

# **STATE OF ILLINOIS HUMAN RIGHTS COMMISSION**

**Annual Report for Fiscal Year 1985  
July 1, 1984 — June 30, 1985**



**Manuel Barbosa**  
**Chairperson**

**The Honorable**  
**James R. Thompson**  
**Governor**



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**Human Rights Commission**

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Howard R. Veal, Sr.  
Springfield  
Alfred C. Whitley  
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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 1985.

Respectfully submitted,

Manuel Barbosa  
Chairperson

September 12, 1986

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## OVERVIEW OF COMMISSIONERS AND COMMISSION RESPONSIBILITIES

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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 1985 the Commission consisted of the following members:

Manuel Barbosa (Chairperson) . . . . .	Elgin
Marion N. Baruch . . . . .	Chicago
Wallace L. Heil . . . . .	Taylorville
Lillian A. Mitchell . . . . .	Carlyle
Randall Reynolds . . . . .	Springfield
Rebecca Sive-Tomashefsky . . . . .	Chicago
Howard R. Veal, Sr. . . . .	Springfield
Alfred C. Whitley . . . . .	Chicago
Oscar S. Williams . . . . .	Chicago

Late in the year Commissioner Marion N. Baruch died after a long illness. Governor Thompson appointed Aloysius A. Mazewski, Jr. of Mount Prospect to fill the vacancy created by Commissioner Baruch's death.

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. The Commission receives all its work from the Department's activities — it has no public intake.

In Fiscal Year 1984 (FY '84) the Commission staff consisted of five administrative law judges (ALJs), four clerical support staff, an executive assistant, and a general counsel.

From mid-FY '83 through FY '84, the Commission experienced a dramatic increase in cases filed for public hearing by the Department of Human Rights. This increase was caused by an upsurge in the filing of charges by individuals with the Department combined with an increase in investigators processing those charges. The caseload increase meant that the Commission would either have to expand its staff of administrative law judges or face inordinate delays in holding hearings and issuing decisions.

In FY '85 the Commission expanded its staff of ALJs by three, added two secretaries to support them, and 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.

Midway during the fiscal year the Commission's Chicago office moved to Suite 5-100 of the new State of Illinois Center at 100 West Randolph Street. The more spacious accommodations at the SOIC, was one of the factors which allowed the Commission to institute the oral motion call twice per week for all complaints arising out of Cook County. This call is discussed more fully in the following portion of this report.

Commission meetings consist of a panel adjudicating settlements, requests for review and recommended orders and decisions, which may include oral arguments by attorneys. Perhaps the most significant of these items are recommended orders and decisions issued by staff administrative law judges. In the following section, Chief Administrative Law Judge Patricia A. Patton describes how the public hearings, which result in recommended orders, are conducted and the comparative data of the Administrative Law Section for Fiscal Years 1981 through 1985.

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## THE ADMINISTRATIVE LAW SECTION

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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, conduct 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 '85 to numerous sites throughout the state ranging from Chicago to Carbondale and from Galesburg to Urbana. Sixty public hearings were conducted in Chicago and were devoted to charges originating in Cook County and adjacent counties. Twenty-eight hearings took place in central Illinois and twelve hearings were convened in the southern part of the state. Northwestern Illinois was the site of five public hearings. The total of 105 hearings was the highest in the history of the Commission.

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.

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, lack of jurisdiction, 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 first 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.

## Statistical Overview

	FY85	FY84	FY83	FY82	FY81
--Charges carried over from the previous fiscal year.....	458	377	294	274	244
--Charges entering Administrative Law Section.....	346	353	289	222	190
--Total number of charges	<u>804</u>	<u>730</u>	<u>583</u>	<u>496</u>	<u>434</u>
--Number of Dispositions	343	272	206	202	160
--Balance carried over to next FY.....	461	458	377	294	274

The number of dispositions for FY '85 was 26% 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 82% since 1981. In response to this growth in caseload the Commission in the course of FY '85 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 new 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 Counties. 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.

## Breakdown of Dispositions of Charges

	FY85	FY84	FY83	FY82	FY81
1. Decisions for complainants on the merits.....	42	28	31	25	44
2. Decisions for respondents on the merits.....	64	38	28	26	11
3. Decisions for complainants not on the merits.....	2	2	0	1	1
4. Decisions for respondents not on the merits.....	20	17	9	25	24
5. Decisions for complainant and respondent-on merits	0	0	3	9	3
6. Settlements.....	56	65	69	63	38
7. Final orders and decisions by administrative law judges.....	150	95	64	50	39
8. Damages/Fact Finding decisions (Commission remands).....	9	27	2	0	0
TOTAL.....	<u>343</u>	<u>272</u>	<u>206</u>	<u>202</u>	<u>160</u>

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 may be expected to diminish 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 fails to file a timely complaint, as was the case under earlier rulings by the Illinois Supreme Court.

Those dispositions designated "Decision 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. Eighteen (18) Interim Recommended Orders and Decisions were entered near the end of FY '85. This figure has not been included in Sections 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 Section II above indicate that the Administrative Law Section is an effective vehicle for settlement, as well as for resolution by means of hearing. The administrative law judges have continued to improve their performance in this regard. 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 after the Interim Recommended Order and Decision has been issued.



## Disposition of Complaints on the Merits

	FY85	FY84	FY83	FY82	FY81
1. Decisions for complainants.....	29**	23*	23	25	10
2. Decisions for respondents.....	54	37	28	24	11
3. Decisions for complainant & respondent	0	0	3	6	3
<b>TOTAL.....</b>	<b>83</b>	<b>60</b>	<b>54</b>	<b>55</b>	<b>24</b>

\* Seventeen Interim Recommended Orders and Decisions were also issued in FY '84, in which complainants prevailed.

\*\* Eighteen interim decisions were issued in favor of complainants in FY '85.

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 five years of its operation under the Human Rights Commission have shown that same balance when Interim Recommended Orders 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.

## Breakdown of Dispositions of Complaints on the Merits

A. Employment	FY85		FY84		FY83		FY82		FY81	
	C	R	C	R	C	R	C	R	C	R
Race.....	11	29	8	18	10	12	11	9	3	3
Sex.....	4	9	7	7	6	6	8	4	5	4
Handicap.....	9	4	5	8	5	6	6	9	1	2
National Origin.....	1	1	0	2	1	1	1	2	0	1
Age.....	7	9	1	3	0	4	0	0	1	0
Retaliation.....	0	6	0	1	0	1	1	3	0	1
Religion.....	0	1	0	0	1	0	0	1	0	0
Sex & Marital Status	0	0	1	0	0	0	0	0	0	0
<b>TOTAL:</b>	<b>32</b>	<b>59</b>	<b>22</b>	<b>39</b>	<b>23</b>	<b>30</b>	<b>28</b>	<b>27</b>	<b>10</b>	<b>17</b>

<sup>1</sup> This figure does not include the seventeen Interim Recommended Orders and Decisions issued in favor of complainants in FY '84 for which Recommended Orders and Decisions were not completed within this fiscal year. It also does not include cases in which settlements were executed after issuance of the Interim Recommended Order and Decision.

<sup>2</sup> Interim decisions were also issued in favor of complainants in eighteen complaints.

B. Other Jurisdictions	FY85		FY84		FY83	
	C	R	C	R	C	R
Race/Public Accommodations Exclusion of Children/Rental.....	0	1				
Race/Rental.....	0	1	1	0	1	1
<b>TOTAL:</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>

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

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# COMMISSION

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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 '84, a panel or full Commission meeting took place nearly every Wednesday of Fiscal Year 1985.

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 '85 with comparative data for the previous four fiscal years. It should be noted that the Commission received more settlements and requests for review in the housing and public accommodations area in FY '85 than previously. 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.

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## Summary of Decisions

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	FY85	FY84	FY83	FY82	FY81
Settlements approved.....	597	665	446	512	375
Requests for Review decided...	317	351	274	340	227
Orders and Decisions issued...	72	45	55	49	43

FY '85 was a highly productive year for the Commission. Settlements and requests for review were slightly lower than in FY '84; however, the number of orders and decisions issued pursuant to recommendations of ALJs was by far the highest in history. This is mainly due to the increase in productivity by staff administrative law judges coupled with continuing good results from having a staff general counsel. With the expanded ALJ staff, it is expected (barring any sudden downturn in the issuance of complaints by the Department) that the orders and decisions statistic will remain high in future years.

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## Requests for Review

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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 vacated ninety-one 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 '85 and prior years is presented in the following chart:

	FY85	FY84	FY83	FY82	FY81
Total requests for review <sup>1</sup>	317	351	274	340	227
DHR dismissal affirmed <sup>2</sup>	252	294	211	283	201
DHR dismissal vacated	65	57	63	57	26
Percentage of dismissals affirmed.....	79.5%	83.8%	77%	83.2%	88.5%
Percentage of dismissals vacated.....	20.5%	16.2%	23%	16.8%	11.5%

<sup>1</sup> Only those cases in which the Department opposed the request for review are included.

<sup>2</sup> 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 '85, the Commission approved 597 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; alongside this year's figures are comparable data for FY '84.

## SETTLEMENT DATA FY '85

Stage at which agreement signed	Number of Settlements		Amount		Average amount per Settlement	
	FY85	FY84	FY85	FY84	FY85	FY84
During investigation:	481	573	\$994,717	\$949,126	\$2,068	\$1,656
During conciliation:	52	36	206,480	99,907	3,971	2,775
During public hearing:	57	53	325,952	372,354	5,718	7,026
After ROD issued:	7	3	131,755	58,000	18,882	19,333
	597	665	\$1,658,904	\$1,479,387	\$2,778	\$2,225

### ■ Data Summaries

The Commission issued orders and decisions which disposed of seventy-two charges on the merits during the 1985 fiscal year. The seventy-two charges are grouped three ways in the following charts: first, by whether the decision favored the complainant, respondent, or both; second, the source of discrimination, with FY '84 comparative data, and finally, whether or not the Commission decision affirmed or reversed the administrative law judge's recommended order.

#### Orders & Decisions for Complainant

35

#### Orders & Decisions for Respondent

36

#### Orders & Decisions for Both

1

## ORDERS & DECISIONS BY SOURCE OF DISCRIMINATION

	<u>FY85 Number</u>	<u>Proportion of Total</u>	<u>FY84 Number</u>	<u>Proportion of Total</u>
Race.....	24	32.0%	18	33.9%
Color.....	0	0%	0	0%
Religion.....	2	2.7%	1	1.9%
Sex.....	22	29.3%	7	13.2%
National Origin.....	2	2.7%	1	1.9%
Ancestry.....	0	0%	2	3.8%
Age.....	5	6.7%	3	5.7%
Marital Status.....	1	1.3%	0	0%
Physical/Mental Handicap.....	11	14.7%	20	37.7%
Unfavorable Discharge	0	0%	0	0%
Retaliation.....	4	5.3%	0	0%
Children under 14... (Rental Housing)	4	5.3%	1	1.9%
	<u>75*</u>	<u>100%</u>	<u>53*</u>	<u>100%</u>

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

## ORDERS & DECISIONS RELATED TO RECOMMENDED ORDERS AND DECISIONS (RODS)

	FY85	FY84	FY83	FY82	FY81
RODs affirmed.....	66	37	48	40	39
RODs reversed.....	2	3	5	8	4
Affirmed in part and reversed in part.....	<u>4</u>	<u>5</u>	<u>2</u>	<u>1</u>	<u>0</u>
	<u>72</u>	<u>45</u>	<u>55</u>	<u>49</u>	<u>43</u>

The Commission also affirmed nineteen RODs not dealing with the merits of discrimination.

## 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 '85. These are Orders and Decisions rendered by three-member Commission panels pursuant to Recommended Orders and Decisions issued by staff Administrative Law Judges. After Orders and Decisions are issued, they are placed in volumes which are printed by Tower 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, 14 Ill. HRC Rep. 48 would be found on page 48 of the fourteenth volume of the Orders and Decisions of the Illinois Human Rights Commission.

In the case of **Sarna and South Suburban Hospital**, 13 Ill. HRC Rep. 171 (1984) the Commission issued a major decision discussing the meaning of the term "handicap" in the context of mental illness. The Commission ruled that a finding of "handicap" based upon a mental illness could not be based upon a mere supposition. The fact that the Complainant had engaged in bizarre behavior and had been hospitalized was not sufficient to prove that the Complainant was "handicapped" within the meaning of the Human Rights Act. The Commission also ruled that an employee could be terminated for behavior which is a manifestation of a mental handicap, if that behavior presents a legitimate basis for a discharge. An employee is not insulated from the consequences of his or her acts merely because they are a manifestation of a mental illness.

Finally, the Commission discussed the implications of the legislative prohibition against discrimination based upon the "perception" of a mental handicap, even where the employee does not suffer from a mental handicap. The employer in the **Sarna** case argued that an employee was not protected under the Human Rights Act unless he or she could prove that the employer acted based upon the perception that the employee had a specific, diagnosable mental illness. The Commission ruled that this approach ignored the nature of the prejudice sought to be prevented by the Human Rights Act. The **Sarna** opinion holds that it is irrelevant whether the person making the employment decision has formulated a scientific diagnosis for the employee's condition. It is sufficient if the decision maker perceives that the Complainant is the victim of some sort of mental illness.

A very different question was addressed by the Commission in the case of **Adams and State of Illinois, Department of Corrections**, 13 Ill. HRC Rep. 214 (1984). In that case Mr. Adams was, according to the Commission, denied a promotion based upon racial discrimination. Adams quit his old position and asked the Commission to award him full back pay. Adams argued that his resignation was the result of a "constructive discharge," in that he could not have been expected to continue working for the Department of Corrections after he was denied the promotion. The Commission disagreed. It stated that a reasonable person in the Complainant's position would not have felt that the working conditions were intolerable.

A major decision interpreting the "marital status" provision of the Human Rights Act was issued in August of 1984 by the Commission in the case of **Burton and Allied Chemical Corp.**, 13 Ill. HRC Rep. 246 (1984). Allied Chemical had a policy which prohibited a person from being the immediate supervisor of his or her spouse. Rose Burton married her immediate supervisor at Allied Chemical, Ron Yates. This violated Allied's policy, and the Complainant was told that she could no longer work in the position that she had previously held. The question represented to the Commission was whether the action of the Respondent was discrimination based upon Rose Burton's "marital status," as that term is used in the Human Rights Act. The Commission Panel ruled that the anti-nepotism policy employed by Allied Chemical was, indeed, marital status discrimination. The Commission said that the only justification for a blanket anti-nepotism rule is an assumption that all married people will act in a particular way when asked to supervise their spouses. It was the opinion of the Commission that the elimination of this sort of discrimination based on stereotypes was well within the purpose of the General Assembly when it passed the Human Rights Act.

The meaning of the term "sex" discrimination was discussed in the case of **Myers and O. & C. Gale Products**, 13 Ill. HRC Rep. 279 (1984). The Respondent in that case argued that the imposition of a mandatory six month leave of absence on female employees was not "sex" discrimination under the Illinois law. The Commission found that the Illinois courts had consistently ruled that a pregnant woman is not "ill". Thus, if a woman is capable of doing a job, she cannot be taken off of the job merely because she is pregnant. It was the ruling of the Commission that the mandatory six month maternity leave of absence constituted sex discrimination under Illinois anti-discrimination law.

The interaction between the Illinois Human Rights Act and Federal bankruptcy law is the subject of the Commission's decision in the case of **Keys and Dynamic Machine Co.**, 14 Ill. HRC Rep. 31 (1984). When a petition is filed against an employer in Federal Bankruptcy Court a provision of the Bankruptcy Code usually prevents proceedings against that employer in all forums except for the Bankruptcy Court. It was argued that this provision prevented Michael Keys from proceeding with a discrimination claim against Dynamic Machine Co., which was in Bankruptcy Court. The Commission ruled in this case, however, that federal law did not prevent an action under the Human Rights Act since the alleged discrimination occurred after the filing of a petition in the Bankruptcy Court. Thus, Mr. Keys was free to proceed against his former employer under the provisions of the Human Rights Act.

Age discrimination was the subject of the Commission's Decision in **Smaidris and Atlantic Richfield Co.**, 14 Ill. HRC Rep. 48. Smaidris was a secretary for the Sinclair Oil Co. prior to the time it merged with the Atlantic Richfield Co. The salaries for Sinclair employees were significantly higher than the salaries of similarly situated Atlantic Richfield employees. The former Sinclair employees were allowed to keep their higher salaries, but these salaries were — in effect — "frozen." Smaidris argued that this practice had an adverse effect on the former Sinclair employees, who tended to be older than the average Atlantic Richfield employee. The Commission ruled that there was no discrimination because the former Sinclair employees were being paid at a rate higher than similarly situated younger employees of the Respondent.

In the case of **Stewart and Armour-Dial Co.**, 14 Ill. HRC Rep. 62 (1984), the Commission was asked to decide whether an employer could refuse to hire an individual with back problems based upon a fear of further injury. The Commission ruled that the employer need not hire someone who cannot do a job without injuring himself. It further held, however, that an employer cannot refuse to hire a handicapped individual based on the mere "possibility" that the condition will cause further injury.

The Commission ruled that emotional suffering associated with the denial of housing was cognizable under the Human Rights Act in the case of **Nichols and Boyd A. Jarrell & Co., Inc.**, 14 Ill. HRC Rep. 149 (1984). Mr. Nichols had been denied housing based on the fact that he had a child under the age of 14 who would be residing with him. The Administrative Law Judge recommended that the Commission award money damages to Mr. Nichols based upon humiliation, embarrassment, and injuries to his dignity and personhood. In the past, the Commission had routinely awarded the victims of discrimination their out of pocket expenses, but compensation for emotional suffering had not been awarded. The Commission ruled that the Complainant is entitled to compensation for all damages occasioned by a violation of the Human Rights Act. Since mental suffering is an important part of the damages inherent in a housing case, the Commission Panel ruled that there was no reason why the Complainant in the **Nichols** case should not be fully compensated for all damages, including emotional damages occasioned by the action of the Respondents.

The rights of State employees to proceed in front of the Human Rights Commission was the subject of discussion in **Moore and State of Illinois, Department of Public Aid**, 14 Ill. HRC Rep. 261 (1984). Ms. Moore had received a demotion based upon alleged poor work performance. She appealed the demotion decision to the Illinois Civil Service Commission which ruled against her. The Administrative Law Judge for the Human Rights Commission found that the demotion was based upon racial discrimination. The Department of Public Aid argued that the Human Rights Commission should reject the recommendation of the Administrative Law Judge because it conflicted with the factual findings of the Civil Service Commission. The Human Rights Commission ruled that the Human Rights Act is the exclusive method for deciding cases of alleged discrimination under Illinois law. Thus, it rejected the argument that the Civil Service Commission decision precluded a finding of racial discrimination by the Human Rights Commission.

In the case of **Knight and Southern Illinois University at Edwardsville**, Ill. HRC Rep. , (Charge No. 1981SF0440 March 4, 1985) the Commission ruled that the Complainant had proved that the use of certain arrest and conviction records had a disparate impact on Black applicants for employment. The Respondent was unable to prove that the use of these records under the facts of this case was justified by some form of business necessity. Accordingly, the Commission entered an order in favor of Mr. Knight.

Religious discrimination was the subject of a decision rendered by the Commission in the case of **Howe and Sarah Bush Lincoln Health Center**, Ill. HRC Rep. , (Charge No. 1982SF0173 March 19, 1985). The Complainant alleged that he was discriminated against on the basis of his religion when the respondent refused to allow him to take off his sabbath day during an emergency construction project. The Commission ruled that the Respondent had proved that the absence of Mr. Howe could not reasonably be accommodated. Therefore, the Commission found that it was not religious discrimination when the Respondent refused to accommodate the Complainant's religious beliefs by allowing him to take the day off.

Handicap discrimination was the subject of the Commission's decision in **Burwell and Caterpillar Tractor Co.**, Ill. HRC Rep. , (Charge No. 1979SN0299 May 28, 1985). This case was begun prior to the effective date of the Human Rights Act, and thus it was decided pursuant to the provisions of the Fair Employment Practices Act. Ms. Burwell had a medical restriction on the use of her right arm which prevented her from doing any job which required repetitive gripping with her right hand. The restriction was to last one year. The Commission Panel ruled that this restriction was a substantial limitation on a major life activity, and thus constituted a "handicap" within the meaning of the Fair Employment Practices Act.

## **The Future**

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The challenge posed by an increased overall caseload will have to be met by increasing staff efficiency as well as more staff. This will be accomplished in part through the establishment of word processing workstations for every secretary employed by the Commission. Additionally, steps will be taken to create an electronic case tracking system so case status information will be more readily available. The new oral motion call will be monitored to assure that it does increase the speed of processing charges in public hearing.

# EXPENDITURES FOR FY '83 — FY '85

<u>Funds of Operations</u>	<u>FY85 Expenditures</u>	<u>FY84 Expenditures</u>	<u>FY83 Expenditures</u>
TOTAL GENERAL REVENUE			
FUNDS	\$596,400	\$436,900	\$355,400
Personal Services.....	345,700	270,000	219,200
Retirement Contributions	19,200	14,000	9,400
Social Security.....	24,300	18,500	14,400
Contractual Services...	120,600	95,700	85,200
Travel.....	27,000	25,600	19,500
Commodities.....	6,200	2,300	1,200
Printing.....	1,600	1,200	700
Equipment.....	45,900	1,700	1,800
Telecommunication Services.....	6,000	6,800	4,000

The increase in expenditures compared to FY '84 is concentrated in three areas: personal services (salaries), contractual services, and equipment. Personal services increases resulted from the expansion of the staff from 11 to 16. Contractual services increased primarily because more court reporting fees were paid out as a direct result of the increase in public hearings described earlier. The relatively large outlay for equipment came from a Commission initiative aimed at partially automating the offices. Toward the end of FY '85, a Harris-Lanier System 6000 word and data processing system was purchased for the Chicago office.



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