

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1362 SCOMM 51: BLUE RIBBON COMN. ON STATE PERSONNEL ACT 1978-1983

nel Act has not been comprehensively revised since its adoption, although circumstances have changed substantially since then.

In addition, the Act itself is poorly structured, and modifications and exceptions to the Act are spread throughout the rest of the statutes. There is need for a comprehensive recodification. Because of the complexity of the question, the Blue Ribbon Commission has not, within the time constraint, been able to consider this issue fully, and therefore can make no recommendation on this matter. We request more time so that we may complete the formulation of additional concepts.

18. The Personnel Rules

In addition to the method by which the Rules are adopted (see discussion above in the Merit System/Collective Bargaining Subcommittee Summary, page 11), there are a number of other problems with the Personnel Rules. Little attempt has been made to cross index the Rules with the several bargaining unit agreements nor are the Rules comprehensive in setting out the topics which they do address. For example, there is no specific rule on whether temporary employees may use the appeal procedures established in Rule 12. The Division has, by analogy, reasoned that temporaries may not use those procedures since probationary employees are forbidden access under the Rule on dismissal during the probationary period, P.R.6 04.0, and since temporary employees have fewer rights generally than do probationary employees.

Personnel Rules are in some instances vaguely drafted, leading to conflicting applications by different departments, and to inconsistent treatment of state employees, depending only on which

department they work in. In some cases, it would be reasonable to set out those limits statutorily.

The commission has not considered this issue extensively. Given the changes to the Rules which may result from future commission recommendations, a decision on this issue will be made at a later time.

IV. Categories of Employees Subcommittee

A. Overview of the Categories of Employees in the State System

In addition to three classes of service (classified, exempt and partially exempt), the state has six categories of employees. Provisions for those categories are set out in the Personnel Rules, and some of the union contracts modify those provisions. The six are: permanent (either full-time, part-time or seasonal), probationary, provisional, temporary, emergency, and short-term. The subcommittee focused its attention on the temporary category, although recognizing a need to later consider contract employees and to consider whether positions in the partially exempt service should be removed to the classified service.

The discussion of the issues following is limited to temporaries in the classified service, although much of what is said would pertain to those in the partially exempt service as well.

B. Temporary Employees

A temporary position is one which is established with an anticipated duration of less than six months. P.R. 1. That period may be extended by the director in extenuating circumstances. Appointments are not required to be made from the registers, but are directed, when practicable, to be done in that manner. P.R.5 06.0. Some departments have adopted internal procedures to require that this policy be followed (Health and Social Services, and recently Natural Resources). Time served as a temporary does not

count as part of an employee's probationary period (P.R.6 02.6), nor are temporaries eligible to receive most of the benefits provided to permanent employees.

The terms governing the employment of temporaries by the state have been modified in some of the contracts negotiated with public employee unions. Specific reference is made to some of those modifications in the discussion of the issues before this subcommittee.

C. Summary of Issues Before the Categories of Employees Subcommittee

1. Hiring Temporary Employees from the Register

Although the Personnel Rules require that temporary appointments shall, when practicable, be made from the eligible lists, (P.R.5 06.0), most of the temporary employees who testified before the commission were not hired from the registers. Requiring departments to abide by the rule and to hire temporaries from the registers could eliminate some of the abuses associated with temporary hiring practices. Abuses include hiring people who would not meet the minimum qualifications of vacant permanent positions so that they can develop minimum qualifications and be placed in the position; hiring people from out of state as temporaries so that they can establish residency and be placed in permanent positions; and using the temporary period to add to the probationary period of permanent employment.

Hiring from the register takes some time. Steps include request for and receipt of the register from the Division of Personnel; notification to eligibles on the register of the vacancy; inter-

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Hiring from the register takes some time. Steps include request for and receipt of the register from the Division of Personnel; notification to eligibles on the register of the vacancy; inter-

views of those interested in the position; and selection from among the applicants. In some instances, program managers may not be able to leave a position vacant for the length of time required.

2. Time Limits on Employment of Temporaries

The Personnel Rules provide that temporary employees can be employed in one position for a maximum of six months, with extensions possible in extenuating circumstances. P.R.5 06.0. Union contracts modify that rule. Local No. 71 members receive a wage supplement of \$1.32 per hour for the first 120 days of temporary service. If the period is extended beyond that time, then they are entitled additionally to shift from the entry-level wage step into the higher level step. The union must agree to the extension beyond the first 120 days. The APEA collective bargaining contract limits employment of its members as temporaries to six months and restricts extensions.

The six-month term is seen as excessively long by some. It invites departments to use temporary employees instead of hiring permanent full-time, part-time or seasonal employees, and permits them to evade the merit system established for hiring permanent employees.

On the other hand, some temporary employees and some program managers see the term as inadequate. The time required to establish a new position can cut into the time available for completion of a project, so managers may have no choice but to hire temporaries. If the project lasts longer than six months, then the manager is forced to train a new employee in the middle of the work. One witness suggested that some of the time required for implementa-

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tion of a new program could be avoided if the legislature requested that departments present P402's for all positions created by a new program at the same time that the budget for the program was being considered.

3. Project Employees

It is difficult to plan for permanent positions in programs funded through federal grants whose receipt is not guaranteed from year to year. Program managers are not authorized to fill those positions until after funding is definite. This leads to the employment of temporaries in those positions. An alternative would be to create a new category for project employees. The employees would understand that their employment would be dependent upon continued receipt of funds for the project.

4. Benefits for Temporary Employment

Of the benefits provided to permanent employees by the state, temporary employees in the classified service are entitled to receive only holiday pay and unemployment insurance. Temporaries are not eligible for court leave, administrative leave, personal leave, or retirement benefits. Even if a temporary employee is subsequently placed in a permanent position, he or she does not receive retroactive credit towards either retirement or, in most cases, seniority.

Temporary employment does not entitle employees to be placed on promotional registers. The state's merit system provides a policy favoring filling positions by promotions. This would appear in some cases to penalize temporary employees who may have

worked for a substantial period of time for the state.

If temporary employees did, in fact, work only for a short time in one position, then it might be inappropriate for the state to provide leave benefits. Temporaries would then be hired only where there were deadlines that could not otherwise be met, and if they were out on leave, the department would have to pay not only their salary, but also the salary of a second replacement temporary.

Because the state does not have to pay for as many fringe benefits to temporaries as it does for permanent employees, it is cheaper for departments to hire temporaries. Program managers may therefore leave permanent positions vacant and hire temporaries instead so as to be able to increase the staff available to work on a project. For the same reason, departments may use temporary employees instead of permanent seasonal employees for recurrent seasonal needs. Some departments have a substantial number of such employees and would probably need a supplemental appropriation to fund benefits if they made use of the permanent seasonal category.

The Local No. 71 collective bargaining agreement addresses the lack of benefits provided to temporary employees. Members who are working as temporaries receive a wage supplement of \$1.32 per hour for the first 120 days of work in a temporary position. After the 120 days, they shift from the entry level wage step into a higher level wage step, and they continue to receive the supplement.

5. Vacant Permanent Positions

The legislature reviews the number of vacant PCN's when it

considers a department's budget request. In some instances, those PCN's which have been vacant for more than six months are removed from the budget, unless the department can justify the delay in hiring. There is evidence that despite this policy, a number of PCN s are remaining vacant for several years, although funds are made available to departments to fill them. Departments use this money to hire temporaries instead of permanent employees.

6. State Employees who are Enrollees of the CETA Program

The state placed employees who are enrolled in the CETA (Comprehensive Employment and Training Act) program in the temporary employee category. This placement creates some problems, both for CETA's working under Titles II and VI and for CETA's working in SCSEP (Senior Community Service Employment Program). The objective of CETA is to provide employment opportunities for underemployed and disadvantaged groups of people in the state.

a) SCSEP. The federal regulations for the SCSEP program provide that an enrollee may work for a maximum of 1,300 hours in a year. No enrollee may be required to work more than 30 hours per week, although he or she may choose to work the full hours of a normal work week. The state may not set a time limit in conflict with these provisions. Therefore, the six-month limit placed on temporary employment appears to be in violation of the program rules. However, extensions are available.

As temporary employees, SCSEP enrollees do not receive the leave, retirement, or health insurance benefits provided to permanent employees. Federal regulations require that all enrollees

of an employer receive the same benefits and that those benefits be comparable to the benefits provided to other employees within the same category. The state meets that requirement, since all temporary employees are treated equally. If the state placed SCSEP employees in the permanent category, whether in the classified or the partially exempt service, then the state would be obligated to provide them with all the benefits which it provides to permanent employees.

As a result of being placed in the classified service, SCSEP employees are members of the bargaining units in which they are placed. Therefore, the union contract provisions apply to them. The APEA contract establishes a minimum wage which the state must meet, and this provision applies equally to SCSEP members as to all other members of the bargaining unit. The union contract and federal regulations of the program forbid the state to work members in tasks above their classification. Placement within the partially exempt service would remove the SCSEP employees from collective bargaining units. In addition to removing them from union oversight, the employees would lose access to the grievance procedures provided in the union contract. As temporary employees, or as partially exempt employees, they would not have access to the dispute resolution procedures set out in the Personnel Rules (P.R. 12) and in order to meet the requirements of the federal regulations governing the program, the state would have to develop some new mechanism of dispute resolution for this group.

Because the goal of the SCSEP program is to promote the use-

ful part-time employment of economically disadvantaged persons who are 55 years or older, the normal state selection procedures for employees have to be modified for the program enrollees. However, those employed by the state must, in addition to meeting the eligibility standards, meet the state's minimum requirements for the job class in which they are hired. If they were placed in the classified service as permanent employees, special registers would have to be developed for SCSEP positions, containing only applicants who both meet the program's and the state's selection criteria. Placement in the partially exempt service would mean that enrollees would not have to be hired from the state's registers nor meet minimum qualification standards and would avoid this difficulty.

b) Other CETA programs. The federal regulations implementing the CETA program set the maximum salary which the federal government will provide for an enrollee. Prior to October 1, 1978, that limit was set at \$10,000 per year, or approximately \$833 per month. The maximum has been changed to reflect the higher cost of living in Alaska and is now \$19,880 per year or about \$1,656 per month. The state may supplement that amount, should it wish to do so. The state is expected to maintain an average salary for all CETA's in Titles II and VI of no more than \$14,314 per year. Testimony was presented on the experience of one CETA enrollee working at a correctional center. She indicated that she was doing the same work as the Correctional Officer I's employed at the institution, but that they were not part of the CETA program and therefore received significantly higher wages than she did. She knew of an instance

where a CETA enrollee was supervising a non-CETA state employee who was much higher paid than the supervisor.

Other testimony presented to the commission has indicated that the state is relying on CETA enrollees to provide essential state services in a number of programs. This reliance, while economical in that CETA salaries are paid from federal monies, may cause serious disruption to those programs in the event that CETA funds become unavailable. There is some question of whether state practices are in full compliance with federal CETA regulations.

7. Due Process Rights for Temporary Employees

Under the Personnel Rules, temporary employees have only a limited right to pursue grievances. The grievance procedures set out in Rule 12 are available to "any employee occupying a position in the classified service who has a grievance relating to his position, working conditions or employment over which the Executive Head of his department may lawfully exercise discretion". However, Rule 6 04.0 limits the rights of probationary employees to appeal or have a hearing for dismissal, except where the dismissal was due to discrimination based on race, color, sex, religion, national origin, or political beliefs. The Division of Personnel has reasoned that temporary employees have less status than probationary employees, and that therefore if probationary employees' right to appeal adverse decisions is limited, then the right of temporary employees must also be limited.

The Personnel Board appeals procedure set out in AS39.25.170

has been administratively construed to apply to employees having a permanent status, rather than a probationary status, except in cases where dismissal of a probationary employee is due to racial, religious or political discrimination. Whaley vs. State, 438 P.2d 718 (1968). Therefore, it is probably also unavailable to temporary employees.

Under collective bargaining agreements, the right of temporary employees to use the grievance procedures is limited as well. In the past, APEA did pursue grievances for temporary employees within their bargaining unit. However, the Division of Personnel began, about a year ago, to hold the association to the letter of the agreement. Under language that had been in the contract since at least 1973, the definition of employee did not include temporary employees.

Art. 1, Sec. 2(c) "Employee" in this Agreement means a person in the state service who is paid a salary or wage and holds probationary, permanent, or provisional status.

Grievances were defined as "any controversy or dispute arising between APEA or an employee of the bargaining unit and the Employer." Article X, Section 1. Given the language, an arbitrator upheld the Division's position that grievance rights were not available to temporary employees, even though that language had not been challenged by the department in previous grievances on the behalf of temporaries within the unit.

The Local 71 contract provides that temporary employees have the right to grieve on violations of contract terms and penalty pay, but that only permanent or probationary employees have a right to arbitration procedures.

8. Pool of On-call Permanent Employees as an Alternative to the Hiring of Temporaries

The state could develop a pool of skilled, permanent employees who would be on call to the various departments to fill in during vacations and to be available during unexpected vacancies or periods of peak work. The departments would have to work with the Division of Personnel to identify which classifications are used enough to benefit from a pool. Certainly, clerical needs could be filled from a pool, and perhaps accounting. Some of the positions in the pool could be set aside for people interested in working part-time.

APPENDICES

COMMISSION MEETINGS

PUBLIC HEARINGS

Anchorage

November 30 & December 1, 1978	Categories of Employees Subcommittee Classification, Certification & Recruitment Subcommittee Merit System/Collective Bargaining Subcommittee Blue Ribbon Commission
January 4, 1979	Categories of Employees Subcommittee
January 27, 1979	Blue Ribbon Commission

Fairbanks

December 12 & 13, 1978	Categories of Employees Subcommittee Merit System/Collective Bargaining Subcommittee Classification, Certification & Recruitment Subcommittee Blue Ribbon Commission
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Juneau

October 3, 1978	Blue Ribbon Commission
November 15 & 16, 1978	Classification, Certification & Recruitment Subcommittee (then called the Centralization/Decentralization Subcommittee) Categories of Employees Subcommittee Blue Ribbon Commission
January 10, 1979	Blue Ribbon Commission
February 15, 1979	Blue Ribbon Commission

WORK SESSIONS AND OTHER MEETINGS

September 15, 1978 Juneau	Blue Ribbon Commission
January 26, 1979 Anchorage	Categories of Employees Subcommittee Classification, Certification & Recruitment Subcommittee Merit System/Collective Bargaining Subcommittee

Appendix A

February 5, 6 & 7, 1979 Juneau	Classification, Certification & Recruitment Subcommittee Merit System/Collective Bargaining Subcommittee Categories of Employees Subcommittee Blue Ribbon Commission & National Conference of State Legislatures
February 15, 1979	Classification Process Walk-Through
February 23, 1979 Juneau	Classification, Certification & Recruitment Subcommittee Merit System/Collective Bargaining Subcommittee Categories of Employees Subcommittee Blue Ribbon Commission
February 24, 1979 Juneau	Blue Ribbon Commission
March 13 & 14, 1979 Juneau	Blue Ribbon Commission

PUBLIC EMPLOYEE UNIONS

Alaska Public Employees Association (APEA)
General Government Unit
Supervisory Unit

Confidential Employees Association (CEA)

Inlandboatmen's Union of the Pacific (IBU)

International Order of Masters, Mates & Pilots (MMP)

Marine Engineers Beneficial Association (MEBA)

Public Employees Local No. 71 (AFL-CIO), covering Labor
Trades & Crafts unit employees (Local 71)

Public Safety Employees Association (PSEA)

1 service without prior written approval of the director except as pro-
2 vided in this section.

3 (b) Every appointment to state service except an emergency
4 appointment shall be made from the appropriate eligible list or dis-
5 patching register unless in exceptional circumstances the director has
6 waived this requirement.

7 (c) The director may authorize the appointment of a non-permanent
8 employee if the request for authorization is accompanied by evidence of
9 available funds for the anticipated duration of that hire and the direc-
10 tor determines that

11 (1) there is specific legislative authorization that the work
12 in question be performed by non-permanent employees and funds have been
13 made available on that condition;

14 (2) there is an urgent need to fill an authorized, permanent
15 position and it is impractical to establish the position or to make
16 certification within a reasonable time because of a lack of individuals
17 on the eligible lists for that position;

18 (3) an urgent program need exists which the appointing auth-
19 ority could not reasonably have been expected to anticipate and meet
20 through the creation of a permanent position; or

21 (4) a program or project exists and the needs for employees
22 can most appropriately be met through the use of program or project
23 employees.

24 (d) The director may not authorize the appointment of a non-
25 permanent employee if after consideration he determines that

26 (1) the need for the non-permanent employee can reasonably be
27 met through the creation and filling of a permanent position;

28 (2) the need for the non-permanent employee would be more
29 appropriately met through an emergency appointment; or

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the Commission on the State
Personnel Act)

IN THE SENATE

SENATE BILL NO. 253

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the hiring of non-permanent employees in the state personnel system; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that certain inconsistencies and abuses in the hiring of employees in the state personnel system have jeopardized the integrity and efficiency of the merit system as well as the morale of employees. The legislature intends to curb the widespread administrative practice of using non-permanent state employment to evade departmental accountability and mask poor planning. The legislature further intends that non-permanent employees be used only to the extent that it is impractical to meet the need with permanent employees and that the burden of proof shall fall upon the department or agency which proposes non-permanent hire.

* Sec. 2. AS 39.25.150(9) is amended to read:

(9) non-permanent [TEMPORARY] appointments to positions in the state service in accordance with AS 39.25.195 - 39.25.200 [WHICH ARE DETERMINED TO BE OF A SEASONAL OR TEMPORARY NATURE];

* Sec. 3. AS 39.35.680(21)(C)(iii) is amended to read:

(iii) casual or [,] emergency [OR TEMPORARY]
workers or non-permanent employees as defined in AS 39.25.200;

* Sec. 4. AS 39.25 is amended by adding new sections to Article 6 to read:

Sec. 39.25.195. APPOINTMENT OF NON-PERMANENT EMPLOYEES. (a) An individual may not be appointed as a non-permanent employee in the state

1 (3) the need for the non-permanent employee is not urgent and
2 could reasonably have been anticipated and met by the appointing autho-
3 rity through the creation and filling of a permanent position.

4 (e) To insure compliance with the intent of this section the
5 director may require a department or agency to obtain prior approval for
6 emergency appointments.

7 (f) The director shall adopt regulations implementing this sec-
8 tion. The regulations shall include consideration of the need for
9 timely substitution for permanent employees on medical or personal leave
10 and other situations in which the appointment of an emergency or perma-
11 nent employee would be inappropriate and when delay in hiring would
12 cause serious disruption.

13 (g) A work assignment may not be performed by a non-permanent em-
14 ployee for more than 120 calendar days in a 12-month period. A non-
15 permanent employee may not be employed by any one department for more
16 than 120 calendar days in a 12-month period. In extraordinary circum-
17 stances the director may authorize an extension of the limit imposed by
18 this subsection if he finds that there is an urgent need for the exten-
19 sion. The limit imposed by this subsection does not apply to program or
20 project employees.

21 (h) The director shall present a report on non-permanent and
22 emergency hire practices in state government to the legislature within
23 the first 10 days of each regular legislative session. The report shall
24 include information on the number of non-permanent employees authorized
25 under this section and the number of emergency employees hired in each
26 department, a description of the procedures used in authorizing the
27 hiring of non-permanent employees, and any recommendations for legisla-
28 tion required to implement the intent of this section.

29 Sec. 39.25.197. TERMINATION OF NON-PERMANENT EMPLOYEES. When the

1 director determines that a non-permanent employee has been appointed in
2 violation of AS 39.25.195, he shall immediately notify the appointing
3 authority in writing and the appointing authority shall immediately
4 terminate the non-permanent employee from state service.

5 Sec. 39.25.198. CIVIL LIABILITY. An appointing authority who
6 violates AS 37.25.195 is liable in a civil action to an individual
7 terminated under AS 37.25.197 as a result of that violation. The
8 damages recoverable under this section are presumed to be three times
9 the gross monthly salary at which the non-permanent employee was hired
10 by the appointing authority.

11 Sec. 39.25.200. DEFINITIONS. In AS 39.25.195 - 39.25.200,

12 (1) "director" means the director of the division of person-
13 nel and labor relations;

14 (2) "emergency employee" means an employee appointed for a
15 period not to exceed 30 calendar days, whose appointment was made under
16 conditions requiring immediate action to carry on work that is required
17 in the public interest;

18 (3) "non-permanent employee" means a person who is employed
19 in state service in a position which is not in the exempt or partially
20 exempt service and who is not a permanent or an emergency employee;

21 (4) "permanent employee" means an employee who has been
22 appointed to an authorized, permanent part-time or permanent seasonal
23 position in the classified service and who is in the process of complet-
24 ing or has successfully completed the required probationary service in
25 that position;

26 (5) "program or project employee" means a non-permanent em-
27 ployee who is employed in state service with prior written understanding
28 that employment in that position will continue for at most the duration
29 of a specified program or project which is not a regular and continuing

1 function of a department or agency and which has an established probable
2 date of termination.

3 * Sec. 5. This Act takes effect September 30, 1979.
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Introduced: 3/22/79
Referred: State Affairs,
Finance and Labor & Management

BY THE RULES COMMITTEE BY
REQUEST OF THE LEGISLATIVE
COUNCIL (for the Commission
on the State Personnel Act)

1 IN THE SENATE

2 SENATE BILL NO. 256

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a Department of Employee Relations;
7 amending the state personnel laws; and providing for an
8 effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 44 is amended by adding a new chapter to read:

11 CHAPTER 22. DEPARTMENT OF EMPLOYEE RELATIONS.

12 Sec. 44.22.010. COMMISSIONER OF EMPLOYEE RELATIONS. The principal
13 executive officer of the Department of Employee Relations is the commis-
14 sioner of employee relations. The commissioner of employee relations
15 shall have experience in both personnel administration and labor rela-
16 tions, either in the public or private sector. His combined experience
17 in these fields must total at least five years of full-time experience.

18 Sec. 44.22.020. DIVISIONS OF THE DEPARTMENT. (a) The Department
19 of Employee Relations shall include the following divisions:

- 20 (1) labor relations;
21 (2) personnel;
22 (3) equal employment opportunity.

23 (b) The head of the division of labor relations is the director of
24 labor relations, appointed by the commissioner of employee relations.
25 The director of labor relations shall have at least three years of
26 full-time experience in labor relations, either in the public or private
27 sector.

28 (c) The head of the division of personnel is the director of
29 personnel, appointed by the commissioner of employee relations. The

1 director of personnel shall have at least three years of full-time
2 experience in personnel administration, either in the public or private
3 sector.

4 (d) The head of the division of equal employment opportunity is
5 the director of equal employment opportunity, appointed by the commis-
6 sioner of employee relations.

7 Sec. 44.22.030. POWERS AND DUTIES OF DEPARTMENT. The Department
8 of Employee Relations shall

9 (1) administer a statewide personnel program, including
10 central personnel services such as recruitment, examination, position
11 classification, training, employee development, and pay administration;

12 (2) represent the state as an employer in collective bargain-
13 ing and grievance resolution under the Public Employment Relations Act
14 (AS 23.40.070 - 23.40.260), except to the extent those functions are
15 performed by the Board of Regents of the University of Alaska;

16 (3) coordinate safety programs for state employees;

17 (4) coordinate all executive branch activities involving
18 equal employment opportunity in state government;

19 (5) perform other functions as provided by law.

20 * Sec. 2. AS 23.40.212 is amended to read:

21 Sec. 23.40.212. AGREEMENT WITH THE BOARD OF REGENTS. (a) The
22 Board of Regents of the University of Alaska may delegate to the Depart-
23 ment of Employee Relations [ADMINISTRATION] its authority under AS 23.-
24 40.070 - 23.40.260 to negotiate with an organization for an agreement.

25 (b) The Department of Employee Relations [ADMINISTRATION] shall
26 participate in the negotiations between the Board of Regents and an
27 organization. An agreement between the board and an organization re-
28 quires the approval of the department.

29 * Sec. 3. AS 39.20.295 is amended to read:

1 Sec. 39.20.295. SPECIAL REGULATIONS ON LEAVE PERIOD. In accord
2 with the procedures established in AS 39.20.320, the Department of
3 Employee Relations [ADMINISTRATION] shall adopt regulations [PROMULGATE
4 RULES] defining and establishing a uniform beginning and a uniform
5 concluding date for the 12 month periods applicable to leave use and
6 accumulation by officers and employees of state government.

7 * Sec. 4. AS 39.20.320 is amended to read:

8 Sec. 39.20.320. ADOPTION OF REGULATIONS. The director of the
9 division of personnel [AND LABOR RELATIONS] in the Department of
10 Employee Relations [ADMINISTRATION] shall prepare and submit regulations
11 necessary to carry out the intent of AS 39.20.200 - 39.20.330. These
12 regulations shall include provisions for crediting and, if necessary,
13 converting accrued leave when an officer or employee transfers, without
14 break in service, between a department or agency of the state government
15 where he is subject to AS 39.20.200 - 39.20.330 and a department or
16 agency of the state government where he is not subject to AS 39.20.200 -
17 39.20.330. These regulations shall be submitted to the commissioner of
18 employee relations [ADMINISTRATION WITHIN 60 DAYS OF JULY 9, 1978]. The
19 commissioner of employee relations [ADMINISTRATION] shall review the
20 regulations and submit them to the personnel board. The regulations, or
21 any part of the regulations, have the force and effect of law 30 days
22 after they are submitted to the personnel board if not disapproved by
23 the personnel board. Amendments to the regulations shall be prepared
24 and submitted in the same manner, and have the force and effect of law
25 30 days after they are submitted to the personnel board, if not dis-
26 approved by the personnel board. [THE REGULATIONS ADOPTED UNDER AS 39.-
27 20.200 - 39.20.330 RELATE TO THE INTERNAL MANAGEMENT OF STATE AGENCIES
28 AND THEIR ADOPTION IS NOT SUBJECT TO THE PROVISIONS OF THE ADMINISTRA-
29 TIVE PROCEDURE ACT (AS 44.62).]

1 * Sec. 5. AS 39.20.330 is amended to read:

2 Sec. 39.20.330. DEPARTMENTS TO KEEP LEAVE RECORDS. Each depart-
3 ment, office, institution, or agency of the state government shall keep
4 for its files a complete leave record, covering each of its officers and
5 employees, on forms prepared and supplied by the Department of Adminis-
6 tration. These records are subject to annual audit and approval by the
7 director of personnel of the Department of Employee Relations [ADMINIS-
8 TRATION].

9 * Sec. 6. AS 39.23.010 is amended to read:

10 Sec. 39.23.010. CREATION OF COMMISSION; COMPOSITION. There is
11 established in the Department of Employee Relations [ADMINISTRATION] the
12 Alaska Salary Commission consisting of five members appointed by the
13 governor. No member of the commission may be a public officer or em-
14 ployee.

15 * Sec. 7. AS 39.23.030 is amended to read:

16 Sec. 39.23.030. OFFICERS; STAFF. The commission shall select a
17 chairman from among its members annually. The director [OF THE DIVI-
18 SION] of personnel [AND LABOR RELATIONS] serves as ex officio secretary
19 to the commission and provides research, technical and administrative
20 services.

21 * Sec. 8. AS 39.25.030 is amended to read:

22 Sec. 39.25.030. [DIVISION OF] PERSONNEL [AND] BOARD. [THERE IS
23 ESTABLISHED WITHIN THE DEPARTMENT OF ADMINISTRATION A DIVISION OF PER-
24 SONNEL.] There is established within the division of personnel in the
25 Department of Employee Relations a personnel board.

26 * Sec. 9. AS 39.25.130(a) is amended to read:

27 (a) After June 30, 1979 [JUNE 30, 1961], the personnel board, upon
28 written recommendation of the commissioner of employee relations [ADMIN-
29 ISTRATION], may extend the partially exempt service to include any

1 position which was in the classified service on June 30, 1979 [APRIL 19,
2 1960], which in the judgment of the board:

3 (1) involves principal responsibility for the determination
4 of policy;

5 (2) involves principal responsibility for the way in which
6 policies are carried out; or

7 (3) involves responsibilities and duties of a type not sus-
8 ceptible to the ordinary recruiting and examining procedures.

9 * Sec. 10. AS 39.25.130(c) is amended to read:

10 (c) After June 30, 1979 [JUNE 30, 1961], the personnel board, upon
11 written recommendation of the commissioner of employee relations [ADMIN-
12 ISTRATION], may extend the classified service to include any position
13 which was in the partially exempt service on June 30, 1979 [APRIL 19,
14 1960].

15 * Sec. 11. AS 39.25.130 is amended by adding a new subsection to read:

16 (d) An action taken under this section may not alter a collective
17 bargaining unit determined under AS 23.40.090. An action taken under
18 this section may be superseded by a determination of a collective bar-
19 gaining unit under AS 23.40.090.

20 * Sec. 12. AS 39.25.140(a) is amended to read:

21 (a) The director of personnel shall prepare and submit to the
22 commissioner of employee relations [ADMINISTRATION] any proposed amend-
23 ments to the personnel rules for all positions and employees subject to
24 this chapter.

25 * Sec. 13. AS 39.25.140(b) is amended to read:

26 (b) The commissioner of employee relations [ADMINISTRATION] shall
27 review the amendments and submit them to the personnel board.

28 * Sec. 14. AS 39.25.140(c) is amended to read:

29 (c) At the time he submits the amendments to the personnel board,

1 the commissioner of employee relations [ADMINISTRATION] shall, by
2 posting in public buildings throughout the state, give notice that the
3 personnel board has the amendments under consideration. The amendments
4 have the effect of law 30 days after they are submitted to the personnel
5 board if not disapproved by the personnel board. The personnel board,
6 if requested, may hold public hearings on the amendments.

7 * Sec. 15. AS 39.25.150(1) is amended to read:

8 (1) the preparation, maintenance, and revision by the direc-
9 tor of personnel, subject to approval by the commissioner of employee
10 relations [ADMINISTRATION] and the personnel board, of a position classi-
11 fication plan for all positions in the classified and partially exempt
12 services; in the position classification plan all positions shall be
13 grouped together into classes on the basis of duties and responsibili-
14 ties; the position classification plan shall include for each class of
15 position an appropriate title, a description of the duties and responsi-
16 bilities, training and experience qualifications, and other necessary
17 position specifications;

18 * Sec. 16. AS 39.25.153(b) is amended to read:

19 (b) The personnel officers specified in (a) of this section are
20 authorized to adopt regulations providing for the activities specified
21 in AS 39.25.150(1) - (10), (13) - (18), (20) and (22) for those classes
22 of employees which are unique to the respective departments specified in
23 (a) of this section. The initial determination as to which classes of
24 employees are unique within the respective departments shall be made by
25 the personnel officer in consultation with the commissioner of his
26 department and subject to the approval of the director of personnel
27 within the Department of Employee Relations [ADMINISTRATION. REGULA-
28 TIONS ADOPTED UNDER THIS SUBSECTION RELATE TO THE INTERNAL MANAGEMENT OF
29 STATE AGENCIES AND THEIR ADOPTION IS NOT SUBJECT TO THE ADMINISTRATIVE

1 PROCEDURE ACT (AS 44.62)].

2 * Sec. 17. AS 39.35.050(a) is amended to read:

3 (a) The commissioner shall appoint an administrator in charge of
4 the detailed affairs of the system. [THE COMMISSIONER MAY APPOINT THE
5 PERSONNEL DIRECTOR OF THE PERSONNEL DIVISION OF THE DEPARTMENT OF ADMIN-
6 ISTRATION AS THE ADMINISTRATOR.]

7 * Sec. 18. AS 44.15.010 is amended by adding a new paragraph to read:

8 (18) Department of Employee Relations.

9 * Sec. 19. AS 44.17.070 is amended to read:

10 Sec. 44.17.070. REORGANIZATION BY DEPARTMENT HEADS. Subject to
11 state personnel laws and the approval of the commissioner of employee
12 relations [ADMINISTRATION], the principal executive officer of each
13 department may, in the interest of improved management, abolish unneces-
14 sary offices and positions, transfer officers and employees between
15 positions, and change the duties, titles, and compensation of existing
16 offices and positions.

17 * Sec. 20. Regulations formerly adopted under AS 39.20.200 - 39.20.330
18 and AS 39.25, including the personnel rules, shall be published in the Alaska
19 Administrative Register and Code as they exist on June 30, 1979 and are con-
20 sidered to have been adopted in accordance with the Administrative Procedure
21 Act (AS 44.62) and this Act. After June 30, 1979, the adoption of regula-
22 tions and amendments to regulations under AS 39.20.200 - 39.20.330 and
23 AS 39.25 is subject to the Administrative Procedure Act.

24 * Sec. 21. TRANSFER OF FUNCTIONS. (a) The Department of Employee Rela-
25 tions is vested with the powers and duties formerly held by the division of
26 personnel and labor relations and the division of equal employment oppor-
27 tunity in the Department of Administration.

28 (b). Appropriations, records, equipment, and other property of the
29 division of personnel and labor relations and the division of equal employ-

1 ment opportunity in the Department of Administration are transferred to the
2 Department of Employee Relations.

3 (c) All litigation, hearings, investigations, and other proceedings
4 pending under a law amended or repealed by this Act, or in connection with
5 powers and duties transferred by this Act, continue in effect and may be
6 continued and completed notwithstanding an amendment, repeal, or transfer
7 made by this Act. Regulations, rules, and orders adopted under a law amended
8 or repealed by this Act remain in effect until they expire by their own terms
9 or until revoked, vacated, or otherwise modified as provided by law. Con-
10 tracts existing on July 1, 1979 which were made by a state agency whose
11 powers and duties have been transferred to the Department of Employee Rela-
12 tions remain in effect according to their terms.

13 * Sec. 22. AS 39.25.040, 39.25.140(e), and AS. 44.21.020(9) are repealed.

14 * Sec. 23. This Act takes effect July 1, 1979.
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DATE: 3/27/79LOCATION: TelephoneMOTION: Release of commission's overview report to
the legislature.

MEMBER	YES	NO	ABSTAIN	ABSENT	SUB-COMMITTEES
Representative Buchholdt Representative Miller	✓				MS/CB
Myrt Charney Ken Humphreys(x)	✓				CCR
Representative Eliason				✓	CCR
Don Fisher				✓	CCR
Frank Flavin Paddy Moriarity					CCR CE
Commissioner Hudson (Pat Hunt)	✓				MS/CB
Pat Hunt Ken Kareen			✓		MS/CB CCR CE
Lynda McCurry	✓				MS/CB CCR & CE
Representative McKinnon Representative Smith					CE
Pat Murphy Darlene Howard	✓				MS/CB CE
Greg O'Claray Homer Sarber	✓				MS/CB
John Pugh Bob Mourant	✓				CCR MS/CB
Senator Ray	✓				M,C&C
Ken Spray	✓				M,C&C
~~Niel Thomas~~ ~~Janet Bradley~~					M,C&C

AMENDMENTS:



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REPORT OF THE
BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
TO THE
ELEVENTH ALASKA STATE LEGISLATURE
SECOND SESSION

Senator Bill Ray
Chairman

January 9, 1980

MEMBERSHIP OF THE
BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

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Chairman, Classification, Certification and
Recruitment Subcommittee

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DOT/PF, Vice Chairman

Vice Chairman, Classification, Certification and
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Affairs Agency

Alternate: Ken Humphries, Senior Policy Analyst*

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Vice Chairman, Categories of Employees Subcommittee

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Lynda McCurry, Personnel Officer, Department of Labor,
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Department of Public Safety*

Representative Joseph McKinnon*

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Patrick Murphy, Executive Director, Alaska Public
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John Pugh, President, Alaska Public Employees Association
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SUMMARY OF RECOMMENDATIONS

The Blue Ribbon Commission on the State Personnel Act recommends that:

1. The merit principles identified during the state constitutional debates should be specifically set forth in the State Personnel Act. These principles are fundamental to fair employment and should be recognized and adopted. (Page 11)
2. If any positions are removed from collective bargaining units, that they remain in the classified service but be prohibited from collective bargaining activity. (Page 15)
3. The legislature should re-examine the placement of positions in the exempt and partially exempt services. Where necessary, statutes should be amended to correct any errors identified. (Page 17)
4. If the legislature wishes to increase its role in the collective bargaining process, it do so by formally considering and approving or rejecting the agreements entered into between the bargaining units and the employer before they take effect. The agreements would be presented to the legislature by a specified date. The legislature would then be required to consider and act on the agreements within 30 days. The law should state that the legislature could not adjourn before having acted. If the agreements were ratified by the legislature, they would become binding contracts. (Page 18)

The legislature consider only the monetary terms of the collective bargaining agreements. (Page 19)

5. An alternative system be developed to reward outstanding employees if the legislature decides to limit eligibility for the merit increase program. (Page 23)
6. Cost of living adjustments be considered on an annual basis to determine whether across-the-board increases or percentage increases are more appropriate based on the current economic situation. (Page 24)

7. Legislative Audit Division review the membership and the functions of the Personnel Board, the Labor Relations Agency and the Public Employee Retirement System Board and report to the legislature on the results of its audit. (Page 26)

The commission finds that the Labor Relations Agency can work satisfactorily within its present staff and structure as long as its members are, and continue to be, completely neutral and the workload of the agency does not substantially increase. (Page 26)

8. The commission continues to support the elevation of personnel and labor relations to departmental rank. In addition, as an interim measure, the commission recommended to the Department of Administration that the department be restructured into two major divisions, one for personnel related matters, and the other for administrative matters, each division to be headed by a Deputy Commissioner. The department has recently initiated steps to accomplish this reorganization. (Page 28)

9. The legislature direct the Division of Budget and Management to immediately prepare and distribute a procedures manual to assist personnel officers and other managers in understanding the process of authorizing new or reclassified positions and to identify whether to consult the Division of Budget and Management or the Division of Personnel when questions arise. (Page 30)

The Division of Personnel continue to extend responsibility to departments for classifying positions and the commission encourages the division to consider granting departmental personnel offices full authority as well as responsibility in that area. (Page 31)

10. All of the state's registers remain open continuously and that the four positions necessary to do the added work be funded by the legislature. (Page 35)
11. The Division of Personnel develop a system in which only one application is necessary from each applicant for each class series for which the applicant wishes to be considered. (Page 35)

12. The majority of the commission recommends that the veterans' preference system be changed to award a five-point bonus to veterans for a three-year period following their discharge from the armed services of the United States. (Page 36)

The preference system for disabled veterans should not be changed. (Page 37)

13. The state continue its efforts to establish a block scoring system for the ranking of applicants. (Page 39)
14. The Division of Personnel review the justifications furnished by departments when hiring below the top five on the register, and that the division be authorized to forbid hiring under the "unique or unusual circumstances" exception when the department cannot substantiate the reasons. (Page 40)
15. Each of the top five interested applicants be advised that they may request a meaningful interview with the person responsible for making the hiring decision prior to the final selection for the position. (Page 40)
16. Each performance evaluation which includes a recommendation that the employee not be rehired be reviewed by the staff of the Division of Personnel prior to its becoming part of the employee's personnel file to establish that the circumstances warrant the recommendation given. (Page 45)
17. Either the Division of Personnel or the Legislative Budget and Audit Committee periodically audit the operation of the personnel system of the state. The results of that audit should be presented to the legislature. (Page 47)
18. A graduated system of penalties be devised to include penalties appropriate to the seriousness of the offense. This should be accompanied by policies indicating when it is appropriate to admonish an employee, when suspension should be considered, when a fine should be assessed, and in what cases the more severe dismissal or involuntary demotion should be imposed. (Page 49)

19. A comprehensive revision of all of the laws affecting personnel should be undertaken by the Blue Ribbon Commission so that the State Personnel Act is the authority for all personnel-related matters.
(Page 50)
20. The Personnel Rules should be revised to reflect existing employment practices and to indicate to what extent the Rules have been affected by collective bargaining. This review should be undertaken by the Blue Ribbon Commission after it completes its revision of the State Personnel Act, so that the Personnel Rules will be in accordance with the revised act. (Page 50)

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INTRODUCTION

The Alaska State Legislature authorized the formation of the Blue Ribbon Commission on the State Personnel Act in 1978 to study and refine the State Personnel Act and to investigate the decentralization of the selection process and problems in contracting for services. The Resolution noted that the State Personnel Act had not undergone substantive revision since its enactment and was consequently vastly out of step with personnel developments of the last decade, and that the advent of collective bargaining and the tremendous growth in the number of state government employees required refinement of the personnel system, all of which was impossible for the legislature to do during the session because of the time required. Legislative Resolve No. 27, 1978.

The commission held extensive public hearings in the fall and winter of 1978-1979 to identify problems in the personnel system. It made its report to the 11th Alaska State Legislature First Session in March, 1979. In response to the commission's request for additional time to study the complex, inter-related problems which it had identified, the legislature funded the commission for a second year.

The commission's membership is representative of all persons and groups vitally concerned with the personnel system. In addition to the legislators who serve on the

commission, the membership includes representatives from the public employee unions and associations, from the Department of Administration and the Division of Personnel and Labor Relations, and from the Ombudsman's office as well as managerial state employees and a public member.

The commission formed three subcommittees for the purpose of reviewing and resolving the problems identified. The subcommittees--Classification, Certification and Recruitment; Merit System/Collective Bargaining; and Categories of Employees--propose their recommendations to the full commission for formal action. Membership overlaps, so that each is advised of the approach the other subcommittees are taking on issues. The subcommittees and the full commission have held public hearings and have solicited written testimony to insure the widest possible participation from the citizens of Alaska.

The task has been challenging. Frequently, conflicting goals preclude reaching an ideal solution, and compromise becomes necessary. There are several areas where the commission is not prepared to make recommendations at this time. The commission therefore requests that it be extended for another year. The commission believes it is vital that the State Personnel Act be redrafted so that all laws concerning personnel management are coordinated. The present act has been in existence for almost 20 years. The commission hopes that its recommendations for changes will be equally well-considered and solid.

The commission urges the legislature to consider carefully the information in this report and to take the necessary action to implement its recommendations so that Alaska's personnel system will more nearly reach the goal of being responsive, equitable and efficient.

CHAPTER I

CATEGORIES OF EMPLOYEES

The State Personnel Act creates a number of different categories of employees. Three services are established: the exempt, partially exempt and classified services. Within each service there are different kinds of appointments, including permanent (full-time, part-time, or seasonal), temporary (nonpermanent after January 1, 1980), and, for the classified service, provisional and probationary. In addition to obtaining services through its own employees, the state also contracts with private firms for services. Issues arise concerning the standards used for the placement of positions in the different services and concerning the standards used for deciding whether to contract for services or hire state employees. The question of moving some exempt and partially exempt positions into the classified service is considered in Chapter II, "Transferring Positions to the Classified Service," page 16.

EXEMPT SERVICE

The exempt service is designed for those positions which require the greatest degree of responsiveness to the policies and philosophies of the state's chief executive as well as for those positions which are properly outside the control of the executive branch. Exempt positions are not subject to any of the requirements of the State Personnel Act or the Personnel Rules. Commissioners of the departments,

elected officials and legislative and judicial branch employees are placed in the exempt service by statute. For a copy of the statute see Appendix A. For a list of exempt positions in state government see Appendix B.

The State Personnel Act lists positions in the exempt service, but does not set out criteria for adding future positions to that service. Furthermore, positions in some special commissions and boards are placed in the exempt service by the substantive statutes which create the commission or board. No cross-reference is made to the State Personnel Act, so these positions are hard to identify when considering the composition of the exempt service.

PARTIALLY EXEMPT SERVICE

Positions in the partially exempt service are subject to the State Personnel Act and the Personnel Rules only as specifically stated in the Act. Partially exempt employees are not subject to the selection methods required for classified positions, nor are they eligible for a hearing by the Personnel Board in cases of dismissal, demotion or suspension. Their permissible political activities are not as restricted as those of classified employees. The limitations on emergency, nonpermanent and provisional appointments do not apply to partially exempt positions. They are part of the state's classification plan, and their salaries are set according to the pay plan. Incumbents are subject to the rules concerning performance evaluations and merit increases and they may be suspended for disciplinary reasons.

The State Personnel Act places assistant commissioners, some division directors, attorney members of the staff of the Department of Law, one private secretary for each commissioner, and employees of the offices of the governor and the lieutenant governor in the partially exempt service. For a copy of the statute see Appendix C. For a list of partially exempt positions in state government see Appendix D.

The Personnel Board may add positions to the partially exempt service, provided they meet the criteria set out in the State Personnel Act. It has no authority to add positions to the exempt service. The board may place positions which involve principle responsibility for the determination of policy or the way in which policies are carried out, or those whose responsibilities and duties are of a type not susceptible to the ordinary recruiting and examining procedures of the state's classified service, in the partially exempt service. AS 39.25.130.

The commission reviewed the positions placed in the partially exempt service and considered the question of adding other positions to the service. Employees responsible for collective bargaining contract administration may find a conflict between those duties and their own union membership. Alternatives discussed included placing these positions in the partially exempt service or leaving them in the classified service but prohibiting them from bargaining. See Chapter II, "Collective Bargaining for Managers," page 13.

CONTRACTING FOR SERVICES

The Division of Personnel is not involved in the state's contracting for services practices. The system is monitored by the Division of Finance of the Department of Administration. Their review is limited to a fiscal analysis which focuses on whether it is economical this year to contract for these services. The state does not attempt to identify whether, in the long run, the state would be better served by adding employees to its staff to perform those services.

The commission expects that the civil liability section in the nonpermanent hiring law, which the legislature passed last session, will cause some state program managers to contract for services which were previously provided by temporary employees. Therefore, it becomes more important for the state to fully consider its decision to contract rather than to create permanent, part-time or seasonal positions. In the past, the legislature has felt that temporary positions were used to evade fiscal responsibility. It is important that budgets prepared for the legislature accurately forecast the departments' staffing needs so that the legislature will be less inclined to randomly reduce requests, with possible illogical results to essential or deserving programs.

CHAPTER II

MERIT SYSTEM/COLLECTIVE BARGAINING

In 1961, the legislature enacted the State Personnel Act to govern the employment system of the state. Three years later, ferry system employees were granted the right to organize and form collective bargaining units to negotiate with the state concerning their wages, hours and working conditions. AS 23.40.010 - 060. Then, in 1972, collective bargaining rights were extended to almost all employees of the state with the adoption of the Public Employment Relations Act (AS 23.40.070 - 260). No comprehensive revision of the State Personnel Act has been undertaken to reflect the changes brought about by collective bargaining, despite the fact that collective bargaining has fundamentally changed the relationship between the state and most of its employees.

MERIT PRINCIPLES OF EMPLOYMENT

The Alaska Constitution directs that: "The legislature shall establish a system under which the merit principle will govern the employment of persons by the state." Article XII, Section 6. During the constitutional debates concerning that section, delegates identified several principles which they considered important components of a merit system, including:

- Selection and retention of employees based on ability, including examination for positions
- Equal treatment of those seeking employment

- Regular integrated salary programs based on the nature of the work performed
- Selection and retention of one's position to be secure from political influences
- Tenure for employees during the time that they perform well

The delegates left to the legislature the task of structuring the system for the state.

The debates also establish that the delegates recognized a need for different kinds of employees. The majority of regular employees would be covered by the protections and restrictions of a merit system. Those holding positions of a sensitive nature close to the chief executive should reflect the political philosophy of the Governor. These positions should be exempt from the protections and restrictions of the classified service.

The State Personnel Act incorporates the concepts of the constitutional convention debates. It provides for exempt, partially exempt and classified service employees. The merit system implemented by the Personnel Rules includes provisions on each of the topics which had been identified. The Act provides that the Rules include, among other items:

- (1) a classification plan in which positions are grouped on the basis of duties and responsibilities;
- (2) a pay plan, based on the classification plan, which provides fair and reasonable compensation on the basis of like pay for like work;
- (3) Employee selection methods including open competitive examinations to test the fitness of applicants;
- (4) promotion of qualified candidates whenever practicable and in the best interest of the state;

- (5) eligible lists with applicants ranked according to their relative performance on examinations;
- (6) hearings on dismissal, demotion and suspension; and
- (7) prohibitions against certain political activities.

However, these are not specifically identified as the "merit principle" of the constitution.

With the advent of bargaining, the union contract is the primary source of information for unit members' rights. The State Personnel Act applies only when the contract is silent on a topic or when the contract is unclear and the past practices of the employer need to be considered to interpret a vague term. Therefore, changes to the State Personnel Act actually affect a very limited number of state employees directly.

By the Act itself, exempt employees are not subject to the rights and restrictions imposed on other employees. Partially exempt employees are covered only to the extent specifically stated in the Personnel Rules. Classified employees are almost entirely organized. In fact, there are only five employees in the state who are members of the classified service who are not included in bargaining units. These five are: the Deputy Director for Personnel, the Deputy Director for Labor Relations, the Chief for Recruitment and Examining, the Chief for Classification and Pay, and the Research Manager, all within the Department of Administration.

The Public Employment Relations Act requires that contracts negotiated with employee organizations must

maintain merit system principles among employees. AS 23.40.070(3). Since these principles are not defined in the statutes, they are open to interpretation during each bargaining session.

Federal law requires that state programs receiving federal grants-in-aid must abide by the federal merit system standards for employment. The standards are set out in 5 CFR Part 900, Subpart F, 1979. They state that programs must meet the following six principles:

- I. Recruiting, selecting, and advancing employees will be on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- II. Equitable and adequate compensation will be provided.
- III. Employees will be trained as needed to assure high-quality performance.
- IV. Employees will be retained on the basis of adequacy of their performance and provision will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.
- V. Fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap or other nonmerit factors and with proper regard for their privacy and constitutional rights as citizens will be assured.
- VI. State and local governments will inform their employees of their political rights and prohibited practices under the Hatch Act.

The commission believes that the merit principles identified during the constitutional debates should be specifically set forth in the State Personnel Act. These principles are fundamental to fair employment and should be recognized and adopted.

MANAGEMENT RIGHTS IN BARGAINING

Management rights clauses identify those topics which are considered to be inherently managerial and on which a bargaining unit cannot require an employer to negotiate.

The P.E.R.A. permits bargaining units to negotiate for wages, hours, and terms and conditions of employment. AS 23.40.070. The act defines terms and conditions of employment as including hours, compensation and fringe benefits, and an employer's personnel policies affecting the working conditions of employees, but as excluding "the general policies describing the function and purposes of a public employer." AS 23.40.260(7). The requirement that contracts adhere to the merit principles of employment also limits the scope of what may be bargained. AS 23.40.070(3). Although there has been no court decision on the question, the present administration believes that the Public Employees Retirement System prohibits bargaining on the benefits provided, although the marine unions participate in their own Taft-Hartley trusts.

Collective bargaining has created inconsistencies in the working conditions and compensation of state employees, depending on the unit to which they belong. Different units have chosen to make different trade-offs during negotiations, and therefore, there are a variety of health plans, pay plans, rights to overtime compensation, eligibility for merit increases, and promotional systems which apply to

state employees. Some state employees are selected through hiring halls provided for in collective bargaining contracts.

If the legislature believes that it is important that there be one system which applies equally to all state employees on a particular topic, then it may wish to either exclude the topic from bargaining by amending the definition of the "terms and conditions of employment" to exclude that topic, or it may wish to enact a management rights clause which would include the subject within its scope.

Topics which might be addressed in a management rights clause include the functions and programs of the employer, its overall budget, the selection, promotion, transfer, assignment and retention of its employees, appropriate disciplinary actions against employees for just cause, and the use of technology.

Consideration should be given to the fact that the P.E.R.A. applies to local government employees as well as to state employees when the legislature decides whether to amend the act.

The commission believes that further investigation and study is needed before it is prepared to make any definitive recommendations concerning management rights.

COLLECTIVE BARGAINING FOR MANAGERS

The P.E.R.A. permits public employees to organize and to negotiate with their employer. "Public employee" is defined as "any employee of a public employer, whether or not in the classified service of the public employer, except elected or

appointed officials or teachers or noncertificated employees of school districts." AS 23.40.260(5). Although the definition does not limit the right to bargain to employees in the classified service, only classified service employees of the state and marine transportation employees, teachers and University of Alaska employees (who are placed by statute in the exempt service) have chosen to form unions or associations. Since the act excludes appointed officials from the definition, a number of the employees in the exempt service are prohibited from collective bargaining.

However, the definition is generous in its scope, and many mid-level management employees are in positions included in the Supervisory Unit of the Alaska Public Employees Association. The extent of employees permitted to bargain in Alaska is greater than in most states, and may hamper management in its collective bargaining negotiations and in the administration of contracts. There are only five employees in the classified service who are not in one of the five bargaining units representing classified employees. All are staff of the Division of Personnel and Labor Relations.

The State Personnel Act places commissioners in the exempt service and deputy commissioners and division directors in the partially exempt service in recognition of the need that the policy-setting state employees be politically responsive to the chief executive. The question of continuing the collective bargaining rights for assistant and deputy directors and the chiefs of certain sections has been

recently posed. See Appendix E for a list of the positions in question. The commission has identified two alternatives, should the legislature wish to remove these positions from bargaining.

We recommend that if any positions are removed from collective bargaining units, that they remain in the classified service but be prohibited from collective bargaining activity. The second, less desirable alternative is to place the positions in the partially exempt service. In addition to removing them from bargaining, this action would end the protections of the Personnel Rules.

The mid-level management positions under consideration should be considered part of the career service of the state. The incumbents must be knowledgeable and skilled in their fields. The selection procedures of the classified service assure selection from among the most qualified applicants. The restraints imposed by the Personnel Rules on political activities and the requirement that discipline and removal from the position be for demonstrated just cause insure that competent employees will be retained and that the continuity necessary for good management is protected.

The commission recognizes that top level management should reflect the political philosophies of the governor, and that it is therefore appropriate for those positions to be either exempt or partially exempt. However, mid-level management positions can be considered as a buffer group between this politically responsive, policy-setting group

and the larger number of state employees responsible for the day-to-day functions, who are granted collective bargaining rights.

Retaining the protections of the classified service for these positions will insure competence and will encourage career state employees with valuable accumulated skills and knowledge of state programs to accept promotion into them. If, on the other hand, the positions are moved to the partially exempt service or exempt service, fewer career employees will risk losing the job security and protection from a change in political administration which is now provided by the classified service to accept a deputy or assistant division director position, at loss to the state of their experience.

TRANSFERRING POSITIONS TO THE CLASSIFIED SERVICE

There are state employees in the partially exempt and exempt services whose duties do not appear to meet the standards for placement in these less-protected and more politically responsive services. It may be appropriate for the heads of the agencies in question to be placed in the exempt or partially exempt service, but the support staff positions appear to belong more logically in the classified service. For a general discussion of the exempt and partially exempt services, see Chapter I.

The entire staff of the Alaska Commercial Fisheries Entry Commission is placed in the exempt service by statute.

AS 39.25.110(15). The entire staff of the Alaska Post-secondary Education Commission is in the exempt service, although the statute only specifically placed the executive director there. AS 14.40.913. A list of exempt state positions may be found as Appendix B. The commission questions the need for all of these employees to be in the exempt service.

There are a number of commissions and agencies whose staff appear to be inappropriately placed in the partially exempt service. These include the Alaska Power Authority, the Alaska Oil & Gas Conservation Commission, the Council on the Arts, the Historical Commission, the Alaska Public Offices Commission and the Human Rights Commission. A list of partially exempt state positions may be found as Appendix D.

The commission recommends that the legislature re-examine the placement of these and other positions in the services. Where necessary, statutes should be amended to correct any errors identified.

ROLE OF THE LEGISLATURE IN COLLECTIVE BARGAINING

Initially, the legislature was responsible for setting the salaries of state employees. With collective bargaining, salaries are negotiated by the administration's bargaining team and the unions or associations representing state employees. The legislature retains its constitutionally-based authority for appropriating money necessary for negotiated wages. The P.E.R.A. states in AS 23.40.215:

The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

Recently, interest in collective bargaining has increased within the legislature, and a more active legislative role in the process has been considered. The cost of negotiated salaries and benefits can substantially affect the fiscal policies of the state.

There are a number of alternatives which the legislature should consider, some with substantial problems. The legislature could take responsibility for negotiating with state employees, either through a committee or through professional staff. This would give the legislature the greatest role in the proceedings, but at the expense of spending considerable time in negotiations. Under this system, administration of contracts would remain the responsibility of the Division of Personnel and Labor Relations.

The legislature could place an observer at the negotiating table. However, negotiating roles are essentially active, and the presence of an observer could disrupt the effectiveness of the negotiating process. If the observer had no authority to make commitments for the legislature, then there would be frustration for all of the participants, since they would feel that whatever agreements were reached would be subject to renegotiation with the legislature at a later time.

The commission recommends that if the legislature wishes to increase its role in the collective bargaining process, it do so by formally considering and approving or rejecting the agreements entered into

between the bargaining units and the employer before they take effect. The agreements would be presented to the legislature by a specified date. The legislature would then be required to consider and act on the agreements within 30 days. The law should state that the legislature could not adjourn before having acted. If the agreements were ratified by the legislature, they would become binding contracts.

If the legislature disapproved an agreement, it would be up to the parties to decide what further action they wished to take. If they chose to renegotiate, they could do so; and if time permitted, the second agreement could be presented to the legislature prior to the end of the session. If the parties were unable to reach a new agreement, the bargaining units could take whatever "job action"--including striking, if permitted under the P.E.R.A.--their membership deemed appropriate. No contract could be entered into without the legislature's approval, so there might be need for a special session to resolve disputes.

The legislature's review could include the entire terms of the contract or it could be limited to the monetary terms. Contracts typically include many provisions on working conditions and other personnel matters--uniforms, parking, access to overtime, safety and health standards, working rules, hours and shifts and the like--which may not interest the legislature. Therefore, the commission recommends that the legislature consider only the monetary terms of the agreement.

Tied into this plan for legislative review could be a requirement that all contracts end on the last day of the

fiscal year--June 30. This would insure, after the system was in place, that there would be a contract in force during negotiations and legislative review. Since all of the contracts negotiated presently contain a clause providing that there will be no strikes during the life of the agreement, there would be additional time if the contracts were not approved before the bargaining units would be able to petition the Labor Relations Agency for strike vote authorization. However, when contracts begin and end has in the past been one of the items negotiated on, and removing this from the scope of bargaining might affect settlements reached on other items.

If the legislature adopts the commission's recommendation for legislative review and action on the contracts, the commission urges that an early date be set for submission of the agreements. Efforts should be made to avoid hampering legislative review with end-of-the-session pressures.

MERIT INCREASES

The Personnel Rules establish a system for merit increases. An employee who has received an overall performance evaluation of "acceptable" or better and who has demonstrated satisfactory service of a progressively greater value to the state is eligible for the award. PR 9 02.21 and 22. The increases are provided for in the state pay plan and are the means by which employees advance from Step A of a

salary range through Steps B to F. The steps beyond F are reserved for time-in-service raises (the longevity increment program).

Merit increases have been the subject of employee negotiations. Most state employees are covered by contracts which adopt the Personnel Rule system. Some of the bargaining units have chosen not to include a merit increase program but rather to provide periodic salary increases for their members based on seniority.

Merit increases are the major alternative open to supervisors for rewarding an employee's outstanding performance. As employees gain experience in positions, they can be expected to provide more valuable services to the state. In theory, the merit increase system rewards an employee only when increased value has been established by the performance evaluations prepared by the supervisor. A seniority system rewards the employee's additional time in service without consideration of the quality of the employee's record. However, if an employee were performing below acceptable standards, a competent supervisor should take appropriate disciplinary action to correct the problem.

The merit increase program does not always operate as intended. Its fairness depends on supervisors' using consistent standards of performance when evaluating employees. In addition, for the past two years, the administration has not requested funds specifically for merit increases in the proposed budget. Any payments of merit increases have been provided from money available from other departmental funds.

Some people believe that having both negotiated salaries provided for in collective bargaining contracts and also in a merit increase system as outlined in the Personnel Rules is a "double dip" for those state employees involved in both systems. As noted above, however, those unions and associations which have chosen not to participate in the merit increase program have had an opportunity to bargain for other kinds of salary increases for their members. In fact, one union contract provides that its members receive a seniority increase after six months of service. The amount of the increase is roughly comparable to the difference between Step A and Step F in the salary plan. It takes five years for an employee to move from Step A to Step F under the merit increase program, provided that increases are granted each year, which is not always the case.

The commission discussed alternatives to the merit increase program. The state might choose to leave salary increases entirely to collective bargaining and repeal the merit increase program. However, this approach would not provide for employees in the partially exempt service who are presently eligible under the Personnel Rules to participate in the program. There are no partially exempt employees in bargaining units. A second alternative would be to provide that no bargaining unit member could receive merit increases. The program could thus be left intact to provide for deserving partially exempt employees.

An alternative to doing away with the merit increase program is to attempt to improve its operation. Departments could be required to develop performance-based standards, using position descriptions as basic criteria for establishing necessary achievements that incumbents should meet. Supervisors would be trained in developing and implementing these standards. This would help to insure that annual personal evaluations were meaningful. Then, merit increases granted on the basis of standard performance criteria would also be valid recognition of performance and not simply rewards for being present at one's place of work.

If the legislature decides to limit the eligibility for the merit increase program, the commission strongly recommends that an alternative system be developed to reward outstanding employees. The state needs to maintain some system which recognizes and rewards exceptional service. Establishment of a system linking performance and compensation can help pinpoint accountability, increase productivity and improve service to the public, thus increasing returns to taxpayers from the salaries they provide to state employees.

A "meritorious service award program" is one alternative. The program could provide a one-time bonus to those employees chosen by an established selection procedure. The sum could be varied, depending on the achievement of the individual in question. The program should recognize examples of outstanding service or special acts or accomplishments. The commission believes that this area needs additional investigation and study.

COST OF LIVING ADJUSTMENTS

Cost of living adjustments are granted in two forms-- either percentage increases in the salaries of all employees or in lump-sum increases for all. In addition, variations of these two basic forms are possible. Those in lower salary ranges can receive greater percentage increases or larger lump-sum increases than those in higher ranges to reflect the fact that in times of inflation, it may be harder for them to remain solvent.

Either system has inherent problems. Across-the-board increases have a tendency to compress salary schedules, thus blurring distinctions between supervisors and their subordinates. Percentage increases have a tendency to expand differentials between the top and bottom of pay scales. The commission recommends that cost of living adjustments be considered on an annual basis to determine which type is most appropriate. In some years, the economic situation may dictate across-the-board increases; and in other years, percentage increases may be more appropriate.

LABOR RELATIONS AGENCY

The duties of the state's Labor Relations Agency are comparable to the National Labor Relations Board. The agency determines the unit in which positions are placed, holds and certifies elections in bargaining units, considers when to permit employee strikes, and determines whether bargaining units or employers have engaged in unfair labor practices. It also has the authority to adopt regulations

necessary to carry out its missions. The agency may appoint mediators to assist in negotiations where impasses have occurred. It is a volunteer agency, which maintains a neutral role in labor relations.

By statute, members of the Labor Relations Agency are the members of the Personnel Board. AS 23.40.260(3). These same three citizens are also, by statute, members of the Public Employee Retirement System Board. AS 39.35.030.

The Personnel Board is responsible for adopting Personnel Rules and for holding hearings initiated by employees in cases of Personnel Rule violations. The number of these hearings has decreased substantially since the advent of collective bargaining. The P.E.R.A. requires that all contracts include procedures for resolving grievances between employees and their employer. These grievance procedures (which do not involve either the Personnel Board or the Labor Relations Agency) cover almost all employee disputes.

The Retirement Board is responsible for reviewing investment of the state's retirement funds and for adopting regulations governing the program recommended by the administrator. The board acts as an appeals board at the request of an employee, a surviving spouse or a beneficiary on decisions made by the administrator, and it prescribes the rate of interest which shall be credited to employee accounts each year. AS 39.35.040.

The commission questioned whether it is necessary to require that all of these boards be composed of the same individuals, as the statutes presently provide. The commission recommends that the Legislative Audit Division review the membership and the functions of the three boards and report to the legislature on the results of its audit.

The commission also considered the staffing situation of the Labor Relations Agency, which is more active than the other two boards. At present, there is a part-time staff assistant whose functions have included conducting hearings for the board, as well as being responsible for the office and paperwork, and an attorney on contract to provide legal advice as needed.

The commission finds that the Labor Relations Agency can work satisfactorily within its present staff and structure as long as its members are, and continue to be, completely neutral and the workload of the agency does not substantially increase.

CHAPTER III

STRUCTURE OF THE PERSONNEL & LABOR RELATIONS DIVISION

The Division of Personnel and Labor Relations is one of seven divisions within the Department of Administration. It is responsible for the operation of the state's personnel system and for representing the state as an employer in collective bargaining matters. The other six divisions are: Administrative Services, Data Processing, Finance, General Services & Supply, Pioneers' Benefits, Retirement & Benefits, and Equal Employment Opportunity.

As the commission reported to the legislature last year, the tasks of the Division of Personnel and Labor Relations and the Division of Equal Employment Opportunity differ significantly from the kinds of tasks of the other divisions within the department. The orientation of the other divisions is towards fiscal matters, and the commissioner of the department must be skilled in those areas. It is less likely that the commissioner will be selected because of his familiarity with labor relations, personnel administration or equal employment laws. The Director of the Division of Personnel and Labor Relations must educate new commissioners on issues concerning the division's activities, and during this time, the Governor is probably less well informed about these topics. Given the significant impact labor relations negotiations have on the state's budget, the commission considered this to be undesirable.

The events surrounding the pay bills during the last regular session and the special session further emphasize the importance of labor relations issues.

The commission recommended that a Department of Employee Relations be created. The functions of the new department would include administering the state personnel system, representing the state in its labor relations activities, coordinating safety and training programs for state employees and coordinating all executive branch activities involving equal employment opportunity in state government.

The commission continues to support the elevation of personnel and labor relations to departmental rank. In addition, as an interim measure, the commission recommended to the Department of Administration that the department be restructured into two major divisions, one for personnel related matters, and the other for administrative matters, each division to be headed by a Deputy Commissioner. The department has recently initiated steps to accomplish this reorganization.

The commission anticipates that the state's experience with this structure for the Department of Administration will justify future creation of a Department of Employee Relations.

CHAPTER IV

PERSONNEL MANAGEMENT

Personnel management is the responsibility of the Division of Personnel and Labor Relations together with the personnel offices in the separate departments. The state constitution requires that the merit principles govern the employment of persons by the state. Article XII, Section 6. The question of what the "merit principle" includes is discussed in Chapter II, "Merit Principles of Employment," page 8.

CLASSIFICATION

DELEGATION OF CLASSIFICATION AUTHORITY

Classification is the process by which a position is assigned to a job class, given a position control number, and assigned the appropriate salary range. The process can be cumbersome, leading to delays in filling positions and in implementing new programs.

Classification of new positions involves some duplication of efforts. Under the present system, the governor's proposed budget sets classifications and salary ranges for all new positions. This information is considered by the legislature in its review. However, the authorized new positions are not necessarily assigned to the classifications approved in the budget.

After the budget has been adopted, the department submits a request for position authorization to the governor's

Division of Budget and Management. The division gives its authorization after ascertaining that the legislature provided funds for the position and that its establishment is consistent with the missions and objectives of the department. The staff time required is minimal, but in the past, departments have encountered delays because Budget and Management placed greater emphasis on other tasks and therefore did not begin work on position authorizations immediately after receiving them.

There are some questions over which both the Division of Personnel and the Division of Budget and Management appear to have jurisdiction. This can lead to confusion for the personnel officer and other managers responsible for the position classification. The commission notes that this confusion and delay has led to the frustration of legislatively enacted programs in the past. Therefore, the commission recommends that the legislature direct the Division of Budget and Management to immediately prepare and distribute a procedures manual to assist personnel officers and other managers in understanding the process and to identify which agency to consult when questions arise.

After the Division of Budget and Management authorizes the establishment of the position, then the Division of Personnel examines the proposed classification to decide whether the department has placed the position in the most appropriate job class. If so, it approves the placement, and the department can then proceed to fill the position. If the division does not agree with the department, then

considerable time can be spent while they discuss the matter and come to an agreement.

The Division of Personnel has begun to share authority for assigning classifications with some personnel offices in the departments. The department staff is responsible for determining the proper classification for a new or changed position. The division routinely approves the department's decisions without reviewing each step taken by the department. This sharing of responsibility serves to speed up the implementation of new programs and to aid necessary restructuring of existing programs.

The commission recommends that the division continue to extend responsibility for classifying positions to departments and encourages the division to consider granting departmental personnel offices full authority as well as responsibility in that area. This is an area that needs further investigation. Care should be taken that the departmental personnel office staff are trained in the standards to be applied. With an increase in delegation of authority, the post-auditing activities of the Division of Personnel must be expanded so that mistakes will be identified and corrected quickly. The division will continue to be responsible for insuring that comparable positions are placed in the same classification, regardless of the department in which they occur.

CLASSIFICATION SYSTEM REVIEW

The state currently has 1,281 job classifications in the classified service. During the past year, the Division of Personnel has eliminated 186 classifications either by merging existing classes or by eliminating obsolete ones. The commission has heard testimony both that the state has too many classifications with unnecessary distinctions between different classes and that present classifications are too broad, making it difficult to find applicants who are qualified for a vacancy on the register.

In addition, the commission has heard that although supervisors are directed to review position classifications each year, existing positions are not properly classified. The duties of positions change over time, but the positions may not be reclassified, particularly when the appropriate new classification is set at a lower salary range than the present one. The commission discussed recommending that a comprehensive review of the classification system be undertaken to consider both of these questions. While most commission members believed that a study could be beneficial, some felt that who performed the study was crucial to its usefulness.

These members felt that contracting with a private firm for this information would be expensive and would not provide results which could be implemented by the state. They explained that other government entities which have used reputable firms have discovered that implementing the

recommendations led to chaos. Personnel management for governments is different from private industry systems, and this difference was apparently not appreciated when the private firms' recommendations were prepared. Those commission members who opposed recommending the study did so on this ground.

The Division of Personnel and Labor Relations has the authority, but not the staff, to perform this kind of audit. In addition, since they are part of the existing system, some commission members considered that while they should be closely involved in the preparation of the materials, they should not have the overall responsibility for the report and recommendations.

The commission members who recommended that the study be performed thought that the state could receive the results of the study and then evaluate whether any attempt should be made to implement the proposals as presented. They considered that it was important for the state to know whether the classification system is viable and reasonably accurate. The commission presents these differing views to the legislature for its consideration.

If the legislature decides to authorize a thorough review of the classification system, the information gathered by the audit could be used to develop comprehensive classification guides. These guides would help establish and maintain uniformity in the classification of positions, particularly if departments are granted greater independence in this area.

A comprehensive classification guide identifies the level of responsibility expected to be exercised by employees of a particular job classification. It would identify the differences between the different steps in a job series (Accountant I, II and III for example). The commission is concerned about the disparity of responsibility for positions within the same job class, particularly in the Administrative Assistant and Administrative Officer series.

SELECTION

REGISTER CLOSURES

During 1978, the Division of Personnel received some 60,000 applications from an estimated 28,000 applicants. The staff of the Recruitment and Examining Section spent an average of only 12½ minutes on each application, rating the applicant's training and experience and recording the resulting score. This is not enough time for a thorough review. However, if they spent more time on each application, they would not be able to process all the applications in a timely fashion. In order to limit the number of applications received, the division closed some of the registers. The division selected registers on which sufficient applicants were listed to meet the state's expected needs. The division planned to open each register for a period of 30 days at least once every year.

Commission members were concerned that closing the registers denied Alaskans the opportunity to compete for

jobs in the state and that the best qualified candidate interested in an opening might be unable to apply for the position. While recognizing that the division's workload is excessive, the commission believed that another solution should be found. The Director of the Division of Personnel and Labor Relations advised the commission that four additional positions would be necessary to handle the expected workload if all registers remain open continuously. Accordingly, the commission recommends that the legislature fund these positions and that all registers remain open to new applicants.

MULTIPLE APPLICATIONS

An applicant who wishes to be considered for a number of positions with the state must submit a separate application for each. The Division of Personnel explained that separate applications are necessary because the raters evaluate applications on a production-line basis for each job classification rather than rating one individual for numerous classes. This method conserves staff time because it alleviates the problem of organizing evaluation materials repeatedly for each application. It takes more time to rate all of the applications from one individual and then rate all from another person than it takes to rate all those applying for one job classification and then changing the rating guides to evaluate all those applying for the next job class.

The commission considered that it was burdensome to ask applicants to provide numerous applications, and urges the Division of Personnel

and Labor Relations to develop a system in which only one application is necessary for each class series (e.g. Accountant, Supply Clerk, or Administrative Officer series). The division has indicated that it is investigating a computer system to handle applications for positions in the clerical classes. In this proposed system, only one application would be filed by each applicant. The commission endorses the division's approach.

VETERANS' PREFERENCE SYSTEM

After applications are rated for training and experience, the division may add additional points to the applicant's score in two situations. Current state employees receive employee credits based on their length of service and on the quality of their performance as established by their yearly performance evaluations. Veterans receive additional points based on their previous service to the nation.

The veterans' preference system is created by statute. AS 39.25.150(23). A veteran is entitled to five additional points each time he or she applies for employment not within the area of promotion, provided that the individual meets the minimum qualifications of the position. Disabled veterans are entitled to a ten-point bonus.

The majority of commission members believe that while the state should recognize the service which veterans provided to the nation by granting some advantage to them when applying for state employment, the present preference system is too extensive. The majority recommend that the system be changed to award a five-point bonus to veterans for a three-year period following

their discharge from the armed services of the United States. This proposed three-year limitation on the exercise of these rights is equitable since it provides a reasonable period to assist those discharged from military service to readjust to civilian life and establish themselves in the civilian work force. The commission recommends that the preference system for disabled veterans remain as it is.

The commission also notes that the legislature has not acted to establish a date for the ending of the hostilities in Vietnam for the purposes of the veterans' preference system.

RELEVANT WRITTEN EXAMINATIONS

The commission received a number of complaints that the written examinations given to applicants were not job-related. Federal and state laws require that tests be constructed to fairly rate applicants. The state must be able to demonstrate that those who perform best on the tests are most likely to perform best on the job. While supporting the concept of fair, relevant tests, the commission believes that there is more than adequate legislation in existence regulating employment examinations. Therefore, the commission makes no recommendations to the legislature on this issue.

BLOCK SCORING OF APPLICATIONS

After applications are scored, the names of successful applicants are placed on registers in order of the score they received. The state has traditionally used a Rule of Five.

The top five interested applicants on a register and all who tie with the fifth score must be considered for a position before an agency may consider anyone below that group. The agency must also justify any selection below the top five by establishing that there were unique or unusual circumstances which made the person selected more qualified for that particular position than the others who ranked above him or her.

Commission members found that in some instances, the qualifications of the first five applicants were not significantly different from the next group. For registers with a large number of applicants, five is an unreasonably small number. In other cases, the first three applicants may be significantly more qualified than the remaining applicants in the top group.

The Division of Personnel has begun to move towards a system of block scoring some registers. In block scoring, the division reviews the performance of previous applicants to determine how their raw scores group together. Dividing lines and standard scores are established for the different groups. Then raw scores are converted to standard scores. All eligibles are ranked according to their final scores. Eligibles with the same final scores have the same rank. Therefore the highest rank certified most often exceeds five eligibles qualified for appointment. This approach gives more flexibility to the Rule of Five, since all those whose raw scores are closely similar will fall within the

same rank and be entitled to equal consideration. The commission recommends that the state continue its efforts to establish a block scoring system for the ranking of applicants.

REVIEW OF "UNIQUE OR UNUSUAL CIRCUMSTANCES"

The Personnel Rules permit selection of an applicant who scores below the top five interested and available candidates for a position in "unique or unusual circumstances." In most cases when a department wishes to select an eligible person ranked lower than fifth on the list, it must record the circumstances justifying the appointment and file a copy with the Division of Personnel. The full responsibility for the appointment lies with the department. The division is not directed by the Personnel Rules to review or evaluate the explanation given. PR 5 02.4.

For positions subject to the Federal Standards for a Merit System of Personnel Administration, the procedures are more stringent. The Director of the Division of Personnel must grant approval of the criteria for possible selection of an applicant ranking below the top five prior to the department's receiving the register showing qualified applicants. The department must then record an evaluation of the applicant selected and of each applicant standing above him or her based on the unique or unusual circumstances which justified selecting below the top five. The person selected must rank among the top five available applicants based on the duties of the position. PR 5 02.5. For a discussion of the Federal Standards, see Chapter II, "Merit Principles of Employment," page 8.

Because there is no review of the department's justification for hiring below the top five applicants for most positions, the system permits abuse. The commission recommends that the Division of Personnel review the justifications furnished by departments, and that the Division be authorized to forbid hiring under the "unique or unusual circumstances" exception to the Rule of Five when the department cannot substantiate the reasons.

JOB INTERVIEWS

The agency which has a vacancy is responsible for the final selection from applicants on the register. The agency requests the appropriate register from the Division of Personnel, notifies the eligibles of the open position, and asks whether they wish to be considered. Those interested respond, and the agency then usually selects from the top five interested in the position. Frequently, agencies fill positions without any further communication with the unsuccessful applicants. When this happens, those who have expressed an interest may question the agency's fairness and the criteria used for selection.

The commission recommends that each of the top five interested applicants be advised that they may request a meaningful interview with the person responsible for making the hiring decision prior to the final selection for the position. The interview may be in person or by telephone. Except in unique cases any travel expenses should be the responsibility of the applicant. This recommendation does not address the question of interviews for the top applicants on registers which use a block