

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Linda C. Johnson,
Commissioner, Department of Human Rights,

Complainant,

RULING ON

MOTION

FOR SUMMARY

JUDGMENT

Vs

City of Hibbing, Public Utilities Commission,

Respondent.

Pursuant to a Prehearing Order issued by Administrative Law Judge Peter C.

Erickson on May 7, 1986, the Respondent filed a Motion for Summary Judgment on May 19, 1986. AN response to the Motion was filed by the Complainant on June 9, 1986. Respondent filed a reply on June 3, 1986.

Appearing on behalf of the Complainant was Carl M. Warren Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101. Appearing on behalf of Respondent was: Richard E. Prebich from the firm of Abate, Wivoda, Clark & Prebich, Attorneys at Law, 704 E. Howard Street, P.O. Box 329, Hibbing, Minnesota 55746.

The issues raised by the Respondent and upon which the Motion for Summary Judgment is based are whether this matter should be dismissed because: (a) the finding of probable cause was not made within 12 months after the charge was filed pursuant to Minn. Stat. VXEG O DQG E the charge alleging discrimination was not served on the Respondent within five days of submission by the charging party pursuant to Minn. Stat. 363.06, subd. 1 (1982) and (1984).

For the purpose of this Motion, the relevant procedural history of this case is as follows:

1. On August 10, 1982, David Fena filed a charge of discrimination with

the Minnesota Department of Human Rights. By letter dated August 19, 1982, the Department informed Respondent of the filing of the charge.

Z. In mid-January 1985, the Department of Human Rights issued its determination that there was probable cause to credit the allegation of an unfair discriminatory practice.

3. On April 3, 1986, a Complaint was issued by the Department of Human Rights alleging that Respondent had committed an unfair discriminatory practice.

Based upon a II of the records, fil es and proceidings here in, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is, in all respects, denied.

Dated this day of July, 1986.

PETER C.-ERICKSON
Administrative Law Judge

MEMORANDUM

At the time the charge of discrimination was filed with the Department of Human Rights, the applicable procedural statutory provisions read as follows:

363.06 Grievances. Subdivision 1. Charge filing. Any person aggrieved by a violation of this chapter may bring a civil action as provided in section 363.14, subdivision 1, clause (a), or may file a verified charge with the commissioner or his designated agent, stating the name and address of the person alleged to have committed an unfair discriminatory practice, setting out the details of the practice-complained of and, if applicable, providing witnesses, documents, and any other information required by the commissioner. The commissioner may dismiss a charge when the charging party fails to provide required information. The commissioner within five days of the filing shall serve a copy of the charge and a request for a response upon the respondent personally or by registered or certified mail. After the filing of a charge the commissioner shall notify the charging party in writing of any change in the status of the charge. A copy of the notice shall be mailed to the respondent.

Subd. 4. Inquiry into charge. (1) Consistent with clause (7), when a charge has been filed, the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when necessary to prevent a charging party fro suffering irreparable loss in the absence of immediate action. The commissioner shall also make an immediate inquiry when it

appears that a charge is frivolous or without merit and

shall dismiss those charges. On all other charges the commissioner shall make a determination as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices, and

(Citations from 1982 Minnesota Statutes) (Emphasis added)

During the 1983 Legislative Session, Minn. Stat. 363.06, subd. 4 (1982) was amended to read:

Inquiry into charge. (1) Consistent with clause (7), the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when necessary to prevent a charging party from suffering irreparable loss in the absence of immediate action. The commissioner shall also make an immediate inquiry when it appears that a charge is frivolous or without merit and shall dismiss those charges. On other charges, the commissioner shall make a determination within twelve months after the charge is filed as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices and

Minn. Laws 1983, ch. 301, 199. (Emphasis added)

The above provision became effective on August 1, 1983. Although 236 of Chapter 301 made certain sections of the legislation retroactive, 199 was not referenced.

Respondent argues that because a finding of probable cause was not made until approximately two-and-one-half years after the charge was filed, the statutory time frame has not been met and it has suffered prejudice as a result. Respondent contends that it was not in a position to negotiate or settle this matter prior to the finding of probable cause. Consequently, damages have risen to the level where no settlement is practical. Complainant argues that: (a) the 12-month probable cause determination requirement is not applicable in this case because it was not enacted until one year after this matter arose; and (b) both time limits at issue herein are only directory, rather than mandatory, so dismissal is an inappropriate remedy.

Respondent cites *State v. Eastern Airlines, Inc.*, 346 N.W.2d 184 (Minn.App. 1984), review denied, (September 12, 1984) and *EEOC v. Air Guide Corp.*, 29 FEP Cases 236 (S.D. Fla. 1978) as support for its position. In *Eastern Airlines*, the Department of Human Rights failed to serve notice of the

charge on the respondent until eight months after it was filed. This prevented the company from becoming aware that it had been charged with an unfair discriminatory practice and deprived it of an opportunity to limit its liability by offering a job to the charging party or by settling the case while back pay damages were still low. In Air Guide Corp., the respondent had no knowledge of the charge until ten months after it had been filed. The

court dismissed the action after it found that the respondent had unknowingly destroyed vital evidence and its ability to settle the case had been seriously prejudiced.

The "notice" requirement, which was the basis of the holding in the two cases discussed above, is not an issued in this case unless the Department is held to strict compliance with the five-day provision. The charge was served on the Respondent nine days after it was filed. There is no substantial time delay as was evident in both Eastern Airlines and Air Guide Corp. Respondent has not alleged that it suffered any prejudice from the less than one week delay in receipt of the notice of the charge.

It is a general rule that statutorily-imposed time limits are construed to be directory rather than mandatory if the statute does not declare the consequences of a failure to comply. *Sullivan v. Credit River Township*, 299 Minn 170, 217 N.W.2d 502, 507 (1974); *State v. Frisby*, 260 Minn. 70, 108 N.W.2d 769, 773 (1961). Chapter 363 provides no penalties, or a remedy, if either the five-day notice requirement or the twelve-month probable cause determination requirement are not met. Specifically with regard to the five-day requirement, the Judge concludes that this provision is directory only and because Respondent has not shown the prejudice resulted from the short delay, dismissal is not warranted on that basis.

The twelve-month probable cause determination requirement was not effective until August 1, 1983, almost one year after the charge in this matter was filed with the Department. Minn. Stat. 645,21 (1984), specifically provides that: "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." As stated above, Chapter 301 did not provide that 199 was effective retroactively. Additionally, it would not make sense to apply a time-limit provision such as this to cases which were already pending where the time period had or was about to expire. Consequently, the Judge will not apply the twelve-month determination period in this case, but rather examine this issue in terms of prejudice to the Respondent.'

Respondent argues that it was prejudiced by the failure of the Department to make a "timely" determination of probable cause because conciliation and possible settlement was unreasonably delayed. Damages were allowed to accrue to an amount which made settlement impractical. This argument is made, however, in light of the standards set forth in *Easter Airlines and Air Guide*

corp, both of which turned on the failure to provide timely notice of the charge. In this case, Respondent did receive notice of the charge approximately ten or eleven days after the charge was filed. Respondent could then have attempted to settle the case, or taken other actions to minimize its potential losses. However, it took no action other than to wait for the Commissioner's determination of probable, or no probable, cause. Respondent has not alleged that vital evidence has been destroyed, that witnesses are now unavailable, or that memories have faded significantly. Absent an, of these showings, the Judge concludes that dismissal on the basis of an "untimely" probable cause determination is not warranted.

P.C.E.

'This analysis essentially turns this issue into one of laches.