

SCOMM

#51:2

MINUTES OF
BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT

from

August 18, 1980 through December 15, 1982

AND

Membership Lists

MINUTES OF THE
BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

August 18, 1980	Full Commission Meeting
August 19, 1980	" " "
October 29,30, 1980	" " "
December 4, 1980	" " "
January 3, 1981	Full Commission Meeting
February 11, 1981	" " "
October 5, 1981	" " "
November 3, 1981	" " "
November 19, 1981	" " "
December 21, 1981	" " "
March 11, 1982	Full Commission Meeting
August 30, 1982	" " "
September 21, 1982	" " "
October 15, 1982	" " "
November 9, 1982	" " "
December 7, 1982	" " "
December 15, 1982	" " "

MEMBERSHIP

February, 1983

Senator Bill Ray, Chairman

Rep. Jack Fuller, Vice Chairman

Members and Alternates:

Myrton Charney, Executive Director, Legislative Affairs Agency

John Chenoweth, Ombudsman

Senator Richard Eliason

William Huston, Superintendent, S.E. Regional Correctional Institution

Lois Jund, Retired State Employee
(Dorothy Whitney)

Frank Raye, Director, Division of Personnel

Lynda McCurry, Personnel Officer, Department of Labor
(Roger Thayer, Personnel Officer, DOT)

Greg O'Claray, Inlandboatmen's Union - SIUNA

John Pugh, Director, Division of Social Services
(Robert Maurant, DOT)

Lisa Rudd, Commissioner, Department of Administration
(Director, Division of Labor Relations)
(Deputy Commissioner, Department of Administration)
(James Fisher, Director Division of EEO)

Cherie Shelley, Executive Director, APEA
(Darlene Livermore, APEA)
(Doryce Eggleston, APEA)
(Dianne Corso, APEA)

(Alternates)

Two vacancies

MEMBERSHIP OF THE
BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

June, 1982 to December, 1982

Senator Bill Ray, Chairman

Representative Jack Fuller, Vice-Chairman

* Representative Sally Smith

Myrton R. Charney, Executive Director, Legislative Affairs Agency

John Chenoweth, Ombudsman

Senator Richard Eliason

Carole Burger, Commissioner, Department of Administration

* Fred Muller, Deputy Commissioner

* James Fisher, Director, Division of Equal Employment Opportunity

* Sandra Withers, Director, Division of Labor Relations

William Huston, Superintendent, S.E. Regional Correctional Institution

Lois Jund, Retired State Employee

* Dorothy Whitney

Kenneth Kareen, Director of Personnel, Department of Administration

Lynda McCurry, Personnel Officer, Department of Labor

* Roger Thayer, Personnel Officer, Department of Transportation
and Public Facilities

Greg S. O'Claray, Inlandboatmen's Union - SIUNA

John Pugh, Director, Division of Social Services, Dept. Health & Social Services

* Robert Mourant, Department of Transportation and Public
Facilities

Cherie Shelley, Executive Director, Alaska Public Employees Assn.

* Darlene Livermore, Alaska Public Employees Assn.

* Doryce Eggleston, Alaska Public Employees Assn.

* Alternates

Staff: Teresa B. Cramer, Administrative/Research Assistant
Loretta M. Knightlinger, Secretary



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

M E M B E R S H I P

March 15, 1982

Senator Bill Ray, Chairman

Rep. Jack Fuller, Vice Chairman

Members and Alternates:

Myrton Charney, Executive Director, Legislative Affairs Agency

John Chenoweth, Ombudsman

Senator Richard Eliason

Bill Huston, Superintendent, S.E. Regional Correctional Institution

Lois Jund
(Dorothy Whitney)

Kenneth Kareen, Director, Division of Personnel

Lynda McCurry, Personnel Officer, Department of Labor
(Roger Thayer)

William R. Hudson, Commissioner, Department of Administration
(Sandra Withers)
(Fred Muller)
(James Fisher)

Greg O'Claray, Inlandboatmen's Union SIUNA

John Pugh, Director, Division of Social Services
(Robert Maurant)

Cherie Shelley, Executive Director, APEA
(Darlene Livermore)
(Doryce Eggleston)

(Alternates)



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

M E M B E R S H I P

November 3, 1981

Senator Bill Ray, Chairman

Vice Chairman Vacant

Members and Alternates:

Myrton Charney, Executive Director, Legislative Affairs Agency

John Chenoweth, Ombudsman

Senator Richard Eliason

Representative Jack Fuller
(Representative Sally Smith)

Bill Huston, Superintendent, S.E. Regional Correctional Institution

Lois Jund
(Dorothy Whitney)

Kenneth Kareen, Director, Division of Personnel

Lynda McCurry, Personnel Officer, Department of Labor
(Roger Thayer)

William R. Hudson, Commissioner, Department of Administration
(Sandra Withers)
(Fred Muller)
(James Fisher)

Greg O'Claray, Inlandboatmen's Union - SIUNA

John Pugh, Director, Division of Social Services
(Robert Maurant)

Cherie Shelley, Executive Director, APEA
(Darlene Livermore)

(Alternates)

January 8, 1981

MEMBERSHIP OF THE
BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray - Chairman

Donald P. Fisher, Fiscal Analyst, Legislative Finance - Vice Chairman

Representative Thelma Buchholdt

* Representative Mike Miller

Myrton R. Charney, Executive Director, Legislative Affairs Agency

Bruce Cummings, Director, Division of Personnel

* Michael McMullen

Senator Richard Eliason

Frank Flavin, Ombudsman

* Paddy Moriarty

Representative Jack Fuller

* Representative Sally Smith

William Huston, Superintendent, Southeast Regional Correctional
Institution

Lois Jund

Lynda McCurry, Personnel Officer, Department of Labor

* Roger Thayer

Fred Muller, Deputy Commissioner, Department of Administration

* Sandra Withers

Greg S. O'Claray, Inlandboatmen's Union - SIUNA

John Pugh, Director, Division of Social Services

* Robert Maurant

Cherie Shelley, Executive Director, Alaska Public Employees Assn.

* Darlene Livermore

* Alternates



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

M E M B E R S H I P

October 29, 1980

Senator Bill Ray, Chairman

Don Fisher, Vice Chairman

Members:

Representative Thelma Buchholdt
(Representative Mike Miller)

Myrton Charney, Executive Director, Legislative Affairs Agency

Bruce Cummings, Director, Division of Personnel

Representative Richard Eliason

Frank Flavin, Ombudsman
(Duncan Fowler or Paddy Moriarty)

Representative Jack Fuller
(Representative Sally Smith)

Bill Huston, Superintendent, S.E. Regional Correctional Institution

Lois Jund

Lynda McCurry, Personnel Office, Department of Labor
(Roger Thayer)

Fred Muller, Deputy Commissioner, Department of Administration

Greg O'Claray, Inlandboatmen's Union - SIUNA

John Pugh, Director, Division of Social Services
(Robert Maurant)

Cherie Shelley, Executive Director, APEA
(Darlene Livermore)

(Alternates)

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

August 20, 1980

Membership

Senator Bill Ray, Chairman

Don Fisher, Vice Chairman

Representative Thelma Buchholdt
(Representative Mike Miller)

Myrton Charney, Executive Director, Legislative Affairs Agency

Bruce Cummings, Director of Division of Personnel

Representative Richard Eliason

Frank Flavin, Ombudsman
(Duncan Fowler)

Representative Jack Fuller
(Representative Sally Smith)

Lois Jund

Lynda McCurry, Personnel Officer, Department of Labor
(Vacant)

Greg O'Claray, Inland Boatmen's Union - SIUNA

John Pugh, Director of Division of Social Services
(Robert Maurant)

Cherie Shelley, Executive Director, APEA
(Darlene Livermore)

Dick Smith, Deputy Commissioner, Department of Administration

(Alternates)

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 15, 1982

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 1:40 p.m. The roll call showed Senator Ray, Representative Jack Fuller, Myrt Charney, John Chenoweth, James Fisher (alternate for Commissioner Rudd), Lois Jund, Mike McMullen (alternate for Ken Kareen), Roger Thayer (alternate for Lynda McCurry), Greg O'Claray, Bob Maurant (alternate for John Pugh), and Lee Powelson (alternate for Cherie Shelley) as present.

The commission reviewed a letter dated December 14, 1982, from Allen K. Korhonen, Acting Commissioner of the Department of Health and Social Services, concerning the status of medical doctors employed by the department. Mr. O'Claray moved that the commission sponsor legislation as requested by the department to place public health doctors in the classified service. There was no objection and the motion passed by unanimous consent.

The commission considered information on the state's nepotism statute. Ms. Jund moved that the commission reintroduce the legislation on nepotism that it had sponsored in the 1981 legislative session. There was no objection and the motion passed by unanimous consent.

The commission discussed recommendations against rehire. Senator Ray suggested that perhaps a committee of impartial individuals should review every performance evaluation which recommends that an employee not be rehired before that recommendation becomes part of the employee's personnel file. Ms. Jund added that a two-step review process might be appropriate. A departmental panel would review the evaluations before they were approved by the department. A second panel would review them before they became part of the employee's personnel file. She also suggested that the information on the back of the personnel evaluation form should include more detail about recommendations about rehire. Senator Ray suggested that the commission write to the Commissioner of Administration to relate these suggestions.

Tom O'Donnell, personnel officer for the Department of Health and Social Services, pointed out that employees receive copies of the evaluation form and have an opportunity to comment before the evaluation becomes final. A review panel would probably not have enough information to act contrary to the supervisor's recommendation. The important thing to bring about is better training for supervisors in making their evaluations. They should also be held accountable for their actions. Mr. Charney replied that many supervisors and employees do not know the effect of recommendations against rehire and therefore employees do not grieve when they receive one. Senator Ray asked the staff to write to the Commissioner of Administration asking that the department consider expanding the information on the personnel evaluation form and implementing review panels for all evaluations on which that recommendation appears and asking for her response within a reasonable time.

Ms. Jund offered some comments on the memorandum on employee discipline which had been discussed at the previous commission meeting. She suggested that the levels of discipline should include

verbal warnings, which should be documented by the employee's supervisor in writing;

written admonishments, which are not made part of the employee's permanent personnel file but which the employee is asked to sign;

written reprimands, which the employee is asked to sign and which do become part of the personnel file, although they may be removed at a later time; and

suspensions, which the employee is also asked to acknowledge receipt of.

In the section on conduct prejudicial to the best interests of the service (F.3), she suggested that the list include soliciting gifts for political purposes. In the discussion of improper conduct related to state property or vehicles, (F.4), she suggested that operating a state vehicle while under the influence of drugs or alcohol should be listed there as well as in the section on improper use of intoxicants or drugs. Mr. O'Claray moved that the commission write to the Commissioner of Administration asking that she include this information as well as the memorandum previously sent to her when she considers the commission's request that the department adopt a written policy on employee discipline. There was no objection voiced.

Senator Ray adjourned the meeting at 2:10 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 7, 1982

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:00 a.m. The roll call showed Senator Ray, Representative Jack Fuller, Myrt Charney, John Chenoweth, Senator Dick Eliason, Fred Muller (alternate for Commissioner Rudd), Ken Kareen, Roger Thayer (alternate for Lynda McCurry), Greg O'Claray, John Pugh, and Doryce Eggleston (alternate for Cherie Shelley) as present. Also present were James Fisher, Mike McMullen and Bob Maurant.

Senator Ray asked the members to consider the memorandum on Minimum Qualifications for the Internal Auditor Job Series. Bob Janes, Chief of the Office of Internal Review in the Department of Transportation, addressed the commission in support of permitting work experience to substitute for the educational requirements of the job series. He said that before the auditing kinds of job classes were combined some years ago, his office was staffed by Audit Review Specialists. That job series had less extensive minimum qualifications than does the internal auditor series. When the classes were combined, employees were transferred into the internal auditor classes. If those employees, some of whom have many years of experience, were to resign and then later try to return to work in the same position, they could find that they no longer qualify because they lack the added educational requirements.

Mr. Kareen said that the Division of Personnel would review the internal auditor job series and consider whether it ought to be replaced with two parallel series.

Marcia Anne Lutterman, Internal Auditor III, testified in support of permitting work experience to substitute for the college degree requirement. She said that she was initially employed as a Fiscal Compliance Officer before that job class was deleted and her position transferred into the internal auditor series. She pointed out an additional problem with the educational substitutions presently permitted. The State of Alaska now requires that applicants for the CPA exam hold college degrees, so there is no way to qualify for an internal auditor without a college education. She will not be eligible for promotion until she completes the hours required for a college degree which is difficult to do while holding a fulltime job.

Carolyn Guess, Chairman of the Alaska Public Utilities Commission, addressed the commission concerning the associate attorney position in the PUC. The position is currently staffed on a reimbursable services contract with the Department of Law because the position needs to be in the partially exempt service, but the PUC does not have authorization to make it so. While the position is staffed through the Department of Law, it is statutorily placed in the partially exempt service. She

asked that if the Blue Ribbon Commission is sponsoring amendments to the State Personnel Act, an amendment to AS 39.25.120 be included to permit the PUC to hire partially exempt associate attorneys. Mr. Kareen pointed out that the PUC could request the Personnel Board to place the position in the partially exempt service without having to amend any statutes. Senator Ray added that the Blue Ribbon Commission would be happy to write to the personnel Board in support of the PUC's request.

The commission discussed and revised the memorandum on Employee Discipline. Mr. Muller suggested that the commission send a copy of the revised memorandum to the Commissioner of Administration and request that the department include the information in an employee handbook. Senator Ray asked the staff to prepare the materials to send to Commissioner Rudd.

The commission reviewed the memorandum on Recommendations Against Rehire. Senator Ray recessed the meeting at 11:45 a.m.

Senator Ray reconvened the commission at 1:30 p.m. and continued the discussion on recommendations against rehire. Mr. Charney suggested that the commission ask for a review of the memorandum from the Commissioner of Administration. Senator Ray directed the staff to ask for a response from the department for the next commission meeting.

The commission reviewed the memorandum on the Office Skills Test and the accompanying memorandum from Kaye Hogan, deputy director, Division of Equal Employment Opportunity. Mike McMullen, deputy director of personnel, explained that the Office Skills Test results have been found to be predictive of performance and the psychometrist has established its job-relatedness. The state is in the second year of a two-year experiment in which the minimum qualifications for clerical job classes are waived. The Division of Personnel will review the effect of waiving the minimum qualifications later in the study. For two or three job classes the minimum qualifications are not waived because the division believed that the experience or educational requirement was necessary. For both the retirement and benefits technician classes and the natural resource technician classes the experience requirement is still in effect. A college degree may be substituted. In addition, applicants for those classes must pass the Office Skills Test.

Chet Cottongim, personnel officer for the Department of Public Safety, said that managers in his department have found that employees who have been out of school for a long time have been getting poorer scores on the Office Skills Test than recent graduates. The department has asked the Division of Personnel to look into the situation. It is important to recognize and give credit to experienced good employees and to provide them with opportunities for promotion. The Office Skills Test may block them from qualifying for promotional opportunities. Mr. McMullen pointed out that 96.8% of the applicants who take the test pass it. Senator Ray responded that ranking can be as important as passing the test. Mr. McMullen added that long term employees will have earned employee credits which are added to their scores and a department wanting

to promote a current employee can fill a vacancy using an intra-departmental register. There methods ought to provide adequate opportunities to promote deserving employees.

Mr. Chenoweth suggested that the commission review the Division of Personnel's response to the Division of EEO's request that it seriously consider making the Office Skills Test only one component in the determination of qualifications of applicants.

The commission considered correspondence received from Marilyn Martin. Mr. McMullen explained that he had met with Ms. Martin and advised her that if credits from the California Coastal University are recognized by an accredited college or university then the Division of Personnel will accept her degree. Ms. Martin is currently writing to the University to gather the necessary documents and should receive credit for the degree when she presents them to the division.

The commission considered draft legislation on Credit for BIA service under the Teachers Retirement System. Mr. Charney moved that the commission sponsor the legislation in the next legislative session. Representative Fuller asked to abstain from voting. The vote showed eight (8) in favor, none opposed and one (1) abstention. The motion carried.

The commission considered correspondence received from David Hickok, chairman of the Alaska Council on Science and Technology, together with a memorandum prepared by Jim Lear, Legislative Counsel, addressing the points raised in Mr. Hickok's letter. Mr. Hickok addressed the commission. He suggested that the legislation should provide that supervisors of inventors be made aware of the discovery at the time that the inventor discloses the invention to the Council on Science and Technology. Senator Ray responded that the Council has authority under the bill to adopt regulations which provide that the inventor do so. Mr. Hickok asked whether the Council would have authority under the proposed legislation to contract with a nonprofit corporation to develop and market an invention and to grant a share of the royalties to the corporation as well as to the employee-inventor. Senator Ray responded that on page 3, section 39.52.020 the Council is authorized to grant monetary recognition for creations in intellectual work products and that the form could be a share of the royalties.

Mr. O'Claray moved that the commission sponsor the legislation on government interests in intellectual work products developed at the expense of the state in the next legislative session. The motion carried without objection.

The commission considered the draft bill on collective bargaining. Mr. McMullen pointed out that the language on lines 14 and 15 "whichever is later" could create a problem and suggested that those words be deleted. Mr. O'Claray moved that the bill, as amended, be introduced by the commission. The motion carried without objection.

The commission considered court leave for nonpermanent employees, item B in the Staff Memo. Senator Ray asked the staff to write to the Personnel Board asking that they act immediately, at the earliest possible time. He asked whether any commission members would object to sponsoring legislation on the issue if that should prove necessary. No objections were voiced.

The commission considered the status of state-employed medical doctors, item C of the Staff Memo. Tom O'Donnell, personnel officer for the Department of Health and Social Services addressed the commission. He said that his department had not been consulted by the Senate State Affairs Committee when the committee amended the State Personnel Act to place all medical doctors in the exempt service. Senator Ray asked that the department present suggested legislation on the question for the commission's consideration at its next meeting.

Senator Ray asked that commission members review the information about the state's nepotism statute for the next meeting. He asked for recommendations about filling the vacancy on the commission. Mr. Thayer suggested that the vacancy be filled after the legislative organization has been completed. Patsy Fletcher, Assistant Director of the Human Rights Commission, spoke in support of the application of James Chase.

Senator Ray adjourned the meeting at 3:00 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
November 9, 1982

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:05 a.m. The roll call showed Senator Ray, Representative Jack Fuller, John Chenoweth, Fred Muller (alternate for Commissioner Carole Burger) Lois Jund, Ken Kareen, Roger Thayer (alternate for Lynda McCurry) Greg O'Claray, Bob Maurant (alternate for John Pugh), and Doryce Eggleston (alternate for Cherie Shelley) as present.

Senator Ray asked the commission to consider the draft bill relating to the state's interest in intellectual work products. Jim Lear, legislative counsel, explained the changes he had made at the commission's instructions and answered questions. Representative Fuller moved that the commission approve the bill as drafted for introduction in the 1983 Legislative Session. The motion carried without objection.

The commission took up the draft bill relating to collective bargaining. Don Kubley, representing IBU-Pacific and the International Order of Masters, Mates and Pilots, addressed the commission. He pointed out a problem in the present language which requires that agreements be submitted to the legislature within 30 days after the convening of the session. If negotiations are delayed past the convening of the session, then employees would have to work without a contract for almost a year, until the convening of the next regular session. He suggested that the language be changed.

Senator Ray suggested that the second sentence of the draft, lines 15-18 be deleted. Greg O'Claray read a telegram from Steve Franks of the Marine Engineers Beneficial Association in Seattle, opposing an earlier version of the bill. Roger Thayer suggested the bill be amended by deleting "30 days after the" in line 14 and adding "10 days after signing by the parties or" in its place. Mr. O'Claray moved that the second sentence of the draft be deleted and that the bill be amended as suggested by Mr. Thayer. The motion carried without objection.

The commission considered the draft relating to PERS credit for BIA service. Mr. Muller explained that the bill would preclude state employees with federal BIA service from receiving retirement benefits from both the federal government and the state for the same period of service. Mr. O'Claray asked how the credit for BIA service was funded. Mr. Muller was not sure. Further consideration of the legislature was held until the next commission meeting.

Terry Cramer read the commission a fiscal note from the Division of Retirement and Benefits for the draft bill limiting the adjustment of retirement benefits which the commission has approved for introduction. The division expects there will be some cost but they cannot be measured and in most instances they are expected to be small.

The commission considered court leave for nonpermanent state employees. Mr. O'Claray said that most collective bargaining contracts provide for jury duty pay and that nonpermanents may be the only group of employees who are not entitled to receive pay while serving on a jury. Ms. Cramer advised the commission that the Personnel Board would be meeting next week to consider amendments to the Personnel Rules. Mr. Kareen added that the Rules which the Personnel Board would be considering do not include leave provisions. The State Personnel Act does not direct that the Personnel Rules address leave for state employees. Those provisions will be placed in other regulations. Senator Ray asked Ms. Cramer to advise the Personnel Board of the commission's support for court leave for nonpermanent employees.

The commission considered the request that it recommend a preference for student-loan recipients.

The commission considered the requirement that internal auditors hold college degrees. Mr. Kareen said that the Division of Personnel reflects the views of state managers in setting the minimum qualifications for job classes. Mr. O'Claray asked for more information on how the minimum qualifications for this job class were established, since most minimum qualifications permit substitution of training and experience for educational requirements. Senator Ray asked the staff to invite the Director of the Division of Internal Audit to the next commission meeting.

The commission discussed employee discipline and recommendations against rehire. Senator Ray suggested that the problem with recommendations against rehire is that a supervisor has control of an employee's entire job future with the state. Mr. Muller explained that the Division of Personnel reviews recommendations against rehire to insure that their scope is appropriate. The recommendations can be limited to that job class, to the department as a whole, or to any state employment. Mr. Kareen added that there are adequate departmental review procedures to insure that the recommendation against rehire is imposed only in appropriate circumstances. The employee's immediate supervisor prepares the recommendation. It is then reviewed at the next level of supervision, and finally there is a department level review, frequently by the Personnel Officer for the department. Unfortunately, the reviews are sometimes cursory, and the recommendations are signed automatically. Mr. O'Claray asked whether there were any guidelines to assist supervisors. Guidelines would help insure consistency. Ms. Jund added that many supervisors do not understand what a recommendation against rehire means. Could there be something written to let them know? Senator Ray asked the staff to work with Mr. Muller on this issue.

Senator Ray adjourned the meeting at 11:45 a.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
October 15, 1982

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:00 a.m. The roll call showed Senator Ray, Myrt Charney, John Chenoweth, Senator Dick Eliason, Sandra Withers (alternate for Commissioner Carole Burger), William Huston, Mike McMullen (alternate for Ken Kareen), Roger Thayer (alternate for Lynda McCurry), Greg O'Claray, and John Pugh as present. Also present was Bob Mourant.

Terry Cramer, Administrative Assistant to the commission, advised the members that the minutes of the meeting held September 21, 1982, should be corrected. The second sentence of the third paragraph should read:

With objection from the Department of Administration, the commission approved the draft bill limiting the adjustment of retirement benefits for introduction next session.

The correction to the minutes was approved without objection.

The commission considered the draft bill amending AS 14.25.107 prepared by the Division of Retirement and Benefits at the request of the commission. Senator Ray explained that the bill addressed a potential problem in the current statutes which could allow individuals to receive retirement benefits from both the federal and state governments for the same period of employment with the federal government. Greg O'Claray moved that the bill be prepared as legislation for introduction next session by the commission. The motion passed without objection.

The commission considered the draft bill relating to collective bargaining. Senator Ray suggested that the draft be amended to provide that if the legislature does not act within 60 days, then the agreement would be considered rejected. Mr. O'Claray suggested that the time for legislative consideration should be limited to 30 days. Mike McMullen asked whether the language in line 15 required that agreement reached after the legislature convened would have to wait until the next session before being considered by the legislature. Senator Ray suggested that the work should be done before the session to avoid any delays. Senator Ray asked that another draft of the bill be prepared for the commission's consideration at its next meeting.

The commission considered the draft bill relating to government interests in intellectual work products developed at the expense of the state. Jim Lear, Legislative Counsel, explained the changes he made in preparing this draft. The commission discussed the proposed AS 39.52.020, and asked that Mr. Lear prepare language providing that the Council on

Science and Technology may, subject to appropriation, either award the inventor a share of the royalties or give him or her a cash award for any discovery, regardless of whether it provides the state with net revenues or whether it is a cost-saving discovery. In addition, the commission requested that he draft language excluding the provisions of the legislation from the scope of collective bargaining and exempting legislators from the provisions of the bill.

The commission discussed standards for recommendations against rehire and for employee discipline. Senator Ray asked Sandra Withers to draft generalized standards with examples of the kind of conduct which would merit that level of discipline for the commission to consider at the next meeting.

Senator Ray announced that the commission would be meeting in November, December and January. He adjourned the meeting at 11:45 a.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
September 21, 1982

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:10 a.m. The roll call showed Senator Ray, Representative Jack Fuller, Myrt Charney, Senator Dick Eliason, Fred Muller (alternate for Commissioner Carole Burger), Ken Kareen, Lynda McCurry, John Pugh, Darlene Livermore (alternate for Cherie Shelley) present. Bill Huston and Cherie Shelley arrived late. Also present were Roger Thayer and Jim Fisher. Jack Chenoweth, Lois Jund and Greg O'Claray were absent.

The commission considered draft legislation on government interest in discoveries and inventions made by public officers and employees of the state. Jim Lear, legislative counsel, explained the provisions of the draft and answered questions from the commission. He said that legislation from the State of Connecticut and the federal Executive Order on patents by employees formed the basis of the draft. Senator Eliason moved that page 4, lines 1 and 2 be amended to delete the exceptions for the Alaska Energy Center and for the Alaska Resources Corporation. The motion passed without objection. The commission requested other changes and also asked Mr. Lear to prepare draft legislation relating to the state's interests in copywrites, particularly in computer programs. Mr. Don Bennett of the Council on Science and Technology was present, but did not testify.

The commission held review of the draft relating to collective bargaining until the next meeting. Without objection the commission approved the draft bill limiting the adjustment of retirement benefits for introduction next session.

Senator Ray stated that selection of a new commission member would be held until the next meeting. He asked commission members to be prepared to discuss employee discipline at that meeting.

Senator Ray adjourned the meeting at 11:45 a.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
August 30, 1982

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:00 a.m. The roll call showed Senator Ray, Representative Fuller, Myrt Charney, John Chenoweth, Fred Muller (alternate for Commissioner Carole Burger), Lois Jund, Mike McMullen (alternate for Ken Kareen), Lynda McCurry, Greg O'Claray, John Pugh, and Dianne Corso (alternate for Cherie Shelley) as present. Senator Eliason and Bill Huston were absent. Also present were James Fisher, Roger Thayer, Bob Mourant and Doryce Eggleston.

Senator Ray asked Chet Cottongim, personnel officer for the Department of Public Safety, to address the commission concerning correspondence received from Sgt. Richard A. Hemmen who lives in Fairbanks. Mr. Cottongim explained that a vacancy had occurred in the Fish and Wildlife Protection Division in Anchorage which required a seasoned supervisor, ideally one who was also a pilot. The department considered six sergeants and decided that Sgt. Hemmen was the most desirable. Neither Sgt. Hemmen nor the other five candidates for the position were from the Anchorage area. Although the department seldom invokes involuntary transfer, it did so in this case because of the special needs of the position. Sgt. Hemmen refused the transfer because of the financial hardship resulting from the loss of geographic pay differential and having to sell his house in the depressed market in Fairbanks. The department offered him the choice of accepting the transfer, resigning, or being suspended and, if he did not then accept the transfer, being fired. Sgt. Hemmen resigned effective August 1, 1982. He filed a grievance on the involuntary transfer which was decided in favor of the department.

Mr. Cottongim added that Sgt. Hemmen had refused a transfer once before on the grounds of financial hardship. The department accepted his refusal and he remained in Fairbanks and subsequently received two promotions. The Anchorage position actually became vacant on July 16th. Mr. Cottongim stated that so far as he knew, it had not yet been filled. He indicated that the department had hoped that Sgt. Hemmen would change his mind.

Mike McMullen explained that he had served on the contract negotiating team for the Public Safety Employees' Association labor agreement. The terms of the agreement recognize the employer's need to transfer employees, particularly commissioned officers, from one area to another. The contract provides that the employee's moving expenses will be paid by the state.

Mr. Cottongim added that the department's criteria for making transfer decisions are to provide an opportunity for officers to broaden their careers and to meet the needs of the department. The department tries to avoid imposing a hardship on employees, but the needs of the department must be met.

Senator Ray asked whether there was any evidence that the transfer was discriminatory or a disciplinary measure. Mr. Cottongim said that there did not appear to be any indication of that. He added that the department considered Sgt. Hemmen an outstanding employee. Senator Ray said that there appeared to be no further basis for the Blue Ribbon Commission to consider the matter. He was sympathetic to the situation Sgt. Hemmen had been placed in, but the transfer appeared to be the exercise of a valid management prerogative.

Dale Young addressed the commission concerning issues raised in his earlier correspondence with the commission. He was employed by the Department of Fish & Game, F.R.E.D. Division as the Southeast Alaska Regional Hatchery Manager in 1976. When he was first employed, the state needed to develop a production-scale salmon incubator. He asked his supervisor if he could work on the project privately and was advised to request an Attorney General's opinion on conflict of interest. In 1977 the Attorney General granted him permission to proceed with his work and to obtain a patent provided he followed strict guidelines. Mr. Young secured a patent, and in cooperation with a private corporation, developed an incubator and fish rearing system.

Mr. Young stated that following his patenting of the incubator, his work situation deteriorated, leading ultimately to his layoff on August 15. His performance evaluations changed from rating his work as highly acceptable to finding his work unacceptable and recommending his termination. His supervisor had not spoken with him about the change in the performance of his work or made suggestions on how he could improve. He believed the evaluations and other unfavorable situations in his employment were in retaliation for his having secured the patent.

Mr. Young added that in addition to his personal difficulties, Fish and Game had broken state and federal laws to avoid purchasing his products. The Ombudsman's office had twice investigated the department's purchasing practices and found them in violation of the applicable laws. During the second investigation, they referred the complaint to the Governor's Internal Auditors. The auditors confirmed that the department was violating purchasing procedures.

In answer to a question, Jack Chenoweth, Ombudsman, said that his office had investigated the incubator purchasing practices over the past several years. The purchases involve three agencies - the Departments of Public Transportation, Fish and Game, and Administration. Correction of the problem would require the cooperation of the administration, and therefore, his office had asked for a review by the Internal

Auditors. The Ombudsman's office also made several recommendations to each department, but did not receive an entirely favorable response. The Ombudsman's investigation did not consider the employment problems which Mr. Young was raising before the Blue Ribbon Commission.

Mr. Muller asked Mr. Young whether APEA was still involved on his behalf. Mr. Young said that they were. Mr. Muller suggested that the Blue Ribbon Commission should not intervene in the matter until the pending grievances are resolved. Senator Ray replied that in his opinion it was appropriate for an individual to bring anything before the commission at any time. He also requested the commission staff to invite Deputy Commissioner Collinsworth from the Department of Fish and Game to address the commission on this matter at 1:30.

Representative Fuller asked whether Mr. Young's product was used outside the state. Mr. Young replied that there is some small use by private nonprofit concerns on an experimental basis and added that tests have proved the success of the process and equipment. It provides high quality production with a higher survival rate and is the least labor-intensive process available. In response to a question from Ms. Jund, Mr. Young indicated that he had been employed as an assistant hatchery manager by the State of Missouri prior to his coming to Alaska to accept the Hatchery Manager position. In addition, he had owned a private hatchery in Missouri where he began the development work which he continued in Alaska. He believed that his work on incubators was one of the reasons he was selected for the position, but two weeks after he began working it became clear that he would not have time on the job to continue.

Mr. Young added that Fish and Game is justifying his layoff by saying that they are responding to legislative intent that they reduce the numbers of managers in the department. He pointed out that the department has not eliminated any top-level management positions. All of the layoffs in management positions have occurred in mid-level management.

In response to a question from Greg O'Claray, Dianne Corso from APEA explained that Mr. Young has several grievances pending. The grievance addressing the reasonableness of his layoff is under consideration for filing at the Step III level. Mr. Young has the right to pursue that issue through arbitration.

Senator Ray brought a letter from Ms. Eileen Oliver to the attention of the commission and asked Mr. Chenoweth whether there were any recent developments he wished to report. Mr. Chenoweth replied that at Ms. Oliver's request his office has not proceeded further with the complaint, since the position she applied for has not yet been filled.

The commission considered the Issue Summary dated July 20, 1982, concerning issues raised recently.

A. RECOMMENDATIONS AGAINST REHIRE

Mike McMullen explained the state's system on recommendations against rehire. When employees resign in good standing, they have the right to be placed at the top of registers for job classes for which they qualify. Supervisors are not required to hire them but may select

them without considering any of the top five applicants if they wish to. When an employee is not recommended for rehire, he or she loses those rehire rights. In addition, if the recommendation against rehire applies to all state employment, the employee's name will be removed from all registers and no applications will be accepted until the employee has worked for another employer for the length of the probationary period for that job class, either six months or one year.

Senator Ray suggested that the penalty is too severe. Unless an employee is dismissed for an indictable offense, a supervisor should not recommend against rehire by the state. Prospective employers should be notified of the employee's unsatisfactory conduct and be allowed to decide whether they wish to employ that person. Mr. McMullen replied that the Division of Personnel is charged with evaluating applicants to insure that they meet minimum qualifications. Part of that review should include consideration of previous work history. If the history shows that there has been a serious problem, then it is appropriate to find the applicant unqualified until he or she demonstrates that the problem has been resolved.

Dianne Corso pointed out that although the system provides for review of recommendations against rehire by the Division of Personnel, in fact employees may have to go through considerable effort to have Personnel reconsider the supervisor's recommendation. Mr. McMullen explained that the departments have an internal review system before Personnel is involved. Recommendations against rehire are part of the employee's final performance evaluation. After a supervisor prepares the evaluation, it is reviewed by the supervisor's supervisor, typically a division director. If the division director approves it, then the commissioner's office reviews it. That review is frequently delegated to the departmental personnel office. Lynda McCurry pointed out that recommendations against rehire can be attached to voluntary resignations as well as to situations in which an employee is fired. Departments do not impose them consistently and internal review is not always adequate. Ms. Corso added that some supervisors have no knowledge of the effects of the recommendation.

Mr. O'Claray asked whether the state has standards for imposing recommendations against rehire. How does a supervisor know whether it is appropriate to impose that penalty on an employee? Mr. Muller replied that there were no standards. Each case is considered separately on its merits. This allows for consideration of mitigating factors such as a crisis in the employee's home life which is temporarily affecting job performance. Mr. O'Claray pointed out that if you notify employees of the standard which you expect them to adhere to, then in most cases they will do so. Mr. Muller answered that the issue is grievable. Ms. Corso replied that if there were standards, then there would be fewer grievances.

Representative Fuller asked whether the final performance evaluation would not be sufficient to alert future employers to the problem. John Pugh explained that, particularly for positions with high

turnover, supervisors are unlikely to request that Personnel send them copies of performance evaluations. Therefore, they would be unaware of an applicant's unsatisfactory work history. Ms. McCurry said that the Department of Labor requests applicants to provide copies of their last several evaluations when they are interviewed.

Ms. Jund suggested that standards should be developed for applying recommendations against rehire within that section, agency, department, or by the state as a whole. Senator Ray said that the commission would consider the federal guidelines on penalties at its next meeting.

B. RETALIATORY LAYOFF

Mr. Pugh suggested that the commission consider both the issue of retaliatory layoffs and also the development of whistleblower legislation. He added that layoffs will become an increasingly important issue in the near future. Private employers, such as Boeing, have systems which permit considering both productivity and seniority when deciding who will be laid off. Unions favor a seniority system. Standards based on seniority tie the hands of management when it tries to improve productivity.

Mr. McMullen explained that the States uses a table to compute layoff points. Points are given based on the quality of job performance established by the employee's last three evaluations, with that figure multiplied by the length of service within the unit. Since layoffs are made by division or region, layoff points may not mean much. An employee with considerable seniority and good work performance may still be the only person within the unit and therefore may be laid off while less senior and less productive employees in other units may remain on the job. Senator Ray suggested that the layoff system should provide a forum for challenging possible discriminatory action and that the issue should be addressed on an individual basis.

C. CONFLICT OF INTEREST

Ms. Corso pointed out that the conflict of interest issue is similar to the recommendation against rehire issue in that standards of employee conduct are not clear in either case. She added that APEA is finding that the problem is coming up with increasing frequency.

Senator Ray recessed the meeting until 1:30 p.m.

Senator Ray reconvened the meeting at 1:30 p.m. and invited Don Collinsworth, Deputy Commissioner for Resource Management in the Department of Fish & Game to address the commission on the employment issues raised by Mr. Dale Young.

Mr. Collinsworth stated that it was his understanding that the commission was interested in Mr. Young's layoff and also in the issues surrounding the patenting of the incubation system. With reference to

the layoff issues, he introduced Stan Moberly, Director of the F.R.E.D. Division in which Mr. Young had been employed. He added that because of funding cuts, the department would have to lay off about 11 employees, some of whom have as much as 15 years employment with the state. He pointed out that the Attorney General is investigating the patent issues raised by Mr. Young, and that the Ombudsman has investigated the issue. In addition there are grievances pending on the employment issues.

Mr. Moberly addressed the commission. He stated that he was regional supervisor of the F.R.E.D. Division from 1975 through November, 1980. He has been director of the division since this past June. As regional supervisor he had been Mr. Young's supervisor and had written favorable performance evaluations of his work. Mr. Moberly indicated that he did not know the basis for the unfavorable evaluations written after he left the division.

Mr. Collinsworth explained that in making layoff decisions, he and Mr. Moberly had reviewed the division staff, looking at positions, duties and responsibilities. They did not consider the individuals in those positions when deciding who should be laid off. Mr. Young was not laid off because of his performance, but because the department had to trim the SE program staff. Rep. Fuller asked whether any of the layoffs occurred in upper level management. Mr. Moberly replied that some managerial staff were laid off in response to the Legislature's directions. In Anchorage, the managerial staff was reduced from four to three positions and in Juneau, it was reduced from three to two positions. The Anchorage office is responsible for hatcheries in all parts of the state except Southeast.

Mr. Moberly added that in 1976 when Mr. Young was hired there was just one hatchery in the Southeast region. The organization was growing fast and focused its energies on technological development. Since that time the division's task has changed to management of the existing hatcheries.

Mr. Collinsworth said that he had brought Mr. Young's personnel file and asked whether the commission had the authority to review personnel files. Mr. Young stated that he had no objection to the commission reviewing his performance evaluations. Senator Ray asked Mr. Collinsworth to summarize why Mr. Young's work became unacceptable.

Mr. Moberly explained that following Mr. Young's patenting of the incubator processes, it became much more difficult for him to function in a role of regional hatchery manager. Mr. Young's co-workers were unwilling to discuss things openly with him, so there was no free flow of ideas. At the same time the division's focus was changing from technological to managerial in nature. In his job as regional hatchery manager, Mr. Young was unable to recommend what incubators the department ought to install in their hatcheries because of the conflict of interest created by his holding the patent. In addition, his co-workers felt that they had contributed to the development of the incubator system and that in applying for a patent, Mr. Young had plagiarized their ideas.

Mr. Collinsworth explained that when Mr. Young was first employed, the division was developing hatcheries and various types of equipment, incubators, water systems and processes. Mr. Young was working as part of a group which was considering incubators. He had, obviously, contributed to the conception of the equipment, but his colleagues felt that they had as well. Because he took the initiative to patent the process, he is the one to benefit financially from the incubation system when the state or other purchaser pay royalties for its use.

Mr. Young replied that he had acted in good faith after securing an opinion from the Attorney General's office that it would be legal for him to proceed. He added that a person cannot patent something that is not original. The concepts involved in the incubator system were ideas that he had brought with him from Missouri. Mr. Moberly suggested that the commission should request a copy of the Attorney General's report on the conflict of interest question when it is available. In answer to a question from Rep. Fuller, he said that the work that Mr. Young had been doing on the incubator system was part of his job assignment with the state. Mr. Moberly added that whether the situation with the patent has developed into a conflict of interest has not yet been ruled on. It has caused managerial problems and finally led to Mr. Young's being asked not to serve as a member of the facility design team.

Mr. Moberly said that the division has offered Mr. Young another position as the Snettisham hatchery manager. Ms. Corso pointed out that the position would require that he move away from Juneau without his family. Mr. Moberly explained that it was the only job that the division had open. He added that he had told APEA and the labor relations division staff that the F.R.E.D. Division would, to the extent possible, add steps in grade to the position, which is a Range 18, to have as little financial impact on Mr. Young as possible. His last position was at Range 20. Fish and Game tries to return employees who have been laid off to their previous leveles as quickly as possible. Mr. Moberly added that the Hatchery Manager job is important because the Snettisham hatchery is highly visible and has an inventory of several million fish. Mr. Young would be expected to work at the position, not just draw a paycheck while looking for other employment. Mr. O'Claray asked what the timing on the offer was. Mr. Moberly replied that the offer was made about a week ago, immediately after the position became vacant.

Mr. Young challenged Mr. Moberly's statement that there had been no other positions available. He added that when he inquired about the Snettisham hatchery manager position, the supervisor told him that he would have to work the register and that he hadn't made his final decision about how he was going to fill the position. Mr. Moberly replied that he had not been able to offer Mr. Young any other position and that the division cannot let one layoff dictate the management of the whole fisheries program. He explained that the division probably would work the register for the hatchery manager position, but that Mr. Young can be placed on it and that the department's policy is to give preference to employees who have been laid off whenever possible.

Ms. Jund pointed out that in private industry scientists have to sign a release stating that if anything develops during their work which is patentable, it is the property of the employer. She asked whether the state had any similar requirement. The answer was no. She asked whether Mr. Young would have lost his effectiveness with the division if the state had had such a policy. Mr. Collinsworth replied that he believed that Mr. Young would not have. Such a policy would be of benefit to the state and would improve the work environment for scientists.

Senator Ray stated that as chairman he believed that any more discussions by the committee would be premature. The commission will hold the matter until there have been final determinations in the proceedings presently going on. He thanked Mr. Collinsworth and Mr. Moberly for attending.

C. CONFLICT OF INTEREST (continued)

The commission returned to discussion of Conflict of Interest from the Issue Summary. Janet Bradley, Director of the Alaska State Human Rights Commission, pointed out that there is a balance between the employer's needs and the employee's First Amendment rights. Ms. Jund asked whether the conflict of interest Personnel Rules were inadequate. If they are, should the commission try to improve them and make employees aware of their terms? Roger Thayer replied that he had tried to write a conflict of interest policy for DOT/PF and the Attorney General's office had said that it couldn't be done because of First Amendment rights. Senator Ray suggested that the commission look at the issue at its next meeting.

D. ACCESS TO STATE EMPLOYMENT

Myrt Charney suggested that it was appropriate for the state to give higher priority to promotional opportunities than to give access to new employees. Ms. Corso pointed out that a supervisor can choose whether to hire from an open competitive list or from an interdepartmental promotional list. Senator Ray stated that the majority of complaints which most legislators receive is that state employment is a closed shop. Once a person finds employment with the state, he is in, but getting in is very difficult. Ms. Bradley added that the Human Rights Commission has been considering the impact of promotional registers on Affirmative Action. Give that a large proportion of the state workforce is white, limiting access to jobs to those already employed is, in fact, a barrier for other persons who include minorities.

Senator Ray summarized correspondence received from Larry Korkowski. Janet Bradley explained that when the Human Rights Commission receives complaints about its own employment practices, they refer the complainant to other organizations including the Blue Ribbon Commission, the Ombudsman, the Division of EEO and the Equal Employment Opportunity Commission.

Senator Ray suggested that in a pure merit system there would be no Affirmative Action program. Employment decisions would be based solely on the person's qualifications. Rep. Fuller asked how many people take advantage of veterans' points. Jim Fisher, Director of the Division of EEO, replied that the state has not done any studies. In the federal government, a large percentage of the workforce - perhaps 25 or 50% - who are veterans have benefitted from the additional points. Senator Ray pointed out that the commission had sponsored legislation last session which limited application of veterans' points to one time. He added that the commission would look further at the issues of employee credits and promotional lists.

The commission considered the state's retirement system laws. Chuck Elrod, Retirement Supervisor, addressed the commission. The state actually has about six different retirement systems. Senator Ray asked whether it would be feasible to merge some of the systems into PERS. Mr. Elrod replied that that was outside his purview. Major problems in PERS are with the temporary service credit for both federal and state employment. The Attorney General has issued three separate opinions stating that temporary service cannot be considered credited service unless the statute specifically includes it. In practical terms, it is difficult to verify pre-1961 earnings and service.

The commission reviewed and discussed the PERS and TRS statutes.

AS 14.25.045. PARTICIPATION BY NATIONAL EDUCATION ASSOCIATION EMPLOYEES

Mr. Elrod reported that there is an Attorney General's opinion which says that including NEA employees in TRS is unconstitutional. The Division of Retirement has identified the employees involved. Future NEA employees will not be covered under TRS.

AS 14.25.060. ARREARAGE INDEBTEDNESS

There is also a problem brewing with the state taking over responsibility for the BIA schools. What retirement arrangements will be made for the classified BIA school employees? That will depend on the terms of the participation agreements between school districts and the state, but it will probably be limited to including service from the beginning of state involvement. There will also be a large financial impact on the system from BIA teachers who retire from the state. The TRS statutes allow a teacher with five years with the state to claim up to 20 years of BIA service. A similar impact will occur in PERS if the state buys the Alaska Railroad from the federal government.

AS 14.20.107. CREDIT FOR ALASKA BIA SERVICE

Mr. Elrod pointed out a loophole in the present statute. A person may have worked for the federal government long enough to qualify for federal retirement. If he then works for the state, he is entitled to buy in five years of that federal service. The statute requires that the state reduce the amount of retirement benefit it pays by the amount

of benefits which the person is receiving from the federal government for the same period of service. However, if the person takes a lump sum payment from the federal government before retiring from the state, there will be no federal retirement benefits. After his state benefits are established, he can repay the amount into the federal retirement system and then be eligible to draw retirement benefits from both systems for the same years of service.

Senator Ray asked Mr. Elrod to prepare proposed legislation to address the double credit for federal service. He announced that the commission would meet again in two or three weeks and would consider applicants for the vacancy in the commission membership as well as the other issues which have been raised.

Senator Ray adjourned the meeting at 4:00 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
March 11, 1982

MINUTES

The meeting was called to order by Senator Bill Ray, Chairman, at 1:35 p.m. The roll call showed Senator Ray, John Chenoweth, Senator Dick Eliason, James Fisher (alternate for Commissioner Hudson), Lois Jund, Ken Kareen, Lynda McCurry, Greg O'Claray, John Pugh and Darlene Livermore (alternate for Cherie Shelley) as present. Representative Jack Fuller, Myrt Charney, and William Huston were absent. Also present were Roger Thayer and Bob Maurant.

The commission reviewed the draft of the 1982 Report to the Legislature and corrected errors and made changes. It was moved that the report as amended be presented to the Legislature. There were no objections and Senator Ray so ordered. The commission adjourned at 3:00 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 21, 1981

MINUTES

The meeting was called to order by Senator Bill Ray, Chairman, at 10:00 a.m. The roll call showed Senator Ray, Representative Jack Fuller, John Chenoweth, Senator Dick Eliason, Lois Jund, Ken Kareen, Roger Thayer (alternate for Lynda McCurry), Fred Muller (alternate for Commissioner Hudson), Greg O'Claray, John Pugh and Doryce Eggleston (alternate for Cherie Shelley) present. Myrt Charney and Bill Huston were absent. Also present was James Fisher.

Senator Ray asked for public testimony. Charlie Mae Moore addressed the commission. She said that she represents a conglomerate of people who asked that she speak. She works for the Department of Education and has been employed in the field of education in Alaska for 28 years. For a period from 1970 to 1978 she served on the Governor's EEO Commission. For three or four years, the Commission worked closely with the state personnel office, and conducted an overview of the personnel system. Ms. Moore worked for the division for one summer and looked at minimum qualifications and requirements for jobs. She discovered one that she hasn't forgotten. A firefighter couldn't fight a fire unless he was 5'8" tall, which she found ridiculous. The EEO Commission was able to work with the personnel office to resolve some of these instances.

In the course of her tenure with the EEO Commission, Ms. Moore said that she became very upset and disturbed for people who came to her and the other commissioners because they couldn't get on with the state system or because they had been with the system for a long time but couldn't move. The EEO Commission did not have enforcement power, so there was nothing that they could do but listen to people. She began to question what they were accomplishing. Through the personnel division, they were able to do some things. They came up with some specific recommendations which the Governor considered and implemented. They revamped the employment application. But problems still remain.

Women employed in ranges 9 to 15 are generally unaware of the possibility of a career ladder. They are provided with very little orientation to the job and they feel frustrated because they do not get enough career counseling. They aren't advised of their function, of what the state government is about and as to their role. So they become discouraged. Ms. Moore suggested that the 18 departmental personnel offices need to relate more to people, especially to women.

Minorities are underutilized in state government. Ms. Moore said that she was concerned about qualified people being hired and then being able to move forward. The buddy system has become more sophisticated in the State of Alaska but it is still used. It is disturbing to see a job advertized when there is already someone who has been chosen for the position.

On middle management, Ms. Moore pointed out that minorities seem to be trapped in ranges 9 to 21. They can never shake that 21. She said that she wasn't asking for preference, but she was talking about qualified people who are productive employees, who commit themselves to take on more to get the job done. Employees should not fear that they will be retaliated against if they speak out about problems. When setting EEO goals, women should be kept as a separate category from minorities. Advancing women does not satisfy the need to advance minority people.

Ms. Moore said that there has been some strengthening in the personnel system, particularly in career counseling. Employees understand what the requirements are for promotions and what classes they might take to become eligible for better jobs. In some cases, classes are paid for to enhance an employee's performance in his present job.

Ms. Moore said that she has talked with people who have said that all they are interested in as far as the departmental Affirmative Action Plan, is to have the plan approved. If things are going to happen, it means more than having the paper produced and getting the Governor's signature on it. Another state employee came out of an EEO meeting and said that he couldn't wait to get out of there. Attitude is what really bothers her, said Ms. Moore. She asks three things: that minority people are thought about, that they be given an opportunity, and that the Blue Ribbon Commission be endowed to do some of the things that EEOC couldn't do -- to act to correct the problems which were identified.

Senator Ray asked Ms. Moore whether she had any recommendations for overcoming the subtleness of discrimination which can happen when an office has five caucasian employees and one minority group employee and the five employees make the office a miserable place for the one minority person.

Ms. Moore replied that she didn't have an answer to that kind of sophisticated discrimination. She also worries about verbal abuse, which can destroy a person. She was once subjected to it and became so angry that tears came to her eyes, and yet, one hour later, the person who had done it was perfectly friendly. People who discriminate can stay within the guidelines so that there is no avenue of recourse open to the person injured, and yet still be effective. She said that when she has been told of problems in her office, she will act as an intermediary to tell the person who did it that the other person is upset, and that he should talk with the other person. Sometimes they are unaware of the effect of what they have done. One-on-one contact is important, to provide some encouragement and to alleviate frustration. Personnel officers or supervisors can fill this role. If minority people find only putdowns and embarrassment in their jobs, they will leave, even if its more money than they've ever made in their lives. Having someone to talk with personally can allay fears of discrimination and show that a new policy is affecting all employees, or that one individual is like that with everyone, not just the minority employee.

Promotions for minority people are another problem. Ms. Moore said that she has been asked "if I promote this person, will the people who work for them resent them because they are a minority?" If a person is a good supervisor, showing compassion and caring for people, employees will work themselves to death to make the supervisor look good.

The high turnover in jobs between ranges 9 and 15 hurts the employer because of the time invested in employees, in training them, in getting the terminology of the department or unit familiar to them. It's important to be supportive of them, to find out whether there is a problem. Senator Ray suggested that what you really need is a group of people who work for the administration who take care of problems as they crop up. Ms. Moore agreed and added that it is crucial that they work for the administration.

Senator Ray thanked Ms. Moore for her testimony. He asked for any other people who wished to testify. No one came forward at this time and the commission turned to considering the issues presented in a memo dated December 18, 1981 prepared by the commission staff.

A. PROBLEMS IN THE HIRING PROCESS

1. Classification of positions.

Lois Jund pointed out that a review of the entire state classification system is long overdue. When positions with comparable duties are classified differently, it results in a great deal of discrimination against employees. Ken Kareen said that the state is working at a slow pace toward that goal and added that it concerns two different items, the classification system and the state pay plan. Senator Ray added that other problems occur when the duties for a position change over time. When the position is finally reclassified, the person who has been fulfilling them may lack the technical requirements for the new job classification. Mr. Kareen pointed out that there are two different considerations -- fairness to the employee who developed the job vs. appearances of the "buddy system" which cases those who want the job to say "it isn't fair because I didn't have a chance to compete for that job".

Greg O'Claray asked about the use of the classification system to encourage employment of protected classes. Is the state interested in hiring the person most qualified for the job? Should the classification system be used to broaden the selection process? John Pugh explained that the Social Services Associates are entry level positions. The minimum qualifications for that job class are lower than for social workers and the state provides closer supervision of the new employee. The Social Services Associate does not do all of the social worker tasks. A career ladder has been developed and after three years as a Social Service Associate, the employee will qualify as a social worker.

Mr. Kareen added that trainee job classes assume that a training plan will be part of the job duties and that the job will be structured to provide close supervision. Where the training is haphazard, the use

of trainee job classes doesn't work well. There are also some skills such as typing which are better learned away from the office. On-the-job training should be mixed with appropriate training away from the job site.

Senator Ray asked whether providing training was the state's job. Mr. Kareen responded that it was, in some cases. Most successful private employers spend time training their employees. He added that in comparing the state with private employers, it is important to remember that there is no private employer in Alaska whose workforce is as large as the states's. Senator Ray said that you can't expect the state to provide training to people applying for positions in which the registers are already full of qualified applicants.

Mr. Thayer returned to the question of using the classification system to remedy underutilization and suggested that there should be more flexible staffing of positions. Very few departments make use of the system. They hire at the highest level of a job class instead of opening a trainee position and then upgrading the position and the employee as skills are learned.

Mr. O'Claray suggested that in order to attack discrimination, you have to look at the numbers, and the numbers on underutilized classes are pretty plain. So far there has been no tool which is effective to change the numbers, because there is no mandatory requirement that anyone do anything on EEO. If you decide that you want to do something to correct past inequities then you may have to use affirmative action tools which give a preference to those who have been discriminated against. Senator Ray pointed out that those tools may not be fair to the individual who is not covered by the affirmative action plan. Mr. O'Claray asked whether there was an EEO office in every department. Mr. Kareen explained that there are individuals designated as EEO officers and there are EEO committees in the departments, but for many employees, it's a duty added on to their other job responsibilities.

Mr. O'Claray moved that the commission support a review of the classification system. Mr. Kareen suggested that until the review is made, it would be premature to suggest whether the classification system should be used to encourage employment of protected classes, and that the motion should be limited as it was phrased. Mr. Pugh asked whether there were resources available either for an outside contract or for staff time within the division to accomplish such a review. Senator Ray said that he would look at the budget to find funds to at least provide a preliminary review to identify areas of great concentration in the future. The motion carried without objection.

2. Recruitment.

Representative Fuller said that he had intended to talk with Mr. Pugh about the Nome Youth Facility before raising the question in the meeting. He has heard that positions have been upgraded which has meant that some people who applied have been eliminated from consideration

for the positions. Mr. Pugh explained that the positions had not been upgraded, but that there were a number of individuals who did not pass examinations conducted in Nome, so the department held a second recruitment there. The positions are what is called coupled classes. The majority are Youth Counselor I positions, and after six months on the job, the employees will be eligible for promotion to Youth Counselor II.

MEMO ON MALES AND FEMALES ON SELECTED REGISTERS

Senator Ray asked the commission to look at the memo on the numbers of males and females on selected registers. The commission has heard much testimony about the large number of women working in the lower salary ranges. The memo shows that there are few female applicants for higher range positions. He asked whether it would be safe to assume that if there is discrimination in the higher ranges, it is in the partially exempt and exempt services rather than in the classified service. Mr. Pugh suggested that it raises another question about why there is such a discrepancy in the numbers applying. Mr. Kareen added that as an employer, the state inherits the difficulties in society and in the educational system. Higher range jobs usually require that the applicants meet educational and work experience criteria. In the past, women have been discouraged from seeking careers in many areas, so they are unlikely to be well represented in the applicant pool for those jobs. You can't expect a balance to be achieved overnight.

Senator Ray pointed out that the memo under discussion did not show the male/female ratio of presently employed in the job classes. Therefore, it is difficult to know whether the state is doing what it should in its hiring decisions. Mr. Kareen said that the state is working to develop applicant flow data which would consolidate that information. The information is stored now, but not in a coherent form.

Representative Fuller asked how many complaints the commission has received about women not being upgraded. Senator Ray replied that the majority of people were complaining about the low number of women in executive positions. He asked the staff to prepare figures on the number of male and female employees presently employed in the job classes addressed in the memo.

Mr. O'Claray asked about the success ratio of the commission with respect to handling individual complaints. He said that he tends to believe that the most effective way of handling discrimination is on an individual basis because it shows results. Senator Ray said that he believes it is about 90 percent. Ms. Cramer added that the commission staff has not kept a formal summary of the results of the complaints received. Mr. O'Claray added that many of these cases can be better resolved on an informal basis rather than through a formal process like a charge before the Human Rights Commission. People tend to solidify their positions if they think they're going to go through legal proceedings. Senator Eliason pointed out there can be some value to having a public airing of a situation. Senator Ray agreed when the situation affects many people, but when it is an individual matter, public hearings can harm the person involved more than help.

A.3. Five-Plus-Five Certification System.

Mr. O'Claray said he has talked with a few of the people responsible for hiring in several different divisions of the state and asked them about the five-plus-five registers. Some use them and some don't seem to have any working relationship with them. Unless there is some instruction given by the division director or the commissioner of that department, the system is not going to be used. Senator Ray asked whether the register system was fair to use or constitutional within the merit system, when it results in going below the top five to reach others less qualified? Mr. O'Claray responded that if you have an affirmative action plan which says that you intend to meet certain goals, then that is the policy, whether or not it is fair. Mr. Thayer explained that each department either has or is developing an Affirmative Action Plan. Mr. Kareen added that the five-plus-five registers can only be used in job classes where underutilization has been shown to exist. Senator Ray asked whether use of the registers in those cases was mandatory? Mr. O'Claray suggested that use of the expanded registers should be mandatory where underutilization is established.

Mr Muller explained that every person on a register is qualified to do that job. Some people rank higher than others, but all are qualified. The five-plus-five register just gives qualified minorities or women a chance to be interviewed and considered for a position. The system is relatively new. On the constitutional question, he added that similar systems have been considered by courts elsewhere. The courts have recognized that under the federal constitution, where there is underutilization, employers can use instruments of this type until the employer achieves a better balance in the work force. Once that has been accomplished, then the employer returns to a system strictly based on merit principles. Mr. Muller added that it is now mandatory that departments receive the five-plus-five list. Hiring from the minority list is voluntary.

Senator Ray asked whether the commission wished to encourage use of the five-plus-five registers. Members agreed that they did. Mr. O'Claray added that according to Mr. Muller, calling for those registers is mandatory. Mr. Thayer asked for clarification because he knew of nothing which had made that the state policy. Mr Muller answered that where underutilization exists in a job class within a division or a department and the appointing authority calls for a register, the system should, as a matter of course, provide the supplementary register. The decision as to whether the appointing authority will hire from the expanded register is voluntary. Mr. Chenoweth asked whether the source for the mandatory nature of the system is the combination of the Governor's Affirmative Action Order and the Personnel Rules. Mr. Muller agreed and said that the motive force behind it is that you do have underutilization and the only way to resolve it is to allow the appointing authority to reach further down the register when hiring. Ms. Cramer read from regulations dated March 25th from Bruce Cummings which said that "when underutilization has been shown to exist the five-plus-five registers

can and should request discretionary authorization to appoint from below the top five". She asked whether that regulation had been amended? Mr. Muller said that they had talked about the question at length and decided that so much confusion existed that providing the list to the appointing authority would be mandatory. He added that if the policy had not yet been implemented, it would be shortly.

Senator Ray recessed the meeting for lunch.

Senator Ray reconvened the meeting and the commission returned to discussing the Issues Memo.

A.2. Recruitment

Senator Ray asked the commission to consider the issue of recruitment. Representative Fuller said that he'd like to wait for the discussion on rural hiring before commenting on the issue. Senator Ray suggested that recruitment should be the responsibility of those in the rural areas who are interested in applying for positions, including rural organizations. Representative Fuller added that recruitment is made more difficult because the Native Corporations are actively looking for qualified employees to staff their offices. Mr. Pugh added that Sealaska Corporation has a special assistant to the president whose sole responsibility is placing stockholders in jobs with the corporation, so there is considerable competition for workers.

Senator Ray asked for public testimony. Mr. Paul Blank addressed the commission on the issues of non-resident hire and also Native hire. He was offered a job in Bristol Bay, which is mostly a Yupik village. He wanted to accept the job offer, but he talked with people in Dillingham who said that they wanted a Yupik person in the job. But according to the state policy, the department must hire from the top five applicants, no matter where they live. There is strong resentment to that in the bush.

Mr. Blank suggested that perhaps people should get extra points for living in the region where the hiring is taking place. For example, no white person could possibly go to a place like Bristol Bay and expect to understand the needs and desires of the Yupik people there, especially in a job like public assistance. Senator Ray pointed out that many of those programs are funded with federal money, so there is a problem in giving preference to anybody. Ms. Jund added that the commission had discussed having local registers but that there were tremendous problems in administering them.

Mr. Kareen said that since 1959 the state has operated under a basic philosophy that this is a State of Alaska position, and all residents of Alaska have an equal chance at being hired regardless of where they

reside. The state will not distinguish between its citizens. He added that there are other states which have tried to address this problem. One remedy is to say that anyone in the state can take the test to qualify for the position, but it will only be given in the place where the job is. Senator Ray pointed out that this would work against the person in Dillingham who wanted to move to Juneau. Mr. Blank answered that there were plenty of jobs in Juneau and the other cities in the state so there isn't any problem of resentment against the outsider.

Mr. Kareen suggested that there are ways of lawfully addressing the problem. The Department of Health and Social Services in the Lower Yukon and Lower Kuskokwim had a number of positions working in villages to provide liaison between the local population and the department. If the employees were going to be able to do that job they had to speak Yupik and also have an ability in the English language. So ability in both languages was made a job requirement. The Village Council served as a review board for part of the examination and a portion of the interview with them was conducted in Yupik. The Council rated applicants on how well they would get along with the people in the village they would be servicing. The bilingual requirement was bona fide and not used specifically to promote employment of Alaska Natives.

Senator Eliason asked what job Mr. Blank had been going to take and whether the resentment against state employees from outside the village would be the same for all departments or just Health and Social Services. Mr. Blank replied that the job was as an Eligibility Technician I. There's a particular problem with the kind of job he was offered, because most of the people in the village are on public assistance for part of the year and the eligibility technician hands out the emergency funds and gives tentative approvals or disapprovals for long-term public assistance. When the Eligibility Technician can't even speak the language, there's a particular resentment. The only work available is seasonal fishing and cannery work. But the resentment would be there for anyone coming in who gets a better salary than anyone else around.

Senator Ray asked what problems would develop if the eligibility technician were a black or hispanic, for example, and wanted the job and was number one on the register. Mr. Blank replied that that would not make any difference in the village. Senator Ray pointed out that the state has a merit system of employment which must be honored. Mr. Blank replied that the tests don't necessarily show who is the most qualified to do the job. Senator Ray asked whether he meant that in some rural areas, particular job skills should not be counted as strongly as knowing the language, the people and the customs. Mr. Blank said yes.

Mr. Kareen asked Mr. Blank what the reaction would be if some of the services now provided by the state were turned over to the local

government instead. He added that he did not know whether it would be possible under federal and state regulations. Senator Ray said that it would be better if there were a requirement in the job description which would correct the problem. Where there's a job in an area where the dominant language is Yupik, then for a position which is supposed to serve the people, there should be a requirement that the state employee speak Yupik.

Mr. Kareen pointed out that in order to make that requirement under the human rights laws and the federal equal employment opportunity laws, the state would have to show that speaking both languages was a bona fide occupational qualification. In villages in which almost everyone speaks English or for jobs like Fish and Game Technician which don't require talking with people as part of the job, a language requirement would probably run into difficulties. The situation is different for jobs requiring interviewing local people and gathering information from them. In answer to a question from Ms. Jund, Mr. Kareen explained that Village Safety Officers are employed by the villages under funds that are granted to them by the state. The village selects the individual who is trained by the state but remains an employee of the village.

Senator Ray proposed that the commission recommend that knowledge of the predominant language be a job requirement for rural positions requiring communications and knowledge of the cultural background. The commission should further point out that in jobs with no emphasis on communication, the regular job requirements should apply. It would be good business for the state. Mr. Blank suggested that the recommendation should go further, and Senator Ray replied that constitutionally the commission could not go any further. He added that he fought for Alaska hire, but that he would not support a situation which sets one Alaskan against another.

Senator Ray thanked Mr. Blank and asked if there was anyone else wishing to give testimony.

Sandra Borbridge spoke to the commission about discriminatory practices in the hiring of not only minorities and women, but minority women. She identified three areas: entry into state employment through the registers; the availability of unemployment benefits for women who are seeking administrative positions; and the attitude of Department of Labor employees towards Native applicants and Native organizations.

Ms. Borbridge suggested that there should be a central information clearing house for state positions. When she first went to the Juneau Employment Center a year ago, she completed an application, had an interview and was classified as eligible for an administrative position. From that time to the present she has never been informed about the state register, and she still does not know what it is.

On the availability of unemployment benefits to women seeking administrative positions, she related her own experience. When she interviewed with the Juneau Employment Center after becoming unemployed, she was classified as seeking an administrative position. The application asked whether she could type. Before she would answer, she asked whether that would affect either referrals for employment or her unemployment benefits. She was told that it would not, so she said that yes, she could type. She was later referred to a clerical job requiring that she type 30 percent of her time and paying only 60 percent of her previous wages. She refused that job referral because it would be a waste of both her and the employer's time. One week later she received notice from the state unemployment office that her benefits would be cut.

Then she went through a second referral. She went into the Job Service Center office and spoke with the interviewer about the job requirements. When she objected to the typing, the interviewer agreed that she would be overqualified for the position and that she should not bother to go for an interview. So there were two different policies within the Center.

Ms. Borbridge appealed the denial of unemployment benefits. At the arbitration hearing the initial decision was upheld. In an appeal to the Commissioner of Labor, the decision was overturned because she should not have been referred to a clerical job. Ms. Borbridge said that many women do not have the financial means to wait for an appeals decision, and so they accept clerical jobs. Women should not be penalized for wanting challenging work even if they know how to type.

Ms. Borbridge spoke about the attitude of people working in the Juneau Employment Center and in the Department of Labor towards Natives and Native organizations. In 1975, she completed an application and stated her minimum salary requirement. She was asked whether that wasn't a little high for someone with her education and experience. She was also told that she was acting a little "spoiled". A week later she was offered a job with a private firm at a salary higher than her minimum requirement. During the hearings on her unemployment benefits, someone mentioned that Native organizations overpay their employees. She found the statement uncalled for, unprofessional, and reflective of attitudes which she and others, as Natives, encounter. Until these three different problem areas are addressed, Ms. Borbridge suggested that problems will continue to exist.

Senator Ray asked Mr. Kareen to explain the register system to Ms. Borbridge. Mr. Kareen said that when individuals apply for a job with the state, they go through an examining process. Based on the score they receive, they are posted on a register, also called an eligible list. When a vacancy opens in that job class, the Division of Personnel issues an eligible list to the department with the vacancy. The list ranks the names of all those people who are interested in that job class and have passed the test. Then the department proceeds from that point to contact the individuals on the list, interview them and make a selection.

Ms. Jund suggested that there hasn't been a central place where people can go to find out what jobs are available, how to apply

for those jobs, how to get on the register and what a register is. When she was unemployed once, the unemployment office had a large screen which showed all the jobs the Center was recruiting for. There were books to find out what the requirements of the jobs were, but there was no one to explain how to use the information.

Ms. Borbridge said that she still did not know how to get on the register. Mr. Kareen explained that you complete an application for employment and turn it in or mail it to the Division of Personnel. He added that the Division has a public service counter to answer questions from people who want to apply for state jobs. However, the state does not have a job counselor to deal with the people coming in. The individual at the counter is also responsible for answering the telephone on seven incoming lines and handling some paperwork.

Barbara Fallon said that she is presently unemployed and has been applying for jobs. It would help job applicants if they understood that the Division of Personnel is not an employment service for the individual. Its task is to fill vacancies for the state. No one sits down with an applicant and asks for qualifications, experience and work history and then suggests jobs for which the person might apply. She added that the Division of Personnel staff have been very helpful, within the system.

Senator Ray added that applicants misunderstand another part of the state hiring system. When they are notified that they are on the register they automatically assume that they will be offered a job. They don't understand that they are not much closer to being employed than they were before.

Mr. Kareen said that the job service offices are federally funded, and have suffered from cutbacks so they have had to reduce their job counseling services. The new budget will not provide funds for employing job counselors. All federal funds for the offices will be contingent upon how many placements the office makes.

Senator Ray suggested that there should be a handbook or a flyer providing information about state employment. Roy Henderson, an employee of the Department of Education, commented that there is information presently available through the Career Information System at the Southeast Regional Resource Center. It tells about job descriptions and how an individual's qualifications fit into certain jobs. Senator Ray said that that system is not well known. It would still be helpful to have a short pamphlet for all prospective employees to use. Mr. Muller added that the Resource Center was for the Southeastern area. What about the Southcentral area and the bush? Mr. Henderson replied that the information is available at all Alaska Job Information Centers. Most of the information comes from the Department of Labor.

Senator Ray asked Mr. Muller to explain the state's affirmative action program and the five-plus-five certification system to Ms. Borbridge. Mr. Muller said that one of the biggest problems which the state has in

terms of employing both women and minorities is potential barriers to ranking high on the registers. Everyone on the eligible list is capable of doing whatever the job is in that class. To bring people to the attention of the appointing authorities, the state developed a device which allows an appointing authority to hire a minority or a woman who ranks below the top five for jobs in any class in which that protected group is underutilized. The system is still in a formative stage, but it should be an invaluable tool to develop greater parity. Ms. Jund suggested that there still should be a pamphlet to notify applicants about what registers means, and all of the other ramifications of the employment system.

On the issue of Ms. Borbridge's unemployment benefits, Ms. Jund said that, as she understood the system, a person is not required to take employment at less than the previous level of employment. Since Ms. Borbridge had been working in an administrative position and was not interested in returning to a clerical position, they were not supposed to cut off her benefits when she refused to interview for the clerical position.

Ken Kareen handed out copies of a booklet which describe the state hiring system. Senator Ray said that he is still in favor of a one sheet flyer, which would be cheaper and could be updated as changes are made in the system. Ms. Jund suggested that the sheets should be distributed through places like women's resource centers, the NAACP and Native Corporations to get the widest distribution possible.

The commission returned to consideration of the Issues Memo. Senator Ray suggested that bilingual requirements which had been discussed with Mr. Blank should be added to the position descriptions. Mr. Kareen explained that the state has a general description of what, for example, an eligibility technician is required to do wherever the position is located. Then there are individual position descriptions, and those should reflect the language requirements of that particular position. If a position with a language requirement were open, then only bilingual applicants would be considered for that position. That decision should be made in describing the job, before the department is filling a vacancy.

Representative Fuller asked whether there was anything that could be done about the problems which Fish and Game has in filling their seasonal positions. Mr. Muller suggested that Fish and Game should open the registers in the winter and encourage people in the Bush to apply then. When summer comes and the positions need to be filled, they will have people from the local area who they can legally hire. He added that as the executive branch works with the nonpermanent law, it is becoming acceptable and understood. Senator Ray suggested that the registers could be open in February or March, and they could even make selections after that, with the job to begin the first of June. Mr. Kareen agreed. It all depends on the management attitude of the department. Senator Ray suggested that the commission write to the Department of Fish and Game, recommending that they open their registers in the winter and make their commitments then for June hire. Mr. Pugh pointed

out that H&SS found that they needed some travel funds to carry out their special recruitment effort for the Nome Youth Center. The commission might want to make the legislature aware of this possibility. Representative Fuller replied that the rural areas have a responsibility too, and that the Native Corporations might be helpful in any recruiting effort.

A.5. Inclusion of handicapped individuals and people over 40 in the five-plus-five procedures.

Mr. Kareen explained that age discrimination under federal law starts at 40. He added that the state has a program to assist the severely handicapped in finding positions without having to go through the regular examination procedures. Senator Ray said that he had never received any complaints from handicapped people about discrimination.

A.6. Employee credit for any type of Alaskan employment.

Senator Ray said that the suggestion was worthwhile, but that it would not be possible to put it into effect under constitutional requirements. Mr. Pugh added that usually those with work experience in Alaska will make a better impression in the job interview, so there will be some recognition given at that time.

A.7. Credit for experience.

Senator Ray said that he favors the idea that job requirements should emphasize practical work experience and place less emphasis on educational requirements although there has to be a balance. He added that some of the test questions he has seen have no bearing at all to the job requirements.

Mr. Kareen responded that federal guidelines about tests require that first, the division study all the jobs within a class and identify what skills it takes to do them. Then they develop the test based on that information. After the test is developed, the division gives it to all those who are actually working in that job class. They evaluate the employees' test results and ask their supervisors to evaluate how well each employee actually performs on the job. Then the division compares the test results with the supervisor's rating. Those who do well on the test are supposed to be those who are rated well by their supervisors. The federal guidelines expect that the test results will be correct 94 percent of the time. The majority of the tests which the state presently uses were borrowed from other states and a number of them were provided by the federal government. Mr. Pugh suggested that the commission meet with Dr. Dilley from the Division of Personnel to learn more about the topic. Senator Ray agreed.

B. ISSUES CONCERNING PRESENT EMPLOYEES

1. Training for Supervisors

Mr. Thayer pointed out that according to a governor's directive, all supervisors have to attend EEO classes which are continuously given by the Department of Administration. Mr. Pugh suggested that the training

given now is addressed more to attitudes. Most supervisors don't know about the practical questions - how to use the five-plus-five certification procedures, for example. Senator Ray suggested that a letter notifying supervisors of the procedures and where to go if they had questions about the fine points would resolve the problem.

Ms. Jund asked whether in actuality all supervisors take the EEO training. Mr. Fisher, Director of EEO, replied that in the past two or three years, 1,500 people have gone through the training offered by the division. It is focused mostly on behavior. It might be appropriate to include more emphasis on the law. Ms. Jund suggested that a refresher course for those who have had the initial program would help to provide current information. Mr. Fisher agreed, but pointed out that there is a problem of staffing within the division.

Mr. Pugh asked about the Attorney General's opinion concerning whether the five-plus-five procedures could legally be made mandatory. Mr. Muller replied that the Attorney General had said that it would not be legal to ignore all of the other people on the register when using the five-plus-five certifications, but that if all of the top five were considered as well as the top five minority applicants or women, then the problem was avoided. In regard to supervisory EEO training, Mr. Muller pointed out that the programs are given statewide, not just in Juneau.

B.2. EEO Evaluation of Supervisors.

Mr. Kareen pointed out that the present evaluation form has a box which asks about each supervisor's performance in EEO matters. Ms. Jund suggested that the supervisor's performance should be written in the narrative portion rather than just being recorded by a check mark. Mr. Kareen replied that the narrative portion of an evaluation is to address areas where a person has done particularly well or particularly poorly.

B.4. Changes in the Traditional Work System.

Senator Ray said that the commission should most strongly recommend that the Administration develop the use of flex time. The legislature passed a resolution permitting its development and the Governor was interested in it at one time. Flex time would help people in the rest of the state to do business with Juneau. Offices should also be open during the lunch hour, when people need to do business with the state.

Mr. Kareen pointed out one problem he has run into when calling a federal office in Seattle. The individual he wants to speak to is on flex time. He is never there, the office has no schedule of when he will be there because it varies from day-to-day and he is the only person in the office with the background to answer Mr. Kareen's questions.

Mr. Pugh added that he has found difficulty with employees in trying to set up flexible work schedules. Employees believe that flex

time should be a voluntary scheduling and resist management forcing changes in work hours. For example, employees in Anchorage want to work from 7:00 to 3:00 p.m. so that they are off when their children are home. That does not answer management's need to keep the offices open for an hour after people are off work, from 5:00 to 6:00 p.m. Mr. Kareen added that union contracts require that the state pay a swing shift differential for employees who begin work at 10:00 a.m. or after. Senator Ray suggested that that could be changed in bargaining.

Representative Fuller added that the farther you are away from Juneau the more difficult it is to do business with the state. In the far north, there is a three-hour time difference. Juneau state employees need to remember that they provide support services for people around the state. He added that you need to have a decision-maker available. If management is not there, there is no sense in having the office open. Mr. Thayer suggested that one option to include is a four-day work week in which employees would work longer hours for four days and then have three days off. It might permit keeping state offices open for six days a week. Mr. Pugh added that the system should be uniform. If one office is open and another isn't, then the public becomes irritated.

In answer to Mr. Thayer's suggestion, Mr. Kareen said that research elsewhere has shown that flex time is desirable for management because it can increase productivity. However, in the vast majority of cases, compressing the workweek into four days results in a drop in productivity. Mr. Pugh pointed out another problem created by the number of holidays for state employees. If employees are working only four days a week normally, then they go to a three-day workweek during each of the 11 weeks in which a state holiday falls.

B.3. Training Opportunities.

Ms. Jund said that this came from Ms. Randall's testimony at an earlier meeting and that she concurred with her. It is always the top level brass that goes for training. Senator Ray pointed out that this comes down to a budget problem. The commission should mention the suggestion, but it is an administrative problem. Mr. Kareen added that when done properly, some midmanagement training will multiply when the employee who was trained shares the information with other employees. Funds spent for midmanagement training can actually benefit lower range employees too. He added that the budget could identify what level the training was to be geared for. Senator Ray pointed out that there was an Attorney General's opinion which says that the legislature infringes on the executive branch when it tries to direct how money is to be spent through Legislative Intent. Mr. Kareen asked whether the appropriation itself could be directed to a particular level of training. Senator Ray said that it could. However, that still leaves the problem of gaining legislative approval for any training funds at all.

Mr. Pugh added that because of the large turnover of employees in the lower salary ranges, he finds it difficult to justify spending the limited training funds in his division on those employees. Senator Eliason said that the person who has more responsibility should have the

majority of the training. Mr. Pugh suggested that there should be a central statewide career development program. For example, he recently tried to hire a secretary, using both the Clerk Typist III and the Corresponding Secretary I registers. There were 80 names on the the two registers. Out of those 80 names, three people responded and of those three people, the highest typing skill level was 35 words per minute with 18 mistakes. The office made a provisional appointment and found two people who were not yet certified but who were taking a word processing course through the University. Both typed better than 60 words per minute with fewer than 10 mistakes. Training can be an asset to the state, but there is a question of how to accomplish it.

Ms. Jund added that in testimony before the commission a couple of years ago, a computer programmer pointed out that if he were sent to training programs it would save the state from having to bring in a new employee at a higher level from outside. Training an existing employee would save money. Senator Ray said that the way the system works, it is difficult to get training funds through the Finance Committees of the legislature. Senator Eliason suggested that it should be possible to use the community college programs to provide opportunities for students to find job-related training. Student loans are available if needed.

Senator Ray adjourned the meeting.

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CENTRAL COUNCIL

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(907) 586-1432 or 586-3613

January 15, 1982

Senator Bill Ray, Chairperson
Blue Ribbon Commission on the
State Personnel Act
Pouch YG
Mail Stop 3123
Juneau, Alaska 99811

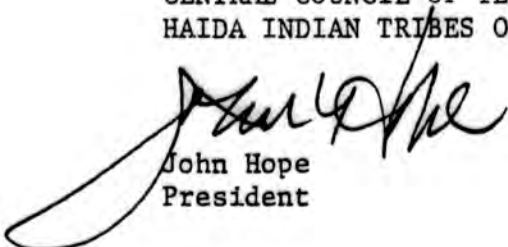
Dear Senator Ray:

The attached document contains the testimony presented to the Blue Ribbon Commission on November 3rd by Brenda Knapp of the Central Council's staff. Additionally, the document contains three recommendations for action that were not included in the oral testimony.

The Central Council Tlingit and Haida Indian Tribes of Alaska would be pleased to work with the Blue Ribbon Commission, the Legislature or the administrative branch of government to develop and implement more equitable hiring practices for Alaska Natives.

Sincerely,

CENTRAL COUNCIL OF TLINGIT AND
HAIDA INDIAN TRIBES OF ALASKA


John Hope
President

JH/BK/ae

Central Council of
Tlingit & Haida
Indian Tribes of Alaska

TESTIMONY FOR PRESENTATION TO THE STATE'S
BLUE RIBBON COMMISSION ON THE PERSONNEL ACT

ALASKA NATIVE HIRE IN STATE GOVERNMENT

CHANGING COMMITMENT INTO ACTION - ON NOVEMBER 2, 1981 THE BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT RELEASED A MEMORANDUM TITLED "COMPARISON OF ALASKA NATIVES EMPLOYMENT BY THE STATE IN 1979, 1980 AND 1981". DURING THE THREE YEAR PERIOD, A GREAT DEAL OF EFFORT HAS BEEN MADE TO CORRECT AND IMPROVE THE EMPLOYMENT REPRESENTATION OF ALASKA NATIVES (AND OTHER MINORITIES) IN STATE GOVERNMENT. REPORTS HAVE BEEN FILED, PLANS DEVELOPED, RESPONSIBILITIES PINPOINTED, ROLES CLARIFIED, DATA SYSTEMS IMPLEMENTED, POLICY EXPOUNDED AND THE BLUE RIBBON COMMISSION ESTABLISHED. YET, ACCORDING TO FIGURES TAKEN FROM APPENDIX A TO THE 1979 ANNUAL REPORT TO THE HUMAN RIGHTS COMMISSION, IN APRIL, 1978 NATIVE PEOPLE HELD 518 JOBS IN STATE GOVERNMENT. THIS FIGURE REPRESENTED 5.4% OF THE TOTAL STATE GOVERNMENT EMPLOYEES (9,635). TODAY (NOVEMBER 3rd, 1981), THREE AND ONE-HALF YEARS LATER, ACCORDING TO FIGURES JUST RELEASED BY THE LEGISLATURE'S BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT (MEMORANDUM DATED NOVEMBER 1981), NATIVE PEOPLE HOLD 694 JOBS (5.4%) OUT OF A STATE GOVERNMENT WORKFORCE OF 12,903. IN OTHER WORDS, DESPITE ALL THE DIALOGUE, MEETINGS, REPORTS, PLANS, and COMMISSION ACTIVITIES WHICH HAVE TAKEN PLACE DURING THE PAST THREE AND ONE-HALF YEARS, NATIVE PEOPLE IN ALASKA HAVE NOT IMPROVED THEIR TOTAL REPRESENTATION IN THE WORKFORCE OF STATE GOVERNMENT BY EVEN ONE TENTH OF ONE PERCENTAGE POINT.

ALTHOUGH 16 PERCENT OF THE STATE'S POPULATION IS ALASKA NATIVE, LESS THAN SIX PERCENT OF THE JOBS IN STATE GOVERNMENT ARE HELD BY NATIVE PEOPLE. MOST OF THESE JOBS ARE, AS EVERYONE KNOWS, CONCENTRATED IN THE CLERICAL, CRAFT AND PARA-PROFESSIONAL CATEGORIES. VERY FEW PROFESSIONAL AND MANAGEMENT POSITIONS ARE HELD BY NATIVE PEOPLE. THE UNDER REPRESENTATION AND UNDER UTILIZATION OF NATIVE PEOPLE AFFECTS MOST JOB CATEGORIES AND ALL DEPARTMENTS OF THE STATE GOVERNMENT. IN FACT, IN NINE OF THE FIFTEEN DEPARTMENTS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT, THE REPRESENTATION OF ALASKA NATIVE PEOPLE HAS DECLINED BETWEEN APRIL 1978 AND SEPTEMBER 1981. OF THE REMAINING SIX DEPARTMENTS FOUR INCREASED THE REPRESENTATION OF NATIVE PEOPLE BY LESS THAN ONE PERCENT OVER EARLIER FIGURES. TWO DEPARTMENTS (COMMUNITY & REGIONAL AFFAIRS AND NATURAL RESOURCES) APPEAR TO HAVE MADE SUBSTANTIAL GAINS. (WE WOULD LIKE TO KNOW WHAT THE ACTUAL CHANGES HAVE BEEN.)

IT WOULD APPEAR THAT THE COMMITMENT, SO CLEARLY STATED IN ADMINISTRATIVE ORDER NUMBER 59 AS EXPRESSING THE EQUAL EMPLOYMENT POLICY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT, NEEDS TO BE MORE FORCEFULLY AND IMAGINATIVELY TRANSLATED INTO ACTION. THE ACTIONS OF THE PAST THREE AND ONE-HALF YEARS HAVE PROVIDED NECESSARY AND USEFUL MECHANISMS TO HELP STATE GOVERNMENT RECRUIT, SELECT, HIRE, PROMOTE AND RETAIN MINORITIES IN STATE GOVERNMENT.

THE EXPANDED CERTIFICATION POLICY IS A PARTICULARLY USEFUL STEP IN BRINGING QUALIFIED NATIVE PEOPLE TO THE ATTENTION OF HIRING DEPARTMENTS. BUT WE BELIEVE THAT WHAT HAS BEEN ACCOMPLISHED TO DATE REPRESENTS ONLY THE FIRST FEW STEPS IN AN OVERALL PLAN THAT MUST PRODUCE RESULTS IN NUMBERS RATHER THAN RHETORIC.

ACCORDINGLY, WE WOULD LIKE TO RECOMMEND THREE MAJOR EFFORTS THAT WE BELIEVE ARE JUSTIFIED AND NECESSARY:

1. EMPLOYMENT OPPORTUNITIES. A FOUR YEAR EFFORT TO ANALYZE EXISTING JOB DESCRIPTIONS AND ACTUAL DUTIES AND TO REVISE THE JOB STRUCTURE WITHIN ALL DEPARTMENTS TO INSURE:

- A. ENTRY LEVEL POSITIONS ARE AVAILABLE TO THE MAXIMUM EXTENT POSSIBLE.
- B. CAREER LADDERS (INCLUDING ALTERNATIVES) ARE AVAILABLE WHICH PROVIDE AMPLE OPPORTUNITY FOR UPWARD MOBILITY.
- C. SUPPORT SERVICES ARE AVAILABLE INCLUDING BUT NOT LIMITED TO, DAY CARE, CAREER AND EDUCATIONAL COUNSELING, TUITION REIMBURSEMENT AND TIME-OFF-WITH-PAY FOR EDUCATIONAL PURPOSES TO PROVIDE ASSISTANCE TO MINORITIES EMPLOYED BY STATE GOVERNMENT AND SEEKING TO IMPROVE THEIR EDUCATION AND TRAINING. THIS PROGRAM SHOULD BE FUNDED AS A SEPARATE AND HIGHLY VISIBLE EFFORT WITHIN STATE GOVERNMENT, PREFERABLY BY THE OFFICE OF THE GOVERNOR. IT SHOULD BE CONTINUED UNTIL PROPORTIONATE REPRESENTATION IS ACHIEVED.

2. NATIVE RECRUITMENT. WE BELIEVE THE STATE SHOULD CONTRACT WITH EACH OF THE NATIVE REGIONAL NON-PROFIT CORPORATIONS TO PROVIDE ASSISTANCE TO THE STATE IN THE IDENTIFICATION AND RECRUITMENT OF MINORITY APPLICANTS. THE SIZE OF EACH CONTRACT SHOULD BE RELATED TO THE NUMBER OF POTENTIAL CONTACTS (THE SIZE OF THE REGION'S ENROLLMENT). SPECIFICALLY, THE CONTRACT SHOULD BE LARGE ENOUGH TO ENABLE EACH REGIONAL CORPORATION TO HIRE ONE OR MORE RECRUITERS TO SEEK OUT AND WORK WITH POTENTIAL NATIVE APPLICANTS.

3. MINORITY INTERNSHIP AND WORK-STUDY. WE BELIEVE A SPECIAL PROGRAM WHICH WOULD PROVIDE SUMMER WORK EXPERIENCE OPPORTUNITIES (WITH GOOD PAY AND REASONABLE BENEFITS) WOULD BE HELPFUL IN ATTRACTING NATIVE YOUTH INTO PUBLIC SERVICE. WE BELIEVE A SPECIAL PROGRAM NEEDS TO BE DESIGNED AND FUNDED WHICH WILL OPEN UP SUMMER JOBS IN VARIOUS AGENCIES AND DEPARTMENTS OF GOVERNMENT. THESE ARE TO BE JOBS LEADING TO PROFESSIONAL EMPLOYMENT UPON GRADUATION. IF THE JOBS TAKE STUDENTS AWAY FROM THEIR HOMES WE BELIEVE ADDITIONAL HELP IN THE WAY OF HOUSING ALLOWANCES AND TRANSPORTATION STIPENDS SHOULD BE INCLUDED. WHILE THIS PROGRAM NEEDS TO BE COORDINATED WITH THE UNIVERSITY OF ALASKA AND THE NATIVE CORPORATIONS, WE BELIEVE IT NEEDS TO BE DEVELOPED AS A HIGHLY VISIBLE PROGRAM WITHIN STATE GOVERNMENT. IF SUCCESSFUL, THE PROGRAM MIGHT GROW BY ADDING AN ADDITIONAL NUMBER OF INTERNSHIPS IN FOLLOWING YEARS.

THESE IDEAS REPRESENT JUST A FEW INITIAL SUGGESTIONS AND PROGRAM CONCEPTS FOR ADDITIONAL ACTION WHICH WE BELIEVE THE STATE MUST UNDERTAKE IF IT HAS A REAL COMMITMENT TO CORRECT THE UNDER REPRESENTATION AND UNDER UTILIZATION OF ONE OF ITS GREATEST RESOURCES - ITS NATIVE PEOPLE. EVEN IF THE COMMITMENT EXISTS, A QUESTION REMAINS AS TO WHETHER THE STATE IS WILLING TO VOLUNTARILY TRANSLATE ITS COMMITMENT INTO ACTION.

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Legislative Information Office, Anchorage, Alaska
November 19, 1981

MINUTES

Senator Ray, chairman, called the meeting to order at 10:00 a.m. The roll call showed the following members present: Senator Bill Ray, Myrt Charney, Lynn Wegener (alternate for John Chenoweth), Senator Richard Eliason, Representative Jack Fuller, Kenneth Kareen, Lynda McCurry, Sandra Withers (alternate for Commissioner Hudson), Greg O'Claray, and Cherie Shelley. The following members were absent: Bill Huston, Lois Jund and John Pugh. The following were also present: Roger Thayer, James E. Fisher and Darlene Livermore.

Senator Ray announced receipt of an application for membership on the Blue Ribbon Commission from Mr. James Chase, who is a member of the Human Rights Commission. He asked the Blue Ribbon Commission members to consider extending an invitation to Mr. Chase to join the commission. Mr. Chase was not present and the question was held for later consideration.

Senator Ray opened nominations for the position of Vice Chairman of the commission. Myrt Charney nominated Representative Fuller. Senator Ray asked for other nominations. No others were received. He closed the nominations and announced that since Representative Fuller was the only candidate, he was appointed Vice Chairman of the commission.

Senator Ray called for public testimony. No one came forward at this time. He asked Cherie Shelley, executive director of Alaska Public Employees Union, to relate how APEA handles any discrimination complaints they receive. She replied that typically they receive few complaints. They refer those they do receive to the Human Rights Commission. She suggested that Darlene Livermore, who handles employment complaints from APEA members, would be better able to answer the question. Ms. Livermore explained that APEA does receive a number of contacts on issues of discrimination, both on the basis of sex (which are the more frequent) and on the basis of minority group membership. In addition, APEA receives a number of sexual harassment complaints. The staff investigates to determine whether there is a legitimate charge to take before the Human Rights Commission. If the complaint is not specious, then APEA makes a referral to the Human Rights Commission and continues to give support to the complainant through the complaint processing procedures. She added that the logic pattern of complaints from men and women is roughly the same. Where men are seeking employment in a job class typically occupied by women they use the same kinds of arguments that women use in seeking employment in job classes predominately occupied by men.

In answer to a question from Senator Ray, Myrt Charney, executive director of the Legislative Affairs Agency, indicated that he is not aware of any complaints within the agency. There was one sexual harassment

charge filed against a legislator one or two years ago which was investigated and found to be without merit.

Ken Kareen, Director of the Division of Personnel, indicated that he does receive inquiries from individuals about whether they may have been discriminated against. They typically are seeking background information to show whether they have come to the wrong conclusion. In one specific instance which happened three years ago, a woman applied for a position and was interviewed. She later received a call at home from the man who had interviewed her asking for a date. She turned him down. She later learned that someone else was appointed to the position. She filed a complaint with the Human Rights Commission and did receive a damage award. Ms. Shelley added that the case was settled without an admission of guilt on the part of the state.

Mr. Kareen added that in the three months that he has been back working for the state, he has been approached by three women who have wondered whether positions which have been offered to them have been offered because of their capabilities or because the person hiring was seeking to fill a quota.

Senator Ray pointed out that it is popular to assume there is a great deal of discrimination in state hiring. However, the commission has found few instances were formalized in the face of complaint. He suggested that one area that should be scrutinized in-depth is the policy of advancement of people who work for the state to the exclusion of first-time hires. A spin-off of this policy is to exclude many members of minority groups, since they are typically not already state employees. This doesn't mean that promotion in itself is bad, since it is also important to bring people up through the ranks, so to speak. Mr. Kareen pointed out that the State Personnel Act and the Personnel Rules provide that current state employees shall receive additional consideration for promotion. The state does benefit by promoting people who know the program already. However, it can also be an advantage to have a new perspective on policies which everyone may have taken for granted, and a new employee can bring some fresh insights into the operation. It is important to balance between the two policies.

Al Baffone, Sr., Business Manager of Local 71, addressed the commission. He explained that the union is presently pursuing a case on behalf of a black member, Mr. Berkley, who was trained as an equipment operator and is now in Wage Group IV, which is one step below journeyman status. There was an opening for a higher position in the duty station in which the member worked. Under Local 71's labor agreement with the state, the employer is supposed to post vacancies before filling them. However, the state transferred another employee from a different duty station instead of posting the vacancy and filling by promotion. Local 71 took the case to arbitration, but the arbitrator ruled that the labor agreement permitted the transfer. The member will file charges with other agencies to contest the matter. He was brought into Local 71 under an affirmative action program four or five years ago and has been waiting for some time for this promotion.

Mr. Baffone added that if there is a subsequent layoff, Mr. Berkley, who has four years of duty station seniority, could be laid off because he is at a lower level than the person transferred. Senator Ray indicated that if Mr. Baffone would provide the commission with the background information on the matter, the staff would investigate it.

Senator Ray asked Senator Eliason whether he received many complaints. Senator Eliason replied that he had not received many about discrimination, probably because there are so few state employees among his constituents.

Senator Ray asked Representative Fuller whether he had received many. Representative Fuller indicated that he had not received too many, but that there are problems in the rural areas of his district. For example, where a new state employee moves to the area, usually his wife will be well qualified and therefore will end up working for the state, rather than that job being filled by someone from the area. He suggested that the only solution is to get the people trained for some of those jobs. He also addressed the question of educational requirements for state jobs. Within the Department of Fish & Game, there are positions for counting sea mammals during the spring hunting season. There are people in the villages who are well qualified to do that work, but most of the people who get the jobs are college students who have applied early and been placed on the state registers. Since they are new to the area, it takes a month or so for them to get adjusted and oriented. Representative Fuller added that times are changing and there are a number of young people in the villages who are interested in getting jobs and are willing to leave the subsistence life style. He pointed out that it does not take an educational background to do a good job. He has a friend in St. Lawrence Island who neither reads nor writes English well, but the department has been depending on him to take the walrus count. He is able to keep the job because he began about 14 years ago before there were tight educational requirements.

Mr. Kareen pointed out that the state does accept experience as a substitute for educational requirements for Fish & Game technician positions, and includes volunteer experience. Representative Fuller agreed but said that the system isn't working. You still have to get your name on a register.

Nancy Groshek suggested that the state institute a pilot project to go out to the Bush and solicit applications and explain the hiring process to the people there, particularly for jobs like the Fish & Game technicians.

Cherie Shelley pointed out that one of the complaints she hears frequently is that there is no provision permitting hiring from the immediate area in special situations. For example, when she was in Kodiak, Fish & Game needed someone to work on a boat. They hired a person from Anchorage, but as soon as he arrived in Kodiak, he took a different job on a fishing boat. Then the department hired someone from Kodiak on an emergency hire basis. The Fish & Game boat was out longer than 30 days and Fish & Game was required to get him off the boat. They

spent more on helicopters than they paid the person hired. She suggested that the commission consider recommending that the Division of Personnel set up local registers for some situations. Senator Ray questioned how this would fit into the merit system.

Representative Fuller agreed that the authority to hire locally would help. In most cases, the Fish & Game supervisors would know the qualifications of the people they would be hiring. Ms. Groshek added that the state would be saving money in transportation costs for new employees and that regulations could probably be instituted by next summer.

Mr. O'Claray asked if he could return to Mr. Baffone's earlier testimony. He asked whether the grievance which Local 71 had filed with the state alleged that their member had been denied a promotional opportunity on the basis of his race. Mr. Baffone replied that the grievance filed had addressed the legality of the transfer rather than the denial of the promotional opportunity. Therefore they had not addressed the question of discrimination in the complaint. The union believes that Mr. Berkley's case is still alive. However, they have been informed that when his case is submitted for arbitration, the state will submit the decision of the transfer arbitration and say that the case has already been heard since Mr. Berkley figured in the initial case. Mr. Baffone stated that he is taking the position that they have exhausted their internal avenues under the labor agreement.

Sandy Withers, Director of the Division of Labor Relations, offered a comment on the case. The underlying question in the grievance was whether there was promotional opportunity in the first place. She explained that two employees had transferred, and had they not transferred there would not have been a vacancy in the first place. Mr. Baffone replied that because the labor agreement provides for duty station seniority, Mr. Berkley will be laid off if a layoff comes, even though the transferree has less seniority. Under the new classification system, the lower guy in the equipment operator group gets laid off before the higher guy. Senator Ray asked how the situation centered into racial discrimination. Mr. Baffone replied that it did because Mr. Berkley is black and is qualified to do the job. He added that if Mr. Berkley were white, he would not be addressing the Blue Ribbon Commission.

Ms. Shelley asked Mr. Baffone what Local 71's position would have been if one of the transferrees had been black and the man seeking promotion had been caucasian. Would the union have objected to the transfer under those circumstances? Mr. Baffone replied that since there is specific language in the agreement that transfers will only take place after promotional opportunities have been exhausted, the union would have objected.

Mr. O'Claray asked again whether Mr. Baffone alleged at this time that the state acted in a discriminatory manner against the black worker. Mr. Baffone replied that he did. In answer to a question from Representative Fuller, Mr. Baffone replied that had the member not promoted been a white person, the union would have arbitrated that

failure to promote, too.

Senator Ray asked James Chase to tell the commission a little about his background and why he was interested in membership on the commission. Mr. Chase replied that he came to Alaska as a result of a military assignment to a remote radar station in 1969. He later transferred to Elmendorf Air Force Base and then decided in 1972 to remain in Alaska. He retired from the Air Force in 1974 and went job hunting. His first job was with the Human Relations Commission of the Municipality of Anchorage. While he was there, the city changed to a municipality and he helped to create the Equal Rights Commission. Then he went to the Alaska Native Foundation where he traveled throughout the state working with school districts, helping them to desegregate. When it was defunded he had to seek other employment. He is now the affirmative action officer for the University of Alaska, Anchorage, and for the community college. In addition to his work, Mr. Chase said that he has been involved in community activities and is currently a commissioner on the Alaska State Commission for Human Rights. He added that that is the position he would like to represent on the Blue Ribbon Commission, since there had been a seat for the Human Rights Commission when the Blue Ribbon Commission was originally established.

Senator Ray explained that the Blue Ribbon Commission has not set aside seats for any particular representation, and that he hoped members represented their own personal convictions rather than their employment. Greg O'Claray asked Mr. Chase whether his employment with the University would offer him opportunity to attend meetings of the Blue Ribbon Commission in other cities. Mr. Chase replied that he would be able to. The University believes that activities like membership on the Blue Ribbon Commission would be ancillary to his job and that he would be permitted to attend, provided only that he met his prime responsibility of getting his job done.

Senator Ray asked whether Mr. Chase saw a pattern in state employment of discrimination on the basis of race. Mr. Chase replied that what appears to him to have happened is that there is a sort of inertia in the system. People become set in their ways and entrenched in their positions. Nothing motivates them to change. Procedures and policies meet with resistance, and unless the total management goes along with a new policy, it's very hard to implement a change. There are people who have been given an "extraordinary opportunity" because of their gender and their race and when they are asked to implement an affirmative action program, they react to it right away because it means they have to move something. Mr. Chase added that he is stubborn enough to believe that change can come about and there can be improvement in the system.

Senator Ray pointed out that frequently what is perceived as discrimination is not understood by the person doing it as discriminatory. Mr. Chase replied that he believes that it is a requirement of all managers not only to show that there is no discrimination, but also that

there is nothing perceived as discrimination.

Mr. O'Claray asked Mr. Chase how he perceived the effectiveness of the current EEO program in the state or the University system. Mr. Chase replied that the University system has changed considerably in the 2-1/2 years that he has been there. When he began, the University did not even know how many employees it had, not to mention the racial mixture. They now have a lot of information about their employees and are working with supervisors to convince them to hire minority applicants and that affirmative action is a necessary thing. The affirmative action job is multi-facted, and at the same time that he has to get the managers involved in the program, he also has to insure that people are applying for positions and that they understand how to write a resume for the University. There has been progress. He added that he knows a little about the state's EEO program and that they have also made progress.

In answer to a question from Mr. Kareen, Mr. Chase said that the University has developed a base on the availability of the workforce in his hiring area for different occupations. It is broken into the seven EEO categories and is further defined by disciplines. He explained that the University recruits locally for positions in the clerical and crafts fields and therefore they use a local base for those job categories. For executives and professional positions, they use a national base.

In answer to questions from Senator Ray, Mr. Chase indicated that he believed that the goal of anti-discrimination laws is to control a person's behavior, not his thoughts. Once behavior is modified, particularly in a hiring situation, then people who may have latent bigotries discover that "it isn't so bad after all" and their attitudes may also begin to change.

Ms. Shelley suggested that, while Mr. Chase was obviously well-qualified for membership on the commission, notice of the vacancy should be given so that others who might be interested could submit applications. She pointed out that the principal membership of the commission is composed of 10 males, one of whom is a minority person, and three females, none of whom are minority group members. Senator Ray responded that the commission has three applications for membership and that it will always accept applications, but that we are not recruiting for them. He urged members not to become sectionalized.

Senator Ray recessed the meeting at 11:30 a.m. for lunch.

The meeting was called back to order at 1:35 p.m. Senator Ray asked for public testimony.

Donna Brooks, a concerned citizen and a previous state employee, addressed the commission.

In 1974 she terminated from state employment and six months later attempted to return. The position was still available, but later the state discontinued her job classification. Since 1975 she has not been notified of the discontinuation of the job class nor has she been offered a rehire position, although she was contacted once about a 30-

day emergency position. She is between first and fourth on the registers. Ms. Brooks asked whether hiring authorities automatically receive the names of rehires when they request a register and whether they have to contact the individuals on the top of the list.

Mr. Kareen replied that rehires and transfers are listed on the registers as additional candidates which a manager may consider. Managers are not required to contact those individuals, however. In fact, in working the eligible list, a manager can contact one applicant and as long as that individual is one of the highest five on the list, the manager can give that person the position without considering anyone else. The Division of Personnel recommends that managers contact all of the top five because they won't know which person is best until they make that check.

Ms. Brooks asked what is happening with the affirmative action policy of the state. Mr. James E. Fisher, the Director of the Equal Employment Opportunity Division of the state, responded. The state Division of EEO has three general functions. One is planning, another is training, and the third is handling complaints. Affirmative action is part of the planning area. The plans are goals set which the state can use to measure its accomplishments. The state has only gone through one cycle of departmental affirmative action plans. It is now in the process of revising those plans for the first time.

Mr. Fisher continued. One of things that the state service has been criticized for is not having accurate records to be able to measure precisely what is happening in affirmative action. The state is improving the records available so that it will be able to point out the actual specific problems in affirmative action.

With respect to affirmative action itself, there are ongoing activities within the state which vary from agency to agency, with turnover, and with location. The Division of EEO has an office in Anchorage where Mr. Fisher suggested that Ms. Brooks might wish to inquire for the most accurate answer to her specific concern. Senator Ray added that while all departments may have affirmative action programs, some of them don't work.

Mr. O'Claray asked about the circumstances surrounding Ms. Brooks' termination in 1975. She explained that she had been hospitalized. All her performance evaluations while she was working were above average. She was not aware of any personality conflicts which might have followed her in seeking reemployment. In answer to a question from Lynn Wegener, Ms. Brooks indicated that she is on the registers for Nurse III, II, and I. She had been working for the Department of Health & Social Services at API, the Alaska Psychiatric Institution. Since leaving there she has worked part-time for other employers and is now so employed.

Barbara Schuhmann, Chair of the Alaska Commission on the Status of Women, addressed the Blue Ribbon Commission. She stated that the Commission on the Status of Women had wanted to undertake an overall review of the state's personnel system because of testimony they received criticizing the system itself as discriminating against women. However,

they lacked the money and time to undertake such a study and also believed that the study should not be limited to questions of sex discrimination, but should include questions as to other bases of unconstitutional discrimination as well. She asked that the Blue Ribbon Commission undertake the review that the Status of Women Commission would have done if it had the time and resources.

Ms. Schuhmann continued. The most recent comprehensive study of the distribution of women and minorities in state government was done by the Alaska Advisory Committee to the United States Commission on Civil Rights in July, 1980. Among the findings of that study were that: state employment "tends to be mostly white male"; the state offers no child care facilities to encourage women to work for the state; when women are hired they are "for the most part relegated to the lowest paying jobs in clerical, secretarial and technical fields"; the hiring procedures in some departments are "both consciously and unconsciously discriminatory"; and the state has not adequately communicated hiring and promotional opportunities. Ms. Schuhmann added that while there has been some progress since the release of that report, the statistics which it included have not changed significantly.

Ms. Schuhmann pointed out that persons claiming discrimination on the basis of race or sex against private employers often prove their cases by use of statistics. If a statistical case were built against the State of Alaska, the state would have a hard time showing that it has not discriminated in hiring and promotion on the basis of race and sex. A report published by the Civil Rights Commission in 1977 showed that only 8% of the people in the top salary ranges (22-28) were women, while at the same time women occupied over 85% of the positions in the lowest end of the scale (05-09). In five departments, not a single woman occupied a position in those top salary ranges. Minority women fared even worse. In all of the departments of the state government, only one solitary minority woman could be found who occupied a position in the top salary ranges.

Ms. Schuhmann added that a more recent survey of the state's affirmative action effort was released by the Division of Equal Employment Opportunity this year, and it does not show much change from this situation. These figures support what the Commission on the Status of Women believes to be the case -- that despite the fact that Alaska has a preponderance of highly educated, capable, and experienced women in the population, many of them have a tremendous difficulty in breaking into the state personnel system or rising in it once they have entered.

In testimony before the Commission on the Status of Women, women have cited repeated instances where the inflexibility of the personnel system prevented them from obtaining suitable employment or achieving upward mobility. Women in professional positions have had difficulty advancing to supervisory positions and receiving equal compensation for equal work. From the testimony, it appears that women in the lower paid clerical positions are afforded practically no incentive to learn new skills or take on additional responsibility, little on-the-job training for career advancement, and no career ladders. Ms. Schuhmann

suggested that a bonus system based on performance to encourage workers to grow and develop is an essential management tool. The existing merit increase system does not fulfill this function and discriminates against those employees in lower salary ranges, since employees in ranges 05 to 09 receive between a 2.6% and a 3% increase when moving from Step A to Step B, while for positions in range 15 or above, the first increase is never less than 3.5%.

Ms. Schuhmann reported that in hiring staff for their own Commission, they found that the classifications of the state personnel system were too rigid to allow for their needs for people with very diverse skills. Too often, this inflexibility causes managers to create more exempt positions, which are outside the EEO directives which the Commission strongly supports.

On a more positive note, Ms. Schuhmann indicated that there are several efforts underway which have great potential for correcting some of the systemic problems in personnel procedures. First, the practice of expanded certification, or the "5 + 5" system, is a valuable management tool for providing managers an opportunity to interview the five most qualified women and minorities to achieve better representation in all levels of the workforce. It enables managers to go beyond paper credentials of applicants and beyond tests which may be culturally biased, neither of which may be predictive of job performance. Female state employees have testified before the Commission on the Status of Women that the main problem with the "5 + 5" system is that it is optional and many managers never request the additional names. The Commission also supports job sharing, since it provides women in particular with the opportunity to combine homemaking and careers. That program as well as flextime and part-time work options and internships or tuition reimbursement plans should be well publicized. It should not require long distance telephone calls to Juneau to find out about these programs, as is often the case today.

The Commission on the Status of Women supports two bills introduced last session. House Bill 906, sponsored by the Blue Ribbon Commission ^{1/} amends the veterans' preference point system. Passage of a bill limiting the duration of any veterans' preference will have a significant impact on what has been a major source of systemic discrimination against women in the state personnel system.

The Committee Substitute for Senate Bill 248 deserves attention next session. The Division of Equal Employment Opportunity now has the responsibility for carrying out the state's policy on equal opportunity, for monitoring the activities of all departments and ensuring that compliance occurs. The bill would define those responsibilities in state law. Ms. Schuhmann said that the Commission on the Status of Women believes that it is essential to have a fully functioning, adequately staffed Division of Equal Employment Opportunity. She urged the Blue

^{1/} Note: HB 906 was actually introduced in 1980

Ribbon Commission's support of the bill as well as support for a fiscal note sufficient to appoint an Equal Employment Officer for each department within the executive branch.

Senator Ray asked Ms. Schuhmann about the problem of having to make long distance telephone calls to Juneau instead of being able to get the information in the branch offices. She indicated that testimony they had received reported that often the local offices don't have the information readily at hand, so callers are referred to Juneau. In addition, in their own offices, they have had to call Juneau for questions they thought should be able to be answered in the branch offices. Mr. Kareen replied that on specific information concerning an application, there is only one file kept and that is in Juneau. However, for general recruitment schedules and for the process and procedures of the state, the branch offices are equipped for most questions. In addition, Anchorage does hold the records for some applications, which on occasion have to be referred down to Juneau, should an applicant move there.

Ms. Schuhmann introduced Chris Callahan to answer the questions more specifically, and explained that the reason for addressing this topic is to alert the Blue Ribbon Commission to the fact that not all of the Division of Personnel offices in every part of the state always have all the information which they might have.

Ms. Callahan stated that the majority of the primary points raised in the statement of Ms. Schuhmann are well-documented, and added that indications of difficulty in dealing with decentralized offices is not unique to this state. Senator Ray replied that in order for the commission to be constructive, we need specific information. He asked Niel Thomas, Executive Director of the Human Rights Commission how many cases of discrimination in the state personnel system their commission had on file. Mr. Thomas replied that at the last Blue Ribbon Commission meeting he had provided statistics about individual people who have complaints on file, but that does not include cases filed by the executive director on class-wide discrimination, for example.

Ms. Schuhmann added that the purpose of her coming before the Blue Ribbon Commission is to urge that someone take a look at the big picture of state employment. It is a large undertaking, but there are indications of problems. One example is the public health nurse lawsuit. That group of nurses was doing very similar, if not identical, work as were another group of state employees who all happen to be male. And the male counterparts were doing very similar, if not identical, work to the nurses, but are paid more. Another indication that there may be problems is that all women are bunched, at least according to statistics, at the low end of the pay scale.

Senator Ray pointed out that in a pure merit system, the person who had the highest score would be the person hired. On the other hand, some people have suggested that the system should allow anyone with minimal skills to be considered for jobs and then let the

hiring authority select whomever he wanted. Under this system, you would have the highest instances of discrimination, both against males and females. To remedy past discrimination, people suggest reverse discrimination. Ms. Schuhmann suggested that perhaps the other side of the coin to affirmative action is the veterans' preference. In a pure merit system, you just depend on an individual's credentials. She reported that she has talked with people in Fairbanks who lost out for a state job by a tenth of a point, and usually a veteran is hired because of the 5-point preference. Senator Ray responded that the veterans' preference provides equal discrimination against males and females who are not veterans.

Mr. O'Claray asked Ms. Schuhmann whether the Commission on the Status of Women had figured the cost of a study of the personnel system. She replied that they had decided it would probably have to be done by a contract with an outside source. She doubted it would cost less than \$100,000. Senator Ray pointed out that the Blue Ribbon Commission operates on less than that amount.

Senator Eliason asked whether the Commission on the Status of Women had figures on the effect of the veterans' preference on women. Ms. Schuhmann replied that they do not, and that is one of the reasons they are urging that a comprehensive study of the personnel system be done. She added that federal law is quite clear on the number of women who can be employed in the military and who can be employed in combat. Congress may have a valid state reason for limiting the numbers, but the fact remains that veterans are far more likely to be male than female.

Mr. Charney commented that there are success stories -- the women who do succeed in rising into the top salary ranges in state employment. He suggested that it might be useful to find out what contributed to their success. Ms. Schuhmann agreed and added that her own suspicion is that many of those women are professionals, such as lawyers in the Attorney General's Office.

Ms. Withers suggested that it can be misleading to look at only one part of the statistics. If all of the women who applied to work in the Attorney General's office were hired, then the 8% represents 100% of the applicants.

Ms. Schuhmann agreed. Availability studies are difficult to obtain, as the Commission on the State of Women has discovered in attempting to get studies for the pipeline workers. In addition, one thing the commission heard at least on the pipeline workers experience is that you can't have systematic discrimination against women, sexual harassment and the like, and expect women to call themselves available for those jobs.

Representative Fuller asked how the Commission on the Status of Women had collected its material. Ms. Schuhmann explained that they looked at reports from the U.S. Commission on Civil Rights, the Annual Affirmative Action Report of the State of Alaska and held public hearings.

In answer to a question from Senator Eliason, she explained that her commission did not try to resolve complaints against an individual who was discriminating against someone. Those cases were referred to the Human Rights Commission. Where there appeared to be a policy in a department which had a discriminatory effect, they would contact the department head to resolve the issue, with fairly good response. Senator Ray thanked Ms. Schuhmann for addressing the Blue Ribbon Commission.

Nancy Groshek spoke for herself. She said that she is a legislative staff employee, working for Senator Fisher, and the committee aide for the Senate State Affairs Committee. She asked that the Blue Ribbon Commission endorse SB 248 which is currently in the Senate Finance Committee. It is important and addresses some of what Mr. Chase spoke of earlier in the meeting. It has teeth in it and makes merit raises depend on how well a supervisor complies with the affirmative action program. It also addresses other forms of discrimination.

Ms. Groshek suggested that the commission look at some of the forms used by the state. When she became a legislative employee, the form she was given asked for her marital status and sex. Those questions are prohibited by the equal rights amendment to the state constitution. When the forms were sent to the Division of Retirement, someone had added that information over Ms. Groshek's signature. She filed a complaint and believes that the form will be corrected. The University of Alaska also has application forms for programs such as learning to repair airplanes which ask for marital status.

Ms. Groshek also asked the commission to look at the word "qualified". It has become synonymous with "white male". For example, on the Superior Court or the Supreme Court, the Judicial Council says they cannot find any women who are experienced or qualified. But the reason is that women have not been allowed in the legal profession for that long. Ms. Groshek added that while she supports a veterans' preference for the transition period between military service and civilian life, she thought it should be limited to three or five years. People who have had careers in the military will receive credit for their work experience and the bonus of five points on top of that can make a significant difference.

Representative Fuller asked Ms. Groshek whether she believed that it makes much difference to an employer whether a person is single or married. She replied that she did, absolutely. In her own career she knew that some of the people she had interviews with had problems because of her marital status.

Senator Ray thanked Ms. Groshek for her testimony.

Senator Ray asked Mr. Baffone whether he wished to testify. Mr. Baffone replied that he did not.

Dee Lane addressed the commission on the issue of discrimination against women and minorities in state employment. She said that everyone knows that discrimination is rampant in Alaska state employment. She urged the commission to concentrate on solutions to the problems rather than going over and over the statistics. Women don't have the support

of the administration. If they speak out, they get the reputation of being a complainer. If there were support in the state government to see that people were treated fairly, there would be more people coming forward to talk about the problems.

Ms. Lane said that she would relate some of her early problems, but not the current ones because she was afraid. She pointed out that retired military persons are replacing women in the upper echelons of the Division of Energy and Power Development. Outsiders are often better educated than Alaskans and are flooding the state. The Molly Hooch case insured educational opportunities for Native Alaskans, but still education in Alaska does not compete with education outside. We only have one university and a community college system that is just recently developed. Parents have to send their children Outside, which means that they must be in the upper salary ranges.

Ms. Lane reported that in 1960 she was hired to merge the records of the Bureau of Public Roads with the newly formed state records. A couple of men, earning three levels higher than she was, had been asked to do it before she was and they had not succeeded, so she was assigned the task. When she was nearly done, she asked her supervisor, a preconstruction engineer, for a raise. She pointed out that the people who preceded her had failed in the job, and that she was doing it on her own schedule and that it would be finished shortly. He replied that (1) women don't belong in the Department of Highways, and then asked (2) do you think that someone on a lower level can maintain this system when you have it completed? She replied that she had set it up so that it could be maintained simply. He then said that he would not give her a raise.

Ms. Lane pointed out that people are afraid of retaliation if they speak out. For example, she was one of the people involved in the Kevin Waring case. He was the Director for the State Division of Planning and he always chose to hire from outside the state. She indicated that she was not one of the people he hired; he overlooked her. Mr. Waring is no longer with the state, but Ms. Lane said that she knows that she has been retaliated against. Senator Ray suggested that perhaps the retaliation is because of her vocal advocacy rather than because of discrimination.

Ms. Lane continued. She suggested that the state should work with Native leaders to improve educational opportunities. It would benefit everyone in the state. In answer to a comment from Senator Ray she pointed out that in state employment, all of the upper echelons are male and the lower echelons are female. How can you possibly say that there isn't discrimination? The women want to be at the top. Senator Ray suggested that there are more men who apply for the upper echelon jobs, and that is why there are more men who get them.

Ms. Lane suggested that there should be a career ladder and definite policy statements that the administration and the Blue Ribbon Commission care about women and minorities in state employment. Many women don't even apply for state employment because they believe they

won't be hired. She added that supervisors should get training on their obligation to be nondiscriminatory in hiring. There is much that can be done to establish a climate where people are made to feel that women and minorities have opportunities to be in the upper echelons, too.

A woman from the Tundra Times pointed out that the advertisement for the meeting said that it was on Tuesday rather than Thursday and perhaps that was part of the problem for the low attendance. Another woman said that if state employees knew of the meeting, they would have come to testify. She learned of the meeting through a women's club. Terry Cramer, administrative assistant for the commission, explained that the personnel officers for each department had been asked to circulate notice of the meeting to all of their employees in Anchorage.

Ed Wesley, president of the Anchorage branch of the National Association for the Advancement of Colored People addressed the commission. He suggested that the commission should look back to the civil rights legislation and more specifically the voters' rights legislation. The burden then was not put on the state to prove discrimination. They looked at the amount of utilization and representation. Similarly, once you look at state employment numbers and the population make-up of the state, that should be a signal that more aggressive affirmative action should take place to alleviate the situation. He asked how many blacks who work for the state make more than \$50,000. Senator Ray asked how many positions which pay over \$50,000 are blacks qualified for, and added that he did not know how many blacks make more than \$50,000. Mr. Kareen pointed out that it is difficult to answer the question of qualifications generally. The qualifications will vary greatly between, for example, a judge and a regional biologist or an engineer.

Mr. Wesley suggested that the commission should look at those figures. He agreed with Ms. Lane that until there is visible support of equal employment policy, people will not be willing to testify on the issue. Once the commission looks at the numbers and sees that there is no representation in that top range of positions, then it should use the same concept that the voters' rights legislation used, and decide that the state must take some action to do something with the heads of those departments.

Representative Fuller asked Mr. Wesley how many blacks there are in Alaska. He replied that something like 3.2% of the state's population is black and that there are approximately 9,700 blacks in Anchorage. Representative Fuller suggested that with the rapid inflow of people to Alaska, there might be few blacks in the higher paying positions because they have not been in the state long enough to work their way upwards.

Mr. Wesley reported that there was one gentleman who was a pathologist for the Department of Fish & Game. The department had something like 900 employees and one black. He had problems there from the beginning of his employment in 1976. For example, the department placed a statement that he was hired to meet affirmative action goals in his personnel file. He requested that the statement be removed from his file and from then on he had problems. Eventually the department fired him.

In the Department of Transportation, Mr. Wesley reported that there was a gentleman making over \$50,000 as a facility engineer. The department reorganized and abolished his job. There were other people in the same status as he was, all of whom found jobs within the system. He was left out. Mr. Wesley said that he believes the number of blacks making over \$50,000 is cut to about five or six in the state.

Senator Eliason asked how the commission can find out what causes these problems. If people are reluctant to talk about the problems, how can change be focused on the regulations which discriminate? Mr. Wesley replied that there needs to be an aggressive approach. He suggested that if the administration has adopted the "5 + 5" policy, that managers should be required to select from the list, even if they have to go Outside in order to meet their goals. Senator Eliason responded that he would not be willing to solicit applications outside the State of Alaska when only 5.3% of the state employees are Alaskan Natives.

Mr. Wesley asked whether there were any blacks on the commission. Senator Ray replied that there has been one application from Mr. Chase, who testified before the commission earlier in the meeting. Mr. Wesley suggested that in addressing a problem that affects individuals or a segment of the community, the commission should utilize members of the group to solve that problem.

He pointed out that historically there has been an overt problem of discrimination, especially with black people, in the State of Alaska back to the 60's. He explained that by discrimination, he meant actions rather than attitudes. Those problems still exist, and when people went to the streets and protested, then there was some change. He added that we know there was not a revolutionary change. The problem still exists. Senator Ray added that when he came to Alaska in 1930 there were signs in the movies "Natives here, and Whites here". There was no mixing. There was rabid bigotry against Native people.

Mr. Wesley suggested that one way to address the problem of discrimination in state employment is to refuse to fund any department that doesn't meet its affirmative action goals. It is not reverse discrimination, it is saying that the person is charged with the task, that the description of his duty to perform includes meeting the affirmative action goal. When that person doesn't carry out his duty, then you don't pay him or else you fire him.

Senator Eliason asked for suggestions which could be implemented into law or regulations to overcome some of the obstacles that have existed. What is the tool to overcome discrimination? He pointed out that APEA would probably resist any firing of a supervisor as Mr. Wesley had suggested and that the Legislature could not cut off funding a department for failure to meet its affirmative action goals.

Ms. Shelley added that it would be difficult to hold one supervisor responsible for meeting a specific affirmative action goal, since registers may or may not include minority individuals and since there might not be any turnover in an office at all.

In answer to a question from Representative Fuller, Mr. Wesley suggested that if the commission were interested in information about what was happening elsewhere in the Lower 48, the NAACP national office has all the historical data and information about problems in every state in the country. They could provide answers if the commission were to pay someone to spend time there working on the question. He added that there is a particular problem in Alaska because there aren't as many blacks here compared with the population as a whole.

Senator Ray thanked Mr. Wesley for testifying before the commission.

Niel Thomas, executive director of the Alaska State Commission for Human Rights, addressed the commission. He indicated that he had not planned to testify, but that a woman had approached him during a break. He offered to speak for her since, for reasons of shyness, she had decided not to testify herself.

She works in a state office which has a very large clerical workforce. There are three people classified at Range 12, probably as administrative assistants, more people at Range 10, probably secretaries, and a group of people who are Range 8 clerk typists. The person who he spoke with is one of the three top people, and the only one who is an Alaska Native. Every time one of the secretaries or somebody further down in the organization is out of the office, somebody has to run that machine or answer that phone. The person who always has to do that, who is in effect demoted for the day, is the Alaska Native. She has been told, "Well, I know that you were a secretary once, and frankly, I can't think of you as anything but a secretary." Mr. Thomas added that he can't help wondering whether the organization isn't losing an opportunity to take someone else and train them on something that is higher level work to cover these situations.

Mr. Thomas said that the woman he spoke with reported that one of the lower level people there is prejudiced and frequently makes disparaging remarks about a black woman who also works there. She also has told the administrative assistant things like "you people have so much catching up to do". He said that his impression of the person he spoke with is that she is a very intelligent, forward-looking person who would like to advance herself in state government but runs into barriers of this type from time to time. He suggested that conduct in the office probably discourages people like her from continuing in state employment. She may be the next \$33,000 administrative assistant to a president of some corporation because the state has permitted people to treat other people like that.

Senator Ray asked Mr. Thomas to encourage the lady to contact him either directly or through the Human Rights Commission. Mr. Thomas replied that he had suggested that before she makes a formal complaint, she should talk with an individual who is at the top of her organization who he knows will not tolerate that kind of behavior. Senator Eliason added that you may not be able to control what people think but you certainly can control their actions when they are employed by the state government. He asked Mr. Thomas whether he had suggestions of what the

commission could do through regulations or legislation to change some of the obvious vehicles used for discrimination.

Mr. Thomas suggested that the commission consider the Committee Substitute to SB 248. Its approach is in the right direction. For instance it insures that an evaluation really does address an employee's EEO performance. The commission might look at both the bill and the fiscal note to see whether they could be improved. Senator Ray pointed out that the Administration is not supporting the bill, even though they are responsible for the affirmative action program. Mr. Thomas suggested that since the commission includes so many people from the Administration, if it could come up with a substitute bill, then the bill should have the support of the Administration.

Mr. Kareen asked Mr. Thomas for suggestions for finding available workforce data which could be used by all employers in Alaska. Mr. Thomas suggested that the Department of Labor has put together a widely-used book called Data for Affirmative Action Planners. They will probably be working on another book based on the 1980 census as it becomes available. If the commission were to meet with the people in the department who are putting the new edition together, they could share any difficulties they are having in developing the material. Everybody in both the private and public sectors needs workforce availability data, so that would be one of the most helpful services the state could perform in the equal employment opportunity area.

Senator Ray advised the commission that he anticipated holding one more meeting before the legislature convenes. He thanked the participants and adjourned the meeting at 4:15 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
November 3, 1981

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:05 a.m. The roll call showed Ken Kareen, John Chenoweth, Representative Jack Fuller, Lois Jund, John Pugh, Cherie Shelley, Bill Huston, James Fisher, (alternate for Commissioner William Hudson) and Senator Bill Ray present. Myrt Charney, Senator Dick Eliason, and Greg O'Claray were absent. Also present were Roger Thayer, Robert Mourant, Darlene Livermore, and Dorothy Whitney.

Senator Ray opened the meeting by asking for public testimony. The first to testify was Niel Thomas, Director of the Alaska State Commission on Human Rights. Mr. Thomas addressed the question of how the number of employment discrimination complaints against the state compares with the number of complaints filed against private employers. He indicated that the information requested by the Blue Ribbon Commission was similar to the material that the Human Rights Commission developed recently at the request of the U. S. Civil Rights Commission. He distributed copies of a computer printout entitled "Total Statistics by Region", dated 10/17/81, R01-GGU-0001. Based on the information on the printout and handwritten information he had added to the sheet, he reported that of the 410 cases presently pending before the Human Rights Commission, 75 are cases involving the State of Alaska, which is 18.3% of the total. He added that the 18% could be misleading, since of the 75 cases involving the state, 24 of them raise one issue, which is now pending at the public hearing state. That issue is the state's classification of public health nurses when compared with physician's assistants. Treating those 24 cases as a single case, which he indicated gives a fairer representation of the situation, the proportion of cases filed with the Human Rights Commission against the state is 13.4%.

Mr. Thomas continued explaining the handwritten numbers on the printout. Of the 3172 employment cases filed with the Human Rights Commission since the beginning of 1975 or open on January 1, 1975, 321 have been cases against the state. Two years ago the Alaska Advisory Committee to the U. S. Civil Rights Commission requested similar information. As of August, 1978, the total number of cases filed was 2162, of which 200 involved the state as the employer. The percentage of the total then was 9.3% and now is 10.1%. He added that the statistics would seem to indicate that the Human Rights Commission is getting something of an upturn in business from the State of Alaska, but that he did not know whether a statistician would consider the increase significant.

When the Human Rights Commission was preparing information for the U. S. Civil Rights Commission, they asked the Department of Labor what proportion of the total nonfarm workers in the state were employed

by state government. The answer was 8 or 9%. Therefore, in 1978, the state employed 8 or 9% of the workforce and was being complained of in 9% of the employment discrimination cases filed with the Human Rights Commission. Mr. Thomas indicated that he did not know whether the proportion of the workforce employed in state government had increased since 1978. If it hasn't, then it would appear that the Human Rights Commission is getting more business from the state than before. Mr. Thomas added that he was providing additional computer printouts to the Blue Ribbon Commission which together represent all of the cases (employment, housing and everything else) filed against the state since 1975.

In answer to a question from Senator Ray, Mr. Thomas stated that of all the discrimination cases filed, about 50% allege race discrimination. He added that he did not have that percentage figured on the cases specifically filed against the state as an employer.

Mr. Thomas continued, addressing the question of what is discrimination. People customarily know that it's discrimination when someone is consciously out to get somebody saying, "I'm not going to hire this person because she is a female and women should not be doing this kind of work" or "we don't want minorities doing this work." This is overt discrimination and is only a small proportion of the cases which involve agencies or wind up in the courts. The majority of discrimination cases arise because a system of rules or a customary way of doing things works out to the detriment of a certain group of people. For example, suppose you believe that to be an effective police officer you need to be an imposing figure who commands respect. You therefore say that police officers must be over 6'6". The last thing that enters your mind is the effect of that rule, which would be to completely exclude women and to exclude most Asian people and most Alaska Natives, except possibly the Indian population. When you discover this unintentional result, you have to review the situation and come up with an alternative which still serves the legitimate purpose of the rule (hiring quality people) but which doesn't have that discriminatory effect.

One of the problems in dealing with discrimination questions is how to get data. Mr. Thomas continued using the example of the tall trooper. Suppose statistics for the Department of Public Safety as a whole indicate that 40% of the workforce is female. You might therefore conclude that the department is not liable to be sued in sex discrimination cases because women are well-represented in its workforce. However, perhaps if you had data by divisions within the department, you would discover that in hiring troopers there is a problem because there are no women. You also need that data by geography, in order to answer whether there is a problem in hiring in a particular office or location. Another kind of data which Mr. Thomas indicated it is extremely important to have is applicant flow data. It shows what happens to the applications as they are processed. In the tall trooper example, for instance, it might reveal that half the people who applied to be troopers are women but that none of those applications get past the review for height

qualifications. Therefore, it would show that Public Safety did not need to increase its recruitment efforts but should reexamine the minimum qualifications for the position.

It is also useful to have availability data, which shows the numbers of people available for or interested in a particular type of work. You need that information when setting goals and percentages for each job-type. Without it, they are extremely difficult to set, and involve a certain amount of guesswork. Mr. Thomas indicated that Chuck LaViege, the counterpart to the Director of EEO in the state, has asked the Department of Labor for information to more fully develop figures on availability data. He urged the Blue Ribbon Commission to encourage the development of better population and availability data.

In answer to a question from Roger Thayer, Mr. Thomas indicated that the information provided in the computer printouts on employment discrimination against the state would indicate the types of employment discrimination: whether they arose in hiring practices, promotional practices or other situations. Senator Ray thanked Mr. Thomas for his testimony.

Dove Kull addressed the commission. She indicated that she was representing herself only, although she was a member of the Alaska Advisory Committee to the U. S. Civil Rights Commission and had represented the state at the annual planning and budget meeting. She indicated that, having lived longer than most others in the room, she had seen many changes, and noted that in 1980, the Ku Klux Klan rode for the first time in 75 years, and in the State of Connecticut, not in the South. She recently visited relatives in Mississippi and was amazed and a little frightened at the unleashing of old attitudes and beliefs. She noted that of President Reagan's appointments as reported in a June 18th document, 10% were women (38 out of 375), 4% were Hispanics (14) and 4% were Blacks (13).

She added that as a result of work she had done in the Aleutian Chain, she felt that people there were neglected and isolated. They have something to contribute. She felt that there was discrimination against dark-skinned people and pointed to the situation in the cannery workers union. Stereotyping limits the opportunities for women, too. Although she had heard one boss say that women cannot lift heavy objects, women do so all the time when raising children. She also felt that the canneries did not provide adequate day care.

Senator Ray asked for further public testimony. Florencio Q. Pax replied that he would prefer to testify in the afternoon. There was no other response.

The commission turned to consideration of the "Prisoner Profile Study" from the Division of Corrections, Department of Health & Social Services. Senator Ray asked Bill Huston to introduce it. Mr. Huston indicated that the profile is based on 100% of the prisoners of the State of Alaska on August 19, 1981. The purpose was to determine the

kind of long-term facilities needed by the state and what kind of prisoners would be in prison when it opened in 1985. He reviewed the information gathered which indicates that 37% of the state's prisoners are between the ages of 20 and 24; that the highest percentage have a high school diploma and many have completed some college coursework. In 1967 the Criminal Justice Commission indicated that the average educational background for the nation's prisoners was between 8 and 9 years. The average at the correctional institution in Juneau is over 13. In addition, the average educational background of state prisoners housed with the Federal Bureau of Prisons (FBP) is even higher. Caucasians represent 54% of the state's prisoners, 9% are Black, 12% and 32% are Alaska Native, which includes American Indian (12%), Eskimo (18%) and Aleut (2%). This is twice as high as their representation in the general population, which is about 16%. Most prisoners had lived in the state at least three years before committing the crime for which they were incarcerated.

The largest category of prisoners is sentenced for a Class A felony (49%). Presumptive sentencing does not appear to have had an impact yet on the population statistics. Mr. Huston didn't expect that to show up for another few years. (Under presumptive sentencing, for the second or third felony conviction a person must serve the time sentenced, rather than being released on parole early.)

Of the crime classes, 62% of all felonies were considered violent offenses. However, that category was not defined to include property and sex offenses, so the percentage would increase where crimes in those categories which were committed with violence included. Of the state prisoners who are considered to have committed violent offenses, 43% are presently housed under the jurisdiction of the Federal Bureau of Prisons, and will be returning to the state as the FBP decreases its housing of state prisoners.

Bethel had the highest percentage of crimes in the villages. Mr. Huston suggested that this was probably because it is the hub of the Kuskokwim area which covers 85,000 square miles, with 56 villages and between 26,000 and 30,000 people.

He indicated that the report also addresses the current custody classification (maximum, close, medium or minimum) of the prison population, and rule infractions. It indicates that 150 prisoners out of the total population commit the majority of the infractions. He offered to provide Commission members with a tour of the facility if any were interested.

Mr. Huston discussed the Administrative Council which was set up at Lemon Creek following some unrest among the population. He indicated that he structured it differently from similar councils found elsewhere to insure representation from the whole population. He required that the prisoners write by-laws, but limited the topics which could be considered at the council to those matters which were not covered in the

regulations, administrative law, departmental regulations, or in the Alaska Statutes. The council was to discuss the welfare of the community where they were at. It met about four times and then the members of the council lost interest.

In conclusion, Mr. Huston stated that there is no doubt that the state will need a new facility in 1985, and that close custody inmates will make up the majority of its population. There will also need to be provisions in the facility for some maximum custody prisoners. A discussion of parole followed.

John Pugh pointed out that while 32% of the prison population is Alaska Native, they make up only 16-17% of the total state population. He indicated that there is a new prison facility which will open in Nome in two years, and that there are a number of Alaska Natives willing to work in it. The state should be encouraged to train and provide employment opportunities for them. Representative Fuller added that attitudes in the Bush are changing. One of the best things that has happened in that regard is the Village Safety Office program. Instead of sending in a trooper or having the school teacher serve as authority figure, the program enables villagers to take responsibility for themselves in these matters. Mr. Huston indicated that cultural traditions could make it more difficult for Native people to be as aggressive as is required in correctional work.

Mr. Pugh suggested that with the reduction in federal money, and particularly federal money to Native corporations, there needs to be an increase in training programs to develop opportunities for state employment. Senator Ray pointed out that contracting with Native Corporations for services may provide a bridge between the cultures. Representative Fuller added that contracting would provide a mechanism for training in both the skills required and in cultural differences. Mr. Pugh pointed out that it would be an advantage to the state to train local individuals to fill positions in rural Alaska, since there is a large turnover in people brought in from outside to fill those positions. Often rural Alaskans don't know of employment opportunities and therefore don't apply.

The commission turned to a discussion of the difference between a pure merit system of employment and implementing affirmative action plans. James Fisher said that affirmative action plans permit a temporary variance of the merit selection system to overcome past difficulties. Lois Jund pointed out that although the commission hearings were extensively advertised few people had appeared to testify. Many people were probably afraid to come forward. She suggested that more people might speak out if the meeting were held on a weekend or if people were invited to provide written testimony and assured that the commission would hold their identities confidential. She cited figures from page 36 of the 1979 Human Rights Commission report which show that 18% of the state's minority employees held jobs classified as range 15 or above in April 1978 which rose to 22.8% in January of 1980, while 44% of the state's white employees held positions range 15 or above positions in April 1978, and 44.5% did in January, 1980. Similarly, in 1978, 18% of

the state's female employees were in positions at range 15 or above, which increased to 20.6% in 1980. During these same periods, 74.8% of the state's male employees were in jobs classified as range 15 or above in 1978, while in 1980, 75.1% were.

Darlene Livermore pointed out that any complaint about discrimination is difficult to keep secret, since to resolve it, the Human Rights Commission must discuss it with the employer. Mr. Huston added that the Blue Ribbon Commission should consider a Saturday meeting, since any employee wishing to appear would be conspicuous in his or her absence from work otherwise.

Senator Ray asked members whether they had ever received confidential inquiries because of their participation in the commission. Lynda McCurry indicated that several women have spoken with her about being considered but not hired for promotional opportunities. Typically, they were within the top five on the register for the positions involved, and the individual selected was lower on the register than they were. It appears that there may be an "old boys" network, but it is difficult to resolve whether there is discrimination or not.

Mr. Huston suggested that the commission consider recommending a review of departmental and divisional registers to discover criteria which might unintentionally operate to discriminate. Many policies have existed since statehood without anyone questioning them.

Mr. Thayer explained, in answer to another question, that each annual personnel evaluation of a supervisory state employee is supposed to contain a rating on how well that employee is carrying out the department's affirmative action plan. However, he has never seen anyone comment in writing about that factor. Mr. Fisher commented that the Division of EEO is working with the departments on their affirmative action plans. Most have only been in effect for one year. They are presently being revised. The division is also putting out a package of information to encourage affirmative action committees in the departments to use the teleconference network to supplement their meetings, to enhance awareness and for training. He added that he senses a momentum in the EEO division, which was established in the fall of 1978. He hoped it would continue to encourage cooperative activities, to help with preparing the affirmative action plans, with training, and with increasing the awareness within state government.

Lois Jund asked whether the state has a positive recruitment program to help minority persons get on the registers, to encourage them to apply for positions and to advise them of what might be available. Ken Kareen answered that the Division of Personnel has no real outreach recruitment of any kind. The departments do whatever is done. The division does respond to requests for participation in public programs more often if it appears that the audience will be composed of women or minority group members.

John Pugh pointed out one positive note in that area. The Nome Youth Center will be opening in December. The Department of Health

and Social Services with the cooperation of the Division of Personnel recruited extensively to encourage residents in Nome to get on the register. Instead of the usual practice of scoring the tests first and then holding oral exams, they took all of the applicants through the orals and then gave the written exams. However, this kind of change from the normal way of handling applications needs to be planned for well in advance. The department began seven or eight months prior to the time that they knew the facility would be opened. The Division of Personnel has become much more willing in the last few years to work with the departments, despite being inundated with general applications for employment. He suggested that the commission recommend to the departments that to work with the Division of Personnel to come up with creative solutions to the problem of getting minorities on the registers.

Roger Thayer added that most villages now have cable TV. The Department of Transportation uses those scanners to provide information about job openings. Lynda McCurry added that additional resources are available through the Job Service Offices of the Department of Labor.

The commission recessed at 11:55 p.m.

Senator Ray reconvened the meeting at 1:35 p.m. and asked for public testimony.

Florencio Q. Pax addressed the commission. He indicated that he was born in the Philippines and was educated under an American educational system, graduating with an accounting major and later passing the Philippine bar examination. He worked for the government as a quasi-judicial hearing officer for six years and had also worked for 23 years in the accounting field. He served during World War II with American forces in the Philippines but chose not to come to the United States at the end of the war. He recently immigrated to the United States because his wife's family had moved here. He introduced M. S. Pax to the commission.

Mr. Pax told the commission that Aaron Isaac suggested to him that he apply for the position of the director of the Division of Equal Employment Opportunity. However, Mr. Pax had never seen the vacancy advertised. Senator Ray asked James Fisher, the new director of that division, to let Mr. Pax know why there had been no advertising. Mr. Pax also indicated that he had been a finalist for the Executive Director of the Anchorage Equal Rights Commission. Although he was not finally selected for the post, he did not quarrel with that. However, he was also a finalist for the position of Affirmative Action Officer for the University of Alaska, Juneau. Another finalist for that position told him that the person finally selected was less qualified than she was, and suggested that Mr. Pax should take steps to challenge the appointment.

Mr. Pax indicated that he had reviewed the United States Constitution, and the constitutional provision of the State of Alaska as well as the State Personnel Act, various civil rights provisions, Executive Orders and the equal employment opportunity provisions in the Code of Federal Regulations. He said that he felt that there are adequate provisions of law in this area and that the problem lies in the effective

implementation of those provisions. He suggested that there should be a continuing educational process so that the goals can be effectively met.

On the question of why individuals do not come forward to testify at hearings such as the present one, Mr. Pax suggested that there are a number of reasons. First, there is fear of reprisal. Also, others had suggested to Mr. Pax that individuals do not come before a group composed of white persons to complain about the actions of a white supervisor because they believe that they will not be successful. Mr. Pax added that he does not share this belief. Mrs. Pax also suggested to him that it might be helpful to educate people about the importance of the subject, to encourage them to speak out.

Mr. Pax stated that he has been placed on three registers with the state: executive director of Wage and Hour Officer, as a loan examiner and as a regulations specialist. There were a number of job classes for which he was found not to qualify because the Division of Personnel did not consider his education in the Philippines to satisfy the requirement of graduation from an accredited college or university. Mr. Pax stated that his education had been in the American system and that he is familiar with the curriculum in accounting at the University of Alaska and it is practically the same as the education he received in the Philippines. He also was not credited with his 23 years work experience in the field.

Mr. Pax advised the commission that he and his wife participated in a one-month orientation program when they were first hired by the Seattle Public School District. All persons newly hired were required to take the course which provided information on cultural and ethnic backgrounds as well as topics such as effective communications, office skills, first aid and transportation. He reported that there has been a decision by the U.S. District Court in Oklahoma declaring that a Filipino accent could not be grounds for firing an employee. The case was Karinio (?) vs. University of Oklahoma.

Mr. Pax suggested that there should be separate affirmative action goals for women and for minority persons, and that hiring women should not satisfy the goal for employment of minority persons. He added that he opposes reverse discrimination against whites. In order to meet EEO goals, Mr. Pax suggested that the recruitment system should be computerized to monitor applicants and employees so that it is possible to follow an individual through the application process into the employment history. It should show, for example, whether advanced training for an employee was appropriate and whether he was eligible for promotion. He added that a supervisor should be dutybound to recommend training for a woman or minority person who is qualified for it in order to encourage the promotion of these protected classes.

Mr. Pax concluded his testimony by offering to assist the commission in any capacity, whether as a volunteer or as an employee. Senator Ray thanked him for his testimony and asked whether any commission

members wished to ask questions.

In answer to a question from Lois Jund, Mr. Pax indicated that he believed that minority persons might be more likely to bring their problems to the commission if its membership included minority persons or if there were an intake officer who was a minority person. As an example of what he was suggesting, he pointed out that the Anchorage Equal Rights Commission is composed of nine members, with representation from whites, blacks, Native Alaskans, the Filipino community, and Chicanos or those of Spanish origin, and contains both male and female members.

Verneelia Randall addressed the commission. She has worked for the state for four years, first as a Public Health Nurse and now as the Maternal Child Nurse Coordinator. She is also chairperson for the Department of Health & Social Services EEO Committee. She addressed the commission as a private citizen.

In answer to why so few people chose to speak before the commission, she related reasons given to her by other state employees. These included questioning how many women and minorities would make up the membership on the commission, whether commission members would hold positions of power which could lead to real changes, and the fact that they would have to take annual leave in order to testify. Senator Ray advised Ms. Randall that it is not necessary for state employees to take annual leave to appear before the commission. He indicated that membership on the commission includes the Commissioner of Administration, the Director of the Division of Personnel, representatives of employee unions, the Ombudsman and public members in addition to legislators.

Ms. Randall said that there are two kinds of discriminatory problems, those created by societal habits and those which arise from individual discrimination. Societal problems develop from a system which has not been changed in 30 or 40 years and which have an inadvertent discriminatory effect. Once it is in place, the system tends to resist change, rather than being open to solving the problems which it creates. She gave as an example her own situation. She has a bachelor's degree, a masters, is working on a master's in public health and intends to pursue a Ph.D. in health policy and management. Even then, she will not be eligible for the position of health officer because she is not a doctor, a dentist or a veterinarian. Those requirements were created years ago and may have been appropriate for the position then, but the department has not reviewed them since, even though the health education field has changed significantly.

Ms. Randall criticized testing and experience ratings of applications and pointed out that they work against women and minorities. Tests are culturally based and test a person's ability to take tests more than ability for a job. Experience requirements work against those who have had less opportunity to work. Anyone can learn to take a test and can therefore pass a test. The opposite is also true. For example, until an instructor worked with her on test-taking, she nearly flunked out of nursing school, despite knowing the material thoroughly. After

learning how to take tests, she now does well on them. Because of these problems with tests and experience requirements, the registers work against people from different cultural backgrounds. If they appear at all, they are likely to be low on the registers.

Ms. Randall told the commission that the Governor had recently authorized a new register system in which the names of the top five applicants plus the names of the top five from a protected class are shown for those job classes in which women or minorities are underutilized. The problem with this approach is that it is voluntary. The recruiting agency should be required to hire from an affirmative action register for positions in underutilized job classes.

There is a second type of discrimination -- individual discrimination. It may be either conscious or subconscious. Ms. Randall stated that everyone is racist either consciously or subconsciously. Until we recognize that and work to change it, the implementation of any affirmative action policy will not happen on a regular, consistent basis.

Ms. Randall advised the commission of DHSS statistics on minority and women hires. She suggested that DHSS is one of the best departments because women and minority persons are most likely to be either nurses or social workers or office clerks, and DHSS hires a lot of all of those job classes. The figures are based on the department's EEO plan, which identifies the availability of minorities and women for state employment, as compared to the actual employment.

	<u>Female</u>	<u>Minority</u>
Availability of office clerks	79%	21.1%
Employment by the department	90.3%	17.8%
Availability of officials & administrators	44%	19.3%
Employment by the department	26.7%	11.3%

There is a significant difference between the available market and what is actually happening, even if the figures are off by 5%. Ms. Randall recommended that the state use computers to identify underutilized job classes. When a department requests a register in one of the identified classes, they should get an affirmative action register, whether they wanted it or not. A supervisor should have to justify not hiring a woman or minority person for a vacancy if any appeared on the register. The present system requires the supervisor to justify hiring from below the top five even when hiring for job classes in which minorities or women have been shown to be underutilized.

Ms. Randall acknowledged that this system would be reverse discrimination but pointed out that when you have a relay race and one team started the race 15 minutes after you did, then you cannot expect them to win the race unless you provide some catch-up time. In our society women and minorities began well after the race was underway, and only those minorities and women who are far above the exception even get into the running. You cannot have equal opportunity until society

provides women and minorities a chance to catch up.

Ms. Randall said that she had a personal concern for Alaska. It is unfair to group Alaska Natives with other minorities. Alaska is a state of immigration and many minorities who are highly qualified choose to come here. Statistics show that Native Alaskans, who were here first, get drowned out by blacks, Filipinos and Chicanos who immigrated. While 11.3% of the officials and administrators may be minority, 0% may be Alaska Native. Ms. Randall recommended that in underutilization figures, Alaska Natives should be broken out to insure that they have fair representation and that immigrants not be allowed to take the jobs that they would have had.

Ms. Randall shared another area of concern: that of upward mobility. One problem is the opportunity for training. DHSS provides individual training contracts for its employees. An employee can go to the agency and say "here's a course which relates to my job and will give me added skills and I want to take it." If the agency agrees, it will cover the costs provided the employee signs a contract to remain on the job for a specified length of time. Last year, DHSS had 85 such contracts. There are 71 officials and administrators in the department. Of those, 20% had individual training contracts, while only 4% of the office clerks (who number 421) had them. In answer to a question from Lois Jund, Ms. Randall indicated that she did not know how many applications had been filed for training. She did show that 79% of the officials went out-of-state for their training. None of the office clerks went out-of-state. It's the office clerks who need the training for promotional opportunities. To have affirmative action, the state has to provide opportunities for upward mobility. Therefore, training funds should be part of every budget and there should be some system to insure that a fair portion of those funds reach those on the bottom. If 60% of a department's workforce is classed as officer clerks, then 60% of those employees should be getting training.

Senator Ray pointed out that the legislative finance committees have been reluctant to pay for on-the-job training. The legislators feel that there are requirements which employees should meet before getting the job. The state should not have to pay for it. Therefore, a good share of the inservice training money gets cut from the budget. It's an area which has been abused and is still abused. Ms. Randall replied that it is short-sighted to cut training funds. Recruiting and orienting new employees is more expensive than training existing employees who have proven themselves to be loyal to the state and who will stay in the job for a longer time.

A second difficulty in providing upward mobility is that supervisors may discourage their employees from seeking promotions. If that attitude is to change, it must start at the top. She gave as an example her own promotion to her present position. Her supervisor discouraged her, saying that she wouldn't be able to do the work, and the position was vacant for a whole year.

Ms. Randall agreed with Mr. Pax's recommendations that goals for employment of women and minorities should not be grouped together. Women have different problems and circumstances from those of minorities. Problems women face arise in part from the traditional employment system which is based on the employment of men who could work knowing that their families would be cared for by their wives. That is no longer the case. Single parent families are now prevalent and two-working-parent families are a fact of life. Any employer, whether private or public, will have to recognize that the traditional system of hours of work, work days, and annual leave, was made up for the traditional family system. Day care is necessary for even two-parent working families. The employer should be responsive to that need, although the employee should expect to pay for the care provided. In addition, employers should be sensitive to the needs of working parents. For example, Ms. Randall suggested that women be allowed to take annual leave, sick leave, or leave without pay in order to breast feed children while working. This kind of small accommodation could make a family's life much easier and also free an employee to put more energy into the job.

In closing, Ms. Randall said that any program which is developed must have teeth in order to be effective, especially for those who are low on the pole.

Senator Ray asked whether Ms. Randall had been discriminated against in working for the state because she is a black. She replied that it is hard for a non-minority or a male to understand. It is not that there is clear discrimination, but little things happen. For example, when there is a question in her section, people who are above her will first go to the man who is under her and ask him. If he is not available, they will go to the white woman who is not even in her section and ask her. The end result is that those who have been asked come to Ms. Randall for the answer. Ms. Randall indicated that it is probably because of conscious or subconscious racism. In answer to another question, Ms. Randall indicated that whether the motivation is a personal, individual dislike or racism or sexism, the end result is the same. The cause does not matter. The end result for her as a woman and a black, is discrimination. Senator Ray thanked Ms. Randall for her testimony before the commission.

Brenda Randall-Sadek addressed the commission. She is an Accounting Clerk III for the Department of Transportation and has worked for the state for a year in December without promotion. She first spoke of applying for a position with the Juneau office of the Human Rights Commission. There was a vacancy for an entry level, trainee position which she saw advertised. It required a high school degree, and she has graduated from college. She applied, but received no response. The position was advertised two more times and each time she applied. Only after she went to the office did she receive a letter telling her that she was not qualified for the position.

In the time that she has worked for DOT, Ms. Randall-Sadek said that she has asked to take the state accounting course three times. Her requests have been both oral and in written memos. Although she

wrote that she intended to stay with the department and hoped to be promoted into a position which would require the knowledge the course offered, the only reply she received was written on the bottom of her memo saying "we do send people when we feel that it is related."

Ms. Randall-Sadek said that she had worked at three different clerk desks in the department. When she was in the research section, she learned that her supervisor planned to hire a Tech I. She was planning to leave that section and her supervisor did not want her to leave. He said she was a good worker and encouraged her to stay in the section. However, he did not hire her for the Tech I position, explaining that she was too low on the register. The person who was hired had worked for the department for less time than she had and was a white male. Ms. Randall-Sadek told the supervisor that Tech I's are under-utilized class and he could have hired her if he had wanted to. Furthermore, in her time with DOT she has seen them hold registers for people who they want to hire and justify hiring anyone they want regardless of where they were on the register.

In the time that she has been with DOT, Ms. Randall-Sadek said that the only other minorities she has seen are Filipinos. She asked several people how long they had worked for the department and found that the three or four white people who had been with the department from four to six years all were at the Tech III or Accounting I levels. She knows of two Filipinos who do excellent work and have been with the department for more than five years, but who are still at the Accounting Tech I level.

Ms. Randall-Sadek agreed with Verneelia Randall on the register system and test-taking. Test results depend on your abilities to take tests. However, she said that if that is the system the state is going to use, then they should stick by it, instead of waiting for the people they want to get on the register. Ms. McCurry added that as a personnel officer she calls the tactics Ms. Randall-Sadek mentioned "crafty techniques". All of them are legal. She suggested that the commission should zero in on these practices and fix them. She added that DOT could have called for departmental promotional lists to fill the Tech I position and that probably Ms. Randall-Sadek would have placed well on that register. A second thing at DOT could have done was use the Five-Plus-Five register and gone below the top five to select her. Ms. Randall-Sadek pointed out that DOT cannot use those registers because their EEO plan has not been accepted yet.

Mr. Thayer asked Ms. Randall-Sadek to provide him with copies of her requests to take the training course and added that it is the practice of DOT to use promotional registers. He indicated that he planned to do some checking on the situation.

Senator Ray asked whether Ms. Randall-Sadek's experiences resulted from discrimination against her because of her race or sex rather than being a situation where the supervisor was hiring a friend regardless of who the other people applying for the job were. She replied that the system seems to work most against the blacks and

Filipinos and Indians. Verneelia Randall added that when the system breaks down like this, then white people get caught in it but black people, Indians, Filipinos, minorities get caught in it more. The end result of the race is that since women and minorities are 15 minutes behind to begin with, then when 10 more minutes are added to everyone's time, it makes them 25 minutes behind.

Ms. Jund suggested that the situation might have been better handled if the state's policy were to always provide an EEO register for any vacancy in a job class where underutilization had been shown. The supervisor would have to justify not hiring from that register. This would put it in the proper perspective and get away from the game of crafty techniques.

Senator Ray added that he hoped more people would come to testify and that if anyone used an appearance in front of this commission to discriminate against a witness, that he wanted to know about it because the commission and the Governor would not tolerate that.

Mr. Pax suggested that the state should enforce laws which provide that the state as grantor to political subdivisions can withdraw funding from any grantee who violates anti-discrimination laws. Senator Ray said that he would ask the Legislative Affairs Legal Division to research the area to insure that the laws in effect were adequate.

Ms. Jund suggested that the commission propose legislative intent to insure that any training funds are used proportionately to categories of people to enhance upward mobility. Senator Ray replied that legislative intent is not enforceable and that the language could be put into a statute. He added that he expected that the departments would resist the suggestion. The commissioners would come before the legislative committee and say that where they really needed training funds is for the specialized classes.

Brenda Knapp, a planner with the Central Council of Tlingit-Haida Indian Tribes of Alaska addressed the commission. She indicated that the council would be submitting testimony in written form to the commission and that she wanted to share the introduction now.

Sealaska Advisory Committee to the United States Commission on Civil Rights produced a report and initiated a series of open meetings in the fall of 1978, including a meeting in Juneau on 11 September, 1978 and the findings of the Alaska Advisory Committee were published in July, 1980. To date, a great deal of effort has been made to correct and improve the employment representation of Alaska Natives and other minorities in state government. Reports have been filed, plans developed, responsibilities pinpointed, roles clarified, data systems implemented, policy expounded and the Blue Ribbon Commission established.

In April, 1978, Native people held 518 jobs in state government. This figure represented 5.4% of the total state government workforce. Today, November 3, 1981, 3-1/2 years later, according to figures just released by this commission, Native people hold 5.4% of jobs in

state government workforce. There has been a rise in actual numbers that went from 518 to 694, but the percent of the total state government jobs has not changed, 5.4%.

In other words, despite all of the talks, meetings, reports, plans, commissions, etc., which have taken place during the past 3-1/2 years, Native people in Alaska have not improved their representation in the workforce of state government. Although 16% of the state's population is Native, less than 6% of the jobs in state government are held by Native people. Most of these jobs are, as everyone knows, concentrated in the clerical, craft and paraprofessional categories. Very few professional and management positions are held by Native people. The underrepresentation and underutilization of Native people affects most job categories and departments of state government. In fact, in nine of the 15 departments of the Executive Branch of state government, the representation of Alaska Native people has declined between April '78 and September '81. Of the remaining six departments, four increased the representation that Native people by less than 1% over earlier figures. Two departments, Community & Regional Affairs and Natural Resources appear to have made substantial gains. But, we have no information as to what really resulted in these gains.

It would appear that the commitment so clearly stated in Administrative Order No. 59 as expressing the equal employment policy of the executive branch of state government needs to be more forcefully and imaginatively translated into action. The actions of the past 3-1/2 years have provided necessary and useful mechanisms to help state government recruit, select, hire, promote and retain minorities in state employment. The expanded certification policy is a particularly useful step in bringing qualified Native people to the attention of hiring departments. But we believe that what has been accomplished to date, represent only the first few steps in an overall plan that must produce results in numbers, rather than intentions.

Senator Ray asked Ms. Knapp whether she knew how many state jobs had been contracted out to Native Corporations. These positions would therefore no longer show up in state employment figures and would probably have been held largely by Native Alaskans. Therefore, the number of Native state employees would have decreased, although the number of employed Natives would not have. Ms. Knapp replied that she did not know. However, she pointed out that since the jobs are no longer part of any of the figures on state employment, that she did not consider them relevant to this question. Of the remaining positions, the state should have been able to do better than maintain 5.4% Alaska Natives over the last three years. Good intentions are not translating into action. She pointed out that many Native people were working under CETA positions and that these programs are being eliminated as a result of the current economic trend. These trainees are available for employment.

In answer to another question from Senator Ray, Ms. Knapp said that she did not know whether the number of Native Alaskans who are applying for state jobs has increased or decreased since 1978, but that there are a significant number of Native people who are now unemployed

and who would like to work. If their number has substantially decreased on state registers, then the important question is "why". Senator Ray agree and said that what the commission is trying to discover is whether there is a discriminatory attitude or whether there is some other problem. Ms. Knapp pointed out that the Native Corporations are able to find, recruit and employ qualified Native people. The state government should also be able to do that. She indicated that the written testimony which the council will provide will include specific recommendations on what the state might do to improve opportunities for Native Alaskans.

Senator Ray thanked Ms. Knapp for testifying.

Mary Lisack, Affirmative Action Officer for the University of Alaska, Juneau, addressed the commission. She reported that the University has been under a compliance review by the federal government since the early 1970's. If it does not show progress in affirmative action, it will lose its federal funding. The University's Affirmative Action Office is under top management rather than part of the personnel office. Her responsibility is to monitor and ensure compliance with affirmative actions plans and employment opportunities. One of the ways in which the University tries to eliminate discrimination is through ensuring that job qualifications are job related. The affirmative action officer has to approve all job qualifications for positions open at the University. The qualifications must be job related. For example, there is no reason that a secretary has to have graduated from high school to do the work. For a large portion of jobs, the qualifications are simply knowledge, skills and ability sufficient to perform the duties of the job. For example, if one of the duties is budgeting, the University will consider that handling a household budget demonstrates the person has the skill to handle that portion of the job.

The University maintains flow charts for every protected group person who applies for a job. The rejection of that person has to be justified on the flow chart. All hiring has to be approved by the Affirmative Action Officer to ensure that the selection process has not been discriminatory. According to the University Affirmative Action Plan, preference is given to members of protected groups wherever applicants are equally qualified.

This year for the first time, the University has funds for staff development. It has earmarked a portion of those funds for training for protected persons, in order to better attract, retain and promote them.

Ms. Lisack pointed out that you can't successfully force affirmative action on a hiring authority. Where a hiring authority, with the agreement of others in the office, has selected a non-protected person, the Affirmative Action Officer cannot require that a protected person be hired. The other employees in the office will say that the only reason for the hire was because of the person's race. The protected person will be made to feel extremely uncomfortable and will probably terminate early. Hiring authorities and co-workers need to be educated. The University does not hire unqualified people. But supervisors need to be trained in how to deal with these situations, how to work with the

people they supervise, how to train them to deal with cultural barriers that exist. One hiring authority complained to her about a minority person who had been hired, saying that she could not do the work. But that was not the problem. When Ms. Lisack went to the office at lunch, everyone went out together leaving the protected person sitting there. The hiring authority made no effort to correct the situation. Instead they said that the person could not function.

In answer to a question from Mr. Huston, Ms. Lisack explained that the University testing is done by reviewing written applications and then interviewing the applicants. They also give typing tests where production typing is required.

Senator Ray thanked Ms. Lisack for her testimony.

A woman in the audience asked about hiring the handicapped. She asked whether the statistics in the commission memos included handicapped in the "Other" category. Ms. Cramer replied that the memo was addressed only to the racial make-up of the state workforce.

Ms. Randall pointed out that there is a problem in getting handicapped state employees to speak out. She conducted a voluntary survey and asked handicapped employees to identify any concerns they had. Few of the questionnaires were returned, and most of those said that there were no problems. Ms. Randall indicated that she suspected that handicapped individuals have a harder time and are more reluctant to identify themselves. For example, if handicapped individuals are to work at their highest capacity, they should be provided with desks and other equipment which best meets their needs. Handicapped individuals are not seen in state employment, particularly where their employment would require a change in the office environment. Perhaps the commission should try to find out why they are not there.

Senator Ray pointed out that in all the time that the commission has been in existence, there has not been one complaint from anyone representing handicapped people. John Pugh added that the Governor's Special Commission on Hiring the Handicapped is a very active group and does a very good job addressing this problem. For the Blue Ribbon Commission to look at the area would be an unnecessary duplication. Ken Kareen pointed out that the Division of Vocational Rehabilitation has counselors who look for job opportunities for handicapped people, either with the state or with private employers. For a position with the state, the counselor can make the referral, the person can be hired as a provisional employee and after four months on the job they can be made permanent. Ms. Jund added that Vocational Rehabilitation also provides training. Another woman asked for a definition of handicapped and wondered why alcohol and drug abuse has been added to it. Mr. Fisher responded that they have been added. The Department of Natural Resources received an award from the Governor's Council for placement of 25 handicapped persons with 80% retention since January, 1981.

Senator Ray pointed out that the Constitution of the State of Alaska provides for a merit system. The state government is supposed to employ people according to their merits. Wages and fringe benefits are

attractive and many of the top class of workers in the state are applying for state jobs. The state should get the best employees they can for the money they spend. That's the way a merit system works. He added that those handicapped persons he has been associated with were the most accommodating people and the best workers. The supervisor will recognize the capabilities of the person and provide the equipment that they need.

The woman indicated that she still had a problem with the definition of handicapped. Mr. Kareen indicated that Vocational Rehabilitation uses federal guidelines because so much of their funding comes from the federal government. Senator Ray added that the legislature tried to prepare legislation to provide for free ferry rides for senior citizens and handicapped individuals, but the word "handicapped" was so hard to define to insure that it included those who should be included, but to exclude those not genuinely handicapped, that they had to give up. They have worked on the problem over the interim and developed another definition which will probably be closely examined next session.

Senator Ray asked the commission whether they wanted to hold an election for the vice chairman's seat. Mr. Huston moved that the matter be held over to a later date. The motion passed without objection.

Senator Ray adjourned the meeting at 4:20 p.m.

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TOTAL STATISTICS BY REGION

BEGIN-DATE 010181

END-DATE 093081

	CASES OPEN AT END OF PRIOR PERIOD	NEW FILINGS THIS PERIOD	CASES CLOSED THIS PERIOD	CASES OPEN AT END OF THIS PERIOD
CENTRAL	162	098	080	180
SYSTEMIC	003	000	000	003
NORTHERN	104	043	071	076
SOUTHEASTERN	086	033	024	095
OTHER	057	003	004	056

STATE TOTALS

412 86 177 26 179 15 410 75 = 18.3% *

TOTAL EMPLOYMENT CASES IN
SYSTEM SINCE 1975
SOA

3172
321 } = 10.1%

SOA Cases

* Note: 24 SOA Cases have been
consolidated at hearing (1 issue)

AS OF 8/16/78 (CIVIL RTS COMM TESTIMONY)

TOTAL 2162
SOA 200 } = 9.3%

SOA Proportion
if 24 Cases
Counted as one $\frac{325}{52} = 13.4\%$

NOTE: NON FARM WORKFORCE 8.0%
EMPLOYED BY SOA = 9.0% (1978)

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
October 5, 1981

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:00 a.m. The roll call showed Ken Kareen, Senator Dick Eliason, John Chenoweth, Representative Jack Fuller, Lynda McCurry, Greg O'Claray, John Pugh, Fred Muller, Bill Huston, Darlene Livermore (alternate for Cherie Shelley) and Senator Bill Ray present. Myrt Charney and Lois Jund were absent. Also present were Roger Thayer and Robert Mourant.

Senator Ray advised the commission of the Letter of Intent passed by the Legislature when it provided funding for the commission. He asked the members to consider the question of affirmative action and minority hiring within the framework of the provision of the Alaska Constitution calling for a merit system for state employment. Ken Kareen pointed out that the constitution also requires that there be equality of citizens regardless of race, and that the framers of the Alaska Constitution would probably not see a constitutional conflict between those provisions. Jack Chenoweth commented that he found it hard to believe that the state's provisions on the merit system would exclude Alaska from having an affirmative action program. At least the constitution gives equal weight to affirmative action and probably the courts would find that helping people to apply for positions with the state would be enhanced by the provisions of the constitution.

Senator Ray added that affirmative action should mean that every citizen has an equal opportunity to apply for jobs. But what is the use of having a testing and classification system if the state is required to hire, for example, 10% Native Americans and 10% Eskimos regardless of qualifications. He added that the state should, in its approach to affirmative action and other programs, recognize the distinct cultural differences between Eskimos and Alaska Natives.

Senator Ray asked whether females should be considered a minority group. Fred Muller answered that women are classified as a "protected class" because there is an institutional bias which has resulted in lower pay for women. In the past, they have been barred from entry to a number of positions.

Mr. Kareen suggested that for continuity, the commission should use the federal government classifications and those that the State Human Rights Commission has established. Senator Ray disagreed. He asked whether this is a first step towards eliminating the merit system.

Darlene Livermore replied that this would not be a step to either eliminate or harm the merit system. Senator Ray added that he

wants to see more minority individuals employed in government, but how can that be done without reverse discrimination?

Greg O'Claray pointed out that if the state has an affirmative action program then, in effect, they are using two hiring systems -- the merit system and another.

Senator Ray commented that the majority of complaints of discrimination against women which the commission has heard appear to have resulted from personality conflict rather than from outright discrimination.

Ms. Livermore pointed out that it depends on how you define discrimination, whether you are looking at covert or overt acts. Covert discrimination is more insidious because it doesn't leap to the surface, you have to look at patterns to identify it. APEA would normally refer a charge of discrimination to the Human Rights Commission. To establish a charge of covert discrimination requires prolonged investigation. You have to consider comments made over a long period of time and work assignments given. There are certain kinds of jokes which may be accepted as humor, but may also reveal a discriminatory intent behind the surface. It is difficult to bring covert discrimination to the surface. In the case of people who are labeled trouble-makers, they frequently become trouble-makers because they want to stand up for themselves, to ease the tension they are feeling.

John Pugh suggested that the commission focus on the under-utilization of women and minorities, on problems of getting on the state's registers and on looking at whether positions are overclassified.

Senator Eliason pointed out that the state does overclassify positions. What is the interest of the state -- getting the best qualified person for a job or providing equal opportunity for all of its people?

Bill Huston added that the Department of Health and Social Services has sent directives to the correctional institutions to try to hire minority applicants, but very few appear on the state's registers. He used to believe that recruitment should be the responsibility of the Division of Personnel, but perhaps the departments should recruit on their own.

In response to the question of overclassification of positions, Mr. Kareen related that several years ago the Governor's Commission on Minority Employment formed a subcommittee which considered every classification in the state. They recommended substitutions for educational requirements in a number of classifications, and now there are very few jobs which have an absolute requirement for educational background. Relevant experience has been substituted. But for people living in rural areas of the state, frequently there is neither the opportunity for academic training nor for gaining the substitute experience required.

Occasionally when an individual does have both the education and the training, he may still be lower on the eligibility list.

Since last spring, Mr. Kareen continued, the state has been using a new hiring system called the Five-Plus-Five system, which allows managers to consider not only the top five applicants on the eligible list but also the top five members of a protected class which has been shown by the department's Affirmative Action Plan to be underrepresented in the department's workforce. Underrepresentation deals with many things. Where the administration recognizes that they do have a shortage of women or minorities, candidates frequently do not exist in the labor force for that position or for work in that location.

Senator Eliason pointed to startling employment figures from the Annual Affirmative Action Report of 1981 which show that of a total of 10,479 employees in the Executive Branch of State Government, only about 250 are Alaska Native. (Page 13 of the Report).

Mr. Huston reported that the Department of Health & Social Services just completed a Prisoner Profile Study which was published on August 10, 1981, and shows the racial composition of the Alaska Correctional Institutions. Senator Ray directed the commission staff to request a copy of the Profile from the Division of Corrections. He also asked the staff to ask the Limited Entry Commission for a breakout on the number of permits originally issued to Natives and to Caucasians and the numbers presently held.

Senator Ray asked the commission to consider the goals it wished to pursue in this project and the things which should be looked at. Senator Eliason suggested the classification procedures and asked who writes the class specifications. Mr. Kareen answered that the position descriptions for each position in the classified service are written either by the employee holding the position or by his or her supervisor. From those position descriptions, the Division of Personnel writes the generalized class specifications.

John Pugh suggested that the commission should look more closely at underutilization of women and minorities. It is not clear how many members of those protected classes are actually on registers. Mr. Kareen pointed out that in Alaska the registers identify the race of ethnic background of applicants. The law permits that kind of identification where the purpose is permissible. It would not be permissible to show race or sex if that information was to be used for discrimination. Mr. Pugh suggested that to decide whether there has been discrimination, you have to know whether there have been minority applicants who have not been hired. It may be that the underutilization results from a limited labor pool, that minority workers are not interested in working for the state government in that job class. Then the solutions to underutilization should focus on increased job training.

Mr. Huston asked how many minorities apply for work but fail to qualify and be placed on the register. Mr. Kareen answered that the Division of Personnel hopes to be able to provide that information soon. They are developing a program to provide data on how many people have applied, how many were tested, then how many were placed on the register. All applications will be entered into the system. Mr. Muller pointed out that since the question on racial and ethnic background on state applications is voluntary, the data captured will not be an entirely true representation of those who have applied for state employment.

Mr. O'Claray noted that the Human Rights Commission Report for 1980 on page 44 shows that of the new cases filed, 51% were filed by Caucasians and 25% were filed by Blacks. Fifty-three per cent were filed by females.

Mr. Thayer suggested that it is also important to consider where the job is. Many Natives do not want to leave their villages. Rep. Fuller agreed. Many people choose to follow their cultural traditions, and prefer to be able to leave work for the spring seal hunt, for example. Mr. Muller added that temporary and nonpermanent employees are excluded from the data on state employees which the Division of Personnel is developing.

Senator Eliason asked whether it would be possible to find out the number of full time state jobs located in the Bush which are filled by Caucasians and by Alaska Natives. Mr. Kareen responded that the data exists for the executive branch, but that it would take considerable time to extract it and put it in a usable form. Rep. Fuller added that there are few state jobs in the villages. Most are located in Kotzebue, Nome, Bethel and Barrow.

Senator Ray suggested that educational requirements for state jobs are too strict. Mr. Kareen replied that the largest number of complaints which the Division of Personnel receives about minimum qualifications are from administrators who say the requirements should be stricter because the lists contain too many people who cannot do the job.

Mr. O'Claray asked about current state practices for increasing the number of women and minorities hired. Mr. Pugh explained that expanded certification is used to meet affirmative action plans. Senator Ray asked whether that short circuited the merit system. Mr. Kareen replied that the courts have disagreed about whether considering race for the purposes of meeting affirmative action goals was constitutional or not. In the Bakke case, Mr. Bakke won, but the court did say that race could be considered. Mr. Thayer added that whether a department uses the expanded certification is an individual departmental choice. If a supervisor has 10 employees who are all white males, then he may decide that for the next vacancy he will hire a woman or a minority

person. He fills out a form and requests an expanded certification. He will get a person who is qualified to do the job, but not necessarily the most qualified person for that job.

Senator Eliason asked how frequently the departments evaluate the progress they are making on their affirmative action plans. Mr. Thayer replied that it depends on the individual department and the Division of Equal Employment Opportunity. For example, DOT has a large staff in their EEO section, and they provide information every month. Mr. Muller added that the EEO Division in the Department of Administration recently began to monitor the statistics closely. There may be a realistic problem in requiring that applicants from a protected class must be hired for some positions. There is also a question, however, of whether ranking on the register actually reveals an ability to perform the job. He added that there are two basic time periods to consider in looking at discrimination. The first is from the time of application to the time of hire. Once members of protected classes become state employees, then that's a separate area.

Senator Ray asked Mr. Chenoweth if he could provide the commission with a paper discussing his views on the compatibility of minority hiring programs with the merit system in the constitution.

James Fisher, Director of the Division of Equal Employment Opportunity addressed the commission. Mr. Fisher explained that he is new to the EEO Division and that he is still learning what has been done, how it is done, and what the division's mission is. The division, under Administrative Order 59 of June, 1980, is to provide management assistance to the executive branch in affirmative action functions, in training functions, and in complaints procedures - to pick up errors in the system. Mr. Fisher said that he is contacting each commissioner of the state government departments to review their EEO systems and to learn how things are going.

Senator Ray asked whether there were any questions for Mr. Fisher. There were none. Senator Ray thanked Mr. Fisher for addressing the commission.

Senator Ray reviewed what the commission needs to do and suggested that one of the statistics it would be helpful to obtain is the percentage of Alaska Natives in the group of employees working in Range 16 and under. Mr. Kareen pointed out that in the information Senator Ray asked for, the Labor Trades and Crafts positions are not covered, since they are on a different salary schedule. Mr. Muller said that the state is in the process of developing statistical tools to track all employees by race, sex, and full employment history (whether they are promoted or not, for example). That statistical review is a year or two away from being operational, however.

Mr. Chenoweth suggested that perhaps the state should consider the diversity of its population. The difference between the state's approach to hiring and the Bureau of Indian Affairs' approach when each had positions in the Bush was that the BIA positions required ability to speak the local language in addition to English. Perhaps the state should consider requiring bilingual speakers for social service positions in the Bush. That would be one way of avoiding a direct consideration of race or ethnic background in hiring. Senator Ray pointed out that many of the social services positions in the rural areas have been eliminated because the state has contracted with Native Corporations to perform those services. Senator Ray asked the staff to check with the Department of Health and Social Services and the Division of Personnel on the number of state employees lost when those services were contracted out. Those positions may have previously been filled by minority group members and those employees may have remained on the job and become employees of the contractor instead of the state. Senator Ray recessed the meeting for lunch at 11:45 a.m.

Senator Ray reconvened the meeting at 1:35 p.m. and reviewed the memo on the status of the bills sponsored by the commission last legislative session. Terry Cramer advised the members that the Senate State Affairs Committee is holding a teleconference hearing in Anchorage on Monday, October 12th, to consider retirement bills.

Senator Ray asked Roger Thayer to review the memo concerning the Marine Highway System hiring procedures. Mr. Thayer explained that all applications for employment on the ferries are group scored and that hiring is done by groups. If there is an opening, then the division contacts all applicants whose scores fall in the top group. Those who respond are interviewed and the selection is made. When the top group has been exhausted, then hiring proceeds from the second group, and so on. However, it's getting harder to find work in the ferry system, and they are beginning a period of reduction in force, so there will be even fewer jobs.

Senator Ray asked why the division could not accept applications all year long. Mr. Thayer explained that there was a discrimination suit filed several years ago which resulted in an agreement that applications would be accepted only for a limited period which would occur before any selections were made. The division advertizes in 32 newspapers around the state beginning in January of each year and accepts applications from February 15 to March 15. The applications are then graded and grouped and selection begins in late March or early April.

Mr. O'Claray asked whether they hired from any source other than those applications received during the "window period". Mr. Thayer replied that for entry level positions, those applications were the only

ones considered. However, for higher level positions, the division accepts and considers applications received all year long. He added that the division has not hired an able-bodied seaman from outside the system in two years.

Mr. O'Claray added that the most frequent complaint he hears is not being able to file an application until February. Senator Ray pointed out that the division's public image would improve if the application period were longer. Mr. Thayer indicated that he thought it might be possible to extend the period from 30 days to 60 days, but that he was uneasy at making it as long as 120 days. The reason for the limited period is to insure that all applications are processed before hiring starts.

Senator Ray asked whether there were any other matters before the commission. Ms. Cramer answered that the commission had received documentation from Betsy McGuire who had applied for a Project Coordinator, Range 18 position in Juneau. Initially, the Division of Personnel advised her that she did not meet the minimum qualifications. Ms. McGuire was successful in having the division staff review her application and her score is now 103.65. She submitted this material to the commission for its information.

Senator Eliason asked whether nonresidents make more money than residents on the ferry system. People in his area believe that they do. Mr. Thayer explained that nonresidents are paid less than residents, but that within the Marine Highway System there are two different salary scales - one for the Southeast Alaska ferries and one for those in Southwest Alaska. In Southeast, the monthly wage is based on 240 hours per month while in Southwest it is based on 182 hours per month. Nonresidents are also responsible for paying their own travel expenses to and from Alaska.

Mr. O'Claray suggested that someone from the Human Rights Commission be invited to the next Blue Ribbon Commission meeting and that they be asked to compare the number and kinds of complaints they receive from the public sector as contrasted with those they receive from the private sector.

Senator Ray asked Mr. Fisher whether the Division of EEO has any outstanding complaints on file. Mr. Fisher replied that there are complaints and that the division is in the process of getting a better handle on what has been filed against the state because of the Governor's requirement that all complaints be served on the EEO Division.

Senator Ray announced that the position of Vice Chairman of the commission is vacant and asked members to consider the question so that the position can be filled at the next meeting. He asked whether

there was any objection to a meeting in Juneau around the 1st of November and then a public hearing on the issues before the commission in Anchorage about two weeks later. There was no objection. Senator Ray adjourned the meeting at 2:10 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
February 11, 1981

MINUTES

Senator Bill Ray, chairman, called the meeting to order at 1:30 p.m. Roll call showed all members or alternates present except Don Fisher, Representative Buchholdt, Myrt Charney, Bruce Cummings, Senator Eliason, Greg O'Claray and Fred Muller. The commission began review of the draft of the report to the legislature. Mr. Cummings, Mr. O'Claray, Senator Eliason and Representative Buchholdt arrived.

During the discussion of Section 9, amending AS 39.25.120, page 12 of the report, Mr. O'Claray raised a question concerning the status of employees in the Division of Labor Relations. Mr. O'Claray asked whether those employees negotiate their own salaries. He suggested that it might be more appropriate to place them in the partially exempt service instead of in the classified service.

Mr. Cummings replied that recently those employees had petitioned the Labor Relations Agency to be removed from membership in the Confidential Employees Association. The petition was granted and they are now members of the classified service, but not members of any of the unions which represent state employees. Their salary schedule is the same as the schedule for partially exempt employees. There are 11 or 12 employees in the state who are in the classified service but not members of any collective bargaining unit.

Lynda McCurry added that CEA had released the employees from membership after studying their request. There is nothing to prevent those employees from petitioning the Labor Relations Agency at a later time to be placed back in the CEA membership.

Mr. Cummings pointed out that membership in the classified service insured that selections were made on the basis of merit and that there were some protections for the employees from arbitrary action.

Mr. O'Claray moved that AS 39.25.120 be amended to include the director, deputy director and all of the 12 employees in the Labor Relations Division of the Department of Administration. Discussion followed. Lynda McCurry pointed out that there are clerical employees included in the motion who remain members of the Confidential Employees Association. Their job duties do not directly involve them in negotiations for the state.

Frank Flavin said that the partially exempt and exempt services were created so that the administration can set and control its management policies. It is appropriate to expect that when there is a change

in administration, there will be a change in the division to reflect the new administration's policies. Senator Ray added that collective bargaining negotiations are a sensitive and important area in which the administration should have full control over policies.

Bill Huston pointed out that if the employees were placed in the partially exempt service, persons selected would not have to meet the minimum qualifications as is now the case. Lois Jund added that leaving the positions in the classified service provides a career ladder for those individuals and makes the positions more attractive to qualified people.

Mr. O'Claray amended his motion to provide that the clerical employees who are presently members of CEA should remain in the classified service. Those employees who would be placed in the partially exempt service are: director, deputy director, personnel analysts II, labor relations analysts II, labor relations analysts I, senior negotiators, and research directors. A roll call vote was taken:

Yeas: Senator Bill Ray; Representative Thelma Buchholdt; Senator Dick Eliason; Frank Flavin; Representative Jack Fuller; Greg O'Claray; John Pugh; Cherie Shelley.

Nays: Bruce Cummings; Lois Jund; Lynda McCurry; Bill Huston.

Absent: Don Fisher; Myrt Charney; Fred Muller.

The motion carried.

Bruce Cummings suggested that paragraph (9) of AS 39.25.120 in section 9 of the bill be amended to more clearly state that additional special assistants may be created by the Personnel Board pursuant to AS 39.25.130. There was no objection to the change.

Frank Flavin pointed out a problem in section 13, AS 39.25.150-(17). The word "citizen" has been interpreted to exclude resident aliens. He suggested changing the word to provide for grievances from the general public. There was no objection.

Senator Ray suggested that an effective date of July 1, 1981 be added to the bill. There was no objection.

Senator Ray asked whether the commission favored adopting this part of the report and sponsoring the bill amending the State Personnel Act as amended in the meeting. Without objection, the motion carried.

The commission turned to consideration of the section of the report on the nepotism bill. Roger Thayer advised the membership of a

problem in the present draft of the bill. Subsection (a) prohibits the hiring of someone related to the person doing the hiring. That prohibition could make it impossible to find employees to fill positions in the rural areas of the state. He suggested deleting the phrase referring to the person doing the hiring. Without objection, the motion carried.

The commission discussed the draft bill limiting the adjustment of retirement benefits and the section of the report concerning that bill. Lois Jund suggested that the report be redrafted to reflect the fact that there were many retired Alaskans in the situation described. There was no objection. There were no other changes proposed for that section of the report.

The commission reviewed the section of the report on the bill amending the membership of the Public Employees Retirement Board. There were no objections to its adoption.

The commission reviewed the section concerning the bill applying the Administrative Procedure Act to the adoption of regulations by the state retirement systems. There were no objections to its adoption.

The commission reviewed Chapter II of the report, concerning "Unresolved Personnel Issues". Senator Ray advised the commission that the legislature does not presently have a classification system for their employees. He indicated that he intended to suggest to the presiding officer of each house of the legislature that the Blue Ribbon Commission be delegated the task of drafting a uniform code for hiring and employment practices for the legislature. He added that he also intended to request that the commission be extended for another year. He asked whether there were any objections. There were none.

Senator Ray introduced Chief Buehler from Kotzebue who was a guest of the commission.

Senator Ray advised the commission of correspondence concerning credit for service in the state retirement systems. The Chief of Police of Seward wrote that he was not able to purchase three years of employment with the municipality into the state retirement system. Under the current law a police officer must work for the state for three years before he is eligible to purchase prior law enforcement time into the PERS.

Bruce Cummings explained that originally the retirement law provided that the only extra time for which retirement credit would be given was for employment with the Territory of Alaska. That service was credited without charge to the employee after he or she had worked for the state for at least five years. The period of required employment was then shortened from five years to three and other kinds of service

were added to the list.

Bill Huston added that the concern of law enforcement officers is that the work is for consecutive years, and yet some of the time counts toward retirement credit and some does not, depending on the agreement between the state and the municipality.

Senator Ray suggested that Bill Huston, Bruce Cummings and Terry Cramer investigate the question and consider whether there is merit in amending the statute. Bruce Cummings suggested that it would be more appropriate to include a referral to someone within the Division of Retirement and Benefits. Senator Ray directed the commission staff to pursue the matter.

Greg O'Claray raised an issue which had been brought to his attention. An individual has been a state employee for a number of years and is now placed in the position of losing seven years of retirement credit. He worked as a vessel employee on the state ferries. Then, in 1977, he was appointed to work as port captain. When that happened, he was no longer eligible to participate in the Taft-Hartley Trust Fund which is the retirement system for marine highway employees. At the time that he accepted the position onshore, he was assured by the Division Director of Retirement and Benefits and by Bill Hudson in the Division of Marine Transportation, that he would be able to transfer his period of service with the Taft-Hartley trust into the state retirement system. He therefore accepted the appointment at reduced pay with the understanding that his retirement benefits payments would continue. The Taft-Hartley trust requires 10 years of employment before a member is vested.

In fact the information which he was given was wrong, and he has now been told that he cannot receive credit with PERS for his period of employment on the ferries which was covered by the Taft-Hartley trust. He is left having to consider suing the state.

Senator Ray suggested that Greg O'Claray and any other interested members be constituted a subcommittee to call on Mr. Hudson to ask for his statement and report to the commission. Bruce Cummings pointed out that as a trustee on the NW Marine Highway Trust he has become familiar with the case. Commissioner Hudson does not dispute the facts. He advised the individual that he could transfer his Taft-Hartley service to the PERS system and that was an error. Mr. Cummings suggested that it might be appropriate to consider amending the PERS to allow time with any other retirement system to be credited with PERS under certain circumstances.

Senator Ray adjourned the meeting at 2:45 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Representative Thelma Buchholdt
Bruce Cummings
Senator Dick Eliason
Frank Flavin
Representative Jack Fuller
Lois Jund
Lynda McCurry
Greg O'Claray
John Pugh
Cherie Shelley
Bill Huston

OTHERS IN ATTENDANCE

Roger Thayer
Robert Maurant
Darlene Livermore
Donald Buehler

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
January 8, 1981

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:05 a.m. The commission began consideration of the draft bill on nepotism. Senator Ray asked for objections to the commission sponsoring the bill. It was noted that APEA had registered its objections to the bill at a previous commission meeting. Bill Huston pointed out that nepotism laws will prevent a child pursuing the same choice of career with the state as his or her parent. Sandra Withers suggested that the disadvantage of that limitation should be weighed against the alternative, which is the appearance of favoritism given whenever a close family member is employed in an office headed by another family member. Frank Flavin added that he would prefer to see the statute focus on the basis of the hire rather than on the existence of a relationship. Many of the complaints which the Ombudsman receives are based on relationships which are as close as marriage without there being any formal legal tie, rather than on a relationship which the draft bill would address. Senator Ray called for objections to the commission pursuing this bill. Doryce Eggleston, Frank Flavin and Bob Maurant objected.

The commission next considered the draft bill amending the State Personnel Act and discussed the bill section by section.

In Section 4, page 2, line 2, the amendment to existing law was deleted, leaving the line reading "authorized by this chapter".

In Section 7, page 3, line 21, the word "and" was changed to "or", to make the phrase read "temporary or special inquiry".

The commission discussed the section concerning procedures for amending the Personnel Rules, Section 11, which begins on page 7, line 9, and decided to delete the material on page 8, lines 15-28 and to amend the preceding paragraph by adding eligible lists, hours of work, and merit increases to the topics which are included within "matters of public policy".

AS 39.25.150(17). In Section 12, page 11, line 7, procedures for resolving citizen grievances were added to the topics which the rules should address by adding the word "citizen" between the words "employee" and "and".

In discussion of AS 39.25.150(21), Representative Fuller raised a problem which has occurred in the conversion of Fish and Game temporary positions to permanent seasonal positions. He provided commission members with background material and explained that for positions in the bush which used to be classified as temporary positions, the change to permanent seasonal has meant that many fewer local residents are qualifying for the jobs. Permanent seasonal positions must be hired from the

registers, and many residents of the villages in question (Gambell, Savoonga, Diomed, and Shishmaref, for example) either are reluctant to apply at all, or else, because they do not have much formal education, do not score as well as college students when their applications are evaluated. As a result the Fish and Game Technicians I and III who are hired for monitoring marine mammal harvest and collecting biological specimens are more likely to be from Anchorage and Fairbanks than from the local area. This costs the state more because of transportation costs and the technicians spend a substantial period of time initially becoming familiar with the area, rather than being able to begin their substantive work immediately.

Mike McMullen pointed out that the requirement that employees be hired from the register cannot be waived for permanent seasonal positions, while it could be waived by the Division of Personnel if the positions were classified as nonpermanent. Frank Flavin added that block scoring would be appropriate, since to do the job well does not require technical knowledge. This kind of job classification would benefit from essentially a pass/fail application evaluation system.

Senator Ray suggested that the commission authorize him to send a letter to the Governor, perhaps with copies to the Department of Fish and Game and to the Division of Personnel explaining the situation and encouraging the hiring of local residents for these positions. The letter might also be directed to Jerry Reinwand, the Governor's special assistant who had addressed the commission on personnel matters at an earlier commission meeting. There was no objection.

The commission continued review of the bill. In Section 14, AS 39.25.160(i), the word "unlawfully", page 14, line 25, was deleted.

In discussion of Section 15, beginning on page 14, line 28, questions were raised about whether employees who were hired in positions in the classified service only to have those positions transferred into the partially exempt or exempt service have any recourse. Members also asked whether the more routine positions which are presently in the exempt service or the partially exempt service are being transferred into the classified service. Senator Ray suggested that the commission write to Jerry Reinwand asking for a response to the latter question.

Frank Flavin noted that the present draft of the State Personnel Act does not set out a penalty clause. The present statute provides that violation of the Rules is a misdemeanor, but that is not an effective deterrent, since it is rarely enforced. Senator Ray suggested that discussion of the penalty clause should be reserved for future meetings of the commission.

In Section 18, AS 39.25.192, Senator Ray suggested that a state employee's right to make contributions to political candidates and campaigns be listed, since many state employees believe that they are denied this right under the present State Personnel Act. There was no objection. This ended discussion on the State Personnel Act amendments.

Senator Ray brought up recent correspondence to the commission from Donald E. Buehler, Chief of Police in Kotzebue. Chief Buehler has submitted his name for consideration for appointment to the Blue Ribbon Commission. However, since the membership on the commission is full, the commission decided that Chief Buehler should be invited to the next meeting as an observer.

The commission reviewed the draft bill on membership of the Public Employees Retirement Board. The draft dated December 30, 1980 was approved without objection.

The draft bill limiting the adjustment of retirement benefits was under consideration.

The commission considered the draft bill limiting the adjustment of retirement benefits. Lois Jund pointed out that the present draft would not significantly help in the cases about which the commission had initially been concerned. In those cases, the amount of overpayments had exceeded 10 per cent of the amount to which the retired person was actually entitled. Discussion followed. The commission agreed to delete AS 14.25.173(b)(3) page 1, lines 17-18, and AS 39.35.520(b)(4), page 1, lines 28-29.

The commission also decided to eliminate the phrase "which reduces benefits or" from page 1, lines 10 and 20 so that for future payments, retired persons will only be entitled to the correct amount of their payments. A question was raised concerning whether the phrase "credited service with the state" includes territorial service as well as employment after statehood. The commission decided that in order to benefit from the limitation on adjusting retirement benefits, retired people will have to meet all the requirements listed, and therefore decided to add the word "and" between paragraphs (1) and (2) of Section 1, page 1, line 14, and between paragraphs (?) and (3) of Section 2, page 1, line 25.

Paul Arnoldt, Director of the Division of Retirement and Benefits addressed the commission on the retirement bills. He began with a presentation on the bill requiring that the Public Employees Retirement Board comply with the Administrative Procedures Act in adopting future regulations. He pointed out that the intent of the APA is to insure that there is an opportunity for public comment before regulations are promulgated, to provide the Department of Law with an opportunity for review, and to insure that the Governor has input into regulations which are adopted. He indicated that these goals are met by the present system for adoption of regulations. The process of adopting regulations through the APA is involved and if those goals are met now, then it does not seem appropriate to change the system.

Mr. Arnoldt also pointed out that there is a nationwide trend for holding retirement board members personally responsible for their actions which began with the 1974 ARISA Act. It is appropriate therefore

to provide the PERS board members with the tools which they will need to carry out their responsibilities. For example, last session, 10 retirement bills were combined and passed by the Legislature in the closing days of the session. These measures had to be implemented expeditiously. If the board had had to comply with the APA in adopting regulations to put the new laws into effect, then considerable time would have been lost. Lois Jund agreed that many agencies find the APA procedures cumbersome. Frank Flavin pointed out that the APA does provide for the adoption of emergency regulations for that situation.

Mr. Arnoldt continued with discussion of the bill affecting membership of the retirement board. He stated that the provisions of the bill were appropriate and he had no objection to the proposal.

On the adjustment of retirement benefits bill, Mr. Arnoldt stated that he agreed that any errors in retirement benefit payments should be found and corrected quickly, but that the two-year limit imposed by the bill was not really necessary. The appeals procedures presently in the law provide the retirement boards with an opportunity to act in consideration of the circumstances of the retired person and to provide an equitable solution to the error. Since the ARISA Act is imposing personal accountability on private sector retirement boards and since the federal government is expected to impose similar provisions on public sector retirement boards, the authority of the PERS board should not be decreased.

Senator Ray pointed out that while the retirement board has the authority to waive collection of overpayments, they can be quite slow to act. The retired person, who often has only the retirement income to live on, is put through considerable grief and uncertainty. Other procedures which do not put the retired person through that sort of experience should be developed to provide the retirement board with the information and control which it requires. Senator Ray was called away from the meeting and Don Fisher, Vice Chairman of the Commission, chaired the meeting.

Bill Huston suggested that in order to keep the retirement fund solvent, errors should be paid for out of the general fund rather than from the retirement contributions of members and employers. Frank Flavin pointed out that the ARISA provisions are aimed at penalizing board members for improper investments rather than for improper payment of benefits. Greg O'Claray replied that nonetheless, the board cannot sit as a fiduciary and condone improper payment of benefits. They would have to correct the payment and collect the improper back payment unless there were provisions to the contrary in the law. Mr. Arnoldt repeated that he felt that this bill would be taking a wrong turn in the direction of retirement legislation. The national trend is in the other direction. Frank Flavin pointed out that the bill does not take away any present powers, it just states that after two years, the board's power

to act is limited. Mr. Fisher thanked Mr. Arnoldt for coming to the commission meeting and expressing his views.

Mr. Fisher asked the commission to consider when to schedule the next meeting. Wednesday, February 11 at 1:30 p.m. was selected. He adjourned the meeting at 3:40 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Mike McMullen
Frank Flavin
Representative Jack Fuller
Lois Jund
Roger Thayer
Greg O'Claray
Robert Maurant
Doryce Eggleston
Sandra Withers
Bill Huston

OTHERS IN ATTENDANCE

Paddy Moriarty
Paul Arnoldt
John Logan
Ann Wolden

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Since the conversion of our temporary help to permanent seasonal positions, we must now hire from a list of eligible applicants on a statewide register, rather than through local Employment Offices. The net result is that normally we must hire someone from outside of the area, as they will be on the top of the list of available applicants. As a result, we usually end up having to pay the individual travel from and back to Fairbanks or Anchorage and often have to provide a subsistence or per diem payment while on the job.

Some of the reasons this happens include:

- 1) Registers are usually open for recruitment for limited periods of the year.
- 2) The time an individual must apply to get on a register is often months away from the time the job will be available.
- 3) Most people indicate they will work anywhere in the State because they know most Technician jobs are of short duration during the summer, and it is an adventurous experience for them. They don't expect to take the same job more than once or twice.
- 4) College students are looking for these type jobs for the experience and money and they will almost always rate higher on the register than someone living say at Gambell, with limited education and work experience.

Some possible solutions include:

- 1) Some preference for hiring local residents.
- 2) More flexibility in getting applicants rated and on registers, by allowing local Employment Offices to examine and rate applicants at the time jobs are actually being filled.
- 3) When it can be demonstrated that hiring a local resident will save the State money, measurably contribute to the success of the program, or provide a more efficient employee, that latitude be granted the employing agency.

January 5, 1981

Maybe an example will illustrate the problem. If we intended to place observers in Gambell, Savoonga Diomed, and Shishmaref to monitor marine mammal harvest and collect biological specimens this summer, here is what we would have to do. The positions would be Fish and Game Technicians I and III's and the registers are only open during December. So, during December we would have to try and contact individuals in those villages telling them to fill out State of Alaska employment applications, and be sure and turn them in for a job that won't start til May. As you know it is most likely that only a limited number of individuals in each village will actually fill them out and send in the application form. Also, anyone who happens to not get the word for whatever reason, but who would be available to work in the summer, obviously will not be on the register.

In April we ask for registers for the positions and find that there are over 100 names on the register, almost all from somewhere other than the four villages that we intend to station the positions. Even if there are individuals from the four villages, they will probably be rated much lower than several of the college students on the register, many of whom will take jobs if they are offered. So instead of hiring someone from the village, we have to hire someone out of Anchorage or Fairbanks, pay their travel to the job site and assist in locating housing for them. For the first two weeks they must spend most of their time getting to know the local hunters.

I should make it clear that I don't have anything against college students working for the Department as seasonal technicians, as they have proven to be exceptional employees, and they need the experience, not to mention money, to round out their education. There are simply some situations where local residents could be a decided advantage to the overall program.

In the past I've recommended hiring individuals in various villages, as part time Department employees to perform a variety of tasks such as, sealing furs, issuing harvest tickets, conducting subsistence surveys, recording harvest by village residents, be a contact person that residents of a village could go to for an explanation of regulations, or to voice their concerns about the effects of various Fish and Game regulations. However, I've backed off pushing the idea the last two budget submissions, because it is essential, for such a program to work, that I be able to hire residents of the individual villages.

There are several advantages to the individuals hired as permanent seasonal as opposed to the old temporaries, but the net result is that Fish and Game is less likely to hire someone from the local area now than we used to two years ago.

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 4, 1980

MINUTES

Senator Ray, chairman, called the meeting to order at 10:00 a.m. and asked commission members to consider the draft bill limiting the adjustment of retirement benefits. Paddy Moriarty asked why, in subsections (b)(1) of the first two sections of the bill, the date set was after the incorrect benefit was first paid rather than after the individual had retired from state employment. It was pointed out that the purpose of the bill is to set a statute of limitations and that beginning to run the period from the first incorrect payment was a reasonable decision.

Bruce Cummings pointed out that the Public Employment Retirement System board presently has an appeals procedure to consider cases in which overpayments have been alleged by the Division of Retirement and Benefits and the retired person has difficulty in repaying the amount. However, an individual can knowingly allow an overpayment to be made, and in those cases it would be appropriate for the state to seek to recover the amount overpaid. The review system of the PERS board would permit this but the proposed bill would not.

Senator Ray asked how the state should handle the situation in which an employee retires after having received written computations from the division setting out his years of credited service and the amount of benefits to which he will be entitled and later is told that the figures were incorrectly calculated. Therefore, the amount of his benefits will be reduced. Senator Ray asked whether it would be fair to require the state to rehire the retired employee in the job from which he retired. The retired employee would then have an opportunity to earn the credits which he was initially informed he had.

Bruce Cummings suggested that this would injure the employee who had replaced the retiree on the job. The new employee might have resigned from a job to accept the new position and giving the retired person back his old job would mean injuring the new worker. Some other system for addressing the problem should be developed.

Fred Muller asked what the frequency of error in the computations of length of service credits is. Lois Jund explained that a number of cases had arisen at the same time several years ago when the Division of Retirement and Benefits performed a wholesale audit of the retirement system and discovered a number of errors. Many of the cases which were raised involved overpayments of from \$1000 to \$5000. It was often very difficult for the retired person to repay this large an amount. Mr. Muller asked whether any of the commission members knew how many state

employees retire expecting to be eligible to receive retirement benefits and then discover that an error has been made and that they are not eligible for any benefit at all.

Paddy Moriarty replied that the Ombudsman's office has received information of several cases in which people wrote to the Division asking for a computation of their creditable service. They received a written response and then retired. Later the division reviewed their file and disallowed some portion of the service which had been previously included in the computation. Bill Huston added that some of the computation errors occur because of statutory changes. The formulas for computing creditable service are complicated so that an employee cannot simply add up the number of months he has worked for the state and know the length of creditable service or the retirement benefits he will be entitled to.

Bruce Cummings suggested that there are two possible solutions to the problem which the commission is considering. The state could offer assistance to those whose creditable service has been erroneously computed in returning to work, as has been done for Julie Issac. In addition, the PERS board has the authority to waive recoupment of overpayments in cases of hardship. Senator Ray pointed out that in Mrs. Issac's case, the appeal to the board took 2-1/2 years to reach a decision and that her petition was denied because her husband's resources were considered in evaluating whether collecting the overpayment would be a hardship to her. On that information, the board found that it would not be a hardship if she were required to repay the money to the state. The issue was finally satisfactorily resolved through the efforts of the Governor's Office and the Attorney General.

Senator Ray asked whether there was any objection to adding a statute of limitations to the adjustment provisions of the retirement benefit law. Fred Muller suggested that it would be appropriate to require that the larger cases of overpayments be reviewed by the PERS board rather than automatically waiving any recoupment. He suggested that the statute of limitations should not apply to those cases in which the overpayment had been more than 10 per cent of the monthly benefit to which the retired person was correctly entitled. Senator Ray asked whether there was consensus on Mr. Muller's proposal. There was no objection.

The commission then considered the draft bill relating to the nepotism in state employment. Terry Cramer, the administrative assistant to the commission, explained that this bill was an attempt to place the provisions of the Personnel Rules prohibiting nepotism into statutory form. The drafter changed the language of the Personnel Rule, which uses the term "appointing authority" and instead used the term "person making the appointment" in the draft.

Darlene Livermore stated that the Alaska Public Employees Association has three concerns about the proposed bill. The current statute prohibits employment of persons related to the commissioner of the department. The intent of the legislature was therefore probably to

discourage political patronage in the state employment. The Personnel Rules probably were drafted with the same theory as their basis. Recently in the Civil Service Reform Act of 1978, the federal government repealed a 90-year old nepotism law which had a general application. Congress retained prohibitions against abuse of power by elected officials, aiming again at political patronage. Secondly, Ms. Livermore raised the issue of whether the present draft is in opposition to laws protecting certain classes of people from employment discrimination, particularly, from discrimination based on marital status or change in marital status. The third issue which APEA is concerned about is access to employment. Unlike most locations in the Lower 48, there are a number of communities in Alaska which have only a few major employers. For example, in Valdez there are two -- the division of highways and the division of mental health. Both to provide employment opportunities for the people living in those communities and to provide a pool of employees for the state, the nepotism laws should not be unnecessarily stringent.

Bruce Cummings said that he did not disagree with the points which APEA was raising and that the provision of the Personnel Rules gives the director of the division of personnel authority to waive enforcement of the rule. He added that could not recall an instance in which he had refused to waive enforcement of the rule. However, it is appropriate to have each case of employment of close relatives considered in order to prevent abuse.

Ms. Livermore explained that she did not object to the present situation in which the statute addressed nepotism at the commissioner level and the Rules had broader application, but that putting the provisions of the Rules into the statutes would provide the courts with a greater opportunity for review and limitation. Mr. Cummings explained that the Attorney General has advised the division that the scope of the rule is broader than the rule-making authority granted by the statute. Therefore, enforcement of the rule could probably not be defended successfully in court.

Representative Fuller asked whether there were regulations for elected officials. Senator Ray replied that the State Personnel Act applies only to the executive branch of government. Representative Eliason asked whether nepotism was a lively issue. Mr. Cummings answered that there are some communities in the state in which there has been considerable public interest in the question. Senator Ray asked whether there were any objections to the commission sponsoring a bill which would put the language of the Personnel Rules into the statutes. Darlene Livermore registered APEA's objection.

The commission next considered the draft to require that the regulations adopted by the retirement board be subject to the Administrative Procedure Act. Members commented that the draft did not follow the instructions which the commission had given the drafter and decided to defer consideration of the subject until a redraft was available.

The commission considered the draft bill relating to membership of the Public Employees Retirement Board. Lois Jund suggested that the draft be amended to require that of the four members elected by the members of the retirement system, at least one must be a retired person. The amendment was adopted without objection.

The commission turned to the redraft of the State Personnel Act amendments. Several problems were noted and Senator Ray asked Jack Chenoweth, from the Legal Services Division of the Legislative Affairs Agency to meet with the commission. After reviewing the second draft of the State Personnel Act with Mr. Chenoweth, the commission discussed with him the amendments to the draft limiting adjustments to retirement benefits which had been agreed upon earlier in the meeting.

Terry Cramer advised the commission members of a telephone call from Grace Kack. Ms. Kack is concerned that individuals applying for state positions must be re-examined every two years in order to stay on the register for a job class. Ms. Kack was not concerned on her own behalf, since she is presently employed by the state, but she felt that the requirement was unfair for those who were not presently employed.

Ms. Cramer also advised the commission that several responses had been received from agencies whose employees were placed in the exempt and partially exempt services concerning whether those employees should remain in their present status or should be transferred to the classified service.

Senator Ray stated that the commission would meet to review redrafts of all of the bills probably at the end of December.

Senator Ray adjourned the meeting at 11:45 a.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Bruce Cummings
Representative Dick Eliason
Representative Jack Fuller
Lois Jund
Lynda McCurry
Fred Muller
Bill Huston
Paddy Moriarty
Robert Maurant
Darlene Livermore

OTHERS IN ATTENDANCE

Roger Thayer

* * * * *

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau
October 29-30, 1980

MINUTES

The meeting was called to order at 10:00 a.m., by the Chairman, Senator Bill Ray.

John Williams, Commissioner of the Commercial Fisheries Entry Commission, testified in response to the Blue Ribbon Commission's request for information concerning whether his employees should be in the exempt service or would more appropriately be placed in the partially exempt or classified service. Mr. Williams stated that the limited entry commission is a quasi-judicial, independent regulatory body which is granted special status by the Alaska Statutes. According to an Attorney General's opinion, prepared for the Alaska Oil and Gas Conservation Commission, it is appropriate for commissions of this type to remain independent from the executive branch. Therefore, Mr. Williams believes that employees of the commission are most appropriately left in the exempt service. Placing them in the partially exempt or classified service would subject them, and the commission as their employer, to inappropriate regulation by the executive branch.

Mr. Williams stated that the commission had conducted a poll of its employees to learn what their wishes were. Of the 29 employees, 25 participated. Each of the staff was provided with a copy of the State Personnel Act prior to the poll being taken. Every effort was made to insure that the poll was secret. Of those voting, 21 favored remaining in the exempt service and four favored moving to the partially exempt service. None wished to be placed in the classified service.

Mr. Williams added the commission has chosen to follow the practices which the Personnel Rules set out for partially exempt employees.

Greg O'Claray addressed the question which the commission had posed at its last meeting about why the vessel employees of the Marine Highway System are placed in the exempt service. He provided the members with a letter explaining his reasons.

The vessels are, by federal law, under the jurisdiction of the United States Coast Guard for the safe operation, navigation, staffing and examination, and certification of personnel. These federal regulations cover employment rights, health, safety and other conditions of employment of the seamen as well as making requirements concerning the number of qualified personnel who must be on board before the vessel can sail. In addition, employees recruited from the Maritime Unions are covered by

private Taft-Hartley health and welfare and retirement trusts and would not automatically participate in the state retirement system or in its other benefit coverage without considerable loss of benefits. For Merchant Seamen, engineers and mates recruited from the private sector, the state's wage classification system would not provide a competitive salary. Therefore, the state decided at the inception of its involvement in the marine transportation enterprise, that the employees should be exempt from the State Personnel Act. None of these reasons has changed and therefore Mr. O'Claray recommends that the Marine Transportation System employees remain in the exempt service.

Roger Thayer added that the ferry system receives approximately 1200 applications a year. They must be submitted to the department between February 1st and March 10th. The personnel office ranks them based on training and education, and shoreside and maritime experience. Grades range from 70 points for a person without a high school diploma and with no relevant work experience to 110, for someone with the previous shipboard experience in a field directly related to steward's tasks who also holds a Coast Guard license for lifeboatman. Hiring is usually done by late April. This system was developed as a resolution to EEO complaints claiming that the ferry system discriminated against women and minority applicants. Most positions which are above the entry level are filled by promotion.

Senator Ray raised the question of the membership of the Public Employment Retirement System board. The statutes presently require that the three members of the Personnel Board sit on the PERS board as well as on the Labor Relations Agency. He asked whether any of the commission members believed that the overlap in membership was important. Cherie Shelley pointed out that as a result of recent legislation, the PERS board is now responsible for decisions concerning the Alaska Supplemental Benefits program and the Deferred Compensation program, in addition to the retirement program. Therefore, their duties have significantly increased. It makes sense to limit the demands on the time of those board members, who are all volunteers. Without objection the commission agreed to draft a bill to change the membership of the Retirement Board. Two alternatives were proposed: to eliminate the members of the Personnel Board from membership on the PERS board and replace them with one member appointed by the Governor and two members elected from the retirement system; and to increase the size of the PERS board while leaving the members of the Personnel Board on it.

The commission reviewed the memorandum on employee service credits and then recessed for lunch.

The meeting reconvened at 1:30 p.m. Eric Yould, Executive Director of the Alaska Power Authority, addressed the members on the question of why the power authority employees are in the exempt service. Of the 16 employees, 14 have college degrees. He believes that they should remain in the exempt service. The Authority would have difficulty meeting its deadlines if it had to go through the red tape of hiring

employees through the classified system.

The Alaska Power Authority was structured by the Legislature to permit it to become similar to a public utility district which is a form prevalent in the lower 48. Mr. Yould was concerned that changes which might be made in the structure of the Authority now would foreclose flexibility in the future when the Authority has developed to the extent anticipated by the legislature. He wanted to preserve those options for future employees. It is anticipated that there will be power plant operators, linemen and so on, once the structures are in operation.

In answer to a question from Darlene Livermore, Mr. Yould explained that although most of the employees have degrees, they perform general professional kinds of duties rather than highly-technical tasks. Mr. Yould added that he is not opposed to union membership for the clerical employees of the Authority.

The commission began its discussion of the review on the State Personnel Act. See attached comments and recommendations.

Fred Cook, personnel officer for the Department of Fish and Game, addressed the commission about a number of his concerns. The Personnel Division has been receiving a large number of applications for the positions available, especially for permanent seasonal positions. Changing from hiring temporary employees to hiring permanent seasonal employees has increased the Department's recruiting expenses from \$8,000 - \$57,000 this past year. Contacting the applicants through phone calls and telegrams has been difficult because frequently people do not reply. Therefore, the department continues to send them telegrams or to call them for other positions. He knows of one gentleman who received approximately 30 telegrams and didn't answer any of them.

Many applicants state they will accept employment anywhere in the State, but when the department contacts them, they say that they are not interested in going to such and such place. Mr. Cook suggests that if anyone rejects a job offer, he be removed from the state register at once. The application form should specify four regions of Alaska (such as Southcentral, Southeast, Central and West) to narrow down areas in which the applicant says he will work. It would speed up the process for his people and also would save the department a tremendous amount of money. He figures that the department, as a whole, spends upwards of \$200,000 a year just in recruitment.

Another problem area is in insuring that applicants are Alaskan residents. No one verifies the information provided by the applicant.

The scoring of the applications is also a problem. There are approximately 100-200 applicants with the same score all ranking #1 on the register. He suggested a more sophisticated grading system to rank these applications so that the top group would have fewer applicants in it. The department then would have fewer people to consider when filling a position.

Mr. Cook also suggested changing the length of time for recruitment of bush positions. Presently it is 30 days. He would like it changed to 60 days to enable the recruiting people time to have applications corrected and the applicants time to get it done. He gave an example of a problem he had today. The department has a Fish & Game Resource Specialist II position, at range 16, open and there's an Alaska Native in Angoon that they would like to hire. They want a bilingual person. The applicant forgot to sign his application. In order to meet the application deadline, Mr. Cook had to contact him, which took five telephone calls to Angoon, take the application out to Channel Flying and instruct the pilot on what needed to be done, fly the application to Angoon for the gentleman's signature and have it returned by 3:00 p.m. that afternoon. He estimates that particular problem costs his department \$200.

Jerry Reinwand, Executive Assistant to Governor Hammond, addressed the commission at its request. He explained that the Governor's Office is in the process of reviewing the separate agencies which are located within it to decide whether they should remain as part of the Office or whether it would be more appropriate to attach them to one of the departments. There are questions which make the decision difficult in some cases. For example, the Human Rights Commission should avoid even the appearance of being subject to political pressure, and therefore, it would appear to make sense that it be placed in one of the departments rather than the Governor's Office. However, it should also be insulated from the pressures of being a line agency within one department, and therefore, it may be inappropriate to place it in a department. Mr. Reinwand indicated that he has questions about whether the staff of the Division of Budget & Management and the Division of Policy Development & Planning and the Office of Internal Audit need to be in the partially exempt service. Since the review process has not been concluded, Mr. Reinwand suggested that the commission wait for its results as an expression of what the Governor recommends on the question of who needs to be in the exempt service.

The commission recessed at 3:20 p.m. until 10:00 a.m. Thursday, October 30.

Senator Ray, chairman, reconvened the meeting at 10:00 a.m. on October 30.

Kerry Romesburg, Executive Director of the Postsecondary Education Commission spoke in response to the commission's request.

The Postsecondary Education Commission has 30 permanent employees and adds four nonpermanent employees to its staff in the summer. He indicated that although the statutes place himself and the staff in the exempt service, in reality the commission uses the same pay scale as the classified service, the kinds of work which most of the employees do is similar to work done by classified employees and, except for hiring employees from the registers, the commission operates under most of the

procedures of the Personnel Rules. Of the 30 employees, 16 are loan repayment, awards and collection clerks. Three others are clerical employees, two are in the administrative assistant class and the remainder are professional employees. He added that as permanent exempt employees, the commission employees receive benefits as do permanent classified employees.

There being no more questions for Mr. Romesburg, he was thanked and excused.

John Pugh commented that it did not appear that the Post-secondary Education Commission needed to be in the exempt service. He recommended that if the Blue Ribbon Commission is going to clean up the State Personnel Act, that each of the boards and commissions which presently has its staff placed in the exempt or partially exempt service be carefully reviewed.

The commission then returned to reviewing the draft of the State Personnel Act. Comments and recommendations are attached.

Senator Ray stated that when a redraft of the Act is available the commission will meet again. Without objection, the meeting was adjourned at 11:30 a.m.

October 29, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston
Paddy Moriarty (for Frank Flavin)
Fred Muller
Greg O'Claray
John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Mourant

October 30, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston

Fred Muller

John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Mourant

A D D E N D U M

To the
MINUTES

October 29-30, 1980

COMMENTS AND RECOMMENDATIONS ON THE STATE PERSONNEL ACT

Page 2 AS 39.25.080. Public Records.
Line 7

Cherie Shelley was concerned that the Division of Labor Relations might use this section to assert that information APEA needed in preparing cases was confidential and could not be released. Senator Ray suggested adding For the purpose of this Act at the beginning of the sentence on Line 7.

In discussion of paragraphs (1)-(5) members noted that paragraph (1) provides for information on all state employees and that paragraph (2) provides for information about an individual employee. Members decided that the phrase state employee should be used rather than the phrase "state officer or employee".

Page 3 AS 39.25.110. Exempt Service.
Line 1

After discussing the standards proposed in subsection (a), the commission members decided to delete all of (a).

The commission will consider whether the employees of the agencies named in paragraphs (11) and (12) should remain in the exempt service after further testimony on the question.

A question was raised about the difference between the exempt and classified service. An employee in the exempt service is not hired from the register, does not get paid according to the pay plan, and can be fired at will. In the classified service there must be just cause before an employee can be fired.

Page 5 AS 39.25.120. Partially Exempt Service.
Line 23

Assistant Commissioners should be added to paragraph (1).

Page 6 Commission members asked why the state forester, hearing
Line 8, examiners in the Department of Revenue and the Chief of
23 & 27 Subsistence in the Department of Fish & Game should be in the

partially exempt service. The question will be considered later.

Page 6 Bob Mourant pointed out that there are airport managers for
Line 29 smaller airports who are not in the partially exempt service. Only
 the managers of the Anchorage and Fairbanks International Air-
 ports are partially exempt. Paragraph (16) should be changed
 to reflect this.

Page 7 The commission will consider in the future whether the
Line 2 deputy director of the division of tourism and the deputy
 director of the division of insurance should remain in the
 partially exempt service.

Page 8 AS 39.25.140. Amendment of Personnel Rules.
Line 5

 The question of the distinction between public policy and
 internal management was raised. Paddy Moriarty suggested that
 instead of the phrase "public policy", that the draft should
 say whether it affects the public or is used by an agency in
 dealing with the public. Senator Ray suggested looking at the
 language which was used in the Alcoholic Beverage Control Board
 bill last session to help clarify the distinction between public
 policy and internal management regulations. Cherie Shelley
 pointed out that many of the subjects covered in the Personnel
 Rules have been included in the collective bargaining agreements.
 Therefore changes in the Rules which are contrary to the
 substance of the contracts would have little practical effect.

Page 8 The commission decided that the Personnel Rules should be
Line 20 required to be published in the Alaska Administrative Register
 and Code and therefore that the word "may" in paragraph (4)
 should be changed to shall.

Page 8 AS 39.25.150. Scope of the Rules.
Line 27

 The commission decided that the Personnel Board should
 also approve the classification plan.

Page 9 Senator Ray suggested finding a clearer phrase than "sound
Line 18 employee selection methods" for this paragraph.

Page 11 After considerable discussion about the veteran's preference
Line 4 system, the commission decided not to amend this paragraph.
 Under the present system, a veteran receives the five additional
 points only on the applications he files before he is hired.
 Once he has accepted a position with the state, then any appli-
 cations for other positions which he has filed are rescored
 to remove the 5-point bonus.

Page 12 Senator Ray suggested investigating the definition which the
Line 7 director of the division of vocational rehabilitation uses in

determining whether a person is severely handicapped. It might be appropriate to include that definition in the State Personnel Act.

Page 12 In discussion of paragraph (23), the commission questioned the
Line 10 definition of programs and disadvantaged persons. Senator Ray suggested adding that the programs could not be against the standards of a merit system of employment.

Page 12 AS 39.25.153. Personnel Officers.
Line 18

Diana DeSimone pointed out that the Department of Law does not have a Personnel Officer so subsection (a) should be redrafted. It should read: If a principal department of the executive branch requires a personnel officer, then the personnel officer shall be permanently employed by and located within the department.

Page 12 She also suggested that the whole section be deleted since
Line 22 the director of the division of personnel has the authority under AS 39.25.150 to delegate authority for personnel actions to the personnel officers of the departments and since that authority has been delegated recently. Roger Thayer replied that the delegation is recent and that he would prefer to have some authorization for independent action by the personnel officers remain in the Act.

Page 12 The commission decided to delete the language authorizing
Line 22 the personnel officers to act contrary to the Personnel Rules so that subsection (b) begins with the phrase Subject to the provisions.

Page 13 The commission also decided to delete paragraph (4) which
Line 7 would have given the personnel officers authority to make rules concerning the methods and procedures for overtime work and pay.

Page 13 In order to provide for consistency in the personnel policies
Line 15 of the state, the commission decided to require that the commissioner of administration must approve the exercise of any powers under this section, rather than the commissioner of the department in which the employee worked.

Line 13 AS 39.25.160. Generally.
Line 17

After discussion of the meaning of "precinct level" the commission decided that the phrase should be defined in the State Personnel Act.

Page 13 To clarify subsection (b), Senator Ray recommended changing
Line 23 it to read: ... in connection with securing or making an appointment....

Page 13 Senator Ray recommended that subsection (c) be made to
Line 26 apply to all state employees rather than just those in the

classified service.

Page 14 The commission decided that protection against actions based
Line 6 on unlawful discrimination due to race, sex, color, religion,
 national origin, age or handicap should be extended to all
 state employees. Classified employees should be protected
 against discrimination based on political beliefs.

Page 14 Senator Ray recommended adding the word knowingly to the
Line 11 first line of subsection (g) so that it reads: "A person may
 not knowingly make a false statement...."

 Definitions should be included in the Act for "fraud" and
 for "knowingly".

Page 14 Subsection (h) should be changed to read: "...person may not
Line 16 unlawfully defeat, deceive, or obstruct...."

Page 14 AS 39.25.170. Hearings and appeals upon dismissal, demotion, or
Line 27 suspension.

 The commission decided that all state employees should have
 the right to appeal actions based on unlawful discrimination.
 Subsection (c) should be redrafted to provide for this. Classified
 employees should have the right to appeal actions based on
 unlawful discrimination due to political beliefs.

Page 15 Subsection (d) was phrased unclearly. It should be
Line 2 redrafted to read:

 A permanent employee in the classified service who holds
 probationary status in his present position may appeal a
 dismissal from the classified service the Personnel Board.

Page 16 AS 39.25.185. Employment of Federal Employees.
Line 6

 The commission decided that this new section should be
 deleted.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Capitol Building, Juneau
August 19, 1980

MINUTES

Senator Ray, Chairman, called the meeting to order at 1:35 p.m. The commission continued its discussion of the State Personnel Act begun at its meeting on Monday, August 18th.

AS 39.25.140 (Amendment of the personnel rules). Senator Ray pointed out the distinction between those rules governing the internal management of agencies and those rules which affect the public and should be considered matters of public policy. Rules which affect the public should be subject to public review before being adopted or amended. He suggested that subsection (e) be amended to limit the exemption from the Administrative Procedures Act to those rules affecting only the internal management of state agencies. A new subsection should be added requiring that those rules which affect the public must be enacted pursuant to the APA. He also directed the staff to ask the Attorney General's office and the legal staff of the Legislative Affairs Agency to prepare opinions on what legal authority the rules have.

Darlene Livermore pointed out that most of the collective bargaining agreements which the state has entered contain a clause which says that if there is a conflict between the contract terms and the Personnel Rules, then the contract terms govern. Only if the contract is silent on a subject do the Personnel Rules apply to employees who are members of collective bargaining units. Since almost all of the classified employees in the state are members of collective bargaining units, the Personnel Rules have a very limited application. Because of this, most state employees are probably not even aware that the state has Personnel Rules.

Senator Ray pointed out that the political climate is not necessarily favorable to the present public employee collective bargaining situation and that it is possible that the governor or some legislators will sponsor legislation to change the present system. Therefore, it is appropriate to be concerned about the personnel system.

The commission discussed the distinction between exempt, partially exempt and classified employees. There are about 500 employees in the partially exempt service and 5 employees in the classified service who are not members of collective bargaining units. Senator Ray asked for reasons for preserving both the partially exempt and exempt services. Bruce Cummings replied that partially exempt positions are appropriate where the work performed is essentially similar to other kinds of positions in the state. For example, the salary and job title and most of the duties of a clerk typist in the Office of the Governor are comparable to other clerk typists. However, it is appropriate for the Governor to be able to appoint and dismiss the employee with greater ease than if the position were covered by the protections of the classified service.

Positions are appropriately placed in the exempt service when the salaries which must be offered to attract skilled employees are not included in the

state's pay plan, when the position is not expected to last long or requires unique responsibilities, and for the political appointments which the chief executive needs to be able to make for policy reasons.

The classified service provides salary integrity and protections from arbitrary hiring or firing decisions.

AS 39.25.150 (Scope of the rules). The commission discussed cleaning up the language of this section to delete material more appropriately included in the rules. Bruce Cummings pointed out that subsection (2) does not make provision for paying employees pursuant to a valid collective bargaining agreement, although the state has interpreted the language to permit paying employees based on pay plans adopted under union contracts. The commission agreed that language should be proposed to address this problem. Darlene Livermore added that while she agrees that the section should be cleaned up, she thinks it is important to preserve the statements of principles which are presently there, such as "like pay for like work."

On the question of crediting work experience as an alternative to formal education, and on the question of tests, Bruce Cummings explained that the laws requires employers to be able to demonstrate that any tests for employment are consistently able to predict that those who receive good scores are more likely to be successful employees than those who receive lower scores. The state is trying to develop validated tests, but it is a difficult process and there are only three employees in the division who are assigned to that project. The state has fewer than 15 tests which would be likely to withstand a challenge in court. Furthermore, the tests which the state is discarding for the validated tests have been, in fact, irrelevant. For example, there was an excellent accountant in the Division of Finance who was marked for promotion. He took the old exam five times and failed it each time. When the new, validated exam was ready he took it and was number one on the register.

Senator Ray pointed out that there is another problem - that of being sure that the job description is kept current so that the job classification actually reflects the duties of the position. The state needs a full scale desk audit program.

AS 39.25.153 (Personnel Rules for certain departments). Lynda McCurry reported that the personnel officers in the departments continue to believe that they can perform their jobs better if they are the employees of the departments in which they work rather than the employees of a centralized Division of Personnel. The Division of Personnel has recently begun to decentralize several personnel functions to the departmental personnel offices.

Bruce Cummings raised questions about subsection (b) which gives the departmental personnel officers authority to adopt regulations for those positions unique to their departments. At present those powers have not been exercised, but if they were, the state could find that there were significantly different working conditions for groups of employees based only on which department they worked for. Consistency is important, not only for morale of the employees but also because the state has to comply with the terms of the collective bargaining agreements it enters.

Delegating greater authority to the departmental personnel officers increases the importance of auditing. In the 1980 Report the commission recommended that annual audits be performed either by the Division of Personnel or by some other agency. Mr. Cummings has thought about the question and believes it would be better for a third party to perform the audit since the Division of Personnel needs to remain effective as a service agency, rather than being perceived in a policing role. The division would, of course, work closely with whoever did the audit to provide information and expertise as requested.

Senator Ray suggested that the subsection might be changed to enable departmental personnel officers to adopt only rules which relate to the internal management of the department for classes which are unique to the department.

Don Fisher raised the question of setting up a system for a periodic review of the Personnel Rules to insure that they accurately reflect the changing policies and procedures of the state. Senator Ray directed the staff to investigate the feasibility of doing so.

AS 39.25.155 (Vocational substitution program). Bruce Cummings pointed out that the positions which fall within the program have all been placed in the Local 71 bargaining unit. The program is therefore no longer used, since Local 71 members are hired through a union-operated hiring hall. The union system does not include the kinds of minimum qualifications which the state uses in evaluating applicants.

Lois Jund asked whether subsection (g) which establishes a one-year residency requirement was still legal. Mr. Cummings replied that it wasn't.

AS 39.25.160 (Prohibitions). Senator Ray suggested that subsection (e) should provide that partially exempt employees as well as classified employees are required to resign from their positions in the state service when they seek nomination or become candidates for state or national elective political office.

Bruce Cummings indicated that the Rules do require a partially exempt employee to resign, even though the statute does not.

AS 39.25.170 (Hearings and appeals). Senator Ray asked whether an employee could require that hearing be open to the public. Bruce Cummings replied that the Personnel Rules do give the employee this right. Senator Ray suggested amending the section.

AS 39.25.180 (Status of present employees). Senator Ray pointed out that the first three subsections of this section are obsolete.

AS 39.25.195-200 (Nonpermanent law). The law has not yet been in effect for a full year and therefore it is too early to consider whether it needs to be changed. The commission should review figures on positions which used to be temporary and are now seasonal as a result of the procedures created by the nonpermanent law at a later time.

AS 39.25.210 (Penalties). The commission will consider later the question of implementing a graduated penalty schedule, whether there should be administrative penalties set out in the statute and whether it is appropriate that

being found guilty of a willful violation of the Rules leads to conviction of a misdemeanor.

AS 39.10.010 (Nepotism prohibited). The commission agreed that a stronger statute prohibiting nepotism should be prepared for its review.

Senator Ray directed the staff to prepare a work draft of a revision of the State Personnel Act with the help of the Legislative Affairs Agency legal division. The commission will meet when the draft has been completed, which should be in one month.

Senator Ray adjourned the meeting at 2:55 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Bruce Cummings
Duncan Fowler (for Frank Flavin)
Representative Jack Fuller
Lois Jund
Darlene Livermore (for Cherie Shelley)
Lynda McCurry
John Pugh

OTHERS IN ATTENDANCE

Bob Mourant

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Capitol Building, Juneau
August 18, 1980

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:00 a.m. He asked for testimony from the public. Julie Issac called the commission's attention to a problem that she is having with the state's retirement system.

Mrs. Issac retired in 1976, at which time the Retirement Division on four separate occasions had advised her that she was eligible for more than nine years of credited service with the state. As the result of an amendment to the laws three months after she retired, she was also told she would receive credit for an additional three years of military service. Her benefits were calculated on that basis. In 1979 Mrs. Issac received a letter from the Retirement Division advising that their original computations had been in error. She had been credited with 4½ years of service to which she was not entitled, part of which was for employment with the University of Alaska. Furthermore, she had received over \$5000 in overpayments which would have to be paid back to the state. In the beginning of January, 1980, the division began reducing her retirement check by \$100 per month to be credited towards the overpayment, in addition to having reduced her check because of the decrease in the years of credited service.

Mrs. Issac was advised that she could appeal the division's decision to the Retirement Board at their next meeting. She was unable to attend but a friend did read a letter to the board which preserved her appeal rights. Following that hearing, Mrs. Issac asked that the state waive collection of the debt. According to its interpretation of the statutes, the only ground upon which the division can waive repayment is hardship. The division therefore required that she submit information not only about her own financial situation but also about her husband's. Mrs. Issac questioned why her husband's information should be considered since it is her retirement credit which is under question.

Mrs. Issac added that the basis for denying her period of employment with the University of Alaska was a regulation adopted by the Retirement Division in 1978 - two years after she retired. Without credit for the University of Alaska employment, she needs an additional 13 months state employment in order to claim her territorial service.

Early in July, Mrs. Issac wrote to Commissioner Hudson asking for assistance in finding employment with the state so that she could work for the time needed to then receive credit for her territorial service. She was no longer eligible to be placed on the state's rehire lists because more than 2 years had elapsed since she left state employment. She has also asked the Governor's office for assistance in finding a position in which she can earn the necessary service credits. Mrs. Issac pointed out that she had been a loyal and responsible state employee but that she believes that the state has treated her shabbily and that she is becoming bitter.

Lois Jund stated that while she was at the Department of Health and Social Services, several people had talked with her about receiving similar notices from the Division of Retirement. Bruce Cummings explained that while

he was working in the retirement division he noticed that there was a constant flow of files with errors. Therefore, the director of the division ordered a wholesale audit of all of the PERS and TRS records. Any with errors would be adjusted as of the date of the audit. Although he had no sure figures, Mr. Cummings estimated that 3 to 5% of the files contained errors. Because the retirement statutes require that any errors in benefits be corrected, the division does not have the authority to write off any overpayments which a retired person may have received. He suggested that the legislature consider giving the retirement boards authority to waive recoupment of overpayments in certain situations.

Duncan Fowler pointed out that Mrs. Issac's case raises two questions. First, whether the state ought to be prohibited from seeking repayment because she had based her retirement plans on information provided by the state and over 3 years had elapsed since then. The second problem is with the state's investigation into her husband's financial situation when considering whether to grant her a hardship waiver. Lois Jund pointed out that in the federal retirement system there is a statute of limitations and that they can only seek to correct errors which occurred within the past two years.

Dick Smith said that Mrs. Issac has two complaints against the state: being charged with an overpayment which resulted from the state's errors and being denied 4½ years of credited service. It appears that because the Retirement Board is considering her appeal, there can be no immediate appeal to the courts, although, on the basis of the information which she has provided it seems likely that she would be successful in court. He suggested that it would be appropriate to change the retirement statutes to provide for a statute of limitations against attempts by the division to collect for errors which it caused. Bruce Cummings added that since there are between 80 and 90 other employers who participate in PERS and TRS, any changes should be carefully drafted to apply only to the state's employees.

Mr. Smith added that the second part of Mrs. Issac's problems - denial of service credits for her work with the University of Alaska - is harder to remedy since the University is a separate entity according to the state constitution. The University voluntarily joined the retirement system in 1978, but before that work with the University did not apply to the state's retirement system.

Senator Ray suggested that there should also be some recourse for an employee who wanted to return to work for the state to build up retirement credits. Bruce Cummings explained that if there was a 2-year statute of limitations for asserting overpayments, then an employee would still have rehire rights and would therefore be entitled to preference for any vacancy in the job class from which she or he retired. Mrs. Issac also asked that if the commission sponsored any legislation that it be made retroactive to resolve her problems as well as helping other employees.

Senator Ray asked whether the commission approved sending a letter to the Retirement Board concerning the commission's suggestions for future legislation. There was no objection. Staff was directed to work with Deputy Commissioner Smith on a draft of the letter.

The commission began consideration of the memorandum on public inquiries.

Issue 1. Posting of promotional opportunities on bulletin boards. Darlene Livermore explained that APEA and PSEA take different approaches to protecting their members' interests in access to promotional opportunities.

Issue 2. Postsecondary Education Commission. Senator Ray pointed out that whether these positions should be in the exempt or classified service raises the ongoing question of ease of hiring versus protection of the rights of employees. This question will be discussed during the review of the State Personnel Act.

Issue 3. Delay in processing applications. Bruce Cummings explained that the division received some 5,500 applications in July, and that this volume has partly caused the delay. In addition, all of the processing is done manually at present. The division hopes that the number of applications will decrease in August. There has been no turnover in the division staff for the last three months, which should also help reduce the time to process applications. They are implementing a system of block scoring for all job classifications in which that is possible and also hoping to move toward an automated record keeping system. However, if the volume of applications continues to increase, it may not be possible to decrease the time.

Mr. Cummings explained some of his division's long-range plans for speeding up the application process. They are investigating a computerized automatic classification tracking system, but first the state job classification system has to be restructured. This system does not read applications, establish whether the minimum qualifications are met, nor does it score the examinations. However, the state is also investigating a self-administered training and experience rating system which appears to work with the clerical classes but not others. An additional problem in the classification computer system is that it is not designed to fit into the IBM equipment which the state presently uses and therefore there is a conversion problem.

Senator Ray moved that the commission write to the Commissioner of Administration asking him to outline what he thinks needs to be done to shorten the application process time to a more reasonable period. The motion passed without objection.

Issue 5. Geographical cost of living differentials. The commission noted that this is a matter which is addressed in the collective bargaining contracts.

Issue 6. Employee credits. Bruce Cummings explained that employee credits are designed to encourage retention and promotion of state employees and to discourage breaks in service. The system awards these extra points only to permanent classified employees. John Pugh pointed out that the system can work against employees who for family reasons are forced to move from one area of the state to another without having a new job lined up, although they intend to remain in state service if they can find employment. They lose their points as soon as they resign from one job, even though they may return to work within a short period of time. The same thing happens to classified employees who accept employment in the partially exempt or

service. They lose their accumulated credits upon resigning from the classified position. Lois Jund suggested that the commission recommend that the state do away with the system of employee credits. Senator Ray proposed that the staff research the advantages and disadvantages of employee credits and other bonus point systems and report to the commission.

Senator Ray asked whether there were any statistics on the number of permanent seasonal positions created for positions which had been previously filled by temporary employees and how many nonpermanent positions there were. Bruce Cummings replied that it is not yet available. Senator Ray pointed out that the newspapers had reported 1100 new positions created by the budget but that in fact from the information presented to the Finance Committee he thought that there were no more than 300. The rest were already in existence because of Revised Programs which had been started before the new fiscal year or through converting CIP positions.

Senator Ray adjourned the meeting at 11:42 for lunch.

The commission reconvened at 1:30 p.m. and began discussion of the Revision of the State Personnel Act memorandum. Only those sections on which there was discussion will be noted.

AS 39.25.040. Director of personnel. The staff was directed to find out what the statutes say about the position of the Director of Labor Relations and the actual duties of the director.

AS 39.25.060. Personnel board. Senator Ray pointed out that this section includes unnecessary language and should be cleaned up. He asked whether there was a need for the Personnel Board since most of their original functions are now performed through collective bargaining. Mr. Cummings replied that there are still five employees who are in the classified service but not members of any bargaining unit. The State Personnel Act and the Personnel Rules govern all of the terms and conditions of their employment. In addition, some of the members of the Confidential Employees Association have petitioned the Labor Relations Agency to be taken out of the CEA unit, which would add them to this group of five. The Personnel Board adopts the Personnel Rules and amendments and some body is needed to continue to do that. Senator Ray asked the staff to contact the Personnel Board to ask whether they should continue in operation.

AS 39.25.080. Public records. Mr. Cummings explained that the Personnel Rules which implement this section provide for confidentiality for personal information about state employees. The public does have access to information about who is a state employee, where he works, how much he is paid, and how long he has been employed. Confidential records include information about an employee's family and performance evaluations, although any state supervisor who is considering hiring a present state employee does have access to the whole personal file. Every employee can see his entire file at any time and have copies of anything in the file. Secret files are forbidden.

Senator Ray suggested that the statute be changed to specify which information is open to the public and which information is to be kept confidential rather than relying on the Personnel Rules to set those standards. Mr. Cummings mentioned that there are a number of conflicting laws on this subject already.

AS 39.25.110. Exempt service. The commission discussed the groups who are made members of the exempt service and agreed that the section should be recodified. Duncan Fowler suggested that the commission should hear from those entities which have employees in the exempt service to learn whether there are positions which should be transferred to the classified or partially exempt service. Senator Ray also directed the staff to inquire of Greg O'Claray whether there is still a reason for the employees of the ferry system to be in the exempt service.

AS 39.25.120. Partially exempt service. The commission discussed specific language changes which should be made to clean up this section. In addition, Duncan Fowler suggested that the commission should develop a policy statement for the exempt service comparable to the policy statement found in AS 39.25.130 concerning the partially exempt service. Mr. Cummings explained that positions in the partially exempt service are similar to other state jobs and therefore can be placed in the job classification plan and paid according to the pay plan but they are not susceptible to ordinary methods of recruitment or they require greater flexibility in hiring and dismissal than do positions in the classified service.

On the other hand, exempt service positions are not subject to either the state's classification plan or the pay plan. They are generally meant to be jobs which are so unique or of such short duration that it is more appropriate not to try to fit them into the system. The Division of Personnel makes no attempt to develop a job description for exempt positions, to classify them, or to set the salary for them. There is a need for both the exempt and the partially exempt service, in addition to the classified service. Lois Jund added that the state really has four services: the exempt, the partially exempt, the classified service which participates in collective bargaining with the state, and the classified service positions which are not unionized.

AS 39.25.130. Extension of partially exempt and classified services. Senator Ray suggested eliminating the reference to dates in this section.

AS 39.25.140. Amendment of personnel rules. Senator Ray suggested that the law should provide two methods for adoption of the Personnel Rules. Those Rules which affect the public policy should be adopted through the Administrative Procedures Act. Those Rules which are matters of internal management only, could be adopted without the procedural requirements of the APA.

The commission will meet to review a proposed draft of a revised State Personnel Act in September.

Senator Ray adjourned the meeting at 3:45 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Bruce Cummings
Duncan Fowler (for Frank Flavin)
Representative Jack Fuller
Lois Jund
Darlene Livermore (for Cherie Shelley)
Lynda McCurry
John Pugh
Dick Smith

OTHERS IN ATTENDANCE

Bob Maurant

ADDENDUM: Correction for the Merit System/Collective Bargaining and Full Commission minutes of November 15, 1979 - Frank Flavin was present at the meeting. It had been erroneously recorded that he had been absent.