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The Impact of Collective Bargaining on the Civil Service Merit System in Oregon

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THE IMPACT OF COLLECTIVE BARGAINING
ON THE CIVIL SERVICE MERIT SYSTEM
IN OREGON

by

DAVID K. BLANCHARD

A dissertation submitted in partial
fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY
in
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Portland State University

1994

DISSERTATION APPROVAL

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ABSTRACT

An abstract of the dissertation of David K. Blanchard for the Doctor of Philosophy in Public Administration and Policy presented April 29, 1994.

Title: The Impact of Collective Bargaining on the Civil Service Merit System in Oregon

This study examines the impact of collective bargaining on the civil service merit system in the State of Oregon. Four topics of current interest are explored. The first is a discussion of the status of collective bargaining and the civil service merit system legislation. The second topic is an analysis of the extent to which the day-to-day administration of public sector personnel functions is determined by the relative influence of collective bargaining agreements and civil service rules. The third is the impact of the collective bargaining model on the integrity of the merit principle. The final topic addressed by this study is the implication of the relationship between collective bargaining and civil service for the effective administration of public sector personnel systems in the future.

This research utilized a multiple methods design. The data collection methodology involved two approaches. The first was a document review of state statutes, administrative rules, Employment Relations Board orders, and court decisions

applicable to the civil service and collective bargaining. The second approach to data collection employed a written survey designed to solicit the opinion of personnel administrators and others in a position to have an opinion concerning the influence of collective bargaining within their respective jurisdictions. Both qualitative and quantitative methods of data analysis were employed to interpret the data. Qualitative analysis of historical documents yielded descriptive information pertaining to such factors as the proliferation of collective bargaining legislation and the rationale behind such legislation. Quantitative survey data were summarized through the use of descriptive statistics. In addition, qualitative survey data were analyzed using techniques of narrative description and content analysis, which were applied to the open ended survey responses and interview data. A combination of quantitative and qualitative techniques were used in tandem with the expectation that such an approach would contribute to a more thorough investigation of the research question and lead to a better understanding of the impact which collective bargaining legislation may have had on the civil service merit system than would the use of either technique alone.

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INTRODUCTION

RESEARCH QUESTIONS

The purpose of this study is to explore the impact collective bargaining has had on the civil service merit system (CSMS) in the State of Oregon. To answer this question, the study explores four topics of current interest relative to the merit system and collective bargaining models of public personnel administration.

The first topic of this study is a discussion of the current status of collective bargaining legislation and the civil service merit system. The purpose of this appraisal is to describe the status of Oregon's civil service merit system and illustrate the influence that collective bargaining legislation, Employment Relations Board (ERB) orders, and court decisions have had on the changes made to that system.

The second topic addressed by this study is an analysis of the extent to which the day-to-day administration of public sector personnel functions is determined by the relative influence of collective bargaining agreements and civil service rules. The purpose was to determine what, according to practitioners, has been the practical effect of any impact which collective bargaining may have had. This is accomplished by means of a survey completed by 90 personnel administrators at the county and city level of government.

The third topic which this study explores is the impact of the collective bargaining model on the integrity of the merit principle. At the heart of this issue is

the question of the compatibility of the civil service and collective bargaining systems and the principle of merit.

The final issue addressed by this study is the implication of the relationship between collective bargaining and civil service for the effective administration of public sector personnel systems in the future. Having observed the development of the civil service merit and collective bargaining systems of public sector employment relations to the present, what might be the future course of development? Do the two models, civil service/merit and collective bargaining, present inherently conflicting paradigms of personnel administration as some writers have suggested or are they compatible, perhaps even complimentary, systems?

DEVELOPMENT OF THE PRESENT STUDY

Lack of Prior Empirical Studies

The need for this study stems from the fact that there has been very little empirical research undertaken to address the issues raised above. While the debate over the compatibility of unionism and the public service dates from the 1830s when federal shipyard employees struck in support of a 10 hour work day, the nature of this debate has been philosophic rather than pragmatic, just as its methods have been theoretical rather than empirical. Certainly no such study has ever been undertaken within Oregon at the scope of the present research. The reason for the lack of empirical research is, in part, due to the fact that only relatively recently have many states adopted legislation allowing collective bargaining. The first state to enact

collective bargaining legislation (other than that banning its practice) was Wisconsin in 1962, while as of 1992, only 28 states have enacted such legislation. As these states gain experience with collective bargaining, and as additional states adopt legislation permitting collective bargaining, we believe more empirical studies will result.

Another factor which may explain the scarcity of empirical studies is the nature of the question. For the most part, the issue of public sector collective bargaining has been treated as a legal one. As such, discourse concerning its impact has appeared principally in employment relations board orders, court decisions, and law review articles, while the focus of discussion has been the legal effect of statutory change.

Douglas,¹ explored the statutory relationship between civil service merit systems and labor relation systems in 28 states which had enacted public-sector collective bargaining legislation through 1990. In his own review of the literature on the topic, he concluded that the literature on civil service is voluminous, yet there is a paucity of empirical research on the association between civil service merit systems and labor relations systems. Even so, the scope of the Douglas study was limited to a content analysis of public sector collective bargaining and merit legislation in those states which provide for collective bargaining by public sector employees. Douglas did not explore the relationship between collective bargaining and civil service at the local government level but limited the scope of his investigation to the impact of collective bargaining legislation at the state government level. The primary questions addressed

¹ Douglas, Joel, M. "State Civil Service and Collective Bargaining: Systems in Conflict," Public Administration Review, vol. 52 (2), March/April 1992, p. 163.

by the Douglas study were to what extent and in what manner have labor relations systems been accommodated by legislation dealing with existing civil service systems. Topics governed by either civil service merit systems or collective bargaining can be insulated from influence by the other in four ways. First, civil service merit systems can be protected by legislation which mandates the continuation of, and adherence to, the merit system. Douglas found this mechanism to be operational in nine states. Second, civil service merit systems may be protected from influence by collective bargaining if legislation designates certain topics to be under the exclusive influence of such systems and not within the scope of collective bargaining. This approach was found in ten states. These first two approaches reflect a philosophy that civil service merit systems are the preferred means of governing personnel administration and that adherence to merit principles is best achieved through a dominant merit system. A third approach is the supremacy of collective bargaining over the civil service merit system in matters of labor relations which can be specifically outlined by statute. In such cases, collective bargaining agreements enjoy supremacy, and civil service statutes are deemed subservient to collective bargaining in those areas for which collective bargaining is either mandatory or permitted. This arrangement was found in nine states. The fourth approach to the accommodation of the two systems is the declaration of certain topics to be reserved as management rights. This approach, according to Douglas, appears to weaken both collective bargaining and civil service control over the personnel function while strengthening the position of the employer. Management rights clauses were found in 11 state statutes. Douglas also found, in

every state in which both civil service merit systems and collective bargaining exist, that civil service legislation predates collective bargaining legislation and that civil service merit systems continue to govern most of the traditional personnel functions such as recruitment, selection, position classification, and performance appraisal. States which allow collective bargaining typically negotiate such topics as compensation rates, fringe benefits, grievance procedures, and union membership requirements. Douglas concluded that although the influence of civil service merit systems on personnel administration has been diminished by the rise of collective bargaining legislation, collective bargaining had not replaced the civil service merit system as a means of personnel administration in those states where the two systems coexist. A major conclusion drawn by Douglas based on the findings of his research was that there appears to be an emergence of dual personnel systems which attempt to integrate competing aspects of civil service merit and collective bargaining systems. Not surprisingly, in some jurisdictions civil service merit systems and collective bargaining seem to coexist in a cooperative relationship, while in others the two systems appear locked in conflict over jurisdictional and functional authority.

Perhaps the most comprehensive study of public sector unionism to date is the field research undertaken by the Brookings Institution in the first half of 1969 (referred to here as "the Brookings study"). That research project, "Studies of Unionism in Government," undertook to study the effects of public employee unionism and collective bargaining on the administration of public personnel systems in fifteen cities and four urban counties including Multnomah County, Oregon. The findings of that

study were presented in numerous articles and books, the first three of which are of particular interest to the present study.

The first book, The Unions and the Cities, written by Harry Wellington and Ralph Winter in 1971,² speaks to the legal issues involved with collective bargaining in the public sector. The principle thrust of the Wellington and Winter text is that there are basic differences, with respect to the work performed as well as with respect to the relationship between employer and employee, between the public and private sector, and that because of these differences, the arguments in support of collective bargaining in the private sector do not necessarily hold in the public sector. Claims made in favor of collective bargaining in the private sector are: first, that collective bargaining is a means to achieve industrial peace by promoting an understanding of the position of the interests of each party; second, that collective bargaining is a means of achieving industrial democracy by allowing participation of workers in their own governance; third, that unions which bargain with employers represent employees in the political arena as well;³ and fourth, that collective bargaining equalizes the bargaining power of employers and employees. The authors argue that the first three of these arguments can be said to hold, at least to some extent, in the public sector as well but that the fourth argument, that of equal bargaining power, is not relevant to the employment relationship in public sector for two reasons. First, the authors argue that

² Wellington, Harry H., and Winter, Ralph K., Jr., The Unions and the Cities, The Brookings Institution, Washington, D.C., 1971.

³ Wellington, H. Labor and the Legal Process, Yale University Press, 1968, pp. 215-238.

to the extent that civil service or merit systems exist in the public sector the arbitrary exercise of managerial power will be reduced. Second, the authors argue that, while in the public sector the social costs of collective bargaining are largely economic and driven by market forces, in the public sector the costs are less economic than political. For instance, the decision to offer a low rate of pay for a particular job may be made as a result of pressure from special interests or a desire to promote the general welfare and in substitution for higher welfare payments or an improved transit system which could be gained by offering higher wages for the job in question. The general conclusion the authors draw is a rejection of the claim that what's good for public employees is good for the cities, counties and states of our nation.⁴

The second book in the series, Managing Local Governments Under Pressure, written by David Stanley with the assistance of Carole Cooper⁵ and published the following year, addresses the influence of unions on administrative practices of selected cities and urban counties. The study examines the effect of collective bargaining on several personnel functions including: hiring, promotion, training, and grievances; job classification, pay, and benefits; work management and working conditions. The study found little union impact on initial hiring procedures. The authors attributed this lack to the acceptance of the merit principle by union leaders as

⁴ Wellington, Harry H., and Winter, Ralph K., Jr., The Unions and the Cities, The Brookings Institution, Washington, D.C., 1971, p. 202.

⁵ Stanley, David T., Managing Local Governments Under Pressure, The Brookings Institution, Washington, D.C., 1972.

well as to the union's concentration of energy on other areas of personnel activity.⁶

Stahl, commenting on a different study, noted that if the unions exert effort to control conditions of initial hire, it is usually because they are interested in influencing procedures governing promotions, and promotion criteria is generally linked to section criteria.⁷ Stanley and Cooper found the effect of unions on promotions to be modest, although the effect of union activity on promotions was found to be greater than the impact on initial hire. The unions included in the Brookings research generally strived for the following goals in establishing promotion criteria: Filling vacancies, other than entry level positions, from within the ranks of current government employees (the use of state, county, or city promotional lists); filling vacancies within a given organization unit by promotion from within that organization unit or department (the use of agency promotional lists); giving present employees of the governmental unit some type of preferential status, such as awarding points for work in a specific classification, when positions are to be filled by open competition (the use of specialized job content); limiting the use of or weight given to subjective management judgements such as oral exams or performance ratings; and installing seniority as the determining or major factor in selecting candidates for promotion.⁸ Generally speaking, unions in the

⁶ Stanley, David T., Managing Local Governments Under Pressure, The Brookings Institution, Washington, D.C., 1972, p. 32.

⁷ O. Glenn Stahl, Public Personnel Administration, (5th edition), 1962. p. 28. As quoted in Feigenbaum, Charles, "Civil Service and Collective Bargaining: Conflict or Compatibility," Public Personnel Management, May-June, 1974, p. 245.

⁸ Stanley, David T., Managing Local Governments Under Pressure, The Brookings Institution, Washington, D.C., 1972, p. 36.

jurisdictions covered by the Brookings study indicated little interest in the topic of training except in the area of training for promotion. The study team speculated that union interest in training would increase in the future because of the impact such training can have on promotional decisions and because the ability of the unions to provide such training would give them additional leverage in the area of promotion. Grievances and discipline were found to be major areas of interest to unions in the Brookings study. The study found an increase in the number of grievances as well as a tendency to handle grievances in a more structured, formal manner than was the case prior to unionization. Unions were found to have less influence in matters of discipline than in resolution of grievances. However, the research team concluded that, as is the case with training, the trend in matters of procedure by which to handle disciplinary issues is to move from civil service to collective bargaining. Stanley found the major impact of union activity on personnel practices was a weakening of what he termed "management-by-itself,"⁹ by which he meant the unilateral decision-making process.

The third book of the series, Public Employee Unionism, written by Jack Stieber¹⁰ and published in 1973, discusses the differences between public and private sector labor organizations, and examines the development of several different types of employee organizations in the public sector (all public unions, mixed unions, state and local employee associations, professional associations, and unions and associations

⁹ Stanley, David T., "What Are Unions Doing To The Merit System?," Public Personnel Review, April 1970, p. 109.

¹⁰ Stieber, Jack, Public Employee Unionism: Structure, Growth, Policy, The Brookings Institution, Washington, D.C., 1973.

representing what are referred to as the uniformed protective services). The largest all-public union was the American Federation of State, County, and Municipal Employees (AFSCME). AFSCME was originally organized to protect and promote civil service for state and local government employees. One of the union's primary objectives was to champion "the extension of the merit system to all non-policy determining positions of all governmental jurisdictions."¹¹ It was not until 1960 that the promotion of collective bargaining as a means of achieving the union's objectives became part of AFSCME's mission. According to Stieber, mixed unions have not pressed as hard as all public unions for the establishment of collective bargaining in the public sector, most likely because the success of the union is not solely dependent upon it. Mixed unions generally view civil service with mixed feelings in that, where there is neither civil service nor collective bargaining, they seek the protection of civil service. On the other hand, where civil service and collective bargaining co-exist the union argues the superiority of the collective bargaining system.¹² Uniformed services unions (police and fire), tend to work toward the establishment of legislation separate from that of other public employees. In very general terms, the study found police organizations to be in favor of the present civil service system with modifications, while fire fighters tended to favor the replacement of civil service with collective bargaining.¹³ Prior to

¹¹ Kramer, Leo. Labor's Paradox--The American Federation of State, County, and Municipal Employees, AFL-CIO, N.Y. Wiley, 1962, p. 27.

¹² Stieber, Jack, Public Employee Unionism: Structure, Growth, Policy, The Brookings Institution, Washington, D.C., 1973, p. 120.

¹³ Stieber, Jack, Public Employee Unionism: Structure, Growth, Policy, The Brookings Institution, Washington, D.C., 1973, p. 121.

1970, state and local associations were found to be generally opposed to collective bargaining. However, after enactment of legislation allowing it, most associations petitioned for certification.

Not surprisingly, the study also found public employee labor organizations to be related to city size and geographic location. Larger cities have a higher proportion of organized employees than smaller cities. The study found that in cities of 10,000 or more approximately 60% of all employees were represented by employee organizations. Also, cities in the Mid-Atlantic, New England, East North Central, and Pacific states had higher proportions of employees as members of public employee organizations than did states in the South and Mountain states.

Although the Brookings studies were empirical in nature, they certainly may be considered somewhat dated today. In fact, the field research which took place in early 1969 coincided with the first year in which collective bargaining was mandated for those counties in Oregon required to have a civil service system as discussed on page 38. The major piece of legislation governing public sector bargaining in Oregon did not become legally effective until October, 1973, four years after completion of the Brookings study. Collective bargaining did not become practically effective on a widespread basis until 1974, following the enactment of the 1973 legislation. Because of the lack of recent empirical inquiry, questions remain as to the impact of collective bargaining on the civil service merit system on several fronts. This study will address those questions. Before beginning an examination of the specific issues addressed by

this study, a discussion of the reasons why we might expect there to be conflict between these two systems of personnel management is in order.

The Conflicting Nature of the Two Systems

The potential for conflict between the two systems arises because the values and objectives of collective bargaining differ from those of the civil service/merit system in several important ways.

The civil service system is based on a unilateral decision-making model designed with the dual objectives of protecting the individual's employment rights while providing for administrative efficiency. It does this by promulgating a set of rules as well as the procedures by which to enforce them. Under the civil service model, the power to determine wages and conditions of employment remain in the hands of the employer.

The collective bargaining system, in contrast, is based on a bilateral decision-making model designed with the objectives of protecting the individual's employment rights while providing for their economic interests. It does this by attempting to equalize the balance of power to determine wages and conditions of work between the state and its employees through their association with a labor organization. The collective bargaining procedure provides for bilateral establishment of rules and procedures of contract negotiation and for the negotiation of conditions related to employment relations. It also provides for enforcement of the collective bargaining agreement through the establishment of grievance procedures and a process of arbitration. The conflicting nature of the two systems gives rise to several issues.

The Issues

A major controversy in the debate concerning the compatibility of the collective bargaining and the civil service merit systems centers around the issue of preserving the integrity of the merit system. Disagreement exists among scholars and practitioners alike over what range of personnel functions is considered essential to be excluded from bargaining in order to maintain the essence of the merit system.¹⁴ According to Kearney, 38 states have enacted merit standards conforming to the Intergovernmental Personnel Act of 1970.¹⁵ As outlined in that act, the following six elements are considered essential to the preservation of the merit principle: 1. Recruitment, selection, and advancement of employees should be made on the basis of relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment. 2. equitable and adequate compensation, 3. training to insure high quality performance, 4. correction of inadequate performance or separation of those whose inadequate performance cannot be corrected, 5. Fair treatment of all employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religion, 6. protection of employees against partisan political coercion.

Public employee unions, on the other hand, argue that many of the components considered by public sector employers to be essential to the integrity of the merit

¹⁴ Kearney, Richard C., Labor Relations in the Public Sector, Marcel Dekker, New York, 1984, p. 167.

¹⁵ Intergovernmental Personnel Act, Public Law 91-648.

system should be subject to collective bargaining. Among these are wage and benefit determination, position classification, training provisions, and grievance procedures.

A second controversy involves the erosion of the authority of public managers to unilaterally decide the terms and conditions of employment. The general argument against this trend is that a main purpose of the civil service system is efficiency, that collective bargaining is encumbering the personnel system, and that the existence of a dual system of personnel management is necessarily less efficient than a single system.

A third issue concerning the potential conflict of collective bargaining and the merit system centers on the direction which the continued development of these two systems will take. On this issue there are generally three schools of thought. The first is that collective bargaining and civil service merit systems are incompatible systems destined for coexistence yet doomed to everlasting conflict. The second is that, since the two are irreconcilable, one or the other system will prevail; the third view is that the two systems are compatible and can exist in a symbiotic relationship if the merit system is willing to accommodate certain basic tenets of collective bargaining, such as the principle of bilateral decision making.¹⁶

THE MERIT PRINCIPLE

In order to better understand the issues surrounding the debate over the compatibility of the civil service and collective bargaining models of personnel

¹⁶ Kearney, Richard C., Labor Relations in the Public Sector, Marcel Dekker, New York, 1984, p. 170.

administration, it is first necessary to understand the distinction between the merit principle and civil service merit systems. Discussion of this difference necessarily begins at the federal level.

Both the merit principle and the civil service merit systems are products of the civil service reform movement which began to gain momentum following the assassination of President Garfield by Charles J. Guiteau, a disgruntled job seeker, in 1883.¹⁷ Until that time, the spoils system was the dominant means of filling (and creating) vacancies in government service. The purpose of the reform movement was twofold: to insure the political neutrality of civil servants by removing them from the political pressure of a patronage system and to encourage a new system of selection, retention, and promotion of employees based on principles of merit or competence. The values which underlie this system of selection and promotion, known as the merit principle, are found in the civil service reform act of 1978 and outlined by Klinger and Nalbandian as follows:¹⁸

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after a fair and open competition, which assures that all receive equal opportunity.
2. All employees and applicants for employment

¹⁷ Klinger, Donald E., and Nalbandian, John, Public Personnel Management Contexts and Strategies, Prentice Hall, Englewood Cliffs, N.J., 1993, p. 12.

¹⁸ Klinger, Donald E., and Nalbandian, John, Public Personnel Management Contexts and Strategies, Prentice Hall, Englewood Cliffs, N.J., 1993, p. 13.

should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights. 3. Equal pay should be provided for work of equal value with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance. 4. All employees should maintain high standards of integrity, conduct, and concern for public interest. 5. The work force should be used efficiently and effectively. 6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. 7. Employees should be provided effective education and training in cases which such education and training would result in better organizational and individual performance. 8. Employees should be: a. protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and b. prohibited from using their official authority to influence for the purpose of interfering with or affecting the result of an election or a nomination for election. 9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences: a. a violation of any law, rule, or regulation; or b. mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

These principles reflect what Hugh Heclo described as the civil service ideal, characterized by open access to jobs, competitively determined selection and career advancement, discipline and/or removal from a position only for non-performance and not for partisan reasons, and political neutrality of public employees in both employment and partisan political activities.¹⁹

CIVIL SERVICE MERIT SYSTEMS

The merit principle can be considered a statement of values or a public policy statement declaring the basis for recruitment, selection, retention, and promotion of public employees within the merit system. In contrast, the merit system is a model of civil service personnel administration based on the values expressed in the merit principle. David Stanley draws the following distinction between the merit principle and merit systems:

The merit principle is the basis on which employees are recruited, selected, and advanced under conditions of political neutrality, equal opportunity, and competition on the basis of merit and competence. When we say merit systems, however, this has come to mean a broad program of personnel activities. Some are essential to carrying out the merit principle: recruiting, selecting, policing of anti-politics and anti-discrimination rules, and administering related appeals provisions. Others are closely related and desirable: position classification, pay

¹⁹ A Government of Strangers, The Brookings Institution, Washington D.C., 1977, p. 20.

administration, employee benefits, and training.²⁰

The following sections offer a brief description of the development of the civil service system at the Federal and State level.

The Federal System

Certainly as a response to the pressures of the civil service reform movement, but also undoubtedly spurred by reaction to the assassination of President Garfield, Congress passed the original civil service act known as the Pendleton Act of 1883. The Pendleton Act established a bipartisan federal Civil Service Commission which was charged with the dual tasks of ensuring the end of political patronage and overseeing a new system which would implement selection and promotion criteria based on the principle of merit. According to Stahl,²¹ the major features of the Pendleton Act were: 1. administration vested in the hands of an independent bipartisan commission, appointed by and responsible to the chief executive, 2. selection by open competitive and practical examination, 3. a probation period as part of the selection process, 4. disabled veteran preference provisions, 5. freedom of employees from any obligation to make political contributions, 6. authorization of the commission to undertake independent investigation, 7. discretion of the president to extend the classified service and to prescribe exemption from it.

²⁰ Stanley, David T., "What Are Unions Doing To The Merit System?," Public Personnel Review, April 1970, p.109.

²¹ Mosher, William, E., Kingsley, Donald, J., and Stahl, Glenn, O., Public Personnel Administration, (3rd edition), Harper & Brothers Publishers, N.Y., 1962 p. 26.

In discussing the civil service merit system in general, Stahl has defined it as:

"A personnel system in which competitive merit or achievement governs each individual's selection and progress in the service and in which the conditions and rewards of performance contribute to the competency and continuity of the service."²²

A key provision of the civil service which is not included in Stahl's definition is that of unilateral decision making.

Robert Hastings,²³ past general counsel of the American Federation of State, County, and Municipal Employees, points out that while the civil service concept is generally understood to mean recruitment or selection, promotion, and job retention based on merit and fitness, it also includes unilateral determination of wages, fringe benefits, and other conditions of employment such as hours of work. Additionally, in disciplinary actions there are appeals to a civil service board or civil service commission appointed by the public employer.

Oregon's Civil Service System

The establishment of the state civil service merit systems followed that of the federal system with varying levels of enthusiasm. The first state systems to be established were those of New York and Massachusetts in 1883 and 1884 respectively.

²² O. Glenn Stahl, Public Personnel Administration, (5th edition), 1962, p. 28. As quoted in Feigenbaum, Charles, "Civil Service and Collective Bargaining: Conflict or Compatibility," Public Personnel Management, May-June, 1974, p. 245.

²³ Hastings, Robert, H., "The Public Employee Union Looks at Collective Bargaining in the Public Sector," in A Conference Report of the Fifth Annual Dryfoos Conference on Public Affairs; Collective Bargaining in the Public Sector, The Public Affairs Center, Dartmouth College, Hanover, N.H., 1968, p. 49.

By 1940, nineteen states had established some sort of merit system. In that year, establishment of state civil service merit systems was mandated under certain conditions as a result of the Social Security Act of 1940. In accordance with that act, all civil employees of state and local jurisdictions whose salaries or programs were funded under federal grant-in-aid funds were required to be hired under a system of merit similar to that of the federal service.²⁴ Oregon, in 1945, became the 23rd state to establish such a system. Oregon actually has a three tier system of legislation governing its civil service merit systems. The three statutes (ORS chapters 240, 241, and 242) govern civil service merit systems for state, county, and local employees respectively. The Oregon statutes governing Civil Service for the State (ORS 240), Counties (ORS 241), and Civil Service for City or School District Employees and Fire Fighters (ORS 242), each specify that a system of merit must be observed in consideration of appointments and promotions in the civil service. However, none of the statutes makes a formal distinction between the two terms "civil service system" and "merit system." Because of their intimate relationship (both the civil service system and merit systems generally are intended to preserve the principle of merit and govern personnel practices in the civil service), the two terms "merit system" and "civil service system" have become virtually synonymous in both the academic literature and in practical use. Therefore, the two terms will be treated as synonymous in this paper.

²⁴ Kearney, Richard C., Labor Relations in the Public Sector, Marcel Dekker, New York, 1984, p. 167.

The objective of this study is to explore the impact which collective bargaining may have had on the merit systems at the county and local government levels in the state of Oregon. Although the language of ORS 240 does not specifically address the civil service at the county and local government level, the presentation of a brief overview of the civil service statutes pertaining to all three levels of government will help to place the focal issue in context.

ORS 240

The purpose of Oregon revised Statutes Chapter 240, State Personnel Relations, is to establish for the state a system of personnel administration based on merit principles.²⁵ The Oregon Revised Statutes chapter 240 section .235, Compensation plan for classified service, directs the personnel division (Division), to establish and implement a merit pay system. Sub-section (1) of section .306, which governs recruitment selection, and promotion criteria and procedures for state employees directs that:

Recruitment, selection, and promotion of state employees shall be on the basis of merit determined by open competition, without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, disability, or other non-job-related factors. Subsection (4) states that, "Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from eligible lists established by the division

²⁵ ORS 240.010.

or a delegated operating agency."

subsection (7) provides that:

The division or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education, and career development assignments. The division shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring into state service through open competition at higher levels where such competition provides abilities not available among existing employees, enrich state service or contribute to improved employment opportunity for under represented groups.

Section .316 of chapter 240 sets out conditions under which an appointing authority has discretion to subject an employee to a period of trial service and directs that procedures shall be established by the division for the layoff and opportunity for reemployment of employees separated for reasons other than cause, for the transfer, discipline, or demotion of employees for the good of the service, or the dismissal of employees for cause. The language of ORS 240 specifically states that recruitment, selection, and promotion of employees shall be made on the basis of merit and that the appointing authority has discretion in matters of performance appraisal (trial service), discipline, and discharge. Section .430 of ORS 240 directs the personnel division to establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service, and section .551 directs the division to establish working hours, holidays, leaves of absence and vacations of employees in

state classified service.

ORS 241

Oregon Revised Statute (ORS) chapter 241 governs the establishment and administration of county civil service systems. Most county employees are covered under the provisions of ORS 241. County fire fighters, however, are covered under ORS 242.702 to 242.824.²⁶ All appointees to positions in the public service of the county are subject to civil service, except as noted in the following sections of ORS 241.025:

241.025 (1) Any officer chosen by popular election, or appointed to fill a vacancy caused by the death, resignation, or removal of any officer chosen by popular election (2) Any official reporter, bailiff or crier, subject to appointment by any court or judge or justice thereof. (3) Any person employed to perform manual labor, skilled or unskilled, in construction, maintenance, and repair of county property; provided that electrical workers, members of road and bridge crews, and laborers permanently employed shall be subject to civil service unless otherwise provided in ORS 241.020 to 241.990. (4) Any special deputy sheriff or deputy constable appointed to act without compensation from the county. (5) Any member of the county civil service commission. (6) Any deputy district attorney (7) Any doctor, nurse, intern, or superintendent or other executive officer, employed by, in or at the county hospital, county or farm, or any home

²⁶ ORS 241.006 (2).

maintained by the county for the detention or care of juveniles. (8) The road master of the county. (9) Any temporary, part-time or seasonal employee. (10) Any person holding a position subject to the jurisdiction of the commission created by ORS 242.706. (11) Any chief examiner appointed under ORS 242.716. (12) Any assistants to a board of county commissioners. (13) Any undersheriff, deputy undersheriff, or administrative aide to a sheriff.

Counties subject to ORS 241.020 through 241.990 include those with a population of 500,000 or more persons.²⁷ Additionally, any county may establish a civil service system by either initiative or referendum.²⁸ Any county that does establish a civil service system must also establish a civil service commission whose function it is to oversee administration of the civil service system.²⁹ Civil service commissions consist of three members, appointed by the board of county commissioners, whose term of office is six years with the term of one commissioner expiring every two years.³⁰ The purpose of the commission is to make suitable regulations, not inconsistent with ORS 241.020 through 241.990 and to carry out the provisions of ORS 241.020 through 241.990. The regulations must provide in detail the manner in which examinations shall be held and appointments, promotions, transfers,

²⁷ ORS 241.020.

²⁸ ORS 241.009.

²⁹ ORS 241.020-990.

³⁰ ORS 241.075.

reinstatements, suspensions, and discharges shall be made.³¹ ORS 241.120 through 241.130 grants county civil service commissions the power to investigate and hold hearings on matters related to the civil service system as well as to administer oaths and subpoena witnesses.

Classification and compensation plans, and the selection and promotion of employees, is covered by ORS 241.205 through 241.300. ORS 241.205 outlines the basis of appointment and promotion generally:

Except as otherwise expressly provided in ORS 241.020 to 241.990, the appointment and promotion of all persons to or in all positions subject to the provisions of OS 241.020 to 241.990 shall be made solely upon merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation.

ORS 241 directs the board of county commissioners to control creation of positions and fixing of compensation. ORS 241.210 states that, "All positions subject to civil service in the county shall be created by the board of county commissioners and the board is authorized to fix the compensation of all employees employed therein." ORS 241.215 speaks to classification and compensation.

(1) The commission shall classify, with respect to the examinations provided for in ORS 241.020 to 241.990, all positions in the public service of the county to which ORS 241.020 to 241.990 applies. The classifications shall be based upon the respective functions of the positions and the compensation attached thereto,

³¹ ORS 241.110 (1).

and shall be arranged so as to permit the grading of positions of like character in groups and subdivisions to the end that like compensation shall be paid for like duties. (2) The commission shall establish maximum and minimum salary limits for each grade on the basis of efficiency and length of service. (3) The classification and grades may, from time to time, be amended, added to, consolidated or abolished by the commission, but no person holding any position under any established classification or grade shall be affected by any such change so as to deprive the person of any of the benefits attached to the classification or grade applicable to the position then held by the person. (4) The positions so classified and graded shall constitute the classified civil service of the county.

ORS 241 establishes procedures for the administration of examinations and certification of candidates for vacancies.³² Section .295 of chapter 241 provides that no appointment or promotion to any position in the classified civil service of the county shall be made except in the manner provided in ORS 241.020 to 241.990. Sections .405 through .460 govern procedures to be followed concerning leaves of absence,³³ transfers, and reinstatement,³⁴ suspension,³⁵ and dismissal.³⁶

³² ORS 241.220 - 285.

³³ ORS 241.405.

³⁴ ORS 241.415.

³⁵ ORS 241.420.

³⁶ ORS 241.425 - 241.460.

ORS 242

Chapter 242 of the Oregon Revised Statutes governs civil service for three specific classes of employees: employees of annexed districts, city or school district custodial employees, and fire fighters. ORS 242.050 provides for coverage of employees of districts annexed by a city that operates under a civil service system.

Whenever any rural fire protection, water or sanitary district becomes partially or wholly absorbed into a city which operates under a system of civil service for its employees, notwithstanding the civil service provisions of law or such city's charter, the governing body of the city may, at its option, provide for inclusion of any or all the employees of the district as employees of the city under its civil service system with or without civil service examinations, in a manner determined by the exercise of the sound discretion of the governing body.

ORS 242.330 addresses coverage of school custodians:

In all school districts having a population of 300,000 or more persons according to the last federal census, there is created a civil service board with jurisdiction over the appointment, employment, classification, and discharge of custodians and assistant custodians in the employ of the school district.

Section .520 of ORS 242 mandates adherence to a system of merit:

(1) No appointment or promotion shall be made except as provided in the Custodian's civil service law. All appointments to beginning employment positions in the classified civil service shall be made according to fitness, to be ascertained by open competitive examinations. All promotions in the classified

civil service shall be made according to merit in service, fidelity in service, and seniority in service.

As does ORS 241, ORS 242 establishes procedures for certification and appointment of candidates for vacancies,³⁷ suspension, dismissal, appeal, and reappointment.³⁸

Civil service for fire fighters is specifically addressed under ORS 242.702 through 242.824. The political subdivisions and positions to which ORS 242.702 to 242.824 do not apply are specified in ORS 242.704:

(1) ORS 242.702 to 242.824 do not apply to any political subdivision which under its charter, ordinances or regulations has a civil service system covering the employees of its fire department which substantially accomplishes the general purposes of ORS 242.702 to 242.824. However, such political subdivision shall retain such exemption only so long as the civil service system upon which the exemption is based remains in effect. (2) The civil service shall include all employees of the fire department of a political subdivision which employs four or more fire fighters on a full-time basis, not including the chief. The governing body of the political subdivision shall decide whether the chief may be a member of the civil service.

The civil service system for fire fighters is similar to that of other civil service employees under ORS 242. The main differences are that fire fighters have a probationary period of 12 instead of 6 months and leaves of absence for fire fighters

³⁷ ORS 242.570.

³⁸ 242.610-242.635.

may be granted without pay for longer periods than other employees without the consent of the civil service commission.³⁹ Also, whereas non-fire fighting personnel may be suspended for a period of up to 30 days without the right to review, fire fighters suspended for any length of time may appeal to the civil service commission. Finally, the civil service commission governing fire fighters has no authority to establish salary ranges as does the commission governing other employees.

In summary, the goals of any civil service/merit system, whether federal, state or local, are five fold: (1) to secure the best qualified work force, (2) to provide equal opportunity in employment with respect to selection and promotion, (3) to protect employees against unfair dismissal or other disciplinary actions, (4) to provide an avenue of appeal when disputes do arise, and (5) to provide efficiency in the administration of public policy. The first four goals of the merit system can be seen as insuring adherence to the merit principle. The merit system accomplishes this by specifically prescribing the criteria and procedures for recruitment, selection, and promotion and by establishing a means through which the conduct and performance of civil servants can be held accountable to the general will of the people by insuring accountability to those who are elected to office. The fifth goal of the civil service system is to enhance the efficiency of public administration. Public administration according to Corson and Harris consists of

decision making, planning the work to be done, formulating objectives and goals, working with the legislature and citizen organizations to gain public support and

³⁹ ORS 242.766 (1).

funds for government programs, establishing and revising organization, directing and supervising employees, providing leadership, communicating and receiving communications, determining work methods, and procedures, appraising performance, exercising controls, and other functions performed by government executives and supervisors. It is the action part of government, the means by which the purposes and goals of government are realized.⁴⁰

In an obviously streamlined view of policy formulation and implementation, public policy is determined by elected or appointed government officials in accordance with the will of the people. Policy thus determined is implemented by government employees who are selected by these same officials to carry out the work of government. The civil service system is meant to be a means by which to bring about efficiency in the administration of public policy through the effective administration of public personnel management. In this respect, it can be said that the civil service merit system exists to effect the efficient management of human resources necessary for the accomplishment of government work while maintaining adherence to the merit principle.

THE COLLECTIVE BARGAINING SYSTEM

Chester Newland defines collective bargaining as a legally defined system for

⁴⁰ Corson, John J. and Harris, Joseph P., Public Administration in Modern Society, McGraw Hill, 1963, p. 12. Quoted in Stanley, David T. Managing Local Government Under Pressure, Studies of Unionism in Government, Brookings Institution, Washington, D.C., 1972, p. 4.

resolving conflicts, solving problems, and promoting common goals of management and organized employees. The basic concepts of collective bargaining according to Newland are identified as 1. exclusive representation within legally established bargaining units, 2. enforcement of good faith bargaining through legal maintenance of the bargaining process but without prescription of bargaining ends, 3. legal enforceability of agreements for a fixed period of time, 4. legal differentiation between types of disputes and remedies, 5. Bargaining processes and legal remedies, such as arbitration, based on concepts of fairness and flexibility -- a search for organizational justice or reasonableness.⁴¹

Dunlop's Industrial Relations Model

Beal, Wickersham, and Kienast have adopted the model of industrial relations proposed by Dunlop.⁴² Briefly, Dunlop defines the industrial relations system as a set of relationships between actors which can be studied the way economists study market relationships or political scientists study power relationships. This industrial relations system can be studied in terms of three contexts: the context of the market, the context of work place technology, and the context of power relations of society as manifested in the work place. In Dunlop's model, the actors interact for the purpose of

⁴¹ Newland, Chester A., "Public Personnel Administration: Legalistic Reforms v. Effectiveness, Efficiency, and Economy," Public Administration Review, September/October 1976, p 534.

⁴² Dunlop, John T., Industrial Relations Systems, in Beal, Edwin F., Wickersham, Edward D., and Kienast, Philip K., The Practice of Collective Bargaining, Richard D. Erwin, inc., Homewood Illinois, 1976, p. 4.

establishing substantive rules by which to govern their relationships. According to Beal et al, Dunlop stopped short of specifying what the actors make rules about, what issues the rules deal with and try to resolve, what functions the rules fill that need to be provided for, and perhaps most importantly, what the rules for rule making are.

Accordingly, Beal et al. have expanded Dunlop's industrial relations model to outline the rules by which employment relationships are governed and contrast what they refer to as the rules for rule making in union and non-union employment relationships.⁴³ The rules governing these employment relationships and the functions of the labor agreement are discussed below and summarized in Figure 1 which appears on page 33. The first rule, central to both union and non-union relationships, is the wage and effort bargain. The wage and effort bargain refers to an exchange of the worker's time and talent in return for compensation from the employer. The scope of this exchange comprises five elements: (1) pay for time worked, (2) the effort bargain, which determines production standards, (3) premium pay, (4) pay for non-work time such as vacation and holidays, and (5) contingent benefits such as insurance and pensions.

In addition to the wage and effort bargain, mechanisms to address concerns regarding what under collective bargaining would be called individual security measures may develop even under non-union conditions. The scope of individual security includes an individual worker's relative claim to available work and the absolute claim for fair treatment on the job.

⁴³ Beal, Edwin F., Wickersham, Edward D., and Kienast, Philip K., The Practice of Collective Bargaining, Richard D. Erwin, Inc., Homewood Illinois, 1976, pp. 16-18.

FUNCTION	CATEGORY	SCOPE
I Union Security and Management Rights	a. The bargaining unit	a. Who speaks for whom
	b. Form of recognition	b. With what authority
	c. Duration and renewal	c. For how long
	d. Management rights	d. Except in what conditions
II The Wage and Effort Bargain	a. Pay for time worked	a. Day and base rates; job
	b. Effort expended	evaluation
	c. Pay for time not worked	b. Standards
	d. Contingent benefits	c. Hours: duration
III Individual Security		d. Fixed labor costs
		e. Variable labor costs
	a. Job rights	a. Relative claim to available work; seniority
	b. Due process	b. Absolute claim to fair treatment; grievance procedures
IV Administration	a. Internal	a. On-the-job representation
	b. External	b. Arbitration

Figure 1. Functions of the Labor Agreement.⁴⁴

⁴⁴ From: Beal, Edwin F., Wickersham, Edward D., and Kienast, Philip K., The Practice of Collective Bargaining, Richard D. Erwin, Inc., Homewood Illinois, 1976, p. 251.

The relative claim to available work, sometimes called job rights, gives rise to rules governing who gets available overtime work, who gets laid off, and who gets recalled when. The worker's absolute claim to fair treatment, or the establishment of a system of due process, gives rise to rules governing such issues as discipline and grievance procedures.

Under non-union conditions, employers must consider all five elements of the wage and effort bargain in establishing the conditions which constitute their offer of employment, and workers must weigh the value of an individual employer's offer against other opportunities and the value of leisure in deciding to accept or reject an offer. Nonetheless, under a non-union system the rules on the wage and effort bargain, as well as the rules on individual security, are established unilaterally by the employer. In the private sector these rules are generally implicit, and even if they do exist in written form, the rules may not be binding on the employer who is free to change them at will. In the public sector the rules are generally written in the form of personnel rules and policies. As pointed out by Robert Hastings, although they may be more binding on the public sector employer, the rules themselves are no less unilaterally derived than in the private sector.

Under a union system, the rules of the employment relationship take on a different nature. Under collective bargaining, the rules are not established unilaterally nor are they implicit. A collective bargaining system is characterized by the existence of a bilaterally negotiated, written, and binding labor agreement which explicitly spells out the rules of employment for those employees covered by the agreement. Although

the collective bargaining employment relationship continues to center on the wage and effort bargain, and mechanisms to address concerns with individual security still exist, there are two additional rules of a union employment relationship which distinguish it from a non-union one. The first of these is specific contract language which outlines what Beal et al, refer to as the rules for rule making, such as establishing the range of topics considered negotiable while enumerating the elements of the employment relationship considered to be prerogatives of management. These rules for rule making, explicitly written into labor agreements, are referred to as union security and management rights clauses. Union security and management rights provide answers to four questions: who speaks for whom, with what authority, for how long, and with what exceptions. The second element which distinguishes union from non-union employment relationships is the provision for joint administration of matters relating to the execution of the employment agreement such as on-the-job representation as well as mediation and arbitration of disputes.

The existence of employee organizations in the public sector dates to the beginning of the American labor movement. Collective bargaining in the public sector, however, did not begin to gain a foothold until the 1960s.⁴⁵ As this is a treatise on the impact rather than the development of public sector collective bargaining, we will not linger on the national history of collective bargaining nor on the similarities and distinctions between private and public sector organizing. Suffice it to say that

⁴⁵ Spero, S.D., and Capozzola, John M., The Urban Community and Its Urbanized Bureaucracies, Cambridge University Press, Dunellen Publishing Co., N.Y., 1973, p. 15.

collective bargaining, in the civil service as in the private sector, originated in part with the desire by individual workers to have a greater voice in the determination of the wages for and conditions under which they worked. The resources of a single employee contribute very little to bargaining power compared to the resources that can be mustered through collective effort. This is so because, among other reasons, the supply of workers competent to perform a given task outnumbers the supply of employers for whom the task can be performed. As a result, an individual is generally powerless should an employer adopt a "take it or leave it" attitude concerning wages and other conditions of work. It is only by collective action that most workers can hope to equalize the balance of negotiating power between themselves and their employers.

Oregon's Collective Bargaining History

In 1959, the state AFL-CIO sponsored a bill granting public employees the right to organize and bargain over matters regarding employment relations. The bill sought to "authorize and direct" state and local agencies to enter into collective bargaining agreements with unions or councils of unions representing their employees.⁴⁶ The bill received opposition from the League of Oregon Cities and was amended to authorize, but not require, collective bargaining. The bill was passed by the legislature but was vetoed by Governor Mark Hatfield. In 1961 another collective bargaining bill was introduced, again by the AFL-CIO, but it never got out of committee.

⁴⁶ Or. H.B. 138, 50th session (1959).

In 1963, the AFL-CIO again sponsored, and the legislature passed, a bill which permitted but did not mandate public employee collective bargaining.⁴⁷ This 1963 law gave employees the right to bargain over matters concerning employment relations, a term which included but was not limited to wages, salaries, hours, vacations, sick leave, holiday pay, and grievance procedures. The law gave employers the right to enter into collective bargaining agreements with public employees and provided that the State Conciliation Service could be used to resolve public sector labor disputes. It also contained a prohibition against public employee strikes. The 1963 law did not provide procedures for establishing bargaining units or conducting representation elections nor did it establish a definite structure for bargaining. Since the law was viewed as one which permitted but did not mandate bargaining, only a few local governments began bargaining at this point and there was no state level bargaining taking place.

As a result of efforts by the Oregon Education Association (OEA) during the 1965 session, public school teachers were removed from the public sector bargaining statute and a meet and confer law was enacted for teachers (OR laws Ch. 390).⁴⁸ Subjects of meet and confer were limited to matters of salary and related economic policies affecting professional services. Local school boards were empowered to establish procedures for election and certification of teacher meet and confer committees. Also during the 1965 legislative session, the Oregon State Employee's

⁴⁷ Or. Laws ch. 579 (1963).

⁴⁸ 1965 ORS Ch. (390).

Association (OSEA) was successful in obtaining an amendment to the 1963 statute.⁴⁹

The amendment required civil service commissions at all levels to establish and administer procedures by which to designate bargaining units and select and certify bargaining representatives as well as enact enforceable procedures governing misconduct of representation elections. This 1965 statute implied that bargaining was mandated in state and in all county governments which were required to have a civil service commission. In 1966, for the first time, the state and the labor organizations which represented its employees signed collective bargaining agreements. In 1969 the State Civil Service Commission was abolished and personnel management for state service became centralized in the Personnel Division of the Executive Department. The Civil Service Commission was renamed the Public Employee Relations Board (PERB) and given the dual responsibilities of performing the functions of the former Civil Service Commission as well as administering the collective bargaining law for the State and local government units that chose to be covered by state law procedures. The 1969 law also transferred the State Conciliation Service from the Bureau of Labor to the PERB. Among the changes made by the 1969 legislative session was a broadened definition of the term employment relations and a new definition of collective bargaining adapted from language contained in the Taft-Hartley Act, both of which would have made it difficult for local governments to argue the non-mandatory nature of the statute.⁵⁰ One other amendment, however,

⁴⁹ Or. Laws ch. 543.

⁵⁰ Oregon Law Review, v 51, 1971, p. 14.

lessened the apparent mandatory impact of the law. The term "public employer," which previously included the state as well as "a county or city, or any political subdivision thereof"⁵¹ was amended by the addition of the qualifying phrase "that has requested the Public Employee Relations Board under ORS 243.751 to make its services and facilities available for the purpose of establishing public employee representation."

The 1971 legislature amended the meet and confer law for public teachers to require consultation over "salaries and related economic issues and grievance procedures," while at the same time placing classified employees of school districts under a similar meet and confer law.⁵² Also by 1971, there were a number of local governments bargaining, as well as a number refusing to bargain, with labor organizations. In June 1971, Jim Redden, who had been appointed to the PERB in 1969, suggested to Governor Tom McCall that a task force be appointed to study the matter of public sector collective bargaining and submit proposed legislation on the matter to the 1973 legislature. The task force proposed an extensive amendment to the existing state collective bargaining law. Although opposed by a group of senate members who attempted a petition to place the matter before the voters of the state, the PECBA became effective October 5, 1973.⁵³ Within two months, over 200

⁵¹ Or Laws ch. 579.002 (4) (1963).

⁵² 1971 Or Laws ch 582.

⁵³ Or laws ch 536.

representation petitions and unfair labor practice complaints were filed.⁵⁴ The Public Employee Collective Bargaining Act (PECBA) grants to public employees the right to join labor organizations and to negotiate collective bargaining agreements. The main features of the PECBA are as follows: 1. Employees have the right to exclusive representation by a certified or recognized labor organization. 2. Parties in a collective bargaining relationship can demand that subjects referred to as employment relations be the focus of negotiation. The term employment relations includes but is not limited to matters of direct or indirect monetary benefits, hours, vacation, sick leave, grievance procedures, and other conditions of employment. 3. The PECBA collective bargaining process provides for dispute resolution mechanisms which include negotiation, mediation, fact finding, arbitration, and a cooling off period. 4. The PECBA prohibits discrimination against employees for forming, joining, or participating in the activities of a labor organization of their choice. 5. The Employment Relations Board (ERB) enforces the PECBA through orders executed in unfair labor practice complaint hearings.⁵⁵

It has been 20 years since the Public Employees Collective Bargaining Act became law. The purpose of the present study is to determine what the impact of that legislation has been on the civil service merit system and public personnel administration in the State of Oregon generally.

⁵⁴ Greer, William, Jr. (Ed.), Labor and Employment Law: Public Sector (Oregon CLE 1990), pp. 1-10.

⁵⁵ Greer, William, Jr. (Ed.), Labor and Employment Law: Public Sector (Oregon CLE 1990), pp. 1-2.

METHOD

SUBJECTS

The observation units in this study are labor relations specialists, personnel directors, or other persons designated by personnel directors to complete the survey instrument. The units of analysis are the counties and cities of Oregon. Surveys were sent to all 36 counties, all cities with populations greater than 20,000, and a representative sample of 25% of all Oregon cities with a population of between 500 and 20,000. In organizations where the personnel staff included both a personnel manager and labor relations specialist, surveys were sent to both parties. Including those sent to personnel managers and labor relations specialists, a total of 42 county surveys were mailed. Surveys were sent to 56 Oregon cities. One difference between the respondents in the two sampling frames is that a large proportion of city organizational structures do not have a position solely dedicated to personnel management. (Fully one half of the cities in Oregon have populations under 1,000, and 62% of the cities that returned surveys indicated a work force of 37 or fewer employees). Therefore, the personnel management function is often handled by a city manager, commissioner, recorder, or mayor rather than a professional personnel administrator. In these cases, an effort was made to determine who, within the structure of that particular organization, had the greatest knowledge of or responsibility

for personnel administration. Although the civil service merit system has applicability to all public employers, a decision was made to include only counties and cities and to exclude other public employers such as school districts, water districts, and other special districts. The rationale for this exclusion was based on the size of the employing unit, as was the decision to exclude cities with populations under 500 as explained below. The purpose of this study was to solicit information concerning the impact of collective bargaining on the civil service/merit system from the perspective of the public employer and, for that reason, labor organizations were not included as respondents to the survey.

MATERIALS

The materials used in this study were the Oregon revised statutes (ORS) covering merit system and collective bargaining law (ORS chapters 240, 241, 242, and 243), Employment Relations Board (ERB) orders, and court decisions relating to those statutes. In addition, a written survey instrument was administered by mail. There were two versions of the survey instrument used, differing only in the wording with respect to the terms "county" and "city." A copy of each of the survey instruments is included in appendix A of this report.

DESIGN

This research utilized a multiple methods design. The data collection methodology of this study involved two approaches. The first was a document review

of state statutes, administrative rules, Employment Relations Board orders, and court decisions applicable to the civil service and collective bargaining. The second approach to data collection employed a written survey designed to solicit the opinion of personnel administrators and others in a position to have an opinion concerning the influence of collective bargaining on the civil service/merit system within their respective jurisdictions.

The survey instrument was designed to solicit information in four areas. The first 16 questions requested descriptive information such as the number of employees and whether or not the city or county engaged in collective bargaining. Question 17 was designed to determine the extent to which procedures governing certain personnel functions were established by either collective bargaining agreement or civil service/merit system rules. Question 18 was of a more subjective nature. This item asked respondents to indicate the extent to which they feel the civil service merit system and collective bargaining are in conflict with regard to the areas of personnel administration listed in question 17. Questions 19 and 20 were open-ended response items which asked what the effect of public sector collective bargaining has been and specifically what changes have been made as a result of union discussions in their jurisdictions. To the extent that question 18 asked for a response indicating a feeling of conflict, the answers necessarily reflect personnel manager's perceptions of conflict rather than its existence on an objective scale. No attempt was made to operationally define the term conflict, and no claim is made that this rating indicates any objective measurement of the existence of conflict nor that this perceived level of conflict

indicated by individual managers would be universally recognized by all members of the organization. The purpose of the question is solely to identify personnel managers' perceptions of the existence of conflict between the two systems.

Both qualitative and quantitative methods of data analysis were employed to interpret the data. Qualitative analysis of historical documents yielded descriptive information pertaining to such factors as the proliferation of collective bargaining legislation and the rationale behind such legislation. Quantitative survey data were analyzed using simple techniques of basic descriptive statistics and tabulation. No difference tests or other inferential statistics were employed in the analysis of the data due to the low statistical power inherent in such a small sample (e.g., only 17 counties and 10 cities report the presence of both civil service and collective bargaining). In addition to the quantitative analysis, narrative survey data were analyzed using content analysis techniques, which were applied to the open-ended survey responses and interview data. A combination of quantitative and qualitative techniques were used in tandem with the expectation that such an approach would contribute to a more thorough investigation of the research question and lead to a better understanding of the impact which collective bargaining legislation may have had on the civil service merit system than would the use of either technique alone.

PROCEDURE

As a first step in the construction of the survey instrument, as well as a later check on its face validity, a non-random sample of individuals who are in a position to

have firsthand knowledge of public sector labor relations issues (key informers) were interviewed in person or by telephone to aid in the identification of potential issues related to the effects of collective bargaining on the merit system.⁵⁶ Following these interviews, a written survey of 20 questions was developed. After the survey instrument was constructed, it was "piloted" on a non-random sample of five respondents. The objective of this pilot study was to discover and correct any potential for respondents to misinterpret the questions as they were worded. No changes to the survey were made as a result of the pilot study returns.

In order to compile the sample used in this study, a list of all Oregon counties and cities was drawn from the most recent (1990) U.S. Census data and two sampling frames, county and city, were developed from that list.

The county sampling frame consisted of a list of all 36 Oregon counties. Prior to mailing the survey instrument, telephone calls were made to personnel directors and labor relations specialists in order to discuss the purpose of the research and ask for their commitment to complete the survey. Of 49 potential respondents, eleven were unavailable by telephone and did not return phone calls. In one case the Personnel Manager was unable to return toll calls apparently due to the budget restrictions that ballot measure five had imposed on the county. Surveys were then mailed to personnel directors and labor relations specialists of the selected jurisdictions accompanied by a

⁵⁶ These persons include personnel representatives of one major city, one major county, and a senior assistant attorney general who represents the state of Oregon in labor relations matters and whose chapter on public sector labor relations appears in Greer.

cover letter explaining the purpose of the study. A self-addressed postage paid envelope was included for return of the survey. Approximately three weeks after the initial mailing, follow-up calls were made to any respondents who by that time had not returned the survey. A second follow-up call was made after five weeks and, in some cases, a third call was made after eight weeks. Any surveys not returned after three follow-up calls were considered uncollectible data and were not included in the analysis.

There are a total of 241 cities in Oregon. The city sampling frame consisted of all 186 Oregon cities with a population over 500. A sample of 56 Oregon cities was drawn from this frame in the following manner. As a first step, the 14 Oregon cities with populations greater than 20,000 were chosen for inclusion in the sample. The systematic inclusion of larger cities in the sample was deemed appropriate for two reasons. First, excluding them would have resulted in substantial under representation of cities housing the majority of citizens and local government employees in the state. Second, smaller cities are assumed less likely to have both civil service merit and collective bargaining systems. Since one purpose of this study was to assess the degree of conflict existing under the presence of both systems, it was deemed necessary to insure that cities likely to have both systems would be included in the final sample. Next, the list of 172 remaining cities was sorted by population and, using a periodic sampling technique with a random start, every fourth city was selected. Forty two cities were selected in this manner for inclusion in the study. As with the county sampling frame, preliminary phone calls to survey respondents were made in an effort

to maximize the response rate. The final sample used in this study consisted of 98 individuals and 92 organizations, 56 city and 36 county governments.

RESULTS

REVIEW OF CURRENT STATUTES

One means of determining the impact of collective bargaining on the civil service merit system is to examine the relevant legislation governing each of the two systems. This was the approach taken by Douglas in his 1992 article. Douglas took the initial position that the power of civil service merit systems had been usurped by collective bargaining legislation. He reviewed the scope of bargaining limits, statute revocation, and primacy of legislation procedures of statewide public sector labor relations laws in those states which had enacted public sector labor relations statutes through 1990. Douglas contended that if civil service merit systems are statutorily protected, either by direct reference (i.e. by statutory language specifically protecting the merit system) or by limits placed on the scope of bargaining, then it may be argued that the perception of a diminished status of merit systems is false. If, on the other hand, legislation subjugates Civil Service Merit Systems to collective bargaining, then it can be argued that Civil Service Merit Systems have acquired a diminished status.⁵⁷ Based on a reading of the current Oregon statutes governing civil service merit systems and public sector collective bargaining, it is clear that the intent of policy makers in

⁵⁷ Douglas, Joel, M. "State Civil Service and Collective Bargaining: Systems in Conflict," Public Administration Review, vol. 52 (2), March/April 1992, p. 162.

drafting those laws was to give supremacy to collective bargaining over civil service authority as a means of determining the wages, hours, and other terms and conditions of employment of bargaining unit employees in the public sector.

ORS 240

Following the reasoning set out by Douglas, examination of the statutory language of merit system and collective bargaining legislation in Oregon suggests that it was the intent of the legislature to establish the dominance of collective bargaining agreements over civil service merit system rules in at least some, if not all, aspects of the employer employee relationship. Specifically, ORS 240.321(2) gives precedence to collective bargaining agreements in the determination of all aspects of wages, hours, and other terms of employment for employees of state agencies who are in certified or recognized appropriate bargaining units.

Sections (2) and (3) of ORS 240.321 state:

- (2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430, and 240.551, employees of state agencies who are in certified or recognized appropriate bargaining units shall have *all aspects of their wages, hours, and other terms of employment* determined by collective bargaining agreements between the state and its agencies and the exclusive employee representatives of such employees pursuant to the provision of ORS 243.640 to 243.762 *except with regard to applicants for initial appointment to state service.*
- (3) The provisions of rules adopted by the division, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to

employees within appropriate bargaining units covered by such agreements

(emphasis added).

ORS 240.321(2) applies only to employees of the State of Oregon, not to all public employees in the state. ORS 240.321 is specifically to give precedence to collective bargaining agreements in the determination of all aspects of wages, hours, and other terms of employment for employees of state agencies who are in certified or recognized appropriate bargaining units pursuant to the provision of ORS 243.640 to 243.762. There is no parallel language in ORS 241 or ORS 242 which subjugates the merit system in county or local governments to collective bargaining. Therefore, the supremacy of the PECBA over other statutes dealing with labor relations issues must be determined by comparing each of them to the PECBA. However, a reading of The Public Employee Collective Bargaining Act (ORS 243.650 to 243.782) in conjunction with ERB orders and court rulings makes it clear that it was the intent of the legislature, in enacting ch. 243, that collective bargaining be given precedence over the civil service merit system as well as other state statutes and local ordinances governing employment relations at all levels of government.

ORS 243

ORS 243.650 to 243.782 is known as The Public Employee Collective Bargaining Act (PECBA). This act grants *public employees* the right to be represented by labor organizations and to negotiate collective bargaining agreements (emphasis added). The principal features of the PECBA are as follows:

1. Employees have the right to exclusive representation by a certified or

recognized labor organization. 2. Parties in a collective bargaining relationship can demand that subjects referred to as employment relations be the focus of negotiation. The term employment relations includes but is not limited to matters of direct or indirect monetary benefits, hours, vacation, sick leave, grievance procedures and other conditions of employment. 3. The PECBA collective bargaining process provides for dispute resolution mechanisms which include negotiation, mediation, fact finding, arbitration, and a cooling off period. 4. The PECBA prohibits discrimination against employees for forming, joining, or participating in the activities of a labor organization of their choice. 5. The Employment Relations Board (ERB) enforces the PECBA through orders executed in unfair labor practice complaint hearings.⁵⁸

The purpose of ORS 243.650 to 243.782, as specifically set out in ORS 243.656 (5), is to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations

⁵⁸ Greer, William, Jr. (Ed.), Labor and Employment Law: Public Sector (Oregon CLE 1990), p. 1-2.

with public employers.⁵⁹

Public employer is defined by the act as

The State of Oregon or any political subdivision therein, including cities, counties, community colleges, school districts, special districts, and public and quasi-public corporations. "Public employer" includes any individual designated by the public employer to act in its interests in dealing with public employees.⁶⁰

Public employee is defined as "an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, or persons who are confidential employees."⁶¹ A confidential employee is one "who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining."⁶² Labor organizations as defined in ORS 243 means "any organization which has as one of its purposes representing employees in their employment relations with public employers."⁶³

Collective bargaining is defined as

the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations, or the negotiation of an agreement, or

⁵⁹ ORS 243.656(5).

⁶⁰ ORS 243.650(18).

⁶¹ ORS 243.650(17).

⁶² ORS 243.650(6).

⁶³ ORS 243.650(12).

any question arising there-under, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.⁶⁴

Section .656 of ORS chapter 243 is a policy statement which reads:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees; (2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees; (3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment, and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees; (4) The state has a basic obligation to protect the public by attempting to assure the orderly and

⁶⁴ ORS 243.650(8).

uninterrupted operations and functions of government; and (5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees, and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.

The definitions elucidated in ORS ch. 243.650 coupled with the policy statement of section 243.656 clearly indicate that the intent of the legislature in Oregon is to give preference to collective bargaining over civil service authority as a means of resolving disputes relating to employment relations and in determining the wages, hours, and other terms and conditions of employment of public employees who are members of a bargaining unit.

Given that the legislative intent is to obligate public employers, public employees, and their representatives to enter into collective negotiations to resolve grievances and disputes relating to employment relations, the question of impact is twofold: 1) How have county and local governments responded to the mandate that they engage in collective bargaining; and 2) What specific personnel functions have come to be established and/or guided by collective bargaining agreements? To begin

to answer these questions we turn to a discussion of Employment Relations Board orders and court rulings.

RELATIONSHIP OF THE PECBA TO OTHER STATUTES

Since its enactment in 1973, ERB and state court system have had to face issues concerning the relationship between the PECBA and the provisions of other state statutes and local ordinances governing public employees. One such issue concerned the concept of home rule. A second, yet related, issue is that of what constitutes a public employer. The third issue is that of scope of bargaining. Cases relating to all three issues will be discussed in the following section.

The Issue of Home Rule

The Oregon constitution prohibits the state legislature from enacting, amending, or repealing any charter or act of incorporation for any municipality, city, or town.⁶⁵ Similar language protects the charters of counties in the State.⁶⁶ The issue of home rule is relevant to the present discussion because the home rule principle was cited by four cities and one county as authority for not conforming to ORS chapter 242.

In State ex rel Heinig v. Milwaukie, the Oregon Supreme Court ruled that the city of Milwaukie need not follow the state civil service statutes since civil service for fire fighters was a matter of primarily local concern.⁶⁷ The Heinig decision thus

⁶⁵ Oregon Constitution article XI section 2.

⁶⁶ Oregon Constitution article VI section 10.

⁶⁷ 231 Or 473, 483-484, 373 P2d 680 (1962).

invalidated that portion of ORS 242 which would have required Milwaukie (and all Oregon cities) to establish a civil service system for firemen on the grounds that such matters were of "local concern." However, the Oregon Attorney General, in a 1967 opinion, reasoned that Heinig did not preclude the legislature from requiring home rule cities to bargain with their employees.⁶⁸ Subsequent cases, while not over-ruling Heinig, have limited the power of local governments in related areas. For instance, in La Grande/Astoria v. PERB⁶⁹ it was found that retirement benefits for fire fighters was a matter of state concern and therefore the Public Employee Retirement System does not violate home rule amendments.⁷⁰ The Oregon Supreme Court ultimately ruled, in City of Roseburg v. Roseburg City Fire fighters, that PECBA does not violate the home rule amendment of the Oregon Constitution.⁷¹

The case of AFSCME Local 350 v. Clackamas County arose when the county refused to bargain proposals, submitted by AFSCME, dealing with procedures for layoff which eliminated or replaced procedures contained in the previous agreement related to the Civil Service Commission and its rules. The county argued that, while it was willing to discuss the proposals, it had no authority to agree to them unless the proposals were accepted by a vote of the people. AFSCME filed an unfair labor practice complaint charging Clackamas County with refusal to bargain certain

⁶⁸ 33 Op. Or. Attorney General 295 (1967).

⁶⁹ La Grande/Astoria v. PERB, Or 173, 586 P2d 765 (1978).

⁷⁰ Labor and Employment Law: Public Sector, (Oregon CLE 1990) p. 14-6.

⁷¹ City of Roseburg v. Roseburg City Fire fighters, 292 Or 266, 639 P2d 90 (1981).

mandatory subjects. ERB found that the County had refused to bargain in good faith over layoff, discipline, and grievance proposals in violation of ORS 243.672 (1) (a) and (e).

The Board reasoned that, although there did appear to be a statutory conflict between certain bargaining rights guaranteed by the PECBA and the authority granted to the Civil Service Commission, legislative intent was clear that, where employees are organized, matters of employment relations should be developed under and governed by the PECBA. ERB ruled that because the PECBA was enacted after the Civil Service statutes, and because it included a statement of legislative intent to provide a uniform basis for bargaining, the legislature intended "all employment relations of organized public employees" to be governed by the PECBA rather than local Civil Service commissions.⁷² The County appealed the ERB order, and the court of Appeals ruled that proposals which involve order of layoff and recall, grievance procedures, or arbitration procedures involve conditions of employment and are therefore mandatory subjects of bargaining. The court also ruled that, since the union proposals were mandatory subjects of bargaining subject to the PECBA, the County committed an unfair labor practice by refusing to bargain them. The court acknowledged the seeming conflict between ORS chapters 243 and 241 but noted that PECBA "is later enacted and is more comprehensive."⁷³ Further, the procedures of PECBA are

⁷² AFSCME Local 350 v. Clackamas County, 7 PECBR (1983), affirmed 69 Or App 488 (1984).

⁷³ AFSCME Local 350 v. Clackamas County, 7 PECBR (1983).

mandated for all public employers, including counties, while chapter 241 simply permits counties to adopt a civil service system. Finally, the court found that a county is neither required to have a civil service system nor to submit a proposed civil service system to the voters but is required to bargain matters pertaining to employment relations.

Who is the Public Employer

Three cases which have come before ERB and the courts are of particular importance to this issue, the lead case being OSEA v. Lincoln County and Sheriff Everett Hockema.⁷⁴ In 1977, the Oregon State Employees Association filed a complaint alleging that, through Lincoln County, Sheriff Hockema discharged three deputy sheriffs who served on the Association's bargaining team, along with the President of the Association, because of their participation in the bargaining process in violation of ORS 243.672 (1) (a) (b) (c) (e) and (i). These sections of the statute define certain unfair labor practices on the part of an employer related to interference with or discrimination against an employee because of their participation in any employee organization. The issues before ERB were whether the deputy sheriffs of Lincoln County were public employers under ORS 243.650 to 782, and if so, whether or not the alleged acts constituted unfair labor practices within the meaning of ORS 243.672 (1) (a) (b) (c) (e) and (i).

Sheriff Hockema argued that appointed deputy sheriffs served at the pleasure of

⁷⁴ OSEA v. Lincoln County and Sheriff Everett Hockema, 3 PECBA 1650 (1977), aff'd 49 Or App 349 (1980).

the sheriff under ORS 204.635, and that because they were appointed deputies, as sheriff he had absolute authority to fire them at will. Hockema also argued that any attempt at limitation of the sheriff's ability to terminate these deputies by application of the PECBA was in conflict with ORS 204.635, and that because of the terms of 204.635, bargaining on the issue of termination was not required. ORS 204.635 states in part:

(1) A sheriff's deputies shall be appointed by him in writing and continue during his pleasure (3) A deputy has the power to perform any act or duty that his principal has, and a person specifically appointed to do a particular act authorized. The principal is responsible for the conduct of such deputy or person specially appointed except as provided in subsection (4) of this section

ERB found that Sheriff Hockema's actions had violated all of the above sections of ORS 243. ERB also rejected the Sheriff's argument that any attempt to limit his authority to terminate employees at will was inconsistent with ORS 204.635. ERB ruled that, in applying rules of statutory construction, it is clear that the protection afforded public employees, including deputy sheriffs, by the PECBA is not abrogated by ORS 204.635. ERB stated, "To the extent a conflict exists between the PECBA which was enacted in 1973 and ORS 204.635 which descends without change from Dedy's Code of Laws of 1959, section 962, the PECBA must take precedence."⁷⁵

ERB's ruling was appealed and the Appellate Court affirmed the decision of ERB. Reconsideration was denied, as was a petition for review. The court held that,

⁷⁵ ORS 174.020.

since a public employer, the state, within the meaning of ORS 243 has designated sheriffs to act in its interests in dealing with deputies, the sheriff is a public employer under the law and his deputies are public employees.

The other two cases worthy of mention with respect to the supremacy of the PECBA over other statutes dealing with labor relations are Lent v. Employment Relations Board of the State of Oregon,⁷⁶ and Circuit Court of Oregon, Fifteenth Judicial District, Juvenile Judge, Honorable Richard L. Baron et al. v. AFSCME Local 502-a.⁷⁷

Judge Lent was the Chief Justice of the Oregon Supreme . He argued that labor relations with employees of the judicial department were not subject to the PECBA because his authority under ORS 1.002 and 1.008 was inconsistent with and should prevail over the provisions of the PECBA. The provisions of ORS 1.002 and 1.008 were enacted by OR Laws 1981, sometimes referred to as the Reform Act of 1981, and state:

The Chief Justice of the Supreme Court shall establish and maintain, consistent with applicable provisions of law: (1) A personnel plan for officers, other than judges, and employees of the courts of this state who are state officers or employees, governing the appointment, promotion, classification, minimum qualifications, compensation, expenses, leave, transfer, removal, discipline and other incidents of employment of those qualified officers.

⁷⁶ 63 Or App 400 (1983).

⁷⁷ 295 Or 542 (1983).

The trial court found that the exercise of personnel functions delegated by the court Reform Act of 1981 are subject to the PECBA, and that there is no unconstitutional infringement on the judiciary by either the legislature or the executive branch. The Court of Appeals affirmed the ruling, and a petition for review was denied.

In the Barron case, Judge Barron argued that since he had authority to hire, fire, and set salaries of juvenile court counselors under ORS 419.604, he was not bound by PECBA. ERB had entered an order requiring juvenile justice court judges to bargain with the juvenile counselors' union, and Judge Barron appealed the order. The Court of Appeals affirmed the order and the judge again appealed.⁷⁸ The Supreme court affirmed the decision of the appeals court finding that

(1) There is nothing in language of statute authorizing judge to hire, fire, and set salaries of counsellors that made it inconsistent with simultaneous operation of Public Employee Collective Bargaining Act, and (2) inclusion of juvenile court judges and counselors in Act did not conflict with Oregon Constitution sections governing separation of powers or section governing courts.⁷⁹

There is one final case on the relationship of the PECBA to other statutes dealing with labor relations which has application to the present study. This case addresses the specific question of whether the PECBA is superordinate to ORS 240. AFSCME Locals 2623-A 2623-B and 191-B v. Executive Department et al.⁸⁰ was a consolidated

⁷⁸ 61 Or App 311, 657 P2d 1237.

⁷⁹ 295 Or 542 (1983).

⁸⁰ 52 Or App 457 (1981).

case dealing with several issues; however, in its relation to the present study, the central issue was whether the legislature, in enacting the PECBA, meant to remove from the State Personnel Division the authority to set salaries for individual employees in collective bargaining units as outlined in ORS ch. 240. In January 1979, the state and union began the process of negotiating a successor central agreement to a contract due to expire on July first of that year. An impasse was reached with respect to certain wage and benefit matters. Mediation failed. Fact finding was initiated and completed. In June the union notified ERB that it did not accept the fact finder's recommendations and requested interest arbitration pursuant to PECBA. The interest arbitrator awarded salary increases which the state refused to implement. AFSCME filed an unfair labor practice complaint alleging that the state had violated the provisions of ORS 243.742 and 243.752. ERB found that the state had committed an unfair labor practice by refusing to implement the arbitrator's award and directed the state to comply. The state did not comply with ERB's order, and in June of 1980 both parties filed for judicial review. AFSCME's position was that the PECBA (at that time the Public Employee Relations Act, PERA) required compulsory interest arbitration in the case of impasse for those employees prohibited by law from striking. Among other things, the state argued that ERB erred in affirming the arbitration award without the approval of the plan by the Personnel division in accordance with ORS 240.215, 240.233, 240.235, and 240.240. With regard to the issue of binding arbitration and the conflict between ORS 240 and 243 the court found that

while the State Personnel Division retains the power to group all job positions

into classes and to adopt, pursuant to ORS 240.235 (1) for each class or position, a salary range which includes maximum, minimum, and intermediate positions, that: (1) the establishment of the compensation plan itself can be a subject for bargaining between the state and labor organizations and (2) the individual wage rates for public employees in collective bargaining units are to be set within the negotiated ranges. Where the bargaining process breaks down, and the employees are forbidden by law from striking, the arbitrator has been given the authority to set new salaries for those employees. The Personnel Division does not have the authority to approve these rates. We conclude that this was the intention of the legislature in enacting ORS 243.696 and ORS 243.742.

The above cases have demonstrated that ERB and the courts view the PECBA as superordinate to other state statutes and local ordinances which also deal with matters of employment relations. On the matter of home rule ERB ruled that, because the PECBA was enacted after the Civil Service statutes, and because it included a statement of legislative intent to provide a uniform basis for bargaining, the legislature intended all employment relations of organized public employees to be governed by the PECBA rather than local Civil Service commissions. As concerns the issue of whether matters of labor relations between public employers and public employees are subject to the provisions of the PECBA or other state statutes, ERB and the courts have consistently ruled that, although there may appear to be a conflict between two statutes, such matters are subject to the provisions of the PECBA. In *Hockema*, the court reasoned that the PECBA takes precedence because of its more recent enactment.

In *Lent and Barron*, the court reasoned that, there was no conflict between the PECBA and the provisions of the other statutes cited in challenge to the authority of the PECBA. In *AFSCME Locals 2623-A 2623-B and 191-B v. Executive Department et al.* the court ruled that, while the State Personnel Division retains the power to group all job positions into classes and to adopt salary ranges which include maximum, minimum, and intermediate positions, the establishment of the compensation plan itself can be a subject for bargaining between the state and labor organizations.

Previous literature has speculated on the question of which areas of personnel administration are likely to be affected by collective bargaining legislation, while the preceding discussion of state statutes, local ordinances, ERB orders, and court decisions have demonstrated the intent of the Oregon legislature and the courts with respect to the superordinate relationship of the PECBA to other pieces of legislation governing public sector labor relations. The third major issue which ERB and state court system have had to face with regard to the implementation of the PECBA concerns the scope of bargaining. Once it is determined that an entity is a public employer and that the public employer must bargain, on what topics must that public employer enter into negotiations when it is requested by the other party?

The Issue of Scope of Bargaining

A brief summary of Employment Relations Board findings and court decisions will provide an answer to the question of what the scope of bargaining has come to be under the definition of wages, hours, and other terms and conditions of employment.

Following the federal practice, bargaining items in Oregon are classified into

three categories. Mandatory subjects are topics which parties are legally obligated to bargain (although they are not legally obligated to reach an agreement). Permissive subjects are those which parties may bargain by mutual agreement. Prohibited subjects are those which are not bargainable generally because to do so would contradict existing state law. In general terms, the scope of bargaining issue is important for four reasons.⁸¹ First, while it is legal to propose a permissive subject, it is an unfair labor practice to insist on negotiation of a permissible subject to the point of impasse. Second, a determination is important because only mandatory items may precede to fact finding (unless the other party has failed to identify the issue as permissive in earlier stages of bargaining). Third, permissive subjects may not be included as strike issues. However, if the employer has not refused to bargain an item on the grounds that it is permissive, the item may be a strike item. Finally, an employer may not take unilateral action on a permissive item.

The scope of bargaining issue is relevant to this study because, to the extent that a subject is mandatory, it is not subject to civil service/merit system control. It may be argued that permissive topics are subject to neither collective bargaining nor civil service rules but are management rights issues. However, we would argue that, to the extent permissive subjects actually are bargained, the collective bargaining model has gained dominance in the overall administration of public sector personnel practice. The statutory language of ORS 243.656 (3) makes it clear that items with financial impact to employees (disputes arising out of differences as to wages, hours, terms, and

⁸¹ Hungerford & Bischof, Oregon Labor Law Today, pp. 2.4.1-2.4.2.

other working conditions) are mandatory subjects of bargaining. What is meant by the terms "wages" and "hours" seldom is at question or a matter of dispute. In addition, certain other specific items which are mandatory subjects of bargaining are defined elsewhere in the statutes; these include vacation time, sick leave, and grievance procedures as outlined in ORS 243.650 (7).

Most scope of bargaining issues arise from interpretation of the term "other working conditions" mentioned in ORS 243.656 (3). In Oregon, the determination of whether items covered under the term "other working conditions" are permissive, mandatory, or prohibited is initially made by Employment Relations Board. ERB has seldom determined a bargaining proposal to be prohibited. The best known and most far reaching of the cases concerned with scope of bargaining was Springfield Education Association v. Springfield School District.⁸² The Springfield Education Association had filed an unfair labor practice complaint against the Springfield School District over the district's refusal to bargain 92 specified items on the grounds that they were non-mandatory subjects of bargaining.⁸³ One particular issue in that case was whether teacher evaluations were subjects of bargaining. In Springfield, after rejecting various tests suggested by each party, ERB developed criteria which defined prohibited subjects as items "which would require either party to do an illegal act or

⁸² Springfield Education Association v. Springfield School District, 1 PECBR 347 (1975), 22 Or App 751, 547 P2d 647, former opinion modified 25 Or App 407, 549 P2d 1141, rev. denied 276 Or 387(1976), on remand 3 PECBR 1950, 1969 (1978), 42 Or App 93, 600 P2d 425 (1979), aff'd 290 Or 217, 621 P2d 547 (1980).

⁸³ Kaser, Stephen, "The Scope of Bargaining Under Oregon's Public Employee Collective Bargaining Act," Oregon Law Review, v 56, 1977, p. 439.

perform an act which is contrary to any other statutory or constitutional provision."⁸⁴

ERB ruled that because it was covered by statute, and because it was a management prerogative, the subject of teacher evaluations was a permissive subject of bargaining.

On appeal, the court ruled that ERB should have applied the balancing test which was first articulated by the court of appeals in Sutherlin Education association v. Sutherlin School District⁸⁵ as follows:

The appropriate test to be applied in determining whether a proposed subject is a "condition of employment" and therefore a mandatory subject for bargaining is to balance the element of educational policy involved against the effect that the subject has on a teacher's employment.⁸⁶

In 1977 ERB reheard the case and again found that the basis for and use of teacher evaluations were permissive subjects of bargaining since educational policy interests outweighed teacher interests.⁸⁷ ERB also found that certain aspects of the evaluation (the right to know the basis for the evaluation, right to notice of the evaluation report, right to have the evaluation presented in written form, and right to respond) were mandatory subjects because the effects on a teacher's conditions of employment outweighed the educational policy considerations.⁸⁸ On a second appeal, the court

⁸⁴ Springfield, 1 PECBR 347 1975.

⁸⁵ Sutherlin Education association v. Sutherlin School District, 25 Or App 85, 548 p2d 204 (1976).

⁸⁶ 25 Or App at 88.

⁸⁷ Hungerford & Bischof, Oregon Labor Law Today, p. 2.4.4.

⁸⁸ 3 PECBR 1959 (1978).

confirmed the right of ERB to define "other conditions of employment," finding that the legislature had delegated the policy-making function to interpret statutory language to ERB.⁸⁹ The Oregon Supreme Court eventually heard the case and reversed the Court of Appeals determination of ERB's policy-making role, finding that deciding the scope of employment relations was a matter of interpretation rather than an addition of items to be included under the term "other conditions of employment." The Supreme Court did, however, back ERB's use of the balancing test. In 1983, ERB ruled that "where a subject generally has a greater effect on working conditions than on management rights, that subject is a condition of employment and is mandatory."⁹⁰

Oregon's PECBA contains no management rights language per se, although management rights clauses can be negotiated into individual bargaining agreements. Any subject which is neither prohibited nor mandatory is a permissive subject of bargaining in Oregon and, to the extent that a subject is either permissive or mandatory, it is not solely within the scope of civil service/merit system rules. The conclusion to be drawn is that the only topics outside the scope of bargaining are those pertaining to the recruitment and selection of applicants for initial appointment. As a result, collective bargaining can be said to have diminished the impact of the civil service/merit system as a means of establishing procedures governing most public personnel functions in Oregon. Based on a reading of the Oregon revised statutes, ERB opinions, and court decisions, we believe that the collective bargaining system

⁸⁹ 42 Or App 93 (1979).

⁹⁰ IAFF v. City of Salem, 7 PECBR 5819, 5825 1983.

has come to dominate public employee/employer relations in Oregon.

If it is the case that collective bargaining is now the dominant paradigm of public employee personnel administration, what exactly has been the impact of the collective bargaining system on the civil service merit system with respect to the day to day administration of public sector personnel practice? The survey employed in this study was designed to provide insight into that issue.

SURVEY RESULTS

The following sections address the results of the survey, sent to all Oregon counties and approximately 25% of all Oregon cities, conducted as a part of this research. Numerically scaled questions were designed to solicit personnel managers' opinions as to the extent to which specific personnel functions are governed by civil service merit systems or collective bargaining agreements. Similar questions were intended to gauge the extent to which the civil service merit system and collective bargaining are in conflict with regard to those same personnel functions. Open-ended response items were designed to solicit managers' opinions as to the general effect which collective bargaining may have had on the civil service merit system and the specific ways in which union discussions, pressures, or influences may have caused management to alter policies, procedures, or standards. Discussion will proceed with presentation of the quantitative data followed by a presentation and discussion of verbatim responses to open-ended survey questions.

County Descriptive Data

The county sample frame consisted of 36 counties and 42 individuals, including personnel administrators and labor relations specialists. Of the 42 surveys that were sent to Oregon counties, 39 surveys were returned for an individual response rate of 93%. These 39 returns included responses from 34 of 36 counties. The response rate tallying counties, rather than individual respondents, as the unit of analysis was 94%. This is an unusually high rate of return which is likely attributable to the technique of placing preliminary and follow-up telephone calls to survey respondents. Because the number of surveys returned by labor relations specialists was very small ($n = 6$), and because surveys returned by personnel managers represented 34 of the 36 Oregon counties, a decision was made not to include the labor relations specialists' survey data in the analysis.

The mean population of Oregon's 36 counties, based on 1990 U.S. census data, is 89,394 with a median value of 46,300. Population values range from a low of 1,750 in Gilliam County to a high of 605,000 in Multnomah County. Based on the 34 returned surveys, the number of county employees ranges from a minimum of 11 in Morrow County to 3,529 in Multnomah County, with a mean county work force of 503 and a median of 280. The number of bargaining unit members also shows a large range, from 7 in Crook County to 3,302 in Multnomah County. The mean number of bargaining unit employees is 342, with a median of 154. The number of bargaining agreements ranges from 1 in Gilliam County to 9 in Multnomah County. The mean number of agreements is 3 and the median number of agreements is 2.5.

Of the 34 responding counties, 17 (50%) reported that they have a merit system. Four counties (11%) reported that they have a civil service system and civil service board (Washington, Multnomah, Wasco, and Columbia). By statute, a county with a civil service system must have a civil service board to administer that system. Because the Oregon statutes do not make a distinction between civil service and merit systems, the survey asked respondents if they had each type of system in place. Two counties (Multnomah and Washington) reported the presence of both merit and civil service systems. Thirty-three counties (97%) reported that they engage in collective bargaining (only Sherman County does not), and 17 counties (50%) reported the presence of both collective bargaining and merit systems. Of the four counties which have civil service boards, three boards (Washington, Multnomah, and Wasco) reported that they meet "as needed" and one (Columbia County) reported that they meet quarterly. All four of the counties which have a civil service and a civil service board (Washington, Multnomah, Columbia and Wasco) also responded that they engage in collective bargaining. This information is summarized in Table 1 on page 77.

City Descriptive Data

Of the 56 surveys that were sent to Oregon cities, 34 surveys were returned for a response rate of 61%. Population values of those cities included in the sample ranged from a low of 527 to a high of 37,319 based on 1990 U.S. census data. The mean population of cities included in this study is 29,304 with a median value of 3,268. Based on the 34 returned surveys, the number of city employees ranges from a low of 3 in Dufer to a high of 5,915 in Portland with a mean of 322 and a median of 22. The

number of bargaining unit members ranges from 5 in Madras to 4,629 in Portland. The mean number of bargaining unit members is 437 and the median is 108. The number of bargaining agreements ranges from 1 in Eagle Point and Madras to 7 in Portland. The mean and median number of agreements is 3.

Of the 34 responding cities, 15 (44%) report that they have a merit system. Four (12%) report the presence of a civil service system. Twenty (59%) report that they engage in collective bargaining, and ten cities (29%) report that they have both civil service and collective bargaining systems. Of the four cities which have civil service boards, two boards (Portland and Salem) meet monthly, one (Milwaukee) meets annually, and the last (Bend) meets "infrequently." This information is summarized along with that for the counties, in Table I on page 77.

Comparison of County and City Data

Surveys were sent to 36 counties and 56 cities. A total of 68 surveys (34 counties and 34 cities) were returned for an overall response rate of 74%. Counties were somewhat more likely to report the presence of a merit system than are cities (50% of counties versus 44% of cities), although the results of chi-square analysis showed a non-significant difference between type of organization and presence or absence of a merit system, $\chi^2 (1, N = 68) = 14.46, p > .7$.

Counties, however, are significantly more likely to report that they engage in collective bargaining than are cities (97% of counties versus 59% of cities), $\chi^2 (1, N = 68) = .139, p < .001$. Given the data available in the present study, the reason for this finding is difficult to ascertain and beyond is beyond the scope of this inquiry. One

possibility is that the difference in the presence or absence of collective bargaining is due to the number of employees. Post hoc analysis does show a statistically significant zero order correlation between the presence of collective bargaining and both of the variables, number of employees, $r = .248$, $P = .042$ and size of population, $r = .285$, $P = .018$. However, there is an even greater zero order correlation between type of governmental organization (city or county) and presence or absence of collective bargaining $r = -.4611$, $P < .001$). To attribute the presence or absence of collective bargaining simply to the presence of a large number of employees would be overly simplistic and overlook such other variables as number and size of departments, salary ranges and their relationship to local cost of living, and many other potential influences effecting the presence or absence of collective bargaining.

As to the presence of dual personnel systems, 17 counties (50%) and 10 cities (29%) report the presence of both civil service/merit and collective bargaining systems. It would be interesting to more closely examine the relationship between the presence or absence of dual personnel systems and such variables as type of organization (city or county), number of employees and other factors, but again, the small number of governmental units and thus low statistical power precludes a quantitative analysis of this question.

Assessment of Influence

At this point it would be helpful to reiterate the distinction between a civil service or merit *system* and the merit *principle*. A merit system is a set of established procedures, such as personnel policies set out in a personnel manual or city/county ordinance,

created to implement the principle of merit in government organizations. The goal of the merit system, according to Helburn and Bennett, is to establish rules for the movement of personnel into, within, and out of public employment.⁹¹ The merit principle seeks to make relative employee competence the major criterion in decisions directing the movement of personnel. David Stanley makes the following distinction between a merit system and the merit principle.

The merit principle is the basis on which employees are recruited, selected, and advanced under conditions of political neutrality, equal opportunity, and competition on the basis of merit and competence. When we say merit systems, however, this has come to mean a broad program of personnel activities. Some are essential to carrying out the merit principle; recruiting, selecting, policing of anti-politics and anti-discrimination rules and administering related appeals provisions. Others are closely related and desirable: position classification, pay administration, employee benefits, and training.⁹²

One means of assessing the impact which collective bargaining has had on the civil service merit system is simply to compare the number of governmental entities which operate under one or another of the two systems. Of the 68 responding governmental units, 32 (47%) reported the presence of a merit system. Nine respondents (13%) reported the presence of a civil service system (by definition for

⁹¹ Helburn, I.B., and Bennett, 1972, "Public Employee Bargaining and the Merit Principle", Labor Law Journal, 23, October, 618-629.

⁹² Stanley, David T., "What Are Unions Doing To The Merit System?" Public Personnel Review, April 1970, p.109.

counties this would be a merit system run by a civil service board). Fifty-three governmental units (78%) reported that they engage in collective bargaining, and 27 of 68 survey respondents (40%) reported that they have both civil service and collective bargaining systems. These results are presented in Table I found on page 77. A listing of counties and cities, noting the presence or absence of each system is given in Appendix B.

Clearly, collective bargaining has assumed a dominant position as a system of personnel administration when dominance is defined as the frequency with which each system is found. Furthermore, while 27 of the 32 units (84%) which report the presence of a merit system also engage in collective bargaining, only 32 of the 53 units (60%) which engage in collective bargaining also report the presence of a merit system. This apparent dominance of collective bargaining has led one administrator to offer the observation that "we no longer administer civil service merit systems, we administer a collective bargaining system."⁹³

A second means of determining the effect that collective bargaining has had on the merit system is to compare the extent to which certain personnel functions are governed either by collective bargaining agreements or merit system rules. Item 17 of the survey conducted in conjunction with this study dealt with this question. At issue is the range of personnel functions that is considered fundamental to the maintenance of the merit system. As outlined in the Inter-governmental Personnel Act of 1970, the following six elements are considered essential:

⁹³ Personal communication.

1. recruitment; selection, and advancement of employees on the basis of relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment; 2. equitable and adequate compensation; 3. training to insure high quality performance; 4. correcting inadequate performance or separating those whose inadequate performance cannot be corrected; 5. fair treatment of all employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religion; 6. Protecting employees against partisan political coercion.⁹⁴

Table 1
Prevalence of Civil Service, Merit, and
Collective Bargaining Systems

Personnel System	All Respondents	Counties	Cities
Merit System	32 (47%)	17 (50%)	15 (44%)
Civil Service	8 (13%)	4 (11%)	4 (12%)
Collective Bargaining	53 (78%)	33 (97%)	20 (59%)
Collective Bargaining and Merit System	27 (40%)	17 (50%)	10 (29%)

Note. Total sample N = 68, city n = 34, county n = 34.

⁹⁴ Intergovernmental Personnel Act, Public Law 91-648.

Discussion of responses to survey item 17 is necessarily limited to those 27 responding organizations that reported both that they have a merit system and that they engage in collective bargaining. Once again, because of the small number of cities and counties reporting the presence of both civil service merit and collective bargaining systems (17 counties and 10 cities), only descriptive statistics and cross tabulations were employed in the analysis of the data. Respondents were asked the following question: "To what extent are procedures governing the following personnel functions for bargaining unit employees in your jurisdiction established by collective bargaining agreements and/or civil service merit system rules?" The functions included recruitment, selection, promotion, classification, work assignment, transfer, reduction in force, training, performance standards, dispute resolution, discipline, dismissal, appeal routes, salary, pension/retirement, vacation leave, safety, sick leave, other leave, and "other personnel functions." Respondents were asked to rate the relative influence of both systems on the establishment of the above personnel functions, according to the following instruction.

Please circle the number corresponding to the extent to which procedures governing each function are influenced by each system. For instance, circle "1" if the procedure governing a function is established entirely by collective bargaining agreements and "10" if the procedure governing a function is established entirely by civil service merit system rules. Circle a number between "1" and "10" to indicate the relative influence of both systems.

Interpretation of responses to this question is based on the reasoning that prior to The

enactment of the PECBA and the initiation of collective bargaining, civil service merit systems were the dominant administrative paradigm. If procedures governing a particular personnel function are now established by civil service/merit system rules, responses on the high end of the scale would be expected. To the extent that procedures governing a particular personnel function are established by collective bargaining rather than a civil service merit system, responses would be expected to be at low end of the scale. In that case, higher numerical responses can be said to indicate the continuation of merit system influence while lower numeric responses indicate the diminishment of merit system influence and a corresponding increase in the influence exerted by a collective bargaining system. Table 2 on page 82 lists, in rank order of influence by civil service/merit system rules, 18 personnel functions and the mean rating assigned to each of the indicated personnel functions. Mean influence ratings, indicating the extent to which procedures governing each function are influenced by the civil service merit system, ranged from a low of 2.3 to a high of 7.9. The mean rating given to all personnel functions was 4.86. If we adopt the convention that ratings above 5 indicate the primacy of merit system influence and that ratings below five indicate the primacy of collective bargaining influence, a clear pattern can be discerned. The mean ratings of those 18 personnel functions appear to fall into two distinct groups; those with mean ratings above 6 and those with mean ratings below 3.4. The functions for which procedures are most heavily established by the influence of the merit system are selection, performance standards, recruitment, training, classification, and promotion, safety, work assignment, and transfer. Those functions

were assigned mean ratings of between 5.95 and 7.86, a range of 1.9 points. The overall mean for this group was 6.95. The functions for which procedures are most heavily established by the influence of collective bargaining are (in order of influence) appeal routes, vacation leave, sick leave, dismissal, discipline, dispute resolution, salary, reduction in force, and pension/retirement. Those functions received mean ratings of between 2.3 and 3.5, a range of 1.2 points. The overall mean for this group was 2.8. A statistical test of the significance of the difference between the mean ratings of these two groups is not appropriate, due to the small size of the sample (two groups of 9 functions); however, this does not preclude a general conclusion regarding the apparent placement of these personnel functions into two distinct groups. With the exception of the safety function, it would appear that those personnel functions rated as subject to the influence of the merit system are those functions which, according to the provisions of the Intergovernmental Personnel Act of 1970, are essential to the preservation of the merit system (selection, promotion, classification, work assignment, and performance appraisal). Also, those functions most strongly rated as influenced by collective bargaining agreements are those functions which are traditionally thought of as union concerns (monetary issues and individual security).

Conflict

Another area of interest to this research was a determination of the amount of conflict personnel managers feel exists between the civil service merit and collective bargaining systems with respect to the those same 18 areas of personnel administration. Question number 18 asked respondents to indicate, on a scale of 1 to

7, the extent to which they felt the civil service merit system and collective bargaining are in conflict with regard to particular areas of personnel administration. Survey respondents were asked the following question: "To what extent do you feel the civil service merit system and collective bargaining are in conflict with regard to the following areas of personnel administration?" Respondents were asked to rate the extent of conflict between the two systems according to the following instruction.

Please circle a number to indicate the extent of conflict where a "1" indicates there is a minimum amount of conflict between the civil service system and collective bargaining and a "7" indicates that there is severe conflict between the civil service and collective bargaining.

Answers to this question necessarily reflect personnel manager's perceptions of conflict rather than its existence on an objective scale. No attempt was made to operationally define the term conflict. The logic is that if a person professes to feel conflict, then for that person conflict exists. The purpose of the question was simply to determine if personnel managers felt the presence of conflict as determined by whatever definition they chose to apply. No claim is made that this rating indicates any objective measurement of the existence of conflict or that this perceived level of conflict indicated by individual managers would be universally recognized by all members of the organization. The purpose of the question is solely to identify personnel managers' perceptions of the existence of conflict between the two systems. Table 3, on page 83, presents in rank order the rating given by respondents when asked to indicate the extent to which they felt the civil service merit system and collective bargaining are in

conflict with regard to the indicated areas of personnel administration. Mean conflict ratings ranged from a low of 1.53 to a high of 3.42. The overall mean conflict rating for all personnel functions was 2.12. The highest degree of conflict occurred in the

Table 2
Personnel Functions Ranked in Order
of Influence by Merit System

Function	Mean Rating	Rank	Function	Mean Rating	Rank
Selection	7.86	1	Pension/ Retirement	3.45	10
Performance Standards	7.35	2	Reduction in Force	3.35	11
Recruitment	7.23	3	Salary	2.83	12
Training	7.15	4	Dispute Resolution	2.73	13
Classification	7	5	Discipline	2.65	14
Promotion	6.91	6	Dismissal	2.64	15
Safety	6.67	7	Sick Leave	2.61	16
Work assignment	6.4	8	Vacation Leave	2.43	17
Transfer	5.95	9	Appeal Routes	2.30	18

areas of salary, reduction in force, discipline, dismissal, appeal routes, and dispute resolution (those personnel functions ranked in the top third as sources of conflict). The lowest degree of conflict occurred in the areas of recruitment, training, selection,

Table 3
Personnel Functions Ranked in Order of Conflict Between
Merit System and Collective Bargaining Influence

Function	Mean Rating	Rank	Function	Mean Rating	Rank
Salary	3.42	1	Performance Standards	2.26	10
Reduction in Force	3.33	2	Work Assignment	2.21	11
Discipline	3.32	3	Vacation Leave	2.05	12
Dismissal	3.16	4	Sick Leave	2.0	13
Appeal Routes	3.16	5	Pension/Retirement	1.78	14
Dispute Resolution	3.05	6	Safety	1.63	15
Transfer	2.47	7	Selection	1.63	16
Classification	2.42	8	Training	1.58	17
Promotion	2.37	9	Recruitment	1.53	18

and safety. It is worth noting, however, that even the ratings of the six areas identified as the greatest source of conflict only ranged from a low of 3.05 to a high of 3.42. It is not possible to state conclusively from the data at hand, but perhaps these apparent low levels of conflict can be attributed to the fact that the source of authority for the establishment of procedures governing each of these functions is well delineated, as evidenced by the response patterns to item 17 discussed previously.

Open-Ended Response Items

In addition to scaled questions, the survey included two open-ended response items intended to solicit data of a more qualitative nature. Question 19 asked respondents to identify, in general terms, what has been the effect of public sector collective bargaining on the civil service merit system within their county or city. Question 20 asked respondents to indicate specifically how union discussions, pressures, or influences have caused management to change or modify its policies, procedures, or standards in those areas listed in questions 17 and 18. Responses to these questions ranged from "no effect" or "no change" to the expression of opinions which seem to indicate that the civil service merit system has been totally replaced by a system of personnel administration governed entirely by collective bargaining agreements. Because response to these two questions tended toward redundancy, they will be discussed together.

By far the most often mentioned effect on or change to the civil service merit system was that individual merit could not be rewarded and that seniority had become the basis for decisions regarding promotion or reduction in force. The general tenor of

these comments was one of concern over the perceived erosion of merit as a basis for decision making generally as opposed to the absence of merit as the basis of decision making in any one area. This theme was mentioned by 10 of the 27 responding personnel managers in government organizations which have both civil service merit and collective bargaining systems in place. The 10 responses are as follows:

- 1) One of our greatest problems with collective bargaining is merit increases or bonuses for outstanding performance.
- 2) The statutory requirement to bargain wages, benefits, and working conditions has resulted in policies that are inconsistent with directions that management is trying to go. For example, the union's traditional insistence on basing all decisions on seniority or time in grade is contrary to basing promotion, pay and other decisions on performance, skill level, or other factors.
- 3) Collective Bargaining has removed a merit system from county policy. It has removed the possibility of the county to recognize outstanding work and personal initiative with merit pay increases.
- 4) Greater emphasis on seniority in selection & promotion process. Preference for in-house candidates in recruitment.
- 5) Layoffs based on seniority within classifications.
- 6) Limits Management ability to reward performance. Limits flexibility in assigning work, classifying jobs, and in layoff procedures.
- 7) Seniority and presumptive competence have taken the place of the merit system. Individual excellence and initiative are not collective bargaining values.
- 8) Greater emphasis on seniority less on performance evaluations. Just cause standard for discipline and discharge.
- 9) Work assignments -- in public works can be based

on seniority. 10) One of our greatest problems with collective bargaining is merit increases or bonuses for outstanding performance.

The preceding verbatim responses support the quantitative results obtained in response to survey item 17, which found reduction in force and salary determination to be areas of personnel influenced more by collective bargaining agreements than merit system rules. Also, when respondents were asked to indicate the level of conflict existing between collective bargaining and the merit system with respect to 18 personnel functions, salary and reduction in force were the two areas which received the highest conflict ratings. These open-ended responses also support the outcomes of question 18, in which personnel administrators noted the greatest source of conflict between the civil service merit and collective bargaining systems to be in the areas of salary and reduction in force. The fact that collective bargaining agreements have come to be the controlling factor in the determination of monetary issues in the public work force is also in keeping with legislative intent that matters concerning wages, hours, and other conditions of employment be subject to collective negotiation. In this respect, we do not believe that it can be said the two systems are incompatible, since the practical effect has been the implementation of the policy spelled out on the PECBA. However, we see a potential for incompatibility between the objectives of the merit and collective bargaining systems in the area of promotion and separation if seniority, rather than merit or fitness for service, becomes the sole factor in determining the order of promotion, or layoff in cases of reduction in force.

The theme which was mentioned second most often (by 7 respondents) was,

ironically, that there was little effect or no change to the merit system as a result of collective bargaining in their county or city.

The third and fourth most frequently mentioned themes indicate concerns over the two areas of classification/salary range and discipline/dismissal, which were mentioned four and five times respectively. The content of these themes, although somewhat similar to the absence of merit criterion theme, was more directly reflective of specific personnel functions and the process by which these functions are established and carried out. In the area of classification and salary range, the nature of the comments concerned the process by which procedures are implemented and decisions are made in this area is principally influenced by the terms of the collective bargaining agreement in force and not by civil service rule or management discretion. Verbatim responses reflecting that theme follow:

- 1) A distinct example of union influence in an area traditionally administered by personnel and our precious civil service system is the area of dispute over classification allocation and salary range recommendation. In response to union interest in developing a fair review process, we established a "classification, compensation, review panel" of three management employees and three different union representatives to hear and review employee's requests for reviews over classification allocation of their position or a salary range recommendation for that classification. This panel gives their opinion to the Director of Employee Services who must consider their views in making a final decision.
- 2) Conflict between union and civil service regarding the definition of part time and

temporary positions. 3) In my experience in this county (22 months) the influence [of collective bargaining] is mainly in salary and benefit areas. 4) Wages have been higher for those represented than for exempt positions. This is being remedied but only with expected levels of conflict.

Again, the fact that collective bargaining agreements have come to be the controlling factor in the determination of monetary issues in the public work force is in keeping with legislative intent that matters concerning wages, hours, and other conditions of employment be subject to collective negotiation, and so we see no conflict between policy objectives and implementation. Also, there appears to be congruence between responses to this item and responses to question 18, which asked respondents to indicate the level of conflict they feel exists between collective bargaining and the civil service merit system with respect to certain personnel functions. The personnel function which received the highest mean conflict rating was salary.

Concerns voiced about the effects of collective bargaining in the area of discipline and dismissal were also, predominantly, concerns about process rather than erosion of merit being the basis for decision making. Still, some element of concern that personnel actions were based not on individual merit but on collectively negotiated criteria was voiced. Presentation of those responses follows:

- 1) Decline in usage of civil service board appeals. Atrophy of personnel policy, rules, and regulations for both represented and non-represented employees in matters not covered by collective bargaining contracts. We have, by practice and through lack of training, in the face of assertive unionization, given away a lot of

management rights in areas k and l. [researcher's note: the areas k and l are discipline and dismissal, respectively]. 2) The single biggest factor for unions in public sector is job security wherein newly elected department heads would come in and clean house, bringing in their supporters. To that end, Oregon's at-will employment law is undermined. Is it bad? The other major factor is binding interest arbitration for law enforcement. That process is slowly eliminating the "bargaining" from collective bargaining in favor of going to a judge--bad deal!! In the areas of reduction in force and discipline procedures. Reduction in force--primarily eliminated at-will in favor of seniority within classification during any labor force reduction. Discipline/discharge--added a step in due process to accommodate unions. Good organizations have always followed a due process including notice, hearing, decision, post hearing. Now organizations have to build in the negotiated process. 3) More time is spent in resolving disputes. Union employee's disputes can go (and have gone) to arbitration, a step not available to non-union; this step may be the cause of union grievances being disproportionately higher than non-union. Reduction in force--bumping and recall and layoff--more complicated and restricted under labor agreement. Discipline and dismissal--restrictions, more with labor agreement than without. Salary--must give unions chance to negotiate salary for new classes. Trial service--union wants 6 months, management wants 12 months, for some classes. 4) With binding arbitration it is very difficult to discipline and discharge employees--it is also very expensive. ERB does not appear to be in sync with current economic

conditions. 5) Greater emphasis on seniority, less on performance evaluations.

Just cause standard for discipline and discharge.

The areas of discipline, dismissal, appeal routes, and dispute resolution, respectively, ranked third, fourth, fifth, and six when respondents indicated the mean level of conflict existing between collective bargaining and civil service merit system rules for certain personnel functions. Collective bargaining agreements provide for a grievance procedure, a mechanism by which to resolve grievances resulting from alleged violations of the labor agreement. The PECBA provides that public employers "may enter into a written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding arbitration."⁹⁵ Civil service rules do not directly address contract issues, nor is the grievance procedure established by a written agreement applicable to topics outside of that agreement. Civil service rules, however, usually do provide a means by which employees can appeal decisions regarding matters such as discipline and dismissal. Although in some jurisdictions an employee in a recognized bargaining unit is limited by the bargaining agreement to pursuing an appeal only through the negotiated grievance procedure, other jurisdictions allow an employee to pursue the second route of appeal after exhausting remedies available under the first.

The themes discussed so far have shared a common thread in that they reflect management dissatisfaction with the impact collective bargaining has had on the civil service merit system. Two themes, each mentioned only twice, reflect a greater

⁹⁵ ORS 243.706 (1).

acceptance of the coexistence of the two means of personnel administration. One theme suggests that one effect of collective bargaining has been the ability to standardize practices, and the other theme suggests that labor and management have begun to form joint work groups to determine certain personnel policies.

Overall, responses to the open-ended survey items appear to support the quantitative data obtained through scaled questions concerning the amount of influence each system has on the establishment of procedures and the degree of conflict existing between the two systems with respect to those procedures. Additionally, both scaled and open-ended responses indicate that the implementation of collective bargaining legislation has been in keeping with legislative intent. An interesting question, not directly addressed by the present study, is how Oregon compares to the rest of the states with respect to its collective bargaining legislation.

COMPARISON WITH OTHER STATES

Because of the lack of other studies, it is very difficult to compare Oregon's collective bargaining status with that of other states. Perhaps the best reference for comparison is the study published by Douglas in 1992. Douglas did not explore the relationship between collective bargaining and civil service at the local government level but limited the scope of his investigation to the impact of collective bargaining legislation at the state government level. The primary questions addressed by the Douglas study were to what extent and in what manner labor relations systems had been accommodated by legislation dealing with existing civil service systems. Civil

service merit systems can be protected by legislation which mandates the continuation of and adherence to the merit system. Douglas found this mechanism to be operational in nine states. Civil service merit systems may also be protected from influence by collective bargaining if legislation designates certain topics to be under the exclusive influence of such systems and not within the scope of collective bargaining. This approach was found in 10 states. In a third approach, the supremacy of collective bargaining over the civil service merit system in matters of labor relations could be specifically outlined by statute. In such cases, collective bargaining agreements enjoy supremacy, and civil service statutes are deemed subservient to collective bargaining in those areas for which collective bargaining is either mandated or permitted. This arrangement was found in nine states. This was also found by the present study to be the status of collective bargaining and civil service legislation in Oregon. The fourth approach to the accommodation of the two systems is the declaration of certain topics to be reserved as management rights. Oregon's PECBA does not specifically address management rights. Douglas also found, in every state in which both civil service merit systems and collective bargaining exist, that civil service merit systems continue to govern most of the traditional personnel functions such as recruitment, selection, position classification, and performance appraisal. This is the case in Oregon. Douglas concluded that although the influence of civil service merit systems on personnel administration has been diminished by the rise of collective bargaining legislation, collective bargaining has not replaced the civil service merit system as a means of personnel administration in those states where the two systems coexist and

that there appears to be an emergence of dual personnel systems which attempt to integrate competing aspects of civil service merit and collective bargaining systems. The obvious question which must be asked in light of the present study is what direction will Oregon take in the future with respect to the development of these two systems? Is collective bargaining seen as a complement or an alternative to the civil service merit system?

DISCUSSION

The purpose of this study was to explore the impact which collective bargaining has had on the civil service merit system in the State of Oregon. The goals were to describe the relative status of the state's civil service merit and collective bargaining systems 20 years after the enactment of Oregon's Public Employee Collective Bargaining Act, to determine the relative extent to which procedures governing most personnel functions are influenced by merit and collective bargaining systems, and to attempt to discern the implications of the relationship between the two systems for the effective administration of public personnel systems in Oregon in the future.

Relative Status and Extent of Influence of the Two Systems

Based on a review of applicable statutes, ERB opinions, and court decisions there can be no question that the intent of policy makers in the State of Oregon is for the collective bargaining model to be the dominant means of administering the labor relations process. The statutory language of ORS 240.321 (2) and (3), in conjunction with the policy statement contained in ORS 243.656, makes this point perfectly clear. Additionally, ERB and the courts have consistently ruled that other State statutes as well as county and local government civil service ordinances governing hours wages and other conditions of employment are subservient to the authority of the PECBA. The present study addressed three issues related to that point.

First, as concerns the issue of home rule, ERB and the courts reasoned that because the PECBA was enacted after the civil service statutes, and because it included a statement of legislative intent to provide a uniform basis for bargaining, the legislature intended "all employment relations of organized public employees" to be governed by the PECBA rather than local civil service commissions. Second, regarding the issue of whether matters of labor relations between public employers and public employees are subject to the provisions of the PECBA or other state statutes, ERB and the courts have consistently ruled that, although there may appear to be a conflict between two statutes, such matters are subject to the provisions of the PECBA. In *Hockema*, the court reasoned that the PECBA takes precedence because of its more recent enactment. In *Lent and Barron*, the court reasoned that there was no conflict between the PECBA and the provisions of the other statutes cited in challenge to the authority of the PECBA. Third, in response to the question of scope of bargaining, in *AFSCME Locals 2623-A 2623-B and 191-B v. Executive Department et al.* the court ruled that while the State Personnel Division retains the power to group all job positions into classes and to adopt salary ranges which include maximum, minimum, and intermediate positions, the establishment of the compensation plan itself can be a subject for bargaining between the state and labor organizations.

In addition to addressing the question of legislative and judicial intent, This study also addressed questions surrounding the outcomes associated with the application of civil service/merit and collective bargaining models of personnel administration. Survey results which tallied the number of governmental units reporting the presence

of each system show that collective bargaining agreements are the dominant means of establishing personnel functions in a majority of local governments. Responses show that 53 of 64 jurisdictions (78%), including 33 of the responding 34 county governments and 20 of 34 responding city governments, have established collective bargaining systems. On the other hand, only 32 of 64 respondents (47%) report the presence of a merit system. Furthermore, while 27 of the 32 units (84%) which report the presence of a merit system also engage in collective bargaining, only 32 of the 53 units (60%) which engage in collective bargaining also report the presence of a merit system.

Finally, this study undertook to identify those areas of personnel activity most affected by union activity and the existence of collective bargaining agreements. The most common theme to emerge from open-ended survey items asking the extent to which collective bargaining has effected the merit system is that collective bargaining has resulted in the erosion of merit as a decision criteria for promotion and reduction in force, typically to be replaced by seniority. Another theme expressed was concern that in the area of classification and salary range, the process by which procedures are implemented and decisions are made are principally influenced by the terms of the collective bargaining agreement and not by civil service rules or management discretion. A third dominant theme that was expressed is that the collective bargaining model has added complexity to the appeals process. When both civil service rules and collective bargaining agreements are in force, employees may have access to multiple avenues of appeal.

Implications of Administering a Dual Personnel Systems

There are three commonly expressed views concerning resolution of the collective bargaining/merit system controversy. The first sentiment is that they are incompatible systems destined for coexistence yet doomed to everlasting conflict. The second opinion is that, since the two are irreconcilable, one or the other system will prevail. The third belief is that the two systems are compatible and can exist in a symbiotic relationship if the merit system is willing to accommodate certain basic tenets of collective bargaining, such as the principle of bilateral decision making.

Given the results of the present study, we believe development will proceed along the lines of the third scenario. We feel that the future will see the further development of a co-determinate model of personnel administration in which primary decisions about personnel activities will be decided jointly by labor and management for the following reasons. First, legislative intent is clear with respect to the superordinate position of the PECBA over other legislation governing labor relations. Second, based on survey results, there currently appears to be a rather clear demarcation of influence by each of the two systems in different areas of personnel administration. The turf, as it were, has been divided. Quite clearly those functions traditionally thought of as essential to the preservation of the merit system (recruitment, selection, classification, work assignment, transfer, and establishment of performance standards) are the personnel functions reported to be most heavily influenced by civil service merit system procedures. On the other hand, economic and

individual security issues (pension/retirement, salary, reduction in force, vacation and sick leave, discipline, dismissal, and appeal routes) which are generally the major concerns of labor organizations are reported to be most heavily influenced by collective bargaining agreements. Third, the survey results obtained in this study indicate that the level of conflict between the two systems over the establishment of procedures by which to guide these personnel functions is minimal. This does not mean, however, that there is not potential for conflict under a dual personnel system.

To the extent that a dual system of personnel management exists, administration of the overall personnel system will remain necessarily complex and burdensome for the employer. The areas of greatest concern to personnel administrators responding to this survey are frustration over their inability to reward individual performance on the basis of merit and the necessity to accept "greatest seniority" as the decision criteria in times of work force reduction. Even so, although use of this criteria is of concern to managers, its widespread use seems to indicate at least a grudging acceptance by management in lieu of another, mutually acceptable, alternative. We would speculate that if promotion and retention criteria based on merit and viewed both as an objective and valid assessment of performance could be developed, then unions would agree to the use of this criteria rather than insisting that public employers rely on seniority as the major determinant in decisions of promotion and reduction in force.

Another example of an area of potential conflict is that the dual system can provide two avenues of appeal for those employees covered under both civil service and collective bargaining. Collective bargaining agreements provide for a mechanism

by which to resolve grievances resulting from alleged violations of the labor agreement. Civil service rules also provide a means by which employees can appeal actions regarding matters such as discipline and dismissal. Although in some jurisdictions, an employee in a recognized bargaining unit is limited by the bargaining agreement to pursuing an appeal only through the negotiated grievance procedure, other jurisdictions allow an employee to pursue the second route of appeal after exhausting remedies available under the first. This circumstance can lead to additional complexity and cost of administration, as well as raising questions of equity between bargaining unit members and those not covered by a labor agreement.

A final area of potential conflict is that some employees see the civil service merit system as an arm of the administration rather than as a neutral body. Given this, it may be asking too much for these employees to put aside the adversarial relationship which often exists between "the union" and "management" and adopt a more collaborative stance. Collaboration implies trust, yet where the appearance of neutrality is lacking, trust will be difficult to develop and maintain.

Direction of Future Research

This study presented a description and analysis of the relationship between the civil service/merit system and collective bargaining models of personnel administration within the counties and local governmental units within the State of Oregon.

One area of future research suggested by this study is the question of whether a difference exists with respect to the impact of collective bargaining on the merit system at the city and county government level. This question was left unanswered by

the present study due to the small number of governmental organizations which reported having both systems in place (17 county and 10 city).

A second logical extension of the present research would be to expand the geographic range of the study. An obvious next step would be to examine collective bargaining and civil service legislation and to survey administrators in each of the 50 states at the state level of government. A study of this scope would provide a much better focused picture of the status of public sector collective bargaining and civil service models of personnel administration throughout the nation than is now currently available. Another approach would be to survey the balance of the western region of the United States at both the state and county levels including Washington, Idaho, Montana, Nevada, California, Alaska, and Hawaii in addition to Oregon. This approach would allow for a comparison of the impact of collective bargaining, as well as an analysis of the sources of conflict between collective bargaining and the civil service merit system legislation in "strong" and "weak" collective bargaining states.

A final direction of research suggested by the present study is to explore more fully those areas of personnel administration identified as sources of conflict between the two systems. What are the root causes of this perceived conflict; is the existence of this conflict detrimental to the effective administration of public personnel systems, and if so, and how can the conflict be reduced?

Appendix A

PSU Department of Urban and Public Affairs Letterhead

Date

Dear Personnel Administrator,

I am asking your help in completing a survey being conducted through Portland State University's School of Urban and Public Affairs. This survey is being conducted as part of my doctoral research and its purpose is to gather information that will allow an assessment of the effects of collective bargaining on the civil service merit system throughout the state. Surveys have been sent to personnel administrators and labor relations specialists in many cities and all 36 counties. When completed, this study will provide the first comprehensive description of the relationship between the merit system and public sector collective bargaining in Oregon.

The first section of the survey is intended to gather information by which to group political subdivisions with respect to such factors as population and number of employees. The second section of the survey solicits information and opinion on the nature and extent of the impact which collective bargaining may have had on the civil service system in your jurisdiction. If you have additional information or opinions which you would like to share, please feel free to attach additional pages to your response.

In order to make timely use of this information, I need to have it returned to me by 11/01/93. A stamped, self addressed envelope is enclosed for this purpose.

Your cooperation in this effort is greatly appreciated. All responses will be considered confidential unless permission to quote is specifically granted. If you have any questions please call me at (503) 284-1815. Additionally, if you are willing to be contacted for further information or would like to be informed of the results of this study when they are compiled, please indicate this and include your name, address, and telephone number with your completed survey.

Once again, I thank you for your participation in this survey.

Sincerely,

David Blanchard,
Research Fellow
Portland State University

Personnel Administrator Survey
The impact of collective bargaining on the civil service merit system

1. How many people does your county employ? _____
2. Does your county have a merit system? YES___ NO___
3. If so, how many county employees are covered by that system? _____
4. Does your county have a civil service system? YES___ NO___
5. If so, how many county employees are covered by that system? _____
6. Does your county have a civil service board or commission? YES___ NO___
7. If so, how often does that group meet? _____
8. When was the last time that group met? _____
9. What topics were discussed the last time this group met? _____
10. Does your county engage in collective bargaining? YES___ NO___
11. How many employees are eligible to be bargaining unit members? _____
12. How many employees are ineligible to be bargaining unit members? _____
13. How many employees actually are bargaining unit members?
(include both dues paying and non-union members) _____
14. How many bargaining units are there in your jurisdiction? _____
15. How many bargaining agreements is your county a party to? _____
16. With which labor organizations does your county have bargaining agreements? _____

17. To what extent are procedures governing the following personnel functions for bargaining unit employees in your jurisdiction established by **collective bargaining agreements** and/or **civil service merit system rules**? Please circle the number corresponding to the extent to which procedures governing each function are influenced by each system. For instance, circle "1" if the procedure governing a function is established entirely by **collective bargaining agreements** and "10" if the procedure governing a function is established entirely by **civil service merit system rules**. Circle a number between "1" and "10" to indicate the relative influence of both systems.

Extent to which procedures for the following functions are established under
collective bargaining agreements or merit system rules

	<u>Collective Bargaining</u>									<u>Merit system</u>
a. Recruitment	1	2	3	4	5	6	7	8	9	10
b. Selection	1	2	3	4	5	6	7	8	9	10
c. Promotion	1	2	3	4	5	6	7	8	9	10
d. Classification	1	2	3	4	5	6	7	8	9	10
e. Work Assignment	1	2	3	4	5	6	7	8	9	10
f. Transfer	1	2	3	4	5	6	7	8	9	10
g. Reduction in Force	1	2	3	4	5	6	7	8	9	10
h. Training	1	2	3	4	5	6	7	8	9	10
i. Performance Stndrds	1	2	3	4	5	6	7	8	9	10
j. Dispute resolution	1	2	3	4	5	6	7	8	9	10
k. Discipline	1	2	3	4	5	6	7	8	9	10
l. Dismissal	1	2	3	4	5	6	7	8	9	10
m. Appeal routes	1	2	3	4	5	6	7	8	9	10
n. Salary	1	2	3	4	5	6	7	8	9	10
o. Pension \ retirement	1	2	3	4	5	6	7	8	9	10
p. Vacation leave	1	2	3	4	5	6	7	8	9	10
q. Safety	1	2	3	4	5	6	7	8	9	10
r. Sick leave	1	2	3	4	5	6	7	8	9	10
s. Other leave (specify)	1	2	3	4	5	6	7	8	9	10
t. Other functions (specify)	1	2	3	4	5	6	7	8	9	10

18. To what extent do you feel the **civil service merit system** and **collective bargaining** are in conflict with regard to the following areas of personnel administration?

Please circle a number to indicate the extent of conflict where a "1" indicates there is a minimum amount of conflict between the civil service system and collective bargaining and a "7" indicates that there is severe conflict between the civil service and collective bargaining.

Extent to which
civil service and collective bargaining conflict

	<u>Minimum conflict</u>							<u>Severe conflict</u>						
a. Recruitment	1	2	3	4	5	6	7							
b. Selection	1	2	3	4	5	6	7							
c. Promotion	1	2	3	4	5	6	7							
d. Classification	1	2	3	4	5	6	7							
e. Assignment of work	1	2	3	4	5	6	7							
f. Transfer	1	2	3	4	5	6	7							
g. Reduction in force	1	2	3	4	5	6	7							
h. Training	1	2	3	4	5	6	7							
i. Performance Standards	1	2	3	4	5	6	7							
j. Dispute resolution	1	2	3	4	5	6	7							
k. Discipline	1	2	3	4	5	6	7							
l. Dismissal	1	2	3	4	5	6	7							
m. Appeal routes	1	2	3	4	5	6	7							
n. Salary	1	2	3	4	5	6	7							
o. Pension or retirement	1	2	3	4	5	6	7							
p. Vacation leave	1	2	3	4	5	6	7							
q. Safety	1	2	3	4	5	6	7							
r. Sick leave	1	2	3	4	5	6	7							
s. Other leave) (specify	1	2	3	4	5	6	7							
t. Other functions (specify)	1	2	3	4	5	6	7							

19. In general terms, what has been the effect of public sector collective bargaining on the civil service merit system within your county?

20. Specifically, how have union discussions, pressures, or influences caused management to change or modify its policies, procedures, or standards in the areas listed in question 17?

Personnel Administrator Survey
The impact of collective bargaining on the civil service merit system

1. How many people does your city employ? _____
2. Does your city have a merit system? YES ____ NO ____
3. If so, how many city employees are covered by that system? _____
4. Does your city have a civil service system? YES ____ NO ____
5. If so, how many city employees are covered by that system? _____
6. Does your city have a civil service board or commission? YES ____ NO ____
7. If so, how often does that group meet? _____
8. When was the last time that group met? _____
9. What topics were discussed the last time this group met?
10. Does your city engage in collective bargaining? YES ____ NO ____
11. How many employees are eligible to be bargaining unit members? _____
12. How many employees are ineligible to be bargaining unit members? _____
13. How many employees actually are bargaining unit members?
(include both dues paying and non-union members) _____
14. How many bargaining units are there in your jurisdiction? _____
15. How many bargaining agreements is your city a party to? _____
16. With which labor organizations does your city have bargaining agreements?

17. To what extent are procedures governing the following personnel functions for bargaining unit employees in your jurisdiction established by **collective bargaining agreements** and/or **civil service merit system rules**? Please circle the number corresponding to the extent to which procedures governing each function are influenced by each system. For instance, circle "1" if the procedure governing a function is established entirely by **collective bargaining agreements** and "10" if the procedure governing a function is established entirely by **civil service merit system rules**. Circle a number between "1" and "10" to indicate the relative influence of both systems.

Extent to which procedures for the following functions are established under
collective bargaining agreements or merit system rules

	<u>Collective Bargaining</u>										<u>Merit system</u>
a. Recruitment	1	2	3	4	5	6	7	8	9	10	
b. Selection	1	2	3	4	5	6	7	8	9	10	
c. Promotion	1	2	3	4	5	6	7	8	9	10	
d. Classification	1	2	3	4	5	6	7	8	9	10	
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f. Transfer	1	2	3	4	5	6	7	8	9	10	
g. Reduction in Force	1	2	3	4	5	6	7	8	9	10	
h. Training	1	2	3	4	5	6	7	8	9	10	
i. Performance Stndrds	1	2	3	4	5	6	7	8	9	10	
j. Dispute resolution	1	2	3	4	5	6	7	8	9	10	
k. Discipline	1	2	3	4	5	6	7	8	9	10	
l. Dismissal	1	2	3	4	5	6	7	8	9	10	
m. Appeal routes	1	2	3	4	5	6	7	8	9	10	
n. Salary	1	2	3	4	5	6	7	8	9	10	
o. Pension \ retirement	1	2	3	4	5	6	7	8	9	10	
p. Vacation leave	1	2	3	4	5	6	7	8	9	10	
q. Safety	1	2	3	4	5	6	7	8	9	10	
r. Sick leave	1	2	3	4	5	6	7	8	9	10	
s. Other leave (specify)	1	2	3	4	5	6	7	8	9	10	
t. Other functions (specify)	1	2	3	4	5	6	7	8	9	10	

18. To what extent do you feel the **civil service merit system** and **collective bargaining** are in conflict with regard to the following areas of personnel administration?

Please circle a number to indicate the extent of conflict where a "1" indicates there is a minimum amount of conflict between the civil service system and collective bargaining and a "7" indicates that there is severe conflict between the civil service and collective bargaining.

Extent to which
civil service and collective bargaining conflict

	<u>Minimum conflict</u>							<u>Severe conflict</u>
a. Recruitment	1	2	3	4	5	6	7	
b. Selection	1	2	3	4	5	6	7	
c. Promotion	1	2	3	4	5	6	7	
d. Classification	1	2	3	4	5	6	7	
e. Assignment of work	1	2	3	4	5	6	7	
f. Transfer	1	2	3	4	5	6	7	
g. Reduction in force	1	2	3	4	5	6	7	
h. Training	1	2	3	4	5	6	7	
i. Performance Standards	1	2	3	4	5	6	7	
j. Dispute resolution	1	2	3	4	5	6	7	
k. Discipline	1	2	3	4	5	6	7	
l. Dismissal	1	2	3	4	5	6	7	
m. Appeal routes	1	2	3	4	5	6	7	
n. Salary	1	2	3	4	5	6	7	
o. Pension or retirement	1	2	3	4	5	6	7	
p. Vacation leave	1	2	3	4	5	6	7	
q. Safety	1	2	3	4	5	6	7	
r. Sick leave	1	2	3	4	5	6	7	
s. Other leave) (specify	1	2	3	4	5	6	7	
t. Other functions (specify)	1	2	3	4	5	6	7	

19. In general terms, what has been the effect of public sector collective bargaining on the civil service merit system within your city?

20. Specifically, how have union discussions, pressures, or influences caused management to change or modify its policies, procedures, or standards in the areas listed in question 17?

Appendix B

Prevalence of Merit and Collective Bargaining Systems

COUNTY	POP	EMP	MS	CS	CB
Gilliam Co.	1750	34	NO	NO	YES
Sherman Co.	1800	26	NO	NO	NO
Multnomah Co.	6050	3529	YES	YES	YES
Waliowa Co.	7150	60	YES	NO	YES
Grant Co.	8000	120	YES	NO	YES
Morrow Co.	8100	11	NO	NO	YES
Jefferson Co.	14600	100	NO	NO	YES
Crook Co.	15000	118	NO	NO	YES
Baker Co.	15800	121	NO	NO	YES
Hood River Co.	17600	175	YES	NO	YES
Tillamook Co.	22500	230	NO	NO	YES
Wasco Co.	22600	350	NO	YES	YES
Union Co.	24000	190	YES	NO	YES
Lane Co.	24100	1300	YES	NO	YES
Malheur Co.	26800	150	YES	NO	YES
Clatsop Co.	33100	170	NO	NO	YES
Columbia Co.	38800	126	NO	YES	YES
Lincoln Co.	39600	390	YES	NO	YES
Polk Co.	53000	190	YES	NO	YES
Klamath Co.	59400	400	YES	NO	YES
Umatilla Co.	61100	377	NO	NO	YES
Coos Co.	62100	398	YES	NO	YES
Josephine Co.	65400	600	NO	NO	YES
Yamhill Co.	69200	330	YES	NO	YES
Benton Co.	72900	350	NO	NO	YES
Lake Co.	73500	80	NO	NO	YES
Deschutes Co.	82600	550	YES	NO	YES
Linn Co.	95000	560	NO	NO	YES
Douglas Co.	96300	920	NO	NO	YES
Jackson Co.	152900	1496	YES	NO	YES
Marion Co.	241500	900	YES	NO	YES
Curry Co.	293700	185	NO	NO	YES
Clackamas Co.	294500	1385	YES	NO	YES
Washington Co.	340000	1200	YES	YES	YES

Prevalence of Merit and Collective Bargaining Systems (cont.)

CITY	POP	EMP	MS	CS	CB
Albany		280	NO	YES	YES
Bend		220	YES	YES	YES
Cannon Beach		30	NO	NO	YES
Cave Junction		7	YES	NO	NO
Chiloquin		3	NO	NO	NO
Clatskanie		16	YES	NO	YES
Coos Bay		119	NO	NO	YES
Corvallis		360	YES	NO	YES
Culver		5	NO	NO	NO
Dufur		3	NO	NO	NO
Eagle Point		14	NO	NO	YES
Enterprise		20	NO	NO	NO
Eugene		1200	NO	NO	YES
Gearhart		5	YES	NO	NO
Gresham		400		NO	YES
Lake Oswego		250	YES	NO	YES
Lowell		4	NO	NO	NO
Madras		23	NO	NO	YES
Medford		337	YES	NO	YES
Mill City		6	NO	NO	NO
Milwaukie		133	NO	YES	YES
Mount Angel		16	YES	NO	NO
Portland		5915	NO	YES	YES
Reedsport		37	YES	NO	YES
Roseburg		140	YES	NO	YES
Salem		1200	YES	YES	YES
Sandy		35	YES	NO	NO
Scio		7	NO	NO	NO
Sherwood		22	YES	NO	NO
Siletz		6	NO	NO	NO
Willamina		9	YES	NO	YES
Wilsonville		100	YES	NO	YES
Winston		18	NO	NO	YES
Yamhill		6	NO	NO	NO