

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Patricia M. Daly,

Complainant,

ORDER DISMISSING

CONTESTED

CASE WITHOUT

PREJUDICE AND

REMAND TO THE

V.

MINNESOTA

DEPARTMENT OF HUMAN

RIGHTS

Hennepin County Park

Reserve District,

Respondent.

The above-captioned matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing issued by the Chief Administrative Law Judge on July 15, 1987. The Chief Judge's Order was issued after receipt of a letter from Jayne B. Khalifa, Acting Commissioner of the Minnesota Department of Human Rights indicating that the discrimination charge filed against the Respondent by the Complainant was being referred to the Office of Administrative Hearings pursuant to Minn. Stat. 363.071, subd. 1a. On July 17, 1987, the Complainant requested that the Chief Judge return this case to the Minnesota Department of Human Rights, noting that her June 24, 1987 request that the Department forward her charge to the Office of Administrative Hearings for a hearing had erroneously been made, and that the matter should be returned to the Department of Human Rights for completion.

On July 21, 1987, the Administrative Law Judge wrote to both parties advising them that Ms. Daly's July 16, 1987 letter would be treated as a motion for voluntary dismissal without prejudice and for a remand to the Minnesota Department of Human Rights for further handling. The parties were told to file objections, if any, to the motion within ten days after receipt of the Judge's letter. No objections were filed.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. That the Complainant's request for the voluntary dismissal of her

contested case is GRANTED;

2. That the Complainant's charge is hereby REMANDED to the Minnesota Department of Human Rights for processing consistent with the provisions of Minn. Stat. ch. 363, including a determination of probable cause or no probable cause.

Dated this 7th day of August, 1987.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

This proceeding was commenced after the Complainant filed a hearing request under Minn. Stat. 363.071, subd. 1a (1986). After receipt of that request, the Acting Commissioner of the Minnesota Department of Human Rights wrote to the Chief Administrative Law Judge requesting that he schedule a hearing as promptly as possible. After the Chief Judge's hearing order was issued, the Complainant asked that this matter be remanded back to the Department because she had requested a hearing in error.

Although Minn. Stat. 363.071, subd. 1a does not specifically authorize a complainant to withdraw a hearing request filed with the Commissioner, the Judge is persuaded that such withdrawals are permissible when no objection is filed by the respondent or the department and when no prejudice will result to any parties. Generally speaking, in the absence of prejudice to the adverse party, the mere commencement of an action is not an irrevocable election of remedies which bars a party from pursuing a different remedy. See 6B Dunnell Minn. Digest 2d, Election of Remedies, 1.04, pp. 5-6 (3d Ed. 1983). Permitting a complainant to withdraw a hearing request when no prejudice results to the respondent is consistent with the purposes of the Minnesota Human Rights Act. The Act is designed to provide counsel to charging parties when the Department makes a determination of probable cause. This is a valuable benefit, and when a charging party erroneously requests a hearing, thereby depriving herself of the potential for counsel at state expense, a charging party should be permitted to change that election if the respondent is not prejudiced.

Since the Department does not object to a remand of this matter, and since the Respondent has not objected or established any prejudice, it is concluded that the Complainant should be permitted to voluntarily dismiss her contested case and have her charge remanded to the Minnesota Department of Human Rights for completion of its investigation and issuance of a probable cause or no probable cause determination.

J.L.L.