the contractors were certified (31.6 percent) and had received 20 contracts totaling $839,842.

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[1] "The Commissioner, shall, at least quarterly, provide such a list to registered units of state or local government which award public contracts and local commissions." [Hum Rts 52 (e)]

- Thirty-nine of the contractors were not certified (68.4 percent) and had received 40 contracts totaling $4,214,384.

The Procurement Division periodically contracts with hundreds of vendors and suppliers to provide various commodities and services to state government agencies and offices.[1] We took all contractors with names beginning with the letters A through L which appeared in the most recent Commodity Contract List (dated August 1, 1980). In this sample group, there were 142 contracts awarded to 113 different contractors. We found that:

- Fifteen of the contractors were certified (13.2 percent) and had received 22 contracts.

- Ninety-eight of the contractors did not hold current certificates (86.8 percent) but had received 120 contracts.

The third sample group included recent construction contracts awarded by the Department of Transportation's Operations Division.[2] Between August 1 and October 10, 1980, 50 contracts were awarded to 33 different contractors. We found that:

- Fourteen of the contractors were certified (42.4 percent) and had received 20 contracts totaling $5,891,728.

- Nineteen of the contractors were not certified (57.6 percent), and had received 30 contracts totaling $7,009,416.

The fourth sample included 22 major construction companies now involved in major state building construction projects. The list was compiled by a Program Evaluation Division staff member and should not be considered an official or complete list of major construction companies who do business with the state. We found that:

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[1]When the Procurement Division circulates bid packages, it encloses a form on which the bidders are asked to indicate that they are in compliance with Chapter 363 because they either hold a current certificate or have made application to the Commissioner of Human Rights. However, the Procurement Division does not crosscheck with HRD to confirm that bidders do, in fact, hold certificates.

[2]The Department of Transportation does not actually ask bidders if they hold current certificates. According to HRD staff, the current practice is for Compliance Unit staff to attend the weekly contract letting sessions, note the low bidders, and compare that information with the files on certificate holders. Where the low bidder does not hold a certificate, staff will contact the firm to remind it of the certificate requirement. On projects involving federal government funding, DOT does require that bidders certify that they are in compliance with federal contracting requirements.

- Six of the 22 major contractors held current certificates of compliance and 16 did not.

Thus, even for those contracts for which certificates of compliance are officially required, the majority of successful bidders do not take the trouble to obtain a certificate. The HRD does not publish or distribute lists of certificate holders and has given a low priority to efforts to monitor compliance. The contracting agencies that we reviewed believe that it is the HRD's duty to monitor compliance with the certificate requirement, and, in any event, they do not have current lists of certificate holders that they could use.

We find that operation of the existing program could be improved in several ways:

- The certification activity is an obvious candidate for conversion to automated data processing methods. An automated system would offer many advantages over current manual operations. The HRD would be able to maintain easily accessible records on certificate holders, to publish lists on a regular basis, and to circulate those lists to all contracting agencies. Certificate holders could receive automatic notification of the need to renew certificates. Obviously any decision on developing an automated system requires a careful analysis of the costs and benefits of such a change.

- Using either manual or automated methods, the department should regularly produce and circulate lists of certificate holders. Only then can the HRD reasonably expect contracting agencies to check whether bidders are in compliance with the requirement. Certificate holders are interested in doing business with the state and are a logical audience for occasions when the HRD wants to educate the state's business community.

- Periodic audits, like the one we performed, should be conducted by the HRD to determine if contracting agencies are awarding contracts to certificate holders only.

- The HRD should review the coverage of the certificate requirement and consider whether it should be imposed on bidders on all state contracts and not just on those that are competitively bid.

However, we have concluded on the basis of our review that the current program of taking applications and issuing certificates is an essentially worthless shuffling of paper. The term "certificate of compliance" is actually a misnomer, since the HRD has no power to actually evaluate how well a company complies with the Human Rights Act or to affect the practices of certificate holders and applicants except through voluntary persuasion. A certificate can be obtained by virtually anyone and can be denied only under extremely limited circumstances.

We propose that the program of issuing certificates be discontinued. In its place we offer two alternatives. First, if the state is seriously concerned about doing business only with employers who practice affirmative action in their firms, then it should authorize the HRD (or another department) to develop a program that would accomplish this goal.

Otherwise, a set of less burdensome methods could be used to accomplish the same results as the existing program. The issuing of certificates would be scrapped. Instead, the HRD would:

- Circulate a list of contractors found in violation of the Act to all contracting agencies;
- Add a strong non-discrimination clause to all state contracts for commodities and services;
- Conduct an ongoing program of educating state contractors to the importance of practicing affirmative action and equal employment opportunity; and
- Investigate charges of state contractors engaging in systemic or individual discrimination.

B. CERTIFICATION OF STADIUM CONTRACTORS

In the 1977 law that authorized construction of a new sports stadium, the Metropolitan Sports Facilities Commission (MSFC) was instructed to require that:

> Every party with whom it contracts for services for construction, concessions, and operation of a sports facility...shall have an affirmative action plan for the employment of minority persons that has been approved by the Commissioner of Human Rights. Minn. Stat. §473.556, Subd. 15; Laws 1977, Chapter 89, Section 4.

This was the first time that specific authority for review and approval of affirmative action plans had been delegated to the Department of Human Rights.

Although the MSFC began operating and awarding contracts in 1977, the Department of Human Rights did not begin reviewing or approving affirmative action plans until the latter part of 1979. We found that:

- During 1977-1979, the MSFC awarded four different contracts to contractors who did not have approved affirmative action plans.

Two contracts were awarded for preliminary design and construction management services in the amount of $451,000. The commission also awarded two contracts for auditing and attorney services, on a fee for service basis. None of these four contractors had an approved affirmative action plan at the time.

The current Commissioner of Human Rights has stated that she was not aware when she assumed her duties in March 1979 that there was a role for the HRD in construction of the new stadium. When the responsibility was brought to her attention, she then contacted the MSFC and took steps to implement the statute.

The HRD issued criteria for review of stadium contractor affirmative action plans in November 1979. Since that time, the HRD has reviewed affirmative action plans for all bidders (not just the successful ones) on stadium contracts. Staff estimate that as of August 1980 they had reviewed 200 plans, about half of which were sent back for some changes. The MSFC has engaged a consultant to assist bidders to prepare plans. The bidders do not pay or reimburse the commission for that assistance; the MSFC considers the consultant's fee an expense of doing business.

In April 1980, the Minneapolis branch of the National Association for the Advancement of Colored People (NAACP) filed suit against the MSFC and the Commissioner of Human Rights. The suit charged that the defendants had failed to carry out their duties under the statute. The suit sought both injunctive and declaratory relief.

After an initial exchange of answers and interrogatories, no further action has been taken in the suit. The HRD generally denied the allegations. In December 1980, counsel for the NAACP said that he expects settlement discussions to resume in the near future.

According to MSFC staff, the four contractors who held 1977 contracts eventually submitted affirmative action plans to the HRD that were approved. The MSFC also says that it now requires that subcontractors have approved plans before they are allowed to work on the stadium site.

The MSFC staff originally monitored the compliance of contractors with their plans. The Department of Human Rights has assumed responsibility for on-site monitoring. As of August 1980, the staff said that it had conducted two on-site inspections.

IV. MANAGEMENT REVIEW

There are several possible approaches to solving the main problem facing the Human Rights Department (HRD), its inability to process cases in a timely fashion:

- taking administrative action to increase the productivity of the HRD;
- increasing the resources of the HRD; or
- redefining the department's case processing program.

The first of these approaches is discussed in this chapter. The next two, which we believe require careful legislative consideration, are discussed in Chapter V. Obviously, these approaches are not mutually exclusive and some action in each area may be considered necessary or desirable.

We reviewed management practices in a number of areas in order to learn:

- whether the Department of Human Rights is managed effectively; and
- what steps might be taken by management to increase productivity or improve the quality of the department's performance in case processing.

In doing so, we consider the question of whether it is possible for the HRD to improve its performance in case processing, and whether there is a reasonable chance that the department will be able in the future to process as many cases as are filed without imposing new standards defining the eligibility of charges for HRD action or materially changing the size of the department.

In general we found that the HRD is managed effectively and is actively trying to solve its problems. There remain specific problems, some urgent, that need to be solved. In particular, the current goal of the HRD to investigate all incoming charges may be impossible given limited resources. Therefore, management of the HRD may need to adjust its program goals so they are more realistic.

We believe it is plausible to suppose that case processing output can be increased somewhat without fundamental changes in the mission of the HRD and without additional staff to the point that the department could close as many cases as are now filed each year. In our view, no plausible improvements in managerial performance will enable the HRD to process all incoming charges as well as process the current accumulation of charges. Thus it will be necessary to implement extraordinary procedures or hire additional staff to process the more than 2,600 cases now open, which, at the present rate, would take the HRD two and one-half years to process even if no new charges were filed.

Specifically, we reviewed the following areas of management responsibility:

- recruitment and staffing decisions;
- training;
- department policies and procedures relating to case processing;
- supervisory control and technical leadership;
- clerical support; and
- data processing support.

A. RECRUITMENT AND STAFFING DECISIONS

The productivity of the HRD obviously depends on the competence, motivation, and morale of the staff who carry out investigations of charges of illegal discrimination. Investigations are carried out by Human Rights Enforcement Officers (HREOs) organized in units of four full time staff augmented with several part time and temporary staff. The position of HREO requires a considerable measure of intelligence, analytical ability, interpersonal sensitivity, as well as persistence and the ability to organize work.

HRD management reports historical problems in recruiting competent staff, citing writing skills as an important deficiency. There have been some differences of opinion between the HRD and the Department of Employee Relations concerning what constitutes an appropriate test for the HREO position. Also, the pay of HREOs in state service appears to be lower than the pay received by those who hold comparable positions in the Minneapolis and St. Paul human rights departments and in comparable positions in the federal civil service.

Even though problems have been experienced in the past, and despite an apparent competitive disadvantage with respect to salaries, there does not now appear to be a problem recruiting qualified HREOs to the Human Rights Department. Case processing supervisors speak highly of unit staff and feel that recent staff additions and terminations have worked to improve quality. Problems with employee motivation are generally described in the past tense by case processing unit supervisors and other managers.

We interviewed half of the full time staff of the case processing units and, if it is possible to judge from such interviews, found the HREOs we talked to to be capable and motivated. Importantly, their conception of the job corresponds closely to that of management. This is significant because the job of HREO requires an

orientation and interest in investigation and enforcement along with a concern for civil rights. This orientation differs importantly from simply a desire to be involved in advocacy of the interests of groups thought to be vulnerable to illegal discrimination.

Thus while the productivity and effectiveness of the HRD very much depends on the competence of its case processing staff, we found this staff to be generally capable and motivated.

The HRD needs to ensure that its job classification and salary structure remains adequate in the future, but according to the HRD, its recent recruitment efforts have been successful. We conclude that the inability of the department to process cases in a timely fashion is not at present due to problems of staff qualifications, motivation, or morale.

B. TRAINING

The Human Rights Enforcement Officers (HREOs) hired by the HRD perform the principal function of the department--investigation of charges of illegal discrimination. The people recruited for this job do not generally have prior experience in investigation of such cases, nor, necessarily, much prior work experience of any kind.

The job, however, is far from routine and training is viewed both by HREOs and department management as desirable and necessary. No formal training program or training manual exists as such. The existing training program consists mainly of on-the-job training, followed by a period of limited responsibility for a caseload. Eventually most HREOs attend a week-long training program conducted by the Equal Employment Opportunity Commission.

While increased training is viewed by both management and workers as desirable, the HRD explains that it is extremely difficult to offer adequate training opportunities because of the press of the caseload and because of budgetary limitations. Implementation of a staff development program is included as an objective in the HRD's work plan for fiscal year 1981.

Thus the department faces a dilemma: while it might be possible to increase the quality and quantity of casework by conducting an improved training program, can the HRD afford to implement such a program in the face of its immediate inability to keep abreast of incoming cases? If it is believed that training can increase productivity or otherwise help the department, it is possible to justify training even in the current environment, although this would require a deliberate decision to prospectively plan for and budget for a training program.

While we recommend that an improved training program be implemented, it is unlikely that improved training by itself will materially improve output. It may shorten the time that a new staff member takes to become fully productive. A good training program will also help make the job of HREO more attractive and help keep staff turnover down.

C. DEPARTMENT POLICIES AND PROCEDURES

At present, the administrative rules of the department are incomplete and obsolete and regardless of whether a positive impact on case processing will result, this situation must be remedied. In addition to an absence of formal administrative rules, we found that the HRD has not developed a complete and coherent set of written guidelines, policies, and procedures relating to department operations.

1. ADMINISTRATIVE RULES

In our review of the HRD's current administrative rules, we found that there is a need to update the department's procedural rules, which no longer reflect the procedures used by the HRD, and which have not kept pace with changes in the Human Rights Act and the Administrative Procedure Act.[1] We also found that the department has failed to promulgate substantive rules that would more clearly spell out what constitutes unlawful discrimination under the Human Rights Act.

The department's procedural rules were last amended in 1975 and are often inconsistent with department practice or with statute. For example, the rules create an active role for members of the State Board of Human Rights in hearing appeals of no probable cause determinations and in hearing complaints issued by the Commissioner after a probable cause determination. The State Board of Human Rights was eliminated in 1977, and its successor, the Human Rights Advisory Board, has no statutory role in hearing appeals or complaints. The current appeals process is otherwise different from the one described in the rules. In addition, a 1976 amendment to the

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[1]The Administrative Procedure Act (Minn. Stat. §15.0411-15.052) requires that each agency:

> Adopt rules setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that these procedures directly affect the rights of or procedures available to the public.

Human Rights Act removed the role of a panel in hearing complaints and requires a hearing to be held as a contested case under the APA.

In amending its rules of procedure, the HRD could also more carefully detail the extent of its case processing authority. For example, the HRD's current rules allow the Commissioner to dismiss a charge when the charging party fails to keep the department informed of his location (Hum Rts 102(f)). However, the current rules do not address the situation of a charging party who refuses to cooperate in the investigation of his charge. Department staff members have stated that they have faced this situation many times but must hold the charge open and try to secure the cooperation of the charging party. The EEOC and many states, operating with statutes similar to the Minnesota Human Rights Act, have written rules that allow the agency to dismiss a charge when the charging party refuses to cooperate. The department's ability to manage its caseload would benefit from such a rule and from a general updating of the HRD's procedural rules.

Rules are defined under the APA as "every agency statement of general applicability and future effect. . .made to implement or make specific the law enforced or administered by it." Some HRD staff members have indicated that they would benefit if some aspects of the Human Rights Act could be made more specific through the formal promulgation of substantive rules.

We believe that the presence of substantive rules would have a positive impact on the department's case processing. Rules would help to clarify ambiguous sections of the Human Rights Act. For example, staff members have experienced difficulties in processing the growing number of charges of disability discrimination because they are unsure of the coverage of the law. The Act broadly defines disability as "a mental or physical condition which constitutes a handicap." The HRD needs rules which define disability in an operationally useful way so that staff can know how the law is to be enforced. The need for substantive rules is particularly great in those areas of discrimination where guidelines have not yet been developed by agencies such as EEOC or through court decisions. As an alternative to promulgating substantive rules, the HRD should consider publishing policy guidelines indicating what has been decided in current case law and what the position of the department is on issues not yet decided in the courts.

2. DOCUMENTATION OF POLICIES AND PROCEDURES

In our opinion, one of the signs of a well managed department is the existence of an up-to-date and accessible statement of department policies and procedures covering the substance and procedures of department operations.

These materials can usefully be collected in a staff handbook or in a manual of policies and procedures. Staff can be held

responsible for maintaining a personal copy of the manual that is up-to-date, and management can formally communicate changes or elaborations of department policies by distributing memoranda and other materials updating the handbook. Department staff should be held responsible for essential material pertaining to policies and procedures contained in the handbook, and the handbook can serve as the centerpiece of an orientation program for new employees and a training program for existing staff.

Although the HRD has made some progress in this area, a complete manual of department policies and procedures does not currently exist in the HRD. Thus, we recommend that procedural and substantive rules along with other departmental policies and procedures ought to be drawn together in a staff handbook and become an integral part of staff training and performance appraisal. We did find some obsolete case processing handbooks, which indicates that the department has, from time to time, recognized a need to develop such materials.

Human rights charge processing will always involve a dynamic element which will make it impossible to formalize all policies and procedures. Nevertheless, the HRD ought to be further along than it is. Preparation of policies and procedures with the HRD--where necessary in the form of administrative rules--needs to receive priority attention during the coming year.

D. SUPERVISORY CONTROL AND TECHNICAL LEADERSHIP

There are two key elements in the way case processing is organized and controlled in the HRD. First, HREOs are organized into three reasonably small case processing units consisting of a supervisor, three HREOs, and several temporary part time staff, usually law school students. Second, the casework performed by HREOs, which includes a record of fact-finding and conciliation activities, along with a recommended disposition of each case, is reviewed several times by the supervisory hierarchy of the department.

The small size of case processing units means that each caseworker, including those with little experience, is closely supervised and works in an environment where expert help is readily at hand from the unit supervisor and other HREOs. This arrangement is consistent with the HRD's reliance on on-the-job training and the absence of finely articulated policies and procedures. It is also a good arrangement since HREOs generally lack much work experience prior to joining the HRD and therefore require a high degree of supervision.

Another important fact is that neither the three case processing units nor individual HREOs specialize in particular kinds of cases. This is probably an advantage in maintaining uniformity in the treatment of cases and in maintaining a high degree of interchangeability and replaceability among staff.

Our interviews with case processing staff revealed a generally high level of mutual respect among HREOs and their supervisors within each unit, and the existence of an effective collegial relationship. HREOs believe they have a ready source of help when they encounter work related problems.

The current HRD administration has emphasized quality control and has instituted a multi-stage review process of each case prior to closure. Cases concluded by HREOs are reviewed by the Case Processing Unit Supervisor and the Case Processing Program Director, and in the case of probable cause determinations, by the Assistant Commissioner and the Commissioner. If any reviewer is dissatisfied with the quality of investigative work or writing, the case is sent back for additional work.

Presumably as HRD management becomes confident in the department's ability to conduct case processing this highly articulated process can be simplified. This won't result in an increase in cases closed, since output is limited by the number of HREOs and their rate of production, but it would permit upper level managers to attend to other pressing needs such as the development of a training program, promulgation of rules, and improved community relations.

We believe that the review process can be used more effectively to identify systematic or recurring problems in investigation and writing and a formal tally should be kept of the reasons for returning cases to a lower level for additional work. Recurring problems can be targeted for additional training and closer supervision.

The decision to impose a careful review process was based on concern about the quality of casework being performed within the department. Furthermore, concern with the productivity and efficiency has resulted in a new pilot program designed to structure the activities of HREOs and to reform certain aspects of the way casework is carried out.

This project has just been implemented on an experimental basis in one case processing unit and it is too early to evaluate its potential for improving the efficiency or quality of casework. Optimistically, it will accomplish both of these objectives and increase the total output of the department as measured by the number of cases closed and the time it takes to close cases.

Maintaining sufficient supervisory control is difficult when each CPU and each individual HREO is assigned a large caseload. At present each HREO is assigned about 50 cases, and it is difficult for supervisors and individual workers to know what progress should be made each week or each month on any particular case. As a general principle the caseload assigned to each HREO should be large enough so that there is always something important to do, but not so large that it is impossible to know where to start, or it is possible to pick either the easier cases or cases of a type preferred by the HREO.

The size of the caseload assigned to each unit, and ultimately to each person reflects the size of the inventory of unresolved cases in the department. As we have seen, this caseload is growing, not shrinking, at present.

An important source of accountability is the fact that once assigned, a case processing unit cannot evade responsibility for a case. In the past, separate units specialized in investigation and conciliation, and clear accountability as to who was responsible for delays on case processing was lost.

We conclude from a review of HRD operations that department management has installed an appropriate organizational structure and mechanisms for supervisory control and the exercise of technical leadership. HRD management has taken clear steps to, first, assure that casework meets standards of quality, and more recently it has begun to implement a pilot program designed to increase efficiency and possibly the total output of the department. This structure and these mechanisms are appropriate to the department as it presently exists. It is possible as policies and procedures become better developed, and training becomes more formal and purposeful that:

- the number of levels of review and approval can be reduced;
- a greater degree of specialization in types of cases could be implemented;
- case processing units could be increased in size with a resulting decrease in the ratio of supervisors to staff; and
- clearer performance standards measured in cases closed by units or workers each month could be instituted.

These steps and others of similar scope might result in improved productivity, but it is difficult to see how any or all of these steps will enable the department to dramatically improve productivity to the point where it will both be able to handle incoming cases and process the current inventory of cases. This is due to the fact that the department has already made some progress in:

- eliminating unproductive staff;
- instituting quality controls; and
- tightening supervisory control and accountability.

Our general conclusion is that staff members are working hard and productively, that they are competent, and that morale is good. One final point: there is no sizeable cache of under-utilized staff elsewhere in the HRD that could be reassigned to case processing. While a small reallocation might be possible, any major shift of resources would appear to involve a redefinition of the department's responsibilities in other areas; and this would appear to require legislative action. The topic of changing the role of the HRD in case processing and other areas is discussed in Chapter V.

E. CLERICAL SUPPORT

In our judgment, productivity of the department is currently being held back somewhat by insufficient clerical support. HREOs and supervisors describe their clerical support as adequate except when someone is absent. Recently, clerical staff have been reorganized so that they are a part of the individual CPUs they serve, and this arrangement is preferred.

A significant proportion of the HREOs we interviewed expressed a desire to use dictating equipment. Also, HREOs reported that they sometimes had to scrounge for a tape recorder to use in recording fact-finding conferences. In our view each HREO ought to be offered improved access to recording and dictating equipment, since the cost of providing a tape recorder and dictating equipment to every regular user is modest if even a small increase in productivity results. The department may need to upgrade its clerical staff so that it can handle additional stenographic duties.

F. DATA PROCESSING SUPPORT

The HRD currently operates a management information/case tracking system which, while useful, clearly needs to be changed to better support department operations.

Roughly, the system has two major purposes: docketing and tracking of cases and providing department management and others with statistical information on department operations.

1. CASE TRACKING

Over 1,200 charges are filed with the department annually and over 900 cases have been closed in each of the last two years. The life of most cases is fairly complex, involving different staff units of the HRD and numerous actions. As a practical necessity, it is imperative that the status of each case be closely tracked so that department management can manage the work flow and the status of cases can be promptly reported to the parties involved.

The current automated case tracking system is not being used for this purpose because it was designed for an organizational structure which no longer exists in the department. Instead, cases are manually tracked via a weekly census of where cases are in the department. The simultaneous existence of an obsolete automated system and a manual system is obviously unsatisfactory and HRD management has taken steps to revise the system.

The case tracking system is functioning effectively in some respects. It produces over 60 different automatic letters for charging

parties and respondents needed during the life of a case. For example, when a case is first docketed letters are sent to respondents notifying them that a charge has been filed; a variety of other letters are sent notifying the appropriate people of referrals, closures, appeals, and other events in an active case. One important problem is that letters, required by law to be sent to charging parties every 60 days notifying them of the status of their case, are not now being sent. According to HRD the size of its inventory of open cases means that the data processing system would be unproductively tied up if put to this task.

Although we didn't make a definitive test of the system, actual case files appear to be kept in order and they can be located regardless of whether they are active or inactive. Many case files, however, are likely to be found in individual offices, reflecting the fact that a lot of cases are open at any given time.

2. MANAGEMENT INFORMATION

The present information system has the capacity to provide department management, federal and local authorities, the Governor's office, the Legislature, and other external units with a great deal of useful information on the human rights investigation activities of the department. The statistical information presented in Chapter II illustrates the kind of caseload analysis that can and is being performed by the department either for its own purposes or at the request of outside agencies.

The system is, however, poorly documented--a fact acknowledged by the HRD and noted in a recent study by the Information Services Bureau (ISB) performed at the department's request. We also conclude on the basis of our investigation, and this is also a conclusion of ISB, that communication between the staff in charge of the MIS and department management needs to be improved.

The ISB review is recent and timely and suggests that better training of users and improved planning and documentation are required. We concur with the principal recommendations of ISB, but emphasize that even now the system is functioning more effectively than management information systems in many other state agencies.

G. CONCLUSIONS

We have concluded that the HRD management appears to be effectively running the department and is at work trying to solve problems that have plagued the HRD for years. The production problems experienced by the HRD are not simply due to poor organization, poor management, incompetent employees, low morale, or any other of the ordinary signs of a troubled department, although there is some evidence that these problems have existed in the past.

However, the administration of the HRD has a lot of work to do because a large inventory of open cases has accumulated over the years. And a number of important managerial tasks, some urgent, remain to be done. The HRD needs to promulgate a contemporary set of procedural and substantive rules in order to be in compliance with laws governing the operation of all state agencies. Management also needs to improve and update the HRD's case tracking system, develop a department training program, and further develop department policies and procedures.

This review of managerial practices has given the HRD credit for efforts made in a number of areas. An assessment based strictly on a review of accomplishments would not be as positive. Some basic signs of a well-run agency are missing in the HRD. Department management needs to show real progress in a number of the areas identified in this report if it is to avoid public concern in the future about how well the department is being run.

V. STRATEGIES FOR IMPROVING PERFORMANCE

Historically and to the present day, the Human Rights Department (HRD) has not been able to investigate and resolve charges of illegal discrimination in a timely fashion. Over the years more charges have been filed than closed, resulting in a growing inventory of unclosed cases and long delays in case processing. As a result:

- The fundamental purpose of the HRD is not well served because, as its role is currently conceived, the primary function of the HRD is to provide a source of relief to victims of illegal discrimination that is quicker and more accessible than district court.

- The quality of investigation suffers when significant delays are involved since principals become more difficult or impossible to locate and testimony, if available, is subject to increased errors because of the passage of time.

- The possibility of compensation for actual discrimination is lessened with the passage of time, both because irreparable damage may be done, and because the awarding of back pay or other kinds of restitution may become financially impossible for certain respondents. Also, the stakes may become too high and respondents may be encouraged to fight cases they would otherwise be willing to settle.

- Significant department resources are consumed in fielding inquiries concerning the status of cases during the period of delay. People filing charges are understandably suspicious that delays they encounter are due to the exercise of favoritism or other unfair practices.

- To the extent that the department achieves a reputation for ineffectiveness, victims of discrimination are discouraged from filing a charge in the first place. Also the department faces a disincentive to carrying out an aggressive educational and outreach program which might acquaint citizens of Minnesota with the services offered by the department, lest these activities increase the volume of charges the department then has to deal with.

Thus, we believe it is essential that the department and the Legislature take steps to assure that the department will be able to process charges of illegal discrimination in a timely fashion.

In the last chapter we reviewed managerial practices within the department to see if the department is generally well-organized and managed and to identify areas where efficiency and effectiveness of department operations could be improved. Having concluded that on the whole the department is competently administered we turn to two larger questions. Given longstanding performance problems:

- Should the resources of the HRD be increased, and if so, by how much?

- Should the role and priorities of the HRD be changed, and if so, how?

Decisions affecting the fundamental role of the HRD and the department's budget need to be addressed by the Legislature in light of the findings of our report. Department action within the purview of administrative authority may also be prompted by an expression of legislative intent.

Because we think action is needed, this paper attempts to lay out the advantages and disadvantages of all the plausible options that we have been able to identify that hold some potential for improving department performance. These strategies are not offered as recommendations. Nevertheless, we believe that either an increase in the resources of the HRD or basic changes in its approach to case processing, or both, is preferable to the status quo. Most of the ideas presented in this chapter are not new, but have been implemented by other civil rights enforcement agencies or are discussed in the literature.

As we see it the following options should be considered:

- An increase in the size of the case processing staff of the HRD.

- A basic change in the HRD's approach to case processing, emphasizing a higher degree of selectivity in accepting cases for investigation.

- Screening of charges at intake or early stages of investigations.

- Increasing the use and availability of resources and options outside the HRD for closing cases.

- A greater emphasis on pre-determination settlements.

A. INCREASING CASE PROCESSING RESOURCES

The HRD is currently unable to process all incoming cases, thus its inventory of open cases, already large, is growing as is the average time required to process cases.

The HRD maintains broad intake standards, as it accepts charges for subsequent investigation based simply on a charging party's belief that a discriminatory act has been committed. Assuming nothing is done to reduce the number of charges eligible for department action, an increase in the number of case processing staff seems

necessary, even if reasonable improvements in department productivity are achieved as a result of managerial reforms proposed or underway.

In an executive branch budget hearing on November 7, 1980 the HRD argued that the budget of its Enforcement Division should be increased by $733,300 and 16 positions for the coming biennium. Fifteen of the 16 positions and $606,100 would be allocated to the case processing function of the HRD to create three new case processing units, thus doubling the present number of units and doubling the staff working on investigation of cases.

The department closed about 1,000 cases in fiscal 1980, a year during which some temporary staff vacancies existed in case processing units. The HRD projects that the current case processing units will be able to close 1,200 cases by the end of fiscal 1981 because these vacancies have now been filled; then with three additional units, the HRD estimates it could close 2,280 cases in both fiscal 1982 and 1983. At the end of 1983, it projects that the inventory of cases will be 1,271 and by the end of 1984 the HRD projects achievement of a steady inventory of 1,125 cases with 1,500 new cases filed and 1,500 cases closed each year, and with all cases closed or referred to litigation within nine months of filing the original charge.

The HRD plan would eliminate two of the three new CPUs within four years through attrition and reorganization and retain one so that it is left with a total of four CPUs for the long run.

The HRD's budget request is based on the same conclusion that we reached as a result of our review of department operations: if the essential approach to case processing remains unchanged, the HRD needs a significant increase in case processing resources, at least for the short term.

HRD plans are based in part on a projected increase in the number of charges filed; specifically it expects 1,500 charges in fiscal 1982. In our view, while the number of charges filed may rise, this cannot be projected from the experience of the last four full years, where charges filed have averaged about 1,200 per year. We understand that in recent months there has been an increase in this number, but it is speculation to conclude this represents a long term change in rates that have been stable for four years. If the number of charges filed doesn't grow or if slightly more stringent eligibility criteria are introduced, the present case processing staff of the HRD or something close to it will be adequate for the long run, but not for the short run.

While the plan of the HRD is a thoughtful response to the case processing problems facing the department it may be difficult to implement. The principal challenges would appear to be:

- Doubling the case processing staff in a short time.
- Eliminating two case processing units within a four year period.

Based on what we know, it is not self-evident that it will be easy or even possible to instantly staff three new case processing units consisting of a supervisor, an HREO intermediate, two HREOs, and several additional part time staff. Problems have been experienced in recruiting qualified staff in the past and, as we noted earlier, HRD salaries appear to be somewhat lower than those paid by the Minneapolis and St. Paul human rights departments for comparable work. Department projections available to us appear to be based on the assumption that once the HRD's budget request is approved, case processing staff can be doubled and can become fully productive almost immediately.

The HRD should submit a plan stating how these practical problems will be dealt with. As things stand in the HRD, effective case processing operations now depend on the existence of a close working relationship between CPU supervisors and HREOs in small units. The absence of a formal training program, the lack of written case processing policies and guidelines, and historic problems in recruiting qualified staff suggest that rapid expansion of case processing staff may be difficult.

Also to be addressed is the problem of how to motivate staff in an environment where the work (reducing a backlog of cases) is temporary, and success would lead to the elimination of one's own job. The solutions to these problems need to be stated prior to embarking on the plan proposed by the HRD. Among the solutions to be considered are creation of temporary rather than permanent positions, or a demonstration that attrition rates are high enough so that it will be possible to reduce staff without relying on sizeable layoffs.

The HRD's plan for increasing its case processing resources and production calls for operating the new CPUs like the existing ones, with no specialization or priorities. It may be desirable for the department to devote any new resources that the Legislature approves to reducing the inventory of old cases in a strategic manner. The existing CPUs, or their equivalent, could then be used to process only new and recently filed charges. According to HRD's projections, the existing staff complement will close 1,200 cases this year, as many as have been opened annually in recent years.

We believe that this allocation of staff resources is desirable for the following reasons:

- The EEOC and some state enforcement agencies have achieved some success in reducing their inventories of old cases because they have adopted a deliberate strategy for achieving such a reduction and they have dedicated specific staff units to accomplish the task. The HRD could devise such a strategy and could utilize techniques specifically suited for processing old cases, such as sorting or grouping cases by respondent or practice, and so on. Charging parties could be contacted to see if they are still interested in pursuing the charge, if they wish to seek other remedies, or even if they can be located. The special backlog

unit(s) could be staffed by skilled and experienced investigators and supplied with sufficient clerical resources. The HRD could develop a plan for reducing the case inventory and could adopt timetables and other performance measures.

- Data on case outcomes show that charging parties are more likely to receive remedies when their charge is investigated shortly after filing. The longer a charge is pending, the less the chance that the charging party will receive a remedy, but the greater the likelihood that the charge will be dismissed for lack of probable cause or for failure to locate. If current staff resources were devoted to processing fresh cases, a number of benefits could result. The remedy rate would increase and the HRD would improve its reputation for timeliness and effectiveness. Speedy processing would also increase the number of predetermination closures, which usually require less staff time than a complete investigation. Finally, if the HRD was pursuing fresh charges, less time would be required to respond to status calls on old cases.

- The current distinction that the HRD makes between its inactive backlog (created in October 1979) and its case inventory is confusing and artificial. There is no useful distinction between a charge in the backlog and a charge that is formally assigned but which will not be investigated for a long time. If the HRD followed this strategy, it could then show the legislature and others how the addition of resources will be used to accomplish the specific task of reducing the case inventory over time.

- The HRD has recently initiated innovations in case processing procedures which hold some promise for improving the department's productivity. However, the effectiveness of these innovations or any future changes is necessarily hampered by the staleness of the caseload. The HRD could get more mileage from these new practices if they were applied to fresh charges only.

B. REDEFINING THE ROLE OF THE HRD IN CASE PROCESSING

The Human Rights Act declares that "it is public policy of this state to secure for persons of this state, freedom from discrimination." The issue raised here for legislative consideration is whether, in carrying out its case processing responsibilities, HRD should concentrate on:

- Offering all citizens of the state who feel they are victims of illegal discrimination a mechanism for seeking relief that is simpler and more accessible than district court; or

- Accepting and selecting cases with a high potential for impact on discriminatory behavior. Such cases might be those filed against large employers, those with large potential recovery, or those that could have impact for large classes of people.

Both functions are permitted and encouraged by the Human Rights Act, but given limited resources, the case processing program of the department will look quite different depending on which is considered paramount. If it is thought that the department must offer a source of relief to all citizens then it can be concluded that one citizen's charge is as important as another's and that cases ought not to be prioritized on grounds other than the date they are filed. If it is thought that the department's goal is to have a maximum impact on discriminatory practices, emphasis on a more selective approach to case processing aimed at systemic discrimination, large employers, test cases, and other strategically important cases makes sense.

In point of fact, most human rights agencies acknowledge the legitimacy of both general approaches outlined above. The Minnesota HRD emphasizes its responsibility to pursue every charge equally, yet the law permits and the department now pursues a small number of strategically important charges on a priority basis.

As we have shown elsewhere, the department is unable to keep abreast of its caseload as matters stand. Even with existing resources, the department could process all cases it accepts annually if it accepted fewer charges than it does. The department feels it is obliged to accept all charges that meet broad jurisdictional and technical standards and that it is unfair to establish priorities in processing charges. Our view is that while this is a legitimate point of view and consistent with the Human Rights Act, it is not specifically required by the Human Rights Act. There is no mandate for chronological treatment of cases in the Act and the Act provides for the commissioner to seek relief for classes of individuals and to initiate charges and to immediately investigate charges involving possible irreparable loss.

However, should the Legislature desire that the HRD exercise more selectivity in accepting or investigating charges, we believe it would be highly desirable to authorize the HRD to do this in a legislative statement of some kind.

We discuss below the possibility for implementing other changes in the Human Rights Act or in department practices which might permit the department to avoid the hard choice outlined above. While we doubt that merely exhorting the department to be more productive will solve the problem, there may be a way of screening cases against stricter technical standards that will reduce the caseload enough to enable the department to keep up with incoming cases.

To repeat, the present state of affairs in which the HRD closes fewer cases annually than are filed is unacceptable in our view and less preferable than either:

- Prioritizing cases on stated technical or substantive standards.

- Increasing case processing resources.

C. SCREENING CHARGES AT INTAKE

Like many other civil rights enforcement agencies, the Department of Human Rights maintains an open intake standard. Anyone who professes belief that he has been the victim of unlawful discrimination and whose charge falls within the HRD's jurisdiction is allowed to file a charge that will be investigated by the department.

At least 15 other jursidictions (including Colorado, Kansas, Maryland, New York, and South Dakota) have established more stringent standards for the intake of charges, whereby staff can refuse or dismiss a charge that it finds to be clearly meritless or frivolous before conducting a complete investigation. In a few other states, agencies will conditionally accept a charge but will impose a requirement that the charging party produce or identify the existence of evidence of discrimination. If the charging party cannot meet this standard, then the unperfected charge may be dismissed.

In interviews, HRD staff members said that a significant number of discrimination charges are either filed for frivolous or malicious reasons or predictably will not sustain a probable cause finding. Admittedly rough estimates from HRD staff suggest that these comprise upwards of 30 percent of all charges filed. As we have discussed in Chapter II, only 5 percent of the cases closed in fiscal 1980 resulted in a probable cause determination, while a no probable cause determination was made in about 40 percent of the cases. Only a small proportion of charges will usually result in a monetary award or other remedy to the charging party and the average award is about $2,000. However, the department will accept all charges and investigate them.

The HRD could expand the Intake Unit's role and authority in screening charges in several ways. The first would be to impose an evidence standard, as described above. The intake officer taking the charge could determine what elements of evidence would be necessary to support the charge and request that the charging party produce or identify the existence of the evidence (e.g., an eye witness to an incident, a certain document) needed to prove the charge. If the charging party was unable to meet that requirement, the department could dismiss the charge. In the same section of the Act that allows "any aggrieved person" to file a charge, there is also a requirement that charges contain basic facts about who committed what practice and "any other information required by the commissioner." (Minn. Stat. §363.06 (1)) Such language could be cited as authority for imposing a standard of evidence on charging parties before the department expends any substantial amount of investigative resources.

Second, the Intake Unit could review charges and tag those charges amenable to speedy resolution. For example, the intake staff could identify charges where the necessary elements of evidence can easily be found, or conversely, apparently do not exist. The department has recently experimented with such a program, in which intake staff members identify such charges and have 60 days in which to resolve the charge before it is sent to a case processing unit for investigation. Such techniques require no added statutory authority and could be used to expedite the closure of simple charges.

The Human Rights Act requires the commissioner to "promptly inquire into the truth of the allegations of the charge" (Minn. Stat. §363.06(4)), but it does not prescribe what this inquiry should consist of. Currently, intake staff conduct a detailed interview with charging parties and complete a lengthy questionnaire. This material then becomes the basis from which the investigators conduct interviews, site visits, fact-finding conferences, and so on. The HRD could develop a program for evaluating the merits of a charge after the intake interview to determine if there is sufficient reason to recommend a no probable cause determination. Through a review of its files of recent no probable cause closures, we believe that the department could identify certain common elements of such cases that were known at intake and before extensive investigation took place. Such a screening program has the potential to remove charges from the HRD's workload at an early stage.

As mentioned above, several state enforcement agencies operating under statutes similar to Minnesota's will dismiss charges at the intake stage, without completing a more extensive investigation. Many of these state agencies believe that discretion to close charges in this way is necessary to the effective operation of the agency and to protect respondents from malicious or frivolous charges. The Minnesota Human Rights Act states that, "It is the public policy of this state to secure for persons in this state freedom from discrimination. . .. It is also the public policy of this state to protect all persons from unfounded charges of discrimination." (Minn. Stat. §363.12, Subd. 1(5))

Under current HRD practice intake officers do not routinely counsel charging parties on the amount of time that is likely to elapse before their charge is investigated or closed or the likelihood that they will receive some remedy. (If the specific questions are asked, the staff will offer some details based on past closures.) As we have seen, it is quite likely that more than a year will pass before a case

is closed but rather unlikely that the charging party will receive any remedy.[1]

While the HRD has legitimate concerns about distorting the expectations of charging parties, we believe that serious misunderstandings result from the current practice. As an alternative, the intake staff could routinely inform potential charging parties of how long it has taken to close cases in the past and what were the results of those investigations, stressing the limitations of using this information for making predictions about any individual case. It may be preferable to provide charging parties with realistic (though probably discouraging) expectations at the outset than to lead them through a process that often involves years of waiting and frustration and results in no remedy in many cases. If parties had better information, they might be able to better evaluate the importance of their charge and the other alternatives that are open to them. We expect that if potential charging parties are given objective information on the time required to process a case, a number of them will not file charges. In the current environment, where the department is unable to process all charges filed in a timely manner, this will not result in an actual loss of service to the potential charging party.

With each of these proposals, the department must act cautiously so as to not prematurely dismiss meritorious charges. If adopted, these proposals should be carried out:

- under strict guidelines;
- with consideration that charging parties are not always able to clearly articulate the charge and may not have access to the necessary evidence;

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[1]The department maintains that this practice of not volunteering such information is necessary:

- to avoid unfairly raising or deflating a charging party's expectations;
- because each individual charge is different and may take more or less time than the historic average to close due to factors within or outside the department's control;
- because the best predictions that could be made are based on past history and do not reflect possible improvements in the department's performance;
- because charging parties will not understand estimates of case processing delays based on statistical averages or probabilities; and
- because it believes that such counseling would only add to the distress and hopelessness of persons who already feel aggrieved by the system.

- by senior staff members and managers; and
- with an opportunity to appeal the department's decision in the same way that a no probable cause determination can be appealed.

D. EXPLORING THE INCREASED USE OF OUTSIDE RESOURCES

Although the Human Rights Act requires that all charges arising under that law must begin at the Department of Human Rights, many charges are ultimately resolved outside the HRD and do not require the full use of its resources. There are several ways in which the Legislature or the HRD could expand the availability or use of such alternatives.

The HRD has recently initiated a program to train local human rights commissions (which have no enforcement powers) to conduct a no-fault grievance procedure by which the local commission would attempt to resolve discrimination disputes before they rose to the level of a formal charge filed with the HRD. Such a program has potential for screening some charges before they reach the department, although HRD staff time is required to train, advise, and oversee the local commissions.

We see two other potential benefits from this program. First, cases that are resolved quickly are most likely to result in a remedy to the charging party. Second, the program would provide a forum for potential charging parties who want nothing more than an opportunity to air their grievances.

Some charging parties will eventually withdraw their charge from the HRD in order to file lawsuits in district court. For example, 56 cases were closed in fiscal 1980 because charging parties withdrew for private right of action. However, it is often difficult for a charging party to engage an attorney because the potential recovery in those suits is usually small.

Currently, the law restricts damages available to successful charging parties to specific compensatory damages (back pay and benefits), and specifically excludes general tort damages for mental anguish and suffering. Punitive damages are currently limited to $1,000. Some persons have suggested that the damages available under the Act should be changed because they do not adequately compensate the charging party for the damages suffered as a result of discriminatory practices. If the ceiling on punitive damages was raised or removed and general tort damages were available (including pain and suffering, damage to career, etc.), this would increase the

potential recovery and create incentives for the private bar to accept discrimination cases.[1]

It may also be desirable for the Legislature to amend the Act regarding the award of attorney's fees (Minn. Stat. §363.14 (3)) so that attorney's fees would be awarded more frequently to a prevailing charging party. The purpose of the above changes would be to increase the incentives for members of the private bar to take discrimination cases and to increase the availability of the private right of action option to charging parties.

A final option in this group would be to establish an arbitration system for resolving charges of discrimination. Some work of this type has been done by the American Arbitration Association, a public service, non-profit organization that encourages people to settle their disputes through the use of mediation, arbitration, and other voluntary methods. The AAA maintains panels of arbitrators throughout the United State and administers programs for arbitrating a wide range of disputes. It administers panels to arbitrate discrimination charges arising under collective bargaining agreements and has worked with the EEOC and some state agencies to develop case processing procedures which utilize mediation techniques.[2]

In 1978, the AAA developed draft rules for the arbitration of employment discrimination claims arising under Title VII and other applicable state laws and organized panels of arbitrators who are knowledgeable in discrimination law and arbitration techniques. The AAA has yet to establish a pilot program for implementing its proposal, so there is no model for us to examine. However, the AAA is eager to work with local agencies, such as the HRD, to develop programs to meet the needs of local agencies.

While there are no programs of individual discrimination arbitration to examine, there are other arbitration programs in Minnesota that could provide models for certain aspects of a discrimination program.

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[1]The Legislature may wish to change the provisions on damages only as they apply to private actions in district court, and not for administrative hearings where the commissioner is formally the complainant. If general tort damages were available through an administrative hearing, it could result in ethical problems for the attorneys representing the department.

[2]It should be noted that the case processing techniques currently used by the HRD involve the use of mediation efforts to resolve discrimination charges. The fact-finding conference resembles in certain respects grievance arbitration proceedings under collective bargaining contracts, particularly in its abandonment of traditional rules of evidence and the opportunity it provides the agency representative to obtain the viewpoints of both sides in an open exchange.

In broad outline, an arbitration program for discrimination charges would operate something like this: After a charge of unlawful discrimination is filed with the HRD, the parties would be offered the option of voluntarily submitting the matter to binding arbitration. An agreement to arbitrate would serve to withdraw the charge from the HRD and would be a waiver of any additional claims arising out of the same facts.[1] Thus it would be analagous to withdrawal for private right of action.[1] From an established panel, an arbitrator acceptable to both sides would be named and would preside over a hearing at which the parties would submit their evidence. The arbitrator would announce his findings and any award; they would be binding on the parties, subject to court review or appeal under the state arbitration act, Chapter 572 of Minnesota Statutes.

The arbitration system would operate under rules and procedures promulgated by the Minnesota Supreme Court, which is how the existing No-Fault Automobile Insurance Arbitration System is operated. The system would be administered by a private organization, such as the AAA, which would establish and maintain panels of arbitrators. The HRD would have no role other than counseling parties about the availability of the arbitration option.

The costs of such a program would include a filing fee from both parties to cover administrative costs of about $100 per case, and the arbitrator's hearing time, at about $200 per day (based on the AAA proposal and the No-Fault System). Allocation of the costs would be set down in the rules of the program but could be done in several different ways. The parties could split all costs equally or by another formula, and there could be the possibility of the prevailing party recovering his costs through the arbitrator's award.

The AAA proposal presumes that both parties would be represented by counsel and that the payment of this expense would also be stipulated in the rules. Attorney's fees could also be recovered by prevailing parties as part of the arbitrator's award. In order to make the arbitration option widely available, the Legislature may wish to have the state (through an appropriation to the Department of Human Rights or otherwise) defray some of the costs of the arbitration.

We are unsure what potential exists for an arbitration system diverting charges from the HRD's workload. Arbitration could be seen by the parties as a relatively quick, conclusive, and inexpensive alternative to handling individual charges of discrimination, particularly when compared to the delays of the existing system. On the other hand, the potential recovery in the average case (which we have discussed in another chapter) is not large. If the charging party is responsible for the costs of the system, this could deter participation.

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[1] Like private right of action, the option to submit to arbitration would be generally open after filing the charge. However, the potential for helping the HRD by diverting cases from its workload is obviously greater before an investigation takes place.

E. EMPHASIZING PREDETERMINATION SETTLEMENTS

The HRD never makes a formal determination on the merits of most charges because they are closed through administrative closures, withdrawals, and predetermination settlements. In the last two years, slightly under one-third of all closures have been predetermination settlements, in which the respondent was not obliged to admit any fault in the matter. The department could increase its emphasis on this type of closure as one way of easing its caseload, since such closures usually require somewhat less staff time to accomplish.

The EEOC and some state enforcement agencies have adopted a policy of encouraging predetermination settlements at all stages of investigation and have concluded that it is the only technique which can secure a remedy for a significant number of complainants in a timely fashion. The EEOC believes that the changes it has adopted in case processing techniques and organization have enabled it to reduce its case inventory substantially and to improve the rate of remedies for charging parties.

According to EEOC reports, the EEOC charge backlog, estimated to include 130,000 charges in 1977, was reduced to 56,000 charges at the end of 1979 and will be completely eliminated by 1982. The rate of securing a remedy to charging parties through negotiation and conciliation (settlements) has increased from 14 percent under the old charge processing system to 52 percent for recently filed charges under the new methods.

The Department of Human Rights has instituted some of the new case processing methods used by the EEOC, but it has not followed the EEOC's approach toward predetermination settlements in every respect. The HRD's management does not share all of EEOC's enthusiasm for predetermination settlements because of concerns that justice suffers when the enforcement agency pushes settlements without a determination of the merits of the charge. Some respondents may find it more expedient to offer a small cash settlement to conclude a case, even when both parties know that the charge has little merit. There is also a danger that charging parties with meritorious claims will be influenced to accept some compensation immediately instead of waiting for the conclusion of the case when they might be fully compensated.

However, the HRD's caseload also includes charges for which there will be insufficient evidence to support a probable cause determination, but where the charging party has, nonetheless, suffered some discrimination. A stronger emphasis on predetermination settlements might allow these charging parties to receive some remedy through the system and also relieve some of the HRD's caseload.

APPENDIX A

DEPARTMENT OF HUMAN RIGHTS CHARGE PROCESSING

A. CHARGE PROCESSING PROCEDURES

The Department of Human Rights provides a means of enforcing the rights of individuals who believe that they have been the victims of unlawful discrimination. To illustrate the procedure that the department has established for processing charges,[1] we will describe a fictitious person's experience with the department.

Nancy Johnson is a black female, age 26, who was employed for one year as a cashier in a Saint Paul supermarket. After one year, the store manager fired her, saying she had been absent from work on too many days. Johnson believes that her attendance record was as good as other employees who were white and/or male, and who had not been dismissed.

Johnson decided to seek help from the Minnesota Department of Human Rights. When she telephoned the department, her call was referred to a staff person in the Intake Unit of the Enforcement Bureau, who asked her some questions about her situation and attempted to determine if the department had jurisdiction over the matter. Jurisdiction depends on a number of factors, including:

- Statute of Limitations: Was the alleged discriminatory act committed within the 180 day time limit set by law? By waiting too long, a person may lose his rights under the Minnesota Human Rights Act.

- Unlawful Act: Does the practice complained of constitute a violation of the Act? Not all forms of discrimination are banned by statutes.

- Protected Class: Is the individual a member of a group that the Legislature has decided needs special protection? For example, race and sex are protected classes under Minnesota law; occupation and political party affiliation are not.

The intake officer concluded that the department could exercise jurisdiction over the matter and explained the process for

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[1] It should be noted that most persons filing charges with the department will only go through part of this procedure. For example, 55.7 percent of the cases closed by the department in fiscal year 1980 were closed before a determination of the merits of the charge was made.

filing and processing a charge with the department.[1] Johnson decided that she did want to file a charge, and an interview was scheduled for the following week.[2] At the interview, a lengthy questionnaire was completed, and the official charge was drawn up, signed, and notarized. The charge contained the allegation that the supermarket company (the respondent) unfairly discharged Johnson and thereby discriminated against her in employment on the basis of her race and sex.[3] The department's intake practice is that Johnson needed only to state her belief that she had been discriminated against for the department to accept her charge; there is no threshold requirement that she supply evidence tending to substantiate her charge before the department will accept it. Note that the department has no statutory power to seek temporary, immediate relief for the charging party prior to a determination on the merits of the charge.

The Intake Unit gathered together the charge, questionnaire, and any other documents that Johnson may have provided and sent the material to the Planning and Program Development Division. There, the case was assigned a number and entered into the case tracking/management information system (MIS). The MIS automatically generated form letters which were sent to the charging party and respondent. The Planning Division also assembled the materials into a file and sent that file to the Program Director of the Case Processing Division.

The case was then randomly assigned to one of three case processing units (CPU). The CPU supervisor, in turn assigned the case to a Human Rights Enforcement Officer (HREO) or a law student for investigation. The HREO contacted the supermarket company and requested information on its personnel policies and practices.

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[1]Where the department does not have jurisdiction, intake staff will often refer the person to other potential sources of help.

[2]According to Intake Unit staff, a large number of people will drop out of the process after the initial inquiry or not show up at the scheduled interview.

[3]If the practice or action alleged may also be in violation of Title VII of the Civil Rights Act of 1964 and the Equal Employment Opportunities Act of 1972, the charge will be simultaneously filed with the U.S. Equal Employment Opportunity Commission. EEOC will then defer processing of the charge to the Department of Human Rights. Title VII bans employment discrimination by employers having 15 or more employees, on the basis of race, color, religion, sex, or national origin. Its coverage is narrower than the Minnesota Human Rights Act.

After some initial inquiries, the investigator decided to call a fact-finding conference, in order to bring the parties together to present their respective cases. At the conference, both parties submitted evidence and stated their side of the dispute. Some issues were clarified, but neither party was willing to consider a voluntary predetermination settlement, in which the respondent would not have to accept fault for the dispute.

The HREO completed her investigation, analyzed the record, and recommended a finding of probable cause in the case. The recommendation and case file went up for review to the CPU supervisor, the Case Processing Program Director, the Assistant Commissioner, and finally to the Commissioner. The recommendation was approved, and a probable cause determination was announced.[1]

After the commissioner had announced her determination that there was probable cause to believe that the supermarket had committed an unlawful discriminatory practice, both parties were contacted to determine if there was any hope of conciliating the dispute. When there was no agreement to settle, the commissioner referred the case to the Special Assistant Attorneys General assigned to the department and issued a complaint against the supermarket company. The complaint was then heard before a state hearing examiner, in a contested case proceeding under the Minnesota Administrative Procedure Act. The commissioner became the complainant in the case, and Johnson's case was prepared and argued by a Special Assistant Attorney General.

After hearing the evidence and arguments presented by both sides, the hearing examiner found that Johnson had been illegally discriminated against, and ordered the supermarket company to reinstate her and to pay her back wages from the date of termination. The hearing examiner declined to award any of the punitive damages allowed by law.[2] On appeal to Ramsey County District Court, the hearing examiner's order was upheld.

2. PILOT CASE PROCESSING PROGRAM

The department has recently initiated a pilot program for

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[1]The Case Processing Program Director is now the final reviewer of cases in which a no probable cause determination is recommended. Note that if a no probable cause determination had been made, Johnson could have appealed that decision through the department. That appeal is heard by a committee chaired by the Deputy Commissioner and made up of a member of the Human Rights Advisory Committee and staff members not directly involved in the case. That committee can recommend that the Commissioner affirm or reverse the determination, or remand the case for additional investigation. The commissioner may also reconsider a probable cause determination.

[2]Damages available under the Act include compensatory damages for lost earnings and punitive damages of not more than $1,000. No damages for mental anguish or suffering may be awarded.

the investigation of discrimination charges. One case processing unit is now operating under the new procedures, which are intended to increase the department's productivity and improve its ability to manage its caseload. The new procedures are an enhancement or modification of the Rapid Charge Processing (RCP) procedures that were developed by the New York City Commission on Human Rights and adopted by the U.S. Equal Employment Opportunity Commission and some state agencies, including the HRD.

The primary objective of using the new procedures is to reduce the amount of staff time and investigation needed to determine whether or not there is probable cause to credit the charge of unlawful discrimination. The centerpiece of the pilot program is an expanded and more structured fact-finding conference, which is designed to be the entire investigation into the merits of the case, except in special situations.

The investigator, charging party, and respondent are all expected to assume additional responsibilities. The investigator, working under a more structured schedule and closer supervision, will be responsible for thoroughly preparing for the fact-finding conference by identifying what evidence is needed in the case and requesting such evidence from the parties. The investigator is to conduct the conference so that both sides completely, but efficiently offer their evidence and arguments and so that all relevant evidence is presented. HREOs will be expected to complete a certain number of conferences in a week, and to have those conferences written up and a proposed determination in each case ready by the following Monday. Extended investigation, reconvening the conference, or other time consuming measures would require the agreement of the CPU supervisor and the program director.

Under the new procedures, the respondent and charging party will be expected to cooperate with the department investigation, to provide the necessary evidence, and to arrange for witnesses to be present at the fact-finding conference. Subpoenas will be issued as needed to ensure the production of evidence and the presence of parties and witnesses.

A second objective of the pilot program is to increase the number of predetermination closures. A thorough presentation of both sides of the case ("all cards face up on the table") will enable the parties to more realistically evaluate the merits of their cases, the chance of prevailing, and the potential recovery. Parties will be able to see if their opponent has a prima facie case or if their own case "has no clothes," and will be inclined to close the charge before a merit determination is made, either by reaching a settlement or even by withdrawing the charge. The EEOC has emphasized settlement as "the primary method of administrative enforcement and as the only technique which can secure a remedy for a significant number of complainants in a timely fashion."[1] The HRD has stated that, "Early,

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[1]Statement of Eleanor Holmes Norton, Equal Employment Opportunity Commission, Wednesday, July 27, 1977. 42 Federal Register 42034, 42035, August 19, 1977.

voluntary resolution of suitable charges must be emphasized without jeopardizing the parties' statutory right to a full and impartial investigation if resolution is impossible."[1]

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[1]Department of Human Rights, Proposed Biennial Budget, 1981-1983.

STUDIES OF THE PROGRAM EVALUATION DIVISION

Final reports and staff papers from the following studies can be obtained from the Program Evaluation Division, 122 Veterans Service Building, Saint Paul, Minnesota 55155, 612/296-8315.

1977

1. Regulation and Control of Human Service Facilities
2. Minnesota Housing Finance Agency
3. Federal Aids Coordination

1978

4. Unemployment Compensation
5. State Board of Investment: Investment Performance
6. Department of Revenue: Assessment/Sales Ratio Studies
7. Department of Personnel

1979

8. State-sponsored Chemical Dependency Programs
9. Minnesota's Agricultural Commodities Promotion Councils
10. Liquor Control
11. Department of Public Service
12. Department of Economic Security, Preliminary Report
13. Nursing Home Rates
14. Department of Personnel, Follow-up Study

1980

15. Board of Electricity
16. Twin Cities Metropolitan Transit Commission
17. Information Services Bureau
18. Department of Economic Security
19. Statewide Bicycle Registration Program
20. State Arts Board: Individual Artists Grants Program

1981

21. Department of Human Rights
22. Hospital Regulation
23. Department of Public Welfare's Regulation of Residential Facilities for the Mentally Ill
24. State Designer Selection Board
25. Corporate Income Tax Processing
26. Computer Support for Tax Processing

27. State-sponsored Chemical Dependency Programs, Follow-up Study
28. Construction Cost Overrun at the Minnesota Correctional Facility - Oak Park Heights
29. Individual Income Tax Processing and Auditing

In Progress

30. Division of State Building Construction
31. Real Estate Management Division
32. State Timber Sales
33. Fire Inspections of Residential Facilities for the Disabled
34. State Mineral Leasing Policies and Procedures
35. State Purchasing
36. Department of Education Information System
37. Procurement Set-Asides