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SUNSET PERFORMANCE AUDIT

**PENNSYLVANIA
HUMAN RELATIONS COMMISSION**

November 1990

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I. INTRODUCTION

Audit Authority and Purpose

This sunset performance audit of the Pennsylvania Human Relations Commission was conducted pursuant to the "Pennsylvania Human Relations Act," 43 P.S. §951 et seq., Act 1955-122, as amended and the "Sunset Act," 71 P.S. §1795.1 et seq., Act 1981-142, as amended.

Pursuant to the provisions of the Sunset Act, the Legislative Budget and Finance Committee is to conduct a performance audit of each agency scheduled for sunset termination. The LB&FC's audits are intended to determine whether agencies are operating in the public interest, suggest ways in which their efficiency and effectiveness can be enhanced, and aid the General Assembly in determining whether the agency should be continued, terminated, or modified/restructured.

The scheduled sunset termination date for the Pennsylvania Human Relations Commission is December 31, 1991. Appendix A contains overview information on the sunset review and termination/continuation timetable which will apply to the Commission.

Audit Objectives

The objectives of this audit incorporate the following sunset criteria set forth in Act 1981-142:

1. To determine if the activities of the Commission are consistent with the objectives intended by the General Assembly.
2. To determine if the activities of the Commission are being conducted in a faithful, efficient, economical, and effective manner.
3. To determine whether termination of the Commission would significantly harm or endanger the public health, safety, or welfare.
4. To determine if there is an overlap or duplication by other agencies that would permit termination of the Commission.
5. To determine if the Commission's operation has been in the public interest and whether there is a demonstrated need, based on service to the public, for its continuing existence.

6. To determine if the Commission has encouraged public input and participation in its deliberations and decision-making processes.
7. To determine if the Commission's services may be provided in an alternate, less restrictive manner.

Audit Scope and Methodology

The operations and activities of the Pennsylvania Human Relations Commission were reviewed primarily for the period January 1985 through February 1990, with an emphasis on fiscal years 1988-89 and 1989-90. The audit was conducted in accordance with generally accepted government auditing standards and included:

1. Review of applicable statutes and regulations.
2. Interviews with PHRC staff.
3. Attendance at PHRC meetings.
4. Receipt of information and input (through survey questionnaires and interviews) from Commission members, Commission employees, pertinent legislative staff, complainants, respondents, and other interested organizations and individuals. (Appendix B contains information on the surveys administered in this audit along with associated response rates.)
5. Review of PHRC study reports, policy research documents, educational pamphlets and other published materials.
6. Identification and testing of PHRC's management control systems.
7. Contacts with Pennsylvania state agencies which are involved with the PHRC, human relations commissions in selected other states and pertinent state and national organizations (e.g., the U.S. Department of Justice).

The above activities were carried out primarily during the period March 1990 through August 1990. No information has been omitted from this report because it is deemed privileged or confidential.

Report Structure and Acknowledgements

This audit report consists of five chapters: Chapter I - Introduction contains information on audit authority and purpose, objectives, and scope and methodology; Chapter II presents the

audit findings and recommendations; Chapter III contains a summary of prior audit recommendations and their implementation status; Chapter IV provides background descriptive information on the Pennsylvania Human Relations Commission and its functions; and Chapter V - Appendices sets forth various supplemental information related to the sunset review process and the Commission.

The audit staff expresses appreciation to the members of the Pennsylvania Human Relations Commission and to the Commission staff for the cooperation and assistance they provided during this audit. Special thanks are extended to Commission Chairman Robert Johnson Smith and PHRC Executive Director Homer C. Floyd, and to Louise Oncley, Special Assistant to the Executive Director, who served as audit liaison to the LB&FC staff.

Input received from Commission employees, staff of selected pertinent Pennsylvania state agencies, PHRC complainants and respondents, outside agencies with interest in the Commission, and others who have involvement with the Commission was also instrumental in the development of this report.

LB&FC staff involved in the sunset performance audit of the Pennsylvania Human Relations Commission was under the direction of the LB&FC Executive Director, Philip R. Durgin, and Assistant Chief Analyst Robert C. Frymoyer. The audit team leader was Senior Analyst David C. Johnson. Linda G. Brown and Deborah A. Blackburn, Analysts, worked on the audit on a full-time basis. Jonathan P. Nase, Counsel, and Krista L. Keisling, Paralegal, also assisted in the audit effort. Secretarial support was provided by Beverly L. Brown, B. Anne Gange, and Shannon M. Opperman. Additional staff assistance was provided by Michael G. McKenna and Charles V. Saia.

IMPORTANT NOTE:

This report contains information developed by the Legislative Budget and Finance Committee (LB&FC) staff. The release of this report should not be construed as an indication that members of the LB&FC necessarily concur with all of the information contained in the report. The LB&FC as a body, however, supports the publication of the information and believes it will be of use to the members of the General Assembly by promoting improved understanding of the issues.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania, 17105-8737.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RELATIONSHIP TO PUBLIC HEALTH, SAFETY, AND WELFARE

The Pennsylvania Human Relations Commission (PHRC) serves several important functions for the citizens of the Commonwealth, which appear necessary to protect the public health, safety, and welfare. Under the authority granted by the Pennsylvania Human Relations Act (PHRA), the Commission acts to identify and eliminate unlawful discrimination and to foster goodwill and promote equal opportunity. From FY 1984-85 through FY 1989-90, the PHRC obtained compensation of over \$30 million for victims of discrimination. The Commission also provides technical assistance, training on ethnic intimidation, and other educational community services throughout the state to help reduce civil tension and eliminate discrimination.

Although improvements in equal opportunity in employment, housing, education, and public accommodations have reportedly occurred, recent reports on both the state and national level indicate that significant instances of discrimination continue to exist. In some areas, the frequency of incidents of unlawful discrimination has actually increased in recent years. Additionally, results of an LB&FC survey sent to organizations with an interest in or involvement with PHRC activities generally indicated a strong endorsement of PHRC efforts and solid support for continuation of the Commission. In considering whether a Commission is needed to conduct the functions authorized by the PHRA, it is noted that, because of the number of complaints filed each year against state agencies, questions of objectivity might arise if the Commission consisted solely of state officials. Also, the current composition of the PHRC provides membership from a variety of regions across the state and from a cross-section of professions.

DISCUSSION

COMMISSION OVERVIEW

The Pennsylvania Human Relations Commission is an 11 member, non-partisan body which was first created by the Pennsylvania Human Relations Act, Act 1955-122, as amended. (See Appendix C for a current list of Commissioners.) The principal mission of the PHRC is (1) to identify and prevent discrimination because of race, color, religious creed, ancestry, handicap or disability, use of guide dogs because of blindness or deafness of the user, age, sex, or national origin in employment, housing, education, and places of public accommodation and (2) to foster and promote goodwill and equal opportunity.

The Commission has several specific statutory powers and duties which are described in Chapter IV. Although the statute does not prioritize these responsibilities, the PHRC has established the following functional priorities:

1. Initiating, receiving, investigating, and resolving complaints of discrimination.
2. Promulgating rules, regulations, and guidelines.
3. Formulating policies.
4. Conducting public education, including research, publications, workshops, technical assistance, and other communications.
5. Working with the PHRC Advisory Councils, units of government, and other organizations to foster the purposes of the laws.
6. Investigating and responding to situations of racial tension.
7. Reporting to the Governor and Legislature annually and as requested on progress and recommendations.

Monthly Commission meetings are conducted alternately in the cities of Harrisburg, Pittsburgh, and Philadelphia, as well as other sites on selected occasions. The Commission is supported by a full-time staff of 174 employees, organized in three regional offices, with headquarters in downtown Harrisburg. The Commission's operating appropriation from the state General Fund for FY 1989-90 was \$6,800,000. PHRC received an additional \$1,217,000 in federal funds for FY 1989-90. (Additional background information on the Commission is contained in Chapter IV of this report.)

CONDITIONS WHICH LED TO THE CREATION OF THE COMMISSION

In 1952, Governor Fine appointed a Commission on Industrial Race Relations, which was charged with studying industry and employment practices, assessing the extent of discrimination, and making recommendations. A central finding of that report was that 89 percent of employers discriminated against minorities at some level in their employment practices.

To address this situation, in 1955 the Legislature enacted the Pennsylvania Fair Employment Practices Act, prohibiting discrimination in employment because of race, color, religious creed,

ancestry, national origin, or age (ages 40 through 62). This act also established the Fair Employment Practices Commission within the the Department of Labor and Industry for the purpose of enforcing the law.

According to the PHRC, widespread discrimination in employment, education, housing, and places of public accommodation was described in a 1960 survey conducted in York which included many examples of overt exclusion of Blacks and Jews. In 1961, Governor Lawrence convened a conference which documented extensive housing discrimination. Based on these findings and other information, the Pennsylvania Fair Employment Practices Act was amended in 1961 to prohibit discrimination in housing, education, and places of public accommodations, and the Commission was redesignated as the Pennsylvania Human Relations Commission.

In 1986, the Pennsylvania Human Relations Commission underwent sunset review and was re-established by the Pennsylvania General Assembly for a five-year period.

The Commission noted that improvements have occurred during the last three decades to include expanded employment opportunities for minorities, women, handicapped, and older workers. In addition, the PHRC reported positive changes relating to equal opportunity in housing, education, and public accommodations in the state.

EVIDENCE OF DISCRIMINATION SINCE 1986

Despite efforts made by the PHRC and other organizations with similar interests, a number of reports indicate that both state-wide and nationally, discrimination not only continues but may have actually increased since 1986.

Reports made in compliance with Pennsylvania's Ethnic Intimidation Statistics Collection Act show that ethnic intimidation and hate crimes increased 28 percent, from 141 to 181, between FY 1987-88 and FY 1988-89. During this one-year period, the number of reported physical injuries resulting from hate crimes almost doubled, from 20 to 38. The Commission has also noted an increase in the number and severity of tension incidents based on race, religion, or ethnic differences. The number of new cases opened by the PHRC has remained fairly constant from a total of 4,017 in FY 1985-86 to 4,038 in FY 1989-90. The vast majority of these cases involve employment discrimination, with lesser numbers of cases in housing, public accommodations, and education.

The reported increase in racial discrimination and tension incidents in Pennsylvania mirrors a similar increase on a national level. According to the 1989 Annual Report of the Community Relations Service of the U. S. Department of Justice, the alerts of

racial incidents or problems on college and university campuses increased substantially between FY 1987 and FY 1989. Specifically, alerts classified as interracial conflicts increased 31 percent between FY 1987 and FY 1989, and alerts classified as community disorders increased 44 percent during the same period of time. (An alert is filed with the Community Relations Service when an identified dispute or conflict appears to meet the mandated criteria of race, color or national origin.) The number of conciliation and mediation cases handled by the Community Relations Service also increased from 1,097 in 1985 to 1,416 in 1988.

According to a report published by the Klan Watch Project of the Southern Poverty Law Center in December 1989, on a national basis the total number of incidents involving murder, bombings, arson, assault, cross burnings, threats, vandalism, shootings, and conspiracies based on race have increased from 52 in 1984 to 242 in 1989. The Anti-Defamation League (ADL) of B'nai B'rith reported similar findings. In a 1989 publication, the ADL reported an increase of anti-Semitic episodes of vandalism, harassment, threats, and assaults from 906 in 1986 to a total of 1,432 in 1989. This ADL publication also contained a state-by-state report on the number of incidents of anti-Semitic vandalism and threats, which showed that Pennsylvania ranked 7th in the number of incidents in 1989 with a total of 30. In addition, the same report shows that Pennsylvania is recorded as the state with the highest number of on-campus anti-Semitic incidents for the year 1989. A total of ten such incidents were reported on Pennsylvania campuses out of a total of 65 reported throughout the nation.

EFFECTS OF DISCRIMINATION

According to Section 2 of the PHRA, the practice of discrimination undermines the foundation of a free society. Specifically, the act states:

The denial of equal employment, housing, and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful, and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety, and general welfare of the Commonwealth and its inhabitants.

Federal civil rights legislation and the court system have also addressed and condemned the negative effects of discrimination. The legislative history of the Civil Rights Act of 1964 quotes President Kennedy as saying:

Race discrimination hampers our economic growth by preventing the maximum development of our manpower, by contradicting at home the message we preach abroad. It mars the atmosphere of a united and classless society in which this nation rose to greatness. It increases the cost of public welfare, crime, delinquency, and disorder. Above all, it is wrong.

The legislative history also points out the economic burdens created by discrimination in public accommodations and employment opportunities.

ROLE OF THE PHRC IN COMBATTING DISCRIMINATION

The role of the PHRC as the lead agency in the state charged with eliminating discrimination and providing relief to those who have unjustly suffered from it is clearly established in the PHRA and affirmed in numerous court decisions. A 1979 Pennsylvania Supreme Court decision includes the following language on legislative intent regarding the PHRC:

The General Assembly, recognizing the invidiousness and the pervasiveness of the practice of discrimination, attempted by the PHRA to create a procedure and an agency [the PHRC] specially designed and equipped to attack this persisting problem and to provide relief to citizens who have been unjustly injured thereby.

The PHRC has the authority and the responsibility to investigate complaints to determine if there is probable cause, to attempt to settle the dispute through conciliation, and to hold hearings and issue appropriate orders if conciliation fails.

In addition to its impact on the prevention and elimination of unlawful discrimination, the PHRC identified other important functions it performs in the public interest:

- o Through its community services and educational efforts, it promotes mutual understanding and cooperation among the various groups in the Commonwealth.
- o Technical assistance to business, government, and communities serves to prevent problems of discrimination and the appearance of unfairness.

- o The Commission's activities in coordinating the Inter-Agency Civil Tension Task Force have resulted in a decrease in community tension incidents, early response to incidents which do occur in order to resolve them and prevent escalation, and training local police to deal more effectively with intergroup disputes and racial, ethnic, or religious intimidation.
- o The existence of the Commission provides a state administrative vehicle for redress avoiding the necessity for lengthy and expensive court litigation.
- o The existence of the Commission and its procedures enhances a perception that state government is aware of and responsive to the legitimate rights of its citizens.

PHRC ACCOMPLISHMENTS

LB&FC staff obtained input on the accomplishments of the PHRC from a variety of sources. Data taken from draft PHRC Annual Reports, shown in Exhibit 4 in Chapter II-D, indicate the number of cases disposed of by the PHRC during the past ten fiscal years. Table 1 shows that the amount of compensation awarded by the PHRC to victims of discrimination has increased from \$3.3 million in FY 1984-85 to \$6.9 million in FY 1989-90.

Highlights of PHRC achievements in the area of technical assistance, education, and outreach are addressed in Finding H. In addition, examples of accomplishments as reported by the PHRC are listed in Appendix D.

Those who responded to an LB&FC survey questionnaire sent to 126 organizations and agencies having involvement with the PHRC (e.g., local Human Relations Commissions, NAACP Chapters, and state agencies) strongly endorsed the work of the PHRC and made the following comments:

- o PHRC serves as a well-defined, visible point of contact with which to register complaints and investigate discrimination.
- o PHRC is identified as the primary defender of minority rights in the state. As such, it protects and advances minority rights.
- o PHRC can educate the public and the police and investigate violations of human rights - even those allegedly committed by law enforcement agencies.

TABLE 1. PHRC IMPACT: COMPENSATION AWARDED TO COMPLAINANTS, FY 1984-85 THROUGH FY 1989-90

	Employment	Housing	Public Accomm.	Education	Total
FY 1984-85	\$ 3,295,170	\$ 4,258	\$ 5,639	\$ 1,325	\$ 3,306,392
FY 1985-86	5,321,033	11,966	4,068	0	5,337,067
FY 1986-87	4,185,309	28,051	895	2,187	4,216,442
FY 1987-88	4,568,406	18,163	5,915	0	4,592,484
FY 1988-89	6,130,398	184,668	3,914	0	6,318,980
FY 1989-90	6,822,673	18,300	18,191	925	6,860,089
TOTAL	\$ 30,322,989	\$ 265,406	\$ 38,622	\$ 4,437	\$ 30,631,454

Source: Developed by LB&FC staff from PHRC annual reports and data supplied by PHRC staff.

- o Professional consultation, legal advice and counsel are provided free by PHRC along with education and support services.
- o PHRC serves in an advisory capacity to employers, housing providers and others assisting them in complying with the law.
- o PHRC resolves conflicting attitudes and behavior that no other state agency could accomplish.
- o PHRC answers questions and maintains up-to-date information about the law.
- o PHRC provides training and education to groups on new laws, methods and techniques of addressing problems.
- o PHRC serves as a regulatory agency to enforce fair housing laws.
- o PHRC serves to help disadvantaged citizens and handles tension situations.

Eighty percent of the 40 responses received indicated that the PHRC was serving a demonstrated need. Only two of the 40 responses did not support continuation of the PHRC.

The following are synopses of actual recent cases in which individuals who had filed complaints of discrimination received a favorable ruling in a final order from the PHRC following a public hearing which provided for compensation by the respondents.

In the case of a 61 year old person who was dismissed after working 42 years for the respondent, the PHRC approved a finding in February 1990 of unlawful discrimination on the basis of age. The respondent in this case was ordered to pay the complainant the lump sum of \$44,489.12 and provide a number of shares of respondent's stock to compensate for lost wages and benefits.

In another case involving a complaint of sex-based discrimination regarding promotion and termination, the Commission found in April 1990 that the complainant was entitled to reinstatement to the next available sales representative position and subsequent instatement to the next available assistant sales manager position. In addition, the respondent was ordered to pay the complainant the lump sum of \$129,500 representing wages lost between 1983 and the public hearing.

In August 1989, the PHRC determined that an employer had discriminated against an employee on the basis of religion. In this case the employer was required to pay the employee the lump sum of \$22,980.30 representing back pay lost for the period June 29, 1984, up to July 1988, costs associated with seeking alternative employment, additional commuting costs, and medical and dental costs incurred.

NEED FOR A COMMISSION

The functions of the PHRC could perhaps be carried out totally by an administrative entity comprised solely of state officials. Two reasons, however, support continuation of the PHRC in its current organizational form. First, the composition of the Commission itself provides for membership from a variety of geographical regions within the state and from a cross-section of professions and vocations. If the Commission were replaced by a group of state officials, it might lose its current broad base of knowledge from the legal, educational, clerical, and other professions. In addition, it might not allow for the geographic diversity reflected in the present Commission.

Secondly, some of the complaints docketed by the PHRC are filed against the Commonwealth or one of its departments or subdivisions. Of the 4,297 cases filed in FY 1987-88, a total of 195 (5 percent) were filed against state agencies. The percentage was even higher in FY 1988-89 when 216 (6 percent) of the 3,757 cases docketed by the PHRC were filed against state agencies. If the Commission consisted solely of state officials, questions might arise as to the objectivity and impartiality of Commission decisions in cases filed against state agencies.

**B. ADEQUATE PROVISIONS EXIST FOR PUBLIC INPUT AND PARTICIPATION
IN COMMISSION ACTIVITIES**

A variety of mechanisms provide for public input and participation in Pennsylvania Human Relations Commission (PHRC) activities and decision-making. For example, the Commission holds meetings in different cities of the state, and during these meetings, public input is actively solicited and considered by the Commissioners. In April 1987 the Commission clarified its policy welcoming and specifically making provision for public participation at Commission meetings. The LB&FC staff's review of the Commission's compliance with the Commonwealth Documents Law indicated no problems: when the Commission recently sought to promulgate regulations, proper procedures for soliciting public comment were followed. While the PHRC is in compliance with certain provisions of the Sunshine Act, it is not adhering to the requirement that it publish a comprehensive schedule of its meetings annually.

Additionally, the Commission has created advisory councils to serve as channels of communication between the Commission and the community. The Commissioners themselves, because they are private citizens from different areas of the state and are of divergent backgrounds, also serve as sources of public input. In addition, the Commission sponsors and conducts various training and informational sessions for organizations throughout the Commonwealth. Through these and other activities, the Commission receives public input and encourages public participation in Commission activities.

DISCUSSION

The Pennsylvania Human Relations Commission uses various methods to receive and consider public input and to encourage public participation in its activities. Several of these methods are described in the following paragraphs.

PUBLIC MEETINGS

The PHRC holds public meetings each month at locations throughout the Commonwealth. Meetings are held most often (three times per year) in the cities where there is a PHRC Regional Office (Harrisburg, Pittsburgh, and Philadelphia). Since 1988, meetings have also been held in the cities of Sharon, Reading, Erie, Lake Harmony, King of Prussia, and Lancaster. (Please see Exhibit 1.) During these meetings, public input is actively solicited.

EXHIBIT 1. LIST OF COMMISSION MEETING DATES AND LOCATIONS,
JANUARY 1988 THROUGH AUGUST 1990

<u>1988</u>	<u>1989</u>
January 25 - Harrisburg	January 23 - Philadelphia
February 22 - Harrisburg	February 27 - Harrisburg
March 28 - Pittsburgh	March 27 - Pittsburgh
April 25 - Pittsburgh	April 24 - Reading
May 23 - Sharon (West Middlesex)	May 22 - Erie
June 27 - Harrisburg	June 26 - Pittsburgh
August 1 - Philadelphia	July 31 - Philadelphia
August 29 - Harrisburg	August 28 - Harrisburg
September 26 - Pittsburgh	September 25 - Pittsburgh
October 24 - Philadelphia	October 23 - Lake Harmony
November 28 - Harrisburg	November 20 - Harrisburg
December 19 - Philadelphia	December 18 - Philadelphia

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January 29 - King of Prussia
February 26 - Harrisburg
March 26 - Pittsburgh
April 23 - Lancaster
May 21 - Pittsburgh
June 25 - Pittsburgh
July 30 - Philadelphia
August 27 - Harrisburg

Source: Prepared by LB&FC Staff from PHRC meeting minutes.

In April 1987 the Commission clarified its policy which addresses public participation at Commission meetings. Its 1987 policy statement reads, in part, "The Commission is most interested in and welcomes the expression of views by individuals or organizations through their representatives on matters within the Commission's jurisdiction." Rules governing public participation are also enumerated in this statement. Visitors at Commission meetings who wish to make a presentation are requested to contact the Executive Director prior to the date of the meeting, state the nature of the proposed presentation, and request that they be placed on the agenda. Persons who have not made prior arrangements may speak by informing the Executive Director prior to the start of the meeting or by submitting a note during the meeting. Visitors who have not made prior arrangements are permitted to speak at the discretion of the Chairperson of the Commission.

COMMISSION COMPOSITION

The Commissioners themselves are another source of public input into Commission activities in that they are private citizens who come from different geographical areas and backgrounds. Commissioners who responded to an LB&FC questionnaire stated overwhelmingly that they believed that the public has adequate opportunity to provide input and is encouraged to participate in Commission activities. Reasons given included that meetings are open (pursuant to the Sunshine Act) and are held in different areas of the Commonwealth, thereby assuring that a large segment of the population has easy access to Commission meetings.

SUNSHINE ACT COMPLIANCE

The Commission is subject to the Sunshine Act. Among other requirements, this act requires an agency to hold deliberations and take official actions at open meetings and to keep minutes of the meetings. LB&FC staff review of recent Commission meetings found the PHRC to be in compliance with these requirements.

The Sunshine Act also requires an agency to give public notice, each January or July, of the place, date, and time of all regular meetings to be held that year. The Commission does not publish such an annual schedule of its meetings. The Commission holds twelve regular meetings each year (three each in Harrisburg, Pittsburgh, and Philadelphia, and three in other locations around the state). According to the PHRC's Director of Publicity, the Commission publishes one notice for all of the PHRC's Harrisburg meetings prior to the first such meeting each year. She also stated that the Commission publishes notice of each of the other meetings in a local newspaper five to ten days before the meeting.

PUBLIC TRAINING/INFORMATIONAL SESSIONS

In addition to its public meetings, the PHRC also sponsors and conducts various training and informational sessions for organizations throughout the Commonwealth, such as ethnic intimidation training for the State Police and other law enforcement personnel and "The Governor's Conference on Ethnicity" in June 1990. The PHRC also recruited 22 agencies to participate in a statewide conference entitled "Pennsylvania Responses to Hate" on June 2, 1989. (For more information regarding outreach/educational activities undertaken by the Commission, please see Finding H).

REGULATORY REVIEW COMPLIANCE

The Commission has complied with the public notice and input provisions of the Regulatory Review Act, 71 P.S. §§745.1-745.15.

The PHRC proposed comprehensive amendments to its regulations in October 1989. The proposed regulations were printed in the Pennsylvania Bulletin on October 21, 1989, and public comment was solicited. One response was received from Community Legal Services in Philadelphia. According to the Assistant Chief Counsel of the PHRC, the comments provided by Legal Services were considered by the PHRC, and changes were made in the proposed regulations based on the comments received. These regulations have not yet been approved in final form. (Please see also Finding F.)

ADVISORY COUNCILS

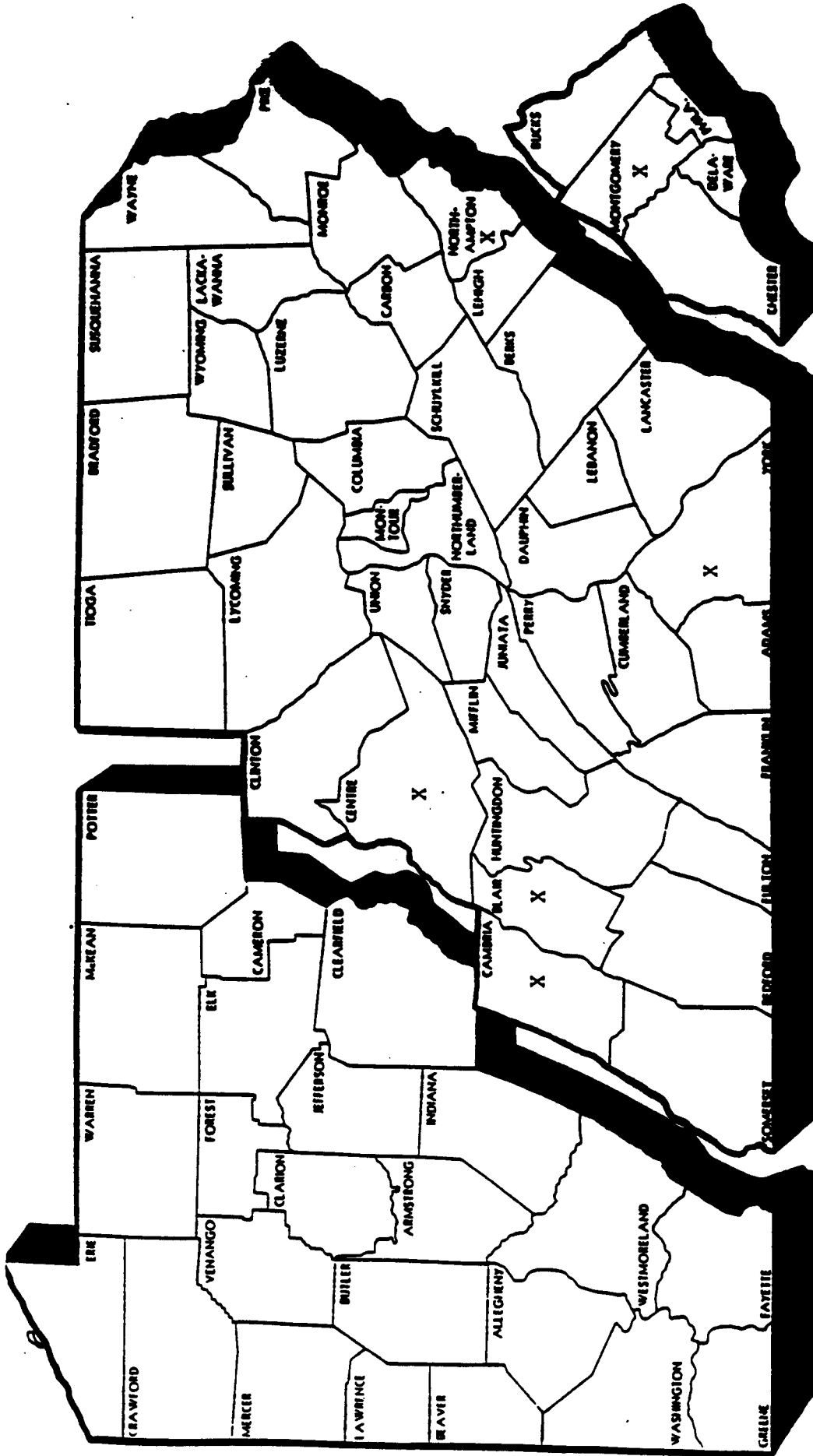
Advisory councils to the PHRC have been formed in various areas of the Commonwealth. These councils, which serve as channels of communication between the Commission and the community, are composed of concerned citizens, meet on a regular basis to provide input to the Commission, and generally work to further the causes of the Commission in the community. The councils are created by the PHRC under the provisions of the Human Relations Act which state that the PHRC is authorized to create advisory councils to aid it in achieving the purposes of the act. Further, the act states,

The Commission may itself, or may empower these agencies . . . to (1) study the problems of discrimination in all or specific fields of human relations when based on race, color, religious creed, ancestry, age, sex, national origin, or handicap or disability and (2) foster, through community effort or otherwise, goodwill among the groups and elements of the population of the State.

These advisory councils also provide information to the PHRC regarding local concerns and interests, refer allegations of illegal discrimination to the Commission, and act as a mechanism to educate the public regarding the PHRC and the provisions of the Human Relations Act and other civil rights legislation. Councils exist in Blair County, Centre County, Eastern Montgomery County, Easton/Bethlehem, Johnstown, and York. (Please see Exhibit 2.) A representative from the Harrisburg Regional Office (all but one advisory council--Eastern Montgomery County--is under the jurisdiction of this office) was reported to attend all council meetings in Region II. This person provides technical assistance to the advisory council.

As of September 1990, there were no advisory councils in the Pittsburgh region. According to the Regional Director, this is not a problem because other groups, such as the NAACP and the National Organization for Women, are active in the region and play

EXHIBIT 2. LOCATION OF PHRC ADVISORY COUNCILS



SERVED BY PITTSBURGH
REGIONAL OFFICE
GEORGE A. SIMMONS, DIRECTOR

SERVED BY HARRISBURG
REGIONAL OFFICE
HOWARD L. TUCKER, JR., DIRECTOR

SERVED BY
PHILADELPHIA REGIONAL OFFICE
SANDRA H. BACOTE, DIRECTOR

X = Advisory Council

Source: Pennsylvania Human Relations Commission.

a role similar to that which would be played by an advisory council. Similarly, only one advisory council exists in the Philadelphia region, in Eastern Montgomery County. According to the Regional Director, this council is extremely active, and the staff at the Philadelphia Office could not adequately handle the interaction which would be necessary if other councils were to be created. The Regional Director also indicated that the Philadelphia Commission on Human Relations is active, well staffed, and complements the services provided by the PHRC in the city.

The Philadelphia and Pittsburgh Regional Offices undertake an additional outreach activity in that they send intake personnel to various locations within their regions, such as Chester and West Chester (Philadelphia Region) and Erie (Pittsburgh Region), to take complaints and answer questions.

RECOMMENDATION

1. *The PHRC should publish a schedule of the date, geographic location, and, if known, time and address of its regular meetings each January or July, as required by the Sunshine Act. This notice should be in addition to the notices currently published prior to individual meetings.*

C. PHRC FUNCTIONS HAVE MINIMAL OVERLAP AND DUPLICATION WITH SIMILAR AGENCIES

In addition to the PHRC, several other federal, state, and local entities have responsibilities and interests in eliminating unlawful discrimination in Pennsylvania. None of these appear, however, to overlap or duplicate the role and functions of the PHRC to the extent that would warrant the termination of the PHRC.

At the federal level, both the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) have authority which overlaps with the PHRC. However, these agencies have cooperative work-sharing agreements with the PHRC which are designed to ensure timely processing of complaints and minimize duplication of effort. In general, the PHRC has broader jurisdiction than either EEOC or HUD in Pennsylvania. For example, the PHRC can act on complaints involving employers with four or more employees, whereas the EEOC is restricted to those employing 15 or more persons (20 in the case of age discrimination). The PHRC also has the authority to issue cease and desist orders, while the EEOC does not. Although HUD has both investigatory and adjudicatory authority as does the PHRC, HUD has jurisdiction only over property used for residential purposes, whereas the PHRC has jurisdiction over both residential and commercial property.

The Commonwealth court system overlaps the PHRC in that both can adjudicate cases involving discrimination. In a number of decisions, however, the courts have affirmed PHRC's authority and expertise in coping with the problem of unlawful discrimination. In addition, the large number of complaints filed with the PHRC could pose a substantial additional burden on the Commonwealth court system, and complainants could incur greater expense in using the judicial system instead of the PHRC due to filing fees and possible court costs.

The numerous local Human Relations Commissions have functions similar to the PHRC, but most do not have commensurate enforcement authority or investigative resources nor do they provide statewide coverage. To minimize overlap and duplication, the PHRC has developed memoranda of understanding with each of the larger local commissions.

DISCUSSION

LB&FC staff identified a number of federal, state, and local agencies that appear to overlap or duplicate, in some manner, the functions of the PHRC. Some state agencies, such as the Labor Relations Board and the Department of Education, have legal mandates to process complaints or conduct compliance reviews. Others are private, national level organizations, such as the NAACP and

the Anti-Defamation League, which work with the PHRC to prevent discrimination and to reduce civil tension. However, none of these agencies, or others identified in this audit, appear to unnecessarily overlap or duplicate the functions and responsibilities of the PHRC.

Four of the major entities whose responsibilities overlap those of the PHRC are addressed below. A summary of these agencies and their capabilities as compared to those of the PHRC is contained in Exhibit 3.

Equal Employment Opportunity Commission. Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment, is enforced by the Equal Employment Opportunity Commission (EEOC) at the federal level. This act prohibits discrimination on the basis of race, color, religion, sex, or national origin. The EEOC is also responsible for administering and enforcing the Age Discrimination in Employment Act (ADEA), 14 U.S.C. §621 et seq., which applies to enterprises employing 20 or more persons and prohibits discrimination on the basis of age against persons 40 to 70 years of age.

Broader provisions are provided by the PA Human Relations Act (PHRA), which prohibits discrimination on the basis of age, race, color, religion, ancestry, sex, national origin, handicap, General Educational Development (GED), use of support animals, and the willingness or refusal of a physician, nurse, or staff member to perform an abortion or sterilization procedure. In addition, Title VII generally applies to entities employing 15 or more persons whereas the PHRA covers situations involving employers with four or more employees.

The PHRC has the authority to hold public hearings and issue cease and desist orders and order affirmative relief to eliminate an unlawful discriminatory practice in employment. However, the EEOC's ability to resolve a discrimination complaint appears to be limited to the informal methods of conference, conciliation, and persuasion with the respondent. If the EEOC is unsuccessful in its conciliation efforts, it may bring its own suit or, in certain instances, refer the case to the U.S. Attorney General, who may bring litigation.

A portion of Title VII defines how a case of alleged unlawful employment practice is to be processed in states such as Pennsylvania, which has a law and an established state agency such as the PHRC. The PHRC and the EEOC currently operate under a work-sharing agreement in which each designates the other as its agent for the purpose of receiving charges or complaints and which provides for a division of primary responsibility for the resolution of complaints between the agencies.

EXHIBIT 3. JURISDICTION/CAPABILITIES OF THE PHRC COMPARED TO OTHER AGENCIES WITH SIMILAR FUNCTIONS AND INTERESTS

<u>Jurisdiction/Capabilities</u>	<u>PHRC</u>	<u>Local HRCs</u>	<u>Courts</u>	<u>EEOC</u>	<u>HUD</u>
Statewide Jurisdiction ...	Yes (4 or more employees)	Local Only	Yes	Yes (15 or more employees)	Yes
Enforcement Authority	Yes	Limited	Yes	Limited	Limited
Investigative Resources and Expertise	Yes	Limited	Not solely for charges of discrimination	Limited	Limited
Types of Discrimination:					
Employment	X	X	X	X	X
Housing	X	X	X		
Public Accommodation ...	X	X	X		
Education	X		X		
Basis of Discrimination:		Generally	1/	X (ADEA)	
Age	X	X		X	X
Race	X	X		X	X
Color	X	X		X	X
Religion	X	X		X	X
Ancestry	X	X		2/	
Sex	X	X		X	X
National Origin	X	X		X	X
Handicap	X	X		X	X
GED	X				
Participation in Abortion/Sterilization	X	In 2 HRCs			
Sexual Preference		In 3 HRCs			
Familial Status		In 3 HRCs			
Marital Status		In 3 HRCs			
Use of Support Animals .	X	In 1 HRC			X

(See footnotes on following page)

Footnotes to Exhibit 3

1/To the extent that the courts review PHRC decisions, they consider cases concerning all forms of discrimination prohibited by the PHRA. To the extent that the statute provides a remedy for alleged cases of discrimination, the courts will not permit an action under a common-law tort theory. See, e.g., Lofton v. Wyeth Laboratories, Inc., 643 F. Supp. 170 (E.D. Pa. 1986).

2/The courts have read the prohibition against discrimination on the basis of national origin broadly, as prohibiting discrimination based on the country from which the person's ancestors came. See, e.g., Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88 (1973).

Source: LB&FC staff review of the Pennsylvania Human Relations Act, PHRC Compliance Manual and Policies, local fair practices and human relations ordinances, Title VII and Title VIII of the Civil Rights Act of 1964, as amended, Fair Housing Amendments Act of 1988, Age Discrimination in Employment Act, and recent court decisions.

Although the potential for overlap and duplication between EEOC and PHRC exists, the work-sharing agreement has certain provisions designed to minimize this problem. A charge filed with the PHRC which meets EEOC jurisdictional and procedural requirements and which is referred to EEOC by the PHRC for dual filing will be considered as a charge filed with EEOC. The agreement delineates categories of charges which will be initially processed by the PHRC and those which will be initially processed by the EEOC. Provisions are also made for sharing of information at the time of intake and on a regular basis throughout the investigation on all complaints filed with both agencies. Charges processed pursuant to this agreement are identified in the monthly status report provided by the PHRC to the EEOC's district office in Philadelphia.

Section 709 of Title VII provides for the reimbursement of agencies such as the PHRC for services rendered to the EEOC. The PHRC is reimbursed \$400 for each case closed in accordance with the work-sharing agreement with EEOC.

In summary, although the PHRC and the EEOC have some similar functions and responsibilities, their work-sharing agreement is designed to minimize overlap and duplication. In addition, certain provisions of the PHRA are broader than those of Title VII, and the PHRC has broader adjudicatory authority than does the EEOC.

Department of Housing and Urban Development. Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, or financing of housing. This act requires that the Department of Housing and Urban Development (HUD) refer cases to a state fair housing agency if the agency is certified by the Secretary of HUD and if the complainant is within its jurisdiction. Generally, HUD is to take no further action on the complaint if the state or local agency has commenced proceedings on the matter within 30 days from the date the alleged offense has been referred. The PHRC has a cooperative agreement with HUD which is renegotiated on an annual basis. This agreement includes criteria for processing complaints designed to insure the uniform, timely, and quality processing of fair housing complaints. In accordance with this agreement, the PHRC is reimbursed at the rate of \$650 for each case closed and for certain other training and research efforts.

One principal difference between HUD and the PHRC is their jurisdiction over various types of real property. HUD, for example, is permitted to act on cases of discrimination occurring on property which is used for residential purposes only. The PHRC, on the other hand, has jurisdiction for discrimination cases occurring on all types of housing accommodation or commercial property in the state. This authority extends to entities such as office buildings, retail malls, and even to the acquisition of land intended for commercial purposes other than residences.

Like the PHRC, HUD has both investigatory and adjudicatory authority in cases of discrimination and housing. However, according to HUD officials, PHRC assistance is needed in processing complaints because of the large volume of housing cases filed each year. In addition, HUD has only one compliance office in the state (located in Philadelphia).

The Commonwealth Court System. If the prohibitions against discrimination identified in the Pennsylvania Human Relations Act and the Pennsylvania Fair Educational Opportunity Act were retained and the PHRC were terminated, it would appear that individuals would still retain the rights to bring private suits through the court system.

However, federal and state courts have acknowledged that the PHRC, as a specialist, has greater expertise in the field of discrimination law than do the courts, which are generalists. For example, in the 1973 case PHRC v. Alto-Reste Park Cemetery Association, the Pennsylvania Supreme Court stated:

. . . the Legislature recognized that only an administrative agency with broad remedial powers, exercising particular expertise, could cope effectively with the pervasive problem of unlawful discrimination. Accordingly, the Legislature vested in the Commission, quite properly, maximum flexibility to remedy and hopefully eradicate the 'evils' of discrimination.

We thus recognize that the expertise of the Commission . . . is not to be lightly regarded.

Additionally, the Executive Director of the PHRC placed special emphasis on the Commission's role in ensuring consistency and uniformity in the state's discrimination law. If the Commission was disbanded and the PHRA was implemented through civil actions in the courts of common pleas, he stated that:

. . . with 67 separate courts ruling on a wide variety of issues, inconsistency in rulings will develop. Even with the unifying functions of the appellate court, an employer with branches in five counties could face different expectations in each.

Annual reports prepared by the Court Administrator of Pennsylvania show that the state Unified Judicial System continues to have a large caseload. If the PHRC were not operating, complaints of discrimination would further clog the court dockets, and complainants who took their cases to court instead of to the PHRC could incur greater expense in terms of possible court costs and

filing fees. Additionally, the PHRC reports that it annually responds to approximately 20,000 informal complaints, in many instances reportedly resolving the problem without filing a formal complaint. This is not a service which the courts could likely provide.

Local Human Relations Commissions. Although the establishment of local HRCs is authorized by the PHRA, their enforcement authority is specified in local ordinances. As of August 1990, only eight of approximately 43 local commissions had such authority in all types of discrimination covered by the PHRA (employment, housing, and public accommodation). Lancaster will receive enforcement authority in January 1991. In general, these ordinances prohibit discrimination in housing, public accommodation, and employment on essentially the same basis as the PHRC, i.e., age, race, sex, religion, ancestry, national origin, and handicap. However, ordinances in Philadelphia, Pittsburgh, and Harrisburg go beyond the PHRA by prohibiting discrimination based on the presence of children in the household (familial status) and sexual preference. Unlike the PHRC, local ordinances typically do not prohibit discrimination in education.

With the exception of the larger local human relations commissions^{1/} which have enforcement authority, most of the local commissions have few staff. Additionally, since they are local commissions, they do not provide coverage for all areas across the state. With its staff of 174 persons and statewide organization, the PHRC has investigative resources, expertise, and accessibility to citizens which exceed those of local HRCs. For these reasons, the existence of local human relations commissions would not appear to be duplicative to the extent that it would permit termination of the PHRC.

Additionally, detailed memoranda of understanding are in effect between the PHRC and all the larger local HRCs to minimize overlap and to establish working relationships. For example, in the Philadelphia, Pittsburgh, and Harrisburg regions, findings made by the local HRC are forwarded to the PHRC where they are reviewed to ensure that state standards have been met in cases which have been dual-filed.

1/The larger local human relations commissions include those in Philadelphia, Pittsburgh, and Harrisburg.

D. CONTINUING BACKLOG OF CASES

A large and aged backlog of cases, which was identified as a problem in the 1984 sunset audit, continues to be a major problem. The Pennsylvania Human Relations Commission (PHRC) had a complaint case backlog of over 6,600 unresolved cases at the end of FY 1989-90, 9 percent of which were five or more years old.^{1/} Further, the percentage of cases closed in fewer than 90 days has decreased substantially since FY 1984-85, while the percentage of cases requiring more than a year to close has increased from 16 percent in FY 1984-85 to 37 percent in FY 1988-89.

A review of 20 cases which required more than five years to resolve found numerous time gaps in which no activity appears to have taken place on the case. In some cases, the delays appear to have been caused by factors beyond the control of the PHRC (e.g., court appeals); in other cases, PHRC files contained no explanations for the delays. High caseloads and inefficient case record-keeping and monitoring systems are two causes for delays in closing cases in a timely manner. The PHRC has made recent efforts to address the case backlog problem, including the initiation of a regional office case audit review and overtime projects. Additionally, the Commission is purchasing computer equipment to improve case monitoring and tracking. Recommendations for improvement appear on pages 38 and 39.

DISCUSSION

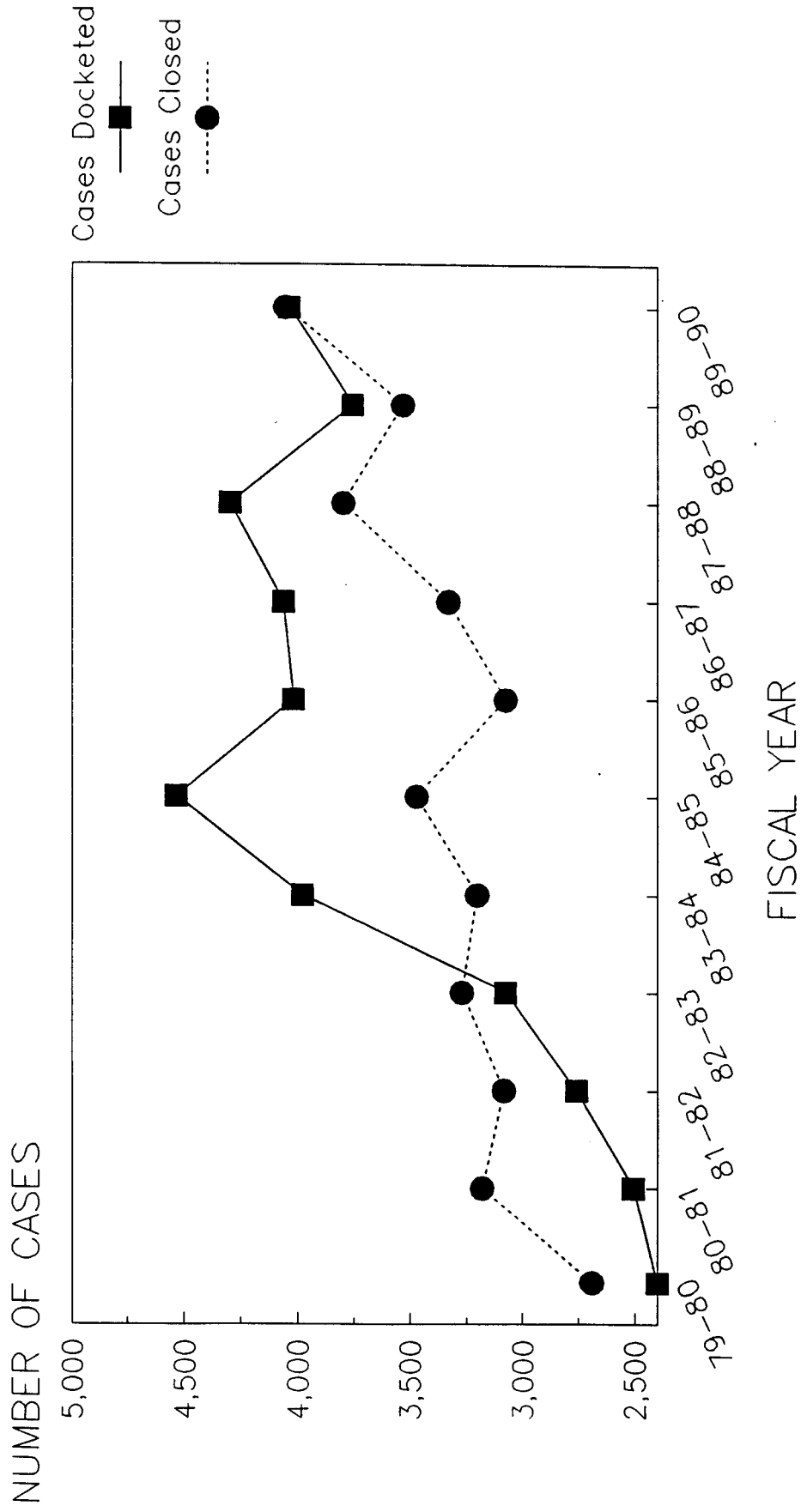
PHRC CASE BACKLOG

A large backlog of unresolved cases continues to be a problem for the PHRC. During FY 1989-90 the agency received 4,038 new complaints of discrimination and closed 4,056 cases. Although this is the first year since FY 1982-83 that the agency closed more cases than it received, the PHRC still retained 6,629 unresolved complaints at the end of June 1990, 617 (9 percent) of which were five or more years old. (See Exhibits 4 and 5.)

During the 1984 sunset audit of the PHRC, 211 cases were identified as five or more years old; as noted above, at the end of FY 1989-90, 617 cases were five or more years old. These 617 cases were fairly evenly divided among the regional offices, with 31 percent from the Pittsburgh region, 25 percent from the Harrisburg region, 34 percent from Philadelphia, and 10 percent assigned to the Headquarters office. (See Table 2.)

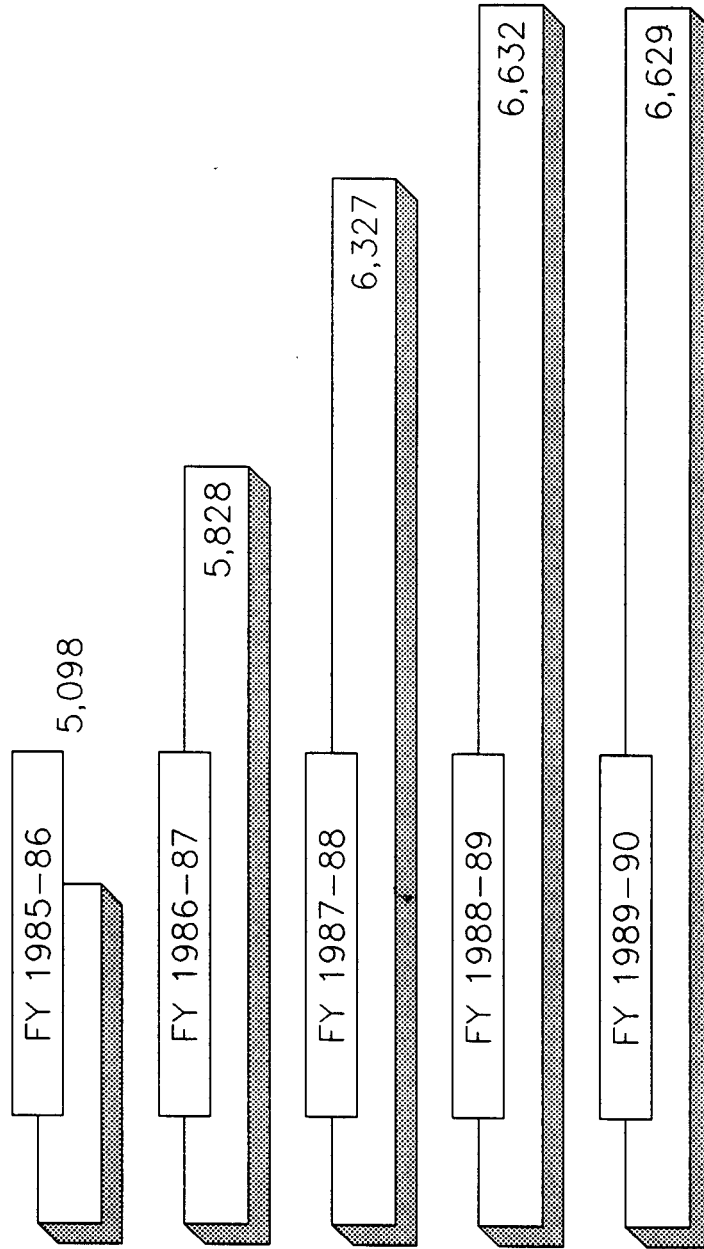
^{1/}The PHRC also handles requests for information and receives informal complaints from members of the public. In 1988-89 the PHRC handled approximately 22,000 such requests.

EXHIBIT 4. PHRC CASES DOCKETED AND CLOSED, FY 1979-80 THROUGH FY 1989-90



Source: PHRC's Annual Report and information provided by PHRC staff.

EXHIBIT 5. OPEN CASES CARRIED FORWARD AT END OF FY 1985-86
THROUGH FY 1989-90



NUMBER OF CASES

Source: PHRC reports to House and Senate committees and monthly Compliance Report.

TABLE 2. CASES DOCKETED PRIOR TO JULY 1, 1985, WHICH REMAINED OPEN AS OF JUNE 30, 1990

<u>Docketed</u>	<u>Pgh. Region</u>	<u>Hbg. Region</u>	<u>Phila. Region</u>	<u>HQs</u>	<u>Total</u>
1973	1	--	--	--	1
1976	5	--	--	--	5
1977	2	--	--	--	2
1978	3	--	--	--	3
1979	1	--	--	--	1
1980	2	1	4	--	7
1981	--	3	--	--	3
1982	9	6	9	--	24
1983	29	16	8	64	117
1984	72	62	90	1	225
1985	<u>65</u>	<u>67</u>	<u>97</u>	<u>--</u>	<u>229</u>
Total	189	155	208	65	617

Source: Commonwealth Management Information Center (CMIC) case status report prepared for PHRC, February 23, 1990, PHRC docket books as of May 31, 1990, and PHRC compliance activity report submitted at July 30, 1990, Commission meeting.

Of the 211 cases identified as being open for more than five years during the last sunset audit, 11 cases from the Pittsburgh region still remained open as of May 31, 1990. According to the Pittsburgh Regional Director, three of the cases were on the public hearing docket and were likely to reach settlement before the hearing date. In one of these three, a conciliation agreement was being drawn up. A group of six cases was against the same respondent. The investigation had not verified the harassment charged, and the cases were to be closed administratively. One case was being held open pending the outcome of a bankruptcy proceeding per the request of the complainant; the case may be closed as no probable cause. The eleventh case was closed in June 1990.

The average time required to close a case has also increased since FY 1984-85. According to PHRC reports, in FY 1984-85 only 6 percent of the agency's cases took over two years to close; in FY 1988-89, 18 percent of the cases required more than two years to resolve.^{2/} (See Table 3.)

^{2/}This increase may, in part, be related to emphasis by the PHRC on closing older cases.

TABLE 3. PERCENTAGE OF CASES RESOLVED BY LENGTH OF TIME TO RESOLUTION

<u>Total Days Docketing to Case Closure</u>	<u>FY 1984-84</u>	<u>FY 1985-86</u>	<u>FY 1986-87</u>	<u>FY 1987-88</u>	<u>FY 1988-89</u>
Less than 90 days	28%	22%	17%	12%	11%
90 to 365 days	56%	52%	45%	51%	52%
Greater than one year but less than two years	10%	17%	21%	18%	19%
Greater than two years ...	6%	9%	17%	19%	18%

Source: Developed by LB&FC from PHRC annual report to the House and Senate Committees.

An LB&FC staff analysis of a sample of 614 PHRC cases closed between March 1989 and February 1990 showed that 21.5 percent of the cases closed by the agency during this time frame were two or more years old when closed. For this sample of 614 cases, it required an average of 480 days for a complaint to be resolved by the PHRC. The Pittsburgh region's average was 639 days; Philadelphia, 367 days; and Harrisburg, 481 days.

Although the PHRC's performance in closing cases in a timely manner appears to have fallen in recent years, the Commission's performance has improved in terms of the number of cases closed per staff member. For example, as shown in Exhibit 6, in FY 1979-80, the Commission closed an average of 14.5 cases per employee; in FY 1989-90, this number had improved to 23.3 cases closed per employee, an improvement of 61 percent. Exhibit 7 illustrates the fluctuation in staff levels during this ten-year period.

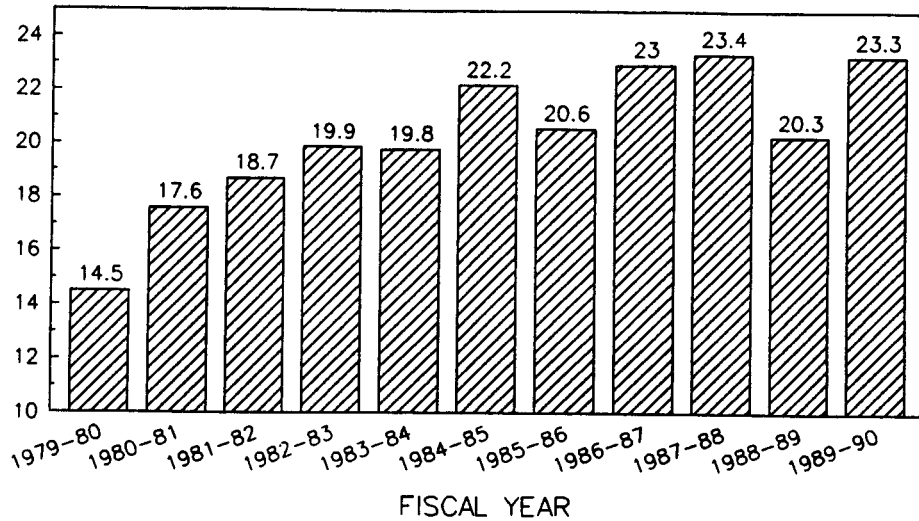
TIMELINESS REQUIREMENTS

The Pennsylvania Human Relations Act specifically states that "after the filing of any complaint . . . the Commission shall make a prompt investigation in connection therewith." Additionally, the PHRC Compliance Manual identifies certain timeliness guidelines for case processing (see next section).

The federal government has established timeliness requirements for age discrimination and housing discrimination complaints. The EEOC requires that case processing be completed

EXHIBIT 6. CASES CLOSED PER EMPLOYEE PER YEAR, FY 1979-80 THROUGH FY 1989-90*

NUMBER OF CASES

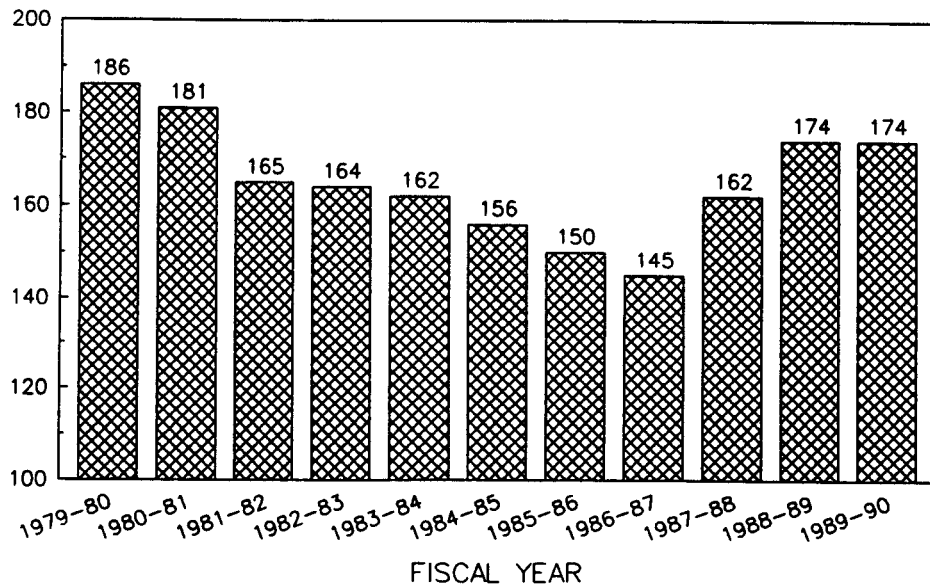


*/Includes all PHRC employees, not just investigative personnel.

Source: PHRC reports to House and Senate committees and information provided by PHRC staff.

EXHIBIT 7. NUMBER OF PHRC EMPLOYEES, FY 1979-80 THROUGH FY 1989-90

NUMBER OF EMPLOYEES



Source: PHRC reports to House and Senate committees and information provided by PHRC staff.

within 18 months of the act of discrimination in age discrimination complaints. In its statement of funding principles for FY 1991-92, EEOC officials have indicated that they will be more strictly enforcing this processing time requirement in the future. EEOC will assume jurisdiction over age cases at 16 months unless the PHRC can certify that the case will be completed within the 18 month period. This notification is to be made by the EEOC at 15 months. A PHRC official expressed concern with the Commission's ability to meet EEOC's more strict enforcement of this timeliness requirement in all age cases.

PHRC's Housing Division has difficulty meeting HUD's requirement that complaint investigations be completed within 100 days. HUD officials report that 77 percent of dual-filed cases with the PHRC are beyond HUD's 100-day requirement. These federal officials indicated that this is the poorest performance of the 19 Fair Housing Assistance Program agencies in Region III of HUD. HUD officials have discussed recalling cases to be investigated by HUD and bypassing the PHRC. HUD has not been able to do this because of staff limitations and other demands on their resources. A decrease in federal reimbursement to the PHRC would likely result if HUD were to recall these aged cases.

CAUSES OF CASE PROCESSING DELAYS

To determine the reasons complaints take so long to resolve, LB&FC staff examined 20 cases closed between March 1989 and February 1990 which were over five years old when closed.

In these cases, the PHRC generally appears to have met the timeliness guidelines identified in its compliance manual. Typically, complaints were docketed within 24 hours, respondents were notified of the complaint within 30 days, and fact-finding conferences were scheduled within 30 days of notification of the respondent.

A review of the case chronologies in each case found that delays usually occurred during the investigation of a complaint (i.e., after the fact-finding conference). Six case chronologies indicate lengthy delays during review by PHRC's legal department. Ten case chronologies had one or more relatively long gaps of time with no apparent case activity and no indication of the reasons for the lapses. These gaps range from a few months to as long as four years.

Six of the 20 cases reviewed included delays which were beyond the control of the PHRC. Two of these cases were held open pending an investigation by EEOC, and four cases were delayed because of various court appeals or decisions. One case reviewed did not contain enough information to determine the reasons it was open so long.

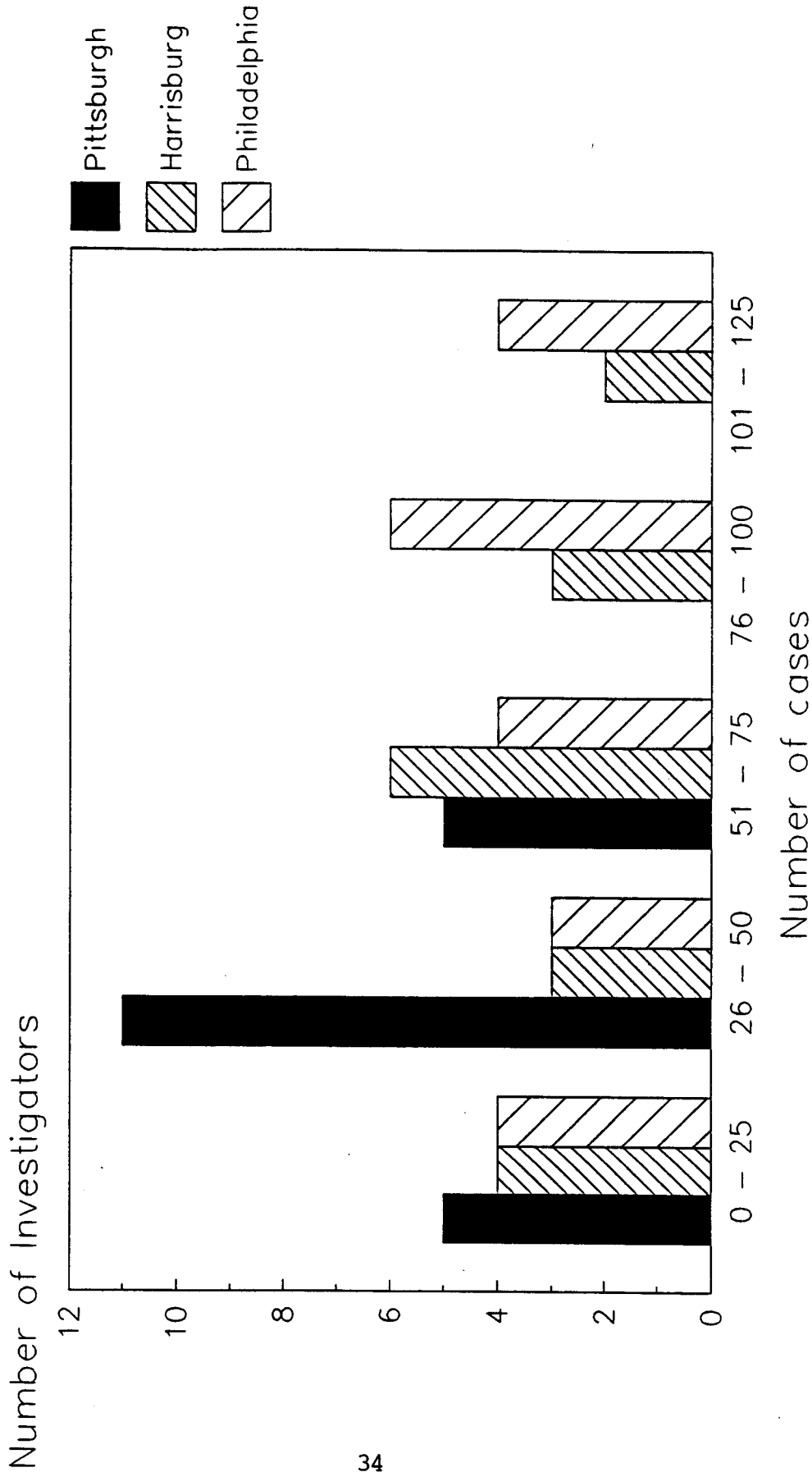
A recent (August 1989) Commonwealth Court decision points to the Commission's case processing delays. Commenting on the PHRC's case processing delays, Judge Craig stated, "Although the Commission [PHRC] doubtless has struggled against a shortage of personnel in the face of a great workload, questions necessarily arise concerning the effectiveness of an investigative process which consists of the seemingly desultory issuance of inquiry letters, with intervals of months and years between the receipt of information and the next inquiry."

In a further attempt to explain these case processing delays and understand the gaps in the case chronologies, LB&FC staff interviewed compliance supervisors and case investigators in the three regional offices. The major reason cited for complaint processing delays by investigators and compliance supervisors was uncooperative respondents. PHRC staff said that respondents are often reluctant to provide requested information, uncooperative in scheduling fact-finding and conciliation meetings, and may file a motion to dismiss the complaint, which can cause additional legal delays. PHRC officials also indicated that when staff changes occur, cases must be reassigned to investigators who already have large caseloads. These reassigned cases may have no activity for periods of time while the investigator integrates them into his existing caseload.

Internal reviews were also identified by PHRC staff as contributing to processing delays. Investigators stated that cases sent to the PHRC's legal staff for legal opinions can often take 30-60 days, and legal staff must approve all probable cause determinations. Cases submitted for closure are reviewed by the compliance supervisor and the regional director at the regional office and then by a compliance supervisor at headquarters. Some cases are reviewed again by the Executive Director before being presented to the Commission for final approval. Some regional personnel felt that the compliance review at the headquarters level was unnecessarily duplicative.

Additionally, personnel in all regions indicated that managing a large caseload takes a great deal of time, and the investigator can be much more effective if caseloads are kept to a "reasonable" number. At a Commission meeting in March 1990, the PHRC's Executive Director identified a reasonable caseload as 30 to 35 cases and stated that many of PHRC staff have 70 to 80 cases. At the end of June 1990, the average caseload was 56 cases per investigator with 15 investigators (25 percent) having caseloads in excess of 75. The average varied among regional offices, with an average of 70 cases per investigator in Harrisburg, 60 in Philadelphia, and 37 in Pittsburgh. Exhibit 8 shows more detail on individual caseloads which ranged from a high of 111 to a low of 12. PHRC officials indicated that staff with caseloads in the 0-25 range and some in the 25-50 range are typically new employees in their training period who do not yet have full caseloads.

EXHIBIT 8. NUMBER OF PHRC INVESTIGATORS MANAGING VARIOUS CASELOADS AS OF JUNE 30, 1990*



*/This graph depicts the distribution of the number of investigators handling caseloads as indicated. No investigator in the Pittsburgh Office was handling more than 75 cases as of June 30, 1990.

Source: Developed by LB&FC staff from PHRC regional reports to the Executive Director.

SUPPORT SYSTEMS PROBLEMS CONTRIBUTE TO PROCESSING DELAYS

Clerical Support

Lack of clerical support for case processing was also reported as contributing to processing delays. Regional staff stated that, while clerical support is generally adequate, problems can arise when clerical personnel are also assigned duties from other units. In Harrisburg, such staff reportedly are assigned legal typing, and in Pittsburgh they rotate into receptionist duties. Several employees noted a shortage of clerical support in the Philadelphia office.

Computer Support

A related problem is that record-keeping is largely a manual process at both headquarters and the regional offices. Similar information is kept in hand-written logs or docket books in the intake unit, the compliance unit, the legal unit (if a legal review is required), and the Headquarters office. Harrisburg office personnel have brought personal computers from home into the office to aid in record-keeping, data retrieval, and reporting. According to agency personnel, it can be very difficult to locate case information if the docket number is unknown. The Philadelphia Regional Director stated that if someone calls for information on a case and doesn't know the docket number, each investigator in the office may need to be canvassed individually to determine who is handling the case.

The PHRC's Automated Technology Multi-Year Plan for FY 1989-91, developed in conjunction with the Office of Administration, details computer equipment required by the Commission to meet its objectives to automate case tracking of complaints, case management, and rapid case flow and control. Its cost was estimated to be \$153,080 and includes a fully automated case management system with customized software to interface with federal agencies, allow generation of reports tailored for particular agency needs, allow networking with all regions, and to facilitate case reviews.

Although the full package of equipment requested by the PHRC was not approved by the Office of Administration because of the automated technology purchase moratorium imposed by the Office of Administration in December 1989, an exception was granted in the amount of \$85,200 to allow the purchase of four minicomputers, four laser printers, and associated software.^{3/} According to the PHRC's Executive Director, the Office of Administration urged the PHRC, along with other state agencies, to resubmit its Automated Technology Multi-Year Plan as part of its FY 1990-91 re-budget

3/A minicomputer is a midrange computer with capabilities between that of a microcomputer (PC) and a mainframe computer.

process. The PHRC reports that its approved rebudget for FY 1990-91 includes necessary funding to purchase the remaining computer equipment identified in PHRC's Automated Technology Multi-Year Plan.

According to the PHRC's Systems Administrator, the equipment which has been purchased (i.e., the four minicomputers, terminals, and printers) will allow each region on-line access to an electronic docket book which will eliminate the manual docket process now in use.^{4/} Each region will also have the ability to format and prepare reports on its caseload and have access to a more efficient case tracking and data retrieval system. The Headquarters office will be able to access all open and closed case files which will facilitate record keeping and reporting and may be able to eliminate the Commission's dependence on Central Management Information Center (CMIC) reports.

However, as of October 1990 the PHRC staff had not developed a written plan to facilitate the programmatic implementation of the four minicomputers for case processing efforts. Regional office staff indicated that they were aware that new computer equipment would be available but expressed only a general idea of how the new equipment would impact on daily activities.

The PHRC's recent computer equipment purchase is a step toward a more efficient and effective data processing system. However, this initial purchase provides for only one computer workstation in each regional office and will result in limited access to the computer by supervisory and investigative personnel.

Reporting

Until a new computer-based reporting system is installed, PHRC officials plan to continue to monitor case processing activities through manually tabulated reports from the regional offices and the compliance division. However, these manual reporting systems appear to limit the amount and type of information available for management planning. Although each regional office prepares a monthly report to the Executive Director on performance and productivity, these reports are not always timely and are not consistent in form, substance, or degree of detail. These reports also do not appear to be prepared on a regular basis. For example, the regional offices were unable to provide complete sets of reports for months between March 1989 and February 1990.

Related, but less detailed, information is provided in a more timely manner via monthly reports prepared by the Headquarter's Compliance Division. One report is a manual tabulation of the

^{4/}In October 1990 the PHRC reported that it has received this equipment but that it was not yet operational.

number of cases docketed and closed for each month with cumulative figures for the year. It also breaks down types of cases and closures. The Compliance Division also prepares a summary of cases docketed and closed each month for presentation at Commission meetings and a monthly status report on how well each region is meeting EEOC contract goals.

EFFECTS OF CASE BACKLOG AND LONG CASE PROCESSING TIMES

In its 1987-88 report to the Senate Labor and Industry Committee and House State Government Committee, the Pennsylvania Human Relations Commission reported that delays in resolving complaints cause hardships for both complainants and respondents. Complainants are less likely to secure adjustments, and both claimants and respondents have difficulty documenting incidents which took place several years in the past.

In its FY 1990-91 agency budget request, the PHRC stated that delays caused by the agency backlog can create a denial of justice, cause individual hardship, and disillusionment with the power of government to protect individual rights.

Dissatisfaction with the timeliness of complaint resolution was prevalent in responses received in response to an LB&FC questionnaire: 41 percent of complainants indicated that the PHRC did not process complaints in a timely manner. This perception was also shared by 34 percent of the respondents and 32 percent of the organizations which responded to the LB&FC survey.

In a 1989 concurring opinion filed in the case of the Pittsburgh Board of Education v. Pennsylvania Human Relations Commission regarding a case which took over 13 years to be resolved by the PHRC, Judge Craig noted that "the Commission's chief plea is that, despite earnest attempts to obtain needed appropriations and legislative assistance, it has been understaffed and overworked, unable to process thousands of complaints efficiently."

Judge Craig further stated, "Because of the truth of the familiar statement that justice delayed is justice denied, we take this opportunity to make a record with respect to the serious time problem which exists in resolving discrimination issues, to encourage a solution, not only by the Commission, but by the Executive Branch and the Legislative Branch as well."

PHRC EFFORTS TO ADDRESS THE BACKLOG PROBLEM

The PHRC has made several attempts to address the backlog problem. The PHRC compliance supervisors interviewed by LB&FC staff stated that they attempt to control case processing delays through a monthly case audit of each investigator's caseload.

These audits review the past month's activities on each case, prioritize the cases for the next month, and suggest activities which will move each case forward. Both the supervisors and investigators indicated that, when done properly, the monthly case audit can be an effective management tool. In the regional offices, the case audits have been stressed as an effective way to manage case backlog. However, supervisors indicated that when caseloads approach 100 cases per investigator, as has been the case for some investigators at the PHRC, the work load can become unmanageable.

Each regional office has also developed specific programs to address older cases in their region. The Regional Director in the Pittsburgh office indicated that he selects specific older cases and becomes personally involved with the investigator to resolve whatever problems are delaying resolution of the complaint. In Harrisburg, the Regional Director has instituted a special project to address probable cause cases which have been pending for a long period of time. He personally becomes involved in a conciliation attempt. If this is not successful the case is promptly scheduled for public hearing or closed administratively as appropriate. In the Philadelphia office, one compliance supervisor stated that he had added a special emphasis on closing older cases and a standard (for percentage of old [more than one year] cases closed) has been added to the monthly case audit. All of the regional directors indicated that they have taken advantage of special overtime approvals to move old cases toward closure.

The PHRC's Executive Director initiated a special program at the end of FY 1988-89 identified as "The 50 Oldest Cases" project. This was a special emphasis on closing the 50 oldest cases in each region. The Compliance Director indicated that this project was considered successful in moving old cases through the system; all of the cases initially identified for the project were reviewed and appropriate action taken. Overtime projects also helped to address the old case backlog. The Compliance Director reports continuing to stress the importance of resolving aged complaints in communications with his staff.

As addressed above, the PHRC has also developed an Automated Technology Multi-Year Plan for FY 1989-91, approved by the Office of Administration, with efficient case management as a primary goal. Automation is intended to provide more timely and accurate data and free staff from manual reporting functions.

RECOMMENDATIONS

1. *The Office of Administration should grant to the PHRC additional exceptions to the Commonwealth's Automated Technology Procurement Moratorium to allow the PHRC to purchase computer*

equipment with available funds so that all units of the Commission can be incorporated into an automated case management system.

2. The PHRC should develop an implementation plan for its new computer equipment which includes the development of standardized reports to measure the timeliness of PHRC case processing. The plan should also include EDP training for appropriate staff.
3. The PHRC should develop standardized target time frames for the major steps in the complaint resolution process, including supervisory, headquarters, and legal reviews. The PHRC should use variance reports on these time frames to improve the management of individual caseloads and, in particular, to identify lengthy periods of time in which no progress is made on a case.
4. As was recommended by the Bureau of Personnel in 1988, the PHRC should conduct work load studies to examine the appropriateness of staffing levels at the regional offices. The PHRC should prepare a special report on this subject and provide it to the House and Senate Appropriations Committees for their consideration during the FY 1991-92 appropriation process. The report should include projections of how increases in PHRC staff would impact on the timeliness of complaint resolutions and the reduction of backlogged cases. The Commission should also provide a copy of this report to the standing committee assigned sunset review of the Commission.

LB&FC Note: The statutory amendments proposed by the Commission in Appendix G, item 4, of this report and pertaining to the receipt of respondent information would, in the Commission's opinion, make information more readily available and thereby reduce case processing time. The General Assembly may also wish to consider this proposed amendment during the sunset review process.

E. PHRC ANNUAL REPORTS NOT SUBMITTED ON TIME

The Pennsylvania Human Relations Commission (PHRC) has not prepared a statutorily required "annual" report in a timely manner for at least the past five years; the last such report to be published, the FY 1986-87 report, was not published until September 1989. The agency is required by the PHRA to report each year to the General Assembly and the Governor and also to the Senate Labor and Industry and House State Government Committees. Pennsylvania's Fair Educational Opportunities Act also includes an annual reporting requirement for the PHRC. Although this report has been submitted each year to the House and Senate Committees, the Commission's annual report has not been submitted to the General Assembly and Governor as required. When published, the two reports have contained similar information in recent years. The delay in completing the required annual reports is reportedly attributed to a change in the personnel who prepare the annual reports.

The Commission should adhere to its reporting requirement, which should be considered for streamlining during sunset review.

DISCUSSION

Over the past few years the PHRC has not submitted a statutorily required annual report in a timely manner. The FY 1984-85 report was combined with the FY 1985-86 report. The FY 1986-87 report was printed in September 1989, and the FY 1987-88 and FY 1988-89 reports were still in draft form as of September 1990.

The PHRC's enabling legislation requires the agency ". . . not less than once a year, to report to the General Assembly and the Governor . . ." and "to submit annually a report to the Labor and Industry Committee of the Senate and the State Government Committee of the House . . ." Pennsylvania's Fair Educational Opportunities Act also includes a provision for annual reporting to the General Assembly and the Governor.

A review of the PHRA and interviews with PHRC officials indicate that the PHRC is required to prepare two separate reports. The report submitted to the House and Senate committees, as required by the PHRA, provides a description of the types of complaints received, the status of cases, action taken by the Commission, number of probable cause findings and public hearings held by the Commission, and length of time from initial complaint to final resolution. This report is not submitted to the Governor or the members of the General Assembly, other than those of the Senate Labor and Industry and the House State Government Committees. Although the FY 1988-89 report to the House and Senate committees was several months late, this report has been submitted annually.

The PHRC's annual report to the General Assembly and the Governor includes most of the same information that is in the report to the House and Senate committees but in greater detail. As required by the PHRA, this report includes descriptions of the investigations, proceedings, and hearings conducted by the Commission; decisions it has rendered; and other work performed by it. Impact figures and descriptions of other agency activities, such as outreach, community services, and education activities, are included. The annual report also identifies pending legislation and the Commission's recommendations for support or opposition.

The PHRC has an additional annual reporting requirement in the Pennsylvania Fair Educational Opportunities Act which requires a written report to be submitted to the Governor and Legislature on the Commission's activities and recommendations in the area of education. Review of this statute as well as contact with PHRC officials and pertinent legislative staff indicate that the annual report submitted by the PHRC to the General Assembly and the Governor also meets the reporting requirements of the Fair Educational Opportunities Act.

Recent personnel changes reportedly contributed to the Commission's inability to prepare its annual reports in a timely manner. When the current Director of Publicity and Information joined the PHRC in March 1989, the FY 1986-87 annual report had not yet been prepared; this report was subsequently compiled and published in September 1989. As of September 1990, the FY 1987-88 report was completed but not published, and the FY 1988-89 report was expected to be completed shortly; the projected publication date for the two reports was November 1990.

Several reasons for the delay in publishing these reports were identified by the PHRC's Publicity and Information Director. Inconsistent data had to be resolved. These discrepancies were difficult to resolve because of the time elapsed. The Director also indicated that lack of full time secretarial help and computer support increased the difficulty of compiling the reports. Additionally, it was reported that some PHRC divisions were slow to provide input for the report, and the required internal reviews added to the delay.

RECOMMENDATIONS

1. *The PHRC should submit an annual report each year as required by law in a timely manner.*
2. *The General Assembly should consider amending the PHRA to allow the Commission to prepare and distribute one report each year to the General Assembly, the Governor, the Senate Labor and Industry Committee, and the House State Government Committee. The General Assembly may wish to consider specifying a deadline for submission of this annual report.*

F. SOME PHRC REGULATIONS ARE OUT OF DATE

Some of the Pennsylvania Human Relations Commission's regulations are out of date in significant respects. The Commission's procedural regulations conflict with 1986 amendments to the PA Human Relations Act (PHRA), and the Commission's regulations concerning discrimination in commercial housing have not been amended to reflect various statutory changes since 1967. The Commission published proposed regulations in October 1989 to update its procedural regulations. As of September 1990, these regulations had not been finalized. Even if they would be promulgated as final form regulations, they would not bring all of the PHRC's regulations up to date. The Commission should review its regulations and promulgate amendments to bring them into conformity with the statute.

DISCUSSION

Some of the Pennsylvania Human Relations Commission's regulations are out of date in significant respects. The Pennsylvania Human Relations Act (PHRA) was amended in 1986 as a result of the sunset review process. Among other things, the amendments expanded the time limit for filing a complaint to 180 days. The regulations concerning practice and procedure (16 Pa. Code Chapter 42) still provide, however, that a person wishing to file a complaint with the Commission must do so within 90 days of the alleged incident.

Similarly, other PHRC regulations have not kept pace with statutory changes. The regulations at 16 Pa. Code Chapter 45 (implementing the PHRA's prohibition against discrimination in the sale, rental, and financing of commercial real estate) provide an example. The law was amended in 1986 as a result of the sunset review process to prohibit discrimination in transactions involving "commercial property" rather than "commercial housing." Because the new term is defined more broadly than its statutory predecessor, this amendment expanded the act's prohibitions. In addition, Section 5(h) of the PHRA has been amended four times since 1967 to expand the list of prohibited forms of discrimination (i.e., discrimination based on sex, handicap or disability, or use of a guide dog because of blindness or deafness). The Commission has not yet amended the regulations at Chapter 45 to reflect any of these statutory changes.

The PHRC published proposed amendments to the regulations at Chapter 42 in the Pennsylvania Bulletin in October 1989.

Among other things,^{1/} these amendments would bring the Commission's procedural regulations into conformity with the PHRA. As of September 1990, these amendments had not been finally adopted. According to the Assistant Chief Counsel of the PHRC, the proposed regulations were submitted for public comment, were reviewed by the Independent Regulatory Review Commission and the relevant legislative committees, and were returned to the PHRC. Under the Regulatory Review Act, the PHRC has two years from the close of the public comment period (i.e., until October 1991) to submit final form regulations. If this is not accomplished, the PHRC would be required to republish the regulations as a proposed rulemaking to promulgate the regulations.

The proposed regulations would amend only the Commission's procedural regulations. Even if the proposed regulations are finalized, Commission regulations in other areas, such as commercial housing, would still be out of date.

Although no specific problems were noted as being caused by these inconsistencies, the potential for confusion exists if PHRC regulations do not conform with the statute. In an opinion involving another governmental agency rendered in 1974, the Commonwealth Court stated that it is ". . . a fundamental proposition of law that a rule or regulation of an administrative agency may not be inconsistent with, or contrary to, the provisions of a statute." To the extent that PHRC regulations contradict the PHRA, the possibility exists that they could be invalidated; and to the extent that the PHRC regulations fail to reflect the statute they implement, they may fail to carry into effect the will of the General Assembly as expressed in legislation.

RECOMMENDATION

1. *The PHRC should undertake a comprehensive review of its regulations and should promulgate amendments as soon as possible to bring the regulations into conformity with the PHRA.*

^{1/}The proposed regulations would also make a number of changes that are not required to bring the Chapter 42 regulations into conformity with the 1986 amendments to the PHRA.

G. THE PENNSYLVANIA HUMAN RELATIONS ACT DOES NOT FULLY CONFORM WITH FEDERAL LAW

Certain provisions of the Pennsylvania Human Relations Act (PHRA) do not conform with amendments made in 1988 to the federal Fair Housing Act. The federal statute now provides for a protected class which is not covered by the Pennsylvania law (i.e., discrimination based on familial status) and mandates certain other criteria. In order for the Pennsylvania Human Relations Commission to become certified as a referral agency (a new requirement resulting from the 1988 amendments) and to continue to receive federal funds for the investigation of allegations of housing discrimination, the Human Relations Act and/or PHRC regulations will have to be amended prior to January 1992 to include the additional protected class as well as certain other language pertaining to remedial powers and mandated time frames. Projections based on historical trends suggest that the PHRC could lose \$100,000 to \$150,000 per year in federal funds as well as research funding and training resources if the PA Human Relations Act is not amended. House Bill 1925 was introduced in 1989 to address these deficiencies; as of October 1990, this bill was with the House State Government Committee. The General Assembly should amend the PHRA to satisfy the criteria for certification under federal law.

DISCUSSION

Federal law specifies that the U.S. Department of Housing and Urban Development (HUD) is to refer fair housing cases to a state or local agency when the complaint is made in the jurisdiction of a state or local agency which has been certified as "substantially equivalent" (to HUD) by the Secretary of HUD. The PA Human Relations Commission currently acts as a referral agency and has a work sharing agreement with HUD in which it receives federal reimbursement for the investigation of allegations of housing discrimination based on race, color, religious creed, ancestry, age, national origin, sex and handicap. The PHRC currently receives \$650 from HUD for every case which it closes above the level of conciliation.

As a result of amendments made in 1988, the federal law governing referral will change significantly in January 1992. A state or local agency will need to be certified by HUD in order to be a referral agency, and HUD regulations specify the criteria that will be used to determine if a state or local law is substantially equivalent. Certification is to be granted only if:

The Secretary [of Housing and Urban Development] determines that--(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made; (ii) the procedures followed by such agency; (iii) the remedies available to such agency; and (iv) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under [the amended act]. 42 U.S.C. §3610(f)(3).

The federal Fair Housing Act was expanded in 1988 to include prohibitions against discriminatory housing practices based on familial status and handicap. The addition of familial status as a protected class prohibits discrimination in housing based on the presence of children in the household. The 1988 amendments to the Fair Housing Act require that certain items be addressed in relevant state human rights legislation in order for the human service agency (e.g., the PHRC) to be certified.^{1/} For Pennsylvania to meet the certification criteria, the necessary changes would involve the classes of persons to be protected, the processes to be undertaken in the investigation of a complaint, and the remedies available to the agency.

To meet the new criteria, Pennsylvania's Human Relations Act will need to prohibit discrimination based on familial status. In addition, the agency must possess certain remedial powers in order to ensure certification. The agency must be able to (1) grant actual damages to the complainant, (2) grant injunctive or other equitable relief, and (3) assess a civil penalty against the respondent, or to have any of these remedies adjudicated in court at agency expense. Also, provisions need to be established to set certain deadlines for commencement of proceedings (within 30 days), completion of case investigation (within 100 days), and final administrative disposition of the case (within one year).

States were allotted a 40-month time period (until January 1992) from the enactment of the legislation during which they could amend relevant legislation in order to be certified to receive federal funding for the investigation of housing discrimination complaints.

The PA Human Relations Act must meet the federal criteria in order for the PHRC to be certified. House Bill 1925 was introduced in October 1989 to address certain of the criteria noted above. As of October 1990, this bill was with the House State Government Committee. In part, the legislation would amend the

^{1/}According to a HUD official, certain of these criteria could be accommodated by changes in state regulations.

Human Relations Act in the following ways: (1) prohibit discrimination based on familial status, (2) allow the PHRC to award actual damages and injunctive relief to successful complainants, and (3) assess a civil penalty in housing cases.

The proposed amendments do not, however, address the specific time frames mandated by the federal HUD regulations implementing the 1988 amendments to the Fair Housing Act. Under current law, the PHRC is required only to investigate cases in a timely manner. According to a PHRC attorney, the PHRC has not addressed the mandated time frames in the proposed legislation because these time frames apply to only a small proportion of the total PHRC caseload. For this reason, PHRC officials believe that this issue is best addressed in the PHRC regulations rather than in the statute. A HUD official indicated that the PHRC will be certified as substantially equivalent if all criteria are covered. The official also indicated that, in regard to the mandated time frames, an amendment to either state law or PHRC regulations is acceptable to HUD.

If the PA General Assembly does not enact legislation to bring the Human Relations Act into conformity in its relevant portions with the criteria established by federal law, the PHRC might not be certified by the Department of Housing and Urban Development, and, therefore, would not continue to receive federal funds for the investigation of complaints of housing discrimination. According to the Director of Housing at the PHRC, the Commission could stand to lose between \$100,000 and \$150,000 annually in federal funds (including direct contract monies for case investigation as well as incentive funds from HUD for various research projects) if the PHRC is not certified. The PHRC could also lose its eligibility to participate in HUD-sponsored research projects. For example, the HRC was paid \$193,000 for a recent financial institution study undertaken in conjunction with HUD. The PHRC could also lose a valuable networking resource as well as become ineligible to participate in specialized HUD-sponsored training.

RECOMMENDATION

- 1. The General Assembly should consider amending the Pennsylvania Human Relations Act to satisfy the criteria for certification under federal law by adding familial status as a protected class, providing for additional remedial powers, and addressing the time frames set by HUD. If the time frame criteria are not addressed in the Pennsylvania Human Relations Act, the PHRC should promulgate regulations to meet the certification criteria set by HUD.*

H. PHRC IS ACTIVELY INVOLVED IN COMMUNITY OUTREACH ACTIVITIES

One priority area identified by the Pennsylvania Human Relations Commission (PHRC) is its public education and outreach activity, including research on civil rights topics, publication of relevant materials, conducting workshops, and providing technical assistance. Related staff activities include creating and supporting local advisory councils, conducting ethnic intimidation training for the State Police and other groups, and responding to incidents of community tension. In addition, the PHRC publishes various documents dealing with civil rights issues; however, it does not have provisions for disseminating this information to the public and to pertinent organizations. Persons from agencies involved with the PHRC who responded to an LB&FC survey expressed a general satisfaction with the quality of PHRC's outreach activity; several groups expressed concern, however, over the limited extent of such activity. According to the PHRC's Executive Director, agency efforts in community services, education, and outreach have been curtailed in recent years due to reductions in staff. The Commission should notify interested persons and organizations as to what PHRC publications are available and how to obtain them.

DISCUSSION

The PHRC reports that approximately 10 to 15 percent of its effort is directed toward outreach and educational activities, representing a decrease from the estimated 20 percent of ten years ago. Even with this relatively small percentage of staff time, PHRC staff undertakes a wide variety of activities pertaining to education/outreach.

TRAINING AND EDUCATIONAL SEMINARS

The PHRC sponsors or co-sponsors various training and informational seminars such as a June 1990 "Governor's Conference on Ethnicity" in Harrisburg and a June 1989 seminar "Pennsylvania Responses to Hate" which was co-sponsored with the U.S. Department of Justice, the PA Association of Township Commissioners, the PA Chiefs of Police Association, and the PA League of Cities, among others. The PHRC conducted a seminar entitled "Trends in Employment" in Williamsport in December 1989 and a conference in May 1989 entitled "Confronting a New Era in Civil Rights Enforcement." This event was co-sponsored by the Allentown, Harrisburg, York, Lancaster City-County, and Reading/Berks Human Relations Commissions.

In addition to seminars and conferences, PHRC education/community services personnel are involved in delivering presentations on the work of the Commission, the Human Relations Act, sexual harassment, and other topics. These presentations have

been given to such diverse groups as a Penn State University political science class, the American Business Women's Association, the NAACP, and personnel of various local school districts.

The PHRC has also undertaken responsibility for providing ethnic intimidation and cultural awareness training. Ethnic intimidation training has been conducted for all fourteen state universities (admissions personnel, university security, affirmative action personnel, and local police forces) as well as other groups such as the State Police and the municipalities of Chester, Westmoreland, Ephrata, and Dillsburg. The PHRC reports that, from 1987 through 1989, a total of over 2,400 persons received ethnic intimidation training from the PHRC.

The PHRC Housing Division also undertakes various training and educational activities. It has established a regular commitment with the Pennsylvania Association of Realtors to provide eight to ten seminars per year on housing discrimination, and it provides regular training for the Pennsylvania Bar Association and the Association for the Blind. In addition, the Housing Division provides training for police and responds to tension situations pertaining to housing matters.

RESPONSE TO INCIDENTS OF COMMUNITY TENSION

The PHRC has assumed a leadership role in coordinating the Commonwealth's Inter-Agency Task Force on Civil Tension. This task force includes fourteen other agencies including the Department of Education, the Department of Community Affairs, the Department of Public Welfare, the Attorney General, and the U.S. Department of Justice. The goal of the task force is to provide an active and coordinated response to incidents of ethnic and racial tension in the state.

As part of this work, PHRC staff has responded to 190 community tension situations in the past two years, such as incidents at Penn State University in State College, Kutztown University, and in the cities of Scranton and Indiana. In most instances, the PHRC is involved after an incident has occurred; however, during an incident at Penn State beginning in March 1988, PHRC personnel were involved in attempting to diffuse a tension situation when students staged a "sit in" on the main campus.

PUBLICATIONS

The PHRC is required by the Pennsylvania Human Relations Act (PHRA) to "issue such publications and such results of investigation and research as, in its judgement, will tend to promote good will and minimize or eliminate discrimination . . .", and to "prepare and distribute fair practice notices." The PHRC publishes

various documents and public notices dealing with civil rights and the Human Relations Act such as employment provisions notices, public accommodations provisions notices, fair lending and housing provisions notices, guides for both the complainant and the respondent in a case of alleged discrimination, and guidelines on sexual harassment. All of these publications are available from the PHRC upon request, and PHRC staff also distribute pertinent publications as part of specific outreach activities. The PHRC does not, however, systematically disseminate published information to pertinent locations throughout the state (e.g., fair housing literature at real estate agencies). Thus, members of the public who may wish to have information regarding the PHRC and its responsibilities may not be aware that these publications exist.¹⁷

ADVISORY COUNCILS

A principal PHRC activity in the area of education and outreach involves local advisory councils; these councils serve both to obtain public input and to act as an outreach mechanism. Please see Finding B for additional information and issues related to local advisory council functioning.

FIELD INTAKE ACTIVITIES

As an additional outreach mechanism, the PHRC's Philadelphia and Pittsburgh Regional Offices arrange periodic visits of intake personnel to various field locations within their regions. This has occurred in the Philadelphia Region at Chester and West Chester and in the Pittsburgh Region at Farrell and Erie. The intake personnel receive complaints of discrimination and provide information to persons who might not otherwise have ready access to the Commission.

COMMENTS ON OUTREACH ACTIVITIES

Respondents to a survey sent to representatives of agencies/organizations involved with the PHRC expressed general satisfaction with the quality of outreach activity provided by the PHRC, but several groups were concerned about the limitations

¹⁷In addressing one of its legal requirements, the PHRC does report activity with the Department of Commerce to help inform new businesses of the requirement to post fair practices notices and how to obtain the appropriate posters. These required notices identify unlawful discriminatory practices in employment, housing, public accommodation, and lending and provide information on how to file a complaint.

thereof. One respondent mentioned that the PHRC was doing a credible job but could do even better with more staff and adequate funding. Another mentioned that there was not enough staff to carry out community services and educational efforts and that joint efforts with other agencies should be established. Other groups unequivocally stated that the PHRC's outreach efforts were not adequate and the PHRC needed to provide for more public awareness. Several respondents mentioned the need for a media or public relations campaign on behalf of the PHRC to inform the public of the work which is being done.

RECOMMENDATION

1. *The PHRC should periodically submit a letter to pertinent governmental and other organizations informing them of the PHRC's publications and how to obtain copies.*

I. PERFORMANCE EVALUATIONS NOT CONDUCTED FOR CERTAIN PHRC PERSONNEL

Most Commission supervisory and management personnel have not received performance evaluations in recent years. Although annual performance evaluations are required by Civil Service requirements and by directives from the Governor's Office, only 5 of 37 of the supervisory and management personnel files reviewed during this audit included a performance evaluation for calendar years 1988 or 1989. Program priorities reportedly take precedence, and actions by agency headquarters encouraging completion of performance appraisals have apparently not been sufficient to produce the required results. The Commission should complete evaluations by the end of the fiscal year for all personnel who have not recently received them.

DISCUSSION

A 1988 Personnel Management Review by the Office of Administration indicated that approximately one half of PHRC personnel had not received performance evaluations for the year evaluated, FY 1986-87. (Please also see Chapter III of this report on Status of Prior Audit Findings.) One recommendation from this review was that the Executive Director ensure that all staff receive performance evaluations each year. In a report on implementation of this recommendation, a PHRC official stated that, although a monitoring system is now in place for performance evaluations, there remain areas where evaluations are not completed regularly.

A review of a sample of 18 personnel files for PHRC investigative staff indicates that most had received a recent performance evaluation as required. Of 18 files reviewed, 16 included performance evaluations completed within the past year.

Personnel files for all management and supervisory personnel identified by the headquarters personnel office as of May 23, 1990 were also checked by LB&FC staff. Only 5 of 37 management and supervisory personnel whose files were reviewed had a performance evaluation completed for their position since 1987. The three Regional Directors last had formal evaluations in August 1986. The only region in which a majority of the supervisors had recent performance evaluations was the Harrisburg Regional Office. In the other regional offices, some supervisors could not remember when they last had a performance evaluation, and personnel files indicate that some had never received a formal evaluation.

The PHRC is located within the Governor's Office for administrative purposes, and it is required to follow the Managers, Supervisors and Professional and Technical (MSPT) evaluation system as described in Management Directive 540.6 dated May 6, 1988, which requires annual evaluations of managers and supervisors. Most PHRC

employees are also covered by Civil Service regulations which require annual performance evaluations.

The PHRC also has a specific policy, dated February 1988, which requires annual evaluations and quarterly reviews for all employees covered under the MSPT performance appraisal system. Additional memos from the Executive Director in May 1988 and June 1989 stress the importance of completing annual evaluations.

The regional directors in Pittsburgh and Philadelphia stated that they recognize that formal annual evaluations should be done on their supervisory staff but that other priorities do not allow the time to do them properly. One indicated that had he been able to find the time to do regular evaluations for his supervisors he might have been able to correct a personnel problem sooner than was the case. Both regional directors indicated that they provide informal feedback on a regular basis and that their supervisors know where they stand in their job performance.

The PHRC's Personnel Director reported that the agency is getting better at meeting its requirements in this area and that the Commission especially emphasizes performance evaluations for new employees. Program priorities, however, reportedly often take precedence over personnel issues despite memos and phone calls on the subject.

RECOMMENDATION

1. *The PHRC should identify agency personnel who have not received formal, written performance evaluations and make it a priority to complete these evaluations by the end of the current fiscal year.*

J. INDICATIONS OF SATISFACTORY PHRC DECISION MAKING

Various measures reviewed by LB&FC staff indicate acceptance of PHRC decisions by reviewing bodies. During calendar years 1987 through 1989, 41 decisions on cases of alleged discrimination were rendered by the Pennsylvania Human Relations Commission (PHRC) subsequent to a public hearing. Fourteen of these decisions were appealed to Commonwealth Court. Of these appeals, four were vacated and remanded to the Commission for further action or were reversed by the court.^{1/} This reversal/remand rate, although higher than that for three agencies which perform similar quasi-judicial functions, is based on too small a number of appeals to draw any definitive conclusions.

As a second measure of the quality of PHRC decision making, LB&FC staff examined PHRC case acceptance rates for both the EEOC (Equal Employment Opportunity Commission) and HUD (U.S. Department of Housing and Urban Development). The EEOC accepted 97.8 percent of PHRC cases submitted for reimbursement during 1989. HUD accepted 100 percent of cases submitted for reimbursement during the past four years.

DISCUSSION

During calendar years 1987 through 1989, the PHRC handled over 12,000 cases of alleged discrimination. During this time, the Commissioners were required to render only 41 decisions, as the vast majority of cases are resolved without going to the level of a public hearing. Fourteen, or 34 percent, were appealed to Commonwealth Court. Of the decisions which were appealed, four, or 29 percent, were vacated and remanded to the Commission for further action or were reversed by the court. In addition, five decisions were affirmed, one decision was affirmed in part and vacated in part, two appeals were withdrawn, and two appeals were still pending as of October 1990. Three of these cases were appealed from the Commonwealth Court to the Pennsylvania Supreme Court. The Court declined to hear one appeal, two others were still pending as of October 1990.

The PHRC's rate of reversal/remand is higher than the rates of three other agencies contacted by LB&FC staff which perform quasi-judicial functions. The Labor Relations Board, the Unemployment Compensation Board of Review, and the Probation and Parole Board of Review had average reversal/remand rates of zero percent (18 appeals), 17 percent (1,114 appeals), and 6 percent (285 appeals) respectively over the same two-year period. While these

^{1/}When a decision is vacated and remanded, the case is returned to the PHRC for further proceedings. In contrast, when a decision is reversed, the court itself issues a final decision in the case.

differences in reversal/remand rates exist, the number of PHRC decisions appealed appears too small to draw any definite conclusions about the quality of PHRC decisions in comparison to decisions of other state agencies.

Acceptance rates for cases handled by the PHRC for both the EEOC (employment discrimination) and HUD (housing discrimination) are within federally established limits. Because the PHRC is a "certified" agency, the EEOC reviews only a portion of cases submitted by the PHRC for reimbursement. The EEOC's "Substantial Weight Review Procedures" set forth the standards and procedures governing EEOC's review of the PHRC's cases.

Criteria for case acceptance include the presence in the case file of all necessary and relevant documentation of the case such as letters of closure, evidence of substantial investigation, determination of jurisdiction, and copies of conciliation agreements. As long as the PHRC maintains at least a 95 percent acceptance rate, the PHRC will remain certified. (If the PHRC fails to maintain this minimum acceptance rate, the EEOC reportedly will begin to review each case submitted for payment.) The PHRC's aggregate acceptance rate for 1989 was 97.8 percent (759 cases were reviewed, 742 were accepted for payment.) An EEOC official reported that this rate of acceptance is comparable to other agencies in the Philadelphia district of the EEOC.

LB&FC staff also reviewed HUD case acceptance rates. According to an official of HUD's Philadelphia Regional Office, all housing discrimination cases submitted by the PHRC to HUD have met HUD requirements and have been accepted for reimbursement. Standards established by HUD include documentation of proper jurisdiction, proper identification of respondent, property, events, and basis of allegation, copies of conciliation agreements, and evidence of sufficient investigation. Occasionally, cases have had to be returned to the PHRC for minor corrections; however, no cases have been rejected for reimbursement.

K. ALTHOUGH GENERALLY SATISFIED, SOME PHRC CLIENTS INDICATED CONCERNS ABOUT THE IMPARTIALITY OF CERTAIN PHRC STAFF

A majority of complainants and respondents contacted during this study perceived that PHRC investigations were conducted in a thorough and fair manner. The Pennsylvania Human Relations Commission (PHRC) complaint investigative process requires impartiality on the part of PHRC staff in the initial stages of complaint investigation, and the Commission stresses impartiality in its policy guidelines and training sessions for newly assigned staff. However, a number of sources indicated that they perceived some PHRC representatives as being biased against those charged with discrimination. Several persons who filed complaints also expressed concern that their cases were not handled in a fair manner by the PHRC. Commission actions to promote impartial investigations and to strengthen its image as an unbiased agency are suggested.

DISCUSSION

PHRC's complaint handling policies and procedures establish that, prior to a finding that probable cause exists for crediting the allegations of the complainant, the Commission is to act as a neutral, fact-finding body. PHRC Human Relations Representatives (HRRs) who conduct the investigations are to seek the facts surrounding the allegations in the complaints and represent the Commission and the Commonwealth in an impartial manner. Not until after a finding of probable cause has been established are the HRRs, along with certain other staff, to act as advocates for the complainant.

The majority of those contacted during this audit indicated that the PHRC investigated complaints in a fair and thorough manner. Example comments include:

The Commission has always acted with fairness and understanding as far as this agency is concerned.

I feel my investigator was honest about my chances and sympathetic to my situation. I appreciated his help. He investigated the counter charges quite well.

I was pleased with the outcome. I feel the person who handled my case was very fair.

However, several indicated that they perceived some HRRs as being biased against respondents (typically employers) during investigations. Seven of the 35 respondents (20 percent) who returned an LB&FC survey indicated that PHRC investigative personnel failed to maintain a neutral approach and instead acted as advocates for the

complainants during the investigation process. Listed below are several concerns expressed by individuals who had been respondents in recent PHRC cases:

. . . the majority of PHRC staff are polite and courteous. There are several who are neither and who are in addition to being difficult to deal with are not knowledgeable in the field but allow personal beliefs to cloud their judgement.

Investigators should not be advocates for the complainant; they should be independent, unbiased, fair, unprejudiced, etc. They should listen, and not prejudge the case.

. . . some of the [PHRC] representatives need to be periodically reminded that they are to be neutral and not advocates for the complainant.

The employer is assumed guilty unless they can prove otherwise.

The following concerns were expressed in response to an LB&FC survey sent to selected state agencies which have been involved with the PHRC on issues of discrimination:

. . . there have been instances where the primary concern of the fact-finder was subjectively pursuing culpability of [this agency] rather than engaging in an objective fact-finding investigation.

The HRC should operate in a businesslike and even-handed manner. Agencies and organizations should not be assumed guilty when accused by a disgruntled customer or employee. Accusations of the most frivolous nature are accepted as true and the HRC acts as if we are guilty.

Additionally, a representative of the Pennsylvania Chamber of Business and Industry also indicated that he had recently received two calls from employers who perceived that PHRC investigators were hostile and confrontational in handling cases in which these employers were named as respondents.

Twelve of the 29 complainants who responded to an LB&FC survey indicated that the PHRC had not done a thorough and fair job in investigating the complaints they had filed. Three of these individuals specifically expressed the following concerns regarding their experience with PHRC investigations:

. . . they have a tendency to favor the [affluent] large company people rather than the individual filing the complaint.

. . . all my statements had to be proven with documentation but [the] company's arguments were accepted at face value.

Fair means listening to both sides. Apparently, my complaint did not compare to the city of Pittsburgh's complaint.

An official of EEOC's Philadelphia Regional Office, whose investigators handle cases in Pennsylvania, stated that it was difficult if not impossible to satisfy both the complainant and the respondent in each case. He added that one party, and in some cases both parties, will often complain that the investigator was biased. PHRC's Executive Director indicated that, in his opinion, complaints of bias on the part of PHRC investigators are generally made by the party that is losing, and that complainants sometimes charge bias when the investigation results in a finding of no probable cause.

The PHRC has taken steps to emphasize the importance of maintaining impartiality in its investigations. The PHRC Compliance Manual makes the following points regarding impartiality during the investigation stage (i.e., prior to a probable cause finding):

. . . the investigation will be impartial, and the findings based on the evidence discovered.

The HRR will be neither a judge nor an advocate . . . seek the facts . . . encourage both parties to present . . . evidence.

The HRR will not only be impartial, but convey the appearance and image of impartiality.

PHRC legal counsel describes a bifurcation, or splitting of staff responsibilities, which occurs when probable cause is determined. Subsequent to the finding of probable cause, the Commissioners, hearing examiner, and panel advisor (the adjudicatory branch) remain neutral. However, once an investigation is complete, fact-finding/conciliation fails, and there is a finding of probable cause, the HRR (and certain other PHRC staff members) become advocates for the complainant. This shifting of roles may contribute to the perception by respondents that the HRR is not impartial in their cases.

According to PHRC officials, the importance of impartiality during investigations is stressed at training sessions for newly assigned PHRC staff. The PHRC Executive Director also stated that corrective actions have been taken by the Commission in cases in which HRRs did not follow prescribed policies and procedures. At the present time, impartiality is not formally identified as a specific performance standard in the PHRC evaluation process for

investigative personnel. However, standards are included which relate to stating findings in clear, concise statements of fact supported by evidence in the case file.

The Pennsylvania Human Relations Act, as amended in 1986, calls for the PHRC to afford complainants and respondents the opportunity for comments after the final disposition of a complaint and for these comments to be provided to Commission members. PHRC accomplishes this by sending standard closing letters informing the parties of this right, as well as their appeal rights. PHRC officials report that, on average, two responses to these letters are received each month and are provided to the commissioners as part of the compliance package. Although these letters do not ask specifically for comments regarding fairness or impartiality, they do provide a mechanism for feedback to the PHRC which could include these areas. A majority of the 12 responses to these letters received from February through August 1990 contained positive feedback on the manner in which the PHRC conducted investigations. Several, however, expressed dissatisfaction with the results of the investigations and with the manner in which the cases were handled.

RECOMMENDATIONS

1. *The PHRC should strengthen the process of obtaining feedback from both complainants and respondents after their cases have been closed to determine if the investigators who worked on their cases acted in an unbiased and impartial manner. For example, the Commission could specifically request information pertaining to fairness or impartiality in the closing letters sent to PHRC complainants and respondents. Using such information, the PHRC should take follow-up action at the regional office level as may be needed to ensure that staff appropriately carry out their duties with respect to the Commission's policy of impartiality.*
2. *The PHRC should consider including impartiality as a performance standard for investigators as part of their annual performance evaluations.*

L. ABSENCE OF AUTHORITY TO AWARD ATTORNEY'S FEES

In contrast with commissions in several other states and certain federal agencies, the Pennsylvania Human Relations Commission (PHRC) does not have the authority to award attorney's fees to a person who has filed a complaint when it determines that the respondent in the case has engaged in unlawful discrimination. PHRC officials pointed out that, while most respondents are represented by counsel, most complainants cannot afford attorneys and are, therefore, at a disadvantage, particularly in the early stages of an investigation. Complainants may also be discouraged from obtaining legal counsel because they cannot expect to recover legal fees given the PHRC's current authority unless they take their cases to federal court following the PHRC decision. The PA Judicial Code lists, as one of ten conditions in which participants in court cases are entitled to receive a reasonable attorney's fee, the case where conduct by the party commencing the matter was arbitrary, harassing, or in bad faith. This suggests that awards of attorney's fees might also be appropriate to respondents in PHRC cases in which the complaint was patently false or malicious. Such a provision for PHRC cases could serve to discourage the filing of frivolous or retaliatory complaints. Recommendations to provide for this are suggested for the General Assembly's consideration.

DISCUSSION

At the present time, the Pennsylvania Human Relations Act does not permit the award of attorney's fees to a successful complainant. In some cases attorney's fees are included in the settlement; however, this occurs only when requested by the complainant and agreed to by the respondent, and not because the Commission has the authority to make that award.

Several PHRC officials suggested that the PHRC should have the authority to award attorney's fees, citing that, while most complainants cannot afford to pay for an attorney, almost all respondents are represented by legal counsel. They pointed out that complainants without legal counsel are at a disadvantage, and that complainants with counsel during the early stage of the investigation have assistance in presenting their case and negotiating voluntary settlements. The staff of the PHRC cannot serve that function, since the role of an investigator, prior to the finding of probable cause, is to be a neutral and impartial investigator.

According to PHRC officials, complainants are discouraged from obtaining legal counsel on their own because they cannot expect to recover legal fees based on the PHRC's current authority. In addition, they pointed out that it is unrealistic to expect an attorney to work on a contingency fee basis for complainants, since the dollar value of potential remedies in many cases is very

low. For example, many employment discrimination cases involve back pay awards of under \$1,000. In addition, many employment complaints involving harassment or terms and conditions of employment, housing cases, and public accommodation cases have no monetary award involved.

For the purpose of comparison, LB&FC staff reviewed the legal provisions for the award of attorney's fees in New Jersey, New York, Maryland, Ohio, Florida, Illinois, and Michigan. In five of these seven states, there are provisions for the Commission on Human Relations or its equivalent to award reasonable attorney's fees to successful complainants. Ohio authorizes its Civil Rights Commission to require the respondent to pay actual damages and reasonable attorney's fees in cases involving a violation of the Fair Housing provisions; however, the award of attorney's fees is not authorized for other unlawful discriminatory practices. New Jersey's "Law Against Discrimination" provides that the prevailing party may be awarded reasonable attorney's fees as part of the cost, provided, however, that no attorney's fees shall be awarded to the respondent unless there is a determination that the charge was brought in bad faith.

At the federal level, courts and designated federal agencies are, in civil rights cases, authorized to award fees and other expenses to a prevailing party in a proceeding at which they preside. For example, federal law provides for the award of attorney's fees to a prevailing party under specified civil rights provisions. A court may also award a prevailing party attorney's fees under Title VII of the Civil Rights Act of 1964. Additionally, the Department of Housing and Urban Development (or a court) may award a prevailing party attorney's fees under the Fair Housing Act.

The award of attorney's fees is authorized by Pennsylvania statute in certain other similar situations. For example, the Minimum Wage Act of 1968, as amended, 43 P.S. §333.113, states that:

If any employe is paid by his or her employer less than the minimum wages provided by Section 4 of this act or by any regulation issued thereunder, such worker may recover in a civil action the full amount of such minimum wage less any amount actually paid to the worker by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court,

In the Workmen's Compensation Act, 77 P.S. §996, attorney's fees and other costs can be awarded in certain contested cases regarding liability.

In any contested case where the insurer has contested liability in whole or in part, the employe or his dependent, as the case may be, in whose favor the matter at issue has been finally determined shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee . . . Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established . . .

The Pennsylvania Judicial Code, 42 Pa. C.S. §2503, lists 10 situations in which participants in court cases shall be entitled to receive a reasonable counsel's fee as part of the taxable costs in the matter. According to this provision, "Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious, or in bad faith," is entitled to a reasonable counsel fee as part of the taxable costs of the matter.

While it is not possible to predict precisely what the actual effect would be if the PHRC were given the authority to award attorney's fees to complainants, PHRC officials offered several possible expectations. They suggested that complainants with legal counsel during the investigation would be better able to present their cases and negotiate voluntary settlements; this could lead to earlier settlements because of the threat to respondents of having to pay attorney's fees. However, the Chief Counsel for the PHRC indicated that some cases could be dragged out longer if both sides were represented by attorneys.

According to the Chief Counsel, the primary impact would be that a complainant would be more fairly represented and that having a respondent liable for greater damages could increase the deterrent effect of the law. Finally, the Chief Counsel noted that having more private attorneys handle discrimination cases before the PHRC would free the PHRC legal staff to concentrate on a smaller number of cases in which PHRC attorneys represented complainants. This could expedite their legal review process, which might help reduce the current case backlog.

If the Pennsylvania Human Relations Act were amended so that the PHRC had the authority to award attorney's fees both to complainants and respondents under certain circumstances, some additional effects could be expected. Such a provision could reinforce the PHRC's policy that it is to be objective and impartial in its approach to adjudicating complaints. It could also serve to discourage complainants from filing frivolous, false, or vindictive complaints.

While the PHRC's Executive Director supports the proposal that the PHRC be granted authority to award attorney's fees to successful complainants, he is opposed to the provision which would permit attorney's fees to be awarded to respondents in the

case of false or malicious complaints. He predicted that if the latter provision were implemented, the PHRC would be inundated with petitions for attorney's fees from respondents whose cases had not been found to involve probable cause. He also questioned the ability of most complainants to pay for respondents' attorney's fees if they were directed to do so.

RECOMMENDATION

1. *The General Assembly may wish to consider amending the Pennsylvania Human Relations Act to permit a successful complainant to obtain reasonable attorney's fees. In addition, the General Assembly may wish to consider amending the act to allow a respondent to obtain reasonable attorney's fees if the complainant is found to have filed a complaint that was patently false or malicious. If the latter provision is included in an amendment, the language should be appropriately limiting so that a respondent could recover attorney's fees only in cases in which the complainant was found to have acted in bad faith.*

M. NEED FOR CURRENT PROGRAM TO PREVENT DISCRIMINATION IN EDUCATIONAL INSTITUTIONS

The Pennsylvania Human Relations Commission (PHRC) has not maintained a comprehensive program or plan to eliminate and prevent prejudice and discrimination in educational institutions as is required by statute. A document issued in 1973 continues to be the PHRC's guideline for programs that colleges and universities should implement to eliminate and prevent prejudice and discrimination. The PHRC should develop a comprehensive program to eliminate and prevent prejudice and discrimination in educational institutions.

DISCUSSION

The PHRC is required by the PA Fair Educational Opportunities Act to formulate and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions.¹⁷ Although the PHRC has developed guidelines for reducing discrimination in institutions of higher education, these guidelines were developed in 1973 and have never been updated. The PHRC does not have a written program for preventing discrimination in other types of post-secondary schools (e.g., business and secretarial schools).

The need for continued involvement by the PHRC to prevent discrimination on college and university campuses was demonstrated in a June 1990 report of the House Education Committee. This report, while applauding the PHRC's efforts in addressing racial tension on college campuses, encourages the PHRC to ensure that all campus police officers and other local security forces have an opportunity for training on provisions of the Ethnic Intimidation Act. The Committee also indicated concern that the PHRC reported a lack of adequate resources to effectively monitor racial tension situations and recommended that the General Assembly support the expanding efforts of the PHRC. In October 1990 the PHRC Executive Director submitted to the Secretary of Education and the Chancellor of the State System of Higher Education a proposal to initiate cooperative activities to implement recommendations contained in the House Education Committee report.

RECOMMENDATION

- 1. The PHRC should develop a comprehensive written program to address discrimination in educational institutions, including post-secondary schools other than colleges and universities.***

1/As defined by this act, the term "educational institution" generally refers to post-secondary institutions (including schools, colleges, or universities incorporated or chartered by law, except religious or denominational educational institutions).

N. PHRC'S PROPOSED AMENDMENTS TO THE PA HUMAN RELATIONS ACT

In late August 1990 the Pennsylvania Human Relations Commission (PHRC) provided LB&FC staff with a number of proposed amendments to the Pennsylvania Human Relations Act which the Commission believes the General Assembly should consider during the sunset review process. These amendments include both technical, "clean-up" type changes necessary as a result of amendments made during the 1986 sunset review process and substantive changes in the statute, such as including protection for agricultural workers under civil rights laws and adding "sexual orientation" and "marital status" to the list of protected classes under the PHRA. In addition, some of the PHRC proposed amendments would expand PHRC's investigatory authority and its authority to assess penalties.

Appendix G, beginning on page 99 of this report, is a copy of the document provided to LB&FC staff by the Executive Director of the PHRC. One of the proposed amendments (#10) pertains to changes related to the 1988 amendments to the federal Fair Housing Act which is discussed in Finding G of this report. Another proposal (#4) may impact on PHRC's case processing delays as discussed in Finding D of this report. Certain other proposed amendments relate to policy questions which are not specifically addressed in this report but which the General Assembly may wish to consider during the sunset review process.

III. STATUS OF SELECTED FINDINGS FROM PRIOR AUDITS

During the past five years several state and federal agencies have conducted audits of the PHRC focusing on overall organizational performance, personnel management, computer support, and case management. For the purposes of follow-up on the implementation status of prior audit findings, LB&FC staff chose 24 recommendations, of a total of 82, which were deemed most material and significant. Although the PHRC did not agree with all the 24 recommendations reviewed, it has made at least partial implementation of the recommended action in nearly 80 percent of the cases.

LB&FC staff reviewed four audits which were conducted of the Pennsylvania Human Relations Commission during the period from 1984 through 1989. These included:

- December 1984 sunset performance audit conducted by the Legislative Budget and Finance Committee.
- Annual (1986 through 1989) performance audits conducted by the U.S. Department of Housing and Urban Development (HUD).
- November 1987 operational audit conducted by the Audit Division of the Office of the Budget's Central Services Comptroller's Office.
- January 1988 personnel management review conducted by the Management Review Division of the Office of Administration's Bureau of Personnel.

Each of these audits focused on different areas of the operations of the PHRC and made pertinent comments and recommendations. The 1984 LB&FC sunset audit (containing five recommendations) focused generally on the performance of the PHRC (using the sunset criteria as the guidelines), while the HUD audits (containing a total of nine recommendations) focused on the performance of the PHRC Housing Division in its handling of housing discrimination cases. The Comptroller's Audit (containing four broad recommendations) focused mainly on computer support in PHRC's operations and PHRC's use of EDP resources. The 1988 personnel management review contained 64 recommendations. These recommendations centered around personnel-related issues such as classification, training, and supervision.

Of the 82 recommendations contained in the 4 audit reports, 24 issues were selected as among the most material and significant. (Two recommendations were chosen from the LB&FC audit, 4 from the Comptroller's Office audit, 5 from the HUD audit reports, and 13 from the Bureau of Personnel's review.)

The PHRC agreed with 11 of these 24 recommendations. The PHRC reported completing implementation as recommended for 4 of the 11 recommendations, implementation of 2 was in progress, and implementation of 5 recommendations had been completed on a modified basis. The PHRC disagreed with 4 of the recommendations and no action had been taken or was planned. The remaining 9 recommendations the PHRC agreed with in part and disagreed with in part. The PHRC varied in its degree of implementation of the various recommendations. Please see Exhibit 9 for a complete list of identified recommendations and the PHRC's reported status of implementation for each one.

Actions undertaken as a result of audit recommendations include revision of the "Compliance Manual," improvement of filing systems, development of security and backup procedures for computer systems, and development and monitoring of employee probationary periods.

Certain recommended actions were not undertaken by the PHRC (most notably from the personnel management review) because the PHRC did not concur with the recommendations. These included:

- The PHRC did not, as recommended, develop an accident statistical report (PHRC did not believe that the number of accidents incurred by PHRC personnel warranted a separate statistical report).
- The PHRC did not separate the duties of the Personnel Officer/Affirmative Action Officer (PHRC reasoning was that the Personnel Officer had much experience with affirmative action and that the operations of the PHRC were not large enough to warrant two separate persons for these positions).
- The PHRC disagreed with the recommendation to conduct a staffing study because it was felt that, while the staffing levels were clearly inadequate, staffing levels are set by the budget process, and as such were beyond the control of the PHRC.

Recommended actions which were accomplished by the PHRC on a modified basis include partial implementation of an automated case management system, contingent on budget allocations and EDP plan approvals. In addition, it had been recommended that work standards be developed for the Personnel Officer and her staff and that they be evaluated yearly. This action has been taken; however, these evaluations are not yet current. It was also recommended that the form and content of intake questionnaires be altered. The PHRC considered this and determined that only minor modifications were necessary.

EXHIBIT 9. IMPLEMENTATION STATUS OF SELECTED PRIOR AUDIT RECOMMENDATIONS

	PHRC Agrees With Recommendation	PHRC Disagrees With Recommendation
	Action Taken In	No Action Taken/
	Completed	Planned
	Progress	Other
	Modified	

Selected Recommendation

1984 Legislative Budget and Finance
Committee Sunset Performance Audit

1. Procedures in the PHRC Compliance Manual should be followed by Commission staff or be adjusted.

X
(PHRC believed the recommendation was based on a lack of clarity. The manual is reportedly under revision.)

2. PHRC should review case load to locate all open cases. Cases should be filed to prevent further loss of cases. Cases should be logged in an automated case management system.

X

(Continued)

	PHRC Agrees With Recommendation		PHRC Disagrees With Recommendation	
	Action Taken In Completed Progress	Modified	No Action Taken/Planned	Other

Selected Recommendation

1987 Comptroller's Audit

1. PHRC should design an all encompassing case management and tracking system. Should review resources necessary to develop this system and develop an implementation plan.
2. Written policies should be developed for micro-computers such as security and procedures for operation of EDP equipment.
3. Written guidelines should be developed for backup and recovery procedures.
4. PHRC should analyze the use and format of intake questionnaires.

X

X

X

X
(PHRC reportedly reviewed intake questionnaires and made minor modifications.)

Department of Housing and Urban Development (HUD) Annual Evaluations (1986-89)

1. Devise procedures to shorten the time taken for concurrence at different levels on what should be done with a case.

X
(PHRC agreed there was a problem/disagreed on cause.)

(Continued)

PHRC Agrees With Recommendation PHRC Disagrees With Recommendation

<u>Action Taken In Progress</u>	<u>No Action Taken/Planned</u>
<u>Completed</u>	<u>Modified</u>
<u>Other</u>	<u>Other</u>

Selected Recommendation

2. The Executive Director (ED) should ensure that all staff receive performance evaluations each year. Follow-up action should be taken when supervisors submit evaluations.

3. Personnel Officer (PO) should conduct training needs assessment and then develop and implement a training plan for 1988-89.

4. All managers should be scheduled for classification training. Job descriptions should be reviewed by supervisors to ensure that they are current.

5. Separate the duties of the Personnel Officer/Affirmative Action Officer.

6. Assure that employee probationary standards exist for all positions and that periods are monitored.

7. The ED should make managerial staff aware of employee perception of inconsistent application of work rules. Consider placing time monitoring responsibility with direct supervisors.

b/The PHRC reported that the PO/AA officer had extensive affirmative action experience and that there are no extra personnel to assume such an important responsibility.

(Continued)

	PHRC Agrees With Recommendation		PHRC Disagrees With Recommendation	
	Action Taken In Progress	Completed	No Action Taken/Planned	Other

Selected Recommendation

8. The ED should develop standards for the PO and evaluate her. The PO should develop standards for Personnel Office staff.

X

9. Emphasis should be placed on developing supervisory skills.

X

10. Assure that proper documentation of personnel actions and notification of employee procedures are followed.

X

11. The PO should discontinue the practice of updating employee history cards and rely on PMS reports.

Xc/

12. The PO should conduct workload studies to determine if staffing levels are adequate and if productivity can be improved.

Xd/

13. The ED should develop a sick leave reduction goal and inform the staff of its existence.

X
(The PHRC does not believe that there is significant sick leave abuse.)

c/The PHRC reports that the cards have been very useful for a variety of purposes and their use will be continued.

d/The PHRC states that staffing levels and requirements are documented in the annual budget process; and, although staffing levels are clearly inadequate, rectifying this situation is beyond PHRC control.

Source: Developed by LB&FC staff from prior audit reports and information provided by PHRC staff.

IV. BACKGROUND DESCRIPTIVE INFORMATION ABOUT THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

Legal Background

Act 1955-222, the Pennsylvania Fair Employment Practice Act, created the Pennsylvania Fair Employment Practice Commission. Act 1961-19 renamed the Pennsylvania Fair Employment Practice Act the Pennsylvania Human Relations Act (PHRA) and changed the Commission's name to the Pennsylvania Human Relations Commission (PHRC). Among the powers and duties granted to the PHRC by the PHRA, 43 P.S. §951 et seq., are (1) to formulate rules, regulations, and policies to effectuate the provisions of the act, (2) to investigate and adjudicate charges of unlawful discriminatory practices, and (3) to create advisory councils to aid in carrying out the purposes of the act.

The PHRA sets forth as an enforceable civil right the opportunity for an individual to obtain employment for which he or she is qualified and to obtain all the accommodations, advantages, facilities, and privileges of any public accommodation and commercial property without discrimination because of race; color; religious creed; ancestry; handicap or disability; age (40 to 70); sex; national origin; or the use of a guide or support animal because the user is blind, deaf, or physically handicapped; or because the user is a handler or trainer of support or guide animals. The PHRA also states that it is an unlawful discriminatory practice to discriminate based upon a willingness or refusal to participate in abortion or sterilization procedures.

Since 1955, the PHRA has been amended and broadened numerous times. (See Appendix E for a detailed listing and a brief description.) For example, the Act was expanded in 1961 (Act 19) to prohibit discrimination in the selling, leasing, or financing of housing and to prohibit discrimination in public accommodations; in 1967 (Act 284) to cover employers of four or more persons; in 1969 (Act 56) to prohibit discrimination because of sex; in 1974 (Act 318) to prohibit discrimination because of handicap or disability; in 1980 (Act 198) to prohibit discrimination against a person who has a general education development certificate as compared to a high school diploma; and in 1982 (Act 288) protection against age discrimination in employment was broadened to cover persons 40 to 70. In 1986, pursuant to the Sunset Act, 71 P.S. §1795.1 et seq., the Commission was reestablished until December 31, 1991, when it will terminate unless it is again reestablished pursuant to that act.

In addition to the duties and responsibilities enumerated in the PHRA, the Commission is also charged to enforce the provisions of the Pennsylvania Fair Educational Opportunities Act, Act 1961-341, as amended, 24 P.S. §5001 et seq. The Pennsylvania Fair

Educational Opportunities Act declares that it is the policy of the Commonwealth that all persons shall have equal opportunities for education regardless of their race, religion, color, ancestry, national origin, or sex. Among the powers and duties charged to the Commission by this act are (1) to make visits to educational institutions, except religious or denominational institutions, within the Commonwealth, for the purpose of examining and studying the procedures and practices used in the selection of students, (2) to formulate, recommend, and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions, (3) to initiate, receive, investigate, and seek to adjust all complaints of unfair educational practices, (4) to issue orders requiring educational institutions to cease and desist from any unfair educational practices and to secure enforcement of the order of the Commission or other appropriate relief, and (5) to adopt, amend, modify, or rescind rules and regulations as may be necessary to effectuate the purposes of the act. Additionally, a court decision, Pennsylvania Human Relations Commission v. Norristown Area School District, 473 Pa. 334, 374 A.2d 671 (1977), empowered the Commission to take steps to eradicate racial segregation found to exist within the school population of any Pennsylvania school district.

The Commission is a nonpartisan, departmental, administrative commission located in the Governor's Office. For the purpose of appointing attorneys, the Commonwealth Attorneys Act, 71 P.S. §732.101 et seq., defines the Commission as an independent agency, thus empowering the Commission to appoint and fix the compensation of a chief counsel and such assistant counsels as it deems necessary or to request legal services from the Office of General Counsel.

Commission Powers and Duties

The primary mission of the PHRC is to identify and prevent discrimination because of race, religious creed, ancestry, handicap or disability, use of guide dogs because of blindness or deafness of the user, age, sex, or national origin in employment, housing, education, and places of public accommodation, and to foster and promote equal opportunity. The specific powers and duties of the Commission are set forth in the PHRA and the Pennsylvania Fair Educational Opportunities Act.

Pennsylvania Human Relations Act

As defined in the PHRA, 43 P.S. §951 et seq., Act 1955-222, as amended, the Commission has the following specific powers and duties:

1. To establish and maintain a central office in the City of Harrisburg.

2. To meet and function at any place within the Commonwealth.
3. To appoint such attorneys and permanent hearing examiners and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.
 - a. To conduct mandatory training seminars under the PHRA and other applicable federal and state law procedures and rules for all investigative personnel.
 - b. To afford complainants and respondents the opportunity for comments after the final disposition of a complaint.
 - c. To appoint attorneys to perform the following functions: render legal advice to Commission members on the matters appearing before it, or give legal assistance to complainants appearing before the Commission or Hearing Examiners.
4. To adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of the Act.
5. To formulate policies to effectuate the purposes of the Act, and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government, or board, department, commission, or school district thereof to effectuate such policies.
6. To initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices.
 - a. To investigate where no complaint has been filed, but with the consent of at least eight of the members of the Commission any problem of racial discrimination with the intent of avoiding and preventing the development of racial tension.
 - b. On request of the Governor, to investigate claims of excessive use of force by police in a civil rights protest activity.
7. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any persons under oath or affirmation and in connection therewith, to require the production for examination of any books or papers relating to the matter under their investigation where the complaint has been properly filed before the Commission.

8. To inspect upon request any such records of the Commonwealth or political subdivision, board, department, commission, or school district thereof as it may deem necessary or advisable to carry into effect the provisions of the Act.
9. To create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this Act.
10. To issue such publications and such results of investigations and research as, in its judgement, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability.
11. From time to time but not less than once a year to report to the General Assembly and the Governor describing in detail the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, and the other work performed by it, and make recommendations for such further legislation concerning abuses of discrimination as may be desirable.
12. To prepare and distribute fair practices notices.
13. To submit annually a report to the Labor & Industry Committee of the Senate and the State Government Committee of the House with description of types of complaints received, status of cases, commission action which has been taken, and how many were found to have probable cause, how many were resolved by public hearing, and the length of time from the initial complaint to final Commission resolution.
14. To notify local human relation commissions of complaints received by the PHRC involving persons within a commission's jurisdiction.
15. To prepare and publish all findings of fact, conclusions of the law, final decisions and orders made after public hearings by the Hearing Examiners, Commission panel, or full Commission.
16. To give public access to the Commission's compliance manual.
17. To preserve options rendered by the Commission for five years from the date of publication.

Pennsylvania Fair Educational Opportunities Act

As defined in the Pennsylvania Fair Educational Opportunities Act, Act 1961-341, 24 P.S. §5001 et. seq., the Commission is hereby vested with the following powers and duties:

1. To make visits when deemed advisable to each of the educational institutions, except religious or denominational institutions, within the Commonwealth for the purpose of examining and studying the procedures and practices used in the selection of students.
2. To make studies of the various forms and uses of transcript of records employed by the educational institutions, except religious or denominational institutions, and of standards, procedures, practices and criteria used with respect to recommending and approving students for further education at said educational institutions.
3. To make whatever studies that may be necessary to aid in carrying out its functions, including studies to determine factually, the total number of students applying each year to educational institutions within the Commonwealth, the number of them finally accepted, and the basic factors which determine whether an applicant will be accepted or rejected by such institutions.
4. To formulate, recommend and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions.
5. To formulate policies to carry out the purposes of the Act and to make recommendations to any or all of the educational institutions included under the provisions of the Act to effectuate such policies.
6. To adopt, amend, modify or rescind such rules and regulations as may be necessary to carry out the functions of the Commission and to effectuate the purposes and provisions of the Act.
7. To initiate, receive and investigate and seek to adjust all complaints of unfair educational practices forbidden by the Act.
8. Whenever the Commission in its sole discretion determines that informal methods of conference, conciliation and persuasion have failed to induce the elimination of unfair educational practices, to hold hearings, subpoena witnesses, administer oaths or affirmations, take the testimony of any person under oath or affirmation,

and require the production for examination of any books or papers relating to any matters under investigation or any question properly before the Commission.

9. To issue orders requiring any educational institution of the Commonwealth included under the provisions of the Act to cease and desist from any unfair educational practice and to secure enforcement of the order of the Commission or other appropriate relief.
10. From time to time, but not less than once a year, to render to the Governor and to the Legislature a written report of its activities and recommendations.

Commission Goals and Objectives

As reported by the PHRC Executive Director, the objectives of the Commission relate to case processing activities. Annual projections are developed for the number of new complaints expected to be filed and objectives set for the number of complaints to be closed and the number of informal complaints to be handled. (Informal complaints are inquiries and other issues which are resolved or referred without the need for a formal complaint.)

The projections submitted as part of the Commission's 1990-91 budget request are contained in Exhibit 10. The budget area indicates the projections made the previous year. Projections for future years (i.e., the "update" figures) are contingent upon receipt of the requested funding level.

The objectives for FY 1989-90 were to close 3,906 formal complaints and to process 21,000 informal complaints within quality and procedural requirements. Performance standards for investigators are geared toward accomplishment of these objectives.

Objectives in other operational areas are not yet quantified. They include:

1. To coordinate response to tension situations.
2. To conduct community outreach and information programs to provide information to residents, employers, housing providers, community leaders, and others regarding state civil rights laws and procedures.
3. To review progress of educational institutions and school districts in complying with civil rights laws, guidelines and policies, Commission Orders, approved plans, and state Court Orders.

EXHIBIT 10. PROGRAM MEASURES

CHECK IF RECOMMENDING DELETION	MEASURE	SUBCATEGORY Prevention and Elimination of Discriminatory Practices									
		ACTUAL 1988 to 1989	AVAILABLE 1989 to 1990	BUDGET 1990 to 1991	PLAN. YR. 1 1991 to 1992	PLAN. YR. 2 1992 to 1993	PLAN. YR. 3 1993 to 1994	PLAN. YR. 4 1994 to 1995			
<input type="checkbox"/>	Number of Complaints Pending at Start of FY	Budget 6,327	6,991	7,529	7,881	8,197	8,513				
		Update 6,327	6,551	7,045	6,387	5,945	5,467	4,989			
<input type="checkbox"/>	Number of Complaints Filed During FY	Budget 4,500	4,500	4,500	4,500	4,500	4,500				
		Update 3,757 ¹	4,400	4,400	5,240	5,312	5,312	5,312			
<input type="checkbox"/>	Total Caseload for FY ²	Budget 10,084	10,951	11,445	11,627	11,257	10,779	10,301			
		Update									
<input type="checkbox"/>	Number of Complaints Closed During FY	Budget 3,836	3,962	4,184	4,184	4,184	4,184				
		Update 3,533 ¹	3,906	5,058	5,682	5,790	5,790	5,790			
<input type="checkbox"/>	Number of Complaints Pending at End of FY	Budget 6,991	7,529	7,881	8,197	8,513	8,829				
		Update 6,551	7,045	6,387	5,945	5,467	4,989	4,511			
<input type="checkbox"/>	Number of Pattern Cases Closed	Budget 78	15	15	15	15	15	15			
		Update									
<input type="checkbox"/>	Number of Informal Complaints	Budget 19,000	19,000	19,000	19,000	19,000	19,000				
		Update 22,078	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000

EXPLANATION

1 - Figures were lower than projected because of PSSU strike from July 1-20, 1988.

2 - New measure for 1990-91 Budget.

Source: Pennsylvania Human Relations Commission, FY 1990-91 Budget Request.

4. To develop policies, guidelines, and regulations where appropriate.

Commission Composition and Organizational Structure

The PHRC consists of eleven members appointed by the Governor with the advice and consent of a majority of the Senate. Not more than six of the Commissioners are to be from the same political party. Commissioners hold office for a term of five years or until a successor is duly appointed and qualified. A member failing to attend meetings for three consecutive months forfeits his seat unless the chairperson receives a written notification from the member that the absence was due to personal illness or death or illness of an immediate family member.

Six members of the Commission, or a majority of those duly appointed and qualified, constitute a quorum for transacting business, and a majority vote of those present at any meeting is sufficient for any official action taken by the Commission. Each member of the Commission is entitled to receive per diem compensation at the rate of \$60 per day for the time actually devoted to the business of the Commission, plus reasonable traveling and other expenses. As of September 30, 1990, all Commissioner positions were filled.

Staff Composition and Functions

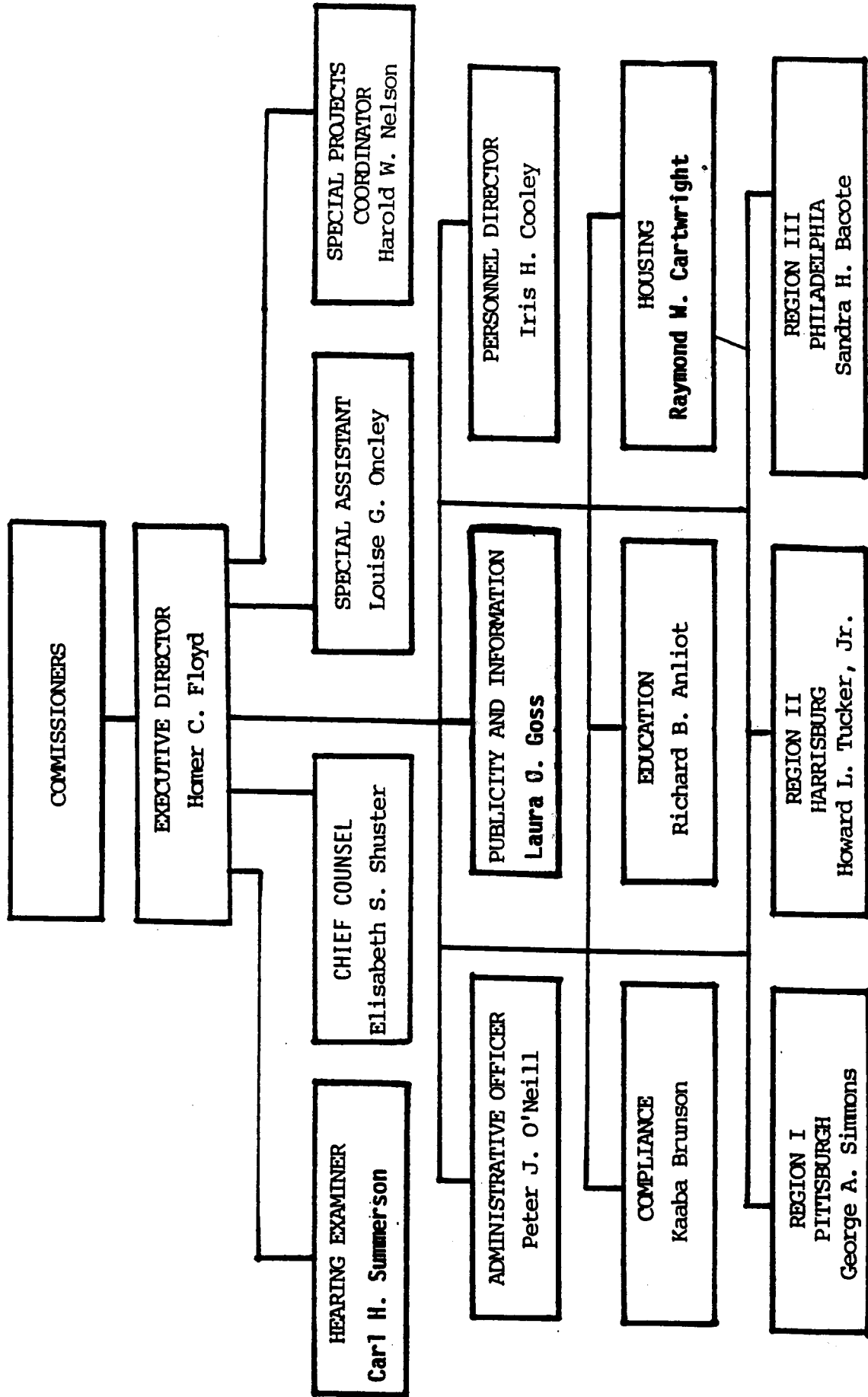
The PHRC has a staff of 174 employees (filled complement as of June 30, 1990) who are located in three regional offices and also at the agency headquarters in Harrisburg (see Table 4). The organizational framework of the PHRC is illustrated in Exhibit 11.

TABLE 4. HEADQUARTERS AND REGIONAL OFFICE BREAKDOWN OF EMPLOYEES OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION (AS OF JUNE 30, 1990)

PHRC Staff	42	Headquarters	Harrisburg
PHRC Staff	47	Regional Office	Pittsburgh
PHRC Staff	44	Regional Office	Harrisburg
PHRC Staff	<u>41</u>	Regional Office	Philadelphia
TOTAL	174		

Source: Developed by LB&FC staff from information provided by PHRC Personnel Office Staff.

EXHIBIT 11. ORGANIZATIONAL CHART OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION



Source: Pennsylvania Human Relations Commission, from the preaudit survey questionnaire.

The PHRC indicated that the Commissioners' time and activities are spent doing the following: 50 percent for public hearing activities, 25 percent for commission meetings and compliance sessions (includes travel time), 10 percent participation in conferences and workshops, and 5 percent for special meetings and other matters (see Exhibit 12). The primary activities of the Commission staff were estimated as 83 percent for receipt, initiation, investigation, and resolution of complaints; 9 percent for the provision of technical assistance and public information regarding discrimination; 4 percent for office administration; 3 percent for policy development; and 1 percent for activities classified as other (see Exhibit 13).

Fiscal Information

The operations of the PHRC are funded from an appropriation from the State General Fund. As shown in Table 5, the FY 1990-91 amount of appropriation was \$8,727,000, of which \$1,652,000 was federal funding.

EXHIBIT 12. PRIMARY ACTIVITIES CARRIED OUT BY THE PENNSYLVANIA HUMAN RELATIONS COMMISSION MEMBERSHIP

<u>Activity</u>	<u>Percentage of Total Commission Effort^a</u>	<u>Brief Description</u>
<i>Public Hearing Activities</i>	50%	Includes action on motions, conducting pre-hearing conferences, conducting public hearings, review of transcripts, evidence, and briefs, determination of decision and rationale, conferences with panel advisor, review of drafts of decisions and other matters.
<i>Commission Meetings and Compliance Sessions</i>	30%	Review of cases closed by Executive Director, official action on motions, orders, petitions and other case activity, approval of final orders, policy determination, review of personnel and financial reports and other matters related to the functions of the Commission.
<i>Participation in Conferences, Workshops, etc.</i>	10%	Exchange of ideas and information with the general public and with governmental officials, as well as sessions to provide training and education to Commissioners on developments in civil rights law.
<i>Special Meetings and Other Matters</i>	5%	Includes consultation with the Executive Director and managers on significant issues and administrative matters.

^a/As estimated by the Pennsylvania Human Relations Commission staff.

Source: Developed by the LB&FC staff from information reported by the Pennsylvania Human Relations Commission in the sunset pre-audit survey questionnaire, January 1990.

EXHIBIT 13. PRIMARY ACTIVITIES CARRIED OUT BY THE PENNSYLVANIA HUMAN RELATIONS COMMISSION STAFF

<u>Activity</u>	<u>Percentage of Total Staff Effort^{a/}</u>	<u>Brief Description</u>
Receipt, Initiation, Investigation, and Resolution of Complaints	83%	Includes all activities related to intake, investigation, complaint resolution, preparation of findings, litigation, determination, administration of case processing, correspondence, and other compliance-related activities.
Provision of Technical Assistance and Public Information Regarding Discrimination	9%	Technical assistance to government, business, attorneys, and others regarding civil rights laws, communication to the general public regarding discrimination, workshops, publications, speeches, work with advisory councils and community groups, response to inquiries from the legislature, and other similar activities.
Administration	4%	Includes all personnel, fiscal, procurement, contracts, and other activities of a purely administrative nature.
Policy Development	3%	Support to the Commissioners in research development and promulgation of regulations, guidelines, policies, and legislative recommendations.
Other	1%	

^{a/}As estimated by the Pennsylvania Human Relations Commission staff.

Source: Developed by the LB&FC staff from the information reported by the Pennsylvania Human Relations Commission in the sunset pre-audit survey questionnaire, January 1990.

TABLE 5. PHRC EXPENDITURES, FY 1979-80 THROUGH FY 1990-91
(IN THOUSANDS OF DOLLARS)

<u>Fiscal Year</u>	<u>State General Fund</u>	<u>Federal</u>	<u>Total</u>	<u>Percent Increase (Decrease) Over Prior Year</u>
1979-80	\$3,884	\$ 679	\$4,563	---
1980-81	4,202	906	5,108	11.9
1981-82	4,264	1,016	5,280	3.4
1982-83	4,538	1,047	5,585	5.8
1983-84	4,544	1,018	5,562	(.4)
1984-85	4,855	1,167	6,022	8.3
1985-86	5,041	1,144	6,185	2.7
1986-87	5,199	856	6,055	(2.1)
1987-88	5,690	811	6,501	7.4
1988-89	6,212	894	7,106	9.3
1989-90 ^{a/}	6,800	1,217	8,017	12.8
1990-91 (Available) ^{b/}	7,075	1,652	8,727	8.9

a/Figures provided by PHRC staff in October 1990; September 30, 1990, Status of Appropriations Report not available as of October 25, 1990.

b/The PHRC reports that \$51,000 of the FY 1990-91 state appropriation was placed in budgetary reserve, and that \$19,000 of the federal appropriation was likewise set aside.

Source: Developed by LB&FC staff from the Governor's Executive Budget, FY 1979-80 through FY 1989-90, Status of Appropriations Report for FY 1990-91 data, and PHRC staff conversations for FY 1989-90 data.

V. APPENDICES

APPENDIX A. PA SUNSET REVIEW AND TERMINATION/CONTINUATION
TIMETABLE

The Pennsylvania sunset cycle timetable as outlined in the Sunset Act, 71 P.S. §1795.1 et seq., appears below:

1. January - The Sunset Leadership Committee^{1/} assigns responsibility for the review and evaluation of each agency to an appropriate standing committee of the House or Senate.
2. On or before March 1 - The responsible standing committee shall receive the following information for each agency that it is reviewing:
 - a. A performance audit or summary audit from the LB&FC.
 - b. A report on all pertinent statutes from the Legislative Reference Bureau.
3. On or before the first session day of September - The standing committee presents to the General Assembly a report on the committee's determination as to the future of each agency under sunset review. The report is to be accompanied by draft legislation to implement the standing committee's recommendations.
4. During November - If legislation has not been enacted by November 1 to reestablish an agency scheduled for termination, a resolution is to be placed before the House and Senate to determine the agency's continued existence. If a majority of the members of each House approve of its continuation, the agency will continue to exist until the next ten-year sunset cycle, unless the General Assembly establishes an earlier termination date for that agency.^{2/}

^{1/}The Sunset Act creates a leadership committee, comprised of the Speaker of the House, the President Pro Tempore of the Senate, and the House and Senate Majority and Minority Leaders.

^{2/}A Commonwealth Court judge, ruling on a motion for a preliminary injunction, recently found the reestablishment by resolution provision unconstitutional. The Supreme Court has heard arguments on the appeal in this case, but has not issued a decision.

(Continued)

5. On December 31^{3/} - Any agency scheduled for termination that has not been specifically reestablished or continued^{4/} shall be terminated. Each such agency shall have until June 30 of the succeeding year to wind up its affairs.

^{3/}Agencies scheduled for sunset review generally have termination dates of December 31 of the termination year.

^{4/}The Sunset Act permits the Sunset Leadership Committee to continue an agency for up to one year. According to a recent Pennsylvania Supreme Court decision, this provision is unconstitutional. Following the Commonwealth Court's decision on remand, the case was again taken to the Supreme Court. The Court heard arguments on the case in October 1990, but has not yet issued a decision.

Source: Developed by the LB&FC staff from Act 1981-142, as amended.

APPENDIX B. SUMMARY INFORMATION ON DISTRIBUTION AND RETURN RATES
OF LB&FC SURVEY QUESTIONNAIRES UTILIZED IN THIS STUDY

<u>Questionnaire Recipients</u>	<u>Number of Surveys</u>		<u>Return Rate (%)</u>
	<u>Sent</u>	<u>Returned</u>	
Commission Members	12	7	58%
PHRC Employees	163	40	25%
Selected Organizations With an Interest in PHRC Activities	126	40	32%
Individuals Who Filed a Complaint With the PHRC	100	29	29%
Respondents to Complaints Filed With the PHRC	100	35	35%

Source: Developed by LB&FC staff.

APPENDIX C. MEMBERSHIP OF THE PENNSYLVANIA HUMAN RELATIONS
COMMISSION

<u>Gubernatorial Appointees</u>	<u>Occupation</u>
Robert Johnson Smith (Chairman) Jenkintown, PA	Minister
Rita Clark (Vice Chairperson) Johnstown, PA	Retired
Raquel O. Yiengst (Secretary) Sinking Springs, PA	School Programs
Gregory J. Celia (Assistant Secretary) Lancaster, PA	Manager/Consultant
Carl E. Denson Bethel Park, PA	Minister
Alvin E. Echols, Jr. Philadelphia, PA	Manager/Attorney
Aubra S. Gaston Philadelphia, PA	Attorney
Russel S. Howell Lititz, PA	Manager
Lauren K. Lukert Erie, PA	Former Social Worker/Student
Elizabeth C. Umstattd Villanova, PA	Real Estate/ Politics
Linda M. Weaver Johnstown, PA	Police Chief

Source: Developed by LB&FC staff from information provided by
PHRC staff in August 1990.

APPENDIX D. EXAMPLES OF PHRC ACTIVITIES IN THE AREA OF EDUCATION
AND COMMUNITY SERVICES

1. Conducted conferences on civil rights issues, including "Confronting a New Era in Civil Rights Enforcement," and a state-wide leadership conference on "Pennsylvania Responses to Hate."
2. Provided training on ethnic intimidation laws in 37 locations to 2,450 police and fire personnel, government officials and university officials and security officers.
3. Responded to 190 community tension incidents.
4. Coordinated the Pennsylvania Task Force on Civil Tension.
5. Prepared numerous studies in cooperation with the Pennsylvania Department of Education, involving basic and higher education, including enrollments, attrition rates, employment, educational achievement, and vocational preparation.
6. Provided technical assistance to school districts and education organizations.
7. Provided 17 training sessions on fair housing to over 2,000 individuals.
8. Taught fair housing courses for the Graduate Realtors Institute.
9. Provided numerous mailing of information, including posters, copies of the law and regulations, guides for complainants and respondents, fair housing materials, and a revised ethnic intimidation brochure.
10. Presented 7 seminars to the Pennsylvania Bar Institute and other organizations to educate attorneys and management personnel regarding civil rights laws.
11. Provided assistance, information and training to advisory councils and local human relations commissions.
12. Provided information, assistance, consultation and formal presentations to organizations representing Blacks, Hispanics, Asians, women, religious groups and people with disabilities, as well as employers and housing providers.

(Continued)

13. Prepared articles for various publications, including the journal The Realtor, the Journal of Real Estate Educators Association, Institute of Real Estate Management Journal, the Black Conference on Higher Education Journal, and various trade and professional associations coursebooks.
14. Served on task forces or advisory groups for government agencies, including the Pennsylvania Department of Education and Housing and Urban Development.
15. Provided information to the media regarding civil rights law, discrimination and tension issues, and PHRC activities.
16. Completed resource document "Today's Ku Klux Klan."
17. Counseled School Administrators regarding "A Suggested School District Response to Hate."

Source: Developed by LB&FC staff from information provided by PHRC staff.

APPENDIX E. SUMMARY OF AMENDMENTS TO THE PENNSYLVANIA HUMAN
RELATIONS ACT

Act 1955-122 first established the Human Relations Commission (HRC) as the Pennsylvania Fair Employment Practice Commission.

The most recent amendments to Act 1955-122 were through Act 1986-186, which reestablished the Commission under the Sunset Act and made several significant changes, including the following:

- Discrimination based on the use of support animals because the user has a physical handicap or because the user is a handler or trainer of support or guide animals is now prohibited.
 - Originally, "dogs" was used instead of "animals," and the act only prohibited discrimination where the dog was used because of blindness or deafness.
- The term "housing accommodations" now includes (1) a "mobile home site or facility" and (2) vacant land held for the construction of a building, structure, or mobile home site or facility. This term does not include any personal residence offered for rent by the owner or lessee or by his agent, broker, salesperson or employee.
- The term "commercial housing" was dropped in favor of the term "commercial property," which is defined as (1) any building, structure or facility which is used or intended for use for the purpose of operating a business, an office, a manufactory or public accommodation and (2) any vacant land offered for sale, lease or held for constructing or locating thereon any such building, structure, facility, business concern or public accommodation.
- The following, among others, are considered to be unlawful discriminatory practices: (1) evicting or attempting to evict a tenant prior to the end of a lease because of pregnancy or the birth of a child; (2) inducing, soliciting or attempting to induce or solicit any listing, sale or transaction involving any housing accommodation or commercial property by representing that it is within any neighborhood, community or area adjacent to any other area in which there reside or do not reside persons of a particular race, color, religious creed, ancestry, sex, national origin,

(Continued)

handicap or disability, or who are guide or support animal dependent; (3) discouraging or attempting to discourage for commercial profit the purchase or lease of any housing accommodation or commercial property by representing that it is within any neighborhood, community or area adjacent to any other area in which there reside or do not reside persons of a particular race, color, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

- A permanent hearing examiner must be an attorney.
 - Before, the hearing examiner could be an attorney or someone who was knowledgeable in human relations matters.
- Commission members failing to attend three consecutive meetings must now forfeit their seats unless the chairman receives a written notice from the member that the absence was due to his own illness or injury or the death, illness or injury of an immediate family member.
- Members receive \$60 per diem and reimbursement for traveling expenses.
 - Per diem was \$15 and members did not receive reimbursement for travel expenses.
- The Commission has the following additional powers and duties:
 - Report annually to Senate Labor and Industry Committee and House State Government Committee.
 - Notify local human relations commissions of complaints received involving persons in their jurisdiction.
 - Prepare and publish all findings of fact, conclusions of law, final decisions and orders made after a public hearing.
 - Give public access to Commission's compliance manual.
 - Preserve opinions for five years.
- Complainants now have 180 days (rather than 90 days) to file a complaint. The Commission must send a copy of the complaint to the respondent within 30 days of docketing it, and the respondent must file an answer within 30 days of service of the complaint (but the Commission may grant an extension of up to 30 days).

(Continued)

- Conduct mandatory training seminars.
- Afford complainants and respondents the opportunity to comment after final disposition.
- Appoint separate staffs of attorneys to render legal advice to (1) Commission members and (2) complainants.

Previous amendments are summarized below in chronological order.

Act 1956-428 amends the Pennsylvania Fair Employment Practice Act to exclude in the definition of unlawful employment practices termination of employment because of the terms or conditions of any bona fide retirement or pension plan.

Act 1961-19 changes the name of the Pennsylvania Fair Employment Practices Commission to the Pennsylvania Human Relations Commission and adds several factors of discrimination, including age and national origin, and prohibits discrimination in places of public convenience, housing accommodations, and commercial housing.

Act 1961-402 changes the number of Commissioners from nine to eleven and changes the quorum requirement from five to six.

Act 1965-497 provides that it is an unlawful discriminatory practice for any person subject to the act to fail to post and exhibit prominently in his place of business any fair practice notices prepared and distributed by the Commission.

Act 1965-498 provides that three members of the Commission may act for hearing purposes.

Act 1966-533 defines "political subdivision," "legislative body," and "local commission" and also grants political subdivisions the authority to establish local human relations commissions.

Act 1966-534 amends the definition of "employer" to include those employers employing six or more persons.

Act 1966-558 provides for enforcement of the Commission's order by the court of common pleas in the county within which the hearing is held.

Act 1967-72 prohibits discrimination in the leasing of commercial housing to persons using guide dogs because the user is blind.

(Continued)

Act 1967-189 provides that the court cannot delay in issuing a decision as to the granting or denying of an injunction for more than 30 days from the filing of the complaint in certain housing complaint cases.

Act 1967-190 requires the Commission to inform a state licensing authority when the respondent is a licensee of that authority in order that the licensing authority can take action as appropriate. An appeal from the Commission's order acts as a supersedeas and stays the action by the licensing authority until a final decision on the appeal is made.

Act 1967-191 provides for the conduct of investigatory hearings relating to racial discrimination or tension and civil rights demonstrations.

Act 1967-284 changes the definition of "employer" to include those who employ four persons.

Act 1967-291 prohibits discrimination in the selling, leasing, or financing of commercial housing.

Act 1968-213 authorizes certain public employees to observe the Sabbath or other holy days and prohibits employers from discriminating against employees who observe these days.

Act 1969-56 prohibits discrimination on the basis of sex.

Act 1970-52 authorizes the appointment of joint staff for local human relations commissions.

Act 1970-278 adds "cemeteries" to the definition of places of public accommodation.

Act 1972-102 makes it an unlawful discriminatory practice for anyone to discriminate at a place of public accommodation, resort, or amusement against a person using a guide dog because the user is blind.

Act 1973-78 grants immunity to persons who refuse to perform, participate in, or cooperate in an abortion or sterilization.

Act 1974-318 prohibits discrimination on the basis of handicap or disability.

Act 1978-53 makes minor amendments to the act. (This is the Judiciary Repealer Act.)

Act 1978-309 provides for equal rights between men and women.

(Continued)

Act 1980-1 establishes as an unlawful discriminatory practice the placement of age limitations on the entry into bona fide apprenticeship programs.

Act 1980-198 makes it an unlawful discriminatory practice for any employer to discriminate against an employee or prospective employee because he has a general education development certificate instead of a high school diploma.

Act 1982-80 prohibits discrimination against deaf persons using a guide dog.

Act 1982-247 permits the use of permanent hearing examiners to conduct hearings and makes several editorial changes.

Act 1982-288 changes the definition of "age" to include persons to age seventy.

Source: Developed by LB&FC staff based on a review of pertinent laws.

APPENDIX F. LIST OF PENNSYLVANIA HUMAN RELATIONS COMMISSION
PUBLICATIONS AND REPORTS

1. *The Pennsylvania Human Relations Act and the Pennsylvania Fair Education Opportunities Act* (May 1989) Reprint Anticipated October 1990
2. *Employment Provisions Posting Notice (43 P.S., Section 955(j))* (March 1990) (Also in Spanish July 1990)
3. *Public Accommodation Provisions Posting Notice (43 P.S., Section 955(j))* (July 1989) (Also in Spanish March 1989)
4. *Fair Housing Practices Posting Notice (43 P.S., Section 955(j))* (July 1990) (Also in Spanish August 1989)
5. *Fair Lending Practices Posting Notice (43 P.S., Section 955(j))* (July 1989) (Also in Spanish August 1989)
6. *Guide for Complainants* (November 1989)
7. *Guide for Respondents* (November 1989)
8. *Facts About Fact-Finding Pamphlet* (February 1990)
9. *Fair Housing Pamphlet* (August 1990)
10. *Official Notice to Owners of Real Property* (April 1990)
11. *County Map of the Pennsylvania Human Relations Commission*
12. *Guidelines on Sexual Harassment (11 Pa. B. 522)* (January 1981)
13. *Sexual Harassment Informational Packet*
14. *Employment Affirmative Action Guidelines (11 Pa. B. 1765)* (May 1981)
15. *Guidelines on Employee Selection Procedures (Pa. B. Doc. No. 71-2019)* (October 1971)
16. *Guidelines on Discrimination Because of Sex (Pa. B. Doc. No. 71-2413)* (December 1971)

(Continued)

17. *Recommended Elements of a School Desegregation Plan* (May 1968)
18. *Desegregation Guidelines for Public Schools* (March 1968)
19. *Agreement on Sharing Compliance and Technical Assistance Information* (December 1982)
20. *Recommended Elements of a School District Employment Affirmative Action Plan* (July 1985)
21. *Inter-Agency Task Force on Civil Tension* (April 1984)
22. *Reaffirmation of PHRC's AIDS Policy* (April 1989)
23. *Pennsylvania Human Relations Commission Policy Manual*
24. *Reprint: Ethnic Intimidation Is Illegal In Pennsylvania* (August 1990)

Source: Developed by LB&FC staff from information provided by the Pennsylvania Human Relations Commission in the Sunset Pre-Audit Survey Questionnaire, January 1990.

PROPOSED AMENDMENTS TO THE PENNSYLVANIA
HUMAN RELATIONS ACT

The following constitutes the Pennsylvania Human Relations Commission's proposed amendments to the Pennsylvania Human Relations Act.

1) Amendment to Subsection 4(c)

It is proposed that Subsection 4(c)1 of the Pennsylvania Human Relations Act be amended to delete the phrase "in agriculture or". This amendment is necessary because of the inequity created by the exclusion of large numbers of agricultural employees from the protection of the Act. There is no just reason to exclude employees who happen to work in agriculture from civil rights protection. This is especially true, given the existence of the large, corporation-like agricultural enterprises that have become increasingly prevalent since the Act was passed.

If the legislature believes an exemption for small farmers is equitable and desirable, in addition to the present, general exemption for all small employers, the Commission would not oppose an appropriately defined exemption for bona fide small farm operations.

(Continued)

2) Amendment to Subsection 5(a)1

It is proposed that the exemption in Subsection 5(a)1 of the Pennsylvania Human Relations Act be deleted. This exemption makes it lawful, under the Act, to involuntarily terminate employment because of the terms or conditions of any bona fide retirement or pension plan. The elimination of this exemption will bring the Act into conformance with the federal Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq., which prohibits such involuntary termination. Since most employees, who are excluded from protection under Subsection 5(a)1 of the Human Relations Act, are protected under the ADEA, Subsection 5(a)1 is largely preempted by the stricter federal provision. The deletion of the Subsection 5(a)1 exemption will eliminate this preemption, and allow the Act to be better enforced by the Commission.

3) Amendment to Subsection 5(i)

It is proposed that the prefatory clause in Subsection 5(i) of the Pennsylvania Human Relations Act be amended to change the term "place of public accommodation" to "public accommodation." This amendment is necessary to correct a technical oversight, which occurred when the Act was last amended in December, 1986. At that time, the legislature intended to change the term "place of public accommodation" to "public accommodation", wherever it appeared in the Act. Unfortunately, the change was inadvertently not made in Subsection 5(i). The change should now be made to correct this oversight, and to conform the Subsection 5(i) language to the rest of the Act.

(Continued)

4) Amendment to Subsection 7(g) */

It is proposed that Subsection 7(g) of the Pennsylvania Human Relations Act be amended to read:

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath or affirmation, issue and compel answers to interrogatories and,

[proposed new language underscored].

This amendment is necessary because of an interpretation of the Commission's power set forth in Pennsylvania Human Relations Commission v. St. Joe Minerals Corp., Zinc Smelting Division, 476 Pa. 302, 382 A.2d 731 (1978). In this case, the court ruled that the legislature has not granted the Commission the power to compel answers to interrogatories. The ability to compel such answers will provide the Commission with an important discovery tool. It will also save everyone involved from the added expense of orally deposing every potential witness, when the same information can often be more readily obtained through the use of enforceable, written interrogatories. Finally, interrogatories are commonly used in court proceedings, and are a familiar and accepted discovery method. See Rule 4004 of the Pennsylvania Rules of Civil Procedure.

*/LB&FC Note: This proposed amendment may have positive impact on the ability of the PHRC to reduce the current case backlog as discussed in Finding D.

5) Amendment to Subsection 9(e)

It is proposed that the second sentence in Subsection 9(e) of the Pennsylvania Human Relations Act be amended to delete the phrase "file a written, verified answer to the complaint and". It is also proposed that the fourth sentence in Subsection 9(e) be amended by deleting the phrase "have like power to amend his answer" and replacing it with "file a written, verified answer to the amended complaint within the time specified in subsection b(3) of this section."

These amendments are necessary to correct an unintentional, technical oversight which occurred when the Act was last amended in December, 1986. At that time, the legislature added Subsection 9(b)3 to the Act. This subsection requires that a written, verified answer be filed within thirty days of service of a complaint. It conforms the procedure under the Act with the general legal requirement that an answer be filed within a definite period of time after a complaint is filed. Prior to this amendment, an answer did not have to be filed. Subsection 9(e) provided that, if one was filed, it could be filed as late as the date of public hearing. This statutory provision put the Commission at a large disadvantage in investigating complaints, and the amendment has been highly beneficial in correcting this problem.

Subsection 9(b)3's mandatory answer requirement clearly supercedes Subsection 9(e)'s optional requirement. Subsection 9(e) was not amended, however, due to an unintentional, technical oversight. The amendment should be made to correct this oversight.

6) Amendment to Section 9.1

It is proposed that Section 9.1 of the Pennsylvania Human Relations Act be amended by deleting the present language and substituting the following:

Section 9.1. Temporary Injunctions

Where the Commission determines that probable cause exists to believe that a violation of the Act has occurred, or in the absence of such determination, where the Commission determines it necessary or appropriate to ensure compliance with the provisions of the Act, the Commission may seek an injunction in the Commonwealth Court or in an appropriate court of common pleas. Said courts are hereby empowered to and shall issue injunctive relief on a prima facie showing by the Commission of a violation of the Act, and on a showing by a preponderance of the evidence that an injunction is necessary or appropriate to ensure compliance with the provisions of the Act. The court shall grant or deny the injunction without delay. Any injunction issued shall be limited to a period of not more than ninety days, and shall contain such provisions as the court deems necessary or appropriate. If an extension of time is required by the Commission, it may be granted at the discretion of the court. The Commission shall not be required to furnish bond or other security in connection with the

proceedings, and neither the institution of this action, nor any of the proceedings therein, shall prevent or prohibit the Commission from pursuing and achieving any other remedy provided for the violation of this act or any rule or regulation thereunder.

This amendment is recommended to clarify the Commission's power to obtain temporary injunctions in situations other than complaints involving the sale, rental or other disposal of a housing unit or units. The present Section 9.1 is limited in this fashion, and the Commission has been required to seek other necessary injunctions under the general injunction statutes. The problem is that it is unclear how far this authority extends. The proposed amendment will grant the Commission explicit power to obtain temporary injunctions, during the pendency of a case, where necessary to ensure compliance with the provisions of the Act.

The proposed amendment also provides appropriate safeguards to protect against the granting of unreasonable injunctions. The Commission will be required to file an injunction action in court, and the court will have the power to grant or deny the injunction on such terms as it deems necessary or appropriate. An injunction is limited to a duration of not more than ninety days, unless an extension is expressly sought and granted.

(Continued)

7) Addition of Subsection 12 a.1

It is proposed that Section 12 of the Pennsylvania Human Relations Act be amended by adding a new Subsection 12 a.1, to read as follows:

The time limits for filing any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

This amendment is requested to confirm that the various statutory time limits for filing complaints, answers, and other matters are periods of limitation, to which the equitable doctrines of waiver, estoppel and tolling apply. This is the interpretation which the Commission currently uses, and which it believes is necessary to prevent manifest injustice. It is also the interpretation given by the U.S. Supreme Court to filing periods under Title VII of the Civil Rights Act of 1964. See Zipes, et al. v. TWA, Inc., 455 U.S. 385 (1982). This amendment will benefit both complainants and respondents, who must meet these time limits, and will ensure the continuing ability of the Commission to maximize the fairness of its decisionmaking process.

8) Amendment to Subsection 12(c)

It is proposed that Subsection 12(c) of the Pennsylvania Human Relations Act be amended to read as follows:

(c) In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year

(Continued)

after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act. An action under this subsection shall be filed within two years after the date of receipt of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement. If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employes, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this act. The court shall notify the Commission of any final orders issued in any action brought under this subsection.

[proposed new language underscored].

This amendment is necessary for a variety of reasons. Unless the Commission is served with a copy of all complaints filed under this subsection, it has no efficient and effective way of learning of these suits. It is important, of course,

for the Commission to learn of them. If the Commission has not closed a case before the complainant files a Subsection 12(c) lawsuit, the pendency of the suit may affect the way the Commission processes its case. Since such lawsuits frequently involve issues requiring legal interpretations of the Pennsylvania Human Relations Act, it is also important for the Commission to be aware of these issues. The Commission may then take appropriate action, such as filing friend of the court briefs, to help ensure that the Act is uniformly and consistently interpreted by the various courts of common pleas.

Similarly, it is important for the Commission to receive notice of all final orders in actions filed under this subsection. The Commission needs to be aware of all decisions affecting the legal interpretation of the Act. Notification of final orders will also facilitate the Commission's ability to participate as amicus curiae on appeal of such orders, so the court may have the benefit of the Commission's expertise.

The final portion of this proposed amendment, which would establish a two year statute of limitations on the filing of Subsection 12(c) actions, is necessitated by the continuing judicial uncertainty over the proper time limit to apply. A two year statute is recommended because that is the time period toward which the courts seem to be heading. See

Raleigh v. Westinghouse Corp., _____ Pa. Super. Ct. _____, 550 A.2d 1013 (1989). The proposed two year period would not begin to run until the Commission closes the complaint. This is in keeping with the Pennsylvania Supreme Court's decision in Baker v. Com., Pennsylvania Human Relations Commission, 507 Pa. 325, 489 A.2d 1354 (1985), which held that a Sub-section 12(c) action may be filed whenever the Commission dismisses a complaint for lack of probable cause. The only way to guarantee this right is to start the statute running at the time of closure, as recommended.

9) Amendments to Protected Class Listing

It is proposed that the Act be amended by adding "sexual orientation" and "marital status" to the list of protected classes. This should be done wherever a list of protected classes appears in the Act.

These amendments are necessary because of the prevalence of discrimination against people because of their sexual orientation or marital status. People should not be denied the right to earn a living, to have a place to live, or to patronize a place of public accommodation because of reasons having nothing to do with their ability to work, to pay the rent, or to eat in a restaurant. There is no just basis for denying people their basic civil rights because of marital status or sexual orientation, and the Act should be amended to provide such basic, equitable protection.

10) Amendments Aimed at Achieving Substantial Equivalency With Federal Title VIII

It is proposed that the Act be amended as set forth in H.B. 1925, Printer's No. 2481, with additional amendments.

The amendments proposed in H.B. 1925 are designed to obtain substantial equivalency with the provisions of federal Title VIII, 42 U.S.C. §§3601-19, 3631. Substantial equivalency is necessary for the Commission to be a deferral agency for processing cases on behalf of the U.S. Department of Housing and Urban Development. Failure to obtain substantial equivalency will result in a loss of federal funding.

The Commission also believes the amendments will be beneficial in its efforts to combat unlawful discrimination, regardless of substantial equivalency, by strengthening the Act in several vital areas. Among the proposed amendments are the addition of coverage over independent contractors, of familial status as a protected class in housing and public accommodations, and of better remedy provisions. An exclusion to the familial status protections is proposed as an amendment to H.B. 1925.

Familial status is defined in Section 4(t) as:

"One or more individuals who have not attained the age of eighteen years being domiciled with (1) a parent or other person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination

LB&FC Note: Please also see Finding G which addresses current inconsistencies between the PHRA and the federal Fair Housing Act, as amended.

on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years."

In relation to the prohibitions against discrimination based upon familial status, it is proposed that an exclusion be added in Section 5 (h)(7)(i)(3).

Following "occupied rooming house with a common entrance," line 29 page 9, a new paragraph would read:

"No provision in this Act regarding familial status shall apply with respect to housing for older persons."

Housing for older persons would then be defined in a proposed Section 4(v) as:

4(v) "Housing For Older Persons" - means housing:

- (1) Provided under any State or Federal program that the Commission determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
- (2) Intended for, and solely occupied by persons sixty-two (62) years of age or older; or

(3) Intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit. In determining whether housing qualifies as housing for older persons under this Section, the Commission's requirements shall include but not be limited to:

- i. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons, and
- ii. That at least eighty percent (80%) of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and
- iii. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

(4) Housing shall not fail to meet the requirements for housing for older persons by reason of:

- i. Persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements above. Provided, that new occupants of such housing meet the requirements above.

- ii. Unoccupied units: Provided, that such units are reserved for occupancy by persons who meet the age requirements above.

In addition, H.B. 1925 should be further amended to clarify the applicability of State and Federal handicap accessibility requirements to the accessibility provisions of the PHRA. Section 4(u) of H.B. 1925 should read:

The term "accessible" means in compliance with the accessibility standards set forth in (1) the Fair Housing Act (Public Law 90-284 as amended; 42 U.S.C. Section 360 et seq. as amended) (2) "An act requiring that certain buildings and facilities adhere to certain principles, standards, and specifications to make the same accessible to and usable by persons with physical handicaps and providing for enforcement" Act of September 1, 1965 (P.L. 459, No. 235 as amended; 71 P.S. Section 1455.1, as amended) (3) "Americans with Disabilities Act of 1990" (Public Law 101-336) and (4) Other Federal, State or local laws or regulations covering accessibility or accommodations. (Lines 8-11, P.S. of H.B. 1925 to be omitted.)

In relation to the proposed remedy amendments in H.B. 1925, it is also proposed that Subsection 9(f) be amended to delete the fifty dollar limit

for travel expenses and the two hundred dollar limit for complaint-related loss of work time. This should have appeared in H.B. 1925, as part of the substantial equivalency legislation. These items are simple two categories of actual damages, which the Commission must have the power to fully award if it is to make a prevailing complainant whole for the losses suffered as a result of unlawful discrimination. See Civil Service Commission of City of Pittsburgh v. Com., Pennsylvania Human Relations Commission, ___ Pa. Cmwlth. ___, 556 A.2d 933 (1989) (one purpose of an award of damages by the Commission is to restore the injured party to his or her pre-injury status).

Finally in relation to the amendments in H.B. 1925, it is recommended that the civil penalties proposed therein be made generally applicable to all types of unlawful, intentional discrimination under the Act. This should be done by deleting the word "Housing" in line 5 on page 15 of H.B. 1925, P.N. 2481, and by substituting the term "under this act" for the term "under section 5(h)(1)," beginning in line 5 on page 15, and continuing in line 6 on page 15. This amendment is recommended to provide consistent remedies for all forms of unlawful discrimination. It is also recommended as being necessary if the Commission is to effectively discourage unlawful discrimination. This purpose has been recognized as one of the primary goals of a remedial award under the Act. See Civil Service Commission of City of Pittsburgh, Id. (one of two purposes of an award of damages by the Commission is to discourage discrimination).

MMS:cf

Attachments

Source: This Appendix is an annotated facsimile of documents provided to the LB&FC by the PHRC Executive Director in late August 1990.

APPENDIX F
RESPONSE TO THIS REPORT

Chairperson
ROBERT JOHNSON SMITH
Vice-Chairperson
RITA CLARK
Secretary
RAQUEL OTERO de YIENGST
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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Reply to:

**P.O. Box 3145
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November 14, 1990

Philip R. Durgin, Executive Director
Legislative Budget & Finance Committee
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Harrisburg, PA 17120

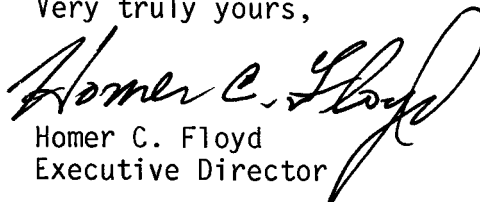
Dear Mr. Durgin:

Thank you for the opportunity to respond to the draft Legislative Budget & Finance Committee Sunset Performance Audit of the Pennsylvania Human Relations Commission. Enclosed is our written response to specific Audit findings and Recommendations in the audit report. The response is organized by alphabetic section of Part II of the report.

For the most part, we accept the findings of the audit staff. They performed a detailed and thorough review of the Pennsylvania Human Relations Commission's operations.

We believe that the Audit report provides overwhelming justification for the continuation of the Commission and the strengthening of the Pennsylvania Human Relations Act.

Very truly yours,


Homer C. Floyd
Executive Director

cf

Enclosure

cc: Commissioners

RECEIVED NOV 15 1990

PENNSYLVANIA HUMAN RELATIONS COMMISSION
RESPONSE TO AUDIT FINDINGS AND RECOMMENDATIONS
PART II OF THE SUNSET PERFORMANCE AUDIT OF
THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

A. Relationship to Public Health, Safety and Welfare

1. The Pennsylvania Human Relations Commission (PHRC) concurs with the findings.

B. Adequate Provisions for Public Input

1. In general, PHRC concurs with the findings and has already implemented the recommendation.
2. PHRC had not been aware that the Sunshine Act had been interpreted to require advance publication of the annual schedule of meetings. The schedule for the remainder of this fiscal year has been published in the Pittsburgh Post Gazette, the Harrisburg Patriot and the Philadelphia Inquirer. Because the Commission meets at various locations throughout the state, often the precise location of meetings cannot be determined at the time the schedule is established. Therefore, PHRC will continue to publish specific meeting information in advance of each meeting in accordance with Sunshine Act requirements.
3. The audit report notes that as of September, 1990, there were no Advisory Councils in the Pittsburgh Region. At the October 22, 1990 Commission Meeting, the Commission voted to establish an Allegheny County Advisory Council. It is anticipated that appointments to that Advisory Council will be made by December, 1990.

C. Minimal Overlap and Duplication

1. PHRC concurs with the findings.

D. Continuing Backlog of Cases

1. PHRC agrees that backlogs remain a major problem. PHRC has noted this problem annually in its budget requests. Backlog reduction depends upon adequate staffing.
2. PHRC accepts the recommendations.
3. As the case figures and staffing levels over the past ten years indicate, in 1979-80 PHRC had an authorized complement of 186 staff, and received 2,402 complaints. During the next seven years, the authorized complement was reduced each year, to a low of 145 in 1986-87, while the number of complaints received each year increased dramatically. Improved efficiency resulted in increased numbers of complaints closed, but the increase could not keep up with new filings, resulting in a backlog. Since 1986-87, authorized complement levels have risen, to 174 in 1989-90, which is twelve positions below

the 1979-80 level. During 1989-90, 4,034 complaints were received, a 68% increase over the 1979-80 level. The audit report shows a 61% increase in productivity over the 10-year period.

4. PHRC workload management has been complicated by delays in receiving approval to fill vacancies, which has often resulted in having significantly fewer filled positions than the authorized complement levels would indicate.
5. The audit report cites comments by staff in the Regional Offices as indicating that delays are caused by internal reviews. PHRC maintains that these reviews are essential to assuring that all complaints receive a thorough and unbiased investigation, which meets federal and state standards. This review has been a major factor in the high acceptance rate by federal agencies. (See comments to Section K.)

E. PHRC Annual Reports Not Submitted on Time

1. PHRC accepts the findings and recommendations.

F. Some PHRC Regulations are Out-of-Date

1. PHRC accepts the findings and recommendations.

G. Need for Conformance With Federal Law

1. PHRC generally supports the findings and recommendations, with the exception of mandatory time frames.
2. Mandatory time frames at the state level are not required by the 1988 Fair Housing Amendments, although time frames are required by Housing & Urban Development Regulations. Time frames, if needed, appropriately should be in regulations. Mandatory time frames can provide incentives for respondents to create delays, or result in denial of due process rights for the sake of speed. In addition, mandatory time frames are unrealistic given PHRC staffing levels.
3. Legislation to bring the Pennsylvania Human Relations Act into substantial equivalency with the federal Fair Housing Amendments of 1988 was introduced in the 1989-90 legislative session as House Bill 1925.

H. Active Community Outreach Activities

1. In addition to the numerous activities mentioned in the audit report, the Executive Director, Regional and Division Directors, and other staff have made numerous presentations to organizations representing community groups, civil rights enforcement agencies, employers, and other interested groups, as well as participating in meetings and functions of a variety of organizations.
2. PHRC has placed a notice in the Pennsylvania Bulletin announcing the availability of posting notices and other publications.

3. Some literature is available on audio cassette and has been provided to organizations representing blind and visually impaired individuals.
4. PHRC will explore other methods of informing groups affected by the Pennsylvania Human Relations Act of the availability of PHRC publications.

I. Performance Evaluations

1. PHRC accepts the finding and recommendation.

J. Satisfactory Decision-Making

1. PHRC concurs with the finding.

K. Impartiality of Staff

1. PHRC's extensive internal review process, which ascertains that all relevant documents and statements have been secured, and that the recommended investigative findings are supported by the evidence, provides assurance that the investigation has been both thorough and objective. Findings are based on the record, not the attitude of the investigator. (See comments to Section D.)
2. Given the controversial and confrontational setting of a charge of discrimination, it is common for the parties to have strong feelings about the issues and the process. Complainants may feel that they have little power compared to large companies. Respondents may interpret requirements for documentation as implying hostility on the part of staff. When perceptions of unfairness are brought to PHRC's attention, those concerns are reviewed by upper management. Generally, there is no factual basis for those perceptions. However, in instances where problems are found, corrective action is taken.
3. PHRC agrees that the majority of complainants and respondents perceive investigations as thorough and fair. PHRC will continue to stress to staff the importance of courtesy, fairness and professionalism. Consideration will be given to the audit recommendations.

L. Attorney Fees

1. PHRC agrees that authorization to award attorneys fees to complainants would be beneficial by helping to equalize the balance with respondents, most of whom are represented by counsel from the outset of the investigation. Most complainants do not have sufficient personal funds to afford counsel, and the possibility of attorney fees would improve their opportunity to be represented during the investigation.
2. PHRC disagrees with the recommendation that attorneys fees should be authorized for respondents. The potential of liability for respondents' attorneys fees would have a significant chilling effect, deterring individuals with valid complaints from filing. The Pennsylvania Human Relations Act prohibits retaliation against persons

because they have filed a complaint. Respondents could use the application for attorney fees as a form of retaliatory harassment. Since complaints where no probable cause is found do not get to the public hearing stage, a separate process would have to be established to consider award of attorney fees to respondents. As a practical matter, most complainants would be unable to afford an attorney to represent them in the respondent attorney fee award consideration process, much less being able to afford to pay respondents' attorney fees.

Currently, the law requires that all complaints be sworn and notarized. Complainants are notified that Pennsylvania law provides penalties for persons who knowingly file false complaints. PHRC believes this provides adequate protection against bad faith complaints.

M. Program to Prevent Discrimination in Educational Institutions

1. The audit report lists a number of activities designed to address prejudice and discrimination in educational institutions, including ethnic intimidation and cultural awareness training for university officials and security officers, studies regarding basic and higher education enrollments, attrition and achievement, consultation and technical assistance, service on advisory groups, publications, and cooperation with Pennsylvania Department of Education and the State System of Higher Education.
2. The House Education Committee report, issued pursuant to House Resolution 49, recommended that "the Legislature ensure that the annual appropriation to the Human Relations Commission is sufficient to accommodate the Commission's expanding workload" in this area.
3. PHRC accepts the recommendation to commit its educational programs to writing.

N. Proposed Amendments

1. With the exception noted regarding Section L, PHRC concurs with the legislative recommendations of the Sunset Audit Report, and urges consideration of the other PHRC recommendations included in Appendix G.