# Department of Human Rights

**January 1996**

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

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JAMES R. NOBLES, LEGISLATIVE AUDITOR

January 29, 1996

Members
Legislative Audit Commission

During the 1995 legislative session, a Senate committee heard testimony that raised questions about the performance of the Department of Human Rights. As a result, the Legislative Audit Commission directed us to evaluate the department's effectiveness and identify strategies that could be taken to improve the department's performance.

Our study found that the department has not handled charges of discrimination in a timely manner and that there is a growing inventory of open cases. We also found that the department lacks the expertise to properly use its own case-tracking system and needs to show more tangible progress in developing the new system funded recently by the Legislature. While the department has been able to certify in a timely way that companies doing business with the state have satisfactory affirmative action plans, we think it should monitor the implementation of those plans more closely.

We have several recommendations for improving the department's performance. Most importantly, we think the department should take whatever steps are necessary to bring the numbers of charges filed and cases closed into balance.

Our report was researched and written by Elliot Long (project manager) and Tina Tsuei, with assistance from Amy Zimmer, and cost approximately $50,000. We received the cooperation of the staff and management of the Department of Human Rights.

Sincerely,

James Nobles
Legislative Auditor

Roger Brooks
Deputy Legislative Auditor

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MINNESOTA OFFICE OF THE LEGISLATIVE AUDITOR

# Department of Human Rights

## EXECUTIVE SUMMARY

The Legislature established the Minnesota Department of Human Rights (DHR) in 1967 to enforce the state's laws against illegal discrimination. The department operates two enforcement programs: (1) case processing, which investigates charges filed by individuals who feel they have been the victims of discrimination, and (2) contract compliance, which assures that vendors doing business with the state are in compliance with the affirmative action provisions of state law.

In recent years, critics of DHR have raised questions about the department's ability to fulfill its statutory responsibilities. In response to these complaints, the Legislative Audit Commission asked us to evaluate the performance of the department. Our study addressed the following questions:

- **Are discrimination charges investigated and resolved in a timely fashion?**
- **How well is the contract compliance program working?**
- **How do the department's organization, productivity, and practices compare with human rights agencies in other states?**
- **What can be done to improve the department's performance in order to better achieve the goals of the Human Rights Act?**

In carrying out the study, we interviewed managers and staff at the department and representatives of human rights agencies around the country. We surveyed department employees and reviewed case files. We inquired about general work-related issues and individual cases. We extracted data from the department's case-tracking system and put together statistical information on the department's performance that goes back to mid-1992, the date the present case-tracking system became operational.

## CASE PROCESSING

The central function of the Minnesota Department of Human Rights is the enforcement of the Minnesota Human Rights Act through investigation of charges of ille-

gal discrimination. In FY 1993-95, approximately 1,200 to 1,400 charges were filed with the department each year. About 70 percent of the charges filed from July 1992 to June 1995 were employment-related, about 5 percent alleged dis - crimination in public accommodations, another 5 percent alleged housing discrimi - nation, and about 4 percent charged discrimination in public services.

Discrimination is prohibited on the basis of age, race, color, national origin, relig - ion, creed, sex, disability, marital status, familial status, sexual orientation, and status with respect to public assistance. About 22 percent of charges filed during fiscal years 1993 to 1995 alleged sex discrimination, followed by race (17 per - cent), disability (17 percent), and age (11 percent). The remaining charges were accounted for by scattered allegations in other categories, and allegations which charged more than one basis of discrimination.

On a basic measure of case processing effectiveness, we found:

- **The department did not close as many cases as it opened in fiscal years 1994 and 1995.**

**The department's year-end inventory of open cases is growing.**

As the following table shows, the number of cases open at year-end grew from 1,359 in June 1993 to 1,784 in June 1995, an increase of 31 percent in two years. One consequence of a growing inventory of open cases is that the department is unable to investigate and resolve charges in a reasonable amount of time and within the deadline set in statute.

## Charges Filed, Cases Closed, and Cases Open at Year-End, FY 1993-95

| Fiscal Year | Charges Filed | Cases Closed | Year-End Inventory |
|---|---|---|---|
| 1993 | 1,287 | 1,373 | 1,359 |
| 1994 | 1,396 | 1,089 | 1,666 |
| 1995 | 1,362 | 1,244 | 1,784 |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

The Minnesota Human Rights Act states that the department should make a deter - mination within 12 months after a charge is filed "as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices." [1] We ex- amined the length of time the department takes to issue its probable cause determi - nations and found:

- **Most probable cause determinations took longer than 12 months, the statutory deadline for making a determination.**

Of the 173 cases closed in FY 1993-95 for which the department issued a probable cause determination, and for which data were available, it took DHR more than a

1 *Minn. Stat.* §363.06, Subd. 4.

year to reach a determination in 66 percent of the cases.[2] In about 21 percent of the cases it took the department more than two years to find probable cause. To comply with the deadline, cases that do not result in a probable cause determination should be closed within a year as well.

The department argues that the statutory deadline is advisory rather than mandatory; however, the Minnesota Court of Appeals recently overturned a major employment discrimination case on the grounds that the department took nearly three years to make a determination of probable cause. This case is currently under review by the Minnesota Supreme Court, which may clarify the legal meaning of the statutory deadline.[3]

**The department must close a case or make a probable cause determination within a year of when the case was filed.**

The department closed a total of 3,706 cases during fiscal years 1993 through 1995. We found that it took the department an average of 427 days to close these cases. Looking at the data another way:

- **About 45 percent of cases closed in FY 1993-95 exceeded the 12-month deadline.**

About 33 percent of the cases closed took between one and two years; 9 percent took between two and three years; and 3 percent took more than three years.

We examined the timeliness with which the department handled different types of case closures and found that it took the department an average of 426 days to dismiss a large category of weak cases accounting for about two-thirds of all closures. As discussed below, these cases, classified as DWR, meaning "does not warrant further use of department resources," typically lacked an effective rebuttal from the charging party. On average, DWR cases spent about 100 of the 426 days until closure awaiting attention from a supervisor. After an enforcement officer has enough information about a case to recommend a particular type of closure, the case must go through supervisory review. This review typically requires only a few hours of work.

**However, this statutory deadline is regularly exceeded.**

# Case Outcomes

We also looked at how the department closed the cases it investigated in the last three years. There are many different types of case closures. First, the person bringing the charge, known as the charging party, can withdraw the case in order to take it to court, or because the parties to the case have privately settled their dispute. Or, the charging party can decide that pursuing the case is not worth the time and trouble. Second, the department can dismiss a case because a jurisdictional problem is discovered, because the charging party fails to cooperate, or because the case, upon preliminary investigation, lacks evidence. (Although a charging party may *file* a case with only an allegation of unfair discriminatory

*2* For the cases closed in FY1993-95, the department issued 271 probable cause determinations; however, for 98 of those cases, the case-tracking system database did not contain information on the original determination date; therefore, these cases are not included in this analysis.

*3* State of Minnesota vs. RSJ Inc., d/b/a Jose's American Bar & Grill and Joseph Schaefer. Appellate Court Case No. C1-94-2365.

practice, in order to reach a determination of probable cause, the charging party, with the department's help, must eventually present evidence that supports the dis - crimination claim and outweighs evidence to the contrary.) Third, the department can assist the charging party and respondent to reach a settlement in the case. Fourth, a case can end with a no probable cause determination if the department completes a full investigation but finds insufficient evidence to support the charge. Finally, the department can issue a probable cause determination in a case, after which the case can be settled, withdrawn, dismissed, or heard by an administrative law judge.

**Most cases are dismissed or withdrawn.**

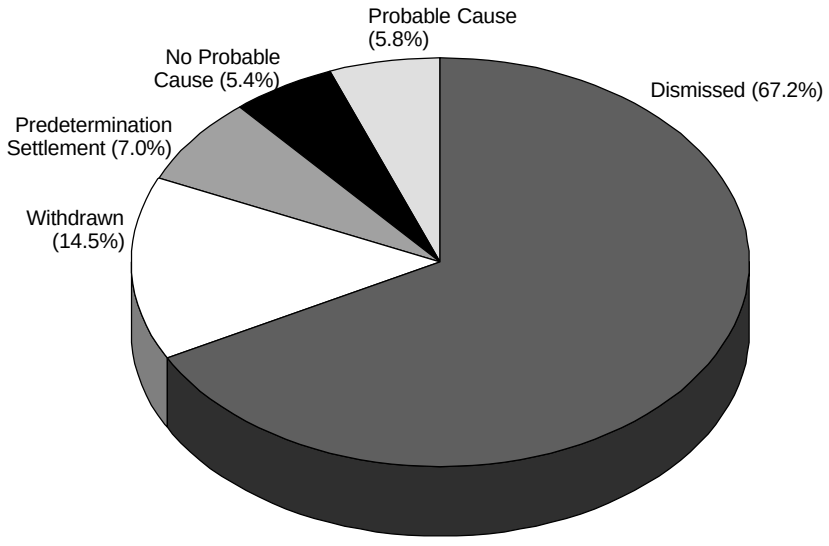
Considering cases closed in fiscal years 1993 through 1995, our data show:

- **Most cases closed in recent years were dismissed or withdrawn;**
- **Relatively few cases resulted in a settlement in favor of the person who filed the charge; and**
- **Even fewer cases resulted in a probable cause determination and subsequent litigation.**

About 67 percent of the cases were dismissed by the department. In almost all of these cases, either the charging party failed to rebut the non-discriminatory expla - nation provided by the respondent, or the case simply lacked evidence to sustain the charge. The charging party bears the ultimate burden of proof in cases filed with the department, just as in any civil action.

**About 6 percent of cases closed had probable cause outcomes.**

**Outcomes for Cases Closed, FY 1993-95**




Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

About 6 percent of the cases were withdrawn by the charging party to take the case to court, and an additional 9 percent were withdrawn for other reasons. Roughly 5 percent of the cases were no probable cause determinations, and about 7 percent were settled prior to a determination. Thus, only 6 percent of the cases closed in FY 1993-95 had probable cause outcomes.

In conclusion:

- **Over three-quarters of cases closed did not sustain the original charge of discrimination.**

The data show that sufficient evidence is not found to support most cases. However, the department took a long time to identify the cases that it could dismiss. This raises the question of whether the department should more aggressively screen cases early in the process and focus its resources on cases with greater potential. We discuss our ideas for increasing the department's effectiveness later in this summary.

# CONTRACT COMPLIANCE

The Human Rights Act requires any business with more than 20 full-time employees that wishes to qualify for a state contract in excess of $50,000 to be certified by the Department of Human Rights. The general purpose of this program is "to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner."[4] Possession of a certificate affirms that a contractor is in compliance with the statutory provisions regarding affirmative action.

**Businesses wishing to contract with the state must be certified by DHR as having an approved affirmative action plan.**

The contract compliance unit of DHR reviews affirmative action plans submitted by vendors interested in doing business with the state. In order to meet department standards, a plan must contain 11 specific elements, including a clear statement of the business' affirmative action policy, procedures for disseminating that policy, three types of statistical analyses, and goals and timetables for taking corrective action.

We examined data from the contract compliance unit and found that:

- **The number of certificates issued annually has increased since the affirmative action plan reviews began in 1985.**

In fiscal year 1995, the department issued certificates, which are valid for two years, to 1,310 businesses, up from the 295 certificates the department issued in 1986 and the 864 granted in 1991. As of July 1995, there were more than 2,400 businesses certified to bid for contracts to do business with the state of Minnesota.

4 *Minn. Rules* 5000.3410, Subd. 1.

According to state rules, the department has 30 days after it receives a plan to issue a certificate, or 15 days to return the plan with a notice of deficiencies. A business whose plan is rejected by the department may revise its plan and resubmit it for review. DHR then has 15 days to consider the revised submission.

We calculated the length of time it took for the department to respond to affirmative action plans and found that:

- **The department issued certificates of compliance in a timely manner.**

It took the department an average of three to nine days to issue a certificate or send a deficiency letter, depending on the type of plan received and the type of notice sent. The department sent out more than 95 percent of certifications in a timely manner, and 86 percent of deficiency letters within the required 15 days.

Minnesota law forbids the award of state contracts to vendors who are not either certified by DHR or exempt from certification requirements.[5] The department circulates a bimonthly list of contractors and their certification status to state agencies, who shoulder the responsibility for ensuring that uncertified vendors do not receive contracts. The Department of Human Rights does not routinely check lists of businesses who are awarded contracts to ensure that all successful bidders are certified.

We tested a 20 percent sample of contracts awarded in fiscal year 1995 to determine whether state agencies were adhering to the law. We looked at four types of contracts: commodities contracts; professional/technical contracts; and construction contracts awarded by the Department of Administration and the Minnesota Department of Transportation. Our test demonstrated that:

- **In fiscal year 1995, about 5 percent of the state contracts over $50,000 were awarded by state agencies to uncertified vendors.**

**We found only a few state contractors without a required certificate.**

Our test results signify marked improvement over the results of a similar test we conducted in 1981, during an earlier evaluation of the department. At that time, depending on the type of contract, we found that between 55 and 90 percent of tested contracts had been awarded to uncertified vendors. While improvements still need to be made, we conclude that state agencies are following the contract compliance provisions of the Human Rights Act much more closely than they were 15 years ago.

According to statute, DHR is expected not only to review affirmative action plans, but also monitor the efforts of businesses to implement those plans. The law gives the Commissioner of Human Rights the authority to suspend or revoke a certificate of compliance if the holder has not made a good faith effort to implement its affirmative action plan.[6] The administrative rules outline several ways that the department can monitor those efforts. Among other things, the contract compliance

5 *Minn. Stat.* §363.073.

6 *Minn. Stat.* §363.073, Subd. 2.

unit can rely on: (1) updated information submitted semiannually by vendors; (2) on-site reviews, when department staff visit the business location to evaluate aspects of the business that relate to the affirmative action plan; and (3) information from the case processing unit about businesses that have been found guilty of illegal discrimination.

We found that:

- **With recent cutbacks in the contract compliance unit staff, the department has essentially ceased to monitor the efforts of businesses to implement their affirmative action plans.**

Citing scarcity of resources, compliance unit staff told us that the department is now unable to review the contents of the semiannual compliance reports; staff merely record whether or not a contractor has submitted a report. Similarly, we learned that the unit does not have plans to conduct any on-site reviews of businesses in fiscal year 1996. In the past four years, DHR conducted an average of 19 on-site visits annually. Finally, compliance unit staff told us that despite past requests for information, DHR case processing units have not provided information that would enable them to identify businesses that have illegally discriminated against their employees.

This decline in oversight may be attributable to a drop in the amount of resources available to the contract compliance unit. The unit presently employs seven full-time personnel, down from eleven positions in May 1994. Since that time, the unit has lost more than one-third of its employees, either through attrition or transfer of staff to other department units.

We think it is important for the department to have an adequate capacity to measure whether businesses are making good faith efforts to implement their plans. The department does not need to be able to monitor every certified vendor, but it should be able to identify egregious violations of the Human Rights Act's contract compliance provisions and take appropriate action.

**The department needs to more closely monitor the implementation of affirmative action plans.**

Administrative rule states that the purpose of the contract compliance program is to increase employment opportunities for women, minorities, and disabled persons.[7] Given this goal, we recommend:

- **The Legislature should consider increasing the contract size and employment thresholds.**

The Legislature set the minimum contract amount at $50,000 in 1981 and has not subsequently raised it, even to adjust for inflation. (The inflation rate since 1981 has been about 73 percent.) We think the Legislature should consider raising the threshold to $100,000, which would reduce the number of contracts to which certification requirements apply by about 30 percent, based on statistics from the sample of contracts we tested. Similarly, raising the minimum number of employees that businesses must have before they are subject to the affirmative action plan

7 *Minn. Rules* 5000.3410, Subp. 1.

requirement would allow the department to focus its resources on larger employers. Both of these actions would free resources for the contract compliance program to use toward monitoring implementation of affirmative action plans.

# ANALYSIS OF CASE PROCESSING PRODUCTIVITY

We sought to learn what factors account for delays in case processing. One problem is that caseloads carried by individual enforcement officers are too large to manage effectively. By caseloads, we mean the number of open cases assigned to each enforcement officer at any given time. Full-time enforcement officers were each responsible for 78 cases, on average, in June 1995. (The average was over 100 cases until the creation of a mediation program resulted in a one-time reduction in the caseload size.)

The magnitude of the caseload means that enforcement officers cannot respond promptly to developments in many cases. It also means that a lot of time is spent taking phone calls from charging parties and respondents who wonder what is happening with their case, and it means that investigators have to spend time reacquainting themselves with cases that they have not worked on for a while. As cases sit idle, their quality tends to deteriorate because witnesses become harder to locate and potential testimony fades from witnesses' memories. Both the charging party and respondent are left in a state of uncertainty, and may experience continuing disruption in their personal and professional lives.

We recommend:

- **The department should reduce caseloads permanently to 40 or 50 cases per enforcement officer.**

**Caseloads carried by individual enforcement officers are too large to manage efficiently.**

Our report discusses several ways for the department to do this, including internal reallocation of resources, better training, better supervision and technical leadership, and, to the extent necessary, the establishment of priorities so that high-potential cases are promptly investigated and low-potential cases are promptly screened out or dismissed.

We reviewed investigator production requirements at human rights agencies around the country. Like many agencies, DHR expects enforcement officers to close a specific number of cases each year. We learned:

- **DHR's production standard of 75 cases per year for fully trained, full-time enforcement officers is comparable to standards around the country.**

While it is difficult to make exact comparisons among the states because of differences in the scope of enforcement officers' responsibilities, over half the states

that responded to our inquiries had a standard that equaled or exceeded Minnesota's requirement of 75 cases per year.

The problem in Minnesota is two-fold:

**Minnesota's investigator production standard is in line with the standards in other states.**

- **Only 9 of 15 enforcement officers were expected to produce at a rate of 75 cases per year in fiscal year 1995, and only 8 of the 9 met that standard.**

- **Even if all enforcement officers had met the standard, the department still would not have been able to close the 1,200 to 1,400 cases filed in each of the last three years.**

It is essential that all enforcement officers (EOs) meet the production standard, and it is reasonable to expect this, since the rate is close to the department's actual historic level of productivity. It is also essential for the department to close approximately as many cases as are filed each year, and meet the statutory 12-month deadline for closing cases or making determinations. The department is currently training four new investigators who will join the permanent staff in March 1996. The addition of four more EOs will increase the department's capacity, enabling it to close 1,300 to 1,400 cases annually. If filings are higher than this level, there are other steps the department can and should take.

The department can achieve at least some improvement in production through better administrative and technical leadership and supervision, more training relating to case law and investigative methods, and an information system that better serves the needs of management and enforcement officers. The current case-tracking system does not readily allow department management to monitor the inventory of open cases, although it contains the basic data necessary for assessing case processing performance. The department did not present much data in its 1993 and 1994 performance reports, and was unable to provide the same kinds of information it produced in 1981 and 1983 in response to requests from our office. It is likely that improved effectiveness will be achieved over time by improvement in these areas through steady attention and effort.

# Strategies for Improving Performance

We conclude with a discussion of three additional issues that we emphasize because of their strategic importance and the fact that the Legislature as well as the department will be involved in decisions relating to each.

- **Legislators need to examine the department's budget and consider whether the performance problems we have observed should be addressed through a budget increase.**

- **Department managers as well as legislators need to decide how the department should set priorities in the face of limited resources.**

- **Legislators need to consider whether to locate the department in a different organization or modify its structure.**

**The department should close as many cases as are opened each year by shifting resources to case processing and by screening out weak cases more quickly and carefully.**

We think that the department should be able to handle the current rate of case filings within its current budget. The number of charges filed has not been unusually high in recent years. A temporary budget increase could be contemplated to solve specific problems such as clearing the present inventory of open cases, but temporary increases have failed to produce an enduring solution to case backlogs in the past. We would not like to see budget increases substitute for essential policy and administrative changes. In our view, the key to solving the problem is for the department to commit itself to the following rule:

- **The department should close at least as many cases as are opened each year.**

If the number of cases filed is below the capacity of the department to give each case full treatment, then it may not be necessary to prioritize cases. Even in this unlikely event, prioritization could still be advantageous. The department could invest in community outreach or education activities that might result in the filing of more or better charges. And the department could put resources into investigating those charges which have the greatest potential for affecting compliance with the Minnesota Human Rights Act.

The law currently gives the commissioner authority to "adopt policies to determine *which charges are processed* and the *order in which charges are processed.*"[8] However, the Legislature may want to emphasize, clarify, or change this authority. Whatever the department's budget, we recommend that:

- **The department should identify high-potential cases and dismiss or otherwise dispose of low-potential cases if resources do not allow full treatment of all cases.**

During the 1995 session, legislators raised a question about the organization of the Minnesota Department of Human Rights. Some asked if the department should be located within the Office of the Attorney General. This issue was also debated in the mid-1980s during another time when the Legislature was concerned about the department's performance. It is possible that the organization of DHR as a separate department of state government contributes to its operational problems.

We collected information on how human rights agencies are organized around the country and found:

- **DHR is organized differently than the civil rights enforcement agencies in most other states.**

Forty-seven of the 50 states have a unit within state government that investigates claims of illegal discrimination, and in at least 37 of those 47 states the agency is governed by a part-time human rights commission or board. This organizational

*8* Minn. Stat. §363.06 Subd. 4 (7). (Emphasis added.)

**In most states, the human rights agency is governed by a part-time human rights commission or board.**

arrangement carries advantages and disadvantages, but it does offer an opportunity to forge ties with community groups most interested in the department's programs, provide a forum for debating policy and priorities, and provide an organizational location to hear appeals that is independent of the staff who were involved in the initial determination. It may be that a board or commission could provide the Minnesota department with the ongoing oversight that it has not received from either the Legislature or executive branch because, as state departments go, it is a small agency with a small budget.

We also studied the role of state attorneys general in enforcing civil rights statutes and found that:

- **Only two states, Arizona and Vermont, rely on their attorney general to investigate discrimination charges.**

We also found that in at least 20 states, the civil rights enforcement agency is affiliated with a larger agency, sometimes for administrative purposes only.

In our view:

- **The Legislature should consider whether the Minnesota Department of Human Rights could benefit from the addition of a part-time governing board or affiliation with a larger state agency.**

A larger agency could provide DHR with administrative resources in areas like computer systems, budgeting, and personnel administration.

# Introduction

**During the 1995 session, legislators raised questions about the Department of Human Rights that could not be quickly settled.**

The Legislature established the Minnesota Department of Human Rights (DHR) in 1967 to enforce the state's laws against illegal discrimination. The Minnesota Human Rights Act (*Minn. Stat.* §363) protects citizens from discrimination in employment, housing, real property, public accommodations, public services, credit, education, and business. It prohibits discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, age, and familial status. The law grants the Department of Human Rights the authority to receive and investigate charges filed by individuals who feel they have been the victims of illegal discrimination.

The department is also responsible for enforcing the contract compliance provisions in the Human Rights Act. Any business that employs more than 20 full-time workers and wishes to bid for a state contract greater than $50,000 must comply with the state's affirmative action requirements. The contract compliance unit of DHR reviews affirmative action plans submitted by vendors and certifies those companies whose plans meet the specifications outlined in administrative rule.

Over the past 15 years, the department has been plagued with recurring performance and leadership problems. In 1981 we evaluated the performance of the Department of Human Rights and then conducted a follow-up study in 1983. [1] We found that the department was unable to process charges as quickly as they were filed and, as a result, had developed a sizable case backlog. Other studies were completed by the Management Analysis Division of the Department of Administration in 1985, and a special task force appointed by then Governor Rudy Perpich in 1987.[2]

During the 1995 legislative session, questions about the effectiveness and efficiency of the department resurfaced. The Senate Finance State Government Division heard testimony from the Department of Human Rights about its performance, but several former employees and members of the private bar disputed the commissioner's testimony. They raised questions about the competence

*1* Office of the Legislative Auditor, *Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), and *Evaluation of the Minnesota Department of Human Rights: A Follow-up Study* (St. Paul, August 1983).

*2* Department of Administration, *An Operational Analysis of the Department of Human Rights* (St. Paul, January 1984), and Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (St. Paul, February 1987).

of management, the accuracy of department data, and the ability of DHR to achieve the goals of the Human Rights Act. Finding these questions difficult to address without further investigation, the Division asked the Legislative Audit Commission (LAC) to authorize an evaluation of the department. In July 1995, the LAC officially authorized this study.

Our project focused on the following research questions:

- **Does the Department of Human Rights investigate and resolve discrimination charges in a timely fashion? Is there a backlog of open cases, and if so, how large is it?**
- **Is the department's internal allocation of resources appropriate for its workload and responsibilities?**
- **Is the department's contract compliance program fulfilling its statutory purposes?**
- **How do the department's organization, productivity, and practices compare with human rights agencies in other states?**
- **What strategies might the department and/or the Legislature adopt to improve the department's performance in order to better achieve the goals of the Human Rights Act?**

To answer these questions, we began by reviewing the historical development of both the department and the Human Rights Act. We looked at the department's biennial budget proposals dating back to 1979, consulted both internal and external department documents, and reviewed reports about the department prepared by other organizations. We also interviewed experts in the field of human rights and gathered information from more than 30 human rights agencies around the country, including the federal Equal Employment Opportunity Commission, the Minneapolis Department of Civil Rights, the St. Paul Department of Human Rights, and civil rights enforcement agencies in other states.

At the Minnesota Department of Human Rights, we interviewed members of the commissioner's staff, unit supervisors, and a number of department employees. In addition, we conducted a survey of non-managerial employees, asking them to rate their satisfaction with various aspects of the department and giving them opportunity to suggest ways to improve the department. Finally, we extracted data from the department's case-tracking information system in order to develop a statistical picture of DHR's performance over the last three fiscal years. [3] Our interviews and data collection activities were conducted during the summer and fall of 1995.

Our report is organized into four chapters. Chapter 1 reviews the history of the Human Rights Act and describes its provisions. It also provides an overview of

*3* Our statistical review is limited to the time period since July 1992 because the department's information system does not contain complete historical data for prior periods.

the department's organizational structure and describes changes in the depart - ment's expenditures and staffing over time. Chapter 2 discusses the performance of the contract compliance unit. In Chapter 3, we evaluate the effectiveness of the department's case processing program, focusing on the statistical data drawn from the case-tracking system. In our last chapter, we look at factors that affect the de - partment's performance in case processing, including management, employee training, and information systems. Our report ends with a description of strategies that the department and the Legislature could adopt to improve DHR's perform - ance.

# 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]

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*1* *Minn. Laws* (1955), Ch. 516.

*2* *Minn. Laws* (1961), Ch. 428.

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

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

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*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

| | Prohibited Bases of Discrimination | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Area | 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-occup ied 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 mem bership in a local human rights commission.

tive hearing if the department does not issue a determination within 180 days of fil - ing.

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 com - pliance. 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 investi - gated 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.

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*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 for 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**

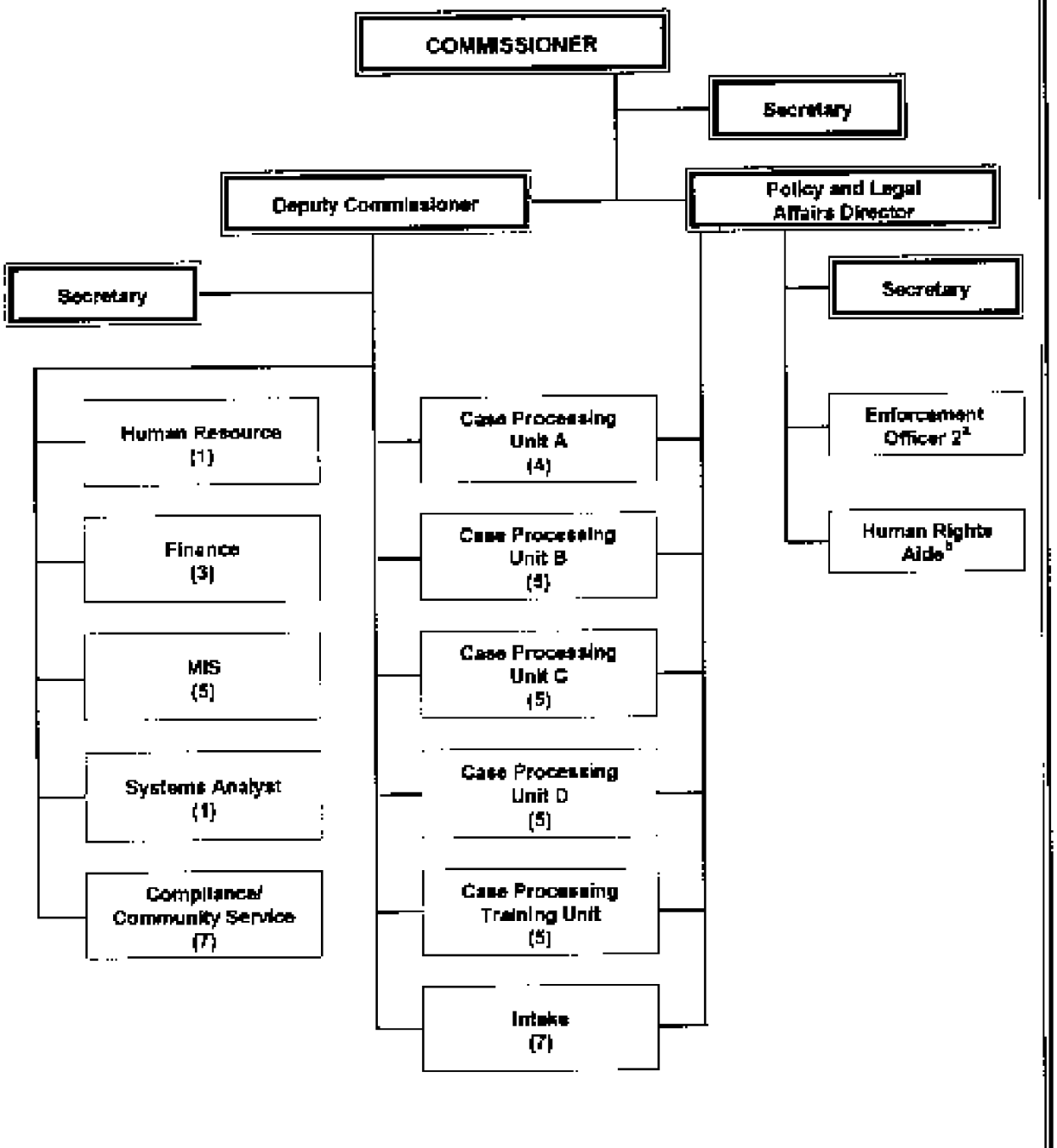
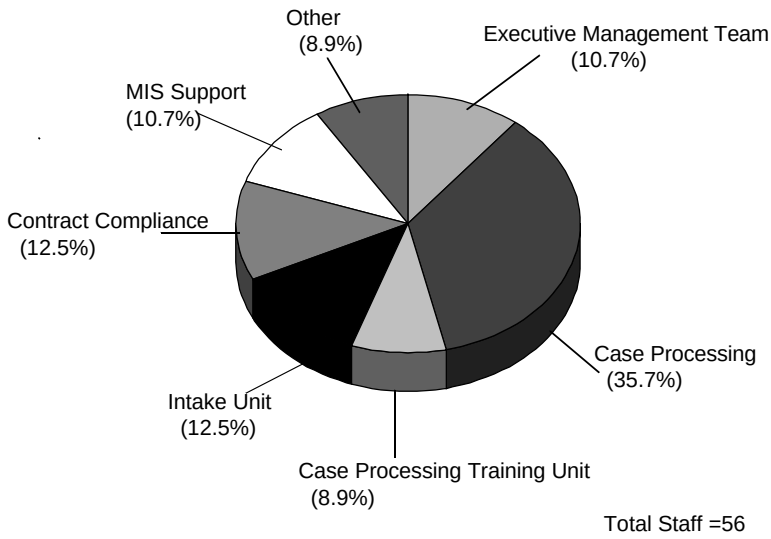


**Figure 1.4: Department Staff Allocation, November 1995**




# Budget and Finances

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

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:

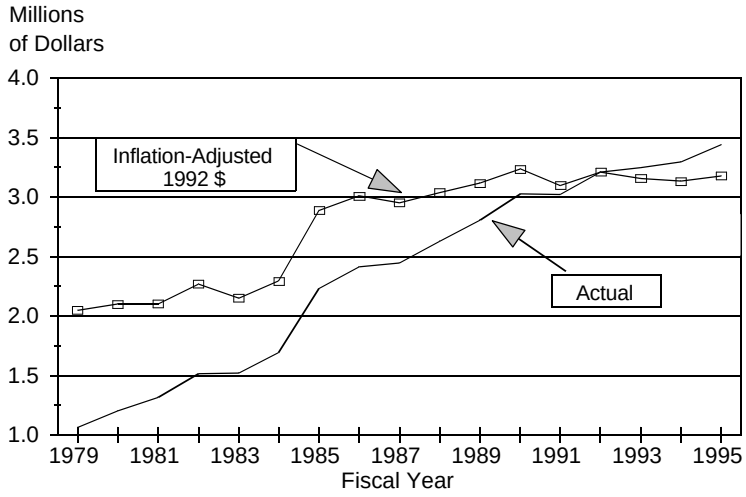
- **The department's level of expenditures has remained virtually constant since 1986.**

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: Personnel | Operating Expenditures | Litigation | Other (Human Rights Day) | MIS | Total Expenditures | Personnel as Percent of Total |
|---|---|---|---|---|---|---|---|
| 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.

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

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

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

| Federal Fiscal Year | Number of Cases | Payment Per Case | Payment[a] |
|---|---|---|---|
| 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.

[a]These 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

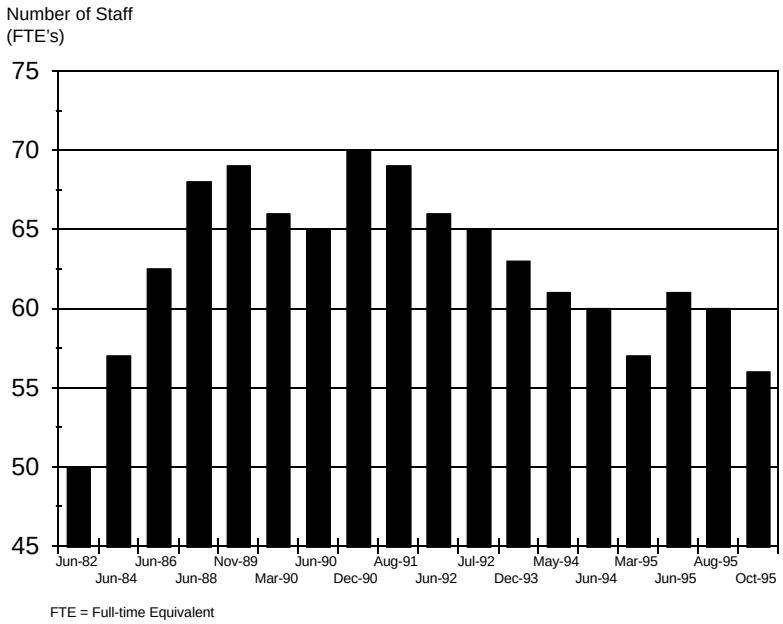
Although the department's personnel costs as a percentage of total expenditures have remained steady at about 78 percent over the past decade, we found that the size of the department's staff has fluctuated. Figure 1.6 shows that:

- **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.**

## Figure 1.6: Department of Human Rights Staff, 1982-95




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.**

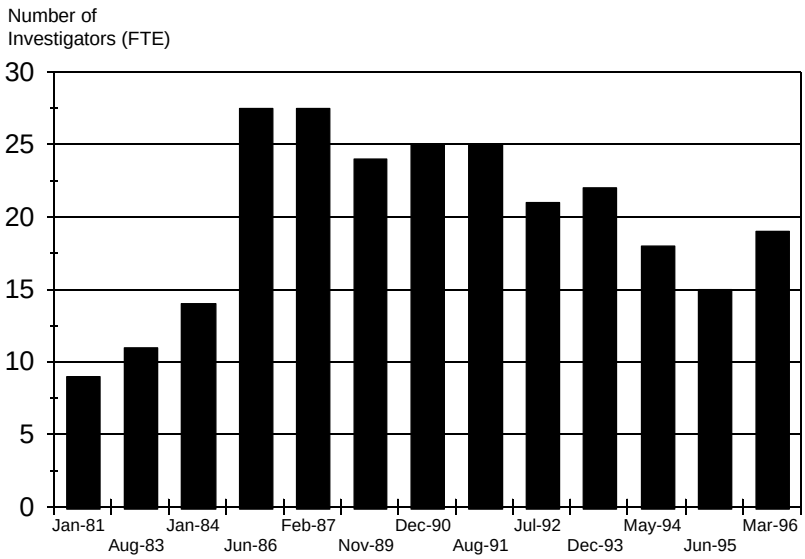
*17* The department purposely held case investigator positions vacant for a number of months in fiscal year 1995. The commissioner wanted to start an 18-month training program for a cohort of five new investigators. Negotiations between the department and the Minnesota Association of Professional Employees (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.

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.

**The number of case investigators has declined since 1986.**

## 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:

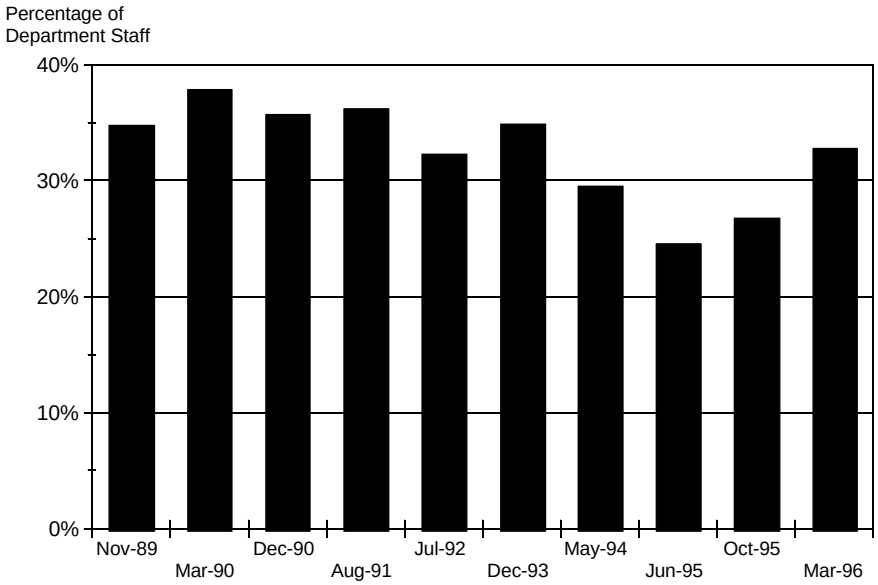
- **Staff reductions affected case processing units slightly more than other departmental units.**

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.

## Figure 1.8: Investigators as Percent of All Staff




Note: Trainee positions are not included. The March 1996 figure is our projection based on t he department's plan to hire its four trainees as permanent staff.

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 proc - ess a steady influx of new cases. In Chapter 4 we discuss some of the implica - tions of the department's shifts in resource allocation and recommend various strategies for increasing the case processing capabilities of the department.

# Contract Compliance

**CHAPTER 2**

**Businesses that want to bid on state contracts must hold a certificate of compliance from the Department of Human Rights.**

Under *Minn. Stat.* §363.073, any business with more than 20 full-time employees that wishes to bid for a state contract in excess of $50,000 must hold a valid certificate of compliance from the Department of Human Rights. To apply for a certificate, a business needs to submit an affirmative action plan for the employment of minority persons, women, and disabled persons that meets department standards. The general purpose of the contract compliance program is "to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner." [1]

An affirmative action program is defined in administrative rule as:

> a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis.[2]

In our study of the department's performance in the area of contract compliance, we asked:

- **How many certificates of compliance does the department issue each year?**
- **Is the department fulfilling its statutory responsibility to issue certificates in a timely fashion?**
- **Is the department furnishing state agencies with bimonthly lists showing the certification status of vendors who have submitted affirmative action plans, as the law requires?**
- **Are state contracts over $50,000 awarded only to certified businesses?**
- **How does the department monitor businesses' efforts to implement their affirmative action plans?**

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*1* *Minn. Rules* 5000.3410, Subp. 1.

*2* *Minn. Rules* 5000.3400, Subp. 3.

- **How is the department using its authority to suspend and revoke certificates of compliance and to terminate or abridge state contracts?**

**We examined the effectiveness of the contract compliance program.**

To answer these questions, we reviewed the statutory provisions and administrative rules that pertain to contract compliance. We interviewed department personnel, including the compliance unit supervisor, and analyzed compliance unit data on the numbers of affirmative action plans reviewed and certificates of compliance awarded. We also spoke with individuals responsible for contract administration in the Department of Administration and the Department of Transportation (MnDOT). To determine whether state contracts in excess of $50,000 were granted only to certified vendors, we tested four samples of contracts awarded in fiscal year 1995.

Overall, we found that the compliance unit has satisfactorily met its obligation to issue certificates within the time limits set in statute. The department has also released regular lists of certified businesses to state agencies, and state contracts have largely been awarded only to certified businesses or vendors that are exempt from certification requirements. However, we learned that the compliance unit has done little to monitor the implementation of affirmative action plans. Recent reductions in the unit's resources have affected its ability to ensure that businesses are not only writing affirmative action plans but also putting them into practice.

# REGULATORY FRAMEWORK

When the Department of Human Rights was first created in 1967, its list of statutory duties did not include contract compliance. Two years later, however, the Legislature passed a law stating: "No department or agency of the state shall award any contract to any firm or person unless such firm or person has received a certificate of compliance or has pending an application therefor." [3] The law directed the Commissioner of Human Rights to promulgate rules and regulations for the issuance of certificates of compliance to bidders on public contracts, and the department adopted administrative rules in 1970. According to the rules, the department automatically issued a certificate to a vendor who had not previously worked under a state contract. For vendors with a history of doing business with the state, the department checked to ensure that no discrimination charges had been filed against the vendor during the six months preceding application for certification.

**The department must review the affirmative action plans of bidders on state contracts.**

In 1981, lawmakers substantially modified the contract compliance provisions of the Human Rights Act. New statutory language directed the department to review the affirmative action plans of bidders on state contracts, increased the minimum contract amount to which the certification provisions applied from $2,000 to $50,000, and exempted businesses with fewer than 20 full-time employees and businesses outside of Minnesota from the certification requirement. In 1985, the department adopted the current administrative rules that govern affirmative action plan review and the issuance of certificates. The rules also describe methods the

3 *Minn. Laws* (1969), Ch. 975, Sec. 19.

department should use to monitor how well businesses are implementing their affirmative action plans.

During the 1988 legislative session, at the initiative of then-commissioner Stephen Cooper, the Human Rights Act was amended again, this time to give the department the power to void contracts awarded to non-certified vendors. Finally, in 1989, the Legislature expanded the law to apply to out-of-state businesses with more than 20 employees. Non-Minnesota firms now constitute about one-fifth of the contract compliance unit's workload.

**Both Minnesota and non-Minnesota businesses must meet the contract compliance requirement.**

# ORGANIZATION AND STAFFING

The contract compliance unit presently employs seven full-time personnel: one unit supervisor, three enforcement officers (EOs), and three human rights aides. The three EOs review affirmative action plans and either identify plan deficiencies or, if plans meet department specifications, recommend certification. One of the enforcement officers acts as a lead worker, providing technical assistance and advice to the other officers, in addition to reviewing the more complex affirmative action plans the department receives. The EOs are also responsible for providing technical assistance to businesses that are preparing affirmative action plans, and monitoring efforts to implement those plans.

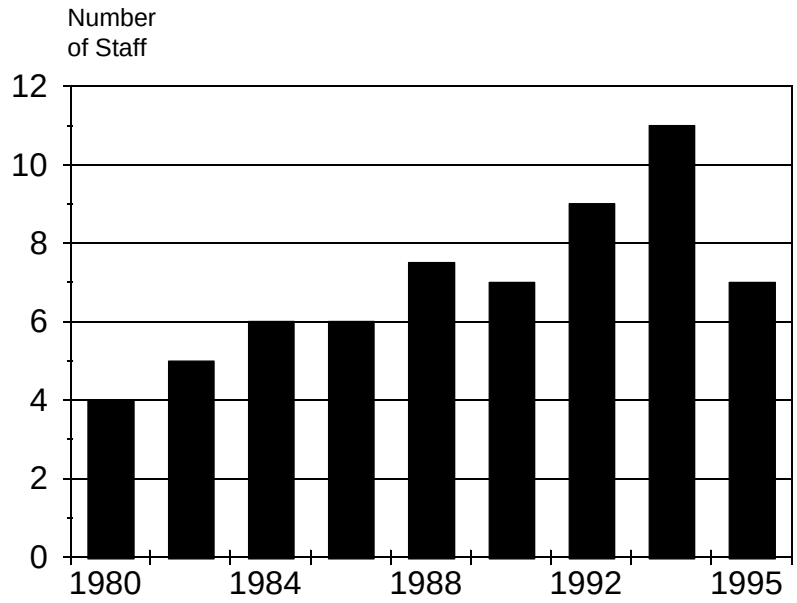
The human rights aides are paraprofessionals who assist the enforcement officers by responding to phone calls and walk-ins, handling incoming and outgoing mail, and processing applications from vendors who have already been certified by another jurisdiction. In accordance with administrative rule, DHR grants a certificate to any business whose affirmative action plan has already been reviewed and approved by a local human rights commission or the Office of Federal Contract Compliance Programs.[4] The contract compliance supervisor manages the work of the unit, suggests changes in rules or policies, and reviews all of the EOs' recommendations before they are finalized.

The contract compliance unit has experienced significant changes in its staffing pattern during the past year. As Figure 2.1 illustrates, the unit steadily increased in size, from four positions in 1980 to eleven by 1994. In May 1994, the unit employed one supervisor, six enforcement officers, and four aides. Since that time, the unit has lost more than one-third of its staff. The department transferred two compliance enforcement officers and one human rights aide to case processing. The unit lost an additional enforcement officer through attrition. As a result of these changes, the contract compliance unit has fewer enforcement officers today than at any time over the last five years.

4 *Minn. Rules* 5000.3560, Subp. 1.

**Compliance unit staff have been cut back recently.**

**Figure 2.1: Compliance Unit Staff, 1980-95**




Source: Department of Human Rights.

# AFFIRMATIVE ACTION PLAN REVIEW PROCESS

## Contents of an Affirmative Action Plan

The revised rules adopted by the department in 1985 provide detailed specifications for affirmative action plans and the plan review process. [5] Figure 2.2 lists the eleven elements that must be included in an affirmative action plan in order for it to receive the department's approval. The rules require that a contractor clearly state in writing an affirmative action policy, meaning "a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements, and to . . . use action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals." [6] A contractor must post a notice describing the affirmative action policy in a conspicuous place accessible to all employees and job applicants.

*Minn. Rules* 5000.3430 mandates that an executive of the contractor be appointed to direct the company's equal opportunity program. The rules outline the responsibilities for the director, including such duties as keeping management informed of the latest developments in the equal opportunity arena, serving as liaison between the contractor and community action groups concerned with the employment of

*5* *Minn. Rules* 5000.3200 - 5000.3600.

*6* *Minn. Rules* 5000.3400, Subp. 2.

minorities and women, and conducting periodic audits to ensure that the business is in compliance with affirmative action rules.

**Affirmative action plans must analyze the company's workforce, report on worker availability, and set goals for correcting deficiencies.**

At the heart of the affirmative action plan are three mandatory analyses. An enforcement officer who reviews a submitted plan invests most of his/her time checking the workforce, availability, and utilization analyses that the plan must present. The workforce analysis must include a list of the job titles within each department, and for each title, the wage rate or salary range and the total number of employees. The analysis must also give the total number of female and male employees for each job title, and the total number of female and male employees identified in each of the following groups: Caucasian, Black, Hispanic, American Indian or Alaskan native, and Asian/Pacific Islander.

## Figure 2.2: Eleven Required Elements in an Affirmative Action Plan

- Statement of the business' affirmative action policy.
- Assignment of affirmative action/equal employment opportunity responsibilities to an executive or top management official.
- Procedures for disseminating the policy internally and externally.
- Workforce analysis.
- Availability analysis.
- Utilization/underutilization analysis.
- Goals, objectives, and timetables.
- Analysis of deficiencies or problem areas.
- Measures to facilitate corrective action.
- Internal audit and reporting system.
- Affirmative action plan for disabled.

Source: *Minn. Rules* 5000.3430-5000.3500.

The second analysis focuses on the availability of qualified women and minorities for the positions within the contractor's business. For non-construction contractors, there are three alternative methods for determining availability. A contractor that employs fewer than 50 people may develop an overall availability percentage using labor force and population statistics from the Department of Economic Security (DES). The second method also relies on DES statistics but calculates availability percentages by job groups. The third method, called the eight factor analysis, weighs eight different situations in which an employee might enter a job group. It too results in a chart of availability percentages for women and minorities.

After completing an availability analysis, a contractor must analyze utilization, and then identify any numerical disparities between the availability of qualified women and minorities, and their representation in the contractor's workforce. For each deficient area, the contractor is to set goals, and outline timetables and specific programs to achieve those goals. In the case of contractors on state construction projects, statute authorizes the commissioner to set the goals and timetables for the participation of women and minorities. The current construction contractor goals, established in September 1993, are 9.4 percent for women and between 1.4

percent and 19.8 percent for minority workers, depending on the region and skill level.[7] The department's manual, *How To Develop an Affirmative Action Plan*, explains, "Goals and timetables are realistic, numerical objectives for minorities and women [that] an employer makes a good faith effort to achieve. Goals are not quotas, but reasonably attainable targets. . . . Timetables prescribe when these goals should be met."[8] After goals and timetables, the affirmative action plan must present a summary analysis of deficiencies or problem areas.

The next section of the plan must describe measures that the contractor will take to implement the affirmative action program. Measures might include positive steps to recruit new minority and women employees or additional training opportunities for current employees. The plan must also describe the contractor's internal audit and reporting system for collecting data on the employment of minorities and women. The final section submitted to the department should be the contractor's affirmative action plan for individuals with disabilities.

# Department Review of Affirmative Action Plans

**Compliance unit staff review affirmative action plans to see if each required element is present.**

The contract compliance enforcement officers at the Department of Human Rights provide free technical assistance to businesses that wish to submit affirmative action plans. The department's manual on developing a plan, produced in May 1993, gives detailed instructions on the format and contents of a plan. Department personnel estimate that less than ten percent of businesses hire consultants to prepare their affirmative action plans; most vendors use in-house personnel to assemble the required documents.

Once the Department of Human Rights receives a new affirmative action plan from a vendor, the plan is entered into the contract compliance unit's new database system, and the computer assigns the plan to one of the enforcement officers. If the plan has already been approved by the Minneapolis Civil Rights Department, the St. Paul Department of Human Rights, or the Office of Federal Contract Compliance Programs, a human rights aide will process the plan for certification, in accordance with Minnesota Rules.[9] Otherwise, the enforcement officer, aided by a computerized checklist, will thoroughly review the plan to ensure that it includes each required element, and that the contractor has properly completed the workforce, availability, and utilization analyses.

After reviewing the plan, the EO may choose one of three alternative actions. If the plan has major deficiencies, the EO will send a letter describing the problems in detail and requesting that the contractor contact the department for further clarification and assistance. Department personnel told us that, in general, first-time applicants have major deficiencies in their plans that need to be corrected before

*7* The commissioner assembled a task force to develop these goals. The task force included representatives of the construction industry, minority communities, and women. Other participants included experts in demography and human rights professionals. Prior to the task force's work, the construction hiring goals were based on numbers from the 1970 census.

*8* Minnesota Department of Human Rights, *How to Develop An Affirmative Action Plan*, (St. Paul, May 1993), 11.

*9* *Minn. Rules* 5000.3560, Subp. 1.

the plans are approved. If the plan has some minor deficiencies, the EO will recommend certification to the supervisor but note the plan's deficiencies and request that the applicant make appropriate revisions. If a plan has no deficiencies at all, the EO will approve the plan and forward it to the unit supervisor for certification.

We examined data from the department's contract compliance unit and found that:

- **The number of certificates issued annually has increased since the commencement of affirmative action plan reviews in 1985.**

**The number of certificates issued each year has increased from 295 in 1986 to 1,310 in 1995.**

In 1985, the department began its current system of reviewing affirmative action plans. Over the past ten years, the number of certificates issued by DHR has increased from 295 in 1986 to 864 certificates in 1991 to 1,310 in 1995. In fiscal year 1995, more than 1,700 businesses applied to the department for a certificate of compliance. Of those businesses, 516, or 30 percent, were first-time applicants. The department issued a total of 1,310 certificates during the year, with each certificate valid for a two-year period. As of July 1, 1995, there were 2,431 businesses certified to bid for contracts to do business with the state of Minnesota.

# Timeliness of Plan Review

*Minn. Rules* 5000.3560 states that a certificate of compliance shall be issued within 30 days after the department has received an affirmative action plan that meets specifications. A business or firm whose submission does not meet the standards is to be notified by the department of any deficiencies within 15 days. The notification should specifically state how the submission fails to meet the requirements. A business may revise its plan accordingly, and resubmit it to the department. DHR then has 15 days to consider the revised submission and issue a certificate of compliance, if the revisions are adequate. In some cases, DHR will award a certificate to a business on the condition that it fix minor deficiencies in its plan.

We calculated the length of time it took for the department to respond to affirmative action plans submitted by vendors between November 1994 and June 1995.[10] In general, we found that:

- **The department issued certificates of compliance in a timely manner.**

Table 2.1 shows that the average time elapsed between receipt of a plan and department issuance of a certification or deficiency letter was between three and nine days, depending on the type of plan received and the type of letter sent. Looking at the percentage of cases in which the department responded to plans within the specified deadlines, we found that the department sent out in a timely manner 96 percent of full certifications, and 99 percent of the certifications condi-

*10* The contract compliance unit began operating its new database system in November 1994. Prior to that time, data on the time elapsed between plan receipt and response were not stored electronically.

## Table 2.1: Department of Human Rights Contract Compliance Unit Timeliness of Certification or Deficiency Notices, November 1994-June 1995

| Type of Plan Received | Type of Letter Sent | Number of Letters Sent | Average Elapsed Time (Days) | Statutory Deadline (Days) | Sent Past Due | |
|---|---|---|---|---|---|---|
| | | | | | Number | Percent |
| New Plan | Deficiency | 105 | 8 | 15 | 10 | 10% |
| | Certification | 100 | 5 | 30 | 2 | 2 |
| | Certification w/Deficiency | 92 | 3 | 30 | 0 | 0 |
| Renewal | Deficiency | 300 | 9 | 15 | 44 | 15 |
| | Certification | 183 | 7 | 30 | 2 | 1 |
| | Certification w/Deficiency | 56 | 6 | 30 | 0 | 0 |
| Revision | Deficiency | 223 | 9 | 15 | 32 | 14 |
| | Certification | 262 | 5 | 15 | 16 | 6 |
| | Certification w/Deficiency | 33 | 5 | 15 | 1 | 3 |
| All Plans: | Deficiency | 628 | | | 86 | 14 |
| | Certification | 545 | | | 20 | 4 |
| | Certification w/Deficiency | 181 | | | 1 | 1 |
| Total | | 1,354 | | | 107 | 8% |

Source: Department of Human Rights, contract compliance database.

tional on correction of minor deficiencies. For deficiency letters, the department sent 86 percent of notices within the required 15 days.

**The department issues certificates in a timely fashion.**

Overall, the department does not have a problem issuing timely certificates of compliance. Besides reviewing the department's data, we also spoke with contract administration personnel in two state agencies. All of the people we interviewed agreed that the department has issued certificates in a timely manner. In addition, each contract administrator mentioned that DHR is very willing to expedite an affirmative action plan review if a vendor or contracting state agency alerts the compliance unit to an approaching bid deadline.

# STATE CONTRACT AWARDS

Minnesota law forbids the award of state contracts to vendors who are not either certified by the Department of Human Rights or exempt from certification requirements.[11] After reviewing the affirmative action plans submitted by vendors, and certifying those with approved plans, the department is supposed to prepare a list of vendors who are certified and circulate the list to all state agencies. The law presumes that agencies will rely on the lists in selecting an appropriate vendor to be awarded a state contract.

*11 Minn. Stat.* §363.073, Subd. 1.

# Department Lists of Certified Vendors

*Minn. Rules* 5000.3600, Subp. 6 states that, "Every 60 days the Department [of Human Rights] shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been deemed ineligible." We checked the lists the department issued recently and concluded that:

- **The department has regularly issued a list of certified contractors for state agencies, as required by state rules.**

**The department's computer system makes it easy to produce a list of certified vendors for state agencies.**

The department provided us with copies of lists, dated August 1, 1994; August 29, 1994; October 31, 1994; January 31, 1995; March 8, 1995; May 1, 1995; and August 1, 1995. Although in some cases more than 60 days elapsed between lists, the department generally complied with this administrative requirement during the past year. The compliance unit's database system, which went on-line during fiscal year 1995, makes it very easy for the department to generate a list. In previous years, the department had to create a list from handwritten records. Now, however, the unit supervisor merely enters a query into the computer, which then produces an up-to-date list of the certification status of all vendors who have submitted affirmative action plans to the department.

The new Minnesota Accounting and Procurement System (MAPS), which became operational in July 1995, has a feature designed to eliminate the need for a printed list. With MAPS the department will update its list of contractors and their certification status on the computer system. For state agencies who will use the system to handle the contracting process, the computer will check the status of each potential contractor against DHR's electronic list. MAPS will refuse to accept a contract for a vendor who is not properly certified.

# State Agency Compliance

In order to learn whether state contracts over $50,000 are awarded only to certified vendors or businesses that are exempt from the certification requirement, we examined four types of contracts:

(1) commodities contracts awarded by the Department of Administration (DOA);

(2) professional/technical contracts administered by DOA;

(3) construction contracts administered by DOA; and

(4) construction contracts awarded by MnDOT.

For each type, we tested a 20 percent sample of the contracts awarded in fiscal year 1995. Table 2.2 displays the results of our test, which demonstrated that:

## Table 2.2: Certification Status of Vendors Awarded State Contracts, Fiscal Year 1995

| Type of Contract | Number of Contracts > $50,000 | Number of Contracts Sampled | Sampled Contracts Awarded to: Certified Vendors Number | Certified Vendors Percent | Exempt Vendors Number | Exempt Vendors Percent | Uncertified Vendors Number | Uncertified Vendors Percent |
|---|---|---|---|---|---|---|---|---|
| Commodities | 176 | 34 | 21 | 61.8% | 8 | 23.5% | 5 | 14.7% |
| Professional/Technical | 342 | 68 | 43 | 63.2 | 24 | 35.3 | 1 | 1.5 |
| Construction (Admin.) | 192 | 38 | 17 | 44.7 | 19 | 50.0 | 2 | 5.3 |
| Construction (MnDOT) | 296 | 59 | 53 | 89.8 | 5 | 8.5 | 1 | 1.7 |
| Total | 1,006 | 199 | 134 | 67.3% | 56 | 28.1% | 9 | 4.5% |

Source: Certification status information: Department of Human Rights. Contract data for commodities, professional/technical, and Department of Administration construction contracts: Department of Administration. Contract data for MnDOT construction contracts: Minnesota Department of Transportation.

- **In fiscal year 1995, 5 percent of the state contracts over $50,000 were awarded to uncertified vendors.**

**Our examination of four samples of state contracts found only a few cases where a non-certified vendor was awarded a contract.**

*Commodities contracts* - In fiscal year 1995, DOA awarded a total of 176 commodities contracts in amounts exceeding $50,000. We tested 34 contracts and found that 21 of the contracting vendors were certified, six did not need a certificate because they employed fewer than 20 full-time people, and two were exempt for other reasons.[12] Five vendors (15 percent) did not hold valid certificates as of the contract date.

*Professional/technical contracts* - According to DOA records, 342 professional/technical contracts awarded in FY 1995 exceeded $50,000. Of the 68 contracts we tested, 43 vendors held the required certificate, 16 were exempt from the requirement because they had fewer than 20 full-time employees, and 8 were exempt as government agencies. We found that only one of the professional/technical contracts we sampled was awarded to an uncertified vendor (2 percent).

*DOA construction contracts* - DOA administered 281 construction contracts in fiscal year 1995. We tested 38 of the 192 contracts over $50,000 and learned that 17 of the vendors had valid certificates of compliance, while 19 had too few employees to need a certificate. Two vendors that were awarded contracts lacked a certificate of compliance (5 percent).

*MnDOT construction contracts* - MnDOT awarded 335 construction contracts in FY 1995, of which 296 exceeded the $50,000 minimum contract amount. Of the 59 contracts we sampled, we found that 53 were awarded to certified vendors. An additional five contracts were awarded to vendors who were not required to have certificates because of their small work force. One contract was awarded to a vendor that did not have a valid certificate of compliance from DHR as of the bid

*12* One successful bidder was exempt as a foreign company; the other contract was an interstate agreement to which the certification requirement does not apply.

date, although the vendor was issued a certificate by the department before the contract was officially awarded.

**There is some dispute over how to interpret provisions of the Human Rights Act governing certificates of compliance.**

DHR and MnDOT have had an ongoing dispute over the interpretation of the Human Rights Act provisions regarding certificates of compliance. *Minn. Stat.* §363.073, Subd. 1 states:

> No department or agency of the state shall accept any bid or proposal for a contract or agreement or execute any contract or agreement for goods or services in excess of $50,000 with any business having more than 20 full-time employees on a single working day during the previous 12 months unless that firm or business has a certificate of compliance issued by the commissioner of human rights, which signifies that the business has an approved affirmative action plan.

DHR interprets the statute to mean that a state agency shall not receive, open, or consider a bid that is submitted by an uncertified business. MnDOT, on the other hand, defines the acceptance of a bid as the awarding of a contract to a bidder. In other words, MnDOT will identify the low bidder first, and then determine whether or not the bidder has a certificate. According to DHR personnel, there have been occasions where MnDOT has identified the low bidder, and then the vendor has come to Human Rights for a certificate. MnDOT's commissioner has stated that, "Our present procedures ensure that no award will be made to any contractor who does not have a current certificate of compliance or exemption." [13] However, DHR thinks that the legislative intent behind *Minn. Stat.* §363.073 was to ensure that all bidders have a certificate prior to the bid date.

We think that all state agencies should adopt a uniform interpretation of this statute. Varying interpretations across state agencies create confusion for state contract administrators and vendors wishing to do business with the state. We recommend:

- **The Legislature should clarify the language in the Human Rights Act to specify whether all bidders should be certified or only vendors who are awarded contracts with the state.**

Prior to our data analysis, we asked the department to what extent state agencies were allowing uncertified businesses to win state contracts. The department was unable to provide us with accurate statistics on the percentage of state agencies that accept bids from uncertified vendors. Although *Minn. Rules* 5000.3600, Subp. 5, requires that contracting state agencies submit to DHR a list of prospective bidders prior to the opening of a bid to ensure compliance with the Human Rights Act, we found that the department does not try to identify bidders who are out of compliance. In fact, we discovered that:

- **The department has not routinely checked lists of state contractors to ensure that all successful bidders are certified.**

*13* Letter from James Denn, Commissioner of the Minnesota Department of Transportation, to David Beaulieu, Commissioner of the Minnesota Department of Human Rights, November 16, 1992

Sole responsibility for checking the certification status of bidders rests with contracting state agencies, and the Department of Human Rights does not audit agencies' decisions. Our data show that the large majority of state contracts are appropriately awarded to certified businesses. However, we think that it might be helpful for the department to spot-check occasionally the list of contractors to ensure that agencies are following the law and awarding contracts only to certified businesses, or vendors who are exempt from certification requirements.

# MONITORING OF AFFIRMATIVE ACTION PLAN IMPLEMENTATION

## Suspensions and Revocations

**The department revoked 46 certificates in the first half of 1995.**

The Minnesota Human Rights Act grants the commissioner the authority to suspend or revoke a certificate of compliance if the holder of the certificate has not made a good faith effort to implement its affirmative action plan. [14] The department is required to provide technical assistance to vendors whose certificates are suspended or revoked, so that the vendor can be recertified within 90 days. In the six-month period from January through June of 1995, the department suspended or revoked 46 certificates; 13 of those contractors have been reinstated.

The administrative rules identify extensive criteria for determining whether a vendor has made a good faith effort. [15] For example, a contractor's good faith efforts are evaluated based on whether the contractor takes prompt corrective action when it becomes aware of underutilization of women or minorities in any job group, or when it recognizes that a selection process eliminates minorities or women at a higher rate than nonminority or male employees. We asked the department to describe the circumstances in which it would suspend or revoke a certificate of compliance and found that:

- **Except in a few cases, the department has used its authority to suspend and subsequently revoke a certificate only when a vendor refused to submit required compliance reports.**

According to administrative rule, construction contractors must submit monthly utilization reports that show the total hours of employment on the project, the hours of employment of women and minorities, total hours of training provided, and the number of training hours provided to women and minorities. Both construction and nonconstruction contracts are required to submit to the department semiannual compliance reports that show specified employment data by job group, race, sex, and disability. [16]

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*14 Minn. Stat.* §363.073, Subd. 2.

*15 Minn. Rules* 5000.3570, Subp. 1 - 4.

*16 Minn. Rules* 5000.3580.

Citing scarcity of resources, compliance unit staff told us that the department is unable to review the contents of each compliance report. More than 2,400 certified businesses submit compliance reports every six months, and only three professional staff are available to review the reports. According to the compliance unit supervisor, the department has had to focus its attention on issuing certificates and reviewing affirmative action plans in order to keep up with the state contracting process, which depends on timely department action. Therefore, the compliance staff merely records whether or not a contractor has submitted a report and begins procedures to suspend a contractor only if the required report is not received. In practice, the department does not evaluate whether a contractor is taking prompt action to correct deficiencies in its employment practices.

**The compliance unit has been unable to review the contents of semiannual compliance reports submitted by about 2,400 certified businesses.**

Likewise:

- **The department's contract compliance unit has not had information from the case processing unit to use in measuring good faith effort.**

*Minn. Rules* 5000.3570, Subp. 4., states that the results of an investigation of a charge of discrimination are one legitimate basis for analysis of a contractor's good faith efforts. However, we have learned that the case processing unit has not provided information that would enable contract compliance officers to identify businesses that have illegally discriminated against employees.

# On-Site Reviews

One way for the department to analyze whether a business is making a good faith effort to implement its affirmative action plan is to perform an on-site review. During an on-site review, a team of contract compliance officers and aides visits a business for several days to evaluate thoroughly every aspect of the business that relates to the affirmative action plan. Department personnel tour facilities, review policies, interview employees and supervisors, and analyze recruitment, hiring, training, and promotion practices and statistics. Contract compliance officers use several criteria to "red flag" a business that might be a candidate for an on-site visit. For example, continued underutilization of women and minorities, a dearth of women or minorities in upper management, or a large number of employees might cause a business to be flagged for on-site review.

In the past four years, DHR has conducted an average of 19 on-site visits annually, as shown in Table 2.3.[17] The compliance unit supervisor told us that, ideally, the unit would be able to conduct about 50 on-site reviews a year. Although this would only be two to three percent of all the businesses certified, the unit's strategic selection of businesses for review would enable the practice to have the maximum impact. Also, the mere threat of an on-site visit could have a strong deterrent effect. In asking the department about plans for on-site reviews this year, we learned that:

*17* As a result of a memorandum of understanding between DHR and MnDOT, the Department of Transportation does some on-site monitoring of state construction projects.

## Table 2.3: Contract Compliance Unit On-Site Reviews

| Fiscal Year | Number of On-Site Reviews |
|---|---|
| 1992 | 8 |
| 1993 | 25 |
| 1994 | 26 |
| 1995 | 16 |
| Average | 19 |

Note: The department is not planning to conduct any on-site reviews of state contractors in FY 1996 due to budget constraints.

Source: Department of Human Rights.

**The department does not plan to conduct on-site reviews in fiscal year 1996 due to staff reductions.**

- **Without additional resources, the department is not planning to conduct any on-site reviews of businesses in fiscal year 1996.**

Due to cutbacks in compliance unit staff, the department will not be conducting any on-site reviews this coming year. In April 1995 the compliance unit lost two enforcement officer positions. Unless those positions are restored, the unit will not go on-site this year to monitor the implementation of affirmative action plans.

# Voiding Contracts

In 1988 the Minnesota Legislature amended the Human Rights Act to give the department the power to void contracts awarded to uncertified vendors. According to the unit supervisor:

- **The department has never exercised its authority to void a contract.**

Contract administrators with whom we spoke were also unable to recall any examples of the department terminating or abridging a contract. The unit supervisor admitted that in order to even discover a situation in which a contract could be voided, the department would have to periodically check the list of state contractors. As we mentioned earlier, the department does not conduct a routine review of the list of contractors.

The unit supervisor gave another reason for the department's inaction--there are no rules in place for voiding a contract. The termination of a contract without due process would probably be protested by the affected vendor and overturned in court. We think that:

- **The department should adopt administrative rules for the termination of a contract held by an uncertified vendor.**

Without such rules, the department's ability to enforce the contract compliance provisions of the Human Rights Act may be diminished.

# CONCLUSIONS AND RECOMMENDATIONS

Language in the Human Rights Act says that, in performing its duties, the department should give priority to several responsibilities, including certificates of compliance for public contracts.[18] In 1981 and 1983 when we conducted our earlier evaluations of the Department of Human Rights, we found several major problems with the contract compliance function. Since that time, the department has done much to improve its effectiveness in the contract compliance area. Based on the data we collected, we conclude that DHR is adequately performing its duties to review affirmative action plans and issue certificates, but it has devoted few resources to monitoring the implementation of affirmative action plans.

**We think the department should conduct some on-site reviews in order to give its compliance program greater credibility.**

We think it is important for the department to measure whether businesses are making good faith efforts to implement their plans. The department does not need to be able to monitor every vendor that is certified, but it should be able to identify egregious violations of the Human Rights Act's contract compliance provisions and take appropriate action. Also, the department should conduct some on-site reviews each year to deter businesses from ignoring those employment practices that discriminate against women, minorities, and disabled persons.

Under the current scheme, the department is unable to monitor vendors' implementation of affirmative action plans, because its resources are consumed in the process of reviewing plan submissions and issuing certificates of compliance. We recommend:

- **The Legislature and the department should strengthen the department's ability to monitor how well vendors are implementing their affirmative action plans.**

The following list of options outlines some of the actions that the Legislature and the department could take to improve monitoring of good faith effort:

1. Decrease the number of plans submitted to the department for review by:

   a. Increasing the contract amount threshold to a higher dollar amount;

   b. Increasing the minimum number of employees that a business must have before being subject to certification requirements;

   c. Extending the period of time for which a certificate is valid; and/or

   d. Exempting certain groups of businesses from the requirement, for example, businesses outside of the state of Minnesota, or businesses with certain types of contracts.

2. Simplify the affirmative action plan requirements and/or the plan review process.

*18 Minn. Stat.* §363.05, Subd. 1.

3. Increase the resources of the department's contract compliance unit by:

   a. Shifting resources from other department units to contract compliance, and/or

   b. Increasing the department's appropriation.

**We recommend increasing the contract size threshold and taking certain other steps to reduce the number of plans the department must review.**

As stated in administrative rule, the purpose of the affirmative action provisions in the Human Rights Act is to increase employment opportunities for women, minorities, and disabled persons.[19] Given this goal, we recommend:

- **The Legislature should consider increasing the contract size and employment thresholds.**

These two amendments would enable the department to focus its resources on the larger contracts in state government, and the businesses who employ more people.

The Legislature adopted $50,000 as the minimum contract amount in 1981, and the threshold has not subsequently been increased. The figure could be raised to $87,000 just to adjust for inflation.[20] We think the Legislature could raise the threshold to $100,000 to anticipate future increases in prices and further narrow the focus of the department to larger contracts. Based on statistics from the sample of contracts we tested, raising the threshold to $100,000 would reduce the number of contracts to which the certification requirements apply by about 30 percent.[21]

There are also reasons to increase the minimum number of employees that businesses must have before they are subject to the affirmative action plan provisions of the Human Rights Act. Compliance unit staff told us that the statistical analyses required in the state rules sometimes make little sense for businesses with only 20 employees. For example, based on workforce and availability statistics, a small vendor might determine that it should set a goal of hiring a fraction of a person. We think the Legislature and the department could consider raising the employee minimum from 20 to 40 or 50.

Finally, compliance unit staff favor the exemption of businesses outside the state of Minnesota. The department has no resources to monitor out-of-state businesses' hiring practices, so DHR's contract compliance activities for these firms are limited to the review of written affirmative action plans. In many cases, the department also lacks availability statistics for regions outside of Minnesota, which makes it difficult to verify plan figures. Out-of-state vendors submit about one-fifth of the plans received by the department.

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*19 Minn. Rules* 5000.3410, Subp. 1.

*20* Using the Gross Domestic Product price deflator for state and local government purchases, the multiplier to convert 1981 dollars to 1995 is 1.73. $50,000 multiplied by 1.73 is $86,500.

*21* Of the 199 contracts that we selected for our sample test, 62 of them (or 31 percent) had contract amounts less than or equal to $100,000.

In addition, we recommend:

- **The department should foster more collaboration and information exchange between the contract compliance and case processing units.**

The compliance unit could use the results of an investigation in analyzing a contractor's good faith efforts. Similarly, a compliance review that indicates a violation of the Human Rights Act could serve as the basis for a commissioner's charge of discrimination.[22]

*22 Minn. Rules* 5000.3570, Subp. 8.

# Case Processing

**CHAPTER 3**

The Minnesota Department of Human Rights was established to enforce Minnesota's laws against illegal discrimination. The department's central focus is the investigation of charges filed by people who feel they have been the victims of unlawful discrimination. This chapter examines the process by which the department investigates and resolves discrimination charges. Specifically, we asked:

- **How is the investigation of charges organized and carried out in the Department of Human Rights?**
- **What is the legal context of case processing?**
- **How many charges have been investigated each year?**
- **What types of charges have been filed?**
- **Have charges been investigated and resolved in a timely fashion?**
- **What were the outcomes of cases investigated in recent years?**
- **How is the appeals process organized? How many charges have been appealed in recent years, and how many decisions were reversed?**

To address these questions, we conducted interviews with the management, first-line supervisors, and staff of the Department of Human Rights; the Attorney General's staff who serve the department; and representatives of other human rights departments locally and around the country. We reviewed a sample of case files and discussed specific and general issues of case investigation with the enforcement officers who conducted the investigations. We also extracted data files from the department's computerized case tracking system, performed various quality checks and edits, and used these records to compute the statistics presented in this chapter on case processing at the department.

Our main focus is the department's performance during fiscal years 1993 through 1995. The department's case tracking system began operation in mid-1992, and most of the statistical analysis we present does not go back before this time. Much of the statistical information on case processing was extracted in August 1995 and does not reflect subsequent activity except as noted. We were able to

make some longer historical comparisons because we conducted two evaluation studies in the early 1980s, and we reviewed statistics and research reports prepared by others in the mid-1980s. Our interviews and other data collection activities took place during the Summer and Fall of 1995.

In general, we found that the department has an orderly process for accepting and investigating charges, but has been unable to keep abreast of its caseload. Cases filed with the department experienced delays that exceeded the deadlines set in law, and, in our view, these delays threaten the effectiveness of the department's enforcement program.

# ORGANIZATION OF CASE PROCESSING

**DHR's intake unit handles initial contact with people who want to file a charge.**

In this section we describe the process by which the department accepts and investigates charges of discrimination. Figure 3.1 provides a simplified view of the life cycle of a case at the department. The process begins in the department's intake unit, which is responsible for initial contact with individuals wishing to file charges of discrimination. The unit receives inquiries by mail, telephone, and occasionally walk-in visits, but most people contact DHR by phone. The department receptionist directs calls to one of the two intake unit personnel who are on phone duty during office hours. The five enforcement officers in intake rotate to phone duty on a weekly basis.

The intake officer provides information about the case filing and investigation process and helps the potential charging party decide whether to file a formal charge. The intake unit plays a key role in ensuring that the department accepts only cases that fall within the jurisdiction of the Minnesota Human Rights Act. In order for the department to accept a discrimination charge, the case must meet the following jurisdictional tests:

- the alleged discriminatory act must have occurred within a year of when the charge is filed;[1]
- it must have happened in Minnesota; and
- it must be prohibited by the Minnesota Human Rights Act.

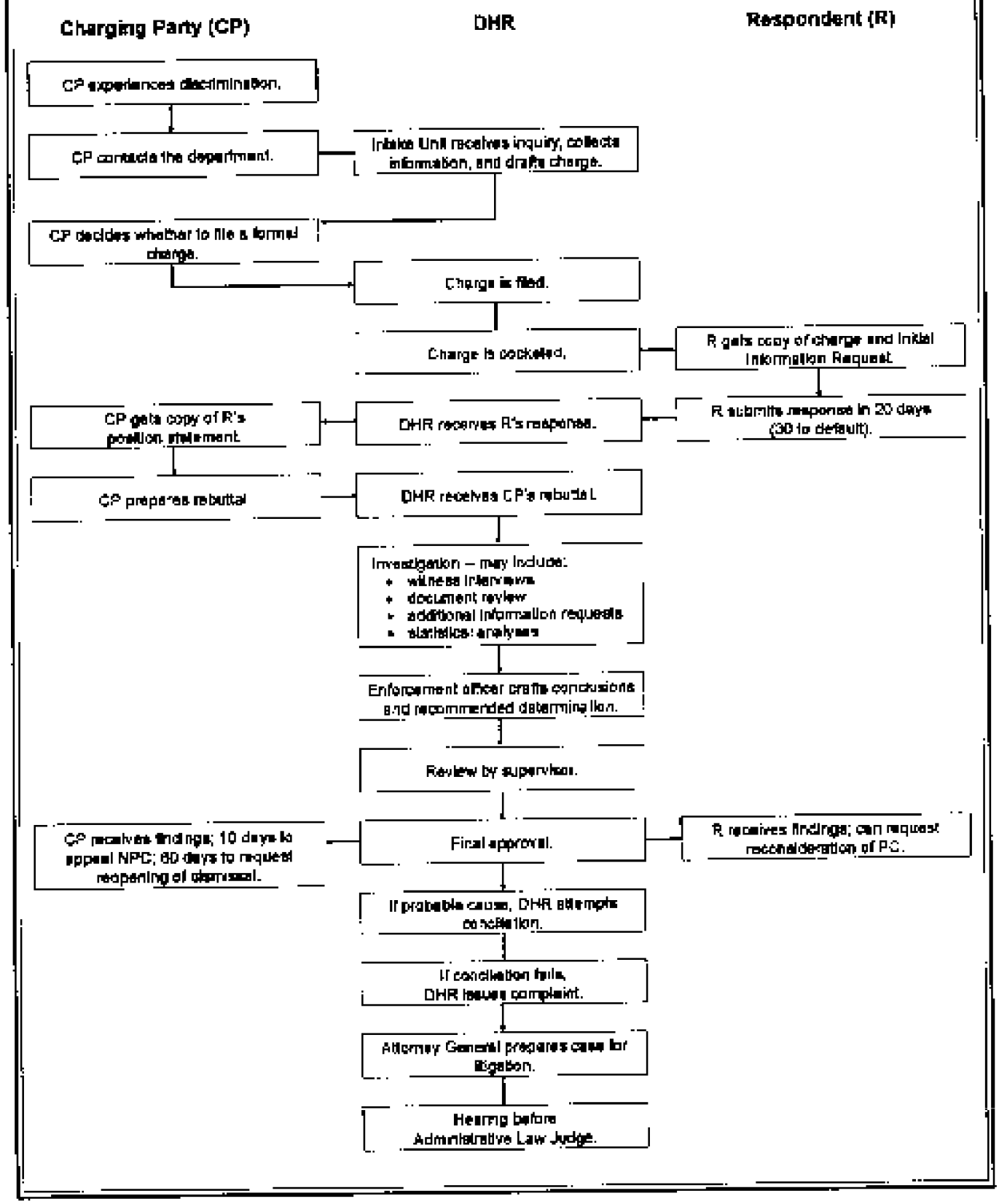
Every year the department receives thousands of inquiries that do not result in a jurisdictional charge being filed. In these cases, the intake officer handling the inquiry may simply provide information or make referrals to other agencies. [2]

If it appears that a case is jurisdictional, the intake officer will arrange to gather more specific information about the nature of the charge. In many employment

*1* The running of the one-year limitation period may be suspended during the time a potential charging party and respondent are voluntarily engaged in a dispute resolution process.

*2* Effective November 1995, the department decided to accept jurisdictional charges filed byprivate attorneys. This policy change is intended to permit additional resources to be shiftedfrom intake to investigations.

## Figure 3.1: Minnesota Department of Human Rights (DHR) Case Processing Overview



cases, the department sends out a questionnaire. The department also sends out information describing the Human Rights Act and the department's process for handling charges. Department personnel told us that unless the potential charging party (PCP) specifically asks, the department does not routinely tell the PCP the average length of time required for investigating and closing a case.

**Intake officers draft discrimination charges.**

Some PCPs do not respond to the mailing, and the department does not pursue these cases. If the questionnaire is completed and returned or other materials are submitted, an intake officer will review them, collect additional necessary information by phone, organize a case file folder, and then draft a formal charge for the case. (The charge is a succinct statement of the allegation, generally less than one page in length). Intake staff mail the charge draft to the PCP, who must affix a notarized signature and return the charge for filing. The charge is filed as of the date the signed charge is received by the department.

As Figure 3.1 indicates, when a signed and notarized charge is returned, the intake officer sends an initial information request to the respondent along with a copy of the charge. The Human Rights Act allows the department ten days after filing to send notification of the charge to the respondent, along with the request for information. The intake unit secretary assembles the case file and forwards it to the management information system (MIS) unit for formal docketing. Docketing includes the assignment of an official case number in the computerized case tracking system, entry of case data into the system, and the preparation of a department case file folder.

**Charges are filed as of the date they are signed and returned to the department.**

The MIS unit completes its work on the case file and then forwards the case to one of four case processing units. MIS distributes new employment discrimination cases on a rotating basis because all of the units investigate employment cases, which constitute the bulk of the department's work. Each unit also specializes in certain types of other cases, such as housing, disability, or sexual harassment. Within each case processing unit, there are four to five enforcement officers, or investigators, who (depending on the case) mediate settlements or agreements; investigate charges by gathering documents, interviewing witnesses, and analyzing other evidence; and recommend a determination for each charge. As of late 1995, each full-time enforcement officer carried a caseload of about 75 cases. All open cases are assigned either to a supervisor or enforcement officer. In the recent past, before a separate mediation program was established and before trainees were assigned a partial caseload, each full-time enforcement officer was responsible for over 100 cases.

# Priority Designation

The department can assign one of two priority levels to new cases. [3] The department assigns *A-level priority* to cases where the charging party is HIV-positive or

*3* The Legislature amended the Minnesota Human Rights Act in 1987 and directed the department to give priority to investigating six types of charges. The Legislature had previously granted the department the authority to determine which charges it processed and the order in which it processed them. Upon these two statutory bases, DHR constructed a two-level priority designation system for cases.

terminally ill, regardless of whether the medical condition is material to the charge. *A-level priority* is also assigned to commissioner's charges and charges where there is likelihood of irreparable harm to the charging party. Commissioner's charges are cases filed by the DHR commissioner, usually on behalf of a class of citizens who have experienced discrimination. Irreparable harm is defined as harm that cannot be remedied by monetary damages awardable under the Human Rights Act. In fiscal years 1993 through 1995, the department designated only 52 of the 4,000 cases filed as A-level priority cases.

The department assigns *B-level priority* if any of the following criteria apply to a case: (1) there is evidence that the respondent has intentionally engaged in reprisal; (2) there is substantial evidence or credible documentation to support the charge; (3) numerous cases have recently been filed against the respondent; (4) the respondent is a government entity; (5) the charge appears to be frivolous or without merit, despite meeting jurisdictional requirements; or (6) there is potential for broadly promoting the policies of the Human Rights Act.

According to department records, 260 cases were classified as B-level priority cases in fiscal years 1993-95. However, department personnel told us that many cases that should qualify as B-level priority are not designated as such. In our review of case files, we found several examples of cases filed against government entities that were not marked as B-level priority. Staff explained to us that the statutory criteria for selecting priority cases are too broad and, if strictly applied, would tag more cases than the department could handle in a priority fashion. Practically speaking, the department pays little attention to the B-level priority designation.

**On the whole, the intake process is well organized.**

In summary, there is an orderly procedure for accepting charges, drafting and perfecting the wording of the charge, and initiating proper notification of all parties to the case. By the time the case processing enforcement officer gets the case, the charge has been drafted, a request for information has been sent to the respondent, and a case file has been assembled. Each case active in the department is assigned to someone either to investigate, negotiate a settlement, or review and approve. In the next chapter we discuss the issue of whether changes in the intake process might improve the department's overall performance, but there is no operational breakdown of the process as matters stand.

# BURDEN OF PROOF IN CASE INVESTIGATION

The guiding purpose of case processing at the Department of Human Rights is to determine whether or not there is probable cause to believe a violation of the Human Rights Act has occurred. As we will see, many cases are settled, withdrawn, or dismissed before reaching a determination, but, from the beginning, case investigations are oriented to making such a determination. [4]

*4* After a probable cause determination is made, cases take on a new life. The department becomes the complainant and is represented by the Attorney General's staff.

**Investigations are designed to determine if there is probable cause to believe a violation of the Human Rights Act has occurred.**

In making a determination, " ... the department seeks to determine if it is probably true, or more likely than not, that a particular entity or individual has engaged in practices which constitute unlawful discrimination." In reaching this determination, "...the department may consider evidence regardless of whether it is sworn to, constitutes hearsay, or would otherwise be inadmissible or useful for determining proof beyond the probable cause level." [5] A more stringent standard of proof, *preponderance of the evidence*, is applied once probable cause has been determined, and the department's role in the case changes from that of investigative agency to complainant before an administrative law judge.

The ultimate burden of proof is on the charging party in discrimination cases filed with the department. During the investigative process, the burden of proof or the burden for producing evidence shifts from the charging party to the respondent and back to the charging party. The approach to proving a claim of discrimination in such cases has been established by an important Federal employment discrimination case, *McDonnell-Douglas v. Green*. The reasoning in this case has been adopted in many states including Minnesota. [6]

First, following McDonnell-Douglas, the charging party must establish a *prima facie* case by showing that he or she is a member of a protected class; that he or she was qualified for opportunities that the respondent was making available to others; that the charging party was denied the opportunities despite apparent qualifications, and that the opportunities remained available or were given to other persons not of the charging party's protected class status. [7] DHR's intake unit is responsible for conducting this stage of the investigation, and failure to articulate a *prima facie* case should result in the charge being rejected at intake. The *prima facie* case depends only on an assertion made by the charging party. No evidentiary standard must be met at this time.

Under the framework of McDonnell-Douglas, once the charging party has articulated a *prima facie* case, the burden shifts to the respondent to present a non-discriminatory reason for the alleged discrimination. The respondent generally does not have to prove his or her case, only provide an explanation for his or her actions, because the ultimate burden of proof still rests with the charging party. [8] Once the respondent has provided an affirmative defense or a non-discriminatory explanation, the burden shifts back to the charging party to rebut the respondent's assertions or evidence.

In actual practice, of course, cases can be complicated. A respondent can have both a non-discriminatory and a discriminatory motive at the same time. For example, an employee can be guilty of misconduct, but be sanctioned by his or her employer in a way that is different than non-protected group members guilty of

*5* Policies and Procedures Manual 7/29/94 Section 15.1, Standards of Proof.

*6* *Danz v. Jones* 263 N. W. 2nd 395, 399 (Minn. 1978) and *Sigurdson v. Isanti County*, 386 N. W. 2d 715, 720-21 (Minn. 1986) *The McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668.

*7* Department of Human Rights Policies and Procedures Manual 7/29/94 Section 15-2.

*8* The respondent does have to prove any of several affirmative defenses in some cases. These include a defense that an employment practice is based on a bona fide occupational qualification.

similar misconduct. Or, behavior that is non-discriminatory on its face can have a discriminatory result. Other types of cases and issues are sometimes presented to the department, but the vast majority of cases are investigated through the three-step process established by the McDonnell-Douglas case in 1973.

*Minn. Stat.* §363.06 prescribes several deadlines during the investigative process. As Figure 3.1 shows, the respondent has 20 days to respond to the original information request. After 30 days, the commissioner may bring an action for default in district court, although this is seldom or ever done. In practice, the department frequently grants extensions of time to respondents. [9] Enforcement officers have large caseloads, and can afford to grant extensions in most cases without causing a further delay.

After a response is received, there is no specific statutory deadline for the charging party to provide a rebuttal, or for the department to interview witnesses, review evidence, and make a determination. But the Human Rights Act specifies an outside limit of 12 months to make a probable cause or no probable cause determination.[10] As we will see later in this chapter, the deadline is regularly exceeded.

**The Human Rights Act specifies an outside limit of 12 months for DHR to make probable cause determinations.**

The department argues that the 12-month deadline is advisory rather than mandatory, because the law contains no penalty for exceeding the deadline. However, the Minnesota Court of Appeals recently overturned a major case because the department took nearly three years to make a determination. [11] This case is now before the Minnesota Supreme Court. The outcome of the case may clarify the legal standing of the statutory 12-month deadline. Notwithstanding the legal question, in the next chapter we offer our analysis of the desirability of the deadline from the perspective of its impact on program effectiveness.

# TYPES OF CLOSURES

Cases under investigation can travel various paths and come to different conclusions. Figure 3.2 presents a summary of the ways in which cases may be closed. The department has the authority to dismiss a case if a charging party fails to cooperate with the investigation. For example, administrative rules require that the charging party cooperate with the department's requests for information, and failure to provide information within 30 days of the request is grounds for dismissal.[12] The department can also dismiss a charge that is moot; outside of its jurisdiction; illogical, fantastic, or incoherent; brought by a charging party acting in bad faith; or a charge that is substantially the same as a previous charge filed by the same charging party, where the department found no probable cause. [13] *Minn.*

*9* Recently, department management has implemented a more restrictive policy on the use of time extensions.

*10* *Minn. Stat.* §363.06 Subd. 4.

*11* State of Minnesota vs. RSJ Inc. d/b/a Jose's American Bar and Grill and Joseph Schaefer. Appellate Court Case No. C1-94-2365. Date of Decision: June 13, 1995.

*12* *Minn. Rules* 5000.0540.

*13* *Minn. Rules* 5000.0530.

## Figure 3.2: Types of Case Outcomes

| ACRONYM | CASE OUTCOME | DESCRIPTION |
|---|---|---|
| DOTH | Dismissed - Other | Dismissed because DHR was unable to locate the charging party (CP) or the CP failed to provide required information. |
| DLJS | Dismissed - Lack of Jurisdiction | Dismissed because, during investigation, case was found to be outside DHR's jurisdiction, despite earlier intake screening. |
| DWR | Dismissed - Doesn't Warrant Further Use of Department Resources | Dismissed because preliminary investigation indicated that a finding of no probable cause was almost certain if a full investigation were completed. The department has established early dismissal standards to identify these cases. Could also be dismissed because the allegations in the charge were not the subject of collectible facts; the CP's own statements indicated that the respondent (R) had a nondiscriminatory basis for action; or the charge was nearly identical to another charge. |
| WPA | Withdrawn - Private Right of Action | Withdrawn by a charging party who wishes to initiate a private lawsuit in district court. CP must wait at least 45 days after filing to withdraw charge. |
| WSR | Withdrawn - Situation Resolved | Withdrawn because the CP and R resolved their dispute. Usually the CP and R conducted their own direct negotiations and achieved a settlement, without assistance from DHR. |
| WDO | Withdrawn - Other | Voluntarily withdrawn by the CP, who has decided not to pursue the charge. Department is supposed to ensure that CP was not coerced into withdrawal. |
| PSA | Predetermination Settlement Agreement | DHR negotiated a settlement between the CP and R before reaching a determination. |
| NPC | No Probable Cause | DHR completed full investigation of the charge and found insufficient evidence to establish probable cause to believe that a violation of the Minnesota Human Rights Act occurred. |
| CSA | Conciliation Settlement Agreement | After a determination of probable cause, DHR negotiated a settlement between the CP and R. |
| LDW | Litigation - Dismissed or Withdrawn | The case was dismissed or withdrawn after a determination of probable cause. |
| LSA | Litigation - Settlement Agreement | DHR found probable cause in the case but was unable to negotiate a settlement. The case moved to the Attorney General's office for litigation, but a settlement was reached under the aegis of the AG. |
| ALJ | Litigation - Administrative Law Judge | After a probable cause determination, the case proceeded to an administrative hearing, where an ALJ reached a decision. |

*Rules* 5000.0520 also states that the department can dismiss a charge "which the commissioner determines does not warrant further use of department resources."

**There are many ways cases can be closed prior to a probable cause determination.**

In some cases, the charging party exercises his or her right to withdraw the charge 45 or more days after filing, in order to pursue the case in civil court. Other cases are withdrawn because the situation is resolved or because the charging party de - cides not to pursue the matter any further.

In some cases, the enforcement officer is able to promote a settlement between the parties prior to a determination. But, if a case is not settled, withdrawn, or dis - missed, it eventually reaches the point where the department issues a determina - tion of probable cause or no probable cause. If DHR finds probable cause to believe that the respondent engaged in the alleged unfair discriminatory practice, the investigator or attorney general's staff will attempt to conciliate, or settle, the case. If conciliation fails, the case may move to litigation at the Office of Adminis - trative Hearings. Both the charging party and the respondent have available ave - nues of appeal for no probable cause and probable cause determinations by the department. We discuss the appeals process in detail at the end of this chapter.

# NUMBER OF CHARGES FILED, CLOSED, AND PENDING

The workload of the department varies with the number of people who decide to file charges each year. Timely investigation of charges and effective performance of its mission require that DHR close as many cases as it opens over the course of a year or so. We looked at the historical pattern of case filings and found:

- **The number of charges filed has fluctuated between 1,000 and 2,000 charges per year over the last 15 years.** [14]

As Table 3.1 shows, about 1,200 charges were filed in 1979 and 1980, but this number increased to about 1,400 charges in 1987 and peaked at 1,900 in 1991. During the last three years, however, filings dropped again to an average of ap - proximately 1,350 charges annually.

Factors explaining variations in the number and type of charges filed include ex - pansion of the Human Rights Act to cover new areas of discrimination, such as dis - parate treatment due to sexual orientation. In Chapter 1 we reviewed the history of how the Minnesota Human Rights Act was extended, over time, to cover new protected groups and new areas of discrimination. Filings in fiscal years 1993-95 are lower than the several preceding years, however, and are not unusually high by historical standards.

*14* We used data from the department's computerized case tracking system to calculate case filings in fiscal years 1993 through 1995. Data for the period from 1978 to 1983 came from our two earlier reports on the Department of Human Rights. Written department documents provided information on case filings between 1987 and 1992, but we are unable to verify the reliability of these figures.

## Table 3.1: Charges Filed, Cases Closed, and Year-End Inventory, FY 1978-85

| Fiscal Year | Charges Filed | Cases Closed | Year-End Inventory |
|---|---|---|---|
| 1978 | 1,034 | 641 | 2,096 |
| 1979 | 1,218 | 932 | 2,383 |
| 1980 | 1,231 | 990 | 2,626 |
| 1981 | 1,628 | 1,069 | 3,062 |
| 1982 | 1,676 | 1,838 | 2,969 |
| 1983 | 1,350 | 1,200 | 3,119 |
| 1984 | *1,477* | *1,368* | *3,228* |
| 1985 | *1,395* | *2,415* | *2,045* |
| 1986 | *1,772* | *2,007* | *1,401* |
| 1987 | *1,437* | *1,328* | *1,510* |
| 1988 | *1,421* | *1,194* | *1,737* |
| 1989 | *1,523* | *1,652* | *1,608* |
| 1990 | *1,692* | *1,527* | *1,773* |
| 1991 | *1,927* | *1,724* | *1,976* |
| 1992A | *1,441* | *1,591* | *1,826* |
| 1992B | -- | -- | 1,445 |
| 1993 | 1,287 | 1,373 | 1,359 |
| 1994 | 1,396 | 1,089 | 1,666 |
| 1995 | 1,362 | 1,244 | 1,784 |

Sources: Data for FY 1978-83 from Office of the Legislative Auditor, *Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), and *Evaluation of the Minnesota Department of Human Rights: A Follow-up Study* (St. Paul, August 1983). Data for FY 1984-86 from Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (St. Paul, February 1987). Charges filed in 1985 and 1986 from DHR. Data for FY 1987-92 from DHR Office Memorandum to Deb Pile, MN Planning, January 14, 1993. Data for FY 1993-95 extracted from the Department of Human Rig hts case-tracking system and analyzed by the Office of the Legislative Auditor.

Note: Data sources do not provide consistent information for FY1984-92. Numbers in italics were taken from reports prepared by others as specified in the source note above. Numbers for 1993- 1995 were calculated for this report and are as accurate as possible. Two year-end estimates (1 992A and 1992B) are shown for 1992. Estimate A is 1,826 calculating forward from earlier years, and E stimate B is 1,445 calculating backwards from later years. We think 1,445 is the more reliable estima te for this year, but data on charges filed, closed and open at year end for earlier years is accurate enough to show the historical range of variation in these numbers.

**The number of charges filed and cases closed has varied over the years.**

We examined changes in the number of cases closed by the department for the same period of time. The statistics, displayed in Table 3.1, show that:

- **The number of cases closed has also fluctuated over the years, but the department closed more cases annually between 1989 and 1992 than it has closed in each of the past three years.**

The number of cases closed increased from fewer than 1,000 in 1980 to more than 2,000 in 1985 and 1986 and then dropped to about 1,400 in 1993 and about 1,100 in 1994. Some unusually high numbers, as in 1982, 1985, and 1986, may be ex - plained by the dismissal of old cases and short-term extraordinary efforts to clear the accumulated backlog.

A comparison of the number of cases filed and closed each year demonstrates whether the department is accumulating an inventory of cases. If DHR regularly closes fewer cases than are filed, then over time a backlog of aging cases will accumulate. We were unable to verify the statistics for the period between 1984 and 1992 because the available data conflicts with reliable information we put together for recent years.[15] We did examine the trend in the number of cases in DHR's inventory at year-end over the last several years, and found that:

**The number and growth of open cases are reasons for concern.**

- **The department's inventory of cases increased from 1,359 at the end of fiscal year 1992 to 1,784 cases by July 1995.**

This inventory level is not unusually high by historical standards, but in the past, the department had to take drastic action to reduce the inventory including the summary dismissal of old cases. The inventory averaged about 2,700 cases between 1978 and 1983, and the large backlog prompted the 1983 Legislature to direct the Commissioner of Administration to appoint a "transition team" to develop a plan to solve the department's operational problems. The Department of Administration was instructed to report back to the Legislature in February 1984.[16] The Management Analysis Division staffed the transition team and in February 1984, Governor Perpich appointed Kathryn Roberts of the Management Analysis Division as acting commissioner of the Department of Human Rights.[17] Problems at the department were not solved for very long. In 1986, the Governor again appointed an acting commissioner when Linda Johnson, the commissioner who replaced Kathryn Roberts, was forced to resign.[18]

The size of the current inventory of cases is a source of concern. If no new cases were accepted into the department, it would take about a year and a half, at the present rate of production, to clear the current inventory of old cases. Of particular concern is the fact that the inventory has grown by about 400 cases, or 31 percent, over the last two years.

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*15* We think the data can be used to understand how filings and closures vary over the period. We are reasonably confident of data before 1984 because our office put together these statistics in the early 1980s. We also believe data for fiscal years 1993 to 1995 to be accurate. We cannot vouch for the accuracy of statistics for 1984 through 1992, however. A break in the statistical series occurred in mid-1992 when data were not entered into the current case-tracking system. There is a discrepancy of 381 cases in the inventory at the end of fiscal year 1992 between our calculations backward from current data, and calculations going forward through the 1980s using data from the sources noted in Table 3.1. DHR asked that the year- end data prior to 1992 be shown in the table. These data are useful if it is understood that they might be off by several hundred cases across a ten-year period 1983 to 1992.

*16* *Minn. Laws* 1983 Ch. 301, Sec. 42.

*17* Minnesota Department of Administration, *An Operational Analysis of the Department of Human Rights* (St. Paul, January 1984), 1.

*18* Minnesota Department of Administration, *Minnesota Department of Human Rights Status Report* (St. Paul, November 1986), 1.

# TYPES OF CHARGES FILED

In Chapter 1 we described how the scope of the Human Rights Act has expanded over the years. The law now prohibits discrimination in 11 different areas, including employment and housing, and it forbids discrimination on any of 12 different bases, including race, religion, age, and disability. We looked at the types of charges filed with the department and compared the distribution with previous years. We found that:

- **More than 70 percent of all charges relate to employment.**

As Table 3.2 shows, over 70 percent of cases filed in fiscal years 1993 through 1995 allege some type of discrimination in the area of employment. During the same period, 4.5 percent of cases alleged discrimination in housing, 5 percent in public accommodations, and fewer cases in the other areas covered by the Human Rights Act. Nearly 7 percent of charges filed alleged reprisal, defined in statute as (among other things) any form of intimidation, retaliation, or harassment against an individual for participating in a human rights investigation, filing a charge, or associating with persons in protected classes. [19]

## Table 3.2: Distribution of Docketed Cases, by Area of Discrimination, FY 1993-95

| | Date Docketed | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | July - Dec. 1992 | | Jan. - June 1993 | | July - Dec. 1993 | | Jan. - June 1994 | | July - Dec. 1994 | | Jan. - June 1995 | |
| | # | Pct | # | Pct | # | Pct | # | Pct | # | Pct | # | Pct |
| SINGLE AREA OF ALLEGED DISCRIMINATION | | | | | | | | | | | | |
| Aiding/Abetting | 33 | 4.8% | 20 | 3.5% | 27 | 3.9% | 42 | 6.0% | 46 | 5.9% | 28 | 4.8% |
| Business | 6 | 0.9 | 4 | 0.7 | 4 | 0.6 | 2 | 0.3 | 4 | 0.5 | 1 | 0.2 |
| Credit | 0 | 0.0 | 0 | 0.0 | 1 | 0.1 | 0 | 0.0 | 3 | 0.4 | 1 | 0.2 |
| Employment Agency | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Education | 23 | 3.4 | 23 | 4.0 | 19 | 2.7 | 29 | 4.2 | 22 | 2.8 | 17 | 2.9 |
| Employment | 506 | 74.0 | 440 | 76.4 | 517 | 74.6 | 441 | 63.3 | 531 | 68.2 | 387 | 66.5 |
| Union | 2 | 0.3 | 0 | 0.0 | 2 | 0.3 | 0 | 0.0 | 2 | 0.3 | 2 | 0.3 |
| Housing | 39 | 5.7 | 16 | 2.8 | 33 | 4.8 | 25 | 3.6 | 42 | 5.4 | 24 | 4.1 |
| Public Accomodations | 30 | 4.4 | 17 | 3.0 | 28 | 4.0 | 50 | 7.2 | 41 | 5.3 | 33 | 5.7 |
| Public Service | 19 | 2.8 | 25 | 4.3 | 32 | 4.6 | 30 | 4.3 | 24 | 3.1 | 27 | 4.6 |
| Reprisal | 25 | 3.7 | 22 | 3.8 | 16 | 2.3 | 37 | 5.3 | 24 | 3.1 | 35 | 6.0 |
| TWO OR MORE AREAS OF ALLEGED DISCRIMINATION | | | | | | | | | | | | |
| Reprisal and Employment | 1 | 0.1 | 3 | 0.5 | 8 | 1.2 | 30 | 4.3 | 33 | 4.2 | 19 | 3.3 |
| Reprisal and Other | 0 | 0.0 | 1 | 0.2 | 4 | 0.6 | 4 | 0.6 | 7 | 0.9 | 3 | 0.5 |
| Other | 0 | 0.0 | 5 | 0.9 | 2 | 0.3 | 7 | 1.0 | 0 | 0.0 | 5 | 0.9 |
| TOTAL | 684 | 100.0% | 576 | 100.0% | 693 | 100.0% | 697 | 100.0% | 779 | 100.0% | 582 | 100.0% |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

*19 Minn. Stat.* §363.03, Subd. 7.

The data also show that:

- **The leading basis of discrimination allegations was sex, followed by race and disability.**

Table 3.3 presents the distribution of charges filed in fiscal years 1993 through 1995 by the alleged basis of discrimination. The leading basis of discrimination was sex (22 percent), followed by race (17 percent), disability (17 percent), and age (11 percent). About 22 percent of cases allege discrimination on more than one basis. Most cases in this category combine a charge of reprisal with another basis, such as race, sex, or age.

We compared the distribution of charges filed in the last three years with the distribution in the early 1980s, when we conducted our previous studies of the department.[20] Then, as now, employment was the major area in which charges of discrimination were filed. Sex, race, age, and disability were also the major bases, with only minor differences in the proportion of charges of each type.

## Table 3.3: Distribution of Docketed Cases, By Basis of Discrimination, FY 1993-95

| | Date Docketed | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | July - Dec. 1992 | | Jan. - June 1993 | | July - Dec. 1993 | | Jan. - June 1994 | | July - Dec. 1994 | | Jan. - June 1995 | |
| | # | Pct | # | Pct | # | Pct | # | Pct | # | Pct | # | Pct |
| SINGLE BASIS OF ALLEGED DISCRIMINATION | | | | | | | | | | | | |
| Age | 70 | 10.2% | 68 | 11.8% | 92 | 13.3% | 74 | 10.6% | 65 | 8.3% | 53 | 9.1% |
| Color | 0 | 0.0 | 0 | 0.0 | 3 | 0.4 | 2 | 0.3 | 0 | 0.0 | 0 | 0.0 |
| Disability | 101 | 14.8 | 106 | 18.4 | 108 | 15.6 | 143 | 20.5 | 121 | 15.5 | 90 | 15.5 |
| Family Status | 3 | 0.4 | 1 | 0.2 | 2 | 0.3 | 5 | 0.7 | 0 | 0.0 | 2 | 0.3 |
| Marital Status | 13 | 1.9 | 0 | 0.0 | 7 | 1.0 | 10 | 1.4 | 16 | 2.1 | 3 | 0.5 |
| National Origin | 22 | 3.2 | 15 | 2.6 | 25 | 3.6 | 30 | 4.3 | 25 | 3.2 | 19 | 3.3 |
| Public Assistance Status | 5 | 0.7 | 3 | 0.5 | 2 | 0.3 | 5 | 0.7 | 2 | 0.3 | 2 | 0.3 |
| Race | 94 | 13.7 | 81 | 14.1 | 128 | 18.5 | 138 | 19.8 | 142 | 18.2 | 94 | 16.2 |
| Religion | 7 | 1.0 | 4 | 0.7 | 5 | 0.7 | 8 | 1.1 | 5 | 0.6 | 4 | 0.7 |
| Reprisal | 26 | 3.8 | 25 | 4.3 | 23 | 3.3 | 39 | 5.6 | 35 | 4.5 | 37 | 6.4 |
| Sexual Orientation | 0 | 0.0 | 0 | 0.0 | 1 | 0.1 | 4 | 0.6 | 13 | 1.7 | 9 | 1.5 |
| Sex | 172 | 25.1 | 125 | 21.7 | 154 | 22.2 | 154 | 22.1 | 175 | 22.5 | 118 | 20.3 |
| TWO ALLEGED BASES | | | | | | | | | | | | |
| Reprisal and Other | 72 | 10.5 | 54 | 9.4 | 58 | 8.4 | 27 | 3.9 | 78 | 10.0 | 56 | 9.5 |
| Other | 79 | 11.5 | 71 | 12.3 | 61 | 8.8 | 39 | 5.6 | 84 | 10.8 | 69 | 11.9 |
| Three or More Alleged Bases | 20 | 2.9 | 23 | 4.0 | 24 | 3.5 | 19 | 2.7 | 18 | 2.3 | 26 | 4.5 |
| TOTAL | 684 | 100.0% | 576 | 100.0% | 693 | 100.0% | 697 | 100.0% | 779 | 100.0% | 582 | 100.0% |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

*20* Office of the Legislative Auditor, *Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), 21-22. *Evaluation of the Minnesota Department of Human Rights: Follow-Up Study* (St. Paul, August 1983), 6-7.

# TIMELINESS OF INVESTIGATION

The length of time the department takes to investigate charges of discrimination was one of the central questions prompting this evaluation study. In the Human Rights Act, the Legislature clearly expressed its intent that the department handle individual charges of discrimination in a timely fashion. The Act lists some types of charges into which the commissioner should make an immediate inquiry, and others to which the commissioner should give priority. It then states:

> On other charges the commissioner shall make a determination within 12 months after the charge was filed as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices.[21]

To evaluate the reasonableness of this standard of timeliness, we reviewed statutory provisions in other states and interviewed knowledgeable staff in civil rights agencies around the country. We found that:

- **At least 21 states other than Minnesota have a statutory deadline of one year or less for making a determination in cases filed with the state human rights agency.**

**Many states set a statutory deadline for making a probable cause determination in human rights cases.**

Five states besides Minnesota also have a deadline of exactly one year. Sixteen other states require case closure in less than a year, with deadlines ranging from 30 days for employment discrimination cases in Kentucky to 300 days, in Illinois and Kansas. Figure 3.3 lists the states that restrict the amount of time their human rights agency can spend investigating a case. These data show that, in comparison with other states, Minnesota's 12-month deadline is not an unreasonable standard of timeliness for making a determination. This is not to suggest that all the states listed in Figure 3.3 have succeeded in eliminating large backlogs. We found that aging cases and large inventories of open cases are a common problem at the EEOC and state agencies around the country.

From our interviews with civil rights enforcement personnel, we also found that:

- **Some human rights agencies are striving to close most cases in less than 120 days.**

The federal Equal Employment Opportunity Commission has been experimenting with ways to expedite case processing. According to staff in their Milwaukee regional office, three to four months is considered to be an adequate amount of time to conduct most investigations. Under their system, the respondent has 30 days to submit a written response to a charge. The investigator then sends a summary of the respondent's position to the charging party, with the respondent's consent, and the charging party is given 30 days for rebuttal. With this information, collected in 60 days, and an additional 30 to 60 days for interviewing witnesses and reviewing other evidence, the investigator can usually make a determination. At least

*21 Minn. Stat.* §363.06, Subd. 4.

**Many states set shorter deadlines than Minnesota for making probable cause determinations.**

## Figure 3.3: State Limits on Case Time in Investigation

| State | Limit on Time in Investigation |
|---|---|
| Kentucky | 30 days for employment; 100 for housing |
| Louisiana | 30 days |
| Arizona | 60 days |
| Georgia | 90 days |
| Nebraska | 100 days for housing complaints |
| Ohio | 100 days |
| Vermont | 100 days |
| Delaware | 120 days |
| West Virginia | 150 days |
| Florida | 180 days |
| Hawaii | 180 days |
| New York | 180 days |
| Colorado | 270 days |
| Connecticut | 9 months |
| Illinois | 300 days |
| Kansas | 300 days |
| California | 1 year |
| Idaho | 1 year |
| **MINNESOTA** | **1 year** |
| Oregon | 1 year |
| New Mexico | 1 year |
| Rhode Island | 1 year |
| New Hampshire | 2 years |

Source: Various state human rights agencies.

five states (Connecticut, Kansas, Maine, Massachusetts, and Oregon) have created similar systems to address the majority of their cases within 60 to 90 days.

In light of Minnesota's 12-month deadline, and the recognition that some experts think it is possible to close most cases in less than four months, we examined the timeliness of investigations performed by the department. We analyzed two different, but overlapping, groups of cases: (1) cases docketed in fiscal years 1993 through 1995; and (2) cases closed in fiscal years 1993 through 1995. [22] In our analysis of cases grouped by docket date, we looked at a set of cases docketed in a specific time period and followed how many were closed over time and how long it took to close them. We also examined the age of open cases in a manner analogous to the way a business might measure the age of its inventory. Such a view is different from an examination of recently closed cases. Statistics on elapsed time of investigation for a group of cases selected by closure date can unduly reflect the department's recent performance, and it can be influenced by the choice of cases that are closed. For example, if the department focused its attention on cases filed

*22* We described earlier in this chapter the process by which charges are filed and docketed. The difference between the filing date (when a signed charge is received by DHR) and the docket date (when the charge information is entered onto DHR's computer system) should be at most ten days. We used the docket date in our analysis because the docket date information was easier to access and check for reliability.

within the last year, rather than the oldest open cases, the data on elapsed time in investigation would look quite different. We think it is necessary to look at the status and age of open cases as well as cases closed.

Our analysis is limited by the fact that the department's current case-tracking system contains data only for cases open as of July 1, 1992 or filed since that time. Data on closed cases from prior years were not entered into the case tracking system when it became operational at the beginning of fiscal year 1993. Therefore, we were unable to construct a complete data set for cases filed and closed prior to FY 1993, although we assembled some information from department records on cases filed before mid-1992 and closed in the last three years.

In general, our analyses of cases docketed and cases closed both show that:

- **Many charges were not investigated and resolved in a timely fashion.**

# Analysis of Cases Docketed FY 1993-95

Table 3.4 presents data on cases filed between July 1992 and June 1995. It shows the number of cases that were docketed in this period, and the number of cases that were closed by August 17, 1995, the date on which we extracted data from the department's system. The data are broken down into 6, six-month periods for further analysis. The number of cases docketed in each six-month period ranged between 582 and 780 cases. The data show that:

- **Many cases filed between July 1992 and June 1994 were still open in August 1995.**

Table 3.4 indicates that 9 percent of cases docketed between July and December 1992 were still open in August 1995, as were 15 percent of those docketed between January and June 1993, 23 percent of those docketed between July and December 1993, and 54 percent of cases docketed between January and June 1994.

## Table 3.4: Rate of Closure of Cases Docketed During FY1993-95

| Date Docketed | Total Cases Docketed | Number of Cases Closed | Percent of Cases Closed | Percent of Cases Open[1] |
|---|---|---|---|---|
| July 1992 - December 1992 | 701 | 637 | 90.9% | 9.1% |
| January 1993 - June 1993 | 586 | 501 | 85.5 | 14.5 |
| July 1993 - December 1993 | 696 | 537 | 77.2 | 22.8 |
| January 1994 - June 1994 | 700 | 325 | 46.4 | 53.6 |
| July 1994 - December 1994 | 780 | 271 | 34.7 | 65.3 |
| January 1995 - June 1995 | 582 | 87 | 14.9 | 85.1 |
| July 1992 - June 1995 | 4,045 | 2,358 | 58.3% | 41.7% |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

[1]As of August 17, 1995.

We calculated the age of open cases and the elapsed time between docketing and closure for closed cases and found that the average age of open cases from the earliest period was over 1,000 days, and the average case life from docketing to closure for closed cases was about a year.[23] Table 3.5 presents information on the age of open cases and the time it took to process cases that are now closed. As Table 3.5 shows, the department took an average of 369 days to close cases filed in July through December 1992, and 345 and 333 days to close cases filed in the next two six-month periods.[24] These numbers are fairly constant; for cases filed in later periods less time was available to investigate cases, so the average age of closed cases is lower.

## Table 3.5: Average Age of Cases Docketed During FY1993-95

| Date Docketed | Number of Cases Closed | Average Elapsed Time From Docketing to Closure (days) | Number of Cases Still Open[1] | Average Age[1] (days) |
|---|---|---|---|---|
| July 1992 - December 1992 | 637 | 369 | 64 | 1,023 |
| January 1993 - June 1993 | 501 | 345 | 85 | 863 |
| July 1993 - December 1993 | 537 | 333 | 159 | 686 |
| January 1994 - June 1994 | 325 | 270 | 375 | 501 |
| July 1994 - December 1994 | 271 | 152 | 509 | 317 |
| January 1995 - June 1995 | 87 | 95 | 495 | 137 |
| July 1992 - June 1995 | 2,358 | 307 | 1,687 | 394 |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

[1]As of August 17, 1995.

# Analysis of Cases Closed FY 1993-95

Table 3.6 looks at how many cases the Department of Human Rights closed between mid-1992 and mid-1995. As Table 3.6 shows, a total of 3,706 cases were closed during the period, and the average elapsed time to closure in this period was 427 days. Table 3.6 shows that:

- **Fewer cases were closed in fiscal year 1995 than in fiscal 1993, and it took longer, on average, to close them.**

This is not a positive trend, although it could mean that the department has recently concentrated on old, difficult to close, cases. It could also simply mean that the department is closing fewer cases and taking longer to do so.

*23* There were, as of mid-September 1995, in addition to the cases identified in Table 3.4, 26 open cases filed prior to July 1992. These cases were 1,142 days old or older at this time.

*24* Keep in mind that fewer of the recently-filed cases are closed, and those that are resolved may not be the same mix of cases as those filed in earlier periods if complex, difficult cases take longer to close.

**On average, it took 427 days from docketing to closure for cases closed in FY 1993-95.**

## Table 3.6: Average Elapsed Time Between Docketing and Closure for Cases Closed During FY1993-95

| Date Closed | Average Elapsed Time From Docketing to Closure (Days) | Number of Cases Closed |
|---|---|---|
| July 1992 - December 1992 | 345 | 666 |
| January 1993 - June 1993 | 391 | 707 |
| July 1993 - December 1993 | 433 | 552 |
| January 1994 - June 1994 | 429 | 537 |
| July 1994 - December 1994 | 490 | 595 |
| January 1995 - June 1995 | 486 | 669 |
| July 1992 - June 1995 | 427 | 3,706 |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

# ANALYSIS OF CASE AGE

We examined the proportion of cases in which the department either reached a determination or closed a case within a year. We calculated the elapsed time to completion or to a determination of probable cause or no probable cause. We found that:

- **The department took more than a year to close a large percentage of cases, and thus was out of compliance with the 12-month deadline for making a determination.**

Table 3.7 shows that 55 percent of cases closed between July 1992 and June 1995 were closed within 12 months. About 33 percent took between one and two years, and 9 percent took between two and three years. About 3 percent of cases took more than three years to close.[25]

Table 3.8 also shows how long it took to close cases docketed in fiscal year 1993, again excluding cases with probable cause outcomes. For these cases, 61 percent were closed in less than one year, 32 percent in one to two years, and 7 percent in over two years.

Finally, we looked at the cases that reached a probable cause determination. Data on these cases are presented in Table 3.9. For 173 cases closed mid-1992 through mid-1995 for which data were available, the time between docketing and a probable cause determination was a year or less in 34 percent of cases, one to two years in 45 percent, two to three years in 16 percent, and more than three years in the remaining 6 percent. The average number of days between docketing and the original determination for the 173 probable cause cases and 21 additional split

*25* This table does not include 216 cases in closure categories reflecting a probable cause determination. Such cases could be in compliance with the 12-month requirement, but take longer than 12 months to finally resolve. Table 3.9 presents data on the amount of time it took the department to issue probable cause determinations.

**Many cases exceeded the 12-month statutory deadline for making a probable cause determination or closing the case.**

## Table 3.7: Cases Closed in FY1993-95, Grouped by Elapsed Time from Docketing to Closure

| Elapsed Time from Docketing to Closure | Number of Cases | Percent |
|---|---|---|
| Less than 1 year | 1,906 | 55.6% |
| 1-2 years | 1,153 | 33.1 |
| 2-3 years | 323 | 9.2 |
| 3-4 years | 68 | 1.9 |
| 4-5 years | 17 | 0.5 |
| 5-6 years | 15 | 0.4 |
| 6-7 years | 5 | 0.1 |
| 7-8 years | 0 | 0.0 |
| 8-9 years | 3 | 0.1 |
| Total | 3,490 | 100.0% |

Note: Excludes 216 cases with probable cause outcomes.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

## Table 3.8: Cases Docketed in FY1993 Grouped by Elapsed Time from Docketing to Closure

| Elapsed Time from Docketing to Closure | Number of Cases | Percent |
|---|---|---|
| Less than 1 year | 660 | 61.4% |
| 1-2 years | 340 | 31.6 |
| 2-3 years | 75 | 7.0 |
| Total | 1,156 | 100.0% |

Note: These counts do not include the 63 cases docketed in FY1993 that had probable cause outcomes. They also exclude the 149 cases docketed in FY 1993 that were still open as of August 1995.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

determination cases was 558 days. This average rose from 484 days for cases closed in FY 1993 to 609 days in FY 1995. So, like the other analyses, this comparison also shows that many determinations took much longer than the statutory deadline of 12 months. This is a serious problem, and we discuss its causes and possible solutions in the next chapter.

# CASE PROCESSING OUTCOMES

We examined not only the rates at which cases were closed, but the outcomes of investigations as well. Figure 3.2 presents the complex array of possible case outcomes. Cases can be dismissed for several reasons, withdrawn for several rea-

## Table 3.9: Length of Time from Docketing to Probable Cause Determination, Cases Closed in FY 1993-95

| Time From Docketing to Probable Cause Determination | 1993 | | 1994 | | 1995 | | 1993-95 | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Less than 1 year | 15 | 36.6% | 16 | 30.8% | 27 | 33.8% | 58 | 33.5% |
| 1-2 years | 21 | 51.2 | 26 | 50.0 | 31 | 38.8 | 78 | 45.2 |
| 2-3 years | 5 | 12.2 | 8 | 15.2 | 15 | 18.8 | 28 | 16.2 |
| 3-4 years | 0 | 0.0 | 1 | 2.0 | 2 | 2.5 | 3 | 1.7 |
| 4-5 years | 0 | 0.0 | 0 | 0.0 | 3 | 3.8 | 3 | 1.7 |
| 5-6 years | 0 | 0.0 | 1 | 2.0 | 2 | 2.5 | 3 | 1.7 |
| Total | 41 | 100.0% | 52 | 100.0% | 80 | 100.0% | 173 | 100.0% |

AVERAGE TIME FROM DOCKETING TO DETERMINATION (DAYS)

| Original Determination | Total Cases FY 93-95 | Average Number of Days from Docketing to Determination | | | |
|---|---|---|---|---|---|
| | | 1993 | 1994 | 1995 | 1993-95 |
| Probable Cause (PC) | 173 | 487 | 530 | 608 | 555 |
| Split Determination | 21 | 453 | 675 | 618 | 580 |
| All PC and Split Determinations | 194 | 484 | 545 | 609 | 558 |

Note: These tables look at the elapsed time between the docketing of a case and the issuance of a probable cause determination. We did not include in our calculations the amount of elapsed time between the issuance of a determination and the final closure of a case.

Of the cases closed in FY 1993-95, the department issued 271 probable cause determinations and 22 split determinations. Our calculations are based on a total of 194 determinations because the department's case tracking system did not contain information on the original determination date for a number of cases.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

sons, or settled with or without the department's assistance. In addition, the department can make a determination of no probable cause or probable cause. After a probable cause determination, cases may be settled, withdrawn, dismissed, or litigated.

It is impossible to set a precise standard, but a reasonable percentage of department investigations should sustain the charge filed with the department if citizens are bringing strong cases to the department and investigations are competent. It is well recognized that a certain percentage of cases filed will be frivolous or meritless, and that other cases, however well-motivated, will lack evidence to sustain an ultimate finding that discrimination occurred, or even that there is probable cause to believe it was likely. Our earlier studies found a somewhat higher proportion of cases were resulting in a probable cause determination. Our 1981 and 1983 studies found that about 6.5 percent of cases closed in FY 1978-93 had probable cause outcomes, compared with 5.8 percent in FY 1993-95. Proportionately there were also more no probable cause determinations and fewer dismissals in the

past.[26] The attorney general's staff now serving the department have told the department that they would like more probable cause cases, and stronger cases, to litigate. The department, in response, made an effort to accelerate probable cause determinations.

**The great majority of charges were withdrawn, dismissed, or found to lack probable cause.**

In general, our examination of the outcomes of charges investigated by the department found that:

- **Relatively few cases were settled in favor of the charging party. Over 80 percent of charges filed were withdrawn, dismissed, or found to lack probable cause.**

To recapitulate, the purpose of investigations at the department is to assemble enough evidence relating to each charge to make a determination if a case is worth pursuing or to promote a settlement of the case if the parties are amenable. If the investigation concludes that it is more likely than not that discrimination occurred, the department finds probable cause, and its role changes from investigator to complainant. After a determination of probable cause, the Attorney General's staff serving the department takes charge of prosecuting the case although the department may still be involved in negotiating a settlement. Again, most cases do not reach the point where a cause or no cause determination is made. Most cases are withdrawn, dismissed, or settled.

# Analysis of Cases Closed FY 1993-95

Table 3.10 presents an analysis of case outcomes and case processing time for all cases closed in fiscal years 1993 to 1995. As this table shows, 67.3 percent of cases closed during this period were dismissed, nearly all because the department judged that further investigation would lead to a no probable cause determination, meaning the cases lacked evidence or a rebuttal of respondent's evidence or arguments. The abbreviation used in Table 3.10 for these cases is DWR, "does not warrant further use of department resources." An additional 14.5 percent were withdrawn, 7.0 percent were settled prior to a determination, and 5.4 percent ended in a no probable cause determination. Only a relatively small percentage of cases, 5.8 percent of all closed from July 1993 to June 1995, resulted in a probable cause determination and subsequent settlement or litigation. Although we have collapsed some of the closure categories used by the department, Table 3.10 is still complex. Refer to Figure 3.2 for more information on how cases may be closed.

There are several reasons why cases are withdrawn. Table 3.10 shows that 5.7 percent of cases were withdrawn to pursue the case in court, 3.9 were withdrawn because the parties resolved the dispute on their own, and 4.9 percent were withdrawn because the charging party decided not to pursue the case for other reasons.

The reasons for dismissal include inability to locate the charging party, or discovery of a jurisdictional defect that was overlooked at intake. Most cases, however,

*26* Office of the Legislative Auditor, *Evaluation of the Minnesota Department of Human Rights: Follow-Up Study* (St. Paul, August 1983), 14.

## Table 3.10: Type of Outcome and Time to Closure Cases Closed in FY 1993-95

| Type of Case Outcome | Number of Cases | Percent of Cases | Average Elapsed Time from Docketing to Closure (days) |
|---|---|---|---|
| Dismissed: | | | |
| DOTH | 58 | 1.6% | 371 |
| DLJS | 47 | 1.3 | 302 |
| DWR | 2,387 | 64.4 | 426 |
| Withdrawn: | | | |
| WDO | 182 | 4.9 | 326 |
| WPA | 211 | 5.7 | 419 |
| WSR | 145 | 3.9 | 359 |
| Predetermination Settlement Agreement | 259 | 7.0 | 212 |
| No Probable Cause | 201 | 5.4 | 499 |
| Probable Cause: | | | |
| Conciliation Settlement (CSA) | 88 | 2.4 | 806 |
| Litigation: | | | |
| LDW | 44 | 1.2 | 656 |
| LSA | 72 | 1.9 | 924 |
| ALJ | 12 | 0.3 | 703 |
| All Cases Closed FY 1993-95 | 3,706 | 100.0% | 427 |

DOTH - Dismissed: Unable to Locate Charging Party (CP); Lack of Cooperation by Charging Party.
DLJS - Dismissed: Lack of Jurisdiction.
DWR - Doesn't Warrant Further Use of Department Resources; Early Dismissal.
WDO - Withdrawn: Other.
WPA - Withdrawn: Private Right of Action.
WSR - Withdrawn: Situation Resolved.
CSA - Conciliation Settlement after Probable Cause (PC) Determination.
LDW - Dismissed or Withdrawn During Litigation after PC Determination.
LSA - Settlement Agreement through the Attorney General after PC Determination.
ALJ - Administrative Law Judge decision after PC Determination.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

**The elapsed time from docketing to closure varies, but those closed after a probable cause determination take the longest time on average.**

fall into the category "does not warrant further use of department resources" (DWR). This category includes cases where the department judges that further investigation would result in a finding of no probable cause.[27] Many DWR case files that we reviewed were cases lacking evidence that rebutted a respondent's non-discriminatory explanation of events. Often there was no answer to the respondent's defense or explanation in the file.

*27* The department then may dismiss the case under the authority granted by *Minn. Stat.* §363.06 Subd. 4(7), which says "The commissioner has the authority to adopt policies to determine which charges are processed ... based on their particular social and legal significance, administrative convenience, difficulty of resolution, or other standards."

Adding up all the cases that were decided in a way that failed to support the initial charge, including dismissals, some withdrawals, and no probable cause determinations, the total equals 78 percent of all charges filed. [28]

Table 3.10 shows how much time elapsed between docketing and closure for each type of closure. Looking at the totals for the three year period, dismissed and withdrawn cases generally took 302 to 426 days from docketing to closure on the average. DWR cases, which were 64 percent of all charges closed, took 426 days from docketing to closure. This was about the same as the average of 427 days for all 3,706 cases closed in the three-year period.

**Caseloads assigned to each enforcement officer are relatively large.**

As Table 3.10 shows, cases that resulted in a no probable cause outcome took 499 days on average to close, and cases that ended in a probable cause outcome took much longer, 656 to 924 days, depending on the exact type of case. Only 216 cases out of 3,706 were closed with a probable cause outcome, so the averages for these closures are based on relatively few cases.

Why did it take 426 days to dismiss weak cases? We identified two major causes of these slowdowns in the work flow. First, the enforcement officers we interviewed attributed the delays to the large caseload. EOs carry about 75 cases at a time but are only able to pay attention to some of these from week to week. Our interviews, and our review of individual files, confirmed that many cases languish as they await attention by the enforcement officer in charge of the case.

Second, we observed that many cases experienced delays at the supervisory review stage. As of March 1995, there were 223 cases awaiting supervisory review. Our analysis of data for cases closed in FY 1993-95 shows that DWR cases spent an average of 106 days, more than three months, on supervisors' desks. We interviewed all supervisors, and learned that, for typical DWR cases, the supervisory review required only about one or two hours of work. The department recently announced a plan for eliminating this bottleneck through increased attention to the problem and a more uniform and streamlined approach to supervisory review. Still, supervisors are permitted 90 days to review enforcement officers' recommendations.

**An average of 106 days is spent waiting for supervisory review.**

# Analysis of Cases Docketed in FY 1993

We examined the outcome of cases docketed during fiscal years 1993 to 1995. This could give a different view of case outcomes than the analysis of cases closed in a given period if the department selected certain types of cases over others for closure. However, our ability to examine cases grouped by the docket date was limited by the lack of data on cases filed prior to mid-1992. A high percentage of cases filed in the last year or two are still open, and we do not know how they will come out.

*28* This is the sum of cases dismissed, withdrawals other than WSR and WPA, and NPC determinations. We count cases that support the original charge as probable cause determinations except those withdrawn after a PC determination, all settlements, cases withdrawn to pursue a privateaction, and cases withdrawn because of a satisfactory agreement.

We looked at the outcome of cases filed between July 1992 and June 1993. About 91 percent of these cases were closed by August 1995. We found that the distribution of case outcomes for these cases was similar to the distribution of outcomes for cases closed 1993 to 1995. Only a relatively small percentage of cases resulted in a probable cause determination (6.4 percent of cases filed in the first half of fiscal year 1993 and 4.6 percent in the second half) and only 7.2 percent and 4.6 percent were closed with a no probable cause determination. Over 75 percent of cases were withdrawn or dismissed.

# SETTLEMENTS

In some cases the charging party and the respondent are able to reach a settlement with or without the department's help. We examined data from the department's case tracking system and found:

- **A few cases resulted in large monetary settlements in recent years, but most settlements were small--half were under $3,000.**

Most settlements are reached prior to a determination of probable cause. During fiscal years 1993 to 1995, as Table 3.10 shows, 7.0 percent of cases were closed through a predetermination settlement, and an additional 2.4 percent were settled after a probable cause determination.

Table 3.11 shows that between July 1993 and June 1995, 379 cases were closed with a monetary settlement. These settlements totaled $3.1 million, and ranged from $50 to $259,000. Three awards equaled or exceeded $100,000, but half of the awards were under $3,000.

## Table 3.11: Cases Closed with Monetary Settlements, FY 1993-95

| Date Closed | Number of Cases | Settlement Value | | | | |
|---|---|---|---|---|---|---|
| | | Total | Average | Minimum | Maximum | Median |
| July 1992 - December 1992 | 47 | $222,028 | $4,724 | $500 | $46,000 | $2,000 |
| January 1993 - June 1993 | 64 | 354,687 | 5,542 | 150 | 56,963 | 2,000 |
| July 1993 - December 1993 | 56 | 296,644 | 5,297 | 50 | 43,412 | 1,750 |
| January 1994 - June 1994 | 80 | 814,914 | 10,186 | 150 | 224,044 | 3,625 |
| July 1994 - December 1994 | 70 | 581,313 | 8,304 | 250 | 62,500 | 3,000 |
| January 1995 - June 1995 | 62 | 872,360 | 14,070 | 100 | 258,701 | 4,507 |
| July 1992 - June 1995 | 379 | $3,141,947 | $8,290 | $50 | $258,701 | $3,000 |

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

# ADMINISTRATIVE APPEALS

The statutes and rules governing the Department of Human Rights provide a process by which department decisions on individual cases may be appealed. The appeals process provides an important check on the quality and professionalism of case adjudication in the department. A large number of appeals or requests to reopen cases could raise questions about the quality of case investigations in the department.

There are three types of administrative appeals of case processing decisions:

- A charging party may request reconsideration of a no probable cause determination under *Minn. Stat.* §363.06 subd.4(2) and *Minn. Rules* 5000.0700;
- A respondent may request reconsideration of a probable cause determination pursuant to *Minn. Rules* 5000.0750; and
- A charging party may request that the department reopen a case that was dismissed for any of several reasons under *Minn. Rules* 5000.0570.

**Generally, the rate of appeals of DHR decisions is low and the reversal of a case on appeal is rare.**

We studied the appeals process and asked:

- How many of the department's determinations were appealed?
- Is the department handling appeals and requests to reopen cases in a timely manner?
- How many determinations were reversed on appeal, and does the rate of reversal signal a problem with the quality of original decisions?
- How is the appeals process organized, and does the process provide an independent review of the department's original decision?
- How is the appeals process organized in other states?

On the question of the overall rate of appeals, we found:

- **The rate of appeals and requests to reopen cases was low, except for appeals of no probable cause determinations.**

Of cases closed during fiscal years 1993-95, the department issued 271 probable cause determinations, and 17 of those cases were appealed, a rate of 6 percent. There were 213 no probable cause determinations and 45 corresponding appeals, a rate of 21 percent.[29] Of the 2,492 dismissals issued in the three years, the department received requests to reopen 5 percent of the cases.

*29* In addition, there were six appeals out of a total of 22 split determinations. A split determination means that the department found probable cause in some parts of the case but found no probable cause in other areas.

The appeal rate for probable cause determinations was low, in part, because respondents have other avenues for seeking redress. A case does not end with a probable cause determination but rather proceeds to settlement negotiations and, if that fails, litigation. A respondent might choose to await a later phase of the process at which the charging party would be required to meet a higher standard of proof, or where a different body would hear the case.

In contrast to the low probable cause rate of appeal, the 21 percent appeal rate of no probable cause (NPC) determinations is fairly high. This might be partially explained by the fact that many no probable cause determinations represent close decisions, since the department dismisses a high percentage of cases in which the evidence is quite clear. The high rate of NPC appeal might also be attributable to the conclusive nature of the NPC decision. If a charging party does not appeal a no probable cause determination, the case has reached the end of its road, unless the case is taken to court.

**DHR has allowed a backlog of appeals to accumulate, but recent efforts to address the problem have shown results.**

Finally, there is a fairly low rate of requests for reopening dismissed cases. This may reflect the fact that, unlike no probable cause notifications, charging parties whose cases are dismissed are not officially notified by the department of their right to request that their cases be reopened.

We examined whether the department is handling appeals in a timely manner and found:

- **The Department of Human Rights has allowed a backlog of appeals cases to accumulate.**

- **Many appeals cases are not being decided within statutory deadlines.**

Deadlines in statute and rule govern the department's consideration of appeals and reopen requests. In the case of a no probable cause determination, the department has 20 days after receipt of a reconsideration request to affirm the determination of no probable cause, reverse the determination, or vacate the determination and remand the case for further investigation on its merits.

For a probable cause determination, the department must notify the respondent whether the request is substantial enough to warrant further consideration, but there is no time limit imposed on the department's decision.

In the case of a request to reopen a dismissed charge, a charging party has 60 days from the date of the dismissal to submit a written request. Within 10 days of receipt of the request, the department is to send a notice to the respondent, and within 20 days of the respondent's receipt of notice, the department is to notify the parties of its decision, either to deny the charging party's request or reopen the investigation.

Given the generally low rate of appeals, it is clear that if the department were handling appeals in a timely manner, it would have few appeals decisions pending at any one time. However, we found that as of September 1995, there were 21 no

probable cause appeals and 55 reopen requests awaiting department action. The department has acknowledged its need to address the accumulation of appeals cases and has established a plan to eliminate the backlog by December 1, 1995. By mid-January 1996, it had made substantial progress toward this goal.

**Many appeals decisions are not rendered within the deadlines set in statute and administrative rule.**

We also found that the department exceeded its deadlines for rendering decisions in NPC appeals and requests to reopen dismissed cases. We looked at cases closed during a three-year period ending June 30, 1995. For NPC appeals, the department took an average of 173 days from appeal to closure. In the 37 cases where the department upheld its original NPC determination, it took an average of 171 days from appeal to closure, meaning that most cases were well beyond the 30-day deadline for a ruling.[30]

The department dismissed 2,492 cases in FY 1993-95 and received 132 requests to reopen. Of the 132 cases, 61 were pending in August 1995 and were, on the average, 360 days past their date of appeal. There were 64 cases where the department denied the request to reopen, but the decision took an average of 270 days. These averages are well beyond the maximum of 30 days allowed for the process.

We looked at the percentage of cases reversed on appeal and found:

- **In fiscal years 1993-95, few case outcomes were reversed on appeal.**

Of the 132 requests to reopen that the department received, our data show that none resulted in probable cause determinations, which would indicate a reversal of the original decision to dismiss.[31] By our count there were only two reversals of NPC determinations and two reversals of probable cause findings.

We considered the independence of the appeals process, and found:

- **The department's appeals process provides less organizational separation than is found in other states.**

In Minnesota, the Deputy Commissioner supervises the appeals process, but the deputy also oversees the department's entire case processing operation. The deputy is not involved in reviewing routine cases, so, to some extent, appeals cases are reviewed by a party not involved in the original determination. Also, cases accepted for reconsideration are assigned to enforcement supervisors who were not involved in the initial investigation. These arrangements provide a measure of organizational separation and independence, but not as much as might be desired.

In many other states, human rights investigations are governed by a commission, which typically serves as the hearing panel for appeals. Staff investigators make the original determinations, and parties to a case can appeal to the commissioners,

*30* The department is allowed 20 days to rule on the appeal, and an additional 10 days to notifythe parties of its ruling.

*31* However, department records show that two cases were reversed in 1994. The difference may be attributable to the selection of cases studied. We looked only at closed cases, and the two cases counted by the department may be still officially open.

who have not previously seen the case. This arrangement provides more organizational separation than the Minnesota system. We discuss the organization of human rights agencies in other states in the next chapter.

# SUMMARY

The Minnesota Department of Human Rights accepts more cases than it can handle in a timely fashion. As a result it is accumulating a growing inventory of open cases. In the past, an accumulated backlog of old cases had to be summarily dismissed. This, of course, added insult to whatever injury the charging parties had suffered that led them to file charges in the first place. It is, however, the predictable result of the chronic failure to investigate as many charges as are filed.

In response to historic problems in case processing, the Legislature enacted a number of provisions to permit and encourage the department to prioritize cases for investigation and dismiss low-potential cases. The Legislature also enacted a 12-month deadline for finding probable cause, but data presented in this chapter show that many cases exceeded that deadline. The department argues that the 12-month deadline is advisory rather than mandatory, but we think a deadline is a necessary discipline for a department that is tempted, for the best motives, to accept more cases than it can investigate. Most human rights agencies have similar deadlines.

Finally, this chapter has pointed out that most cases are not closed in a way that sustains the charge of discrimination that prompted the investigation. About two-thirds of cases were dismissed, and additional cases were withdrawn or determined to lack evidence to sustain a probable cause finding. Of the cases withdrawn, some may be destined for success in district court, but they would have succeeded there without the department. A few were withdrawn because the parties resolved the dispute on their own.

# Analysis of Case Processing Effectiveness

**CHAPTER 4**

This chapter discusses a number of factors that determine the effectiveness of case processing and the production level that the department has achieved. Specifically, we asked:

- **What factors account for the department's delays in case processing?**
- **What strategies for improving performance should the department and the Legislature consider?**

To address these questions, we interviewed many Minnesota Department of Human Rights managers and staff, and asked about their ideas on how to improve the department's effectiveness. We surveyed department employees and offered staff a chance to tell us, in confidence, their views on issues affecting the department's operation. We also reviewed information on how human rights agencies are organized and operated around the country. In addition, we looked at previous reports prepared by our office and others.

The first part of this chapter explores each of the following factors that might impact the department's effectiveness:

- Enforcement officer caseloads
- Enforcement officer productivity
- Employee morale and satisfaction with the department's physical space, leadership, and training and development practices
- Computer information systems

In the second part of the chapter, we consider various options for improving the department's case processing program.

## ENFORCEMENT OFFICER CASELOADS

An important factor affecting the department's productivity is the size of the caseloads carried by the case processing enforcement officers (EOs). To under-

stand the effect of this variable on the department's efficiency and effectiveness, we asked these questions:

- **How large are the caseloads carried by DHR enforcement officers?**
- **How does the present caseload size compare with that in prior years?**
- **How has the size of the caseload affected productivity?**

## Caseloads carried by DHR enforcement officers have grown in recent years.

Caseload size measures the number of open cases in investigation that are assigned to a given enforcement officer at a particular point in time. We found that:

- **Historically, enforcement officers in the Department of Human Rights carried about 50 cases at a time.**

The 1987 task force report stated that investigators had ongoing workloads averaging 50 cases per month.[1] Similarly, the department's 1994 annual performance report showed the caseload per investigator for fiscal year 1993 at 48.5 cases.[2] Stephen Cooper, DHR commissioner from 1987 to 1990, estimated that a reasonable open caseload for an investigator should be about 45 cases.

However, as of March 1995, department statistics showed that the average caseload for a full-time investigator had increased to 106 cases. In other words,

- **Caseloads per enforcement officer have more than doubled over the past few years.**

A few EOs had as many as 140 cases at a time. The deputy commissioner attributed the increase in caseload to delays in the implementation of the enforcement officer training unit. In order to accumulate enough positions to begin the unit, the department did not fill EO vacancies beginning in fiscal year 1995. As we described in Chapter 1, the department's negotiations with MAPE, the labor union that represents the EOs, lasted from November 1994 till February 1995. Although the training class officially began in March 1995, the trainees did not begin investigating cases until September. One of the consequences of this plan was a reduction in the number of full-time investigators carrying a caseload, and a corresponding increase in the size of each officer's caseload.

Case processing enforcement officers reacted strongly to the heavy burden imposed by a growing caseload. In our interviews with case processing staff:

- **Both enforcement officers and supervisors cited the large caseload as an obstacle to speedy resolution of cases.**

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*1* Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (February 1987), 28.

*2* Minnesota Department of Human Rights, *1994 Annual Performance Report* (St. Paul, September 1994), 9.

Investigators explained that an increase in the caseload translates into proportional increases in the number of phone calls from individuals inquiring about the status of their case. For any given case, an enforcement officer could receive phone calls from up to four people: the charging party, the respondent, and attorneys from both sides might call to ask for information from the investigator. With so much time invested in answering the telephone, enforcement officers complained to us that they had less time to spend in investigative work.

**Large caseloads make it difficult for investigators to keep track of developments in each case.**

Investigators also told us that the increase in caseload size affected their ability to keep track of the cases in their inventory and to resolve the cases in a timely manner. One EO declared that it was impossible to work on so many cases at once, and that the huge caseloads made it difficult to keep track of when responses or rebuttals were due. Another explained that the increase in caseload made it hard to remember what was happening with a case, meaning that the EO had to spend more time reviewing earlier work to refresh his/her memory on the details of the case and the strategy of the investigation.

We calculated that EOs can only invest an average of 20 to 25 hours per case if they hope to meet the production standard of 75 cases per year. [3] For every complex case that takes much longer than 25 hours to close, the EO must spend a shorter amount of time on several, less complicated cases in order to attain an average of 20 to 25 hours per case. We reviewed the files of a number of cases that DHR dismissed as not warranting further resources (DWR). These are cases that the department deemed to be weak in evidence to prove a claim of illegal discrimination. According to case processing staff we interviewed, most DWR cases should require less time to resolve than more complex, probable cause cases. However, we found that DWR cases on average took about a year to close, despite little evidence of active investigation. In other words, a case processing enforcement officer spread 20 hours' worth of work over a year's length of time. We questioned the enforcement officers responsible for investigating the cases about the causes of lags in processing, and in every case, the EOs attributed the delays to the caseload. They asserted that the magnitude of the caseload prevented them from giving their attention to cases in a timely fashion.

**Large caseloads also mean that investigators spend time reacquainting themselves with cases they have not worked on recently.**

Weeks and even months can lapse before an investigator has an opportunity to turn to a case for the first time, or give it serious attention. As cases sit idle, awaiting investigation, their quality may deteriorate because witnesses become harder to locate, facts and observations fade from witnesses' memories, respondents go out of business, or charging parties get discouraged and choose to withdraw their cases. One official in Oregon stated it this way: "As cases get older, they don't get any better."[4] Human rights experts are in universal agreement that justice delayed is justice denied. Both charging parties and respondents are affected by longer delays in the investigation process. In the Oregon experience, as the

*3* We arrive at this estimate of 20 to 25 hours of investigative work per case by dividing the number of working hours in a year (2,080) by 75 cases per year. This quotient is about 28 hours per case, but we expect between 10 to 30 percent of work time to be used for vacation, holidays, sick leave, and other non-investigation work assignments. That leaves 20 to 25 hours available for each case, assuming 75 cases per year.

*4* Interview with Sue Jordan, Oregon Civil Rights Division, Bureau of Labor and Industries, October 19, 1995.

agency found ways to give faster turnaround, even some charging parties whose cases were dismissed expressed satisfaction that at least they found out in two months rather than one year.

In summary, it seems clear that increases in caseload size negatively affected the department's effectiveness and efficiency in case processing. Elapsed time in investigation increased, investigations became more difficult as cases languished, and enforcement officers experienced higher stress and pressure. At least two former EOs referred to the increase in caseloads in their list of reasons for leaving the department.

In order to respond to the troubling growth in caseload size , the commissioner established a caseload standard per investigator. A June 1995 memo to staff stated:

> The department will seek to assign cases so that each enforcement officer will have an average of 82 cases. Enforcement officers will be assigned cases so that the total number of cases assigned for investigation will not exceed 104 cases or be less than 60 cases.[5]

**The department lowered caseloads to 78 per investigator from over 100 per investigator, but this was a one-time reduction due to the start of a mediation program.**

We looked at the caseload statistics for the end of fiscal year 1995 and found that:

- **The average caseload for a full-time investigator was 78 cases in June 1995.**

The department lowered the caseload per investigator by 25 percent in three months, from more than 100 cases in March 1995 to 78 cases by June. However, management achieved this reduction in caseload size by setting aside more than 400 cases for a new alternative dispute resolution (ADR) project. [6] The department offered the ADR option in 430 cases, but by September 1995, parties in only 45 to 50 cases had agreed to try mediation, and there were 75 cases of rejection. Answers were still pending in the remaining 300 to 305 cases. Although the case processing personnel whom we interviewed regarded the ADR project as a worthy attempt at innovation, most were skeptical that mediation would resolve a high percentage of cases, and feared that caseloads would increase again as parties rejected the ADR option. Cases in which the charging party and the respondent refused to accept the offer of mediation would revert to the investigator having aged by several months.

We recommend:

- **The department should reduce caseloads permanently to 40 or 50 cases per enforcement officer.**

Although mediation is a useful option that may provide some relief to the department's case processing operation, it is unlikely to solve the problem of the large

*5* Memo from David Beaulieu, Commissioner of Human Rights, to all staff, June 20, 1995.

*6* In July 1995, the department began to work on a project to offer parties a new option for settling charges. Mediation is a process in which a neutral third party, in this case, a volunteer attorney, meets with the parties face-to-face to try to reach a mutually satisfactory settlement of the charge. The department administers the project but relies on volunteers to act as mediators.

caseloads currently carried by DHR enforcement officers. We think there are several additional strategies the department could implement that would lighten the EOs' caseloads. Screening cases more closely to avoid accepting weak charges supported by little evidence would lessen the department's workload. Several states hold incoming cases in a separate, actively managed inventory until enforcement officers are ready for new cases. Additional resources in case processing would distribute the department's load over more staff, decreasing individual caseloads. We discuss each of these options further in the second part of this chapter.

# PRODUCTION STANDARDS

The Department of Human Rights established a production standard for its case processing enforcement officers. DHR policy states that:

- **The department expects fully-trained investigators to close at least 75 cases per year.**

The productivity of each enforcement officer clearly affects the department's overall effectiveness. Decreases in individual production amount to a reduction in the department's capacity to close cases, and, conversely, increases in EO productivity mean that the department can handle more cases. Our research in this area focused on the following questions:

- **What is the current production standard, and how was it developed?**
- **How does actual case production compare with the standard?**
- **How does the standard compare with production standards in other states?**

## History and Development

The Department of Human Rights first instituted numerical standards for case production in 1984. The standards, which were established with input from enforcement staff, required closure of eight investigations per month (or about one every 20 hours). According to the Human Rights Advisory Task Force Report issued in February 1987, more than 80 percent of DHR's case processing enforcement officers were meeting that work performance standard, and another 18 percent were completing seven cases per month.[7] However, one former enforcement officer noted in a 1992 memo to the former deputy commissioner that the staff had averaged only six closures per month since 1987.[8] Commissioner Cooper, who headed the department from 1987 to 1990, did not enforce a formal production

*7* Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (February 1987), 20.

*8* Memo from Kathleen Hagen to Deputy Commissioner Tracy Elftmann, 1992.

standard, but EOs who worked for the department during his tenure told us that they felt continued pressure to close eight cases a month.

**After a careful study, the department established a production standard that investigators must achieve.**

Discussion of a performance standard under the current administration began in earnest in April 1992. In September 1992, the commissioner initiated the Case Processing Production Standards Project to "establish clear production standards for processing charges of discrimination."[9] A human resource director from the Department of Employee Relations served as the project coordinator, and DHR's management analyst provided staff support for the project. Among other tasks, the analyst conducted a survey to learn about production standards in other human rights agencies in the United States, and she gathered statistics to calculate the actual production rates of staff. The project also involved two employee task forces: one comprised of enforcement officers and the other of supervisors. The investigators' work group recommended a standard of 70 to 83 cases per year, while supervisors suggested 83 to 95 cases as an appropriate annual standard.

After completion of the production standards project, the commissioner set a tentative production standard of 80 case closures per year in January 1993. MAPE, the labor union that represents the department's enforcement officers, strongly opposed the new standard and proposed instead a threshold of 72 cases per year. In March the commissioner revised the standard to the current 75 cases-per-year level. The union filed a grievance, complaining that the final standard "constitute[d] an unreasonable and punitive work rule."[10] Despite the protest, the department implemented the performance standard, and it remains in effect today.

# Current Department Standard

The department's current production standard, set in March 1993, is 75 cases per year, or 6.25 cases each month. The range of standards is as follows:

Unacceptable - less than 59 cases per year (4.99/month)

Below standards - between 60 and 74 cases annually (5.00 - 6.24/month)

Meets standards - between 75 and 89 cases/year (6.25 - 7.49/month)

Exceeds standards - between 90 and 104 cases each year (7.50 - 8.74/month)

Greatly exceeds standards - more than 105 cases a year (8.75/month)

Department policy states that investigators who do not meet the minimum threshold of 75 cases per year are ineligible for anniversary salary increases. To receive a bonus award, an investigator must be in the "exceeds standards" range, closing more than 90 cases in a year.

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*9* Catherine R. Johnson, *Case Processing Production Standards* (November 1992), 1.

*10* Minnesota Association of Professional Employees grievance #93-28-2512, (March 24, 1993).

Investigators do not receive credit for closing "companion cases." A companion case is a case filed on or near the same date as another case, that arises from a virtually identical fact situation and involves essentially a single investigation or settlement negotiation. Also, the department does not adjust the standard for employee leave time, for example, medical leave or vacation time, because these types of absences are factored into the standard. On the other hand, department policy does allow for supervisors to make adjustments to an employee's production standard in appropriate circumstances, for example, if an employee is assigned to a special project or if a case is unusually complex. Recently, in an effort to clear an accumulated inventory of older cases, department management decided to give investigators 1.25 credits for closing cases that were at least 700 days old.

The standard applied to nine of the 15 case investigators on staff when we performed this study. Two investigators act as liaison officers to minority communities, and since these enforcement officers spend only 50 percent of their time investigating cases, their closure standard is 37.5 cases a year. For a third investigator, the department has set a minimum standard of 52.5 cases per year because of her language translation responsibilities. Three additional investigators, who joined the department in 1994, were expected to close 63.75 cases per year, or 85 percent of the full production standard.

**The standard set by DHR is in line with standards set in other states.**

# Production Standards in Other States

It is difficult to draw comparisons with production standards in other jurisdictions because of differences in intake procedures, requirements for closure, methods of counting cases, and other variations. For example, in some states enforcement officers handle both intake and investigations, and these states impose lower production requirements than states where investigators have no intake responsibilities. Some state agencies award credit for companion cases while others do not; some production standards are set to take into account leave time, while in other states the standard is pro-rated for vacation or sick leave periods. Despite these differences among states, we think it is still useful to compare the Minnesota Department of Human Rights' production standard with those in other states.

We collected production standard information from 27 states besides Minnesota. In general, we found that:

- **Minnesota's production standard is similar to standards in other states.**

The average production requirement for these states was 7 cases per month, ranging from a low of 4 to 5 closures per month in Alaska, Missouri, New Hampshire, Oklahoma, and South Carolina, to the highest standards of 12 closures in Wisconsin, and 15 per month in Nevada. Fifteen states (56 percent of the 27 who responded) had a standard that equaled or exceeded Minnesota's requirement of 6.25 cases per month, or 75 cases annually.

# Enforcement Officer and Department Production Levels

We studied department data on individual enforcement officer production levels in fiscal year 1995 and found that:

- **Only 9 of 15 enforcement officers were expected to produce at a rate of 75 cases per year in fiscal year 1995, and only 8 of the 9 met that standard.** [11]

**Not all enforcement officers meet the production standard, but even if all did, the department would not be able to close as many cases as have been filed in recent years.**

Of the 15 enforcement officers who investigated cases for at least eight months in fiscal year 1995, eleven of them, or 73 percent, fully met their case production standard. Eight of the 9 enforcement officers closed an average of at least 6.25 cases per month; one of the three investigators on provisional status met the requirement of 5.31 cases per month; and two of the three investigators with other adjusted production standards fulfilled their requirements. Among the full-time EOs, the lowest production rate was about 4.8 cases per month, and the highest producer closed 9.7 cases a month. Overall, in FY 1995, the department's EOs closed a monthly average of 6.29 cases, slightly more than the production standard of 6.25 cases.

We can use the quantitative standard of 75 cases a year to calculate the department's total case production capacity. If all 15 enforcement officers met their individual standards, then the department would be able to close at least 994 cases in a year.[12] Or, applying the monthly average of 6.29 cases from FY 1995 to all staff, the department's capacity should be 1,132 cases per year. [13] Under either scenario, it is clear that the department has a problem. These statistics show that:

- **Without an increase in staff and/or enforcement officer productivity, the department will not be able to close enough cases to handle the 1,200 to 1,400 charges filed each year.**

As we discussed in Chapter 1, the department is training four new investigators who will join the permanent staff, on probationary status, in March 1996. The addition of four more EOs will increase the department's capacity by about 300 cases per year, enabling the department to close 1,300 to 1,400 cases annually. This rate of production will be adequate to clear the cases filed annually, if case filings remain at their present levels, but it will provide little excess capacity for the department to address the backlog of cases that accumulated while the new officers were in training.

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*11* The department provided us with copies of the monthly production reports submitted by each case processing unit supervisor. We used these data to calculate the production statistics presented here. The department claims that, when evaluated on an anniversary year basis, all investigators are meeting their respective standards, but our data show otherwise.

*12* We calculate this figure based on nine enforcement officers producing 75 cases a year, three EOs producing 63.75 cases a year (85 percent of the full standard), two investigators working half-time to close 37.5 cases per year, and one officer closing 70 percent of the full standard, or 52.5 cases a year.

*13* Calculated as 15 officers times 6.29 cases per month times 12 months per year.

# Impact of the Production Standard

The use of a quantitative production standard for enforcement officers carries some risks. A numerical standard provides some incentive for investigators to choose cases that they can close quickly or easily. For example, in order to meet the monthly production standard, an investigator might select several simple cases rather than concentrating effort on one complex case. This practice of "creaming" cases could be particularly harmful if probable cause cases are left to languish and deteriorate while other cases, such as dismissals or no probable cause cases, are investigated. Another possible unintended consequence of the production standard could be an adverse effect on the quality of case investigation.

DHR has addressed both of these problems by holding case processing unit supervisors responsible for monitoring the quality of investigators' work and also for ensuring that older, complex cases are not ignored in favor of newer, straightforward cases. Some other states have tried to develop performance measures for investigation quality, for example, the percentage of cases that are returned to an investigator for additional work or revisions. It is still too early to tell whether these measures will prove useful for assessing investigator performance and counterbalancing the weight placed on numerical production standards.

**We think a performance standard is a necessary management tool; however, it carries some risks.**

Finally, some critics object to a production standard approach because they claim it acts as a ceiling on production, rather than a floor. One former investigator explained it this way:

> in order to make sure you had enough closures for the next month, you would 'bank' closures beyond your [quota], even though you might have been able to finish them that month, just to make sure you met next month's goal. I think actually, on occasion, this resulted in fewer cases coming in per month.

The department tried to motivate enforcement officers to exceed the production standard by offering the possibility of financial rewards; however, due to budget constraints, the department has not been able to offer bonus pay to employees. Nevertheless, it is clear that not all enforcement officers view the standard as a ceiling on production since there are several DHR investigators who regularly exceeded the required 6.25 cases per month. In addition, the department evaluates performance on an annual, rather than a monthly, basis, which reduces the incentive for employees to hold completed cases from one month to another.

Although we recognize the limitations of a production standard, we think that, on balance, a standard is beneficial as a guideline for good performance. It can focus investigators' attention on one of the department's primary goals--closing cases in a timely manner--and provide important incentives for enforcement officers to work as efficiently as possible. Appropriate employee training and proper oversight on the part of supervisors and managers can help to prevent the creaming of easy cases or an undue emphasis on speed to the neglect of quality.

In summary, the department's current production standard of 75 cases per year seems appropriate, when compared with other state standards, and when viewed in

light of actual case production. However, some DHR investigators are able to produce at a higher rate than 75 cases per year, and a number of states impose a higher standard than Minnesota. The department's present production level (about 1,200 cases per year) is too low to manage the department's incoming caseload, let alone address its mounting backlog. For this reason, we think the department needs to look for ways to increase production, by improving the productivity of individual employees, shifting resources to case processing, or both. In addition, we recommend:

- **The department should ensure that case processing enforcement officers meet the production standard. Additional training or closer supervision should be provided for employees who fail to meet the standard, and appropriate disciplinary action should be taken if performance continues to be below expectations.**

**In recent years DHR has suffered from low employee morale.**

# EMPLOYEE MORALE AND JOB SATISFACTION

The work environment and the level of employee satisfaction can certainly affect productivity. In the past few years, the Department of Human Rights has suffered from low employee morale and conflicts between management and the union that represents the department's professional employees. One consultant to the department described the environment as "toxic," a characterization that appears to resonate since staff we interviewed repeatedly referred to the term. [14]

We conducted a survey of non-managerial employees of the department and asked survey respondents to rate their level of satisfaction with various aspects of employment at the department. We received responses from 33 of the 49 employees surveyed, a response rate of 67 percent. A copy of the survey appears in Appendix A. We also solicited their suggestions for improving the department's effectiveness. Table 4.1 summarizes the results of our satisfaction survey. [15] In general, we found that:

- **More department employees are dissatisfied with aspects of their work than are satisfied.**

More than 60 percent of the employees who responded to our survey were dissatisfied with the physical office space in which they work, the quality of managerial and administrative leadership at the department, and the general work environment. Between 50 and 60 percent of respondents were dissatisfied with the quality of professional and technical leadership, the types of staff training and development opportunities, and the department's computer systems and data processing support. In the following sections, we address each of these areas individu-

*14* Suzanne Sisson, "Organizational Scan of the Minnesota Department of Human Rights" (Minneapolis, March 1992).

*15* Appendix A presents additional details about the survey. About two-thirds of employees who received the survey responded.

## Table 4.1: Job Satisfaction

| | Very Satisfied | Moderately Satisfied | Moderately Dissatisfied | Very Dissatisfied | Total Percent | Total Number |
|---|---|---|---|---|---|---|
| Computer systems and data processing support available to you. | 6.7% | 40.0% | 26.7% | 26.7% | 100% | 30 |
| Clerical assistance or support. | 20.0 | 56.7 | 16.7 | 6.7 | 100 | 30 |
| Amount of staff training and development | 12.9 | 38.7 | 22.6 | 25.8 | 100 | 31 |
| Type of staff training and development | 18.8 | 25.0 | 28.1 | 28.1 | 100 | 32 |
| Quality of professional/technical leadership (including civil rights legal issues, investigation methods, and other technical or professional aspects of your work). | 12.9 | 29.0 | 38.7 | 19.4 | 100 | 31 |
| Quality of managerial and administrative leadership. | 12.9 | 19.4 | 25.8 | 41.9 | 100 | 31 |
| Physical space in which you work | 6.3 | 9.4 | 21.9 | 62.5 | 100 | 32 |
| General work environment. | 6.3 | 25.0 | 37.5 | 31.3 | 100 | 32 |
| Your job overall. | 15.6 | 53.1 | 18.8 | 12.5 | 100 | 32 |

Note: The question asked was: "How satisfied or dissatisfied are you with each area?"

Source: Program Evaluation Division analysis of data from Human Rights Department employee survey, December 1995.

ally, presenting information gathered from the survey, staff interviews, and our own observations.

Our survey and interviews also showed that there are many employees who are committed to the work and the purposes the department was established to serve. Table 4.1 shows that more than half of employees responding were either very satisfied or moderately satisfied when asked to rate "their job overall." A third or more of employees were at least moderately satisfied with most aspects of the department listed in the table.

# Physical Office Space

More than 80 percent of the employees who responded to our survey expressed dissatisfaction with the physical condition of the office. Almost two-thirds of respondents were very dissatisfied with the physical space in which they worked, and another 22 percent were moderately dissatisfied. In their written comments, employees criticized the ventilation, noise level, drab environment, temperature

fluctuations, and plumbing problems. Twenty-five of 32 survey respondents ex - pressed views such as:

**In our survey, the single biggest source of employee complaints was the physical space in which DHR is located.**

> "I'm convinced many of us are made physically ill by the air (mold, bacteria, etc.) that's circulated and recirculated in this building. It affects productivity."
>
> "The physical environment is drab and does nothing to lift the morale. There are constant problems with bathroom fixtures and temperature variations. It is also a very dirty environment."
>
> "We need to move--the air quality and cleanliness are unhealthy, leading to low morale and an increase in sick leave usage. The furniture is in poor shape."

The department is located in Bremer Tower, in downtown Saint Paul, where park - ing can be expensive. By our observation, the physical layout of the department is not very friendly to visitors. All staff, with the exception of a receptionist, are housed behind a closed and locked door. While we accept the need for security and understand that the department conducts most of its business over the tele - phone, a more open and inviting design might be appropriate for a department that provides direct services.

Given the strong employee sentiments about the physical environment, if prob - lems with the current space cannot be remedied, we recommend:

- **The department should find more suitable office space in a building that is affordable but accessible to the public.**

The department needs to choose a location where rent is affordable, space is suffi - cient, conditions are better, parking is ample and inexpensive, and public transit is accessible. Although we do not think that the physical environment is the primary cause of the department's productivity problems, we agree that improvements to the office space will boost employee morale and heighten their effectiveness.

# Managerial and Administrative Leadership

**Many employees were dissatisfied with managerial and administrative leadership.**

Forty-two percent of the employees who responded to our survey question about the quality of managerial and administrative leadership said they were very dissat - isfied, and an additional 26 percent were moderately dissatisfied. Survey com - ments reflected a high level of frustration with the lack of communication between management and staff. For example:

> "More communication, feedback, more meetings or memos with updates, news, etc. [are needed]."
>
> "The previous commissioners used to have all staff meetings and gave updates on case closures, staffing, etc. It was like a family. Now, nobody talks to anyone in top management."
>
> "Administration needs to meet with staff, either formally or informally."

> "Changes are made without the input and the understanding of people it will involve."

In September 1995, after we completed our survey, we learned that the department plans to begin holding quarterly staff meetings. We think this is a positive step to improve communications between the commissioner's staff and department employees.

Supervisors told us that they are not fully informed about the actions of top management. Case processing supervisors were unable to tell us how many charges the department received or closed in the last few years. In addition, supervisors did not learn in advance about intradepartmental personnel changes, which shifted employees among units.

**Staff complained that they are poorly informed about important managerial decisions.**

Staff also complained about the lack of a comprehensive strategy for the department. We learned that the department held several strategic planning meetings last year but that no documents or plans were distributed to staff. Outside observers of the department criticized the management for being reactionary and lacking vision. One survey respondent expressed desire for department management to "lay out offensive strategies." Another complained, "Management has many projects going at the same time," and suggested, "Need to better prioritize each project (high, moderate, or low priority) so time constraints can be used." A third wanted management to "invest some (admittedly scarce) staff time in strategizing and agency development." From our observations, we agree that management needs to think through its plans more carefully before making changes. For example, the new training unit, designed to improve training for new enforcement officers, had the unintended effect of hampering department productivity during the planning and implementation phases of the project. Similarly, management efforts to control insurgency among employees discouraged the sharing of important work-related information.

At least two other indicators confirm our analysis of the troubled atmosphere at the department. The fact that five DHR employees have filed discrimination charges with the federal Equal Employment Opportunity Commission against the department raises questions about the relationship between staff and management. Likewise, a recent study of the Department of Human Rights by the Minnesota Department of Administration found a high degree of general dissatisfaction with the work environment, delays in attending to problems or issues in the department, and inadequate communication channels.

Summarizing what we learned from the survey and personal interviews, we think that:

- **Management should foster a more cooperative and collegial atmosphere within the department.**

Staff whom we interviewed seemed interested in collaborating on projects of common interest and concern. However, they did express fear of retaliation for criticizing current department policies and apprehension that management would be

unwilling to listen to their ideas. There are a variety of ways that management could involve staff in improving the department. For example, the Legislature recently appropriated funds to the department to develop a new case tracking system. Since enforcement officers, supervisors, and other staff will be the chief users of the new system, it would be beneficial to include them in the development process. We discuss this proposal in greater detail in a later section of this chapter.

The ultimate measure of management is the efficiency and effectiveness of the organization. Open communications, high morale, or good office space are only means to an end rather than the ends themselves. We criticize management primarily for its inability to steer the department on a course that would prevent delays in case processing and an increasing inventory of open cases. We observe, however, that the department has recently begun to take a course of action that is responsive to these key problems. Management has developed a number of initiatives to address the problems. Although it is too soon to tell whether particular projects will succeed, we give the department credit for recognizing its deficiencies and refocusing attention on some of them.

## Professional and Technical Leadership

**Over half of the employees responding to our survey expressed dissatisfaction with professional and technical leadership in the department.**

We asked employees to rate their satisfaction with the quality of professional and technical leadership in the department, meaning leadership in the areas of civil rights legal issues, investigation methods, and other technical aspects of the work. Thirty-nine percent of responding employees were moderately dissatisfied with this dimension of the department, and 19 percent were very dissatisfied.

Both outside observers of the department as well as current employees cited the need for greater legal or law enforcement experience in upper management. Many people we interviewed remarked that neither the current commissioner, deputy commissioner, nor the enforcement division director (who left the department in October) are attorneys or had substantial civil rights law enforcement experience prior to joining the department.

One of the department's fundamental challenges, recognized by current management, is the need to standardize case investigation and establish a common approach to case processing throughout the department. A number of experienced enforcement officers told us that their jobs varied considerably depending on the case processing unit supervisor for whom they worked. To assure uniform standards across case processing units, the department needs someone outside the units to be familiar enough with the complex, legal issues surrounding case investigation to handle policy issues and promote new case law developments as they arise.

This need has been addressed to some degree by the addition of a lawyer as Policy and Legal Affairs Director, and the creation of a working group consisting of the deputy commissioner, policy director, and unit supervisors. Under this arrangement the policy director has essentially assumed responsibility for technical leadership in the department. In addition, the policy director has begun to meet regularly with the Attorney General's staff who provide legal support to the depart-

ment. It is too early to tell whether the current organizational arrangement will provide the needed oversight; however, the policy director has begun to study ran - dom samples of cases in order to assess the quality of the investigative work and identify ways to improve the process. We think this is a step in the right direction.

We recommend that:

- **One or more of the top positions in the department should be filled by someone with a substantial background in civil rights law enforcement.**

It may be that the department has met this test with recent managerial changes. According to the people with whom we spoke, the department has functioned bet - ter when either the commissioner, deputy commissioner, or enforcement director was a respected source of expertise in civil rights legal issues and law enforce - ment. If top management can exercise credible professional and technical leader - ship, it will gain greater respect in the eyes of the enforcement staff, who will then be more likely to respond to management initiatives. Greater familiarity with the civil rights enforcement field would also help management make important changes to improve the case investigation process.

# Training and Development

Investigation of discrimination charges is a difficult job that requires motivation, organization, and strong analytical, writing, and interpersonal skills. According to the department and other experts, it takes a year or longer for new enforcement of - ficers to become fully productive. In addition, the arena of civil rights law changes continually as legislatures modify the statutes and courts develop new in - terpretations of those laws. All of these facts point to a need for employee training and development, for both new and experienced enforcement officers. We won - dered if a lack of training might be one of the factors impeding department effec - tiveness. We found that:

- **Training opportunities are inadequate for many existing employees, although a thorough training program is in place for a group of recently hired trainees.**

Our survey asked how many hours of training (paid for or provided by the depart - ment) employees completed in fiscal year 1995. The 30 employees who re - sponded indicated that they received an average of about 12 hours of training in this period. About 37 percent said they received no training in FY 1995. These figures are lower than the averages for other state employees. According to a 1994 study of employee training in 21 state departments, 86 percent of surveyed employees reported that they participated in some amount of training during fiscal year 1994, and they received an average of 33 hours of training during the year. [16]

*16* Office of the Legislative Auditor, *State Employee Training: A Best Practices Review* (St. Paul, April 1995), 7-8.

**DHR employees criticized the amount and type of training available to them.**

We also inquired about the amounts and types of training received by current DHR employees and asked what types of additional training would be useful. As Table 4.1 shows, more than half of the survey respondents were satisfied with the *amount* of training they received, while just under half were satisfied with the *types* of training they had. More than 50 percent of survey respondents offered written suggestions for what types of training would be most helpful in improving the department's effectiveness. Many wanted more training relating to legal is - sues, or case law developments. Some emphasized the need for ongoing training rather than training exclusively for new employees. Here are a few representative comments:

> "Need to be kept abreast of new case law on state and federal level."
>
> "More technical training/updating on legal issues would be helpful."

Some employees were critical of the training provided by the department.

> "The only thing we got in the past few years is indoctrination on political correct- ness and diversity. How about investigation training?
>
> "The department relies too heavily on in-house, arbitrarily selected, 'specialists' for professional training."
>
> "New training unit seems to be getting appropriate training. What about EOs who are learning on the job?"

We think that:

- **The department should institute a comprehensive training and development program, especially for enforcement officers. The program should focus on keeping officers abreast of changes in relevant case law and developing their investigative skills.**

In our view, improved training could have multiple benefits. It could provide the technical information that investigators need, and it could improve employee mo - rale, foster a team spirit, and create a better work environment. The department could collaborate with staff at the Attorney General's office who could provide case law updates. In addition, there are a number of enforcement officers and su - pervisors with legal training and/or considerable expertise in the field who might be able to lead training sessions.

# Trainee Unit

In the past, new enforcement officers spent a few weeks in orientation sessions but soon joined a case processing unit and commenced casework. The current admini - stration established a different system. Management concerns about both the lack of orderly training and what they perceived as a negative organizational culture into which new employees were socialized one by one prompted the changes in training. The department developed plans for a training unit in 1994, accumulated

vacancies in enforcement officer positions, and hired five trainees in March 1995 to undergo a year-long program of training and apprenticeship. The training program was designed to provide extensive training in civil rights law, investigative techniques, analytical methods, communication skills, and other aspects of the job of enforcement officer. MAPE initially resisted the plan, objecting that it delayed full staffing of vacant positions and downgraded compensation for the work performed by enforcement officers, but eventually agreed to accept it.

**A training program for new employees is underway.**

We interviewed the director of the training program and reviewed the training schedule but did not evaluate the program in detail since it is still underway. It is clear that the program was thoroughly planned, with explicit training modules, speakers, opportunities for feedback, and supervised work. But, as we discuss elsewhere, the program required the department to take staff positions away from case investigations for a longer period than previous practice required. As of late 1995, the department has two investigator position vacancies. [17] It is not clear how the training program concept will be applied to these vacancies or others that become available one at a time.

Nevertheless, the training program demonstrates that the department appreciates the need for training. Some enforcement officers expressed the view that the trainees were using all the department's training resources, and the needs of existing employees were being ignored. Somehow, the competing needs of new and existing employees have to be reconciled in an environment where new discrimination charges are filed every day and only a limited amount of time away from work can be justified.

# COMPUTER INFORMATION SYSTEMS

The effectiveness of the Department of Human Rights has been impaired because its information systems do not adequately support its operations. Every year the Department of Human Rights handles thousands of cases, each of which passes through a complex process involving several units of the department. In addition, both statute and administrative rule impose restrictions on the amount of time the department can take at various stages of the process. Enforcement officers, who handle about 75 cases at a time, need a way to keep track of the progress of each case. When a charging party or respondent calls the department for information about a case, staff must be readily able to identify the case's location and answer questions about its status. Perhaps most important, managers need reliable statistics about the department's inventory of cases and its productivity in order to detect problems and make necessary changes.

In our review of the department's management information system, we asked these questions:

- **How well has the department's information system worked?**

*17* One of the original trainees left the training program, and one enforcement officer resigned from the department.

- **Does the department have a reasonable systems development plan that responds to known case tracking deficiencies and will meet future needs?**

To answer these questions we examined department records and reports on the information system and its development, including copies of external consultants' evaluations of the system. We looked at statistical reports generated by the department's computer, and interviewed department personnel familiar with the system and involved with planning for future changes. We spoke with staff from the Information Policy Office, who have consulted with the department on its systems development plan. Finally, through the process of extracting data from the system for our evaluation study, we learned more about the system's capabilities and limitations.

**DHR has had information system problems for years.**

# Current System

During the 1980s the department's case tracking system operated on a computer platform at the University of Minnesota. In the late 1980s the University's computer center informed the department that it was the sole user of what had become an obsolete database management system, and that the University planned to discontinue supporting it. In 1989 the department requested funding for a new, in-house information system. The Legislature responded by appropriating $140,000 for system development and implementation. The new system became operational in July 1992, and it is still in use at the department in early 1996.

Although the current system is only three-and-a-half years old, we found that:

- **The information system has numerous problems, including poor documentation, insufficient checks on data entry, and badly designed output.**

**DHR does not have documentation for its current information system.**

We asked the department to provide us with documentation for the system, and were told that no documentation was available. The department did produce a list of the database tables that comprise the system and the information fields that make up each table, but it could not locate further descriptions of the fields' contents or schema of the system design. This lack of documentation hinders the department from understanding the system's internal operations.

In our review of the statistical data we extracted from the system, we detected many examples of data entry errors, including duplicate listings of case numbers, ineligible codes, and implausible dates. For example, the system would allow an operator to enter "1929" instead of "1992," an error that would affect the calculation of time elapsed in processing the case. For information fields such as "charging party's race," the system did not restrict entries to the list of eligible codes, so there were meaningless entries in some of the records.

We looked at a number of the statistical reports produced by the system and found them poorly designed and hard to understand. For example, a report titled "Cur-

rent Status Summary" lists the number of cases in more than fifty overlapping categories but fails to tell the reader the time period covered. The report has a final line called "Total" but it is unclear which categories are summed to arrive at the total.

The department blames the problems with the information system on the lack of competence of its former systems staff. Although we agree that some responsibility for these system deficiencies rests with the programmers who designed the system, we think that:

- **The current administration bears some responsibility for allowing problems with the information system to develop and continue for several years.**

The present commissioner began his tenure in mid-1991. System implementation took place a year later, in July 1992. However, the department did not focus on its system problems and develop a plan to fix them until the end of June 1994. Instead, the department readily admitted that its information system contained erroneous data and cited the problems when it received external requests for information about the department's productivity. DHR's 1993 performance report presented no statistical data at all, and in response to our office's critique of the report, the commissioner wrote:

> For years the Department of Human Rights has struggled with an obsolete, unreliable computer information system that does not support the agency's work. As a result, the Department does not have accurate, reliable data to include in the performance report.[18]

Similar language appeared in the department's 1994 annual performance report. [19]

However, with the help of an outside consultant, we found it possible to extract data from the system, run a series of logical checks on the data to detect errors, and review case files to correct those errors, all within a few months. We found that:

- **Although the information system needs improvement, it contains the basic data needed to assess the performance of the department's case processing program.**

In Chapter 3 we presented a statistical profile of the department's case processing system. Our analysis revealed a growing backlog of cases in investigation, a large percentage of cases that are not processed within the statutory deadline, a problem with the length of time cases spend in supervisory review, and delays in the appeals process. The department could have conducted similar analyses on its own

*18* Annual performance reports were required of 21 state agencies under *Minn. Laws* (1993), Ch. 192, Sec. 39-41. Letter from Commissioner David Beaulieu to James Nobles, Legislative Auditor, June 17, 1994.

*19* Minnesota Department of Human Rights, *Annual Performance Report* (St. Paul, September 1994), 2.

if it had been aware of the types of data available in the current system and had some grasp of the magnitude of errors.

In our view, the commissioner's mistaken opinion that the current system could not be used for these purposes reflects a more significant problem within the department. We found that:

- **The department lacks the expertise it needs to take full advantage of its current information system.**

The department has no permanent staff who understand the inner workings of its computer system. The department needs someone on staff who can design new statistical reports, modify the program code as errors are detected, or reprogram the system to handle new capabilities. We submitted to the department a request for basic case processing data, similar to the data we requested in 1981 and 1983, in mid-May 1995. At the end of June 1995, we received word that the department had been working on our request but was unable to fulfill it, and therefore, we would need to hire a programmer for our project. The vendor with whom we contracted took less than two weeks of working time to complete the assignment.

**The department needs a new case-tracking system, but it could make better use of its current system.**

In summary, we agree with the department that its current system is not ideal. However, we think the department could make better use of the data in its information system. Its failure to do so stemmed in part from a lack of expertise within the department. Without permanent staff who had the appropriate expertise and training to manage the system, the department was unable to meet requests for information from the Legislature and the public, or to use such information for its own management purposes.

# Future Systems Development

The department received a special appropriation from the Legislature totaling $702,000 for fiscal years 1995-97 to redesign its information systems, including the case tracking system. The department chose to focus its attention first on the contract compliance unit, which had previously been relying exclusively on manual recordkeeping. A consultant was hired to design that system, and unit staff worked closely with the consultant to describe their needs and identify ways the system could increase their productivity. It became operational in November 1994, and, with the exception of a few remaining problems, the unit supervisor and staff are satisfied with the system and think that it has enabled contract compliance to improve its service to the public.

Although the department successfully developed the contract compliance system, it did not prepare a specific statement of the scope of work it expected the contractor to complete, or a list of the deliverables due at the completion of the contract. When the contract ended, the department was in disagreement with the vendor over whether the job was finished. In the end, the department decided to write a new contract with a different vendor to complete the work. The department showed a lack of business office expertise in executing the contract and account -

ing for expenses. For example, expenditures for the contract were consistently as - signed the wrong object code in the statewide accounting system.

Despite the department's success in developing a contract compliance information system, we are concerned about its efforts to redesign the case tracking system used by the case processing units. We cannot measure the department's perform - ance in this area very well since the new system will not be completed until the end of fiscal year 1996 and will not be fully refined until the end of 1997. How - ever, we have looked at the department's planning process to this point (October 1995), and the steps taken to develop a new system. Based on our review, we think that:

- **The department has made little progress, so far, in designing and implementing a new case tracking system.**

The Information Policy Office in the Department of Administration gave DHR a rating of "satisfactory" for its information system enhancement plans and recom - mended full funding of the proposal. However, IPO noted that "both the project plan and a cost, benefit, and risk analysis are incomplete. There is no plan to re - fine, monitor, and manage costs."[20] In addition, IPO told us that it lacks sufficient staff resources to provide proper oversight to systems development projects as small as DHR's.

**While the schedule calls for case-tracking system development to take place this year, we found little indication that progress is being made.**

If a case tracking system is to be successfully developed, there will have to be ac - tive participation by the unit supervisors and enforcement officers in intake and case processing units, who will be users of the system, and who presumably know what information might be useful and how a system could improve the work proc - ess. Unfortunately, as of October 1995, we found that few people in the depart - ment had been involved in planning for the system. There had been several meetings, but, as far as we know, there was no formal strategy to gather feedback and ideas from all case processing staff. When we interviewed the systems devel - opment administrator in October, we learned that the development steering com - mittee had not met for several months. There is no document defining user needs that could serve as a starting point for development, and we could find no written budget more recent than a preliminary cost worksheet dated January 1994.

The department employs one person, originally hired as the network administrator, who is now responsible for overseeing the development of the new case tracking system. However, it has taken some time for this person to familiarize herself with the department's work and its current information system. Also, this individ - ual's salary is funded by the special, three-year appropriation for systems develop - ment. We are concerned that the department, as of yet, has no permanent positions set aside for systems administration and maintenance.

*20* Information Policy Office, *1996-97 Information Resource Funding Recommendations* (St. Paul, February 1995), 50.

# STRATEGIES FOR IMPROVING PERFORMANCE

There is little debate among the people we talked to on one point: delays in case processing hinder achievement of the department's mission, lead to an unproductive use of time in handling phone calls from parties to the case, and require the expenditure of time to become reacquainted with cases that have lain idle. Most charging parties assume that something will happen promptly when they file a charge. They become upset and disillusioned when they do not see anything happening. Respondents also have a right to expect that their case will be pursued promptly. The respondent's position usually prevails, but three-quarters of respondents use lawyers, and cases can be expensive and disruptive.

There is also general agreement that "justice delayed is justice denied." If cases take too long, witnesses or parties to the case cannot be located, evidence disappears, and witnesses' memories become unreliable. In addition, cases can become harder to settle with the passage of time since the stakes in the settlement, such as back pay, increase over time.

We have discussed a set of factors that we see affecting the productivity and effectiveness of the Department of Human Rights. We have discussed management, professional leadership, training, and other factors identified in our survey and interviews. These are factors that are within department administrative control although improved performance in any of these areas probably requires on-going efforts rather than a quick fix.

There are several alternatives that the Legislature will need to consider in setting policy for the Department of Human Rights:

**The Legislature should consider several strategies for improving performance.**

- **Legislators need to consider whether the department's performance problems are solvable by an increase in the department's budget;**
- **They need to decide whether and how the department should set priorities in the face of limited resources; and**
- **They need to consider whether to move the department to a different organizational setting or modify its structure.**

As we discuss below, we think the department should be able to handle the present level of case filings within its current budget through internal reallocation of resources and some of the improvements discussed earlier in management, supervision, training, and information systems. We think there is good reason for the Legislature to consider a different organizational structure for the department because of the instability and vulnerability of the department over many years. Finally, we think it is absolutely vital that the department commit itself to screen cases, establish priorities and take other steps to bring the number of cases closed each year into balance with the number filed, no matter what the resource constraints it faces in the future.

## Adequacy of the Department's Budget

**While a case can be made for increasing DHR's budget, we think this step will not yield the desired results without other reforms.**

Our report concludes that EOs are assigned too many cases to permit them to keep up with developments in each case. At the present rates of production, the department's inventory of open cases is growing. Even if every enforcement officer assigned to case processing were meeting the department's production standard, there are not enough fully trained, full-time investigators to handle the workload. In addition, annual filings have been higher in the past, and they could be higher in the future. Therefore, a case could be made for increasing the department's budget.

However, we do not recommend that the department's budget be significantly increased without some other organizational changes. In the past the department has been given increased resources to clear the backlog of cases, but this proved to be a temporary solution. The number of open cases was reduced to manageable proportions, sometimes through extraordinary efforts, but when close attention to the problem was diverted, the problem redeveloped.

With its present budget and plans, the department could assign around 17 or 18 full-time equivalent enforcement officers to case processing, and if each closed 75 cases, the department would close about 1,300 to 1,400 cases per year. This is roughly equal to the number of cases filed in each of the last three years. Under this scenario, the department would be able to handle the workload of incoming cases, but would be hard pressed to clear the current inventory of open cases.

The best argument for favorable consideration in the next budget session of the Legislature would be the department's successful implementation of needed organizational changes that do not require additional funds. Above all, the department needs a plan that anticipates a level of case filings beyond what it can handle in a routine, first-come-first-served fashion. We take up this issue in the next section.

## Case Processing Priorities

Regardless of its budget and other activities, we recommend:

- **The department should strive to close at least as many cases as are opened each year.**

If the number of cases filed is low, and the department has the capacity to give each case full treatment, then prioritization is not necessary. [21] But based on a review of the number of charges filed between 1978 and 1995 (see Table 3.1) it is unrealistic to expect that the department will always be able to provide a timely investigation for all cases. Therefore, we think it is necessary for the department to set priorities for its case processing program.

*21* Even in the case of this unlikely event, there are community outreach and education activities, now performed on a minimal level, that could be expanded. Increased effort in those activities could result in more or better charges being filed.

The statutes governing the Department of Human Rights permit and encourage the department to prioritize cases. They mandate prioritization of cases where there is evidence of irreparable harm if immediate action is not taken, evidence of a repri - sal, potential for broadly promoting the policies of the Human Rights Act, strong evidence supporting the allegation, and certain other grounds. [22] The statute also states:

> The commissioner may adopt policies to determine *which charges are processed* and the *order in which charges are processed* based on their particular social or le- gal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.[23]

**We think the Legislature made it clear that the department should concentrate on high-potential cases.**

The Legislature added this language in 1983 after our earlier report recommended stronger and clearer authorization of prioritization. The need to set priorities is now well-recognized at the EEOC and in state agencies around the country. Staff at the Minnesota Department of Human Rights have acknowledged this need as well. To some extent, the department's early dismissal standards, incorporated in 1994, rest on the concept that the department needs to select the cases on which it will focus its primary attention. Early dismissal standards outline the circum - stances under which case processing enforcement officers can dismiss cases with - out completing a full investigation. However, as we saw in Chapter 3, the department continues to use a first in, first out framework to handle most of its cases.

We recommend:

- **The department should heed the message of statutory language that has long been in place. It should identify high-potential cases and dismiss or otherwise dispose of low-potential cases, if resources do not allow full treatment of all cases.**

There is some debate over where, exactly, in the process, prioritization decisions should be made. Some argue that the department is obliged to *accept* all charges meeting minimal criteria, but then can decide which charges are processed and in what order. Others suggest that cases can be screened out before they are formally filed and docketed.

As we discussed in the last chapter, a charging party makes initial contact with an intake officer who drafts the charge and passes the case to another enforcement of - ficer. We discussed the issue of screening or prioritizing cases with many DHR staff, and with officials at EEOC and other state and local human rights agencies. Some DHR enforcement officers complained that intake workers accept marginal cases, in part because their responsibility for a case ends once the charge is dock - eted; intake officers do not have to deal later with weak cases or poorly drafted charges. EOs suggested that it is easy for intake personnel to err in favor of the charging party, especially when that party is angry or distraught. It is more diffi - cult to tell a potential charging party that he or she does not have a *prima facie*

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*22 Minn. Stat.* §363.06 Subd. 4 (1).

*23 Minn. Stat.* §363.06 Subd. 4 (7). (Emphasis added.)

case than to accept a dubious case and have another person deliver the bad news later in the process. Clearer department policies and closer supervision of intake staff are needed to counteract this tendency.

**Several organizational arrangements for case processing have been tried over the years.**

The Department of Human Rights has experimented with the organization of case processing over the years. At times in the past, enforcement officers handled both intake and investigative responsibilities, and there was no separate intake unit. At another time, DHR operated with three specialized tiers of case processing: in - take, a second tier, which handled quick settlements and dismissals, and a third tier aimed at more complex investigations.

Although many of the case processing staff we interviewed thought the advan - tages of the three-tier arrangement outweighed its disadvantages, the department ultimately abolished the structure. Enforcement officers in the third tier com - plained that they were left with all of the hardest cases but were expected to close cases at the same rate as the second tier. We also heard that some staff thought it a waste of time to have staff in the second tier work on a case, only to have it passed along to third tier, where a second enforcement officer would have to become fa - miliar with the facts of the case.

Overall, the department needs to assess the relative merits of the various organiza - tional alternatives, weighing the benefits of specialized units against the improved accountability inherent in units with broader responsibilities. The Minneapolis Civil Rights Department, for example, is a strong advocate of conducting the com - plete process within a single unit accountable for the results. In fact, most of the time, the same investigator handles intake and subsequent investigative work on a case. According to the Minneapolis agency, if a charge is badly drafted, the prob - lem cannot be shifted to someone else. If a case appears to be weak, there is no opportunity to have someone else deliver the bad news to the charging party. Credit or blame for excellent or poor investigative work is easier to assign and ac - cept.

**We recommend that potential charging parties be provided realistic information about the process.**

Minneapolis representatives also stressed the importance of careful, probing ex - amination of cases at intake so that cases will be rejected if their assertions cannot be supported by evidence. If the state DHR wants to cut down on the number of cases that are in the process for a year or more, but end up as dismissals, it should consider implementing some of the techniques used in Minneapolis and else - where. We recommend:

- **The department should provide potential charging parties with a realistic estimate of how long the process usually takes, and**
- **The department should tell potential charging parties what evidence will be necessary to prove their case and give them an honest assessment if their case appears weak.**

Intake workers should also identify cases that meet the priority criteria established in law and also mark cases that meet criteria established by the department. Al - though there is always the chance that a new and unexpected development will

arise in a case, experts in other states and staff in DHR told us that, in most cases, an experienced investigator can assess the potential of a case with basic information from the charging party and the respondent. We think the department should rely on this principle to restructure its work. First, it should quickly close cases in which investigation shows little promise of supporting the charging party's original allegation. Second, it should give priority treatment to cases that appear to have high potential to become probable cause determinations, especially those case that are likely to deteriorate without prompt action.

# Organization of the Department

**DHR is organized differently than most state human rights agencies.**

During the 1995 session, legislators who had heard criticism of the department considered a reorganization of DHR to improve its performance. One proposal recommended placing the department in the Office of the Attorney General. In this section of our report, we compare the organization of DHR with human rights agencies in other states. We also discuss the potential trade-offs among different organizational structures.

We collected information on the organization of human rights agencies in other states and found that:

- **DHR has a different organizational structure than the civil rights enforcement agencies in most other states.**

Forty-seven of the 50 states have a unit within state government that investigates claims of illegal discrimination.[24] In at least 35 of those 47 states, civil rights enforcement is governed by a human rights commission or board. Boards vary in size, ranging from as few as three commissioners (Massachusetts) to as many as 20 (North Carolina). Commission members are typically appointed by the governor and confirmed by the senate and serve staggered terms of anywhere between three and six years. In some states statutes mandate the geographic, political, or community group composition of the commission.

Most commissions meet periodically as a full body (usually monthly, bimonthly, or quarterly). Commission members are generally paid a per diem allowance for the time they devote to commission affairs, rather than receiving an annual salary. Typically, a full-time executive director appointed by the commission supervises staff and administers the day-to-day affairs of the commission, such as the investigation of charges of illegal discrimination.

In a number of states, the human rights commission bears the responsibility of making final determinations of reasonable or probable cause. Commission staff investigate cases filed by charging parties and present their findings and recommendations to either the full commission or a subcommittee. The commission then serves as a quasi-judicial panel that renders a determination in the case.

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*24* Alabama and Mississippi do not have comprehensive state equal employment opportunity laws; their citizens rely on the federal government for protection from employment discrimination. Arkansas has a state fair employment practice law, but discrimination claims are filed through thejudicial system rather than an administrative agency.

In other states, commission staff issue determinations without the review of the commission. In cases where the staff find probable cause but are unable to forge a conciliation agreement between the two parties, the commission members will hold a hearing to decide the case and award damages if applicable. Staff decisions other than probable cause can also be appealed by either charging party or respondent to the commission.

**There are some advantages to a governing board or commission, although this is no guarantee of good performance.**

We asked representatives of state agencies to discuss the relative strengths and weaknesses of the commission structure. Staff appreciated the political insulation that a commission can provide. A supportive commission committed to upholding civil rights law and representative of diverse interests can shield the staff and executive director from changing political winds or pressure from influential respondents. Staff also mentioned that charging parties and respondents feel more satisfied with decisions rendered by a commission because they have the opportunity to appear before a live hearing panel.

Some states offered criticism of the commission structure. Drawbacks included: (1) a lack of civil rights expertise among commissioners, who need to be able to understand and apply complex legal issues; (2) the difficulty of organizing commission meetings around members' busy schedules, and the corresponding backlog in cases and hearings; and (3) staff inability to handle daily affairs without commissioners' interference.

In December 1995, the Minnesota Department of Human Rights established an advisory task force, composed of representatives from various minority communities, attorneys, state agencies, and foundations. It is still too early to tell what role the task force will play, but it may serve to strengthen the department's public image and help DHR forge better relations with specific citizen groups.

We also studied the role of state attorneys general in enforcing civil rights statutes and found that:

- **Only two states rely on their attorney general to investigate discrimination claims.**

In Vermont the attorney general's office has historically shouldered responsibility for investigating claims of discrimination. However, in 1988 the Vermont Legislature established a human rights commission to address discrimination claims in public employment, housing, and public accommodations. In organizing the commission, the Vermont Legislature attempted to resolve the inherent conflict that arose whenever someone filed a claim against a state agency. In these cases, the attorney general's office would have to provide legal representation to the state agency, but also act as enforcer of the law for the charging party.

Vermont's parallel process for managing the investigation of discrimination claims is not ideal, by the assessment of key staff in the two offices. The human rights commission and the attorney general's office differ in their jurisdictions, intake processes, determinations proceedings, and hearings. The division of responsibility creates complications for citizens wishing to file claims and staff trying to as-

sure uniform interpretation and enforcement of the law. The director of the commission thinks that it would be better to combine functions so that all statutory discrimination investigations would occur in one place.

**Only two states carry out investigation of discrimination claims in the state Attorney General's office.**

The civil rights section of the Arizona Attorney General's office enforces three state laws: the Civil Rights Act, the Fair Housing Act, and the Disabilities Act. The section employs about 18 investigators and 9 attorneys, who together investigate charges of discrimination in employment, housing, and public accommodations; render determinations on the merits of such charges; and attempt to conciliate charges where reasonable cause is found. If no settlement can be reached, the office issues a right-to-sue letter to the charging party because the attorney general has no power to act as a hearing officer.

The office has a 12- to 18-month backlog of pending cases, much like many other civil rights enforcement agencies. According to civil rights section staff, the primary benefit of merging civil rights with the attorney general's office is the expertise of the lawyers and the emphasis on law enforcement. However, the system's weakness is its susceptibility to a changing political environment, since the attorney general is an elected position.

Finally, our research showed that:

- **In at least 20 states, the civil rights enforcement agency is affiliated with a larger agency, sometimes for administrative purposes only.**

Figure 4.1 lists the 20 states in which civil rights enforcement is housed within a larger state agency. In eight states the human rights investigation arm of government is associated with a department handling labor-related affairs such as occupational safety and workers' compensation. Four states house civil rights enforcement in the Governor's Office.

In a number of cases, statute specifically states that the human rights agency will be located within another department *for administrative purposes only*. For example, the Georgia Commission on Equal Opportunity (CEO) is organizationally under the Office of Planning and Budget in the Governor's Office. The OPB handles budgets, accounting, and payroll for the commission but does not interfere with the policy decisions of the CEO. Similarly, in Montana, the Human Rights Commission is attached to the Department of Labor and Industry, which provides centralized services support to the HRC in areas such as computer support, payroll, purchasing, and human resources, but has no line authority over commission staff, personnel decisions, or expenditures.

We think that:

- **The Minnesota Department of Human Rights could benefit from affiliation with a larger state agency, which could provide DHR with administrative assistance in areas like computer systems, budgeting, and human resources.**

## Figure 4.1: Civil Rights Agencies Affiliated with Larger Government Entities

| State | Office with Which Civil Rights Agency is Affiliated |
|---|---|
| Alaska | Office of the Governor |
| California | State and Consumer Service Agency |
| Colorado | Dept. of Regulatory Affairs |
| Connecticut | Dept. of Administrative Services |
| Delaware | Dept. of Labor |
| Georgia | Office of the Governor |
| Louisiana | Office of the Governor |
| Missouri | Dept. of Labor and Industrial Relations |
| Montana | Dept. of Labor and Industry |
| New Jersey | Dept. of Law and Public Safety |
| New Mexico | Dept. of Labor |
| New York | Executive Dept. |
| North Carolina | Dept. of Administration |
| North Dakota | Dept. of Labor |
| Oregon | Bureau of Labor and Industry |
| Pennsylvania | Governor's Office |
| South Carolina | Executive Department |
| South Dakota | Dept. of Commerce |
| Utah | Industrial Commission |
| Wisconsin | Dept. of Industry, Labor, and Human Resources |

Source: BNA Labor Relations Report, 1994.

As we discussed earlier in this chapter, the department has struggled to develop a useful, effective information system. Likewise, it has experienced trouble with personnel management and financial management in the past. For example, the department had trouble negotiating with MAPE over plans to start an enforcement officer training program, and, as noted earlier in this chapter, faced setbacks in its computer systems development project because of problems with contract administration. DHR might benefit from the expertise of agencies such as the Department of Employee Relations, the Information Policy Office, and the Department of Finance. Beyond that, there may be more extensive ways to restructure the department to improve its ability to handle routine operations while not diminishing the department's prestige or autonomy.

# Minnesota Department of Human Rights

January 18, 1996

Jim Nobles
Legislator Auditor
Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

The fundamental flaw of this report is that it fails to acknowledge that during the past four years the Department of Human Rights has increased its efficiency and is now doing more with fewer resources.

There are fewer cases pending at the Department today than in 1991. (Data confirmed by your report.) At the same time, agency expenditures (inflation adjusted) have been consistently below 1990 levels. (Data also confirmed by your report.) Since 1990, the dollars available for staffing have declined significantly. The budget data used in your report for comparative purposes includes the appropriations for the computer initiative and fails to detail the significant annual budget reductions upon staffing and the enforcement capacity of the agency. The agency has eliminated 13 positions and reduced management due to reductions in the funds available for staffing. Despite these reductions, the number of cases pending is lower than when the agency had a staff complement of 70. This has been accomplished by reorganizing the agency, shifting resources to support the enforcement effort, and developing stronger case management. The report criticizes the agency for increases in cases pending during the past two years. The base year was low only because of my imposition of strict intake screening standards that reduced the number of cases significantly that year. The bottom line is that this administration has significantly improved efficiency and increased public value per dollar spent on Human Rights enforcement during the past four years.

This report also fails to give proper credit to several changes with a long term payback.

The most significant is the first formal program in the history of the agency to train individuals to investigate charges of discrimination. After months of negotiations with affected unions, the first 5 trainees began work last March. They are now handling cases and will complete the training program in a few weeks. In the short term this investment reduced the rate at which we handled cases for a few months during 1995, but will pay enormous dividends in the future. Your report focuses on the slower case processing during those months of training but fails to acknowledge the longer term benefits of higher staff competence now being reflected in their work.

Other significant long-term changes are glossed over by the report. Charges drafted by private attorneys are now accepted for filing (ending a long history of agency re-drafting of each charge). The demonstration projects begun during 1995 offer a mediation alternative to charging parties and a new process for identifying and attacking patterns and practices which result in systemic discrimination.

The report also fails to provide adequate information about similar agencies throughout the nation. It lists other states and the federal EEOC claiming they have deadlines of 120 days to 1 year to resolve a case. But it does not then detail, for example, the 13,000 case backlog in New York or the fact the EEOC opens files and then places them in a holding room up to two years before even assigning them to an investigator, an investigator whose caseloads exceed 100 cases.

Your auditors spent many months examining the data and records of the department. After their exhaustive work was completed, they concluded that our data system is flawed and needs to be fixed.

I am glad they agree with us on that point. Three years ago I began work to convince the legislature that appropriations for a special computer project were necessary because of the flawed system I discovered when I became Commissioner. Appropriations were made and the project is now in the second year of its three year term. Only after the case processing data is transferred to operate on this new system will wholly reliable data be available.

I also agree that it takes too long to process some cases. In June, 1995 I identified the 183 cases which were over 700 days old pending in the agency. As of today, 148 of them are closed and work on the remainder will be completed within three weeks. Since becoming Commissioner I have taken several actions to address the fact some cases have taken too long to process. First, I have focused on cleaning up leftover cases. That work is now about completed. Second, I have set strict limits on the extensions of time given to charging parties and respondents to keep cases moving toward resolution. I have also asked the Supreme Court to review the ambiguity created by a recent Court of Appeals decision and to affirm that cases need to be examined by their facts not by a simple time deadline.

In that decision, the Court of Appeals clearly said the law does not require automatic dismissal after 12 months. But the Court did conclude that 35 months before an agency determination was too long. The legislative history of the Human Rights Act makes clear that the 12 months for investigating a case was a goal, not a mandate. (The State Bar Association argues this cogently in their Amicus brief to the Supreme Court) The fact the case before the court had been pending with the agency for 18 months before I became Commissioner confirms that prior administrations had received legal interpretations of the 12 month provision of the law . The Supreme Court will hear arguments on this issue on January 30, 1996 and I have also asked for clarification of the law this session. If the strict interpretation of the law called for by this report is applicable, only a significant investment by the legislature in agency resources will permit full compliance.

Any organization can be improved and the suggestions in the report will be given serious consideration. For example, I agree that there are benefits from closer affiliation with a larger agency for administrative services. To that end, the Department of Employee Relations will now be doing the Human Resources work of the agency under contract. After several months of examining the costs and benefits of this type of arrangement, I decided the potential cost savings to the agency would outweigh the loss of in-house expertise.

I recently established an advisory task force which is reviewing agency initiatives and will be helping guide future activities. I have also engaged the services of the Management Analysis Division of the Department of Administration to assist the advisory committee and the department in preparing recommendations for further agency improvements.

In sum, this report confirms that the agency has done well with diminishing resources. I am proud that this administration has been able to make the Department of Human Rights more productive while increasing the value of diminishing resources available to the agency for enforcement. It also confirms that there are new challenges ahead. I believe the restructuring and other changes I've made have helped the agency maximize the use of its resources. To keep pace with the increasing demands for Human Rights enforcement, new investments in the agency by the legislature will ultimately be necessary.

Although many of the factual errors have been corrected in this final version of the report, many of the conclusions remain affected by errors for which corrected information was provided to your office, complete with supporting documentation. I urge anyone reading this report to also review the list of errors and its supporting data provided to your office.

Sincerely yours,

David Beaulieu
Commissioner

DB/sb

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