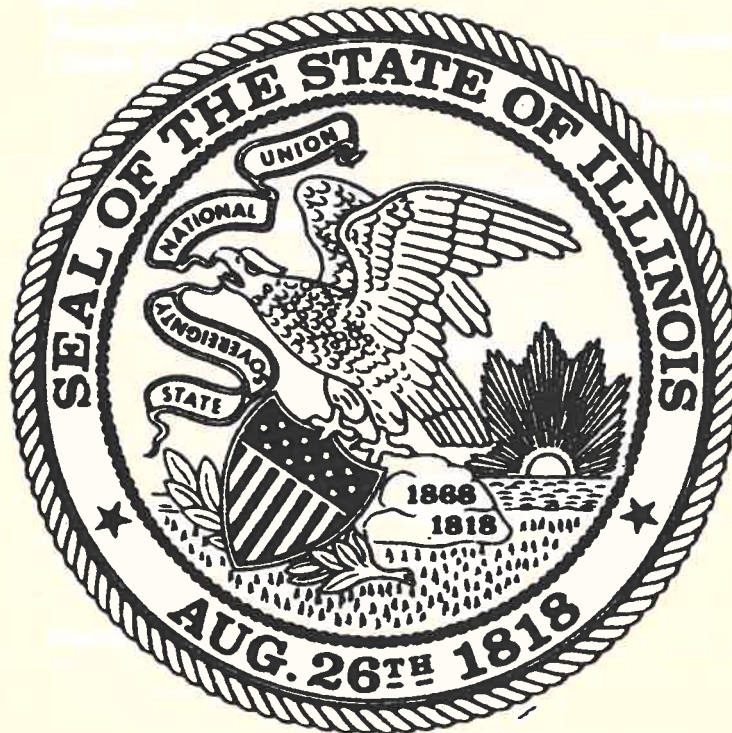


# STATE OF ILLINOIS HUMAN RIGHTS COMMISSION

Annual Report for Fiscal Year 1986  
July 1, 1985 — June 30, 1986



**Manuel Barbosa**

**Chairperson**

**The Honorable**

**James R. Thompson**

**Governor**



STATE OF ILLINOIS  
**Human Rights Commission**

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Chairperson  
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James R. Thompson  
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Chicago  
Wallace L. Heil  
Taylorville  
Mathilda Jakubowski  
Chicago  
Aloysius A. Mazewski, Jr.  
Mount Prospect  
Lillian A. Mitchell  
Carlyle  
Saul J. Morse  
Springfield  
Debra Nesselson  
Glencoe  
Randall Reynolds  
Springfield  
Rebecca Sive-Tomashefsky  
Chicago  
Howard R. Veal, Sr.  
Springfield  
Alfred C. Whitley  
Chicago  
Oscar S. Williams  
Chicago

David Strauss  
Executive Director

To The  
Honorable James R. Thompson  
Governor of Illinois  
and the  
Honorable Members of the  
Illinois General Assembly

I hereby transmit to you a report of the activities  
of the Illinois Human Rights Commission for  
Fiscal Year 1986.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Manuel Barbosa".

Manuel Barbosa  
Chairperson

March 27, 1987

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## Overview of Commissioners and Commission Responsibilities

On December 6, 1979 Governor James R. Thompson signed into law the Illinois Human Rights Act, which created the broadest and deepest civil rights coverage for the people of Illinois in the history of the state. The Act created a bifurcated enforcement apparatus: a Department to investigate and a Commission to adjudicate charges of civil rights violations in housing, employment, public accommodations, and financial credit. Such charges are brought by individuals and/or, in certain circumstances, the Director of the Department of Human Rights.

The nine-member Commission was appointed by the Governor to begin serving on July 1, 1980. At the start of Fiscal Year 1986 the Commission consisted of the following members:

Manuel Barbosa (Chairperson)	Elgin
Wallace L. Heil	Taylorville
Aloysius A. Mazewski, Jr.	Chicago
Lillian A. Mitchell	Carlyle
Randall Raynolds	Springfield
Rebecca Sive	Chicago
Howard R. Veal, Sr.	Springfield
Alfred C. Whitley	Chicago
Oscar S. Williams	Chicago

Several legislative changes to the Human Rights Act became effective during FY'86. One of those changes mandated the increase of the Commission from 9 members to 13 members. In December, 1985 Governor Thompson appointed the following individuals to serve as members of the Human Rights Commission:

Catherine Bertini	Chicago
Mathilda A. Jakubowski	Chicago
Saul J. Morse	Springfield
Debra Nesselson	Glencoe

The Commission is charged with three main functions: approving settlements agreed to by the parties, considering charging parties' requests for review (appeals) of dismissals of charges by the Department of Human Rights, and adjudicating complaints of discrimination filed with the Commission by the Department of Human Rights. The Commission also considers appeals of default orders recommended by the Department against respondents and claims of settlement order violations.

In Fiscal Year 1985 (FY'85) the Commission expanded its staff of administrative law judges (ALJs) by three, adding two secretaries to support them. The agency also opened a Springfield office in Room 404 of the William Stratton Office Building. That office was staffed with two ALJs and a secretary. All hearings on allegations of discrimination from Central and Southern Illinois are handled by that office, assuring more and quicker accessibility to the Commission by parties located south of the Chicago metropolitan area.

In FY'86 the Commission although increasing in size from nine to thirteen members maintained a staff of sixteen state-wide. The Commission's Chicago office is housed in Suite 5-100 of the State of Illinois Center located at 100 West Randolph Street in Chicago's Loop.

Commission meetings consist of a panel adjudicating settlements, requests for review and recommended orders and decisions, which may include oral arguments by attorneys. The most significant of these items are recommended orders and decisions issued by staff administrative law judges. Later in this report Chief Administrative Law Judge Patricia A. Patton describes how the public hearings, which result in recommended orders, are conducted and presents the comparative data of the administrative law section for FY'82 through FY'86.

## Legislation

Several key legislative amendments to the Human Rights Act went into effect during Fiscal Year 1986. It has already been mentioned that Public Act 84-1084 expanded the Commission from 9 to 13 members. That same amendment also made some other changes, including a provision permitting settlements reached after the issuance of a complaint to be approved by a three member Commission panel without first going through the Department. This amendment also clarified that a charge of aiding and abetting and/or coercion applies to *any* violation of the Act and not just to unlawful discrimination.

Public Act 84-717 mandated that proceedings for judicial review of a Commission final order begin in the appellate court for the district in which the alleged civil rights violation originated. Prior to this amendment, which went into effect January 1, 1986, such review began in the circuit court for the county in which the alleged violation occurred.

Public Act 84-445 provides that if a charge filed with the Department has neither a complaint nor a notice of dismissal issued within 300 days of the date the charge was filed the complainant has the option of filing a complaint with the Commission and moving the case to public hearing. The amendment further states that this right must be exercised within 30 days after the expiration of the 300th day. This provision affects only those charges filed after September 16, 1985. Thus, the Commission will be eligible to receive complaints pursuant to this law beginning in mid-July, 1986.

Public Act 84-484 allows a party who is a poor person to proceed in forma pauperis and avoid paying subpoenaed witnesses fees and mileage charges. This Act also describes conditions under which discovery depositions are allowed.

Public Act 84-485 allows certain witnesses residing in the county where the alleged civil rights violation occurred to be compelled to appear at a hearing without the necessity of serving a subpoena.

Public Act 84-775 exempts from the age discrimination provision of the Human Rights Act the initial declaration of a community association or condominium which limits such housing to people 55 years of age or older. This amendment contains provisions which "grandfather in" people under 55 owning or renting such units prior to the recording of the initial declaration.

Several other minor changes to the Act became effective in Fiscal Year 1986. For a complete review of all changes and the exact wording of the amendments described above, consult Chapter 68, Section 101 et seq, Ill. Rev. Stat., 1985.

## **Annual Report of the Administrative Law Section of the Illinois Human Rights Commission**

The Administrative Law Section of the Illinois Human Rights Commission is charged under Section 8-106 of the Illinois Human Rights Act with the responsibility of conducting public hearings on complaints of discrimination filed by the Department of Human Rights. A staff of eight Administrative Law Judges, all of whom are licensed attorneys, conducts hearings throughout the State of Illinois. In accordance with Section 8-106 of the Act public hearings are held at a location that is within 100 miles of the place at

which the civil rights violation is alleged to have occurred. As a consequence, the Administrative Law Judges traveled in the course of FY'86 to numerous sites throughout the state ranging from Rock Island to Carbondale and from Jacksonville to Urbana. Approximately fifty public hearings were conducted in Chicago and were devoted to charges originating in Cook County and adjacent counties. Twenty hearings took place in central Illinois and eleven hearings were convened in the southern part of the state. Northwestern Illinois was the site of five public hearings.

Because of the complex nature of the relevant law, substantial preparation by the parties, including discovery proceedings and motion practice, is generally necessary. As a consequence both parties are almost invariably represented by legal counsel. Public hearings, which are formal and conducted in accordance with the rules of evidence used in the courts of Illinois, typically last a day and a half. They may, however, consume less than half a day at one extreme or more than three weeks at the other. FY'86 witnessed a new record for the longest public hearing—47 days!

After the transcripts of the hearing and the post hearing briefs have been completed, the Administrative Law Judge prepares a recommended decision, which includes findings of fact, a proposed disposition, and a discussion of the applicable statutory provisions, court and Commission decisions, and other relevant authority. These recommendations are then referred to the Commission for review, during which the parties are given the opportunity to present argument for and against them. A panel of three Commissioners has the option of adopting, reversing, remanding for further hearing or modifying the recommended decision. Parties dissatisfied with a panel's decision have the right to seek rehearing before the full Commission.

In addition to the duties outlined above, the Administrative Law Judges may be called upon to assist the Commissioners in deciding requests for review of the Department of Human Rights' dismissals of charges for lack of substantial evidence or for refusal to accept a settlement. They may also hear disputes regarding the failure to comply with the terms of settlements.

The following data represents a breakdown of the disposition of cases within the Administrative Law Section during the last five years of its operation under the Human Rights Act. With the exception

of the last two sections the statistics reflect charges rather than complaints. A charge is the working document filed by the complaining party with the Department. A complaint is a formal pleading drafted by the Department incorporating meritorious charges. The vast majority of the complaints heard in the Administrative Law Section are based upon a single charge; it is not unusual, however, for a complaint to consolidate more than one charge. This may occur when a single complainant has filed more than one or because similar charges filed by several different complainants against the same employer have been merged into a single complaint.

The number of dispositions for FY'86 was 8% greater than it was in the previous fiscal year. This increase is consistent with a steady pattern of growth since the Commission's inception in 1980. The number of charges entering the Administrative Law Section has increased by 68% since FY'81. In response to this growth in caseload the Commission has made significant administrative changes designed to streamline procedures in the Administrative Law Section.

In November of 1984 the Commission opened its Springfield Office in order to increase access of downstate parties to the Commission and to provide a base of operation in Central Illinois. The two Administrative Law Judges assigned to this office are responsible for public hearings in which the alleged discrimination originated from Peoria southward.

At the end of FY'85 the Commission's rules and regulations were amended to provide for an oral motion practice for cases in which the site of the alleged discrimination is located in Cook or Sangamon County. An oral motion call greatly expedites the prehearing phase of litigation before the Commission because it produces immediate responses from the opponent of the motion as well as prompt rulings from the Administrative Law Judge to whom the case is assigned. In the course of FY'86 the motion call proved to be a very successful innovation.

Decisions "not on the merits" are those that were rendered without a hearing on the facts underlying the claim of discrimination. These decisions arise in a variety of situations. A frequent cause is the failure by a party to proceed either to prosecute or to defend. A second frequent cause is the Commission's lack of jurisdiction over the complaint. Such lack of jurisdiction may be found,

for example, where a complainant does not fall within a group protected by the Act or where he/she has failed to file a charge within the time limit provided by the statute. The number of dismissals based upon jurisdictional grounds has diminished because of a ruling by the United States Supreme Court in *Logan v. Zimmerman Brush Co.*, 453 U.S. 422 (1982), wherein the Court held that a claim could not properly be dismissed because of the failure of an administrative agency to comply with statutory time limits. Thus, a complaint cannot be dismissed in instances where the Department has failed to file a timely complaint, as was the case under an earlier ruling by the Illinois Supreme Court.

Those dispositions designated "Decisions for Complainant and Respondent" in Table III consist of complaints in which neither party prevailed on all aspects of the complaint. In some instances, for example, a complainant may have proven that she was denied a promotion because of her sex, yet failed to prove that her discharge violated the Act. Another example of a mixed decision is a case in which race discrimination and retaliation were charged in the same complaint, and the complainant prevailed as to one claim but not the other. As a consequence of the mixed nature of these decisions, their disposition has not been set forth in Table IV.

An Administrative Law Judge closes a case by means of a Final Order and Decision (FOD) where charges are withdrawn by the complainant because he/she has decided not to pursue his/her claim before the Commission. Such withdrawals may occur for a variety of reasons. The most frequent cause is a decision by the parties to settle without making the terms of settlement public. In some instances the complainant has elected to proceed in federal court rather than to seek a remedy under the Act.

Section 8-108 of the Act provides for the award of reasonable attorneys fees and costs to prevailing complainants. Often the determination of the amount of these fees and costs requires the participation of the Administrative Law Judge who heard the case. In order to expedite this process the Commission promulgated new rules at the end of FY'83, according to which an Interim Recommended Order and Decision is issued in cases where it is recommended that the complainant prevail. After the fees and costs have been determined, the Recommended Order and Decision is prepared and transmitted to the

Commission for review. As a result of these regulations, the Commission can review both the merits of the Recommended Order and Decision and the fees award at the same time and thus adjudicate the case more expeditiously. Fourteen (14) Interim Recommended Orders and Decisions were entered near the end of FY'86. This figure has not been included in Tables I through IV because these cases will not be removed from the Administrative Law Section until the determination of fees is completed.

The statistics cited in Table II indicates that the Administrative Law Section is an effective vehicle for settlement, as well as for resolution by means of hearing. Prehearing conferences have been used extensively at various stages in the processing of complaints. As a consequence, settlements have been reached after the filing of the respondent's answer, after rulings by the Administrative Law Judge on crucial motions, and after the completion of discovery. In some cases settlements have been effected after the hearing has begun or even after the Interim

Recommended Order and Decision has issued.

In the five years of its operation under the Fair Employment Practices Commission the Administrative Law Section consistently demonstrated its impartiality in the balance of its decisions between complainants and respondents. The first six years of its operation under the Human Rights Commission have shown that same balance when Interim Recommended Order and Decisions are included as decisions in favor of complainants. It is important to analyze such statistics in terms of complaints, rather than charges, because a decision on one large multi-charge complaint can radically skew the total number of charge dispositions in favor of one side or the other. A finding of discrimination in a single complaint can, for example, result in 25 charges in favor of complainants where the complaint consolidates as many charges.

The number of dispositions exceeds the number of complaints because in some instances more than one issue was resolved in a single complaint.

**TABLE I**

	<b>Overview:</b>				
	FY'86	FY'85	FY'84	FY'83	FY'82
Charges carried over from the previous fiscal year	461	458	377	294	274
Charges entering Administrative Law Section	319	346	353	289	222
Total number of charges	780	804	730	583	496
Number of Dispositions	375	343	272	206	202
Balance carried over to next FY	405	461	458	377	294

**TABLE II**

<b>Breakdown of Dispositions of Charges:</b>					
	FY'86	FY'85	FY'84	FY'83	FY'82
Decision for Complainants— on the merits	58	42	28	31	25
Decision for Respondents— on the merits	65	64	38	28	26
Decision for Complainants— not on the merits	4	2	2	0	1
Decision for Respondents— not on the merits	32	20	17	9	25
Decision for Complainants and Respondents—on the merits	0	0	0	3	0
Settlements	52	56	65	69	63
Final Orders and Decisions by Administrative Law Judges	146	150	95	64	50
Damages/Fact Finding Decisions (Commission Remands)	18	9	27	2	0
<b>TOTAL</b>	<u>375</u>	<u>343</u>	<u>272</u>	<u>206</u>	<u>202</u>

**TABLE III**

<b>Dispositions of Complaints On the Merits</b>					
	FY'86	FY'85	FY'84	FY'83	FY'82
Decisions for Complainants	43*	29*	23*	23	25
Decisions for Respondents	59	54	37	28	24
Decisions for Complainant and Respondent	0	0	0	3	6
<b>TOTAL</b>	<u>102</u>	<u>83</u>	<u>60</u>	<u>54</u>	<u>55</u>

**TABLE IV**

<b>Breakdown of Dispositions of Complaints On the Merits Employment</b>										
	FY'86		FY'85		FY'84		FY'83		FY'82	
	C	R	C	R	C	R	C	R	C	R
Race	15	22	11	29	8	18	10	12	11	9
Sex	10	16	4	9	7	7	6	6	8	4
Handicap	13	14	9	4	5	8	5	6	6	9
National Origin	1	3	1	1	0	2	1	1	1	2
Age	2	9	7	9	1	3	0	4	0	0
Retaliation	2	1	0	6	0	1	0	1	1	3
Religion	0	0	0	1	0	0	1	0	0	1
Sex and Marital Status	0	0	0	0	1	0	0	0	0	0
<b>TOTAL</b>	<u>43*</u>	<u>65</u>	<u>32*</u>	<u>59</u>	<u>22*</u>	<u>39</u>	<u>23</u>	<u>30</u>	<u>28</u>	<u>27</u>

\*These figures do not include Interim Recommended Order and Decisions for which the Recommended Order and Decisions were not completed in the same fiscal year. In FY'84 there were 17 such IROD's; 18 in FY'85, and 14 in FY'86.



**TABLE V**

<b>Breakdown of Dispositions of Complaints On the Merits Other Jurisdictions</b>								
	FY'86		FY'85		FY'84		FY'83	
	C	R	C	R	C	R	C	R
Race/Public Accommodations	0	1	0	1				
Exclusion of Children/Rental	3	0	0	1	1	0	1	1
Race/Rental or Sale	3	0	0	1	0	1	0	1
<b>TOTAL</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>

**Commission**

The Commissioners dispose of cases primarily through meetings of three member panels. Each panel meets once a month, as does the full Commission. One panel meets regularly in Springfield in room 404 of the Stratton Office Building; the others and the full Commission meet in Chicago in Suite 5-100 of 100 West Randolph Street. Thus, as in FY'85, a panel or full Commission meeting took place nearly every Wednesday of Fiscal Year 1986.

A typical panel meeting included a routine approval of up to twenty settlements sent by the Department; ten or more requests for review (appeals) by complainants of Department dismissals; and two recommended orders and decisions, one of which required an hour of oral argument involving attorneys for each party. Additionally, a panel would usually have a variety of motions, usually requests for extensions of time, to consider. Decisions requiring special research or commentary were assigned to the Commission's general counsel for preparation.

Below is a statistical summary of the Commission's activities for FY'86 with comparative data for the previous five fiscal years. It should be noted that the Commission continued to receive more settlements and requests for review in the housing and public accommodations areas in FY'86 than in the early 1980s. However, employment remained the area where over 95% of Commission work was generated. Financial credit appears to be a minimal source of discrimination charges—at least, for those charges which reach the Commission.

**Summary of Decisions of the Illinois  
Human Rights Commission**

	FY'86	FY'85	FY'84	FY'83	FY'82	FY'81
Settlements approved	565	597	665	446	512	375
Requests for Review decided	325	317	351	274	340	227
Orders and Decisions issued	120	72	45	55	49	43

FY'86 was a highly productive year for the Commission. Settlements were slightly lower than in FY'85; however, the number of order and decisions issued pursuant to recommendations of ALJs was by far the highest in history. This is mainly due to the increase in productivity from the addition of three ALJs in FY'85 coupled with continuing good results from having a staff general counsel. With the expanded ALJ staff, coupled with the effects of Public Act 84-445, it is expected that the order and decisions statistic will remain high in future years.

**Requests for Review**

The Department will dismiss a charge if, after investigation, the Director believes there is no substantial evidence (probable cause) of a civil rights violation. Additionally, a dismissal may occur if the Department believes it has no jurisdiction over the charge or if the complainant fails to comply with duly promulgated rules and regulations. If a respondent fails to appear or be properly represented at a fact-finding conference, the Department can issue a default order. In any of the above situations, the aggrieved party can ask the Commission, through a request for review, to vacate the dismissal or default order. After a timely request for review is filed with the Commission the Department, which is the "respondent" during the request for review process, prepares a response. If the Department's legal division believes that the request for review

has merit, a DHR attorney will ask the Commission to vacate the dismissal or default order. The Commission, through its executive director, always complies with this request. In FY'86, the Commission's executive director vacated 122 dismissals at the Department's

request. In the remaining cases, the Department opposes the request for review and a three-member panel of Commissioners must decide what course of action to take. The data for FY'86 and prior years is presented in the following chart:

	FY'86	FY'85	FY'84	FY'83	FY'82	FY'81
Total requests for review	325†	317	351	274	340	227
DHR dismissal affirmed	273§	252	294	211	283	201
DHR dismissal vacated	52	65	57	63	57	26
Percentage of dismissals affirmed	84%	79.5%	83.8%	77%	83.2%	88.5%
Percentage of dismissals vacated	16%	20.5%	16.2%	23%	16.8%	11.5%

†Only those cases in which the Department opposed the request for review are included. In 122, or 27.3% of the requests for review filed, the Department asked the Commission to vacate the dismissal.  
 §Over 98% of requests for review were from DHR dismissals. Defaults are infrequent.

## Settlements

The parties to a charge are encouraged to settle the case at all stages, from Department intake through Commission public hearing. Once such an agreement is reached, they are further encouraged to submit the settlement to the Department and Commission. If both agencies approve the terms of settlement, they are enforceable should either party violate the agreement. During FY'86, the Commission approved 565 settlements. Not all of

them involved financial transactions; some complainants sought neutral letters of reference, the clearing of their personnel files, the ability to rent a particular apartment, or the guaranteed access to a public accommodation. However, most settlements did involve money being paid to the complainant. The amounts negotiated at different stages of proceedings and the grand total appear below.

Stage at which Agreement signed	Number of Settlements	Total Amount	Average Amount per Settlement
During investigation	404	\$676,032	\$1,673
During conciliation	58	\$184,036	\$3,173
During public hearing	44	\$263,973	\$5,999
After ROD issued	59	\$ 96,314	\$1,632
<b>TOTAL</b>	<b>565</b>	<b>\$1,220,355</b>	<b>\$2,160</b>

## Data Summaries

The Commission issued Orders and Decisions which disposed of one hundred twenty charges in which findings were made on the merits during the 1986 fiscal year. The one hundred twenty charges are grouped three ways in the following charts: first, by whether the decision favored the complainant, respondent, or both; second, by the source of discrimination, with FY'85 comparative data, and finally, by whether or not the Commission decision affirmed or reversed the administrative law judge's recommended order.

## Orders and Decisions

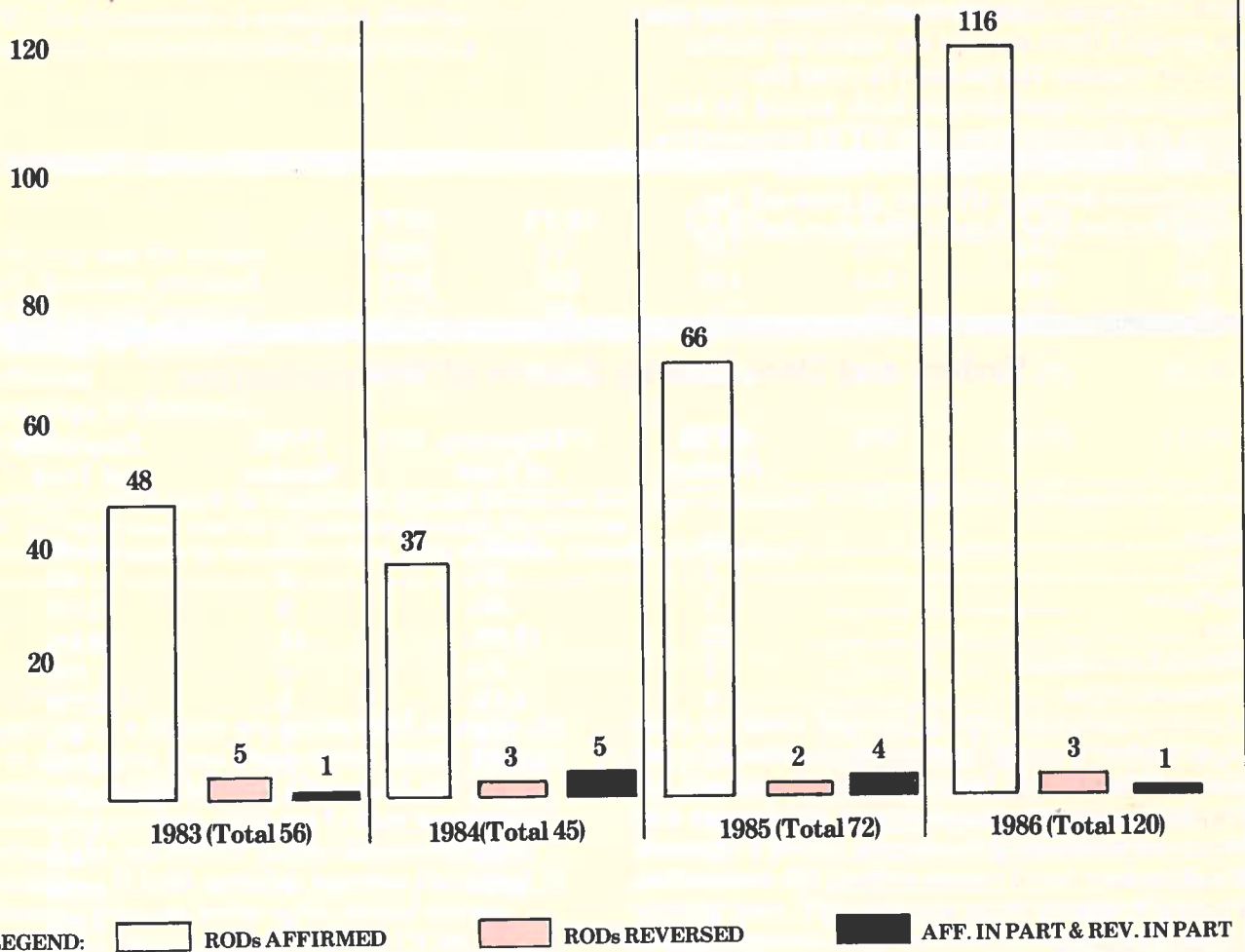
For Complainant	55
For Respondent	60
For Both	5

### Orders and Decisions by Source of Discrimination

	FY'86 Number	Proportion of Total	FY'85 Number	Proportion of Total
Race _____	45	34.9%	24	32.0%
Color _____	1	.8%	0	0%
Religion _____	1	.8%	2	2.7%
Sex _____	22	17.0%	22	29.3%
Sexual Harassment _____	1	.8%	0	0%
National Origin _____	4	3.1%	2	2.7%
Ancestry _____	0	0%	0	0%
Age _____	27	20.9%	5	6.7%
Marital Status _____	1	.8%	1	1.3%
Physical/Mental Handicap _____	19	14.7%	11	14.7%
Unfavorable Discharge _____	0	0%	0	0%
Retaliation _____	7	5.4%	4	5.3%
Children Under 14 _____ (Rental Housing)	1	.8%	4	5.3%
	<u>129*</u>	<u>100%</u>	<u>75*</u>	<u>100%</u>

\*NOTE: some cases involve more than one source of alleged discrimination.

## O&D's As Related To Recommended Orders and Decisions (RODs)



The Commission also affirmed thirty-nine RODs where no findings were made on the merits of the charge of discrimination in FY'86.

### Report of Significant Orders and Decisions

What follows is a summary of a number of important cases decided by the Human Rights Commission during FY'86. These are Orders and Decisions rendered by three-member Commission panels pursuant to Recommended Orders and Decision issued by staff Administrative Law Judges. After Orders and Decisions are issued, they are placed in volumes which are printed by

Towers Records of Illinois, 323 S. Franklin Street, Chicago, IL 60606. Where the opinions discussed in this report have been collected into volumes, a citation to the volume and the page is included. The first number in the citation refers to the volume of the Commission decisions and the second number in the citation refers to the page on which the decision begins. Thus, 17 Ill. HRC Rep. 94 would be found on page 94 of the Seventeenth volume of the Orders and Decisions of the Illinois Human Rights Commission.

In *Chenoweth and Prairie Farms Dairy, Inc.*, 17 Ill. HRC Rep. 94 (1985) the Commission discussed the nature of the protection afforded individuals under the "mental handicap" provision of the Human Rights Act. Where an expert in clinical psychology had diagnosed the Complainant as having an adjustment disorder with depressed moods which resulted in an attempted suicide through the use of drugs and alcohol, the Commission found that the Administrative Law Judge was correct in her determination that the Complainant was the victim of a "mental handicap" within the meaning of the Human Rights Act. The Respondent in the case maintained that the Complainant's adjustment disorder with depressed moods and its manifestation in his suicide attempt was not a factor in the decision which was made to terminate the Complainant.

The Commission found that the employer had, indeed, terminated the Complainant based upon his mental handicap in violation of the Human Rights Act. The Complainant's supervisor admitted that the attempted suicide was a ground upon which the termination decision was made. Since Mr. Chenoweth drove a milk truck, the supervisor was concerned that further self destructive behavior could result in an accident where someone else was injured. Although this was a legitimate concern, there was absolutely no evidence that Mr. Chenoweth would have made further suicide attempts. In fact, the expert testimony in the record indicated that the conditions which had precipitated the suicide attempt had largely been resolved by the time of the discharge. Accordingly, the decision to terminate was based upon uninformed speculation. The Commission ruled that this was not a sufficient basis to terminate an individual who suffers from a mental handicap.

The issue in *Johnson and Stoller & Maurer Construction Company*, 17 Ill. HRC Rep. 184 (1985) was whether there was a violation of the Human Rights Act where age discrimination was only one of many reasons for terminating the Complainant's employment. Because of poor business conditions, it was clear that one of the Respondent's employees would have to be laid off. The Complainant was chosen because the Complainant was doing less useful work than other similarly situated employees, but was being paid more. In addition, the Complainant was unwilling to adapt to the Respondent's work system. The Complainant had the weakest job performance of all individuals being considered for termination.

Finally, the Complainant was chosen for lay-off because he was near retirement age.

The Administrative Law Judge found that it was illegal age discrimination to terminate an individual because he is near retirement age. She further found, however, that the Complainant would have been terminated even if his age were not taken into account. Accordingly, the Administrative Law Judge ruled that there was no violation of the Human Rights Act.

The Commission reversed this finding. It found that there is a violation of the Human Rights Act when illegal motives enter into an employment decision to any degree. The opinion of the Commission panel indicates that an employer may be able to cut-off damages by proving that an employee would have been fired in any event, but proof of valid reasons for firing an individual is not sufficient to prevent a finding of a violation of the Human Rights Act if the employment decision was tainted in any way by illegal motives.

In *Corley and Chicago & Northwestern Transportation Company*, 17 Ill. HRD Rep. 215 (1985) the Commission ruled that an Administrative Law Judge could enter an order of default against a Respondent where the attorney for the Respondent had failed and refused to answer interrogatories which had been served over six months prior to the entry of the default. In an action in front of the Commission both sides are entitled to information reasonably available to the other side. Mr. Corley had asked for information from the Respondent in a proper way. Although the Respondent had objected to the request, those objections had been overruled by the Administrative Law Judge. Nevertheless, the material was not turned over. Eventually, the Administrative Law Judge found that the delay in the proceedings had become so great that justice required an award of damages to Mr. Corley. Since the Respondent was held in default, it had to pay all costs which the Complainant had incurred in prosecuting the case, including those costs incurred by the Complainant during the investigative stage of the proceedings.

In *Mikusch and State of Illinois, Office of the Secretary of State*, 17 Ill. HRC Rep. 241 (1985), the Commission was faced with a conflict between two state laws. The Motor Vehicle Code provided that a Secretary of State investigator could not remain in the position of investigator after his sixtieth birthday. Pursuant to that section of the Illinois

Revised Statutes, the Secretary of State forced his investigators to retire from their positions at age sixty.

The Human Rights Act makes it illegal for an employer to terminate an employee based upon a person's age. The term "age" is defined in the Human Rights Act as the chronological age of a person who is forty but not yet seventy years old. Several investigators for the Secretary of State's office who were affected by the retirement policy filed a charge. The Human Rights Commission ruled that the provisions of the Human Rights Act would prevail. The opinion pointed out that the Human Rights Act was passed and signed into law after the passage and signing of the pertinent provisions of the Vehicle Code. In addition, the panel of the Commission pointed out that the Motor Vehicle Code is a comprehensive scheme designed to regulate the ownership and operation of motor vehicles in the State of Illinois, and that its central concern was not the prevention of discrimination. Thus, the Commission found that it was highly likely that the true intent of the legislature with respect to the question whether older workers should be allowed to continue to work free from discrimination would be found in the Human Rights Act, and not the Motor Vehicle Code.

An important procedural question was resolved in the case of *Pearl and Keystone Steel & Wire Company*, 18 Ill. HRC Rep. 2 (1985). In that case it appeared that the Complainant was going to go ahead with her complaint until just before the hearing. At the last minute the Complainant moved to withdraw her complaint. The Administrative Law Judge found that the motion for voluntary dismissal had to be granted, but that sanctions should be imposed for the expense which the Respondent incurred in preparing for a hearing which never took place. The Complainant never explained to the Commission why it was that the complaint was withdrawn at the last minute. Since there was no purpose in the Complainant's actions other than delay, sanctions were imposed on the Complainant's attorney in the amount of \$3,172.50.

In the case of *Howe and Roadway Express, Inc.*, Ill. HRC Rep. , Charge No. 1983CN0984 (October 9, 1985) the Commission ruled that a freight express company could not exclude a loading dock worker from employment based upon the fact that he had sight in only one eye. The Respondent claimed that the Complainant had not been hired

because the application had been lost, but the Complainant had been told on numerous occasions that his application was being processed.

In *Smith and Cook County Sheriff's Office*, Ill. HRC Rep. , Charge No. 1982CF1564 (October 31, 1985) the Commission ruled that in certain cases the victims of employment discrimination are entitled to monetary compensation for emotional distress. Where the Complainant was subjected to a constant barrage of racial harassment over a long period of time, and was eventually transferred because of racism, the Commission found that it was not unreasonable for the Administrative Law Judge to award \$5,000 in compensation for humiliation, pain and embarrassment caused by the violations of the Human Rights Act.

In *Haas and Texaco Incorporated*, Ill. HRC Rep. , Charge No. 1980CN1479 (November 4, 1985) the Commission found that there had been discrimination based on a physical handicap. In this case it was clear that the Complainant had a present ability to do the job in question, but the employer feared that the Complainant's delicate back condition would cause further injury. The Commission ruled that a mere increased risk of injury brought about by a handicapping condition was not a sufficient basis for rejection of an employment application. Rather, the employer could make out a defense only by establishing that there was a "reasonable probability" that because of the Complainant's physical condition employment in the position sought would be hazardous to the health or safety of the Complainant or co-workers.

Discrimination on the basis of alcoholism was the subject of the Commission's decision in *Manning and Kropp Forge, Division of Anadite Corporation*, Ill. HRC Rep. , Charge no. 1983CN0713 (February 13, 1986). The Commission affirmed the principle in this case that where an individual drinks to excess, he may be subject to protection under the Human Rights Act if his drinking is caused by or is the equivalent of a disease. The disease, however, must be unrelated to the person's ability to do the job in question. Therefore, where it was clear that the Complainant had a lower sales volume than a similarly situated employee, and where it was clear that his percentage sales decline was greater than that of the comparable employee, it was reasonable to believe that the Complainant was terminated because he was not doing a very good job as a salesperson, and not because he was an alcoholic.

In *LaRocca and Chromium Corporation*, Ill. HRC Rep. , Charge No. 1982CF0356 (February 13, 1986) the Commission made it clear that it does not review employment determinations in order to see if the Complainant is doing a good or bad job. Instead, it is the role of the Commission to determine if all employees are subject to the same employment criteria. Thus, in this case the Commission found that the Complainant was terminated because of his age and not because of poor job performance based upon comparative evidence. Although the Respondent was able to show instances where the Complainant had not done a good job, the Complainant was able to show numerous instances where similarly situated younger employees had engaged in similar behavior and had not been terminated. Based upon this evidence, the Commission concluded that it was LaRocca's age which was the cause of discharge.

In *Lamley and City of Benton Police Department*, Ill. HRC Rep. , Charge No. 1982SF0150 (1986) the question was whether the Complainant's alleged handicap prevented him from being a police officer with the city of Benton. The Respondent had rejected the Complainant's application to go back on the police force after a leave of absence based upon a psychiatric problem. The Respondent was afraid of relapse. The Respondent's own psychiatrist acknowledged, however, that the Complainant was free of disease at the time of the rejection, and that it was only a "possibility" that there would be a relapse. The Commission stated that a mere "increased chance" that someone with a handicap may, in the future, have some kind of problem does not make that person "unable" to do the job in question. Accordingly, it was ruled that Mr. Lamley had to be put to work as a police officer.

The right of a prison to refuse to hire female guards was discussed in *Matejewsky and State of Illinois, Department of Corrections*, Ill. HRC Rep. , Charge No. 1979CF1192 (March 10, 1986). In that case the Illinois Department of Corrections argued that being male was a bona fide occupational qualification for the job of prison guard in the Pontiac Correctional Center. The Commission ruled that a prison system may refuse to hire female guards if there is proof that a substantial portion of the inmate population is composed of sex offenders mixed at random with other prisoners and that this presents an unusual danger for female guards. Where there is no proof

that women are more likely to be targets of violence than similarly situated men, however, it is illegal to discriminate on the basis of sex.

In *Martin and Sangamon State University*, Ill. HRC Rep. , Charge No. 1979SF0474 (June 10, 1986), the Commission found sex discrimination where the university could not explain why different standards had apparently been used with respect to the granting of the rank of assistant professor. It appeared from the evidence that the Complainant was denied that rank even though her credentials were at least as good as two male professors who had been granted that rank. Although the Respondent could speculate as to the reason why the male professors had been granted the rank of assistant professor, there was no competent evidence in the record as to why the male employees had been granted the higher rank. Accordingly, the Commission found that Ms. Martin was entitled to a decision in her favor.

In *Jackson and County of Cook*, Ill. HRC Rep. , Charge No. 1984CN0085 (June 2, 1986) the distinction between drinking to excess and alcoholism was discussed. Under the Commission's rules on handicap discrimination in employment alcohol abuse, in and of itself, is not a handicap. It is only where the abuse of alcohol is caused by a disease or constitutes the equivalent of a disease that protection is afforded. Accordingly, where the Complainant failed to establish that the Respondent knew anything more than the Complainant had a "drinking problem," there could be no discrimination on the basis of a physical handicap.

In *Leffler and Board of Directors, Greenhills Country Club*, Ill. HRC Rep. , Charge No. 1984SF0021 (June 2, 1986) the Commission clarified the nature of an employer's liability for sexual harassment. The Commission ruled that an employer is responsible for the acts of its supervisory employees with respect to sexual harassment, regardless of whether the specific acts complained of were authorized or even forbidden by the employer, and regardless of whether the employer knew or should have known of their occurrence. Based upon this standard, the Commission entered its decision in favor of the Complainants.

## Human Rights Commission Expenditures

State Fiscal Year — July 1 - June 30

Line Item	FY'86 Expenditures	FY'85 Expenditures	FY'84 Expenditures	FY'83 Expenditures
Personal Services .....	424,900	345,700	270,000	219,200
Retirement .....	25,100	19,200	14,000	9,400
Social Security .....	29,900	24,300	18,500	14,400
Contractual Services .....	58,500	120,600	95,700	85,200
Court Reporting* .....	105,900			
Travel .....	24,500	27,000	25,600	19,500
Commodities .....	6,200	6,200	2,300	1,200
Printing .....	2,400	1,600	1,200	700
Equipment .....	8,300	45,900	1,700	1,800
Telecommunication Services .....	9,900	6,000	6,800	4,000
<b>Total General Revenue Funds</b>	<b>\$695,600</b>	<b>\$596,400</b>	<b>\$436,900</b>	<b>\$355,400</b>

\*Court reporting was combined with the contractual services line item in fiscal years prior to FY86.

FY86 hearings generated the highest expenditures for court reporting in the Commission's history. This was largely due to a public hearing referred to earlier in this report which consumed 47 days of testimony and argument.

### The Future

In Fiscal Year 1987 Public Act 84-445 (described earlier) will begin to impact the Commission. This impact and the increasing intake of charges by the Department of Human Rights each year will likely tax to the fullest the Commission's current staff resources. Since public hearing procedures have already been streamlined (e.g., oral motion calls in Cook and Sangamon Counties) it may be necessary in future years to add administrative law staff to ensure prompt processing of complaints before the Commission.



