

**REPORT
OF THE**

**GOVERNOR'S BLUE RIBBON TASK FORCE
ON
HUMAN RIGHTS**

FEBRUARY 1984

**Report of the
Governor's Blue Ribbon Task Force on Human Rights**

**Steven L. Belton, Chair
Nancy Latimer, Vice Chair**

**Report prepared by
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PREFACE AND ACKNOWLEDGEMENTS

For the past several years the Minnesota Department of Human Rights (DHR) has carried a substantial inventory of open cases, the result of long delays in processing charges of discrimination. The simple and unfortunate fact is that in a given year, more charges are filed than are closed.

During the 1983 legislative session the public and the legislature expressed concern and dissatisfaction with the carry-over and case processing delays, and there was serious consideration given to numerous ideas and proposals aimed at ameliorating the department's problems. Among the proposals actively considered by legislators and/or legislative committees were plans to immediately eliminate the department, a proposal to zero-fund the department after Fiscal Year 1983-84, and a bill which essentially would have placed the DHR in receivership and transferred administration and management to the Minnesota Department of Administration (DOA).

While many of the proposals had little substantive merit, all were born of ongoing frustration with DHR performance and a genuine desire to better serve the citizens of Minnesota.

One proposal which survived legislative scrutiny was an appropriations measure which directed the DOA to study and make recommendations to the legislature by February 1, 1984, on improvement of case processing and management of the DHR. The DHR was also given one year to reduce the carry-over of unresolved charges.

The Governor's Blue Ribbon Task Force on Human Rights (hereinafter referred to as the "Human Rights Task Force" or "Task Force") was appointed in August, 1983, by Governor Rudy Perpich in response to public and legislative concern over the DHR. The Governor's charge to the Task Force was to study the operation and performance of the DHR, particularly in regard to the department's continuing and escalating backlog of open cases. The Task Force was directed to report to the Governor by February 1, 1984, with recommendations for improvement of human rights enforcement.

The Task Force held its first meeting on August 23, 1983, at which time it was decided that the scope of its work would be divided among several areas of study: budget, management, case processing, public education and outreach and statutory issues.

Our findings and recommendations are reported in these pages. Many of the problem statements presented herein are by nature conclusions and in large part draw upon the previous and concurrent work of the Program Evaluation Division, Office of the Legislative Auditor, and the Management Analysis Division, DOA (also known, for purposes of their review of the DHR, as the "Transition" or "T Team").

Our recommendations represent substantial deliberation and decision-making by the Task Force, including many hours of study, testimony and secondary research; we estimate Task Force members volunteered over 1,200 hours combined on this project.

Our work would not have been possible without the assistance and full cooperation of the DHR, its top management and staff. Our appreciation also goes to the "T Team," particularly Kathryn Roberts and Jean Erickson.

Two Minnesota companies provided direct financial support to the Task Force. We offer thanks and appreciation to the 3M Company and General Mills Foundation for their contributions.

The Chair wishes to personally thank each member of the Task Force for his or her time and commitment to this work. In particular I wish to thank each of the study group chairs and co-chairs (whose names appear elsewhere in this report), and Nancy Latimer, who served as vice chair.

Finally, I wish to thank the Board of Directors and staff of the Urban Coalition of Minneapolis, whose support and patience allowed me to devote substantial time to this project.

This report was prepared by Beth Waterhouse of The Earl Craig Company, Minneapolis, Minnesota.

A handwritten signature in dark ink, appearing to read "Steven L. Belton". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Steven L. Belton, Chair

TASK FORCE BACKGROUND

The Governor's Blue Ribbon Task Force on Human Rights began meeting in late August, 1983, to study the Minnesota Department of Human Rights including an assessment of departmental funding and the overall enforcement of the Minnesota Human Rights Act (MHRA). Members appointed to the Task Force are as follows:

Sharon Andreas, Minneapolis, consumer group affirmative action manager, Pillsbury Company.

Steven L. Belton, Minneapolis, president, Urban Coalition of Minneapolis.

Karen Clark, Minneapolis, state representative (DFL, 60A).

Arthur Cunningham, Crystal, Manager of Community Relations, (CFA), Honeywell.

Donna Folstad, Minneapolis, Indian Housing Director, Minnesota Housing Finance Agency.

Roy Garza, St. Paul, member, Department of Human Rights Advisory Committee.

Hansel Hall, Minneapolis, president, Minnesota-Dakota State Conference of N.A.A.C.P.

Patti Hague, Minneapolis, legislative specialist, Minnesota State Council for the Handicapped.

Peter Heegaard, Minnetonka, executive vice president, Norwest Bank Minneapolis.

Samuel I. Horowitz, Minneapolis, executive director, Joint Religious Legislative Coalition.

Jayne Khalifa, St. Louis Park, small-business owner.

Thomas Kuster, New Ulm, president, League of Minnesota Human Rights Commissions.

Nancy Latimer, St. Paul, private consultant, human services.

Peggy Lucas, Minneapolis, co-chair, human resources and social policy, League of Women Voters of Minnesota.

Ronald McKinley, Minneapolis, program officer, Minneapolis Foundation.

Ruth Myers, Duluth, chair, Minnesota Advisory Committee to the U. S. Civil Rights Commission.

Ember Reichgott, Robbinsdale, state senator (DFL, 46).

Morton Ryweck, Minneapolis, executive director, Jewish Community Relations Council/Anti-Defamation League of Minnesota and the Dakotas.

Lupe Serrano, St. Paul, executive director, Hispanic Ministries, the Archdiocese of St. Paul/Minneapolis.

Matthew Stark, Minneapolis, executive director, Minnesota Civil Liberties Union.

Randy Staten, Minneapolis, state representative (DFL, 57B).

Leng Vang, St. Paul, community specialist, refugee program office, State Department of Public Welfare.

Steve Wrbanich, Minneapolis, advocate for disabilities issues.

Governor Perpich appointed Steven Belton, an attorney, to chair the Task Force, and at the first meeting of the Task Force, Nancy Latimer was elected vice chair.

Gary Becker, an attorney with the law firm of Kurzman, Shapiro, Manahan and Partridge, Minneapolis, Minnesota, and formerly a staff attorney with the Minnesota Senate Counsel, served as counsel to the Task Force.

The Task Force met as a whole at least once each month between August and February, 1984, and twice per month, on average, in smaller study groups. Study groups and their chairs/co-chairs are as follows:

Budget -- Peter Heegaard

Case Processing, Management and Administration -- Arthur Cunningham,
Ruth Myers

Education, Outreach and Prevention -- Matthew Stark

Statutory -- Roy Garza, Ember Reichgott

The Task Force process included two public hearings, in Minneapolis and Duluth. A number of witnesses with special expertise and with general experience were provided an opportunity to present their views and concerns to the Task Force and the public. Synopses of the public hearings are available from the Urban Coalition of Minneapolis, 89 South 10th Street, Minneapolis, Minnesota 55403.

SUMMARY AND MAJOR RECOMMENDATIONS

Summary

The Department of Human Rights was established in 1967 as one of the first department-level civil rights agencies in the United States. Since that time, a number of protected classes and functions have been added, and the department's caseload has expanded greatly (see Table I).

The major problem addressed by this report and perceived by the public, the legislature and the governor of Minnesota is a persistent carry-over of cases filed with the Department of Human Rights. As of December, 1983, there were 2,237 cases more than one year old still open. It is not uncommon for a person filing a charge with the department to endure a multi-year wait for resolution. This is unacceptable and unnecessary.

There are a number of related problems: the public is not well informed about rights and responsibilities under the act; the department's resources have been limited; management has lacked the expertise necessary to deal with the complex functioning of the department.

Concurrent with this study, the Department of Administration's Transition Team has been examining problems in the areas of case processing and administration. We have coordinated efforts with this team since many issues were common to both studies, and we agree with most of their recommendations. However, the Task Force has seen the need to go beyond the scope of the transition team in studying not only other aspects of the administrative functions of the department, but related problems in its education program, statutes, and budget, which affect enforcement of human rights in Minnesota.

Major Recommendations

- 1) Strong top level management is essential to the successful operation of the Department of Human Rights. While these positions should remain appointive, the appointments should be made with careful attention to the requirements of each position, giving weight to background in management, financial planning and human rights enforcement or administration. Substantial weight should continue to be given to the minority or other protected class status of potential appointees, but not with greater weight, or to the exclusion of other factors.
- 2) The task force recommends that the department should develop a program of public education, outreach and prevention, adequately staffed and funded, and drawing on resources through the department. We recognize that the current limited public education efforts in the department are not sufficient. In addition to informing citizens of their rights under the law, the program could act as a deterrent to violations by educating employers, landlords, and the general public about their responsibilities.

- 3) For charges filed, the Department of Human Rights needs to initiate a system of assigning substantive weight or priority. An inappropriate priority system now exists, with the need for federal funds through reimbursement often determining the case priority by default. A clear priority system will provide a better method of allocating finite resources to the investigation of cases.
- 4) In order to increase efficiency, the department should increase case referrals to local human rights commissions or mediation projects. The department should also expand development and training of other human rights commissions. This has the potential for cost savings as well as faster and more informal resolution of charges.
- 5) The task force endorses the concept of allowing a plaintiff easier access to the hearing examiner. It recommends that the legislature enact a provision allowing a charging party to present his/her action before the hearing examiner without department counsel if no hearing has been scheduled or case disposition made by the department within 180 days of filing.
- 6) The department should consider cost-effective methods to increase its access to the citizens of greater Minnesota. The Task Force recommends regional human rights offices, giving primary consideration to one each in the Duluth and Bemidji regions. Creation of a mobile intake unit for use in greater Minnesota should also be considered.
- 7) The Minnesota Legislature should enact a provision mandating a payment by the respondent of three times the compensatory damages suffered by each charging party upon a finding that the respondent has engaged in an unfair discriminatory practice. The treble payment is recommended to be in addition to actual damages. The task force recommendation as seen later in this report recommends further study in specific related areas.

Some of the recommended changes, notably reorganization of the department, are currently underway as a result of the T Team's work over the last several months. Others will need statutory changes, a re-ordering of administrative priorities, or increased resources. It is essential that swift and fair resolution of discrimination complaints be available for Minnesota citizens.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Introduction

Each section of this report contains two subsections: 1) a narrative on the problems addressed including our findings and/or conclusions and the rationale for our recommendations, and 2) the Task Force recommendations. The six areas are: Education, Outreach and Prevention, Management and Administration, Case Processing, Priority Setting, Budget, and Statutory issues.

In general, the recommendations in each area were proposed by the analagous Task Force study group; however, in some instances, they are the result of work by two or more study groups. The entire Task Force, after discussion and amendment, adopted all recommendations.

EDUCATION, OUTREACH AND PREVENTION

Findings and Conclusions

The public is in need of clarity and education about human rights issues. This would inform citizens of their rights, and also could act as a deterrent to violations by uninformed employers, landlords, etc. Discriminatory patterns need to be recognized and stopped as well. Organizations or firms with a pattern of perpetrating discriminatory acts should be brought together periodically to sensitize them to the laws and related matters.

Another problem is a lack of coordination between and among the many publicly funded agencies directly concerned with rights of "protected classes." The expertise of the public and private agencies and their impact on human rights in Minnesota are fragmented by inefficient or non-existent communication and coordination of effort.

Historically, the Department of Human Rights was designed to replace agencies whose primary components were programs of education, outreach and prevention. These programs are also mandated by the Minnesota Human Rights Act. However, the proportion of the Department of Human Rights' resources devoted to education, outreach and prevention has steadily diminished since its establishment.

At present, nearly all of the DHR's limited resources are concentrated on enforcement, and there is very little department work being done in education, outreach or prevention.

The needed education, outreach and prevention functions of the Department of Human Rights will not be restored without a new commitment among those who request, and allocate, funds. Human rights concerns in Minnesota need the leadership of the State Department of Human Rights, and human rights enforcement would benefit from coordination of interest and expertise.

Recommendations

- The Department of Human Rights should establish a program of education, outreach and prevention, implemented initially by an adequate number of professional staff with secretarial assistance, and drawing on resources throughout the department and in the Advisory Council.

As soon as the backlog of delinquent cases is eliminated, there should be a review for the purpose of expansion of the education and outreach thrust of the department, with additional funding requested from the legislature and/or with reallocation of funds within the department to accomplish the education, outreach and prevention goals of the department.

- The legislature or governor should establish an Advisory Council to the Department of Human Rights, consisting of leaders from the broad spectrum of Minnesota groups with a concern for rights. This Advisory Council would provide expertise, information and resources as it works with the department on human rights concerns statewide. It might consist of fifty to sixty people representing the following organizations, classes, sectors or interest groups: Black, Indian, Hispanic, or Asian Americans; women's rights; religions; gay men or lesbian women; physical or mental disabilities; age; partisan politics; labor organizations; business; foundations; housing; poverty; social justice; and media.

People in need should be eligible for mileage expenses and per diem stipends for their work on the Advisory Council.

- The legislature or governor should establish a Coordinating Council on Human Rights, consisting of publicly funded agencies with concerns for "protected class" people, and chaired by the Commissioner of Human Rights. This council would provide opportunities for communication and coordination of efforts by state agencies on behalf of human rights, thereby increasing their effectiveness and saving tax dollars.

Agencies which should be included in such a Coordinating Council are these:

- Indian Affairs Council
- Spanish Speaking Affairs Council
- Council on Black Minnesotans
- Board on Aging
- Commission on the Economic Status of Women
- Council for the Handicapped
- Statewide Affirmative Action Committee
- St. Paul Human Rights Commission
- Minneapolis Civil Rights Commission
- Higher Education/Indian Affairs
- Department of Education/Indian Affairs
- Department of Education/EEO
- State Ombudsman for Corrections
- Developmental Disabilities Council
- State Services for the Blind

- Division of Vocational Rehabilitation
- Refugee agencies of the Department of Welfare
- Office of the Attorney General
- other local human rights commissions
- other germane governmental agencies

The governor should seat, as ex-officio members, such privately funded organizations as he/she sees appropriate. (This should be on the recommendation of the Commissioner of Human Rights).

MANAGEMENT AND ADMINISTRATION

Findings and Conclusions

Although the Department of Human Rights is relatively small (with an authorized complement of 59 staff), the nature of its responsibility is such that management must have fairly sophisticated technical, political and community relations skills. The Task Force found, however, that the management and administrative requirements of the department have often exceeded the capacity of top management; a problem which is complicated by:

- a) insufficient attention to the human rights expertise and management skills of prospective commissioners, deputies and assistant commissioners, and
- b) woefully inadequate training in substantive and managerial subjects for department managers and staff.

Due to the appointive nature of top management positions, there is also lack of continuity in management. Unlike some other departments, there is never retention of the top positions from one administration to the next.

In addition, there is great inadequacy in the department's evaluation and accountability system. For example, job descriptions and annual objectives are not in formats that permit effective evaluation and subsequent accountability of individuals, units, or of the department as a whole.

Recommendations

- Strong top management is essential to the successful operation of the department. While these positions (commissioner, deputy commissioner, assistant commissioner and assistant to the commissioner) should remain appointive, the appointments should be made with careful attention to the requirements of the job descriptions, giving great weight to management, financial planning, and human rights expertise and experience. Although representation of one or more protected classes is important, it should not be considered more important than the other factors.
- Job descriptions and personnel qualifications should be developed to more accurately reflect the background necessary to serve in top level administration within the Department.
 - a) Top level administration must have a basic understanding of the planning, staffing, directing, coordinating and evaluation components of general management and of human rights enforcement. Field experience in areas such as business management should be given substantial weight.
 - b) Top level administration must have at least one member qualified in financial planning and analysis with the ability to communicate effectively in those areas.

- Knowledge requirements and entry skill levels of some staff positions need upgrading. Following placement in case processing or in an investigator position, individuals should be adequately trained in procedures in their division, and in human rights issues and laws.
- Case processing staff members should have evaluative skills with legal perspectives and understanding.
- Time accounting, or the tracking of time on a per case basis, is recommended as useful in helping the department determine costs by category of case and by processing unit.
- There is a need to insure adequate ongoing staffing and assignment of priority to human rights cases by the Attorney General's office. A clearly understood working relationship with this office needs to be established and publicized, both within the DHR and to the general public. Subpoenas need to be expedited to preclude unnecessary delays.

CASE PROCESSING

Findings and Conclusions

This area has been singled out for emphasis because of the exorbitant number of carry-over cases, long waiting periods, ineffective law enforcement, and the poor public image of the Department of Human Rights.

Each year the number of cases filed exceeds the number of cases closed (see Tables). In fiscal year 1982, 2,969 cases remained open at year end. In fiscal year 1983, 1,350 cases were filed and 1,200 cases closed. As of December 31, 1983 3,245 cases remained open, and of those, 2,237 (69%) were more than one year old. Persons filing a charge can expect to wait years for the settlement of their complaint.

The Task Force has identified a number of poor procedures in the area of case processing that, if addressed, could reduce the carry-over problem. Intake procedures are currently inadequate for speedy initial screening. There is no sound system of assigning relative substantive weight to cases. The DHR is top-heavy with supervisors, draining resources from case processing.

Cases that could be handled by local human rights commissions (at the city level) appear to be bottlenecked at the DHR. A "no-fault" grievance procedure which is designed to resolve disputes before they reach the level of a formal charge of discrimination has been authorized by the legislature. By 1982, 26 local human rights commissions had been trained and were receiving referrals. In addition, the Mediation Center in Minneapolis has had good results with a pilot project which accepts case referrals from DHR. Insufficient use has been made of these alternative resources.

Recommendations

- The Task Force endorses the recommendations made by the Department of Administration's Transition Team regarding the reorganization of the department. These include:
 - a) recommending the combination of case processing and the intake units, reassigning more personnel to case processing and organizing the department in such a way that all units handle employment cases (now 80-85% of caseload), and
 - b) the proposed reorganization of top management positions. This management reorganization is not seen as necessarily optimal for the department, but as one plan that fits the existing management personnel.

(The Transition Team predicts that with the reorganization in place, the carry-over of cases would be eliminated by September of 1986).

- Efficient processing of a charge should include increased referrals and a creative use of alternatives. The department should expand its use of Minneapolis and St. Paul Human Rights Commissions, other local commissions, and mediation efforts such as the Minneapolis Mediation Project. The DHR should also eliminate the multiple-step review processes of cases that have been resolved at other levels. This recommendation is repeated as a cost-saving measure in the Budget section.
- The Department of Human Rights should standardize intake and case processing procedures and make written procedures available for distribution, internally and externally.

Table I

Minnesota Department of Human Rights Activities -- 1976 to 1983

<u>Year</u>	<u>Addition of Protected Classes</u>	<u>Cases Filed</u>	<u>% Increase of Cases Filed Over Previous Year</u>	<u>Closed</u>	<u>Total Department Budget</u>
1976		1,129	+28.0	FY 75-76 1,375	\$ 668,198
1977	Age in employment, educa- tion; pension rights; preg- nancy disability benefits	1,405	+24.4	836	1,054,100
1978		1,026	-27.0	710	1,039,000
1979		1,218	+18.7	957	1,064,300
1980	Familial Status in housing; No-fault grievance process	1,234	+1.3	1,003	1,203,600
1981	Private right of action; definition of reprisals; new contract compliance responsibility; dismissal of pre-1978 charges	1,628	+31.9	1,068	1,314,000
1982	Sex harassment defined; discrimination against guide dogs	1,676	+2.9	1,261*	1,516,300
1983		1,349	-19.5	1,199	1,522,834

*Does not include 583 cases dismissed by special legislation.

INFORMATION RECEIVED FROM THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

**PRIORITY SETTING: THE ESTABLISHMENT OF A SYSTEM OF TECHNICAL SCREENING
AND SUBSTANTIVE WEIGHTING OF CHARGES**

Finding and Conclusions

The idea that the State Department of Human Rights should prioritize cases for purposes of allocating departmental resources is at best a difficult notion to fathom. How can a state agency charged with responsibility to enforce anti-discrimination laws, in effect, make distinctions among charging parties?

And yet, enforcement priorities are quite common among governmental agencies, many of which routinely establish priorities in applying their resources without substantial concern or objection from the public. For example, police departments investigate murders more rapidly and with greater allocation of departmental resources than burglaries. Similarly, the State Department of Natural Resources may respond most quickly and aggressively to certain categories of offense.

Moreover, the DHR already employs a system of priorities -- albeit largely by default. Certain cases filed with the department are eligible for federal reimbursement if resolved in a timely fashion, as specified by contract. More than 20 percent of the DHR budget has come from federal reimbursements and the department has regularly halted work on solely state cases in order to devote time to closing federal cases and meeting contract quotas for needed reimbursement income.

In our view the federal reimbursement "priority" is unfair to non-federal and thus non-priority cases, particularly in view of the fact that certain classes of complaints, notably disability complaints, are structurally prohibited from priority consideration because they are ineligible for federal reimbursement.

We believe that a system of prioritizing or substantive weighting of cases can be established that will provide a fair, orderly and rational method of allocating finite departmental resources to the investigating and processing of charges.

Recommendations

- **Technical Screening.** Each charge of unlawful discrimination filed with the department should be subjected to strict technical screening to identify and eliminate complaints which do not in fact allege an actionable violation of the Minnesota Human Rights Act.

We note with some concern that 49.5 percent of all cases closed in Fiscal 1983 resulted in No Probable Cause (NPC) determination (upon investigation, the DHR determines that a case does not merit further consideration by the department). Only 6 percent had Probable Cause determinations with agreements or other resolution favorable to the charging party. One should not conclude from this distribution that all or most cases can be screened out at intake. In many instance, NPC determinations are the result of poor investigation by the department. It does emphasize, however, the need to evaluate information early in the investigation process to speed dismissal of non-meritorious charges.

The DHR also receives a number of employment-related complaints which are not truly human rights violations, but are stated as such because no other remedy at law is available. Because so-called "wrongful discharge" from employment presently is not actionable under Minnesota law, charging parties have been known to "stretch" the facts of their allegations to accommodate the Minnesota Human Rights Act.

While we advocate more rigorous screening of complaints we offer the caveat that intake and enforcement personnel should be trained to differentiate between technical deficiencies in a complaint versus communication or language barriers between the charging party and the intake officer. Our point is that persons who are inarticulate or who have poor English language skills should not be unfairly penalized.

The screening process should also be utilized to identify charges which may lend themselves to settlement by mediation and no-fault grievance procedures to encourage charging parties to elect those options.

- Substantive weighting. Each charge of unlawful discrimination which passes technical screening should be assigned a relative case weight, to be determined by the applicability of the following five factors:

- 1) The complaint alleges reprisal as defined by the Minnesota Human Rights Act.
- 2) The complaint alleges that irreparable harm to the charging party will occur if immediate action is not taken.
- 3) The case has the potential for promoting the development of law favorable to the anti-discrimination purposes of the Minnesota Human Rights Acts.
- 4a) A significant number of charges have been filed against a single respondent during a set time period (the department would define "a significant number" and the time period), OR,
- 4b) A substantial number of complaints from different charging parties alleging the same or similar fact situations against the same respondents (the department would periodically define the term "substantial number"), OR,
- 4c) The respondent is a government entity.
- 5) The complaint is supported by substantial documentation, witnesses, or other evidence.

Under this weighting scheme, a maximum of five points (with a total of one point available for 4a, b or c) could be assigned to each case. It is important to note that once a case passes technical screening it is entitled to be investigated and processed in a timely manner. Substantive weighting is a means to a more efficient allocation of resources to all charges. It is not to suggest that those charges which are given a lower priority rating should be unduly delayed, discouraged, or ultimately discarded.

Upon determining the relative weight of an individual case, the department should assign it to an investigating unit with instructions to process the complaint according to its relative priority. Cases with a weight of 5 should be investigated more rapidly and perhaps with greater application of departmental resources than cases weighted 4, and so on.

Within the same weight group, date of filing should determine priority for purposes of investigation. First filed, first served.

Charging parties should be informed of the weighting system and apprised of the assigned weight of their case immediately upon its designation. The department should promulgate rules to allow for appeals and periodic adjustment of weight pursuant to change of circumstances.

- Commissioners Charge. The commissioner at her/his discretion may designate a charge that takes priority over the substantive weighting system, including charges alleging actual or threatened physical violence.

The Department of Human Rights should monitor this weighting system to determine if it inadvertently favors or disfavors any protected class. If this occurs, the system should be modified so that it does not disproportionately favor any protected class, either intentionally or otherwise.

BUDGET

Findings and Conclusions

Over the years, the DHR has had limited financial resources with which to enforce the Human Rights Act. The addition of protected classes or department functions, such as contract compliance responsibility, have not been accompanied by allocations adequate to the increased work load. As a result, departmental resources have been severely restricted in such areas as education and prevention and in reduced services to areas in greater Minnesota.

In addition, federal contracts, which presently account for approximately 25 percent of the DHR's budget, reimburse at only about 40 percent of actual costs for case processing. There is also a cash-flow problem with federal contracts, since reimbursement occurs two months after contract completion. As mentioned previously, federal contract income also produces inappropriate incentives for setting priority in case processing.

Thus departmental income does not appear to be adequate to enforce public policy on Human Rights in Minnesota. However, existing resources are not fully or efficiently used. With 47 staff during 1982, the department has been operating at less than its full budgeted staff complement. Including the new positions allocated during the 1983 legislative session, the full complement is 59. While the hiring freeze prevented hiring until July 1, 1983 hiring procedures since that time have resulted in unnecessary delays in establishing the full complement of case processing personnel.

A primary concern in assessing the Department of Human Rights' effectiveness is productivity. The task force was unable to determine clear productivity levels since no time management records are kept. However, an organizational chart indicates the department is supervisor-heavy. Of the department's 47 staff, 19 work on case processing, 15 provide clerical support, and 13 are in administrative or supervisory positions.

Exacerbating other problems is current management's inability to communicate effectively with the legislature and public on budget matters. The budget and supporting documentation have not been adequately presented to the legislature. This lack of clarity encourages divisiveness during the legislative process.

Recommendations

- There appears to be a potential for cost savings by increasing the number of cases referred to Minneapolis and St. Paul and other local human rights commissions and mediation projects. The department should expand the use of such services for case resolution. The potential for referrals is not unlimited; however, a goal of at least 400 to 500 cases a year processed by either local commissions or a mediation project may be realistic. The department should track the training costs and all other administrative expenses related to referrals so that actual savings can be evaluated. The net results should be reported to the legislature at the 1985 General Session.

- If the Department of Human Rights were operating at optimum performance with appropriate productivity measures in place, we believe the conclusion would be drawn that current funding levels are not adequate. Once changes emerging from studies of the DHR are in operation, then it will be important to reassess whether the funding levels for specific programs within the department are adequate.
- The present system of reimbursement by EEOC (Equal Employment Opportunity Commission) and HUD (Housing and Urban Development) provides incentives which often result in the department establishing counter-productive priorities. The department should strive to become independent of EEOC/HUD funds. In cooperation with the legislature, a mechanism for up-front state support of all department activities should be developed, thereby eliminating the department's financial dependence on federal contracts for service. Any federal funds earned should reimburse the State General Revenue Fund.
- A strong effort should be made to increase beyond the current 40% level the federal reimbursement for cases processed under EEOC, HUD and Aging contracts. The governor should seek support of the Minnesota congressional delegation to increase the cost-sharing reimbursement.
- The salaries of the commissioner, assistant commissioner, deputy commissioner and assistant to the commissioner should be raised to a level commensurate with similar positions in other departments of state government. The Task Force recognizes that a step in this direction was taken when salaries were increased in October, 1983; however, the DHR management staff is still among the lowest paid in state departments. Additional increases may be necessary to attract top quality managers as needed.
- The department should consider targeted cost-effective methods to increase its access to the citizens of greater Minnesota. The task force recommends regional human rights offices, giving primary consideration to one each in the Duluth and Bemidji regions. Creation of a mobile unit for use in greater Minnesota should also be considered. Funds for regional offices should be newly appropriated, not reducing existing resources for the central office.

STATUTORY ISSUES

Findings and Conclusions

The Task Force has recognized that there are a number of problems relating to the enforcement of the Human Rights Act which can be addressed through statutory changes. In some cases changes may encourage more private attorneys to handle human rights cases.

Charging parties currently face frustration over long delays and their inability to speed up the processing of their cases. They have no access to the hearing examiner except through normal department processes.

The private Bar has had little incentive to take human rights cases because actual damage awards are relatively small and punitive damages are rarely awarded.

Current actual damage awards in cases of discriminatory practices are insufficient to deter such practices or to adequately compensate victims. Punitive damages (which require a finding of intent) are rarely awarded because of the difficulty of establishing "deliberate and intentional" guilt.

There is confusion and sometimes a failure to file claims because the state statute of limitations (currently 180 days) differs from that under federal law (300 days) and time limits expire before complainants contact the DHR. In other cases employers have asked that an employee sign a waiver of rights as part of a grievance procedure. This also hinders human rights enforcement.

Informal grievance procedures are not used to their fullest potential because the time needed to pursue these may prevent timely filing of charges with the DHR, should such grievance procedures be unproductive.

Recommendations

- The Minnesota Legislature should enact a provision allowing a charging party to present his/her action before a hearing examiner without department counsel if no hearing has been scheduled or case disposition made by the department within 180 days of the filing of the charge. The Human Rights Task Force does not support any policy of mandatory dropping of charges after an imposed time limit.

Time did not permit full consideration on all ramifications of this recommendation. Further study should be conducted in the following related areas:

- a) The effect of this proposal on the financial resources of the department (which pays for the cost of hearings and hearing examiners) and the need for additional funding of the department to support any resulting expenses.

- b) The need to amend existing rules regarding access to department files for charging parties who choose to prosecute a case without department counsel.
 - c) The feasibility of providing for an award of attorney's fees in actions before the hearing examiner, with the Task Force recommendation that charging party's attorney be eligible to receive reimbursement for fees if the charging party prevails.
- The Minnesota Legislature should increase the statute of limitations on filing of charges with the department from six months to 300 days.
 - The Minnesota Legislature should enact a provision that "tolls" (suspends) the statute of limitations during participation by a complainant in private or public grievance procedures with the respondent, prior to the filing of a charge. Included in the provision should be a method of verifying the grievance process, and its starting and ending dates.
 - The Minnesota Legislature should enact a provision mandating a payment by the respondent of three times the compensatory damages suffered by each charging party upon a finding that the respondent has engaged in an unfair discriminatory practice. This treble payment is recommended to be in addition to actual damages.

Further study should be conducted in the following related areas:

- a) The need for placing a statutory maximum on the amount of treble damages that may be awarded.
 - b) The legality of distributing to the state's General Fund a portion of treble damage awards in cases where the charging parties are represented by the attorney general.
 - c) The need for imposing a statutory mandatory minimum on the amount assessed as a civil penalty.
- The Minnesota Legislature should enact a provision prohibiting the waiver of an individual's rights under the Minnesota Human Rights Act, and declare that any waiver, whether oral or written, is void.
 - The department should devise administrative procedures to impose sanctions on a party who intentionally delays the processing of a case. These procedures could be contained in informal policy statements or formal rules of the department.