
History, Organization, and Staffing

CHAPTER 1

In this chapter we review the development of the Human Rights Act and its current provisions, focusing on significant changes to the law and, in particular, the role of the Department of Human Rights. We also compare the Minnesota law with civil rights statutes in other states. In addition to describing the history and nature of the law, this chapter addresses the following questions:

- **How is the Department of Human Rights organized?**
- **How have the department's expenditures and staffing levels changed?**
- **How does the department's current allocation of resources compare with previous years?**

We gathered data for this chapter from biennial budget proposals, department records such as staff rosters and correspondence, payroll records from the Department of Employee Relations, and external reports on the department by the Department of Administration and a Human Rights Advisory Task Force. Extensive interviews with department officials provided additional useful information.

THE MINNESOTA HUMAN RIGHTS ACT

History

In 1955, the Minnesota Legislature enacted the State Act for Fair Employment Practices.¹ The law prohibited discrimination in employment based on race, color, creed, religion, and national origin, and established a fair employment practices commission to receive and investigate individual complaints of discrimination. The commission consisted of nine members appointed by the Governor to serve five-year terms. In 1961, the title of the act was changed to the Minnesota State Act Against Discrimination, and the Legislature expanded coverage of the law to include discrimination in mortgage lending and housing accommodations.²

¹ *Minn. Laws* (1955), Ch. 516.

² *Minn. Laws* (1961), Ch. 428.

The Legislature has broadened the Minnesota Human Rights Act several times since its enactment.

The Department of Human Rights (DHR) replaced the state commission in 1967.³ The amended statute, now known as the Minnesota Human Rights Act, established DHR as an executive department run by a commissioner, who was appointed by the Governor and confirmed by the Senate. A 15-member board of human rights, also named by the Governor, served the commissioner in an advisory capacity and acted as a hearing panel in appeals cases. In 1977, the board was changed to a human rights advisory committee with no quasi-judiciary functions. In 1983, the Legislature eliminated the advisory committee, but added language allowing the commissioner to appoint a human rights task force.

The duties assigned to the department in 1967 were similar to those of the former commission, but the statute gave several new responsibilities to DHR as well. These included: developing and conducting educational programs designed to eliminate discrimination; creating local and state advisory committees; disseminating technical assistance; and appointing hearing examiners. The 1967 amendment formalized the procedures for filing charges by specifying timelines and other constraints, and it extended the scope of the law to prohibit discrimination in public accommodations, public services, and educational institutions.

Since 1967, the Human Rights Act has been altered numerous times. Figure 1.1 describes how the Legislature has broadened the law. The statute of limitations for filing a charge of discrimination with the department has been extended twice: from the original deadline of six months after an alleged discriminatory act, to 300 days in 1984, and then to a full year in 1988.⁴ In addition, the Human Rights Act has been expanded to include new areas of discrimination, for example, credit and business practices; and new protected classes, such as sex, age, disability, familial status, marital status, and status with regard to public assistance. The most recent amendment, enacted in 1993, prohibits unfair discriminatory practices on the basis of sexual orientation.⁵ Figure 1.2 shows the current coverage of the law.

The statutes governing the department's case investigation process have also been amended through the years. New language passed in 1976 directed the department to conduct an immediate inquiry in cases where the charging party might suffer irreparable harm.⁶ It also constructed an appeals process to handle disagreements between charging parties and the department over case outcomes, or determinations. Under certain conditions, the law permitted a private civil action for a person seeking redress for an unfair discriminatory practice. In 1981, the Legislature gave the department latitude to dismiss charges deemed to be frivolous or without merit, and cases for which the charging party failed to provide required information.⁷ It also allowed the department to use social or legal

³ *Minn. Laws* (1967), Ch. 897.

⁴ *Minn. Laws* (1984), Ch. 567, Sec. 2, and *Minn. Laws* (1988), Ch. 660, Sec. 6.

⁵ *Minn. Laws* (1993), Ch. 22.

⁶ *Minn. Laws* (1976), Ch. 301. The department uses the term "charging party" to refer to the person who files a charge alleging discrimination. The term "respondent" designates the person or firm who must answer the charge. "Charging party" and "respondent" are analogous to "plaintiff" and "defendant" in a legal trial.

⁷ *Minn. Laws* (1981), Ch. 330, Sec. 1-4.

Figure 1.1: Expansion of the Minnesota Human Rights Act, 1955-93

- 1955 – Legislature passes the Minnesota State Act for Fair Employment Practices, which prohibits discrimination in employment based on race, color, creed, religion, or national origin.
- 1961 – Changes name to Minnesota State Act Against Discrimination. Adds prohibition of discrimination in mortgage lending and in the sale, rental, or lease of real property.
- 1965 – Prohibits economic reprisal against complainants or others who assist, testify, or participate in investigations.
- 1967 – Changes name to Minnesota Human Rights Act. Creates the Department of Human Rights. Prohibits discrimination in public accommodations, public services, and educational institutions.
- 1969 – Prohibits discrimination in employment because of sex. Adds contract compliance provisions to the law.
- 1973 – Prohibits discrimination based on marital status, status with regard to public assistance, and disability. Extends prohibition on sex-based discrimination to all areas covered under the act. Also prohibits discrimination based on sex or marital status in the extension of credit.
- 1977 – Prohibits employment and education discrimination based on age.
- 1980 – Prohibits discrimination in housing based on familial status.
- 1981 – Directs the department to review affirmative action plans of businesses wishing to bid on state contracts.
- 1984 – Changes the statute of limitations for filing a charge from six months to 300 days.
- 1988 – Lengthens the statute of limitations for filing a charge from 300 days to 1 year.
- 1989 – Extends the prohibition on credit discrimination to the bases of race, color, creed, religion, disability, and national origin.
- 1990 – Prohibits discriminatory business practices.
- 1993 – Prohibits unfair discriminatory practices on the basis of sexual orientation.

significance, difficulty of resolution, or other relevant criteria to determine the order in which it processed charges.

By 1983 the department's burgeoning backlog of cases prompted the Legislature to direct the commissioner to determine *within 12 months after a charge is filed* whether or not there is probable cause to credit the allegation of unfair discriminatory practices.⁸ Lawmakers also extended to the department the authority to determine *which* charges it processed, in addition to the sequence in which it handled them. The following year an amendment to the Human Rights Act enjoined the commissioner to prioritize certain types of charges.⁹ In addition, the Legislature passed the 180-day rule, which permits a charging party to request an administra-

⁸ *Minn. Laws* (1983), Ch. 301, Sec. 199-201. For documentation of the department's backlog problem, see two reports: Office of the Legislative Auditor *Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), 18, and Office of the Legislative Auditor *Evaluation of the Minnesota Department of Human Rights: Follow-up Study* (St. Paul, August 1983), 3-4.

⁹ *Minn. Laws* (1984), Ch. 567, Sec. 3-4.

Figure 1.2: Areas and Bases of Discrimination Prohibited by the Minnesota Human Rights Act, 1995

Area	Prohibited Bases of Discrimination											
	Race	Color	Creed	Religion	National Origin	Sex	Marital Status	Public Assistance Status	Disability	Sexual Orientation	Age	Familial Status
Education Institutions	•	•	•	•	•	•	•	•	•	•	•	
Employment Agencies	•	•	•	•	•	•	•	•	•	•	•	
Employment	•	•	•	•	•	•	•	•	•	•	•	
Labor Organizations	•	•	•	•	•	•	•	•	•	•	•	
Rental Housing	•	•	•	•	•	•	•	•	•	•		•
Real Estate	•	•	•	•	•	•	•	•	•	•		•
Mortgage Lending	•	•	•	•	•	•	•	•	•	•		•
Credit	•	•	•	•	•	•	•		•	•		
Public Accommodations	•	•	•	•	•	•	•		•	•		
Public Services	•	•	•	•	•	•		•	•	•		
Business	•	•				•			•	•		

Notes:

- 1) The law also forbids reprisal, aiding and abetting, and obstruction.
- 2) *Minn. Stat.* §363.02 lists numerous exceptions and exemptions. For example, some types of owner-occupied dwellings are exempt from the housing discrimination provisions of the Human Rights Act.
- 3) It is also an unfair practice for an employer to discriminate against an employee based on membership in a local human rights commission.

tive hearing if the department does not issue a determination within 180 days of filing.

In 1987, the Legislature further amended the Human Rights Act.¹⁰ Language was added to *Minn. Stat.* §363.05 mandating that the commissioner focus attention on three areas: (1) case intake and investigation, (2) education, and (3) contract compliance. In addition, new language outlined circumstances under which counting the 180-day period could be temporarily suspended. The amount of time during which a case is involved in settlement or mediation efforts, or is being investigated by another enforcement agency, is not counted in computing the 180 days that must elapse before a charging party can request an administrative hearing. Also, in some situations a case may be certified as complex by the commissioner, which precludes the charging party from filing a request for a hearing.¹¹

The first contract compliance provisions in the Human Rights Act were added in 1969. At that time, the law prohibited state agencies from awarding contracts to persons or firms not certified to be in compliance with the laws and regulations re-

¹⁰ *Minn. Laws* (1987), Ch. 375, Sec. 1-2.

¹¹ According to *Minn. Stat.* §363.071, Subd. 1a, a case may be certified as complex if it involves multiple parties or issues, presents complex issues of law or fact, or presents substantially new issues of law in the discrimination area.

lated to discriminatory practices. The Legislature gave the Department of Human Rights the responsibility to issue certificates of compliance to bidders on public contracts. In 1981, the contract compliance laws were substantially modified, and the department inherited the new task of reviewing the affirmative action plans of vendors who wished to do business with the state. We provide a more in-depth discussion of the department's contract compliance work in Chapter 2 of this report.

Comparison with Other States

We compared the Minnesota Human Rights Act with other states' civil rights statutes and found that:

- **The Minnesota Human Rights Act is broader than many of the civil rights statutes in other states.**

A total of 47 states, including Minnesota, have state fair employment laws, but the breadth of protection afforded by those laws varies from state to state.¹² Only 8 states other than Minnesota give charging parties a full year after an alleged discriminatory act to file a charge of discrimination. Four states have a statute of limitations of 300 days, and 32 states set the limit at either 180 days or 6 months. Delaware and Wyoming grant charging parties only 90 days to file a claim with the state human rights agency.

Nearly all states protect citizens from discrimination on the basis of race, religion or creed, color, ancestry or national origin, sex, disability, and age. The Minnesota Human Rights Act covers four additional bases--marital status, familial status (in the case of housing), sexual orientation, and public assistance status. Discrimination on the basis of marital status is prohibited in 21 states besides Minnesota, familial status in 11, sexual orientation in 8, and public assistance status in only 2 other states.

Finally, the Minnesota Human Rights Act prohibits discrimination in seven main areas: employment, housing, public accommodations, public service, education, credit, and business. It also forbids reprisals, and aiding and abetting in discrimination practices. Many other state laws cover only employment, housing, and public accommodations.

¹² Three states--Alabama, Mississippi, and North Carolina--rely on the employment protection afforded citizens under the federal civil rights laws. North Carolina does have a state fair housing law.

BUDGET AND RESOURCE ALLOCATION

Department Organization and Staffing

**The
department
employs 56
full-time staff.**

As of November 1995, the department employed 56 full-time staff, who were organized into several functional divisions, depicted in Figure 1.3.¹³ A commissioner appointed by the Governor heads the department. Under the commissioner, a deputy commissioner, a policy and legal affairs director, and three support personnel oversee the department's operations. One enforcement officer, who worked on the alternative dispute resolution project, reports directly to the policy director.¹⁴

The intake unit provides information to the public, drafts charges of discrimination, and makes referrals for non-jurisdictional complaints. The unit includes one supervisor, five enforcement officers, and one support person. Once a charge has been filed through intake, the case moves to the enforcement division, which is the department's largest component, with 25 staff. Within the case processing units, four unit supervisors manage a total of 15 enforcement officers who investigate charges of alleged discrimination. In addition, a human rights aide supports the case processing units. The division also has a training unit composed of four enforcement officer trainees and one training supervisor. A Management Information Systems (MIS) support section, with five employees, assists case processing by creating case files, updating the electronic case tracking system, and overseeing other computerized functions such as the issuance of form letters, and data entry and recordkeeping for cases cross-filed with the federal Equal Employment Opportunity Commission. One systems analyst is responsible for coordinating the development of a new case-tracking system for DHR.

The compliance services section employs seven staff, who handle the department's responsibilities in the area of contract compliance. Three enforcement officers, under the direction of one supervisor, review the affirmative action plans of businesses that apply to the department for certificates of compliance. Three human rights aides serve as paraprofessionals who assist the enforcement officers.¹⁵

The balance of the department's staff supports the administrative functions of DHR. The department employs two people, a financial analyst and one additional full-time account technician, to handle the department's budgeting, accounting, purchasing, and payroll. Another individual manages human resource affairs, and one person serves as the department's receptionist. Figure 1.4 displays the allocation of staff within DHR as of November 1995.

¹³ One additional position in enforcement is currently vacant.

¹⁴ As of December 1995, this enforcement officer's position description changed. The EO now spends 50 percent of her time investigating cases and 50 percent researching legal issues of the policy director.

¹⁵ One of the three human rights aides has been on long-term disability leave for nearly a year.

Figure 1.3: Department of Human Rights Organizational Chart, November 1995

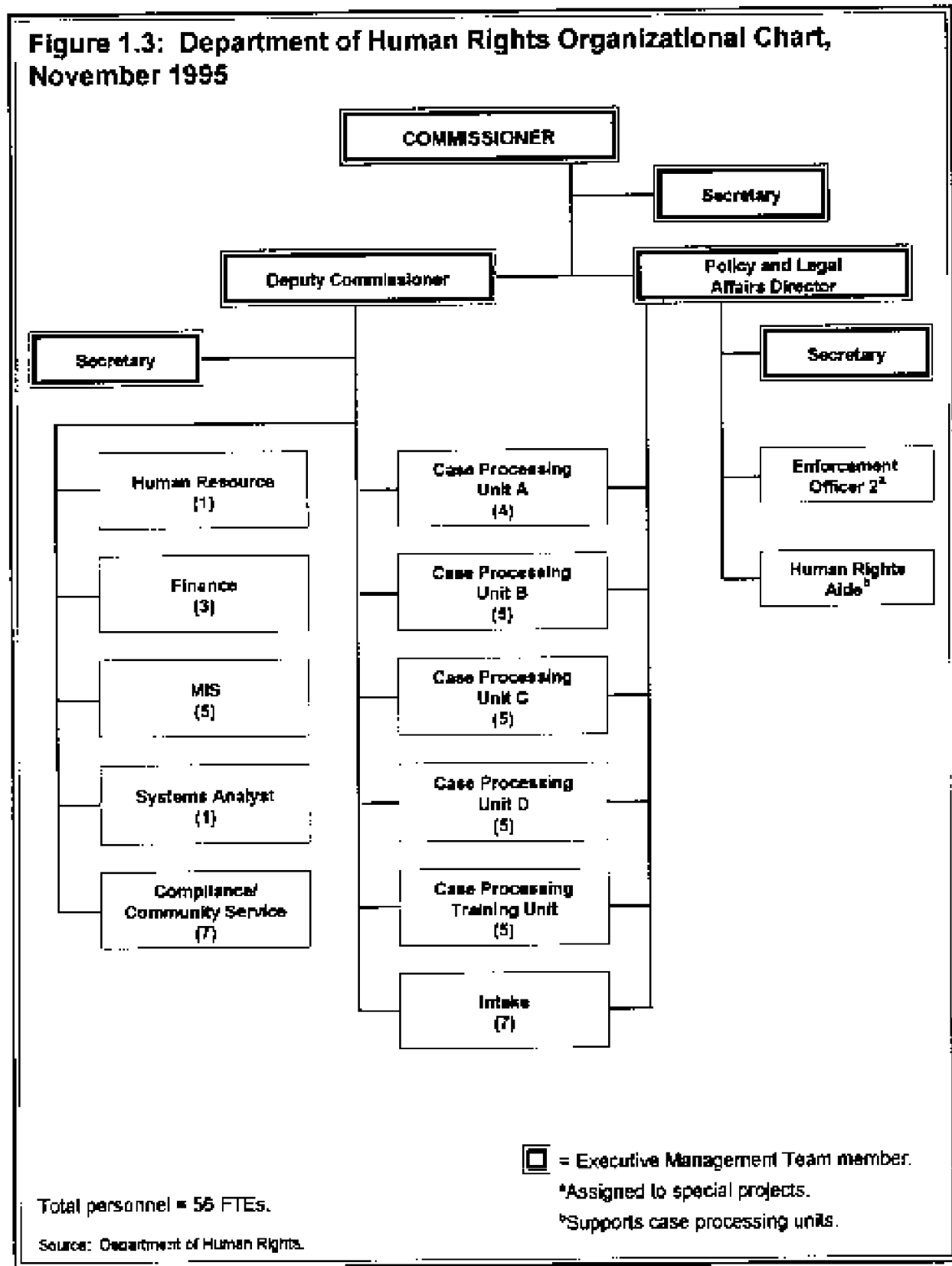
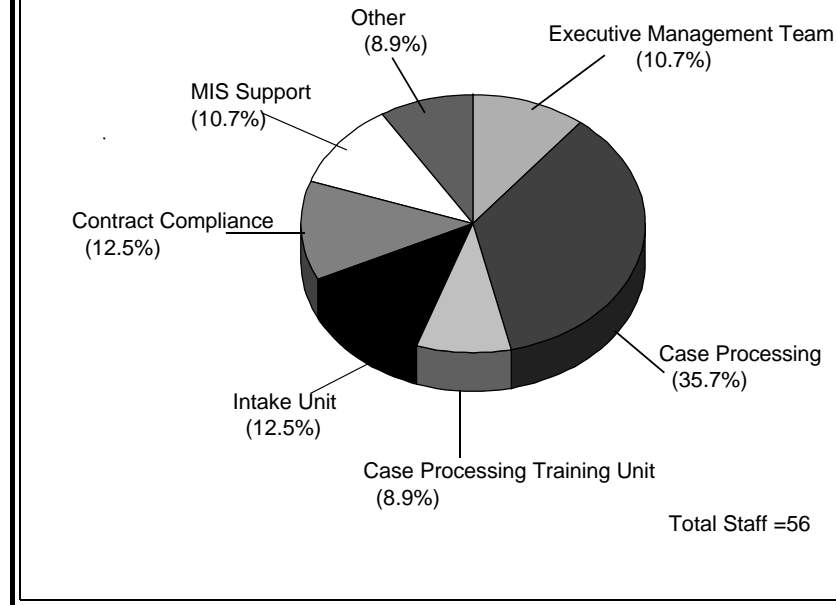


Figure 1.4: Department Staff Allocation, November 1995



About 60 percent of the department's resources are devoted to case processing.

Budget and Finances

During the 1994-95 biennium, the department spent a total of \$6.8 million. Fifty-nine percent of the budget was devoted to the department's complaint processing program, while contract compliance consumed 13 percent. Management services and administration accounted for the remaining 28 percent of the department's expenditures.

We examined the department's biennial budget proposals and expenditure levels for the past 16 years and found that:

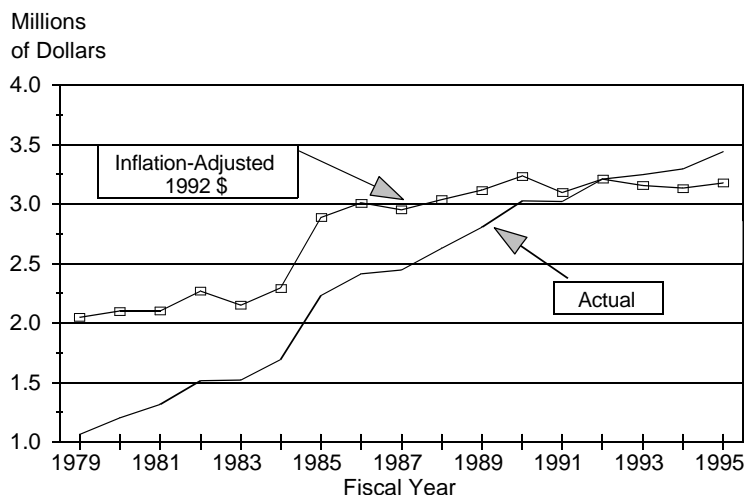
- **The department's level of expenditures has remained virtually constant since 1986.**

As shown in Figure 1.5, the department had expenditures of about \$1.3 million in fiscal year 1981. By FY 1995 expenditures had grown to \$3.4 million, an increase of 162 percent in nominal terms, or 55 percent, after adjusting for inflation. However, 89 percent of the real growth occurred between 1981 and 1986. In those five years, DHR experienced a 43 percent increase in inflation-adjusted expenditures, while in the nine years between 1986 and 1995, spending rose only 6 percent. Since 1990, the department's level of expenditures has declined by 2 percent, adjusting for inflation.

Personnel costs, DHR's largest expenditure category, represented about 73 percent of the department's budget in fiscal year 1995. Table 1.1 shows that the proportion of the department's budget devoted to personnel costs has remained fairly con-

The department's level of expenditures has grown very little since 1986, when adjusted for inflation.

Figure 1.5: Growth in DHR Expenditures, Actual and Inflation-Adjusted, 1979-95



Source: Actual expenditures for 1979-92 from Department of Finance, Minnesota Biennial Budgets 1981-83 through 1994-95. 1993-95 expenditure data from Statewide Accounting System Managers Financial Report, October 1995. Actual dollar figures were adjusted for inflation (to 1992 dollars) using the Gross Domestic Product price deflator for state and local government purchases.

stant over the past ten years, although the percentage was somewhat higher between fiscal years 1991 and 1994. Litigation costs, which are primarily fees the department pays to the Office of Administrative Hearings for agency-initiated litigation and charging party-initiated hearings, totaled \$263,000, or 7.5 percent of expenses in FY 1995.¹⁶ The department's litigation expenses have increased markedly over the last two years. Other costs incurred by the department included

Table 1.1: Department of Human Rights Expenditures, 1986-1995

State Fiscal Year	Expenditure Category					Total Expenditures	Personnel as Percent of Total
	Personnel	Operating Expenditures	Litigation	Other (Human Rights Day)	MIS		
1986	\$1,848,200	\$418,200	\$148,700	---	---	\$2,415,100	76.5%
1987	1,942,800	364,300	127,800	---	---	2,434,900	79.8
1988	2,036,000	386,000	203,000	---	---	2,625,000	77.6
1989	2,183,000	350,000	272,000	---	---	2,805,000	77.8
1990	2,287,072	546,537	191,409	---	---	3,025,018	75.6
1991	2,450,612	413,698	136,459	---	---	3,000,769	81.7
1992	2,655,677	406,718	132,627	\$15,660	---	3,210,682	82.7
1993	2,644,078	373,949	167,300	17,000	---	3,202,327	82.6
1994	2,646,000	340,000	251,000	---	\$69,000	3,306,000	80.0
1995	2,531,386	380,221	262,905	13,298	279,000	3,466,810	73.0

Source: Department of Human Rights, Finance Manager.

¹⁶ Under *Minn. Stat.* §363.071, Subd. 1a, a charging party can request an administrative hearing for a case if the department has not issued a finding of probable cause or no probable cause within 180 days of filing. The department pays for the costs of these hearings. Any reimbursements of the costs are deposited in the General Fund.

The department investigates some cases for the federal Equal Employment Opportunity Commission.

computer expenses, general operating expenses, and expenditures related to the department's annual Human Rights Day activities.

The department receives its funding almost exclusively from the state's General Fund, despite the workshare agreement negotiated annually between DHR and the federal Equal Employment Opportunity Commission (EEOC). As a Fair Employment Practice agency (FEPA) of the EEOC, the department receives a fixed payment for each dual-filed case the department closes. A dual-filed case is one that meets the jurisdictional requirements of both the Minnesota Human Rights Act and one of the federal civil rights laws (Title VII of the federal Civil Rights Act, the Equal Pay Act of 1963, or the American Disabilities Act). Table 1.2 lists the number of dual-filed cases the department closed in each of the last four years, and the total payment from EEOC. DHR earned an average of \$276,000 per year; however, the federal payments are deposited into the state's General Fund and are not dedicated for the department's use.

Table 1.2: EEOC Workshare Agreements, 1992-1995

<u>Federal Fiscal Year</u>	<u>Number of Cases</u>	<u>Payment Per Case</u>	<u>Payment^a</u>
1992	764	\$450	\$347,320
1993	586	450	279,160
1994	444	500	223,118
1995	504	500	253,700

Source: Equal Employment Opportunity Commission contract forms.

^aThese payments are deposited by the department into the state's General Fund and are not dedicated for the department's use. Total payment also includes amounts paid for travel, training, and other miscellaneous expenses.

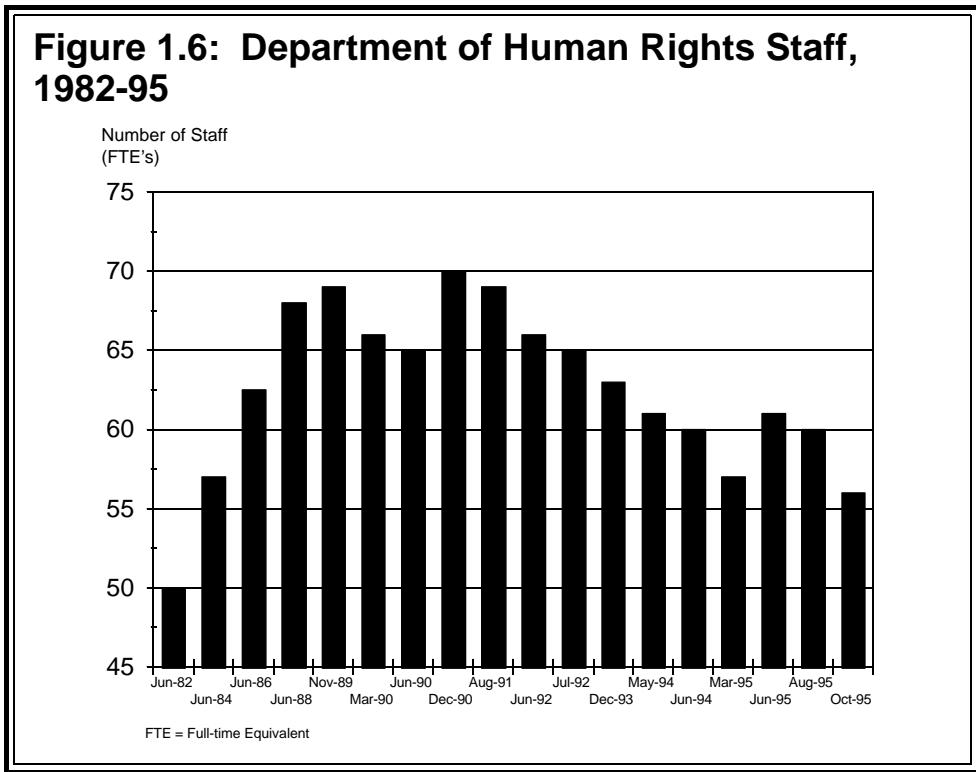
Changes in Resource Allocation

Although the department's personnel costs as a percentage of total expenditures have remained steady at about 78 percent over the past decade, we found that the size of the department's staff has fluctuated. Figure 1.6 shows that:

- **The department's total staffing peaked in 1990 and has since declined by 20 percent.**

In 1981, when we conducted our first evaluation of the Department of Human Rights, DHR had a staff complement of 49 positions. By June 1988 the department staff had increased by almost 40 percent to 68 employees. Department records reveal that employment reached its highest level in December 1990, when DHR employed 70 people. Since that time the number of employees has steadily

The department has lost about 20 percent of its staff since 1990.



decreased. In March 1995 the department phone roster listed only 57 employees.¹⁷ At the end of that month, when the department’s enforcement officer training program officially began, five new trainees joined the staff. By October 1995, however, releases and resignations drove the department’s staffing level back down to 56 employees.¹⁸

In addition to total staff, we also looked at changes in the department’s deployment of staff resources. We found that:

- **The number of case investigators has dropped significantly in the last five years. Even if the department hires all four of its current trainees as permanent employees, the level of staffing will still represent a 24 percent loss in investigators since 1990.**

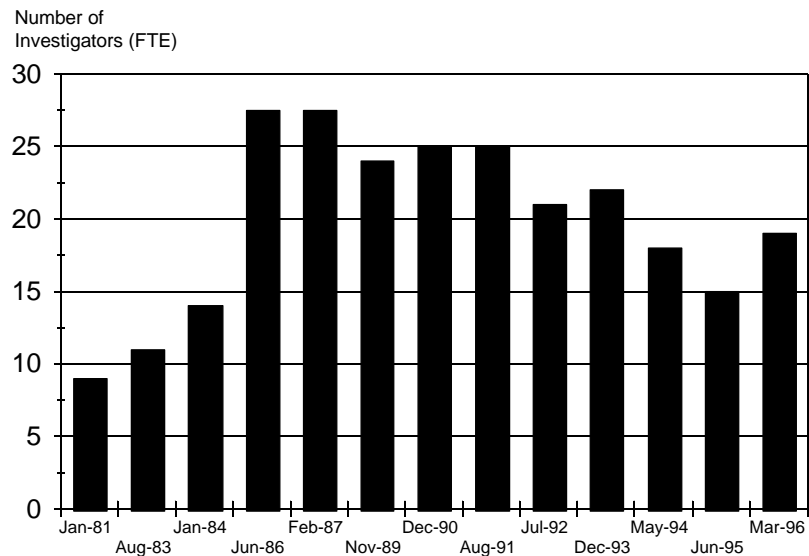
¹⁷ The department purposely held case investigator positions vacant for a number of months in fiscal year 1995. The commissioner wanted to start an 18-month training program for a cohort of five new investigators. Negotiations between the department and the Minnesota Association of Professional Employees (MAPE) over plans for the program began in November 1994 and lasted until the end of February 1995. Five trainees officially joined the department in March 1995 and began to investigate their first cases in September. According to the training supervisor, the trainees will be carrying 85 percent of a full caseload by the time their training ends in 1996. Whatever the merits of the training program strategy, its implementation temporarily diminished DHR’s capacity to investigate cases.

¹⁸ The department released one of the five trainees in September 1995.

The number of case investigators has declined since 1986.

From March 1990 through August 1991, the number of enforcement officers assigned to case processing at the department remained at 25 FTE's.¹⁹ As Figure 1.7 illustrates, the number of investigators declined to 22 in December 1993, then to 18 by May 1994, and to a low of 14 in March 1995, a total decline of 44 percent since 1990. During the beginning of fiscal year 1995, the department did not fill vacant enforcement officer positions because it chose to set aside those vacancies in order to hire five people for a new training program. Although the program began in March 1995, the trainees spent the first six months in classroom training and have only recently begun investigating cases. The projection bar in the graph demonstrates that if the department hires all four of its current trainees to be full-fledged enforcement officers, the number of investigators will increase to 19.²⁰ That level of staffing would still represent a 24 percent loss in case investigators since 1990.

Figure 1.7: Case Investigators



Note: Trainee positions are not included. The March 1996 figure is our projection based on the department's plan to hire its four trainees as permanent staff. FTE = Full-time equivalent.

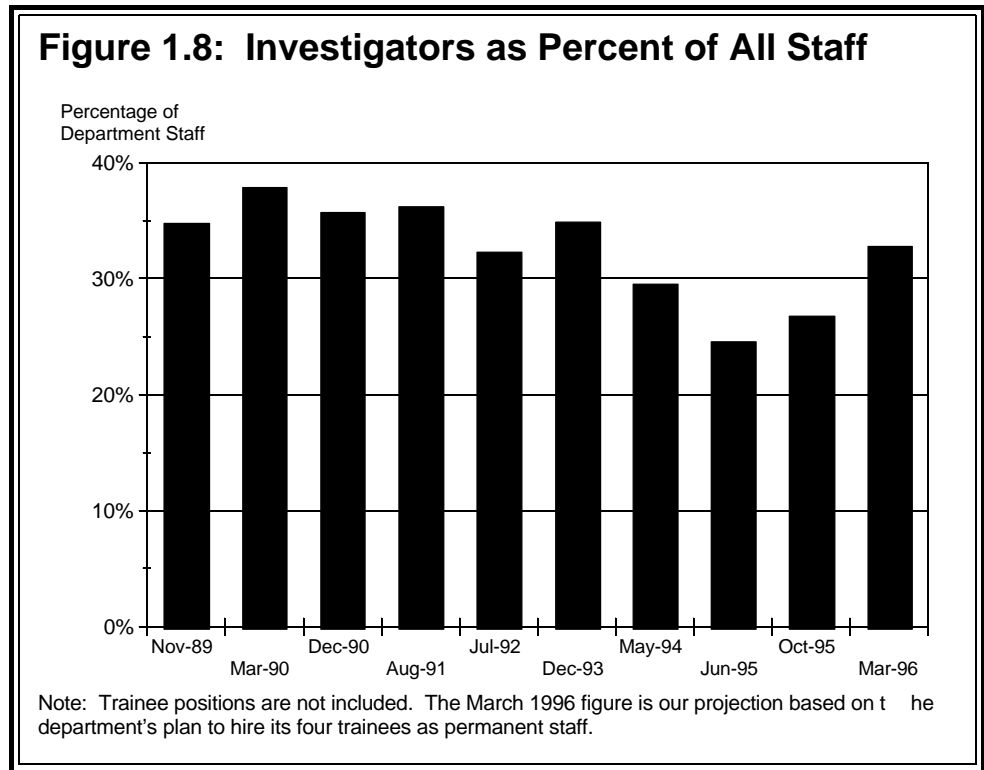
In addition, Figure 1.8 demonstrates that:

- **Staff reductions affected case processing units slightly more than other departmental units.**

Case investigators comprised 36 percent of the department's total staff in 1990-91 but dropped to only 25 percent by early 1995. Although some of this decline may

¹⁹ Up until early 1991, the department had a mobile unit that served areas of Minnesota outside of the Twin Cities metropolitan area. The four enforcement officers in this unit acted as "circuit riders" in different sections of the state. The officers conducted education and outreach programs, helped individuals file charges of discrimination, and investigated those cases. They closed about half as many cases as the full-time investigators in the St. Paul office.

²⁰ One trainee was released in September 1995.



be attributable to general staff reductions in response to budgetary constraints, the vacancies caused by the department's plans to start an enforcement officer training unit are also partially responsible. The percentage will rise again to 33 percent if all four enforcement officer trainees are hired as full-time permanent staff, and if no other investigators leave their positions.

The number of case investigators in the department impacts DHR's ability to process a steady influx of new cases. In Chapter 4 we discuss some of the implications of the department's shifts in resource allocation and recommend various strategies for increasing the case processing capabilities of the department.