LITTLE HOOVER COMMISSION

TOO MANY AGENCIES, TOO MANY RULES: REFORMING CALIFORNIA'S CIVIL SERVICE

April 1995

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May 4, 1995

The Honorable Pete Wilson
Governor of California

The Honorable Bill Lockyer
President Pro Tempore of the Senate
and Members of the Senate

The Honorable Kenneth L. Maddy
Senate Republican Floor Leader

The Honorable Willie L. Brown Jr.
Speaker of the Assembly
and Members of the Assembly

The Honorable James Brulte
Assembly Republican Floor Leader

Dear Governor and Members of the Legislature:

Thousands of applicants take exams for civil service jobs and ultimately the lucky candidates are picked by lotteries. Changing the form that state workers fill out when they are sick requires reams of paperwork and months of paper shuffling. Scores of state employees each year appeal written reprimands through a months-long and court-like process that involves sworn testimony and formal rulings. Large departments have "bone yards," where workers who are too much trouble to fire are assigned meaningless tasks.

Those are among the problems the Little Hoover Commission found when it examined the state's personnel management system. Those are among the problems supporting the Commission's conclusion that significant reforms are needed if California government is going to respond effectively and efficiently to the changing needs of a growing population.

The civil service is largely comprised of hard-working individuals who care about their performance and the State's future. But the system for managing that work force discourages innovation and ambition. It is burdened by a labyrinth of authorities and procedures that are costly to operate, reduce management discretion, and ultimately limit the potential for both rank-and-file workers and managers.

The Commission's report, which is being transmitted to the State's top policy makers with this letter, contains eight findings and recommendations crafted to eliminate redundancies, clarify authorities and deregulate a system that has evolved over nearly a century. Of equal importance, the report identifies ways to better equip state government to deal with challenges beyond the horizon.

The reports findings and recommendations are grouped into three areas:

Organizational Issues. The management system has been amended over the years in response to the urgency of the times and, as a result, authority and responsibility is

Milton Marks Commission on California State Government Organization and Economy

660 J Street, Suite 260 ▪ Sacramento, CA 95814 ▪ *tel* (916)445-2125 ▪ *fax* (916)322-7709

divided among different agencies. Management of this bifurcated structure is further hamstrung by procedures that intentionally discourage change.

- The Commission recommends eliminating the State Personnel Board, unifying management authority in the Department of Personnel Administration and devising alternative methods for filling the board's quasi-judicial functions. The Commission also recommends eliminating review of new personnel management rules by the Office of Administrative Law.

Personnel Management Issues. Individual departments lack the flexibility to test, hire and assign tasks to the most qualified people. Many managers lack the skills needed to change departments for the better. The employee discipline process is costly and dysfunctional. And compensation and job status are independent of performance.

- The Commission recommends that departments be given more latitude over examination and classification procedures. Management training needs to be substantially improved. Arbitration and other procedures need to be negotiated to swiftly resolve disputed discipline actions. And permanent tenure and automatic pay raises should be eliminated.

Labor-Management Issues. The State is restricted from tapping the talents and efficiencies of the marketplace to accomplish the public's work. And fundamentally reforming civil service will require more cooperation and communication between managers and rank-and-file workers.

- The Commission recommends that the state Constitution be amended to eliminate the presumption that civil servants must perform government tasks. And labor-management advisory committees should be established to build common ground for resolving problems and nurturing innovation.

The public's concern about the effectiveness of government does not begin and end with civil service reform. But the delivery of government services can only be improved so much without retooling the government itself. Effectiveness and efficiency cannot be provided by statute. But neither can it be expected in a system that masks accountability and limits discretion, discourages punishments and mutes rewards.

We believe the speedy enactment of the Commission's recommendations will both encourage and shape the kind of public workplace that California needs and Californians deserve. The Commission stands ready to work with the Governor and the Legislature to make these policy changes a reality.

Sincerely,

Richard R. Terzian
Chairman

Too Many Agencies, Too Many Rules:

Reforming California's Civil Service

April 1995

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Executive Summary

Executive Summary

California's civil service system, established to protect the public and state employees from political corruption, has mutated into a bureaucracy within a bureaucracy -- one that is rigid, duplicative and unresponsive. The civil service rules at times prevent the State from going about the public's business in a cost-effective manner. And regulations stifle the enterprise that can lead both individuals and organizations to success.

The overriding problem is that the state personnel system suffers from a split personality: The civil service protections administered and enforced by the State Personnel Board were created more than 60 years ago to eliminate the scandals of patronage and shield workers from political retaliation. Twenty years ago, those procedures were complicated by the advent of collective bargaining, resulting in negotiations between unions and the Department of Personnel Administration on the terms and conditions of employment.

The Little Hoover Commission believes the State Personnel Board is obsolete, protection against a bygone enemy, and should be eliminated. In turn, the State should more fully embrace collective

bargaining as the primary venue for defining and improving the relationship between management and labor.

At the bargaining table and through legislation, the State must abolish the redundant, and therefore unneeded, civil service protections that make it difficult to recruit, promote and reward good workers and even harder to punish, demote and terminate bad ones.

The State must delegate authority to managers, and give them the skills and incentives to be leaders. The future of California government rests largely in the hands of its managers, and the State must recruit from the best and intensively train them for the difficult task of leading the State into the next century. Minimum standards and a system of accounting must be established for management training, and training must be tied to performance evaluations and compensation.

State managers also must have at their disposal the talents, energy and efficiency of the private sector. It is no longer appropriate for the civil service to have a monopoly on public work, and competition for that work is a proven way to stretch the resources of the State.

And finally, for innovation to take root, there must be more cooperation between labor and management.

In short, to improve the delivery of government services, the State's work force must be managed more like the private-sector work force.

The Commission recognizes that there remains a public interest in ensuring fair competition for government jobs, appointments and promotions based on qualifications, and equal pay for equal work. It also anticipates disputes over the fairness and equity of implemented reforms, and to facilitate change a single, expeditious forum -- either arbitration or an independent panel -- is needed for resolving those claims.

If California government is to rise to the challenges created by new technologies and a changing society, fundamental reforms must be made to the civil service system. It is a necessity of the times.

The Commission first addressed this issue 16 years ago at the request of then-Governor Edmund G. Brown Jr. At that time, the Commission foresaw the duplication and conflict between those traditionally charged with administering the civil service system and those assuming the new role as executive negotiator. But the Commission's recommendation to curtail the traditional duties of the Personnel Board was not followed.

Unheeded advice offers no rewards. Likewise, there will be no satisfaction for Californians, including state employees, until reform is achieved.

In pursuit of those reforms, the Little Hoover Commission has reached the following findings and makes the following recommendations:

Finding 1: There is overlap and conflict between the State Personnel Board, steward of the traditional civil service system, and the Department of Personnel Administration, which is charged with the expanding role of union contract negotiator for the Executive Branch.

The principal redundancy in the civil service system is between the quasi-judicial State Personnel Board and the Department of Personnel Administration. The overlap covers the important public employment issues of classifying, selecting and disciplining employees. There also is overlap between the Personnel Board and the Department of Fair Employment and Housing over discrimination complaints. The duplication wastes scarce resources and hinders reforms.

Recommendation 1: The Personnel Board should be eliminated. Oversight of personnel management and central leadership should be assigned to the Department of Personnel Administration. A new forum, either arbitration or a combination of arbitration and an appeal board for issues of favoritism, patronage and discrimination, should be established as the sole and final venue

for resolving worker appeals of management actions.

Article VII of the Constitution should be amended to eliminate the State Personnel Board. The Governor and Legislature should enact legislation to consolidate personnel management authority in the Department of Personnel Administration. Civil service workers should be entitled to a single appeal of management actions, eliminating the multiple appeals currently allowed to the State Personnel Board, the Department of Fair Employment and Housing, the Public Employment Relations Board and the courts. The Commission believes that one of two appeals processes -- binding arbitration or a combination of arbitration and a new appeal board -- should be established as the sole and final venue for resolving disputes and enforcing statutory prohibitions against favoritism, patronage and discrimination.

Finding 2: State departments are hamstrung by the requirement that internal personnel management rules and negotiated agreements be submitted to the Office of Administrative Law, resulting in significant delays of personnel changes.

The Administrative Procedure Act is an important tool for protecting the public from bad regulations. But California's rule-making process is one of the most rigorous in the nation. When it is applied to the rules that state government creates to manage itself it reduces discretion, discourages reforms and stymies timely action.

Recommendation 2: **The Governor and the Legislature should enact legislation to eliminate review by the Office of Administrative Law of rules, regulations and negotiated agreements relating to the internal personnel administration of the State.**

A constant tension defines civil service: The need to balance public interest in how government functions with the need for government to function with business-like efficiency. While the Office of Administrative Law offers a valuable service in reviewing rules applicable to the general public, the review requirement for internal

personnel administration creates a costly burden on state government.

Finding 3: The concept that all state employees belong to one civil service is fiction. Different departments have different missions, clientele and needs. The centralized system hinders cost-efficient management, complicates procedures, discourages experimentation and masks accountability.

It may have been appropriate half a century ago to consider all state employees to be part of the same civil service corps, but centralized controls are too burdensome and costly for the widely diverse agencies striving to accomplish more with fewer resources.

Recommendation 3: **The Governor and the Legislature should enact legislation allowing the Department of Personnel Administration to delegate to individual departments more authority over classification, selection, discipline, compensation and layoff procedures. The legislation also should encourage more demonstration projects to foster reforms.**

The legislation should delegate to departments authority over the classification, examination and selection processes. The Department of Personnel Administration should craft guidelines enabling departments to swiftly and effectively assume more responsibility over those functions. The legislation should ease and encourage more demonstration projects and enable successful experiments to become permanent.

Finding 4: Many state managers lack the authority, leadership skills and incentives needed to create a positive work environment and deal effectively with employees.

Many managers are promoted because of strong technical skills, rather than the skills needed to be effective managers. The authority of managers is usurped by the complex and centralized civil service structure. A trained and inspired management corps is especially needed in state government to make agencies more efficient and effective. For departments to turn managers into leaders, they must be granted more authority, trained to accomplish

the task and provided incentives for taking on the challenge. While these are common traits in successful organizations, they are particularly lacking in state government.

Recommendation 4: **The Governor and the Legislature should enact legislation expanding the Career Executive Assignment program to include all managers and supervisors. Legislation should be enacted allowing for recruitment of managers and supervisors from outside state service, and broadening pay-for-performance programs. Training should be given the highest priority and embraced as a bipartisan concept. Departments should fund training with minimum line items in their budgets and should report to the Legislature annually on the scope and nature of their training efforts.**

The State's management team should be strengthened by better defining the distinctions -- including pay, benefits, tenure and training -- between managers, supervisors and rank-and-file employees. The Department of Personnel Administration must also exercise a leadership role to impress on senior and junior managers the importance of learning new techniques and reforming the system.

Finding 5: A complicated disciplinary process discourages pro-active management of employee performance. In addition, the system for handling disciplinary appeals is unnecessarily costly and burdensome.

Minor disciplinary actions are treated the same as serious ones and can be easily appealed. As a result, the resolution of major disciplinary actions is delayed for months. Duplications and complexity in the procedures discourage managers from taking disciplinary actions when they are warranted. A central cause of this dysfunction is the insistence of the State Personnel Board on reviewing all appealed actions through its quasi-judicial hearing process.

Recommmendation 5: **The Department of Personnel Administration and employee unions should negotiate alternative procedures, such as arbitration and mediation, for resolving disputed discipline actions. The Governor and the Legislature should enact legislation to implement the negotiated solution as the sole venue for resolving major disputes.**

Minor disciplinary actions are a management right and should not be appealable. Minor disciplinary actions are those that do not directly affect the status of an employee, such as letters of reprimand and suspensions of five days or less. For major disciplinary actions, management and labor should negotiate mediation or arbitration procedures for resolving appealed disciplinary actions, with the formality of the process reflecting the gravity of the action. As a condition of employment, employees should waive their right to appeal the decisions of the administrative process to any other venue, including the courts. DPA should impose that same process on non-union employees.

Finding 6: Tenure and automatic pay raises have outlived their usefulness and are counterproductive to achieving effective and efficient government service.

The guarantee of permanent employment and automatic pay raises virtually eliminates the most basic of incentives and disincentives at play in most work places. The protections contribute to the public's negative image of civil servants and their waning support for government.

Recommendation 6: **Article VII of the Constitution and applicable statutes should be amended to eliminate the presumption of permanent tenure. The Department of Personnel Administration should work through negotiations to eliminate automatic pay raises and to link salary adjustments to performance.**

Tenure -- implied in the Constitution, defined in statute and solidified by the courts -- should be abolished for all state employees. Future definitions of employee status, along with more flexible compensation procedures, should be negotiated between labor and management. The Governor and the Legislature should enact legislation necessary to implement the negotiated settlement.

Finding 7: State managers are constrained from contracting out. The public interest in government efficiency is usurped by an overly protective civil service system.

Restrictions on the State contracting with private firms to do public work are complex far beyond what is needed to ensure that the State's resources are wisely used. The courts have interpreted Article VII of the Constitution to mean that only those tasks that cannot be performed by civil servants may be contracted to private firms. That decision has spawned a set of complicated guidelines that, along with union resistance, have further fueled the debate over contracting. One result is that state managers are limited in their efforts to put the State's assets -- including the civil service corps -- to their highest and best use.

Recommendation 7: **Article VII of the Constitution should be amended to remove the presumption that the State's work must be performed by civil servants and to specifically allow contracting with private firms to do public work.**

The State needs to find more cost-effective ways of doing business, and it cannot be precluded from looking to the private sector for that efficiency. If managers are to be responsible for improving performance, they need the flexibility to have state work performed in the most economical way possible. If civil servants are to come to terms with and ultimately benefit from a more competitive environment, a rational approach must be devised for evaluating the alternatives and, when appropriate, awarding private contracts while minimizing the consequences to dedicated workers.

Finding 8: As in the private sector, the success of public sector enterprise requires management-labor cooperation, communication, trust and a willingness to work together to resolve mutual problems.

Tight budget times have aggravated animosities between management and labor, ironically at a time when cooperation is most needed to make government efficient and responsive to the changing needs of Californians.

Recommendation 8: **The Governor should issue an executive order to foster cooperation between management and labor by establishing management-labor advisory committees. The Governor and the Legislature should enact legislation to repeal laws that dictate employment provisions typically covered by labor contracts.**

The executive order should direct DPA and all other departments to experiment with new ways to improve management-labor relations. The goal would be to promote stronger communications and cooperation. DPA should form management-labor advisory committees to exchange information on innovative public sector management, offer advice, suggest demonstration projects and report to the Legislature.

Introduction

Introduction

Public confidence in government is waning. Election tallies and pollsters have documented the dissatisfaction. And commentators and politicians have prescribed a cure of smaller and more efficient bureaucracy. The painful therapy recommended for government is not unlike the wrenching restructuring and work force reductions that private corporations have endured in pursuit of competitiveness. But government has been slow to respond. And in that part of the state government built to manage the bureaucracy, small doses of reform have spurred large controversies.

The institutional resistance to change is predictable. California's stalwart civil service system was designed to ensure stability and insulate it from political influence. It is made even more rigid by the imposition of collective bargaining, an arrangement that can stymie even minor improvements.

Critics of the system can be easily found, inside and outside of government. They describe books of rules that are antiquated and duplicative. They describe oversight overkill, turf cold wars and regulations crafted to circumvent over-regulation.

In the landmark 1992 work "Reinventing Government," David Osborne and Ted Gaebler wrote:

The bureaucracy is basically staffed by well meaning officials and employees who find themselves hamstrung by illogical procedures and pulled in unproductive directions by perverse incentives.[1]

Similarly, the Winter Commission, a privately funded group of business and government leaders that studied civil service systems across the nation, concluded in 1993 that the values that inspired civil service protections had long since been undermined by regulations:

America's civil service was invented 100 years ago to guarantee merit in the hiring process. Sadly, many state and local governments have created such rule-bound and complicated systems that merit is often the last value served. How can merit be served, for example, when supervisors are only allowed three choices from among hundreds of possible candidates for a job? How can merit be served when pay is determined mainly on the basis of time on the job? How is merit served when top performers can be "bumped" from their jobs by poor performers during downsizings? [2]

In each of those examples, what is true in Washington, D.C., is true in Sacramento. But any fortune California derives by not being alone with these problems is limited to the opportunity to learn from others who also are reconstructing government.

When California's civil service system is independently reviewed, three problem areas become clear: Structural problems create inefficiency and reduce accountability. Statutory restrictions make it hard to find the right person for the job, to discipline and reward, to promote and dismiss. And tensions between labor and management undermine efforts to collaboratively strive for improvement.

It is difficult to gauge the resources consumed by this entropy. Even more important -- and harder still to measure -- are the losses to all Californians resulting from an obese and hand-cuffed bureaucracy. Nevertheless, it has become an expensive irony that government has greatly benefited this nation by deregulating private industry, yet has only recently looked to deregulate itself.

The last time the Commission reviewed California's personnel management system was in 1979 at the request of Governor Edmund G. Brown Jr. While some of the Commission's recommendations were followed, those recommendations crafted to reduce redundancies in the bureaucracy, to streamline discipline procedures, and to increase the skills and flexibility of management were not.

Sixteen years have passed since the original study was conducted. In terms of demands on government and the science of personnel management, much has changed. In terms of the government itself, not enough has changed.

In conducting its new study, the Commission convened an advisory group of more than 90 people, including representatives of management, labor, academia, the public and the Legislature (please see **Appendix A** for a list of participants). More than three dozen of those took part in meetings to identify key issues. The study involved an extensive literature review of federal and state reforms. Interviews were conducted with experts in public policy, labor relations and personnel management. The list included former state executives, state personnel specialists, private sector managers and others involved in civil service reform nationwide.

The Commission conducted two public hearings, one in Sacramento in August 1994 and one in Los Angeles in November 1994 (please see **Appendix B** for a list of witnesses at each hearing). These hearings explored overlapping responsibilities and regulatory burdens, barriers to change and steps taken elsewhere to reform civil service.

In addition to specific problems and potential solutions, two overriding realities emerged. First, the State's civil service system is the product of a process and any reforms will be the product of that process, as well. Participation is mandatory on the part of all concerned: unions and professional organizations, public managers and personnel professionals, elected representatives and the general public.

The second reality is that most of those players have a vested interest in the status quo that must be overcome if they are to benefit from a more efficient public workplace.

The Commission's report begins with a Transmittal Letter, an Executive Summary, this Introduction, and a Background section. Eight findings and eight recommendations are presented in three chapters: Organizational Issues, Personnel Management Issues, and Labor-Management Issues. The report ends with a Conclusion, Appendices and Endnotes.

Background

Background

The State personnel management system is a labyrinth of 11 different agencies. Some have broad duties. Most have minor and narrow roles. In addition to laws and regulations, a series of negotiated settlements and interagency agreements guide procedures and decisions in over 100 different departments, from the Department of Aging to the California Youth Authority.

Of the 274,000 employees who receive state paychecks, about 185,000 are part of the civil service system. The rest are exempted executives and employees of the judiciary, Legislature and higher education systems.

Those 185,000 employees fall into 4,462 classifications. Most of them -- nearly 140,000 -- are represented by 21 different bargaining units; the balance are not represented by unions. Collectively, they represent an annual payroll of $8 billion.[3]

This section provides a history of the civil service evolution and a description of the agencies responsible for the personnel system in California. It also describes the personnel management revolution that has swept through the private sector and is pounding on government's door.

When Civil Service Was a Reform

By the late 1800s, the "spoils system" -- which rewarded political supporters with cushy government jobs that were then abused to further solidify political support -- had so corrupted America that it cost the nation a promising president. Just four months after taking office in 1881, President James Garfield was assassinated by a disappointed office seeker. The shocking tragedy galvanized public support for civil service reforms.

The Pendleton Act of 1883, was based on the belief that the public was entitled to efficient service by a stable and professional work force. Those who sought careers in the public sector were entitled to a fair opportunity, based on their competence and not their campaign contributions.[4]

The system built to institutionalize these values was buttressed by the best academic thinking of the day -- that centralized programs would create consistency and efficiency. Jobs would be distributed through competitive hiring, and advancement would be based on qualification.[5]

The initial hallmarks of the civil service "merit" system included a reliance on written examinations, the rule of three, which restricted selection to three top test takers, and other protections for status and tenure. The four consistent themes of the merit system were:[6]

- **Competence.** Selection of the best qualified through open competitive examination.
- **Stability.** A stable career service to serve all the people regardless of change in political leadership.
- **Equality of opportunity.** Everyone may compete for employment based on ability and fitness for the job, regardless of political or religious beliefs, race or gender.
- **Political neutrality.** Employees are to be free from inappropriate political pressures.

California's civil service rules were established as part of progressive reforms

California sought to reform its public employment system in 1913 with passage of the Civil Service Act, which created the Civil Service Commission to eliminate political abuses and guarantee fairness in hiring, promotion and termination. The Act was passed in an era of progressive reforms, including the establishment

of the initiative, referendum and recall processes and non-partisan local elections.

The State's reforms, however, got off to a rocky start. Nearly two decades later, half of the positions remained exempt from the Civil Service Commission's provisions. Temporary appointments lasted for as many as 15 years because the commission could not schedule examinations. Moreover, the commission was resisted by the employees it intended to protect, who were concerned about abuses in the young system and feared their traditional job security was in jeopardy.

Their fears were aggravated by a worsening economic depression. State revenues fell and workers faced pay cuts and layoffs. The newly formed California State Employees Association (CSEA) proposed a plan calling for employees to voluntarily return a portion of their pay to the general fund. But the scheme failed and by 1933 more than 1,500 workers were threatened with layoffs.[7]

To try and solidify the unsure footing of its members, the CSEA sponsored an initiative in 1934, which voters approved by a 3-to-1 margin, that placed the Civil Service Act within the state Constitution. The measure (Article XXIV, recodified as Article VII) replaced the Civil Service Commission with the State Personnel Board (SPB). The board was charged with setting policy and administering the personnel system -- prescribing probationary periods, creating classifications, conducting selection and promotion examinations. It also was charged with policing the system it managed -- investigating and hearing appeals from employees concerning dismissals, demotions and suspensions.[8]

World War II and the decade that followed were stable times for government and its staff of civil servants. The stresses of the economic times and the demands of war had encouraged new management techniques that questioned the centralized control of most organizational structures, including the civil service system. "Enlightened" personnel policies began to move away from control and toward service and results.

Political winds of the 1960s buffeted the Civil Service System

By the 1960s, social and political changes directly challenged the status quo. Dramatic growth required the bureaucracy to satisfy new demands. The Personnel Board struggled to supply the highly skilled workers needed for public works programs such as the State Water Project and interstate highway system, as well as expanding social programs, such as mental health

and welfare. The concept of political neutrality in civil service also was challenged by a rise in employee activism and the push for expanded equal opportunity policies.[9]

All of these forces contributed to fundamental changes in the system: Civil rights authorities were granted to the State Personnel Board. The Career Executive Assignment was introduced to make managers more accountable. Collective bargaining was established.

The Civil Rights Act of 1964 required additional assurances that testing and evaluation methods did not discriminate against people because of sex, race, religion, color, national origin, ancestry, marital status or physical disability. Legislation in 1977 made the Personnel Board responsible for statewide coordination and enforcement of the departmental affirmative action programs.

The Career Executive Assignment (CEA) program was created in response to concerns that top level bureaucrats, who were protected by civil service rules, were indifferent to the policies of political administrations. At this level, loyalty and accountability to program changes are indispensable to democratic government. The CEA was a compromise solution that exempted one half of 1 percent of the work force -- at the highest employment levels -- from civil service procedures, giving administrations more flexibility in selection, compensation and termination.

As unions organized public employees, the manager-worker relationship changed

Almost simultaneously, unions started to organize public employees. Since the mid-1930s, employees -- through the relationship between the Personnel Board and the California State Employees Association -- received the pay and benefits they wanted. But the unions sought a formal and exclusive process for negotiating the terms and conditions of employment.[10]

The George Brown Act of 1961 required the State to "meet and confer" with representatives of the state work force over salaries. CSEA later lobbied for collective bargaining with the Governor's office. Then-Governor Ronald Reagan declined, but in 1971 he issued an executive order instructing the Secretary of the Agriculture and Services Agency to meet and confer with representatives of employee organizations on salary and benefit proposals.[11]

In 1972, state government experienced its first large strike. Five hundred hydroelectric and civil maintenance employees working for the State Water Project struck

over a salary dispute. That strike sent shock waves through the system and led to the formation of the Assembly Advisory Council on Public Employee Relations. The council recommended that employees be given full collective bargaining privileges. Administratively, the duties of setting salaries and benefits began to shift from the Personnel Board to the Governor's office.

By executive order, the Governor's Office of Employee Relations was established in 1975. The agency was charged with representing the governor on salary and benefit issues, meeting and conferring with representatives of employee organizations, and developing policies to improve employer-employee relations.[12]

CSEA continued to fight in the Legislature for collective bargaining and in 1977, the State Employer-Employee Relations Act (SEERA), also known as the Dills Act after its author Senator Ralph Dills, was passed and signed into law. Under the act, most terms and conditions of employment became negotiable for the majority of the State's civil servants. SEERA went beyond "meet and confer" to requiring the Governor's representatives to meet "in good faith" with exclusive representatives of employee groups. The Public Employment Relations Board, created the year before to settle collective bargaining disputes involving teacher unions, was expanded to cover the state work force.[13]

The bureaucracy evolved to provide for a dual personnel management system

SEERA represented a fundamental shift away from a civil service system that unilaterally managed the work force, to a dual system that gave the Governor and exclusive bargaining units the authority to negotiate working conditions. The question was how collective bargaining would be meshed with the Personnel Board's constitutional obligation to manage by merit.

In 1979, Governor Edmund G. Brown Jr. established the Department of Personnel Administration (DPA), which replaced the Office of Employer-Employee Relations and assumed responsibility for overseeing the State Employer-Employee Relations Act.[14]

The DPA has functioned as expected. But the State Personnel Board (SPB) has seen its role challenged and its resources diminish. In the last decade, SPB staffing has fallen from roughly 600 to 150.[15] A portion of that reduction reflects its shrinking role in managing day-to-day activities. For example, in the mid-1980s, the board experimented with decentralizing the civil service examinations it administered and by 1987 all departments

had taken more control of selection and promotional examinations.

But a lack of resources also has hindered the board's ability to carry out those duties still within its purview. For instance, the board once had "advocate managers" working on behalf of specific under-represented minorities to encourage departments to meet affirmative action goals. Those positions have been eliminated.

The Board's once-exclusive appellate responsibilities also have been diluted. In 1985, several applicants for the California Highway Patrol complained to the Department of Fair Employment and Housing (DFEH) that they had been denied jobs because of physical disabilities. The Personnel Board challenged DFEH, asserting it had prime jurisdiction over complaints involving the civil service system. Ultimately, the state Supreme Court ruled that both DFEH and the Personnel Board had authority to hear disciplinary and examination appeals based on charges of discrimination.[16]

Nevertheless, the board's appeals-related caseload has risen. Since the early 1980s, the number of appeals has grown by more than 250 percent. The staff level, however, remained constant and a months-long backlog was created. The board in 1994 was authorized more positions, but the appeals process still takes six months.[17]

The board continues to oversee merit-related aspects of the personnel management program. But its role has shifted from that of performing duties to providing guidance to DPA and individual departments.

Table 1 shows the 11 different state agencies that have some responsibility over the State's personnel management system.

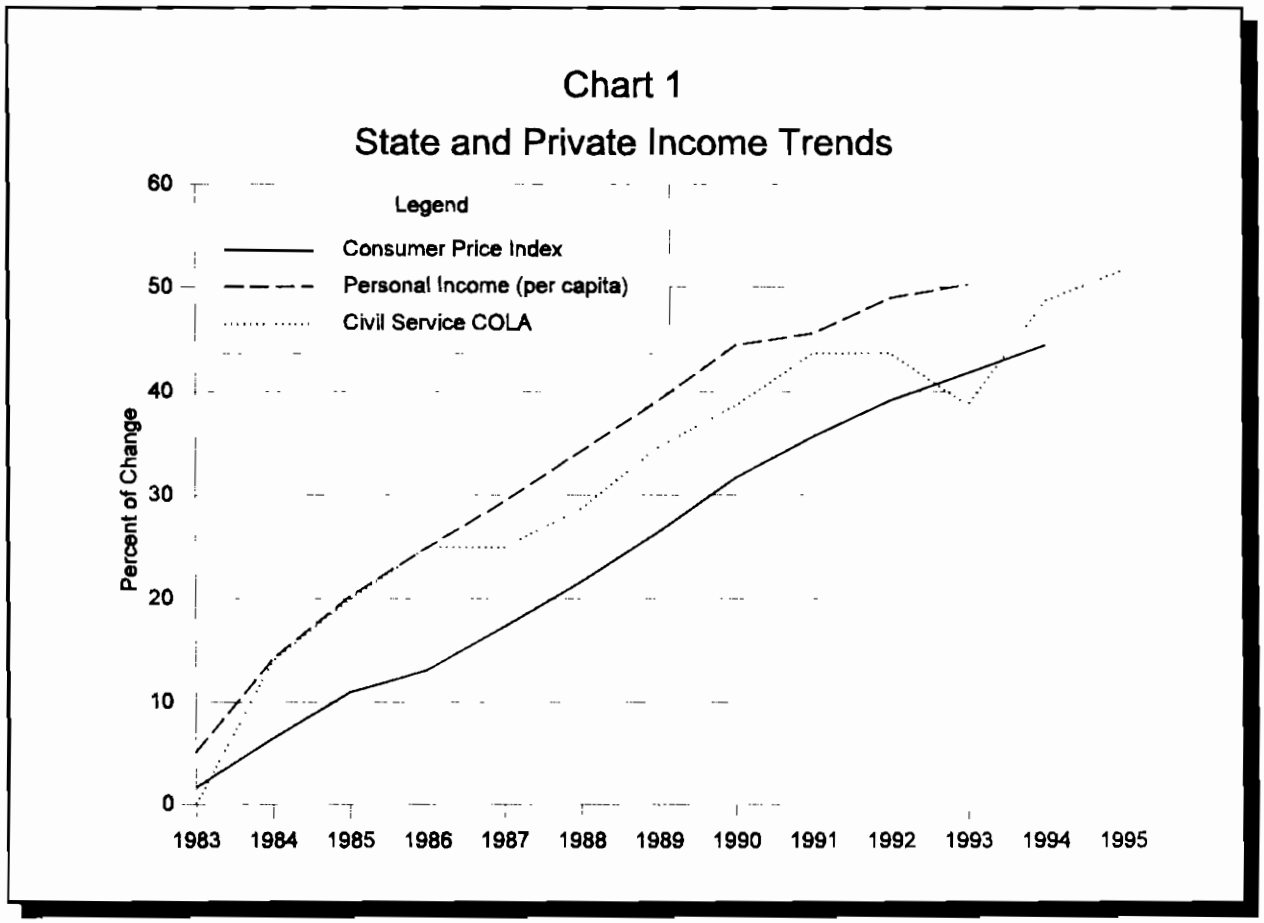
Table 1
The Personnel Management Bureaucracy
(State departments with some personnel responsibilities)

Agency	*Responsibility*
State Personnel Board	The five-member board, gubernatorially appointed, revises classification plans, develops exam techniques and hears employee appeals of discipline actions.
Department of Personnel Administration	Negotiates salaries, benefits and other employment terms with unions. Administers compensation, evaluation and training programs, and layoff and grievance procedures.
Public Employment Relations Board	Protects the rights of workers to unionize and hears appeals of unfair labor practices.
Department of Fair Employment and Housing	Investigates complaints of discrimination in housing, employment and public accommodations.
Office of Administrative Law	Reviews and approves regulations proposed by state agencies, including most personnel management rules.
Department of General Services	Reviews contracts for personnel services from private firms for legal adequacy.
Department of Finance	Analyzes department budget proposals, including the expansion and reduction of staffs
State Compensation Insurance Fund	Offers insurance protection to employers against on-the-job injury claims, and administers benefit claims.
Public Employees' Retirement System	Contracts and approves health benefit plans for state workers; hears employee appeals on coverage disputes.
State Board of Control	Settles employee claims over "out-of-class" work assignments and unpaid benefits.
State Controller	Administers the state payroll and oversees the Personnel Management Information System.

As the table shows, the State Personnel Board and the Department of Personnel Administration play the largest roles in personnel management. Others, such as the Office of Administrative Law and the Department of General Services, play secondary roles. The other seven have administrative duties involving the State's work force.

Over time, the civil service has grown, both in terms of the numbers of workers and in payroll. While the numbers of state workers continue to increase, state employees as a percentage of the population have declined over the last decade, from 8.9 per 1,000 Californians to 8.3 per 1,000 Californians. According to the U.S. Census Bureau, California ranks second in the nation for having the smallest state work force per capita.[18]

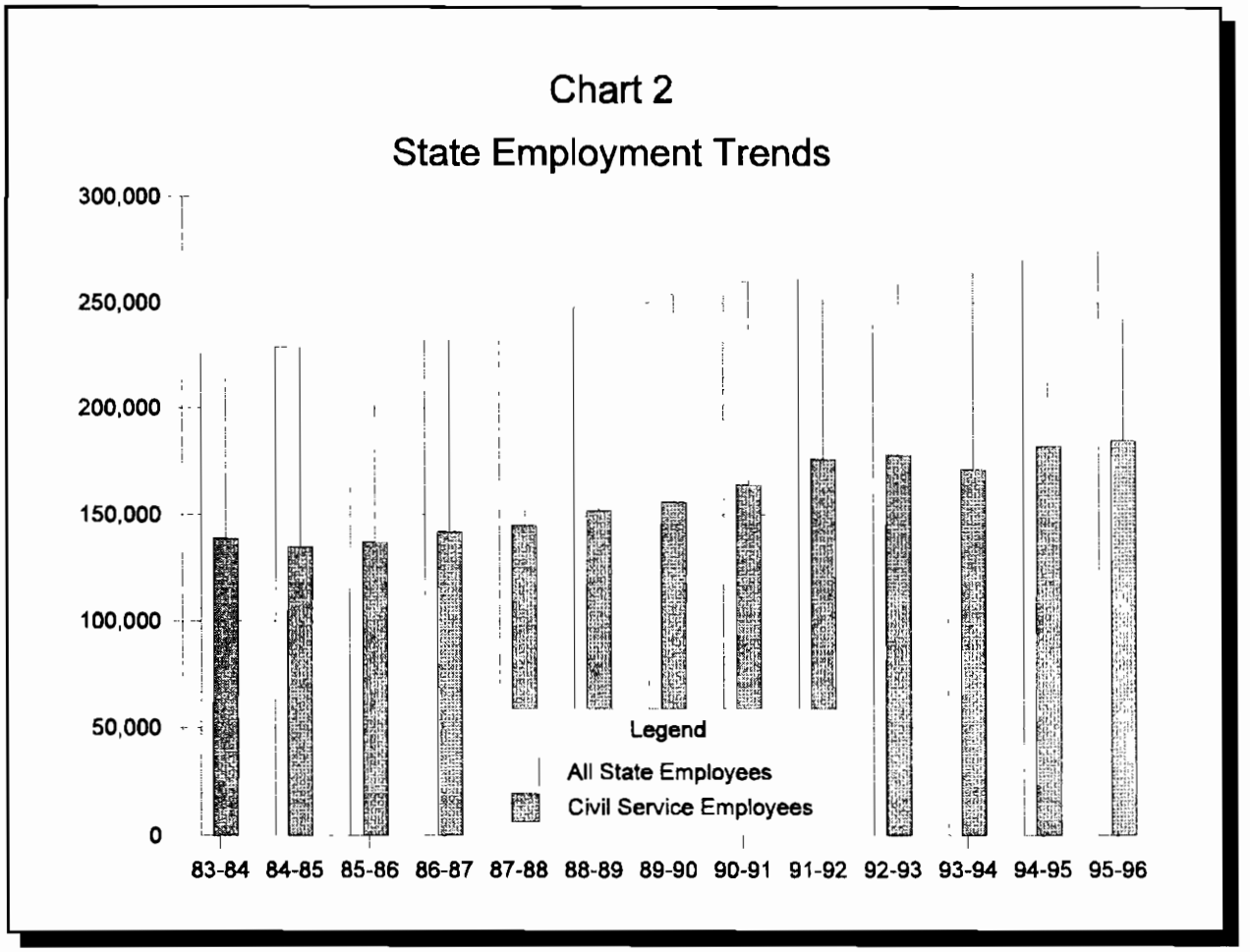
The following series of charts displays trends in the size and compensation of California's civil service work force. Numerical tables displaying the data in more detail are contained in **Appendices D and E.** Chart 1 shows trends in civil service income, the income for all Californians, and inflation as measured by the cost-of-living index.



Source: Department of Personnel Administration, California Statistical Abstract

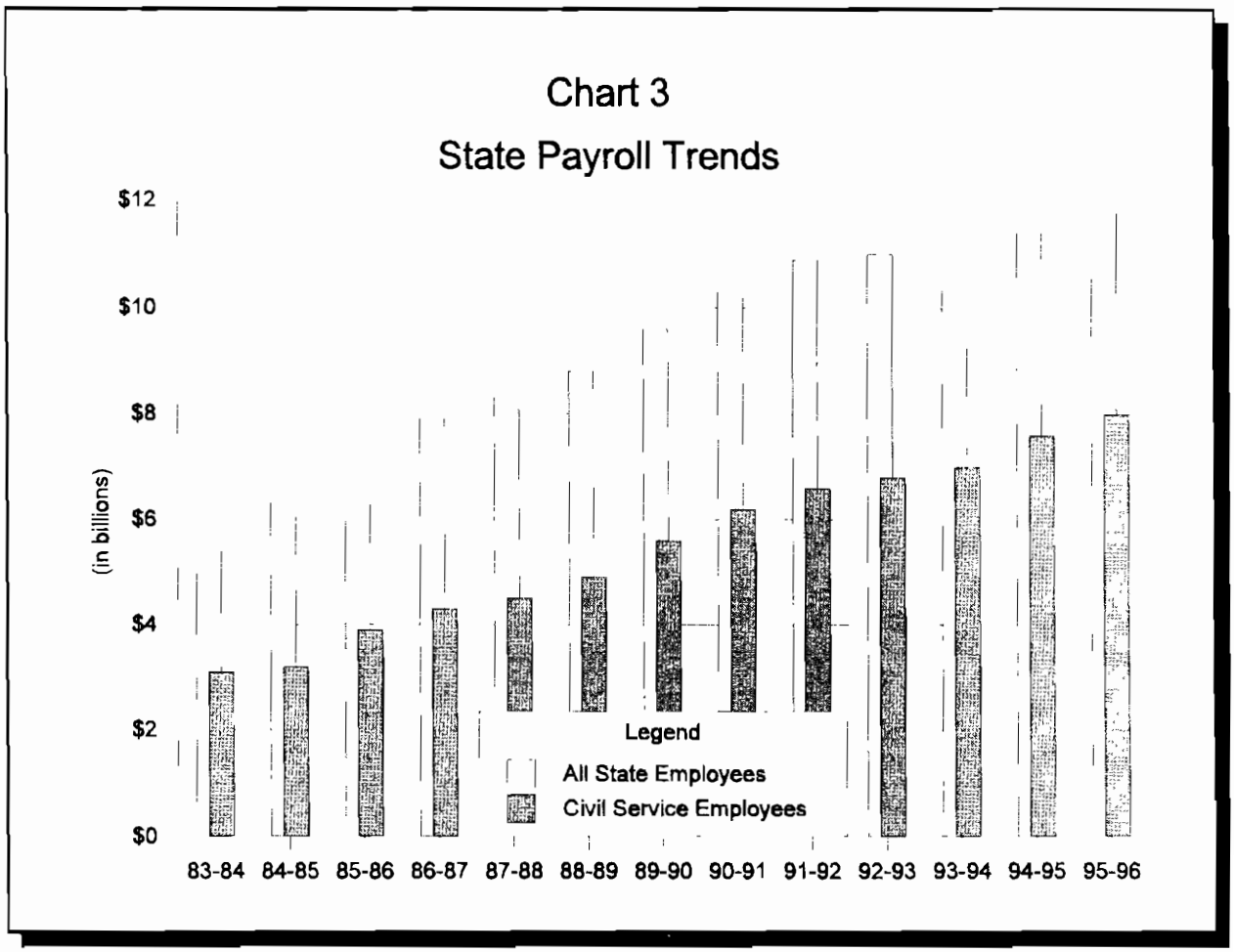
As the chart shows, after a period of gains in the early 1980s, the earnings of both civil service workers and Californians as a whole have paralleled inflation. During the fiscal crisis of the early 1990s, civil service workers took a 5-percent reduction in

pay for 18 months (in exchange for one vacation day a month). Chart 2 shows trends in the number of state employees.



Governor's Budgets, various years

As the chart shows, the number of state employees has gradually increased over time. Civil service, as a subset of the state's work force, has accounted for most of the increase. Chart 3 shows the effects of a growing work force and cost-of-living increases on state payroll.



Governor's Budgets, various years

The Management Revolution

For decades, the private sector in America was the world's model for efficiency and productivity. After World War II, strong demands for U.S. goods and services fueled enormous business growth, largely free from external competition.

As European and Asian countries recovered from the war, American companies experienced increased competition, particularly concerning quality and service. Japanese manufacturing productivity grew at 8.5 percent a year from the late 1950s through the mid-1980s, and German and Italian productivity was not far behind. But U.S. productivity gains slowed -- averaging a modest 2.5 percent a year.[19]

The increased competition, greater emphasis on quality and technological advances exposed anachronistic management practices. Practices that encouraged efficient manufacturing -- a division of labor into specific tasks, elaborate management control and a clear hierarchy -- discouraged flexibility and responsiveness.

Businesses reassessed management practices and experimented with new approaches to regain competitiveness and profitability: management by objectives, organizational diversification, zero-based budgeting, quality circles, Deming's Principles of Quality Management.

Tom Peters and Robert Waterman studied the management practices of businesses that were successful in the new economic climate and identified eight traits in their book "In Search of Excellence: Lessons from America's Best-Run Companies."[20] Among them were a bias for action, an obsession with customer preferences, and an appetite for internal entrepreneurship and the generation of new ideas. Peters and Waterman found that successful organizations recognized that productivity could only be achieved by convincing all employees to make their best efforts. In successful businesses, executives stayed in touch with employees and businesses stuck to what they did best. Successful businesses had simple organizational structures and lean staff. And while the businesses maintained central values, they encouraged autonomy at all levels.

On the whole, the characteristics enabled organizations to better adapt and profit in markets constantly being redefined by global competition, advancing technology, new work patterns and increasing customer expectations.

Emerging Trends of Private Sector Organizations

The private sector has "re-engineered" how work is assigned and accomplished. Other changes are intended to develop a new "work culture."[21] Among the reforms:

- Work units are changing from functional departments to process teams. Jobs are changing from task-oriented work to multi-dimensional projects. Staff roles are changing from specific assignments to broad responsibilities.

- Performance measures and compensation are shifting from recognition for completing certain activities to the results produced by a person, team or function. Advancement criteria is changing from performance in specific assignments to one's general ability and potential.

- Organizational structures are changing from hierarchical to flat. Managers are changing from being supervisors and "critics" to being coaches and mentors. Core "cultural values" of organizations are changing to encourage employees to identify with, and work for, customers.

Implications for the Public Sector

The public sector has been aware of the changes occurring in the private sector. Government agencies encounter many of the same demands. Budget constraints have led public organizations to change the way they provide services.

A recent survey by the National Association of State Personnel Executives showed that more than 30 states are involved in some form of personnel system reform. But like private companies, public agencies have unique political, historical and legal contexts. What might work to revitalize one office may not be easily transferable. Public agencies must also adapt private sector reforms to work in the framework of an elected executive, within the limitations of numerous laws, and for "customers" comprised of a diverse citizenry.[22]

On some issues, California already has instituted reforms that other states have only proposed. Much of the State's selection program, for example was decentralized to departments in the mid-1980s. The limited tenure and flexible hiring characteristics of the Career Executive Assignment Program has been used as a model by the federal government and several states.

The goal of these strategies is to change an agency's culture: To get public managers to be self-critical and challenge the status quo; to become cost-conscious and in touch with taxpayer concerns. And to inspire workers to be concerned with "customer" satisfaction.[23] Among the common strategies being pursued by government agencies:

- Improved "top-down" and "bottom-up" communication. Participative management styles and teamwork approaches. Emphasis on results, accountability and recognition.

- Stronger "customer focus," responsiveness to "stakeholders" and public service organizations. Improved quality and timeliness of service delivery.

- Simplified and decentralized personnel management procedures to encourage greater management flexibility. Cooperation with labor organizations.

- Efforts to take advantage of changing technology. Training and retraining to meet organizational goals with a diverse work force.

Some of these strategies can be implemented through individual initiative and leadership. Others require an overhaul of the present system and the elimination of constraints that have outlived their usefulness. Needed reforms are explored in the following three chapters.

Organizational Issues

- *Dual management system creates overlap in the hiring, classifying and disciplining processes.*
- *Dual system bifurcates authority, and discourages reform.*
- *Cumbersome rulemaking procedures handcuff managers.*

Recommendations:

- *Eliminate the State Personnel Board.*
- *Create a new forum as sole and final venue for resolving fairness issues.*
- *Eliminate review of personnel rules by Office of Administrative Law.*

Organizational Issues

The organizational structure of the State's personnel system resembles the architecture of a European cathedral built over centuries. Departments and programs have been added as needs have changed, their design reflecting the vogue thinking of the day.

Legal authorities are laid out in the Constitution, in the Government Code, in agency-established rules, and as a result of negotiated agreements. The Governor appoints the members of the State Personnel Board (SPB), who then appoint an executive officer. The Department of Personnel Administration (DPA) is led by a director, who serves on the Governor's cabinet.

The prominence and responsibilities of the personnel management organizations have waxed and waned -- with the urgencies of the day, the nature of their leadership, the availability of funds, and their effectiveness in the Legislature.

At best, there has been an enormous amount of bureaucratic diplomacy invested in making sure that agencies do not violate other's turf. But despite the effort, the inevitable has occurred. The executive officer of the State Personnel Board told the Commission: "We have spent a lot of time working together to reduce overlap. Still, there are overlaps."[24]

Sometimes redundancy in government is a necessary evil. Other times it is an unwanted byproduct of history. The evidence shows the civil service system in California is burdened by history.

Finding 1: There is overlap and conflict between the State Personnel Board, steward of the traditional civil service system, and the Department of Personnel Administration, which is charged with the expanding role of union contract negotiator for the Executive Branch.

The principal redundancy in the civil service system -- between the quasi-judicial Personnel Board and the Department of Personnel Administration -- covers the important public employment issues of classifying, selecting and disciplining employees.

But that is not the only redundancy. The Personnel Board overlaps the Department of Fair Employment and Housing on discrimination complaints. The Personnel Board adjudicates discipline matters that might also end up before the Public Employment Relations Board.

This redundancy has even tarnished the effectiveness of one of California's civil service successes, the Career Executive Assignment program. Designed to make top managers accountable to the Governor, the potential is limited by bureaucratic rules.

Overlap Between the Personnel Board and DPA

The advent of collective bargaining redefined the employer-employee relationship by requiring personnel rules and policies to be bilaterally developed. Collective bargaining also required splitting personnel management duties between the Personnel Board and the Department of Personnel Administration, and framers of the new strategy believed they did so in a way to minimize conflict. DPA would represent the executive branch on matters such as salaries and benefits and in negotiations with employee organizations. The State Personnel Board would administer classification proposals, selection programs, probationary periods and disciplinary appeals.

California's dual system was similar to personnel systems that had been developed nationwide. But in the intervening years, most state civil service commissions have been abolished or their responsibilities greatly diminished. A survey by the National Association of State Personnel Executives in 1993 found only eight states have retained an independent commission, and many of the surviving ones have been curtailed.[25]

Shafritz, Hyde and Rosenbloom concluded in *"Personnel Management in Government"* that in addition to their obsolescence in an era of collective bargaining, independent civil service commissions dilute democracy:[26]

Put simply, independent, structurally and politically isolated personnel agencies have a great difficulty in serving the needs of elected executives and public managers. They ultimately become viewed as obstacles to efficiency and effectiveness and are sometimes unduly influenced by pressure groups.

In California, too, the civil service system has developed a reputation for inefficiency, largely because of the dual jurisdictions of the Personnel Board and DPA. The problems, according to personnel specialists and DPA officials, manifest themselves more as a low-grade fever than paralysis:

- When collective bargaining began, the Personnel Board staff sat in on all bargaining sessions. When management or employee representatives raised an issue the board believed involved an issue in its jurisdiction -- such as the minimum qualifications for a class -- the board staff objected. Typically, DPA agreed to avoid the issue, and later reconciled the matter with the board.

- The Personnel Board has consistently maintained that issues within its jurisdiction should not be negotiated, even though the same issues are routinely settled at private sector bargaining tables. In those cases where DPA went along, the issue often ended up before the Public Employment Relations Board (PERB). Charged with settling disputes arising from negotiated agreements, PERB often took the boarder view -- concluding that any topic the employer and employee mutually agreed upon could and should be included in their discussions.[27]

- Layoff is a complicated procedure for DPA to administer. But the complexities of that procedure are aggravated by the requirement that layoff plans

must be reviewed separately by the Personnel Board to determine if minorities and women are unfairly affected by the decisions.

Marty Morgenstern, chair emeritus of the Center for Labor Research and Education Institute of Industrial Relations at the University of California, Berkeley, and the State's first Director of the Department of Personnel Administration, said that through compromise and court action the State ended up with a civil service system of interlocking authorities:

There are too many departments, boards and commissions with overlapping duties and responsibilities, resulting in a cumbersome and wasteful process for adjudicating adverse actions and other disputes. The work force remains divided into hundreds of minutely defined job classifications that interfere with the ability of workers at every level to perform better and produce more efficiently.[28]

Overlap and Disputes Over Classification

Classification is a classic element of civil service. It lays out the qualifications for a job, the range of duties and compensation. These same issues also are important from a management perspective. The result, according to DPA officials and personnel officers, is a litany of conflict and confusion:

- The Personnel Board has exclusive responsibility to establish and revise the classification plan and the board asserts it can unilaterally make such decisions. But if a department wants to revise a class, it must send a proposal to the Department of Personnel Administration. And only if DPA agrees is Personnel Board approval sought.

- DPA has sought to revise classifications at the bargaining table before proposing them to the Personnel Board. But in most instances, the unions have rejected DPA's proposals and opted to make their case to the board.

- Unions have suggested changes as part of their bargaining proposals. And when management has rejected those proposals, the unions have agreed to conduct studies and pursue the issue before the Personnel Board.[29]

- DPA and the unions have negotiated "alternate salary ranges" to compensate workers in common classes who perform special duties. DPA maintains

the new ranges fall within its authority to establish differential pay. The Personnel Board, however, has asserted that DPA is creating new classifications.[30]

- The two personnel agencies have disagreed how to handle transfers between classes. In some cases employees receive salary increases greater than two steps. By some definitions that is a promotion requiring examination. By another definition it is a simple transfer.

These seemingly minor conflicts aggravate and delay state agencies trying to do increasingly complicated jobs with fewer resources, personnel specialists and DPA officials said. Individual departments -- along with DPA and the unions -- complain that class changes require approval from both DPA and the Personnel Board. The frustration is particularly high after lengthy negotiations between DPA and the unions yield an agreement but the Personnel Board is reluctant to approve it.

DPA has urged that the Constitution be amended to eliminate the Personnel Board's role in the classification system.[31] Similarly, the Personnel Board concedes that the classification plan "can be more efficiently established and maintained by a single entity." The board, however, believes it should maintain oversight of the plan to ensure fairness and equity in setting classifications.[32]

Overlap in the Discipline Process

Effective discipline of errant employees is essential to effective management. During the Commission's investigation, it heard frequent criticisms of the current discipline process. One example stems from the overlap between the Personnel Board and the Department of Personnel Administration.

In the early days of collective bargaining, the Personnel Board asserted exclusive responsibility over the discipline process. One union disagreed and filed an unfair labor practice charge. The Public Employment Relations Board (PERB) ruled that DPA could conceivably negotiate discipline procedures to the extent that they did not conflict with the Board's constitutional authority to review discipline.[33] DPA has maintained that the ruling means it can negotiate all aspects of discipline except the Board's ultimate authority to review individual actions. But in

deference to the Personnel Board, DPA has rejected union proposals to modify the discipline process.

This structural stalemate is particularly important because of the overall failure of the discipline process. Management believes it is too difficult to take discipline actions. And unions complain that it takes too long to resolve disputes over the actions that management does take. But the structural overlap divorces accountability from responsibility, and as a result reform proposals have languished.

Another example is the handling of affirmative action complaints. The Personnel Board asserts that affirmative action programs fall within its responsibility to ensure fairness. Consequently, DPA has rejected union offers to arbitrate alleged discrimination or sexual harassment disputes. In a resulting appeal, PERB ruled that the Personnel Board does not hold a monopoly on the process, and that discrimination complaints could be arbitrated. Still, DPA has decided not to arbitrate, arguing that it is a specialized area of employment law and is better adjudicated in specialized forums.[34]

Overlap Between Personnel Board, Other Agencies

In its roles as arbiter of the civil service, the State Personnel Board's duties also overlap those of the Department of Fair Employment and Housing (DFEH) and the Public Employment Relations Board (PERB).

By law, both the Personnel Board and the DFEH can investigate complaints of discrimination filed by state employees. Most of these complaints are made to the Personnel Board. And in most cases where the Board has completed its investigation, held an evidentiary hearing and rendered a decision, DFEH defers to the Board.[35]

But nothing precludes employees from filing complaints with both agencies, and there have been cases in which both agencies investigated the same complaint. On occasion, employees or their representatives filed complaints with the SPB, and if they didn't like the result, refiled it with DFEH. And if they are still unhappy, they file it with the federal Equal Employment Opportunity Commission.[36]

In testimony before the Commission, the director of the Department of Fair Employment and Housing said: "State employees now enjoy more protection than private sector

employees as both the Civil Service Act and the Fair Employment and Housing Act provide protection from, and remedies for, unlawful discrimination in their employment."[37]

For state employees, discrimination complaints are initially investigated by the department charged with discrimination. For that reason, DFEH officials said, state workers frequently consider an appeal to the Personnel Board to be part of the in-house review that should not preclude them from appealing to DFEH, just as any worker could after failing to resolve the issue with an employer. The Personnel Board, however, is supposed to be a neutral party, and has an investigative and hearing process similar to DFEH.

Similarly, discipline issues related to union activity can end up before the Personnel Board or the Public Employment Relations Board. PERB has a policy of not holding hearings on issues covered by a collective bargaining agreement. But the exception to the rules are those cases where employees are job stewards and the union claims that the alleged reprisal interferes with their ability to carry out their representative duties.[38]

Overlap and the CEA Program

The California Executive Assignment Program has been one of the state's civil service success stories. But even that program has stirred controversy between the State's two personnel agencies. And it exemplifies how management discretion can be challenged by employee representatives before the Legislature.

The Legislature created the CEA in 1963 to give administrations more flexibility in selection and tenure -- in exchange for more accountability from -- top level civil servants.

Career Executive Assignment means an appointment to a high administrative and policy influencing position within the state civil service in which the incumbent's primary responsibility is the managing of a major function or the rendering of management advice to top level administrative authority. Such a position can be established only in the top managerial levels of state service and is typified by broad responsibility for policy implementation and extensive participation in policy evolvement...[39]

The act directed the Personnel Board to develop classification, selection and pay features that would not be bound by civil service rules.

Incumbents would not gain tenure in their positions and could be removed by the administration with a 20-day notice, provided the removal was not based on racial, religious or political grounds. Competition for these positions was to be restricted to civil service employees.[40]

The board established one broad CEA category, divided it into five levels of salary and responsibility. Selection procedures were simplified to focus on the position rather than the category. Over the years, the program has remained relatively small, encompassing roughly 900 positions (less than 1/2 of 1 percent of the state work force).[41]

Meanwhile, the DPA has designated nearly 3,150 employees as managerial, based on a definition in the 1977 State Employer-Employee Relations Act:

Managerial employee means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.[42]

Those employees have no representation rights, and fall under a different compensation and classification program than other state employees.

In 1988, DPA proposed to the Personnel Board that the management classes and the CEA positions be "harmonized" by consolidating the classification, selection, pay and tenure provisions of the entire managerial rank. DPA argued that the Personnel Board had too narrowly interpreted the CEA definition. And in an era of collective bargaining, a broader interpretation was needed to give management more flexibility.

The proposal drew criticism from the unions. The Association of Deputy Attorneys General argued that DPA was trying to "subvert the essence of the civil service system and return to the spoils system."[43] The Personnel Board delayed action and several weeks later the Senate Committee on Public Employment and Retirement held its own hearing on the proposed expansion of the CEA program. They concluded that any proposal to significantly expand the CEA category should be a part of a legislative bill, not an administrative decision of the Personnel Board. The issue has never been resolved, and as a result, the State has two working definitions of "management." The CEA program was praised by members of the executive branch who testified before the Personnel Board and the Legislature. While they wanted still more flexibility for selecting and terminating

managers, they testified that the ranks of the CEA had remained stable and a spoils system showed no sign of returning. Moreover, the CEA program has been a model for other states, as well as the federal government's Senior Executive Service.

As it stands, however, not even the CEA program is free from the dual jurisdiction of the Personnel Board and DPA. Departmental personnel officers who testified before the Commission complained that to create a CEA position requires detailed justifications that are reviewed by both agencies and can consume several months. The personnel officers argued that, given the detailed guidelines, no central review -- let alone two reviews -- is necessary.[44]

Bifurcated Authority

The overlapping responsibilities between the Department of Personnel Administration and the State Personnel Board does more than waste money and increase frustration. The overlap diminishes authority and accountability. The Department of Personnel Administration, under the direct oversight of the state chief executive, has had limited authority to speak as management. The State Personnel Board's role as independent arbiter of nearly all civil service disputes is tarnished by its day-to-day administrative duties. In effect, the board at times is in the awkward position of sitting in judgment of itself, and has lost the confidence of workers as an impartial venue for resolving disputes.[45]

In 1979, when the Commission last reviewed the State's civil service system, it concluded:

The time has passed for patching. Only a new overall structure will assure critically needed coordination by, and accountability of, the Governor for the State's personnel management, and adequate and coordinated attention to employee equity and citizen apprehension that merit administration is being avoided. Because the overhaul must be fundamental, it should be completed in two coordinated phases: first, a Governor's initiated reorganization; and second, Constitutional and statutory changes.[46]

The first step was accomplished. The second step was never taken.

Protecting Against Patronage and Favoritism

The Winter Commission, a privately funded panel that studied civil service reforms nationwide, believes the days of flagrant patronage are history. The panel's confidence rests in a series of U.S. Supreme

Court decisions that have made the practice illegal and because of the prevalent attitude among elected officials that "good government" is good politics.[47]

In 1976, the Supreme Court in the case of *Elrod vs. Burns* found that patronage dismissals violated the First and 14th Amendments. In 1980, the court found in *Branti vs. Finkel* that partisanship can only be a factor in hiring when the government can prove it is essential to performance. And in 1990, the court found in *Rutan vs. Republican Party of Illinois* that the First Amendment protections from patronage practices extend beyond dismissal to hiring and promotion. Experts acknowledge that "most of the abuses which merit procedures were established to prevent are now either impossible due to the advent of collective bargaining or illegal due to court decisions; yet the control mentality persists."[48]

Many states and the federal government already have eliminated civil service boards

That belief also is reflected in the nationwide trend to eliminate state civil service commissions. Likewise, when the federal government reformed its civil service in 1978, it eliminated its commission and replaced it with a more narrowly defined Merit Systems Protection Board. The bipartisan board acts as an appellate body and monitors the federal bureaucracy for violations of the fairness issues. The board staff believes that the agency has provided an expeditious alternative to the court system, and its presence has encouraged managers to make more defensible decisions.

In California, even with the Personnel Board, there is concern about fairness. The California State Employees Association, which represents six out of 10 unionized workers, testified that delegating selection and other duties to individual departments has already eroded the core values of the civil service: "The merit system no longer reflects merit and is perceived by employees as a joke."[49] And union officials maintain that those concerns will only grow if departments truly begin to reform, streamline and tailor classification and other procedures as a way of increasing efficiency and improving service delivery.

Reformists, however, must begin by examining the overlap between personnel agencies because it is debilitating to the fundamental civil service elements of classification and discipline. The overlap also has encumbered attempts to reform the system, as has been the case in the CEA program, the delegation of some classification duties to departments, and DPA's interest in crafting an alternative discipline process.

Recommendation 1: ***The Personnel Board should be eliminated. Oversight of personnel management and central leadership should be assigned to the Department of Personnel Administration. A new forum, either arbitration or a combination of arbitration and an appeal board for issues of favoritism, patronage and discrimination, should be established as the sole and final venue for resolving worker appeals of management actions.***

The Personnel Board and the Department of Personnel Administration are not compatible in their present forms. The first and largest step that the State could take to improve the management of its civil service ranks would be to terminate one of the system's two masters.

Article VII of the Constitution should be amended to eliminate the State Personnel Board. The Governor and Legislature should enact legislation to transfer the board's administrative duties to the Department of Personnel Administration.

One of two procedures should be followed to establish a new method for resolving worker appeals and to guard against patronage, favoritism and discrimination. The Governor and the Legislature should enact legislation establishing binding arbitration as the sole venue for settling such disputes. Alternatively, management and labor should decide through collective bargaining whether disputes will be resolved through arbitration or with a combination of arbitration and a new independent board established to hear equity-based termination appeals.

Eliminating the Personnel Board

Employees cannot one moment be given all the protections of civil service and the next moment be afforded all of the protections of union membership. Management cannot be innovative and responsive when its must negotiate with one hand tied behind its back, then plead its case before the Personnel

Board -- and then be subject to the enactment of new laws by the Legislature and interpretation of existing laws by the courts. In this environment, the State would be better served if it were free to negotiate single venues and procedures for dealing with such important issues as classification and discipline.

Consolidating Management Authority

The Commission believes DPA should gain full control -- and be held accountable -- for personnel management operations. Given the authority, DPA could work with employee representatives to simplify classification plans and delegate both responsibility and authority to departments. DPA should also be free to negotiate improvements to the selection and discipline process. DPA could continue to negotiate with labor organizations over the broad issues that cross department lines, while helping individual departments negotiate sub-agreements relating to particular program needs.

Ensuring Fairness

A lingering concern is how the principle of fairness, open competition for public jobs and equitable treatment of civil servants would fare in an environment defined by a political administration sitting across the table from labor unions. At the end of the day -- unions or no -- civil servants are working for all Californians. It is in the best interest of the State that professionals are free from political abuse, and that all citizens have a fair opportunity to secure public jobs. A process should be in place to ensure fairness in selection, promotion and termination of civil service workers, and to guard against partisanship, political favoritism or retribution, and racial, sexual or religious discrimination.

The Commission believes there are two options that the Governor and the Legislature should consider as a way of simultaneously enforcing these values and quickly resolving employee appeals currently handled by the Personnel Board:

- The first option is to legislatively require arbitration, mediation or a similar forum for resolving worker appeals. Arbitrators and mediators would review cases in light of the public priority that fairness be maintained in management of the civil service.

- The second option would be to determine through collective bargaining whether to resolve disputes entirely with arbitration or with a combination of arbitration and a new independent panel. The panel would only hear the most serious appeals -- those for termination -- and only those claims based on violations of equity issues. The panel also could settle claims of favoritism or patronage involving internal programs and procedures, such as demonstration projects and new selection techniques. The board should be created by statute, rather than an inflexible constitutional amendment. The panel could be three gubernatorial appointees -- one representing management, one representing labor and an independent member, with five-year overlapping terms.

Under both options, employees should have a single forum for resolving these issues. As a condition of employment, workers should no longer have the option of pursuing disciplinary appeals before the Public Employment Relations Board and the Fair Employment and Housing Commission, or the courts.

Finding 2: State departments are hamstrung by the requirement that internal personnel management rules and negotiated agreements be submitted to the Office of Administrative Law, resulting in significant delays of personnel changes.

In California, even regulations are regulated. The Administrative Procedure Act was created to make sure that state agencies do not create rules that the public does not know about or cannot understand. The act also required that proposed rules be reviewed to make sure they were legal and did not duplicate or conflict with laws that were already on the books.

Most discussions about this issue begin with a disclaimer that it is in the public's interest to be told about rules that government wants to impose on the public. Citizens should be able to review and comment on proposals, and understand rules eventually put on the books. It is difficult to envision a government "of the people" that made up rules in anything less than public fashion.

However, California's rule-making process is the most rigorous in the nation. It is particularly onerous -- and can take months to negotiate -- when it is applied to the rules that state government creates to manage itself.

Pushing Back the Line on Paperwork

The task of regulating the regulators is assigned to the Office of Administrative Law (OAL), which annually reviews more than a thousand proposed rules covering tens of thousands of pages. Among those rules reviewed by the OAL are those used by state departments, including the State Personnel Board and the Department of Personnel Administration, to manage state workers.

The original Administrative Procedure Act was adopted in 1945. It was substantially amended in 1979, creating the Office of Administrative Law (OAL) and the regulatory process that it was to oversee. The specific intent of the

amendment was to reduce the number of regulations by making it difficult to create regulations. It also was designed to improve the quality of regulations that did make it through OAL's gantlet.[50]

However, state managers testified to the Commission that in attempting to limit government, the Administrative Procedure Act also limited their ability to improve government.[51]

The process for creating personnel rules is the same as creating public regulations

Consider the process: First a rule is drafted and a public notice is issued. The notice must contain a description of the problem, and an "informative digest" analyzing existing state and federal laws and regulations. It must identify each technical, theoretical and empirical study used to craft the rule. It must contain information about potential costs and benefits of the proposed regulation, as well as any less restrictive alternatives. The public has 45 days to respond.

If the agency changes the original proposal, it must send out a new notice and allow another 15 days for public comment. The information contained in the initial "statement of reasons" must be updated before the final regulation is submitted to the OAL.

The final documents must summarize every objection or recommendation received by the agency, explain how the proposed action was changed to accommodate the comment, or defend the decision to not change the proposal. If anyone requests a public hearing, one must be held within 45 days of the original notice.

After this process is completed, the proposed regulations are sent to OAL for its review and approval. OAL has 30 days to review the rules for authority, clarity, consistency, reference, non-duplication and necessity, as well as for compliance with the notice, comment and response requirements. Unions and individual employees can petition OAL to conduct even more review if they believe a proposed rule imposes an undue burden or is illegal. If approved, proposed regulations are filed with the Secretary of State and printed in the California Code of Regulations. They are effective 30 days later.

If the regulations are not approved, the rules are returned to the agency. The problem may be resolved through discussions between OAL and the department. The rules may be refined, or additional public hearings may be required.[52] While OAL's role as the reviewer of proposed regulations is the core feature of the process, OAL's role

is legally distinct from the requirements that proposals be publicly disclosed and that new regulations be published.

Professor Michael Asimow, an administrative law expert at the University of California, Los Angeles, told the Commission that "California's rule-making procedures probably surpass that of any other State, and by far surpass the federal government's procedures, in the number of steps required, the rigor with which the law is enforced, and the breadth of application."[53]

Some rules are exempted from this procedure. Government Code Section 11351 exempts the Public Utilities Commission. Government Code Section 3539.5 exempts DPA rules implementing benefits for state officers and employees who are not covered by collective bargaining. And the Legislature included a broad exemption for "internal management" rules:

Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it or to govern its procedures, ***except one which relates only to the internal management of the state agency*** *(emphasis added).*[54]

But the courts have narrowly interpreted "internal management." In 1973, for instance, the 3rd District Court of Appeal decided in the case of *Poschman vs. Dumke* that college tenure rules were of public interest, and as a result not internal to management.[55]

But the real complications came at the end of that decade, when a state Supreme Court decision and a legislative amendment to APA combined to significantly increase the procedural burden on managers.

In the 1978 case *Armistead vs. State Personnel Board,* the state Supreme Court virtually eliminated the internal management exemption. The lawsuit was brought by an employee of the Department of Water Resources who had resigned, and then asked for his resignation back. The department denied the request, citing the Personnel Board's manual, which gave managers the discretion to accept and keep written resignations.

The employee challenged the validity of the personnel manual. The court ruled that the manual was not "internal" to the Personnel Board, because it concerned

workers in other departments. And because that resignation provision had not been reviewed under the APA process, it was invalid.

The following year the Legislature amended the Administrative Procedure Act, making the rule adoption procedures more involved. The consequence of the two actions, according to Asimow, is that internal rules must go through the rule-making process, and that process is much more difficult to complete.

The rule-making procedures in effect at the time Armistead was decided were similar to the bare-bones notice and comment model in the federal APA. Thus the Supreme Court probably thought that compliance with its decision would not prove burdensome. The 1979 revision called for an awesomely complex pre-adoption procedure and it has been frequently amended since 1979 to add still more bells and whistles.[56]

The costs of complying with the law have not been calculated. But officials say ushering a routine set of regulations through the process can require hundreds of hours of staff time and tens of thousands of dollars in direct costs. The absolute minimum time required for a rule to be approved is four months, and a more typical approval time is six months. However, it is not uncommon for the process to take several years if the rule is controversial, time needed for agencies to document the necessity of the regulation and respond to every criticism.[57]

The resulting paper maze does more than consume time and resources:

- Some agencies don't change rules that need to be changed, and instead tolerate obsolete rules or let problems go unsolved.[58]

- Some agencies ignore the law. The Office of Administrative Law estimated in 1985 that between 100,000 and 200,000 "underground" rules are on the books.[59] As a result, rules that are otherwise sound may be unenforceable. In one case, the Department of Health Services, in an audit that drew samples from thousands of benefit claims, found that a doctor had overcharged MediCal $654,592. The doctor successfully challenged the audit in court, arguing the State's sampling technique had not been OAL approved.[60]

- Some agencies find it easier to change the law than write new regulations. A 1988 survey of state agencies found that 56.7 percent had sought

legislative changes to avoid the regulatory process.[61]

Personnel management agencies say process weakens authority without improving rules

Many believe that the process offers little value. The Personnel Board said that it publicized and held hearings on proposed rules for years before the APA required it to do so. DPA maintains that the State Employer-Employee Relations Act requires personnel rules and policies for rank-and-file employees to be decided through collective bargaining. To go through a public review process afterward, it believes, is useless.[62] And even more to the point of civil service reform, the process discourages departments from fixing problematic regulations, let alone creating innovate ones.

In one instance, a worker challenged the state rule that employees must declare on absence forms the reason they missed work. OAL concluded that the requirement was invalid because the State had not provided public notice and held a hearing when the requirement was added to the forms. The OAL went even further to opine that any revision to the forms might be considered "underground regulations" requiring review.[63]

In the case of drug testing, the Administrative Procedure Act greatly complicated management's effort to respond to the changing stresses of the workplace. The Department of Personnel Administration -- as many large employers did in the 1980s -- wanted to inform departments of rules regarding "substance abuse" testing. It took eight months for DPA to get a drug testing policy through the APA procedures. The Personnel Board was equally frustrated when it set out to establish pre-employment drug testing rules. It started the project in early 1988 and was unable to get rules on the books until April 1990. Five public hearings were required to satisfy OAL. The disagreements often resulted from an OAL determination that the board did not adequately answer questions raised during the hearings, rather than whether the rules were legal or understandable.[64]

And among the reforms stymied by the process are "demonstration projects," the State's primary vehicle for testing new ideas that can be applied throughout the government. While the law allows demonstration projects, the legal complexities of setting them up discourages agencies from trying out the very ideas that could streamline the process. Departments or central personnel agencies interested in starting a demonstration project have to hold public hearings, obtain the approval of both the Legislature and the employee unions, and then

complete the Administrative Procedure Act process before a project can begin.[65]

Some experts believe reforming the process for issuing new rules is essential to reforming all other rules that shape the civil service system. Marty Morgenstern, the first director of the Department of Personnel Administration, said: "If every proposed change in classification, adverse actions and other rules that will be needed to streamline the process is required to go through current procedures, it will never get done. Never happen."[66]

Requirements Elsewhere

Federal law and statutes in other states either require less review or exempt internal management rules from independent review. Many states, however, do require that regulations exempted from review be published in a public forum, and in some cases subject to formal public comment periods.

North Carolina's law exempts internal management rules that do not "directly or substantially affect" the rights of people not employed by the agency. Washington's administrative procedure law -- rewritten in 1988 in a reform effort watched nationwide -- expressly exempts internal management rules from review.[67]

The Model State Administrative Procedure Act, crafted by the National Conference of Commissioners on Uniform State Laws, encourages informal review processes for rules that are not subjected to rigorous analysis.[68] Similarly, federal law does not require policy statements and procedural rules, including those internal to management, to undergo independent review. The federal law, however, does require those rules to be published in the Federal Register.[69]

Recommendation 2: ***The Governor and the Legislature should enact legislation to eliminate review by the Office of Administrative Law of rules, regulations and negotiated agreements relating to the internal personnel administration of the State.***

Two pressures define civil service. The need to balance public interest in how the government functions with the need for the government to function with business-like efficiency. While the Office of Administrative Law offers a valuable service in reviewing rules applicable to the general public, the review requirement creates a costly burden on state managers, reducing discretion and discouraging change.

The Governor and the Legislature should enact legislation to remove the Office of Administrative Law from the review and approval of rules, regulations or negotiated agreements relating to the internal personnel administration of State government. Departments, however, would still be required to provide public notice and allow for public comment on proposed rules.

Eliminating OAL Oversight

The public has a stake in the outcomes of the State's personnel management system. But the Legislature, the courts and the public forum in which the State's chief executive can be held accountable are adequate venues for resolving concerns about those outcomes.

The real stakeholders in internal management are the employees, managers and supervisors. The terms and conditions of employment are already the product of participative processes. The internal stakeholders also have access to the other forums, as well, to resolve disputes about fairness and legality. And they have not been reluctant to use them.

Personnel issues exempted from OAL review, however, would still have to comply with the public notice provisions of that act -- that proposals be announced in the California Regulatory Notice Register, that the public have the opportunity to comment and that approved rules be published in the California Code of Regulations.

Personnel Management Issues

- *Central control discourages innovation, masks accountability.*
- *Managers lack authority, leadership skills and incentives.*
- *Discipline process is costly.*
- *Tenure and automatic pay raises are counterproductive.*

Recommendations:

- *Delegate management authority to departments.*
- *Redefine management and improve training.*
- *Negotiate alternative appeal procedures.*
- *Eliminate tenure and automatic pay raises.*

Personnel Management Issues

Civil service jobs have a reputation for stability. Workers may have to put up with the bureaucracy. But for those fond of security, it is a lifetime job shielded from the blustery management winds and harsh competitive pressures of private enterprise.

This perception has become even more ingrained as the largest of America's corporations -- even those that once enjoyed luxurious monopolies -- have felt the heat of competition on their back and responded with layoffs and pay cuts. But the same demands for reducing costs and increasing service are now being pressed upon state government, and the response must include a re-examination of the civil service assumptions.

Many of those assumptions shape the entire civil service system from the front end: the classification and selection systems that determine who the State will hire and the duties they will perform. The evidence shows the current selection system consumes resources while actually hindering the State's efforts to find the most qualified and ambitious, those who would be up to the task of satisfying the public's rising expectations of government.

The issues of compensation, training, discipline and tenure are issues effecting both managers and rank-and-file workers. While any changes will undoubtedly be seen as an erosion of longstanding comforts, they also could be liberating and rewarding for many in public service.

Finding 3: The concept that all state employees belong to one civil service is fiction. Different departments have different missions, clientele and needs. The centralized system hinders cost-efficient management, complicates procedures, discourages experimentation and masks accountability.

It may have been appropriate half a century ago to consider all state employees to be part of the same civil service corps -- managed by a central office, subjected to identical forms. But today the concept is obsolete, and the system created to manage that system makes it difficult to attract the best employees and match their talents to the needs of an organization.

The obsolescence rests in the civil service mainstays of classification, selection and protection against random layoffs. Central oversight also has discouraged individual departments from launching demonstration projects intended to improve the delivery of public services.

The Fiction of One Civil Service

There are more than 100 different state agencies, departments, boards and commissions covered by the civil service system. They range from the small Board of Prison Terms and State Board of Control to mammoth organizations with facilities throughout the state -- the Department of Corrections, the Employment Development Department and Caltrans. The nature of these agencies is in some ways more diverse than the private sector: law enforcement, administration, medicine, engineering, finance, social work. Some agencies perform research, some provide services, some regulate business.

Some departments have elected executive officers -- the Superintendent of Public Instruction, the Treasurer, the Controller, the Secretary of State. Some have directors who report to politically appointed commissions. Some directors are appointed by the Governor.

Some departments have narrowly defined missions, such as the California Highway Patrol. Others have broad mandates, such as the Public Utilities Commission. Departments such as the Air Resources Board or the Attorney General's Office require highly educated specialists to perform analytical work. The Department of Motor Vehicles and the Franchise Tax Board need employees who can perform standardized tasks yet can quickly adapt to new technology.

Improving government requires flexibility that civil service rules discourage

With declining revenues, increasing public demands and new technology, many departments have begun to review their organizational structure, the skills and abilities of their staff, and the manner in which they provide services. And they have begun to seek more flexibility in personnel and procurement. But the current civil service system eschews flexibility.

The California Code of Regulations contains 48 pages defining State Personnel Board regulations for advertising job openings, creating eligibility lists, defining probation, resolving discrimination complaints, investigating appeals and conducting hearings. Another 60 pages lay out Department of Personnel Administration rules: compensation and employee benefits, the accrual of vacation, sick leave and holiday credit, layoff and demotion provisions, the merit award program and training policies. The problem is not just centralized control. Personnel officials at all levels believe the procedures themselves are antiquated and ineffective.

The requirement for competitive examinations has become in many cases a costly and useless step. For example, the rule of three, which requires departments to hire from candidates in the top three examination ranks, has prevented agencies from matching the right person to the job. The entire convoluted process discourages many of the best candidates from even applying.

Department personnel specialists said the problem is not a lack of creative and innovative ideas. They believe the problem is the miles-long obstacle course that prevents personnel specialists from experimenting with line managers to fulfill program responsibilities.

The three best examples of the problems created by centralized control are the classification, selection and layoff processes. California has been applauded nationally by the Winter Commission, a privately funded panel of government and business leaders, for starting to delegate

these duties to the individual departments. But many believe that process has not gone nearly far enough. Not only is there still central review of many department decisions, but the basic procedural requirements are still in place.

Classification

In 1934, the Personnel Board was given the authority to create classifications.[70] The concept, while used in private industry, has been applied obsessively in civil service as a way to prevent unqualified political cronies from getting government jobs, and to ensure that like classes are paid similar wages.

When classifications were first created in 1916, there were 355 classes for the 12,500 employees.[71] The current civil service corps of 185,000 employees are assigned to more that 4,400 classes.[72]

The system groups workers into general occupations, such as clerical, legal, engineering, professional and law enforcement that are the basis for the 21 bargaining units that negotiate with management over salaries and terms and conditions of employment.

Classification system hamstrings managers ability to respond to changing needs

The system, however, results in the inflexible stratification of duties and responsibilities for the various positions. Performing duties outside the formal description is considered working "out-of-class," which unions view as circumventing the promotion process. But strictly adhering to the system, one expert concluded, creates a system that "keeps the bright performers from moving up and rewards the seat warmers."[73]

Another consequence is the energy consumed by managers trying to comply with the system. Even the State Personnel Board considers the classification plan "so complex that it inhibits rather than helps managers get their jobs done."[74]

If a department wants to establish or revise a class, it must submit a "concept paper" to the Department of Personnel Administration. DPA reviews the idea, and if it concurs, the department develops a more detailed plan. The department typically shares the proposal with the appropriate unions. After DPA approves the proposal, it is forwarded to the Personnel Board, where the staff reviews the job qualifications, proposed exam plans,

probationary periods and affirmative action implications. If there is no opposition to the proposal, it is placed on the Personnel Board's "consent calendar" for consideration.[75] If there is opposition, a public hearing is scheduled. But because the Personnel Board only meets once a month, even noncontroversial proposals can take several weeks to be formally approved.

With so many departments and civil service classes, and with program needs changing so rapidly, there is a staggering volume of paper flowing between departments, DPA and the Personnel Board to approve new classes, revise existing classes or change the grade and pay level of a class.[76] Problems that departments face fall into the following categories:

- The classification system makes it hard to satisfy unique needs. Departments must revise or create a class when a specialist is needed and none of the existing classifications cover the nature of the work, or are crafted in a way to preclude that specialist from meeting the qualifications. Even minor revisions to classes must complete the same months-long process as creating new classes, and more complicated proposals can take more than year to obtain approval.[77]

- The classification process is so complicated that some workers end up in the wrong class, and as a result the plan can actually have the opposite effect of its intent. Nancy Gutierrez, director of the Department of Fair Employment and Housing, testified that because of restructuring efforts, workers have ended up in the wrong classes. "This disparity in classification and compensation leads to poor morale. Equity in pay and treatment can only be achieved by fair and current assessments of jobs and correct classifications."[78]

Many civil service systems have experimented with "broadbanding" -- consolidating classifications with similar occupational skills into single classes. The concept is to give managers more flexibility in assigning tasks, responding to changing and temporary demands, and reducing the paperwork needed to comply with a narrowly crafted classification plan.

The federal government also has experimented with broadbanding, and found that it helped organizations attempting to instill more innovative work cultures, that it facilitated the delegation of classification duties to

managers, and made it easier for managers to evaluate the performance of workers.[79] DPA, SPB and union representatives are working to craft a model broadbanding plan for the State.

Selection

The classification plan defines positions. Selection is the process for filling positions with employees. Selection rules are as rigid as the classification rules and have their genesis in Article VII of the State Constitution:

In the civil service permanent appointment and promotion shall be under a general system based on merit ascertained by competitive examination.

The problems result from the last four words: "ascertained by competitive examination." From those words, an elaborate system has evolved in laws and regulations that control employee selection. The process creates large lists of potential applicants and large pools of technically qualified candidates, while complicating efforts to fill unique positions and doing little to help managers find the right person for the job.

When a department has vacancy -- and it is satisfied with the classification -- it publishes a job announcement. If a list of eligible candidates does not exist, it must develop and conduct a competitive examination. From the examination results, the agency prepares a list of "certified" candidates. And an appointment can be made from that list.

Much of that process has been decentralized to individual departments. Departments have substantial flexibility in the nature and scope of the examination. The Personnel Board regulations allow examinations to be "assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these."[80]

Certification rules are more restrictive. For instance, depending on the examination, some competitors -- such as veterans -- are given supplemental points that raise their test scores.

But delegating duties has not resulted in significant innovation.[81] And despite attempts to instill flexibility, the system is still plagued by the problem of large numbers of applicants who must be tested for broad, entry level classifications. Government Code Section 18900 requires

that eligibility lists "be established as a result of free competitive examinations open to all persons who lawfully may be appointed to any position within the class for which such examinations are held and who meet the minimum qualifications..."

Personnel officers say rules intended to find best candidates often rely on chance

For some departments, the list of potential candidates is so large they have contracted those duties back to the Personnel Board, which on occasion must rent out Cal Expo to accommodate all of the test takers. Typically, 90 percent of those who take the tests pass. The State has turned to lotteries to further narrow down the field.[82]

The Ad Hoc Personnel Officers Committee, a group of departmental personnel officers, testified that some exams involve 15,000 applicants for positions that may result in 300 hires. Hours of staff time are consumed reviewing stacks of applications. And those departments that use written tests to winnow down the list do so knowing such tests are not the best predictor of success. And even then, the test results will leave them with a pool much larger than the vacancies.[83]

The application list doesn't have to reach into the thousands before competition based on qualification is diluted by chance. It is equally common to have 10 or 20 candidates who have tied for the highest score. But the rules require each candidate to have an individual rank on the eligible list, and so computers randomly assign ranks. As a result, a person with the highest score -- and maybe the best qualified -- may not even be granted an interview.[84] The process, personnel officers complain, denies them the latitude to match the person with the right personality and ambition -- and not just the skills -- to a job.

At the state level, the competitive examination requirement prevents the State from being competitive. The process, DPA Director David Tirapelle said, is not only costly to the State, but discourages applicants. When America's top corporations visit university campuses they frequently offer jobs on the spot. The State, Tirapelle said, can offer top graduates the opportunity to take a test in several weeks, and then perhaps be lucky enough to get an interview several weeks later.[85]

The combined problems of the classification and selection process is particularly burdensome to state government as it tries to adapt to rapidly changing technology. Departments need flexibility in job assignment and in

hiring. They need to find people who have the right skills and know how to learn. And they must be able to move that learner into constantly challenging positions to solve the State's problems.

Layoffs

The State's fiscal crisis has illuminated another failing of the centralized bureaucracy, the inability to swiftly, yet fairly, lay off unnecessary workers.

From June 30, 1991 through November 30, 1994, more than 7,000 employees moved from general-funded to special-funded positions as the number of general funded positions declined. During this period, only 310 employees were actually laid off.[86] Each time a department faced potential layoffs, a lengthy and time consuming process was triggered.

For layoff purposes, each department is considered a separate employer and determines need for staff reductions, and the classes and geographic areas where the layoffs will occur. The layoffs are initiated when voluntary methods -- including voluntary transfers, reduced work time, retirement and hiring freezes -- fall short of reduction goals. But centralized oversight by both the Personnel Board and DPA greatly complicates and diminishes that authority.

Cumbersome layoff rules make it hard to eliminate unneeded workers

Layoffs are made according to seniority. But determining the seniority list is "a complicated and lengthy process."[87] DPA staff must prepare detailed seniority lists using a prescription contained in more than 80 Government Code sections and 60 administrative rules.

One credit is awarded for each month of state service, although the law permits performance considerations to be included for selected scientific, professional and administrative positions. Employees can obtain seniority credit for short-term military leave or temporary disability leave. Some bargaining units have negotiated special layoff provisions. For example, the Correctional Officers consider only the time served in classes in that specific unit for calculating seniority.

After DPA has crafted a list, the Personnel Board reviews scores to determine if the layoff will adversely impact ethnic, sexual and disabled composition of the class. If that is a likely outcome, the Board can modify the

seniority score rating. This process has rarely resulted in changing layoffs from the seniority base; the more common effect has been to add complexity and to slow down the process.[88]

Once the seniority list is developed, affected employees must be notified in writing at least 30 days prior to the layoff date. Employees can appeal the layoffs if they believe the process is unreasonable or inappropriate. As workers voluntarily leave a department or transfer to new positions, the seniority list may have to be updated.

The process can take several months. During the past three years, DPA staff has calculated more than 49,000 seniority scores for the 310 employees who were actually laid off.[89] Departmental personnel officers maintain that the longer it took to process a layoff, the more positions they had to cut in order to offset the costs of the salaries during the delays.

Layoff plans in one agency complicate hiring plans in other agencies

The process also has ramifications for those departments not facing layoffs. The "State Restriction of Appointments" (SROA) rules require departments with vacancies to consider individuals from other departments who are in the same or comparable classes and face layoff. These individuals can turn down offers, but each time they have to be considered. From June 1991 to November 1994, 13,715 employees were placed on the SROA list.

Even if a department has advertised to fill a position, or is seeking to promote an employee already performing the duties, it may have to interview and consider SROA candidates. Departments can seek an exemption from the SROA process. If DPA denies the exemption, it is common for departments to not fill the position rather than hire someone who may not be equally qualified.[90] Most of departmental personnel officers interviewed concluded that the SROA process delays line managers from filling positions that are badly needed to meet program needs.

Demonstration Projects -- Innovation Stalled

In 1980, the Legislature gave state agencies a license to experiment. The new law, modeled after a similar federal statute, authorizes the Personnel Board to initiate demonstration projects designed to find ways to improve personnel management practices. The law allows

civil service rules to be set aside to give innovators the latitude they need.

But the law also attached a lot of strings: To set up a demonstration project, concept papers have to be written, hearings held, and notice must be given to unions and the Legislature six months in advance. Unions with members affected by the projects must give written permission. The law only allows five projects at a time, and limits the projects to five-year lifespans. And the Office of Administrative Law maintains it must review the proposals for compliance with the Administrative Procedure Act.

In 15 years, only three demonstration projects have been initiated and all have expired. All three dealt with increasing the members of under-represented groups in the state work force: severely disabled job applicants; women in blue-color jobs; and Hispanics.

Lack of resources, regulations discourage departments from experimenting

In 1994, the Personnel Board urged departments to seize the opportunity to improve selection procedures for managerial classes, establish broadbanding of classes to reduce repetitive testing, ease the transition of student and seasonal employees into the regular work force, and reduce the number of persons tested in open examinations for limited vacancies. But still no proposals have been submitted.[91]

A serious problem is the amount of staff time required to develop a proposal -- particularly when central personnel agencies are shrinking and department personnel offices are trying to assume more responsibilities.[92]

The Personnel Board has considered proposing legislation to increase the potential number of projects that can be active at any given time and to extend the time for a project beyond the five-year period.

The Department of Transportation, during testimony to the Commission, expressed a strong interest in becoming a "pilot" department for new personnel systems. It may be desirable to select several diverse departments to test the concept: A regulatory department such as the Department of Insurance; a public-service-oriented department such as the Department of Fish and Game or the Department of Parks and Recreation; and one of the more autonomous departments managed by an appointed board, such as the Public Employees' or the State Teachers' Retirement System.

Given the wide variation between departments and the needs of each, it has become nearly impossible to impose a single, uniform and effective personnel management system. The problem is particularly evident in the classification, selection and layoff provisions. The tight rules that often result from centralized authorities also have discouraged efforts to find solutions through demonstration projects.

Board of Control

Among the bureaucratic fixtures that complicate the personnel system and ultimately diffuse management prerogative is the State Board of Control's review of special "equity claims" from state employees. The Department of Personnel Administration has the authority to approve claims from employees seeking additional compensation for performing duties outside of their class. The Board of Control, however, also has that authority, and over the years has reviewed claims that were not submitted to DPA, or that DPA did not approve.[93]

The Board of Control also has authority over employee claims for travel and relocation expenses and personal property damage. When those claims are received, the Board of Control refers the matter back to the employee's department for review and its recommendation. Normally, the department concurs with the claim and the Board of Control follows the department's recommendation. The Board of Control then includes the claim in one of its two annual legislative claim bills, which allocates payment from the departmental budgets. Department personnel officers described this as an unnecessary and bureaucratic exercise in paperwork.[94]

Recommendation 3: ***The Governor and the Legislature should enact legislation allowing the Department of Personnel Administration to delegate to individual departments more authority over classification, selection, discipline, compensation and layoff procedures. The legislation should also encourage more demonstration projects to foster reforms.***

While it is the State's interest for DPA to negotiate common salary and benefit issues, individual departments should be enabled and encouraged to develop supplemental agreements with unions on unique concerns.

The Governor and Legislature should enact legislation to give greater discretion to individual departments over classification, examination, selection and layoff procedures. DPA should develop guidelines to assist departments in tailoring those procedures to their needs.

The Governor and Legislature should enact legislation to ease and encourage more demonstration projects, and to enable successful experiments to become permanent management practices. In some cases, entire departments should be granted substantial freedom to gauge the potential benefits of a deregulated personnel management system.

Delegate Personnel Decision-Making to Departments

Departments should be given greater management discretion. This would require an extensive revision of the laws that now dictate these procedures, and in some cases negotiating changes to collective bargaining agreements. The statutory and negotiated changes should enable departments to undertake such reforms as:

- Establishing broader classes that will include successive career steps, with salary increases tied to performance rather than longevity. Such a system would eliminate unnecessary, promotion-in-place examinations.

- Creating a less precise selection system. Establish and modify "desirable qualifications" rather than "minimum qualifications" for job classes. Use a job "certification" process that is tailored to the department's needs -- to replace the "rule of three" with standards more appropriate to the job description.

- Establishing flatter organizations with fewer levels of supervision and greater span of control. Reward the producers with pay, not with a promotion to a supervisory or managerial level.

- Reviewing and deciding internal employee claims for working out of class, travel and relocation expenses, and personal property damage. Many of those claims are now processed by the Board of Control. Departments could be more efficient if the Board of Control review is eliminated.

Enable Innovation

The Governor and the Legislature should amend Government Code Section 19600 to simplify the process for initiating "demonstration" projects. Experimentation is essential to crafting cost-effective reforms and the potential for demonstration projects to encourage change has never been realized. The legislation should remove the limitation that only five projects can be active at any one time and allow projects to extend beyond five years if more time is needed to assess the practicality of an experiment. The legislation also should make it easier for projects to become permanent features of government and enable the transition of successful projects from individual departments to the entire state system.

Finding 4: Many state managers lack the authority, leadership skills and incentives needed to create a positive work environment and deal effectively with employees.

Many managers are promoted because of their strong technical skills, but lack the necessary skills to be effective managers. For organizational cultures to change, managers must be enthusiastic partners. In addition to authority, managers must have the skills necessary to do the job and be held accountable for their actions.

As demonstrated in previous findings, the authority of local managers is usurped by the complex and centralized structure of the civil service system. For departments to turn managers into leaders, they must be granted still more authority, be trained to accomplish the task and given incentives for taking on the challenge. While these are common traits in successful organizations, they are particularly lacking in the State's civil service.

Authority

The Commission was told by numerous personnel officers and managers that their ability to get the job done, let alone make major changes in how work gets done, is hindered by the complexity of civil service regulations: The classification and selection process can take weeks of effort and months of time to find the right worker to complete a difficult task. The discipline procedures make it difficult to resolve the kind of personnel issues that distract other employees.

While some of these issues are structural, they must also be viewed in terms of their effects on managers trying to manage. In "Reinventing Government," Osborne and Gaebler wrote:

Managers in civil service systems cannot hire like normal managers: advertise a position, take resumes, interview people, and talk to references. They have to hire from lists of those who have taken written civil service exams. Often they have to take the top scorer, or one of the top three scorers -- regardless of whether that person is motivated or otherwise qualified...[95]

And Marty Morgenstern, who after directing the Department of Personnel Administration researched public sector management at the University of California, Berkeley, said the State must be willing to give more authority to managers, supervisors and even rank-and-file workers.

"I strongly believe that the single most important step in improving the quality and responsiveness of state government would be to put the power to work smart in the hands of the state work force."[96]

Morgenstern said his greatest concern is the classification system, and how it limits managers' ability to manage workers. He said it creates turf wars within departments, making it hard to get people to work together, or change work techniques.

The same latitude is lacking in selecting and coordinating the management corps. The dispute between the Department of Personnel Administration and the State Personnel Board over the definitions of "management" has given the State two different kinds of managers -- those who fall into the Career Executive Assignment and those who are considered management by the State Employer-Employee Relations Act. As a result, different selection, compensation and tenure provisions apply to different managers.

The CEA is limited, with a few exceptions, to those who already have permanent status in the civil service, and so is effectively a closed system. The State can not tap the expertise of private sector managers to fill these positions. And for the rest of the management corps, the same restrictions that make it difficult to hire the right person for a rank and file job make it hard to find the right manager. Selection is sometimes limited to established promotional lists -- again precluding recruitment of private sector managers. Other times open tests draw so many applicants that the pool is unmanageable -- discouraging top private sector managers from even applying.

Leadership Skills

One criticism of public service is that front-line workers are not performing their jobs. The criticism is often misdirected. Personnel experts assert that supervisors and managers should be the ones held accountable for the performance of their staff and the quality of the service provided. And union officials

better if managers were properly trained to lead willing workers and discipline poor performers.[97]

Either way, experts agree that better leadership skills will become more important as the State streamlines its process and delegates authority.

The characteristics of contemporary organizations are rapidly changing. Managers and supervisors are being asked to improve communication, use participative management styles, take advantage of new technology and focus on results.

The Winter Commission, a privately funded panel of business and public leaders, found that in government these traits were especially needed and particularly lacking:

In its call for merit system reform, the Winter Commission urges a one-two punch: one, freeing managers from any rule that thwarts their abilities to manage personnel and, two, greater investment in education and training to ensure that managers possess the insight and skills to use their expanded direction wisely.[98]

But it is clear that the current system is not providing the training needed for the State to improve efficiency or effectiveness.

- **Many managers lack the skills to effect needed change.**

  Managers often are promoted on the basis of strong technical or professional skills, and don't have formal management training or experience. Those managers who are trained must be retrained to learn modern management styles that stress coaching, listening, mentoring and championing the ideas of their staff. Today's managers need to understand new philosophies for effective selection, performance expectations and evaluations, positive and timely recognition or corrective action, and assuring that their staff receive needed training.

- **Rank-and-file workers cannot be expected to change without leadership.**

  Employees cannot modify work habits and perform new tasks without the strong support of managers. To encourage change, researchers have concluded, managers will have to view employees in different ways and commit to the trust-and-lead approach.

The work culture must encourage employees to view their careers as an endeavor of continuous learning.

- **The State lacks a uniform commitment to training.**

  There are substantial gaps in the State's training programs. Some departments recognize the need to strengthen management. Others have taken a "laissez-faire" approach that does not focus training on the organization's long-term strategy.[99]

It is not that the State lacks rules, regulations and programs on training. The issues are whether those rules are being followed, whether the programs are effective and whether training is a priority among senior managers.

For this study, the Department of Personnel Administration surveyed departments with more than 100 employees to determine the nature and extent of manager and executive training. Of 73 departments that responded, 22 make an effort to provide training. Of the 22, only a handful have what could be considered a significant program.[100]

A primary concern expressed by managers was not insufficient funding but an unwillingness of managers to take time away from their jobs. The reaction is indicative of the commitment made to training, and suggests that the benefits of training some executives will be undermined if other executives do not receive the same training.

Winter Commission Director Frank Thompson said training is a program that managers often -- and wrongly -- think of as discretionary:

The management and executive education ethos that permeates much of the business world is almost completely absent in government. Training and education budgets in government agencies usually get chopped at the first hint of fiscal turbulence. Most state governments slight training ... While recognizing the barriers to adequate investment in education and training, it is essential that we attempt to surmount them. Better prepared managers, committed to drawing on the insights of front-line employees in problem solving, hold the key to the success of more deregulated civil service systems.[101]

Responsibility for Training

The Department of Personnel Administration has the lead role for training in state service. It provides guidelines to help departments comply with training

policies. It evaluates department training programs and develops performance standards for state training instructors.

DPA offers consultant services to departments and it operates the State Training Center. The center offers courses on analytical skills, problem solving, technical report writing, basic supervision, labor relations, the State's discipline process, sexual harassment and managing a multi-cultural work force.

Training has been delegated, but resources and commitment have not followed

Following a fruitful trend, training has been decentralized and many of the larger departments have developed their own training programs. Smaller departments, however, typically offer a limited range of opportunities for employees.[102]

Departments are responsible for allocating financial resources to training, developing training policies consistent with DPA rules, submitting an annual training plan to DPA and conducting the training. They employ their own training staff and hire some outside consultants. Many department employees also perform formal "on-the-job" training in their specialized areas.

The State has done little to evaluate department training programs or provide stronger statewide leadership. There is no effort underway to conceptualize ways to provide managers with a strong, coordinated and on-going training and development program. There is no plan to outline for departments what might constitute an effective managerial training program.[103]

Training Supervisors

State law requires that all new supervisors receive at least 80 hours of training within the term of their probations or one year of appointment. The training covers: "the role of the supervisor, techniques of supervision, planning, organizing, staffing and controlling, performance standards, performance appraisal, affirmative action, discipline, labor relations, and grievances."[104]

The law demonstrates the problems created by overly detailed legislation. Supervisory practices and managerial theory are changing as rapidly as technology and the work itself. Modern managers must be familiar with quality management concepts, team building and "crisis intervention." Although DPA could begin including these

topics in their training programs, technically it requires a change of law.

There is no requirement in the law that supervisors receive refresher or additional training. While some managers and supervisors take additional classes, DPA training officials said there is no requirement and little monitoring to ensure that managers maintain the skills needed to be effective.

State Manager/Executive Training and Development

Two significant efforts have been made to provide executive-level development programs. Both fell victim to the recession.

In 1986, an "Executive Seminar" was initiated to give senior managers a sense of being a management team. Author Tom Peters spoke to several hundred managers about the concepts of "In Search of Excellence." The following year, Manual Perry spoke on "Managing California in the Year 2000." Two seminars in 1990 featured Michael Josephson on "Ethics" and Ann Morrison on "Lessons of Experience." And at the last seminar in 1994 Arch Lustberg spoke on "Winning the Confrontation."

In 1989, DPA and the University of California School of Public Policy at Berkeley initiated the State and Local Executive Institute, a two-week summer residential program for senior managers in state and local government. The program was modeled after the Federal Executive Institute and the senior training offered at Harvard and Duke universities. The program included strategic planning, leadership and implementing change in organizations. But it was an expensive endeavor initiated just as California's fiscal difficulties were becoming severe. After the second session, the program was discontinued.

A similar program exists at the national level: The Federal Executive Institute, an interagency residential development center was established in 1968 "to improve the quality of government for the American people." The Institute's programs assume that senior officials are already skilled in their technical specialties and the administrative procedures of their agencies. The focus is on "broadening" experiences required when managers emerge from the more narrow focus of their own specializations to enter a "second profession" as leaders and executives. Since the Institute was founded, 13,000

executives have attended. The basic four-week program typically has 20 participants from federal and state governments and costs $7,800 per person.

Incentives

Civil service reformers frequently call for tying wages to performance. Most private employers and many public employers now have some form of performance pay system, particularly for professional rank-and-file employees and management. Career Executive Assignment managers have a three-step salary range and the balance of managers and supervisors have a five-step range. One criticism of the system is that whether employees perform exceptionally well or not at all, chances are they will receive the same salary adjustment. The issue is particularly important for managers, which is why the Department of Personnel Administration has struggled to implement a successful performance-pay system:

DPA has found that there is not a sufficient link between the job performance and the level of pay for State managers and supervisors. Without a strong link between pay and performances, the State's compensation program cannot be an effective tool for encouraging and rewarding strong job performance.[105]

In 1985, the State established a lump-sum bonus that ranged from $2,500 to $5,000 annually. Up to 20 percent of the top performers could obtain a bonus. The size of the bonus depended on how many bonuses were issued -- the fewer the bonuses, the bigger the bonuses. Department heads, however, became concerned with the 20-percent cap, and so the cap was increased to 40 percent. But the amount of money was not increased, so the potential range of the bonuses widened to between $1,250 and $5,000. And in 1991, when the State reduced management salaries across the board, the program was discontinued.

But even before the recession the program was unpopular and considered to be unsuccessful. In some departments, the bonus was rotated among managers to supplement base pay. Other departments viewed the bonuses as a source of divisiveness.[106]

In 1993, DPA resurrected a pay-for-performance system for managers and supervisors. The new program linked annual salary adjustments to performance. Historically, many managers and supervisors received step increases virtually automatically, even if they had not received an

annual performance appraisal. The program required that performance expectations be developed and timely appraisals be completed -- and tied to annual salary adjustment. Shortly after DPA released the plan, several unions representing managers and supervisors filed lawsuits challenging its legality.

Management's efforts to link performance and pay has been confounded by rules

To craft the program, DPA had relied on Government Code Section 3539.5, which allows DPA to amend benefits for state employees excluded from collective bargaining under the State Employer-Employee Relations Act. DPA officials believed they could make such changes without processing the rules under the Administrative Procedure Act and getting approval from the Office of Administrative Law. The court concluded the DPA's limited exemption from APA only applied to benefits, and that any changes to management salaries must comply with OAL's rule-making procedures.[107]

DPA studied pay-for-performance in public and private agencies, held hearings and refined its proposal. In December 1994, OAL approved the rules establishing pay-for-performance for managers, retroactive to January 1, 1994. The program was expanded to supervisors beginning January 1, 1995. However, several labor unions have said they may legally challenge the new program, as well.

Two surveys conducted for DPA -- one by Tower Perrin Company and the other by the William Mercer Company[108] showed that:

- Of 30 public jurisdictions surveyed, 18 (60 percent) had performance-based pay for some portion of their nonrepresented employees. Fifteen indicated that base salary increases were tied to performance and eight indicated that bonus or benefits were performance-based.

- Of 54 private firms surveyed, 52 (96 percent) had performance-based pay. The potential performance-based increase for supervisors was up to 20 percent, and for managers up to 30 percent.

The few studies that have been done to assess the effectiveness of pay-for-performance systems have been inconclusive. It is critical for employees to perceive the appraisal process as fair and objective, and to clearly link reward to effort. But such a linkage has not been demonstrated conclusively in the research.[109]

The research has highlighted characteristics unique to the public sector that should be considered in establishing such programs: Many jobs require team approaches and some critics say performance pay results in unhealthy competition and dissension among employees. The potential increase is much smaller in the public sector than in the private sector. The appraisal process is more structured and tends to focus on defending pay decisions rather than on personnel development. And these systems can potentially have more negative than positive consequences.[110]

There also are few incentives for managers to stray from the norm. Sabbaticals, supplemental benefits and other awards are seldom available in the public sector. Disincentives, however, are ample: additional paperwork, lengthy appeals processes and a lack of budgetary controls.

Inversely, the Ad Hoc Personnel Officer's Committee believes that pay-for-performance could also ease pressure on the dysfunctioning discipline process, at least in terms of the output from supervisors and managers. The committee testified:

It is much easier to work with a supervisor to set goals and objectives by which annual performance will be measured and compensated than it is to document and discipline for inefficient performance after the fact.[111]

The proper authority to do the job, the training to do the job and the incentives to do the job are all issues that managers should occasionally revisit to ensure workers and supervisors are productive. For the State, politics and the bureaucracy have made this reform difficult. The State has decentralized duties, but has not yet given managers the authority to do their jobs differently. The State has training programs, but they are not a priority for funding or time. The State has tried to implement performance pay, but has a long way to go before the right incentives can be demonstrably effective.

Recommendation 4: ***The Governor and the Legislature should enact legislation expanding the Career Executive Assignment program to include all managers and supervisors. Legislation should be enacted allowing for recruitment of managers and supervisors from outside state service, broadening pay-for-performance programs. Training should be given the highest priority and embraced as a bipartisan concept. Departments should fund training with minimum line items in their budgets and should report to the Legislature annually on the scope and nature of their training efforts.***

Training, performance evaluations and compensation must become equal parts of a reformed management program that encourages success and requires accountability. The Governor and the Legislature should enact legislation to:

- Expand and clarify the legal definition of managerial employees.
- Permit recruitment of managers from outside State government.
- Continue the pursuit of pay-for-performance.
- Require more effective training and development.

The Department of Personnel Administration must also exercise a leadership role to impress on senior and junior managers the importance of learning new techniques and reforming the system.

Redefining Management

As the State sets out to redefine the workplace, it must begin by redefining management. The Career Executive Assignment program should be expanded and reformed to include all 4,000 managers and 24,000 supervisors.

The new program would allow a single category for managers and a limited number of broad categories for supervisors. It would allow for wide flexibility in the

selection, compensation and reassignment of managers and supervisors, creating the maximum opportunity to eliminate personnel problems, successfully accomplish job assignments, promote and reward star performers, and reassign or demote poor ones.

Recruit from the Outside

The new harmonized management category should be "opened" to permit recruitment and selection to these positions from outside state government. And the Department of Personnel Administration should craft guidelines to assist departments in recruiting managers from other government agencies and private businesses. Outside managers often have greater opportunity to stay abreast of the latest theories and practices in managing personnel. By recruiting from the outside, the State will capture fresh approaches and talent. Outside recruitment also would create competition for existing state managers and encourage them to constantly improve their skills.

Pursue Pay-for-Performance

The success of pay-for-performance is essential to reforming the civil service system, improving government's delivery of services and restoring public faith in the bureaucracy. DPA should continually work with departments to craft meaningful incentives appropriate to their missions.

Training

If state managers and supervisors are to shoulder more responsibility, they will need more training and technical support. The Department of Personnel Administration should develop a statewide plan to improve training for managers and cultivate the spirit of a management corps that is necessary to bring change to state government. Among the essential elements:

- **Training should be a budget priority and annual reports required.**

  Each department should be required to have a minimum amount budgeted for training. Participation in training programs should be tied to performance reviews, promotion and compensation programs. Departments should annually report to the Legislature on the numbers of supervisors and

managers who received training, the types of training they received, and how that training was planned to address the department's specific goals.

- **Training and development must become an expressed priority.**

  Top executives must make it clear that educational development is an important investment. A system of rewards should be devised to encourage managers to improve their abilities.

- **Establish executive-level seminars.**

  The DPA should more frequently sponsor "executive seminars." The seminars should be used to establish a stronger "esprit de corps," promote common values and share creative approaches to problem solving.

- **DPA should establish a management training academy.**

  The academy could be modeled after the federal institute. DPA also could begin by coordinating and sponsoring participation by managers in existing private and public institutes.

- **The State should take advantage of the Federal Executive Institute.**

  Until the State launches its own academy, it should take advantage of the resources available at the federal institute. Ongoing participation in the federal program could also provide ways to constantly improve the State's institute.

- **The statutory requirement covering supervisory training should be changed.**

  The Governor and the Legislature should enact legislation amending Government Code Section 19995.4 to allow individual departments to determine the subjects of supervisor training. The statute should encourage ongoing training and as part of annual performance evaluations, supervisors should be required to demonstrate their effort to improve their skills.

Finding 5: A complicated disciplinary process discourages pro-active management of employee performance. In addition, the system for handling disciplinary appeals is unnecessarily costly and burdensome.

Discipline -- along with evaluations, training and communication -- is a principal tool of management. But the current discipline process is ineffective due to the enormous number of appeals and the elaborate process for reviewing them.

A central cause of this problem is that relatively minor disciplinary actions such as letters of reprimand, can be appealed through the same formal quasi-judicial process, complete with hearing officers, used for major appeals such as terminations.

A collateral result is that managers are discouraged from taking action. And when they do, they often must focus on single events to remedy chronic problems because of the difficulty of proving mere incompetence. Better management, however, could prevent small issues from becoming big problems.

The Discipline Process

Perhaps the most frequent complaint about the civil service system is the elaborate process that has evolved for disciplining employees, and the even more involved process of resolving appeals of those actions. This problem goes far beyond the resources consumed by the process. It results in hundreds of workers who stay on the job long after their performance is of use. And it is dispiriting to those who are trying to fulfill their duties.

State Auditor Kurt Sjoberg testified that the problems with the discipline process permeate the civil service. Large departments -- and even divisions within departments -- have "bone yards" of unproductive workers:

Nonproducing employees are likely to be tolerated and sometimes grouped together in branches of departments where they have the least impact, causing morale problems for employees who do the non-productive employee's work.[112]

Most departments use a three-phased approach to discipline -- preventive efforts, corrective efforts and formal adverse actions. The more common forms of adverse action are: formal letters of reprimand, reductions in salary, suspensions, demotions and dismissals. Formal actions generally follow this pattern:[113]

- The supervisor prepares a report outlining the reasons for the action, including evidence that the problem has been ongoing, that efforts have been made to correct the problem and that discussions have not been satisfactory.
- The personnel or legal office assists in preparing a formal "Notice of Adverse Action" and the employee is served.
- An employee has 20 days to appeal the action to a higher level of management within the department or to the Personnel Board.
- During this period, the employee has "Skelly Rights" as defined by the court in the case of *Skelly vs. SPB.* Prior to an adverse action going into affect, employees and their representatives can respond to the charges before departmental managers, who may be persuaded to amend or withdraw it.

Civil service rules provide an elaborate appeals process for disciplined workers

Managers can use the same process for punitive actions below the threshold of "adverse actions," such as rejections during probation, denials of annual merit salary adjustments and alternate salary range changes and AWOL separations. Employees have the right to appeal these actions to departmental managers, and as a matter of practice, to the Personnel Board.

Roughly half of all adverse actions taken by management are appealed to the Personnel Board. For the 1993-1994 fiscal year there were more than 2,100 appeals, each one handled through the board's quasi-judicial process. More than 500 of those appeals were for dismissals, 450 for salary reductions, 300 for suspensions and 100 for demotions.[114]

Once the board receives an appeal, a hearing is scheduled before an administrative law judge. Priority is given to termination cases; less serious cases are calendared as time permits. Generally, a hearing is scheduled within two months.[115]

Sometimes appeals are withdrawn, or the case is settled before the hearing. At hearings, both sides are entitled to present sworn testimony from witnesses and complex cases often require a follow-up hearing. After considering the evidence, the administrative law judge writes a proposed decision, normally within 90 days, and the case is scheduled for Personnel Board consideration.[116] The Board has the authority to sustain, modify or overturn the decision.

Problems with the System

The Commission received testimony from several witnesses, including representatives of the State Personnel Board and Department of Personnel Administration, that a major problem in current civil service procedures was the time and resources consumed in resolving disciplinary appeals. The process takes too long and consumes too many resources.[117] In mid-1994 it took an average of 12.5 months from the date an appeal was filed until a final decision was rendered by the Board.

The California Correctional Peace Officers Association sued the Board, arguing that the time it took the board to process appeals was unreasonable. The State Court of Appeals held that if the Personnel Board was unable to decide disciplinary appeals within six months, the discipline taken against the employees would automatically be revoked and employees who were terminated would be entitled to reinstatement with back pay.

The Board appealed that decision and the Court reissued its decision, this time stating that unless the employee waived the six-month deadline, the Board would lose jurisdiction after six months and the appellant could file a civil lawsuit without having to first go through the administrative hearing. The decisions have not satisfied the Board, state managers or employee associations. The parties have appealed and a decision is expected in 1995.[118]

In the meantime, several employee organizations supported legislation to shift the Board's hearing activities to the Department of General Services' Office of Administrative Hearings (OAH). A compromise eventually was reached, allowing the Personnel Board to charge departments for more of its services and underwriting the expansion of Personnel Board staff in 1994. Board officials say it now takes six months to process an appeal.

Table 2 shows the disposition of appeals filed with the Personnel Board, some of which are resolved before hearings and formal action is taken by the board.

Table 2
Appeals Presented to the State Personnel Board
(For three fiscal years ending with 1993-94)

Action	*Number of Appeals*			*Percent of total*
	1991-92	*1992-93*	*1993-94*	
Penalty Sustained	324	351	355	46.4%
Penalty Modified	66	61	89	9.7%
Penalty Revoked	64	72	76	9.6%
Stipulated Settlement	210	178	268	29.6%
Appeal Withdrawn	28	20	57	4.7%
Total	692	682	845	100%

Source: State Personnel Board

As the table shows, of the appeals, about one-third of the appeals are settled or withdrawn. Of the two-thirds of the appeals that are fully adjudicated, the department action is sustained in most cases. Overall, fewer than 10 percent of all of the appealed management decisions are overturned by the board.[119]

Distinguishing Between Minor and Major Actions

The single largest criticism of the board's appeals process -- and one that is significantly responsible for long delays -- is the board's historic reluctance to distinguish minor discipline cases from major ones. The board uses identical procedures for cases involving formal reprimands as it does for terminations -- the same standard of proof, the same hearing process.

The Government Code recognizes the difference between minor and major actions by requiring the Personnel Board to hold hearings to resolve the appeals based on the most serious actions, while giving more latitude to the board in resolving appeals of less serious actions. A breakdown of minor and major discipline actions is displayed in Table 3.

Table 3
Delineation of Minor and Major Discipline Actions

Minor Actions	***Major Actions***
Letters of Formal Reprimand	Suspensions for six days or more
Denials of vacation requests	Permanent pay reductions
Suspensions of five days or less	Demotions to a lower class
Temporary withholding of salary adjustment	Dismissals

The table, based on the Government Code, characterizes actions of up to five-day unpaid suspensions as minor, and not subject to hearings upon appeal. Discipline actions more severe, beginning with suspensions of six days or more, are entitled by the code to a hearing.

In one of the most influential court decisions on the discipline process, the California Supreme Court in the 1975 case of *Skelly vs. SPB* ruled that state employees do not have the right to an evidentiary hearing for matters involving minor disciplinary matters. The court defined minor disciplinary actions as suspensions without pay for 10 days or less.[120]

In a 1994 case, the Department of General Services sued the Personnel Board because it provided a hearing to an employee who had been rejected at the end of probation. General Services successfully argued in court that the law does not entitle probationers to a hearing.[121]

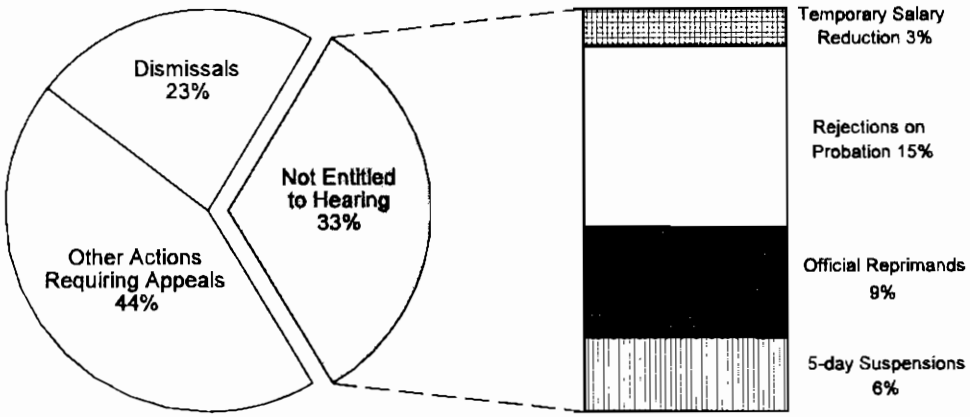
Also critical of the board's appeals process is its companion in personnel management, the Department of Personnel Administration, which pointed out that Government Code Section 19576 calls for an expeditious investigation -- without evidentiary hearings -- for minor cases, defined in the law as suspensions without pay for five days or less, formal reprimands and 5 percent reductions in pay for up to four months. The deputy director of DPA testified:

The current civil service disciplinary process requires a full evidentiary hearing conducted by a hearing officer with both the employee and the State represented by legal counsel, regardless of the cause of the discipline or severity of the punishment. An employee who receives a letter of reprimand receives the same hearing as an employee who is dismissed from state service. This means that the time, effort and cost for the State to defend an appeal from a letter of reprimand is just as time consuming and expensive as an appeal from a dismissal.[122]

DPA officials also have argued that the Constitution only requires the Personnel Board to "review" discipline actions, not hear all appeals. The Board's reliance on full hearings precludes the State from using grievance or arbitration procedures or even less formal processes for minor disputes. DPA officials said of the more than 400 appeals filed in 1994 that were for punishments of 10-day suspensions or less, nearly half of those were for letters of reprimand.[123]

Chart 4 displays the appeals to the State Personnel Board during the 1993-94 fiscal year, breaking out those appeals that were not entitled by law to a full adjudicatory hearing.

Chart 4
Appeals to the State Personnel Board



Source: State Personnel Board

As the chart shows, approximately one-third of the appeals processed by the Personnel Board through its hearing process in fiscal year 1993-94 were not entitled to a hearing under the Government Code. Table 4 shows a more detailed breakdown of those appeals for three fiscal years.

Table 4
Appeals Filed with the State Personnel Board by Type of Action (for three fiscal years ending with 1993-94 Fiscal Year)

Action	*Number of Appeals*			*Total*	*Percent of total*
	1991-92	*1992-93*	*1993-94*		
Dismissals	405	435	504	1362	23.5%
Suspensions	270	259	333	862	14.9%
Reductions in Salary	317	412	470	1253	21.6%
Demotions	92	93	101	286	4.9%
Rejections During Probation	168	183	323	674	11.6%
Official Reprimands	196	218	182	596	10.3%
Discrimination Complaints	12	25	28	65	1.1%
Misc.: Terminations & Demotions (non-punitive)	104	90	123	317	5.5%
AWOL/Layoff Related	120	158	92	370	6.4%
Miscellaneous	5	4	7	16	0.2%
Total Number of Cases	1743	1895	2163	5801	100%

Source: State Personnel Board

As the table shows, both the number and the type of appealable actions are of concern. The sheer numbers -- more than 2,100 in the most recent year -- document the board's caseload. The table also illustrates that while 23.5 percent were for the most serious action, dismissal, 10.3 percent were for the least serious action, official reprimands.

The Department of Fair Employment and Housing (DFEH) -- an agency responsible for protecting the rights of all California workers -- believes that the Personnel Board has extended the hearing rights far beyond the letter and the spirit of the law. The department director testified:

While the law is clear that full evidentiary proceedings are not required, the SPB gives employees such hearings for minor actions at considerable expense to the State both in terms of department or agency staff time and monetary resources. The costs of a hearing for the departments involved can be staggering: management personnel and other witnesses involved in these types of decision must prepare for, be transported to, and participate in the hearing, all of which takes a tremendous amount of time and resources. The question here is "why are full hearings always held no matter what the circumstances or severity of the act?" No profit-making entity could afford this costly time consuming process...[124]

The Personnel Board is rethinking its policy of treating all appeals alike

The Personnel Board has traditionally made two arguments for its policy of offering formal appeals to nearly any aggrieved worker. Its first argument has been that informal investigations would not save significant time or money, and neither side would trust an outcome unless it resulted from sworn testimony with cross-examination.[125]

Its second argument has been that many of the discipline actions are taken against sworn peace officers, principally correctional officers. And the Peace Officers Procedural Bill of Rights Act entitles officers to a hearing any time their compensation is reduced. In an attempt to treat all state workers equitably, it has extended the right to a hearing to all state workers.

The board, however, is beginning to rethink its position. In a February 1995 letter to the Commission, board officials said they now believe that the appeals of employees rejected upon probation should be "extremely limited." And they agree there is room for improving other aspects of the appeal process.

The SPB also believes that streamlining the discipline process, especially for minor disciplines, will make it less inhibiting to managers and reduce the time required to bring closure to adverse actions... The SPB believes that mediation and other early intervention techniques should be promoted and used by departments to solve workplace disputes before they become serious and to decrease the number of performance and behavioral issues that end up needing to be processed as adverse actions.[126]

Those changes would reduce, but not eliminate the kind of episodes retold by DFEH Director Nancy Gutierrez:

I have personal experience with this costly and cumbersome process. Recently, one of DFEH's employees was rejected on probation. That employee subpoenaed five witnesses, including myself, from Sacramento for a one-and-a-half hour hearing to be held in Los Angeles.

The SPB refused to revoke the subpoenas and required these individuals to fly from Sacramento to Los Angeles. When we got to Los Angeles, the SPB hearing officer did not conduct a hearing on the matter, rather discovery issues were discussed, even though in excess of 4,800 pages had previously been turned over to the employee.

This was an extremely expensive waste of time and taxpayers' money. Because only one and a half hours had been set aside for the hearing and it seemed unlikely that the witnesses subpoenaed would be required to testify that day, we had requested the hearing officer to reschedule our appearance due to the travel distance. The hearing officer required us to be at the hearing and we did not testify and subsequently the hearing was rescheduled for four days of testimony.

While this matter could and should be reviewed by the SPB without a hearing, the SPB's actions in this matter may cost the State in excess of $100,000, including staff time, monetary resources and decreased work production.[127]

One consequence of the process is that discipline has become a tool that managers are reluctant to use. Because of the ability to appeal -- forcing managers to justify their actions in a courtroom-like process -- most actions that are taken against employees result from specific incidents rather than incompetence. DPA officials said that it is difficult to prove incompetence, and as a result, action is often not taken against poor performers, only those workers who misbehave.[128]

This is not to say that all managers avoid taking disciplinary action. But because the process is complicated, detailed, time consuming, and the standard of proof for very minor matters is as stringent as for the most serious matters, action is often discouraged.

Alternative Processes

The private sector has dealt with this issue in various ways. Some firms have no appeal process, while others have negotiated grievance procedures. The DPA testified that many companies are trying informal labor-management panels that listen to both sides of the "story" and issue a verbal decision without interference from legal procedures, rules of evidence, transcripts and an elaborate written decision.

Other states also have experimented with mediation and arbitration. Colorado uses mediation to defuse problems before they become formal discipline actions. Oklahoma has a mediation program to resolve appeals made to its Merit Protection System, and Virginia's mediation system covers both discipline and policy violations.[129]

In a few selected cases, the State has experimented with arbitration, in which both sides make their case before a mutually agreed upon and impartial third party -- a member of the bar with special training. Both sides can

provide written briefs, testimony and other evidence, but the process is more flexible and less time consuming than a more formal appeals process.

The Department of Personnel Administration, the State Personnel Board and CSEA officials testified they conceptually supported alternative processes. DPA recommended informal hearings with bench rulings. SPB favored mediation. CSEA said it would consider arbitration.

Better Management as Prevention

Union officials maintain that not all of the problems can be blamed on process. They argue -- and their arguments are buttressed by management experts -- that better management could reduce problems and encourage better worker performance.[130]

Employees need to have a clear understanding of the performance expectations and ongoing feedback from their immediate supervisor. While it should not be necessary to legislatively require employee performance reviews, the Legislature has done so.[131]

When the Commission reviewed the State's personnel system in 1979, it concluded that managers and supervisors often did not consistently evaluate their staffs. The Commission concluded that evaluations often were "poorly done, not done at all, only done when negative feedback or punitive action was anticipated, or were generally inconsistent.[132]

Since that review, collective bargaining has been instituted and the State Memoranda of Understanding (MOUs) include provisions calling for annual performance appraisals: "Employee performance/work standards shall be based upon valid work related criteria, which insofar as practicable, include qualitative, as well as quantitative measures. Such standards shall, in so far as practicable, reflect the amount of work which the average trained person can reasonably turn out in a day."[133]

Based on discussions with managers and personnel specialists, the criticisms offered in 1979 are still valid. Most departments pay little attention to evaluations. While some departments train supervisors and managers and have developed systems to remind them when reports are due, there is typically little follow-up to ensure the reports are completed.[134]

Union representatives say employees complain that supervisors do not provide feedback and the only time their performance is reviewed is during promotional examinations or at informal performance appraisal meetings. Most supervisors and managers do spend time working with the very poor performers or the employees who are serious discipline problems. But they do little to recognize deserving employees or help employees whose work is satisfactory.[135]

It is hard to overstate the consequences of a dysfunctional discipline process. It frustrates managers and discourages action from being taken. When action is taken, it costs too much and takes too much time to resolve the resulting appeals. While intended to protect employees, the burden created by undisciplined workers is carried by fellow workers who dispatch their duties with diligence.

Recommendation 5: ***The Department of Personnel Administration and employee unions should negotiate alternative procedures, such as arbitration and mediation, for resolving disputed discipline actions. The Governor and the Legislature should enact legislation to implement the negotiated solution as the sole venue for resolving major disputes.***

Minor disciplinary actions are those that do not directly affect the current status of an employee such as letters of reprimand, suspensions of five days or less, and denial of vacation requests. And the law is clear that employees are not entitled to the same appeal process for minor disciplinary matters as major ones.

Through collective bargaining, an expeditious process should be developed for resolving disputed disciplinary actions -- informal processes for minor actions and more formal processes for major actions. The Governor and the Legislature should enact legislation to implement the negotiated solution as the sole venue for resolving disputes. As a condition of employment, employees should waive their right to appeal the decisions of the administrative process to any other venue, including the

courts. DPA should impose that same process on non-union employees.

Redefining Discipline

In concept, minor actions are those that do not change the "status" of an employee, such as letters of reprimand. Major actions are those impacting status, such as permanent loss of pay.

There has been some disagreement where to draw the line. The Supreme Court in the Skelly decision considered minor to be any action punishable by up to 10 days of unpaid suspension, while the current Government Code considers any punishment up to five days of suspension to be minor. The statutes allow, and DPA recommends, that informal dispute resolution processes be developed for actions up to five-day suspensions. Negotiations should begin with the standard in existing law -- that employees are not entitled to an appeal in cases involving suspensions of five days or less.

Resolving Minor Disputes

The right resolution process will vary from department to department. And conceptually the departments and their employees will benefit the most by having the flexibility to negotiate a process that will fairly and expeditiously resolve disputes. If taking minor disciplinary actions is a management right, any appeals process can be viewed as a dilution of that right. It would, however, be in the best interest of both management and labor to fashion a simple way to resolve minor disputes -- primarily to prevent them from turning into major problems.

Resolving Major Disputes

Both management and labor would benefit by alternatives to the costly adjudicatory hearings now conducted by the Personnel Board, and those alternatives should be agreed upon at the bargaining table. The Personnel Board believes that a centralized appeal process is essential to consistent standards, and this would be maintained in termination cases if an independent review board were created. The central issue is fairness, and currently labor unions don't view the board as a neutral venue. Alternative procedures, such as employing mutually acceptable arbitrators, should improve efficiency without compromising fairness.

The level of efficiency, however, will be determined in part by the finality of arbitrated decisions. As a condition of employment all state employees should agree that they will submit appeals to the negotiated process and waive any right to appeal, either administratively or to the courts, the outcome of those decisions.

Finding 6: Tenure and automatic pay raises have outlived their usefulness and are counterproductive to achieving effective and efficient government service.

A frequent criticism of the civil service system by managers is that wage increases and promotions are independent of performance, and that the work ethic is undermined by the substantial security that permanent tenure provides. Similarly, the system has encouraged the perception that individuals are "entitled" to specific positions.

Tenure

One of the hallmarks of civil service employment has become the concept of "permanent tenure." It was originally conceived to protect employees from the arbitrary dismissals that had characterized the spoils system.

Crafters of the civil service laws believed that without tenure the work force might not be stable -- with wholesale turnover arriving like a spring tide with each change in the political leadership. This was a particular concern when the government started to grow, and there was a need for increasing reliance on professional skills. For the first two decades of California's civil service program, nearly half the workers were employed through temporary appointments that lasted for years. And it wasn't until the 1934 constitutional amendments were approved that the tenure doctrine started to mature. But even then, support was not unanimous.

Louis Kroeger, one of the first executive officers of the Personnel Board, once observed:

It was a sad day for all of us when the idea first occurred to someone that the merit system should include a guarantee of tenure. The original idea of tenure was to protect the public from the evils of politically motivated removal. Over the years we have allowed it to degenerate into protection of the job holder against removal for the valid reason that he/she doesn't measure up to fair standards or that he/she may be incompatible with the rest of the work force.[136]

Tenure, however, also has become so politically sensitive, another expert argued that few reform plans discuss, let alone advocate, its abolition:

In attempting to protect all employees from capricious action by employers, we seem to have created a system that is virtually incapable of terminating even those employees who have shown that they cannot do the job.[137]

Osborne and Gaebler, in their review of civil service systems across the nation, concluded that terminating employees is so difficult that troublesome workers are tolerated, transferred and occasionally even promoted in order to ease a problem.[138]

The problem rests in a series of court decisions and statutes that have essentially turned public employment into a property right. Once hired, employees are entitled to substantial due process before they can be fired.[139]

Nothing in the Constitution specifically grants tenure. The focus of Article VII of the Constitution is entirely on selection and promotion of a permanent work force. Tenure, however, was addressed in the State Civil Service Act, passed in 1945 to implement the 1934 constitutional amendment.

One of the act's objectives was to provide a comprehensive personnel management system in which "tenure of civil service is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds."[140]

In the case of *Skelly vs. State Personnel Board,* the court interpreted the status of "permanent employee" to mean workers have a property interest in their employment that cannot be denied without due process. It also decided that in addition to any procedural protections specified in the Civil Service Act, permanent employees were entitled to typical due process.[141]

Without the tenure provisions, the civil service system would more closely resemble the relationship between private sector employees and management. Some public jurisdictions already have adopted the private standards of "at will" appointments. Under such a doctrine, employees do not gain a permanent right to their position. Rather employers and employees mutually agree to maintain a working relationship for as long as both parties are satisfied with one another.

Under the "at will" system, dismissed employees can maintain rights to appeal if they believe they are unjustly fired. But the burden of proof upon the employer is lower. Judicial case law has granted all employees "due process rights" and have determined that employers should have "just cause" before terminating workers for performance or behavior-related issues. Thus, even in the private sector the direction seems to be moving toward expanding certain rights to all employees, rather than limiting rights.

Merit Pay

Currently employees enter classifications that have a number of steps. Each year on their anniversary, workers are entitled to a "merit raise," typically getting a 5 percent raise. This occurs each year until they get to the top of their steps. Classifications typically have three to five steps. These raises are in addition to across the board cost-of-living adjustments that the bargaining units negotiate on behalf of civil servants.

While these steps are intended to reflect a graduated improvement in skill level and quality of work, it is viewed as automatic and seldom tied to actual performance. The Department of Personnel Administration reports that 99 percent of all employees eligible receive their merit salary adjustments. Lillian Rowett, DPA's chief deputy director, testified:

We believe one of the primary reasons merit pay has evolved to longevity pay is the fact that it requires the same documentation and evidence to deny a 5 percent merit salary increase as it does to suspend or demote an employee. Supervisors and managers, when faced with this burden in light of all the other work that is required, simply avoid this issue in nearly all situations. This simply makes no sense since a denial of a merit increase takes nothing away from an employee, it just means his/her job performance did not warrant a salary increase.[142]

To this end, DPA's chief deputy testified that the state has tried to be a good manager, but again is stymied by limitations in the law that ironically were installed to protect workers. On the list of concerns DPA offered for the Commission's considerations: "If state government is to retain its public trust and credibility, it must provide state management with the ability to reward the outstanding job performance of its employees as well as the ability to take action against poor performers."[143]

The federal government has experimented with a market-oriented compensation program, and found that in at least

one setting it helped to attract qualified workers and increase performance of the long-term work force. In a demonstration project at the China Lake Naval Weapons Center near Ridgecrest, managers are allowed to suspend the classification and pay systems in order to attract talent with "market rate" compensation. Employees can be given raises without being promoted to a new class, and bonuses are distributed to reward performance. Workers who repeatedly receive marginal performance reviews are automatically bumped to a lower pay grade.

The results: Turnover is down and the quality of job applicants is up. Managers are spending less time negotiating civil service rules and more time managing. And in surveys, employees have overwhelmingly said they favor the new plan.[144]

Likewise, the Winter Commission, which reviewed civil service system reforms across the nation, recommended that governments develop flexible compensation plans. The Commission urged agencies to rethink those pay-for-performance plans that were complicated or underfunded. And it encouraged bonus systems tying performance of individuals and teams to the rewards.[145]

Tenure has gone from a civil service protection thought to be essential to preserving the integrity of the professional corps to a major obstacle to government effectiveness. Government managers and private consultants overwhelmingly believe that removing tenure and linking pay to performance is necessary for reforming the system.

Recommendation 6: ***Article VII of the Constitution and applicable statutes should be amended to eliminate the presumption of permanent tenure. The Department of Personnel Administration should work through negotiations to eliminate automatic pay raises and to link salary adjustments to performance.***

The concept of automatic tenure based on time spent in a position is inconsistent with modern personnel management concepts that seek to motivate workers to strive for excellence in the performance. Automatic pay steps should be replaced

with a system that rewards employees based on improvement and performance.

Article VII should be amended to remove the reference to "permanent" appointment. The Governor and the Legislature should enact legislation to eliminate the statutory presumption of tenure. All state employees should serve on an "at will" basis.

Status and Compensation

Consistent with the use of competency as the common measurement for selection is the elimination of the concept of permanent employment or tenure. To continue to maintain one's job and to advance and assume more duties and responsibilities, an employee should be required to maintain and demonstrate competency.

Unfortunately, this evaluation of performance -- and the consequences and rewards associated with it -- has been lost to many employees, supervisors and managers. Tenure in state service has been nothing more than "putting in time." The Commission recommends eliminating this concept.

To remain a part of the state work force, employees, supervisors or managers should consistently demonstrate a willingness to learn and perform tasks more effectively.

Realistically, this provision may have to be phased in to be legally acceptable and politically possible.

Eliminating tenure and other protections is only one step toward invigorating the civil service system. Equally important is creating the ability to reward those workers who strive for excellence.

Labor-Management Relations

- *Managers are constrained from contracting with the private sector and making the best use of public assets.*

- *Successful reforms will require communication, trust and cooperation.*

Recommendations:

- *Eliminate the constitutional presumption against contracting out.*

- *Establish labor-management advisory committees to begin the process of building cooperation.*

Labor-Management Relations

As in many industries, the relationship between management and labor in the state work force has been strained. Improving the bureaucracy will require easing those tensions through a collaborative approach between workers and managers.

A central issue in this debate has been contracting out of public work to private companies. The debate over this issue has become intense -- and must be resolved if the State is going to meet its needs in an efficient manner and improve the relationship between employers and employees.

Finding 7: State managers are constrained from contracting out. The public interest in government efficiency is usurped by an overly protective civil service system.

Increasingly public agencies are seeking economies by "privatizing" the delivery of government services. Contracting out public work is more common at local agencies, where change can be introduced more rapidly. At the state level, however, contracting has met strong resistance from employee unions.

A central issue is whether contracting out saves money. Several studies have tried to answer that question and the results are often contradictory. Any savings are difficult to prove conclusively because awarding and administering contracts involve hidden costs.

The issue also has been encumbered by California Supreme Court rulings that have interpreted Article VII of the Constitution to mean that only those tasks that cannot be performed by civil servants may be contracted to private firms. The decision spawned a set of guidelines now used to determine which jobs can be privately contracted, and has fueled the debate over how much of the State's work should be done by public employees.

Limits on Contracting

State contracts are reviewed by the Department of General Services (DGS) and the State Personnel Board (SPB). The Commission received considerable testimony on how to streamline the review process. The commission also reviewed departments with unique contracting authority and the federal model. It also considered the arguments that state employee unions make against contracting.

There are three areas of state contracting: contracts for the construction, alteration, repair or maintenance of state property; contracts for personal or consulting services; and contracts for the purchase of supplies and equipment. Contracts for personal and consulting services has generated most of the disputes involving civil service

rules, and so for the purposes of this report, the Commission focused on those types of contracts.

Each year, state agencies enter into a significant number of contracts. The Department of General Services estimated that during the 1993-94 fiscal year, more than 10,000 direct service contracts were issued with a combined value of more than $5 billion.[146]

Most of these contracts were with local governments, special districts and universities, and with architectural and construction firms. The remainder -- contracts valued at almost $850 million -- were for an array of personal, technical, professional and consulting services. The State contracted for equipment maintenance, janitorial, laundry and gardening services, for nursing, specialized investments, legal, architectural, engineering, and management consulting services.[147]

Even though two agencies review contracts, a thorough evaluation is not assured

The Department of General Services and the State Personnel Board limit their reviews to a narrow range of considerations and each has its own "exemption criteria" for approving contracts. Conversely, while the approval process may be arduous, many contracts do not receive a detailed evaluation.

The Department of General Services is responsible for reviewing all contracts entered into by state agencies. In practice, DGS's Legal Office has tended to restrict its review to legal questions: Does the agency have the statutory authority to issue the contract? Has the State Administrative Manual been followed? Is the contract language sound? And has the agency negotiated a reasonable price or received a bid that is reasonable? Currently, contracts under $15,000 are routinely exempted from review.

The State Personnel Board is responsible for determining on a case-by-case basis if it is appropriate for the work to be contracted out to the private sector. Like other aspects of the civil service system, the board's role has evolved over time -- the product of court decisions expanding on the board's constitutional mandate to protect the ranks of the civil service. In several decisions, the state Supreme Court has held that Article VII of the Constitution limits contracting to work that cannot be performed by employees hired under civil service procedures. In the 1937 Riley decision, one of the landmark rulings, the court held:

"...the true test is not whether the person is an independent contractor or employee but whether the services contracted for are of such a nature that they could be performed by one selected under the provisions of civil service..."[148]

Court-imposed limits on contracting out led to statutory guidelines

This decision, taken together with several subsequent cases, resulted in the guidelines that State agencies and departments must consider in assessing whether a contract is permissible. The guidelines were codified into the Government Code Section 19130 in 1982. The code allows contracts if one of the following conditions exist:

- The function is specifically exempted from the civil service in the Constitution.
- The contract is for a new state function and the Legislature specifically authorizes use of independent contractors to perform the work.
- The services contracted for are not available within state service, cannot be performed satisfactorily or are so specialized or technical that the necessary expert knowledge, experience or abilities are not available through the civil service system.
- The services are incidental to a contract for purchase or lease of real or personal property, such as service agreements for office equipment or computers.
- The nature of the work requires emergency appointments.
- State agencies need private counsel because there might be a conflict of interest if the Attorney General's Office were to represent the agency.
- The contractor will be providing equipment, materials, or support services that could not feasibly be provided by the State in the location where the services are to be performed.
- The contractor will be conducting training courses for which qualified civil service instructors are not available.
- The services are of such an urgent, temporary or occasional nature that the delay to implement them under civil service provisions would be unreasonable and frustrate the very purpose for their need.

Statutes also allow contracts if cost-saving criteria are met

At the time the Legislature codified the court decisions, it added a requirement that other public work could be contracted out if it met stringent "cost-savings" criteria. The contracts must meet all of the following criteria:

- The contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the State, provided that:

  (a) In comparing costs, there shall be included the State's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

  (b) In comparing costs, there shall not be included the State's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in state service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities and materials.

  (c) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but not be limited to, those for inspection, supervision and monitoring.

- Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.

- The contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence and time base reductions. Displacement does not include changes in shifts or days off, nor does it include

reassignment to other positions within the same class and general location.

- The contract does not adversely affect the State's affirmative action efforts.
- The savings shall be large enough to ensure that they will not be eliminated by private sector and state cost fluctuations that could normally be expected during the contracting period.
- The amount of savings clearly justifies the size and duration of the contracting agreement.
- The contract is awarded through a publicized, competitive bidding process.
- The contract includes specific provisions pertaining to the qualifications of the staff who will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination, affirmative action standards.
- The potential for future economic risk to the State from potential contractor rate increases is minimal.
- The contract is with a firm. A "firm" means a corporation, partnership, nonprofit organization or sole proprietorship.
- The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government.

The Personnel Board created rules to further define cost-saving criteria

In addition to the code, the Personnel Board has established rules (279.2-279.4) that describe in even greater detail the conditions that cost-savings contracts must meet. Among them: A contractor's wages generally will not undercut the State's pay rate for comparable work by more than 15 percent. A contract will not impact a department's affirmative action goals and that the department can continue to make reasonable progress toward meeting its affirmative action goals. The savings anticipated as a result of such a contract will be at least $50,000 or 10 percent when compared to the cost of performing the same function within the civil service.

A state agency that wants to award a "cost-saving" contract must get the Personnel Board's approval first. The board is obligated to notify unions representing state employees who would perform the type of work described in the contract. If the union does not oppose the proposed contract, the board approves it and the department negotiates the contract. Historically, however, these contracts always have been challenged, and work cannot begin until the board determines that the contract meets all the conditions of the law.

Predictably, the vast majority of consulting contracts never receive detailed review because they are exempt from the more rigorous criteria. According to the Department of General Services, state agencies in the 1993-94 fiscal year entered into roughly 4,260 personal and consulting services contracts. Only 214 of these contracts were ultimately reviewed by the Personnel Board; 69 proposed cost-savings contracts and 145 were other personal services contracts.[149] Table 5 displays the contracts reviewed and approved over the last five fiscal years.

Table 5
SPB Contract Reviews Completed
(For five fiscal years ending in 1993-94)

Fiscal Year	*Number Reviewed*	*Number Approved*	*Percent Approved*
1993-94	214	148	70%
1992-93	97	67	70%
1991-92	115	93	81%
1990-91	69	63	91%
1989-90	113	99	88%
Totals	608	460	76%

Source: State Personnel Board

As the table indicates, while year-to-year trends are erratic, over time more contracts are being proposed, while the percentage of approved contracts is decreasing.

Streamlining the Contracting Process

Routine contracts can take months to wind through the bureaucracy and obtain the necessary

approvals. Many contracting officers admit they are so consumed with the detailed paperwork -- drafting specifications and other documents, overseeing advertising, bid review and selection procedures -- that they have little or no time to monitor contractor performance. These problems are not new. But the laws and state administrative regulations governing contracts are so detailed and convoluted, change is nearly impossible.[150]

Even though a substantial amount of contracting already takes place, many opportunities are lost because of the burdensome review process. The cost-savings statutes are so detailed and so specific, and the probability so great that employee organizations will challenge cost-savings contracts, that most departments choose alternative ways to solve production problems.[151]

The effort to streamline contracting procedures also would encourage well-qualified firms -- now put off by the laborious review process -- to compete for state government work.[152]

In recognition of these problems, the Department of General Services has initiated a task force to identify ways to streamline the process. The panel is exploring ways to automate the review process, standardize contract language and delegate more approval authority to departments with large legal staffs.

Departmental Contracting

Several departments are permitted to contract for certain types of services. One of the most visible is the Department of Transportation (Caltrans), which has responsibility for major projects requiring the services of architects, engineers and construction personnel.

Government Code Section 14101 authorizes Caltrans to contract for engineering services when no "obtainable staff" are available to complete the job in a timely manner. The department did not use the provision much until the mid-1980s when it determined it did not have sufficient staff to meet its needs. Caltrans sought legislation, which became Government Code Section 14130, establishing a plan for contracting project development work. This led to a series of court challenges from the Professional Engineers in California Government (PECG).[153]

At one point in 1991, Caltrans and PECG agreed to a settlement, the legal motions were withdrawn, and the court ruled that contracting could proceed. A joint Caltrans-PECG Cooperation Team was formed to resolve disputes. One provision of the agreement was that if differences between the parties could not be resolved, PECG could reopen its case in court.

In 1993, legislation was enacted clarifying criteria under which Caltrans could contract for engineering services. PECG challenged the constitutionality of the legislation, reopening the legal challenge. In early 1994, while that challenge was pending, Senators Bergeson and Kopp introduced SCA 46 to amend the Constitution to permit the department to utilize private contractors for all or part of any public works project. Union opposition was so strong that the bill was never heard in a legislative committee.

In 1994, Sacramento County Superior Court Judge Eugene Gualco declared Government Code Section 14130 to be unconstitutional. The department and the administration have appealed this decision.

The Department of Corrections also has sought legislation to authorize a pilot program at several remote prisons to contract for health care services for prison inmates. The department noted that it has severe difficulty recruiting and retaining civil service health professionals and assuring adequate quality control. Again, CSEA adamantly opposed the proposal and the bill never got out of committee. A similar measure is under consideration this year.

The Federal Government

A possible model for reforms in California are the contracting provisions used by the federal government. Caltrans Director James van Loben Sels, who experienced the program first hand as a major general in the U.S. Army Corps of Engineers, testified that the federal program sought to enhance government productivity through competition with the private sector.

The program did not simply "privatize" public functions, but established a competition for work that by its nature did not have to be done by public employees. He said millions of dollars had been saved by the program, and he believes a similar program would save the State money. However, the director said such a program could not be

initiated in California without a constitutional amendment removing all doubt that the public is entitled to the most efficient method of providing state services.

The Commission reviewed the Executive Order that created the federal program in 1955.[154] Some examples of the commercial services that have been contracted out include mail and file work, data processing, library services, audiovisual services, training, motor pool and vehicle maintenance, and general maintenance work.[155]

The Executive Order requires that studies be conducted to see whether work should be performed by the government or by the private sector. This evaluation has been shown to enhance productivity by challenging government managers to find the most effective means of doing business at a competitive price. Roughly 40 percent of the evaluations have resulted in the government retaining the work. The fundamental policies are:

- Commercial activities currently being performed by the government shall be compared to private sector sources to determine which can provide the work in the most cost effective manner.

- All new program tasks that can be performed by private sector commercial sources must be acquired from such sources, except where a statute or national security interests require government performance, or where private industry costs are unreasonable.

Union Objections to Contracting Out

Several state employee organizations said they were concerned about efforts to "privatize" or contract out state work. Among them is the California State Employees Association, Professional Engineers in California Government, the Association of California State Attorneys and Administrative Law Judges and the California Association of Professional Scientists.[156] The unions argue:

- Taxpayers' dollars are actually wasted, not saved. It is not uncommon for professional or specialized services to cost more, not less, when contracted out.

- Where savings are realized, they are often accomplished through low wages, lack of benefits

and other personnel practices that lead to high turnover and lower quality of service delivery.

- It is not uncommon for there to be no real competition for a contract.

- There is strong potential for corruption -- payoffs, kickbacks, conflicts of interest, price-fixing -- and as these problems become visible, it discredits government, not the contractor.

- Government loses control over the work that is contracted out.

- There is a lack of monitoring and oversight to assure that the contractor provides the full service promised, and an inability to truly measure certain types of work, particularly work of an analytical or creative nature.

The employee organizations noted that there may be situations where contracting makes sense -- for short-term peaks in workload or for specialized services that are in short supply or unavailable in state service. But they also expressed concern that the short-term peaks were often the result of arbitrary funding restrictions and not real workload cycles.

Contracting out has become a battleground between unions and state managers. The long standing tension has resulted in a complex set of judicial decisions, statutes and administrative rules to narrowly define what work can be contracted. The issue has become a major stumbling block in the relations between labor and management, and is ultimately tying the hands of managers trying to find new ways to stretch tax dollars.

Recommendation 7: ***Article VII of the Constitution should be amended to remove the presumption that the State's work must be performed by civil servants and to specifically allow contracting with private firms to do public work.***

The State needs to find more cost-effective ways of doing business -- and it cannot be precluded from looking to the private sector for that efficiency.

If managers are to be responsible for developing efficiencies, they need the flexibility to have state work performed in the most economical way possible.

If civil servants are to come to terms with and ultimately benefit from a more competitive environment, a rational approach must be devised for evaluating the alternatives and, when appropriate, awarding private contracts while minimizing the consequences on dedicated workers.

As an Element of Civil Service Reform

The personnel system must allow management all of the useful tools needed to accomplish program objectives. At times, the objectives can be accomplished more cost effectively by contracting for the personnel than by increasing the size of the public work force. In some cases, it might even be more cost-effective to contract out work that has traditionally been performed by state employees.

The Commission is not recommending that state government be "privatized." There are far too many circumstances were a stable, experienced and dedicated state work force is indispensable. Nevertheless, there are situations where the private sector may perform services better and cheaper than government.

Where contracting for services would displace existing state employees, the employees should be transferred to comparable positions and retrained. Management must recognize that it will not gain labor's cooperation if the basic premise of contracting out is to replace existing workers. Where a decision is made to contract rather than take on a new hire, management must be able to demonstrate that the alternative is more cost-effective, temporary in nature or justified by urgency.

In all cases, management must be able to demonstrate that the process used for selecting the contractor was based on the qualifications of the firm. Competency and selection based on qualification should be applied to contracting.

Finding 8: As in the private sector, the success of public sector enterprise requires management-labor cooperation, communication, trust and a willingness to work together to resolve mutual problems.

The tight budget times have aggravated animosity between management and labor officials -- ironically at the time when cooperation is most needed to make government more efficient and responsive to the changing needs of Californians. There has been some efforts to cooperatively address issues -- outside of the tension-filled collective bargaining arena. But the relationship between labor unions and the Legislature complicates the complex management-labor relationship.

Cooperation for Reform

Frank Thompson, executive director of the privately funded Winter Commission, captured the challenge awaiting California:

Ultimately we need a new style of labor management communication -- one that is more cooperative and less adversarial. For their part, managers should start involving workers, including union leadership, in decision making processes from the start and not simply brief employees. Once labor and management have established a more positive relationship, union leaders should reciprocate by reconsidering protective devises inherited from an era of adversarial relations, such as the premium placed on seniority, overly elaborate "bumping rules" in the event of work force reductions, and excessively constraining work rules.[157]

State employees have a long history of employee representation and membership in employee organizations. But until the formal recognition of collective bargaining under the 1977 State Employer-Employee Relations Act, management held the final decision making authority and was under no real obligation to pay attention to employee representatives. In 1982, that relationship began to evolve. Twenty-one bargaining units were established and elections were held to determine which associations would represent the respective bargaining units. In December 1994, the associations represented 137,965 employees. The bargaining units, associations and the number of employees in each unit are presented in Table 6.

Table 6 - The 21 Bargaining Units of State Employees

Unit	*Exclusive Representative*	*# of Workers*
1 Administrative, Financial and Staff Services	California State Employees Assn (CSEA)	30,290
2 Attorneys & Hearing officers	Assn of CA State Attorneys	2,486
3 Education & Library Services	California State Employees Assn	1,677
4 Office and Allied Services	California State Employees Assn	29,515
5 Highway Patrol	CA Assn of Highway Patrolmen	4,998
6 Corrections	CA Correctional Peace Officers Assn	20,078
7 Protective Svcs. & Public Safety	CA Union of Safety Employees	5,274
8 Firefighters	CA Dept of Forestry Employees Assn	2,592
9 Professional Engineers	Professional Engineers in CA Govt	7,551
10 Professional Scientific	CA Assn of Professional Scientists	2,175
11 Engineering & Scientific Techs	California State Employees Assn	2,212
12 Craft and Maintenance	Internat'l Union of Operating Engineers	9,877
13 Stationary Engineers	Internat'l Union of Operating Engineers	735
14 Printing Trades	California State Employees Assn	564
15 Custodial & Services	California State Employees Assn	3,623
16 Physicians, Dentists & Podiatrists	Union of Amer. Physicians & Dentists	968
17 Registered Nurses	California State Employees Assn	2,561
18 Psychiatric Technicians	CA Assn of Psychiatric Technicians	6,003
19 Health & Social Services Professionals	American Federation of State, County & Municipal Employees	3,097
20 Medical & Social Services	California State Employees Assn	1,234
21 Educational Consultants, Library and Maritime	California State Employees Assn	455

Source: Department of Personnel Administration

As the table shows, nine of the bargaining units are represented by CSEA, for a total of more than 72,000 state workers.

The traditional view of labor-management relations has been that each side has opposing goals. Although several of the unions have had a positive working relationship with departmental managers, the majority express serious frustrations.[158] Several factors account for the frustration. First, when a collective bargaining relationship is young, it is common for the parties to have relatively little experience with one another and to not have established the level of "trust" or "mutual respect" necessary.

Second, with the decline in state revenue, management has sought to reduce overall state costs -- by reducing salaries and benefits -- while unions have fought to retain the compensation packages they worked hard to obtain. Any trust that had developed between labor and management has been severely strained by the fiscal austerity. And as a result, most labor-management contacts have been viewed in a "win/lose" context.

In the private sector, the nature of the labor-management relationship has changed -- not out of altruism, but an increasing awareness that for companies to remain competitive and retain workers, structural changes to benefit packages were necessary. In those cases where changes were seen as essential to the corporation's survival, traditional bargaining positions on both sides became more pliable.

In the public sector, particularly in states with strong unions and collective bargaining statutes on the books, changes to the civil service system have been resisted. In California, any resistance comes at a time when an improving economy is not erasing government's revenue concerns.

Management Flexibility/Union Reservations

Most of the State's unions tend to oppose attempts to increase management's flexibility. The unions are even leery of forming their own plans for creating management-employee "partnerships." To a large extent, the unions have felt such efforts would undermine their role in the employer-employee relationship. Among their concerns:[159]

- The unions have viewed these proposals as usurping their legal role in addressing workplace issues and negotiating for their members.

- The unions have felt the calls to "reinvent government" have merely been disguised attempts to contract out or downsize.

- The unions are concerned that "quality improvement programs" give the illusion of worker involvement but they are really mechanisms designed to make people work harder and faster for the same pay.

- Management is really an adversary. And as such, there is no sound reason to help management.

Union officials said that several times management did not consult employee representatives until after managers had reached a consensus among themselves -- acting only to inform, not to enlist the union's active support and assistance.

Some unions advocate better labor relations to improve service, win public support

Despite reservations, a number of unions have entered into labor-management partnerships. Reformers say such cooperation is necessary to allow modern personnel practices to be implemented.

The AFL-CIO recently published a statement endorsing cooperative efforts and encouraged its affiliates to pursue more collaborative efforts. The AFL-CIO said that unions have a stake in them because:[160]

- Taxpayers are demanding quality services and they will begin to perceive unions as opposing quality if they do not become participants in the efforts for change.

- Inefficient government operations will more often become subject to downsizing or contracting out.

- Working with management should not, by itself, undercut the union's legal obligation as the exclusive representative. In fact, such efforts might lead to stronger and more effective relationships.

- Employees enjoy being involved in solving workplace problems. And unions can cement employee support by taking a leadership role.

- Collaborative efforts may be able to achieve more than traditional adversarial methods.

Labor-Management Committees

Most of the State's collective bargaining agreements contain provisions encouraging the establishment of labor-management committees. The committees are distinct from the collective bargaining negotiating teams, and are intended to meet regularly to examine and solve mutual problems not covered by the labor agreement. By providing a channel of communication outside of bargaining, the committees offer the parties a chance to meet in a non-adversarial situation to discuss issues and work out problems that are of mutual concern.

Personnel experts have identified several ingredients of successful labor-management committees:[161]

- A motive or push to get started. In most situations, this is a crisis. It could be a deteriorating relationship or severe budget reductions.

- A mutual interest. Both parties must see benefits in cooperation.

- A process to give a framework or structure to the program. The process cannot continue without agreement on how it will be conducted.

- Specific skills and knowledge. These are not the same as those used in collective bargaining. Moreover, it may be necessary at the beginning of these sessions to devote substantial time to training and education.

- A new attitude. The adversarial relationship so characteristic of the collective bargaining arena is an "Us vs. Them" approach. Committee efforts require a collaborative approach.

Cooperative labor-management relations involve changing the way decisions are made in the workplace. For managers who have enjoyed an authoritarian management style, the idea of employee participation and consultative management can be very threatening. For the union stewards who have challenged management decisions through the grievance procedure, the idea of using consensus to resolve problems is counter-intuitive. For

the elected union officials who have succeeded by militantly representing their members against management, the idea of agreeing to cooperative programs is contrary to their political instinct.

Union officials have made it clear they will not participate with management unless they believe they are full partners -- that decisions will be made by consensus and that both union and management representatives will receive the training and information needed to discuss issues and develop alternative solutions.[162]

The State has small successes that it can build upon

There are several notable examples of labor-management cooperation that can be found in state service:

- The Health and Welfare Data Center has a labor-management team reviewing personnel procedures. The team is examining recruitment, selection and promotion, the use of "broadbanding" or consolidated job classes, more flexible compensation techniques and training. The team has been working for more than a year on conceptual ways to address mutual interests of the department and its employees. A more formal proposal is being developed and may be proposed as a demonstration project.

- The Department of Personnel Administration has a labor-management Health Benefits Cost Containment Committee. The committee established four subcommittees: Wellness; Mental Health; Drug (pharmaceutical) Costs; and Federal Health Care Initiatives. The Committee's role has been to review problems and issues in each of the four areas and recommend to DPA and the Public Employees' Retirement System, how to better utilize health benefits and keep costs down. The Wellness Subcommittee is developing a model wellness program that may include "wellness" fairs, newsletters to employees on health-related topics, exercise rooms at departmental facilities, and visits from medical care providers to the work site to provide vaccinations and medical information.

- The Professional Engineers in California Government (PECG) noted several cooperative efforts they had been involved in with Caltrans and DPA; the Association of California Attorneys and Administrative Law Judges (ACSA) pointed to

several ACSA/Departmental Task Forces at the Unemployment Insurance Appeals Board and the Department of Social Services; and the California Association of Professional Scientists cited several successful experiences with the Department of Health Services and the Integrated Waste Management Board.

Among the benefits cited by the participants in these projects has been increased trust between management and union representatives.[163] Both management and the unions have gained more knowledge about the other's concerns, and the end results have been helpful from both a technical and an educational standpoint.

Employee Organizations and the Legislature

Employee organizations in the public sector are a powerful political force. DPA maintains that the unions have occasionally used their influence to obtain legislatively what they could not obtain in negotiations with management.[164] The unions can seek and gain benefits for their members at the bargaining table, through the legislative process, by challenging employer actions with such agencies as the Office of Administrative Law, the Public Employment Relations Board, the Department of Fair Employment and Housing, and lastly in the court system. These options can seriously undermine the bargaining process.

The Department of Personnel Administration provided the Commission with a listing of employee organization proposals for the past three legislative sessions.[165] Many of the proposals were raised by the employee organizations at the bargaining table but were rejected by DPA. Ultimately, they were pursued and approved by the Legislature, only to be vetoed by the Governor. Among them:

- AB 1470 (Cannella) 1994, which would have provided an enhanced early retirement program for state employees without restriction by appointing power.

- AB 634 (Tucker) 1993, which would have redefined the term "family member" in the law to determine benefit eligibility for state dental and vision programs.

- SB 539 (Wright) 1994, which would have allowed represented state employees to donate leave credits to an employee release time bank for use by employee representatives to meet and confer with the State on matters within the scope of representation.

DPA officials said some of the proposed legislation was never placed on the bargaining table and would have been appropriate items for negotiation. They said they often recommend that the Governor veto proposed legislation if the issue is one they believe should be the subject of collective bargaining.

Laws That Fall Within the Scope of Bargaining

Under collective bargaining, the employer and the bargaining unit representatives negotiate the "terms and conditions" under which employees will work. The terms and conditions include salaries, vacation accrual, sick leave, holidays, uniform allowances, grievance appeal procedures and the calculation of seniority for purposes of layoff or reductions in force.

Under the "supersession" provisions of the Memoranda of Understandings (MOUs), if any provision conflicts with the Government Code, the contract supersedes the law. The contracts typically list the specific code sections that are superseded.

A problem occurs when the contract expires before a new agreement is reached. Typically, the terms and conditions of the expired contract remain in effect. But without the supersession provisions of the MOUs in effect, the Government Code becomes the prevailing rule.

In 1992, for instance, when the State was unable to reach agreement with many of the bargaining units and the contracts expired, those terms and conditions set down in the contracts reverted to the Government Code. Both the employer and the bargaining unit representatives would have preferred that the provisions as outlined in the expired contract had stayed in effect. Among them:

- Government Code Sections 19853 and 19854: Holidays

  In the absence of an MOU, these Government Codes eliminate MOU provisions giving employees Holiday Credit when a holiday falls on a Saturday.

It also requires the employer to count sick leave as "time worked" for purposes of computing the 40 hour work week in determining if overtime is earned, a practice not required by the MOUs. The provision imposes additional costs on the State when there is no MOU because sick leave is included in overtime calculations. However, if a holiday happens to fall on a Saturday during a period when there is no contract, the employees would not receive any holiday credit.

- Government Code Section 19856 - Vacation

  In the absence of an MOU, vacation accrual rates for employees with 20 years or more of service are reduced by one hour per month. The Government Code provides for a higher accrual rate at 24 years instead of 20 years as specified in the MOUs.

- Government Code Section 19859 - Sick Leave

  In the absence of an MOU, bereavement leave is eliminated for employees and any employee absence for a death in the family must be charged to sick leave or other leave credits. In addition, the Government Code section limits family sick leave to 5 days per year while the MOUs provide for 5 days per occurrence.

- Government Code Section 19850.1 - Uniform Allowances

  In the absence of an MOU, uniform allowances are reduced to the amounts specified in the DPA Rules which implement this Government Code section. This results in a minor savings to the employer because the uniform allowances specified in the Rules are substantially less than those negotiated in the MOU.

All governments, including the State, must pursue collaborative approaches with their workers and the unions that represent them in order to bring about the change the public is demanding. In turn, employee organizations have an interest in collaboration. If employee organizations cannot demonstrate to their members that they are able to improve the work setting, membership will be less attractive and could decline.

Through collective bargaining, there can either be confrontation between unions and management, or the

two can become partners and collaborate to make changes. In California, some labor-management committees have proven to be successful. But overall the potential has not been realized.

Recommendation 8: ***The Governor should issue an executive order to foster cooperation between management and labor by establishing management-labor advisory committees. The Governor and the Legislature should enact legislation to repeal laws that dictate employment provisions typically covered by labor contracts.***

The executive order should direct DPA and all other departments to experiment with new ways to improve management-labor relations. The goal is to promote stronger communication and cooperation.

DPA should form a management-labor advisory committee including academics, private sector experts and managers from other governments to exchange information on innovative public sector management, offer advice and suggest demonstration projects, and to report biennially to the Legislature. The Governor should assign the director of DPA to monitor actions under the executive order to ensure it is implemented.

The Governor and the Legislature should enact legislation to repeal laws that dictate employment provisions typically covered by labor contracts. If the employer and bargaining unit representatives are unable to reach agreement on terms and conditions, they would revert to the terms and conditions in the most recently expired contract.

Toward Better Labor-Management Relations

Collective bargaining forms the foundation for nearly all State personnel issues. That system calls for good faith negotiations until an agreement is reached. But too often the relationship between labor and management becomes purely adversarial and every issue is seen as zero-sum.

One way to offset this is for the managers and employees to form relationships outside of the bargaining or grievance process, such as joint committees that review and suggest personnel and programmatic improvements. This kind of a maturing relationship is especially important as financial resources for government continue to decrease and public pressure for even greater efficiency increases.

By way of an executive order, the Governor can set the tone and provide the leadership that can improve the labor-management relationship. The Governor must communicate to his managers that the goal is cooperation and agreement -- rather than one-sided victories.

Conclusion

Conclusion

Reforming California's civil service system is a critical first step toward improving California governance. As lawmakers, state managers and union representatives go about this task they should consider the hard lessons learned over the last decade in the private sector.

Already state managers have learned the argot of organizational change -- of re-inventing government, of re-engineering the workplace, and of re-invigorating supervisors and rank-and-file workers. Now the State must make those words descriptive of government in action, not government in theory.

After careful review, the Little Hoover Commission believes the civil service system is in need of organizational changes. The definition and practice of personnel management also must be reformed, and the relationship between management and organized labor must be improved.

The organizational defects are largely the product of having, in fact, two personnel systems: the traditional and rule-burdened civil service system and the often adversarial collective bargaining system. The two systems at times have competed for control in the workplace. At other times they have complicated the workplace. And they nearly always have confused the already daunting challenge of managing the state workplace.

The Commission believes the State Personnel Board should be abolished. What remains of the board's administrative duties should be shifted to the Department of Personnel Administration. Most of the board's quasi-judicial duties could be more efficiently handled through alternative procedures, such as mediation and arbitration, and those procedures should be derived through collective bargaining.

The Commission also believes that the management system must be deregulated. In particular, it must be freed of the laborious review by the Office of Administrative Law of virtually every rule managers create to manage state workers.

The Commission believes that personnel management must be redefined, beginning with a true delegation of duties to individual departments -- over classifying, examining and selecting state workers.

To perform these duties, and others that will be required to make government more responsive, managers must be better trained and given more authority. Their compensation -- and in fact their status -- should depend on their performance.

Similarly, the process for disciplining rank-and-file workers must be dramatically reformed in order to make it easier for managers to discipline poor performers and for disputes over discipline actions to be resolved quickly. The presumption of permanent tenure and automatic pay raises regardless of performance must be abolished. Job security and advancement should be rewards, not rights.

And finally, the institutional relationship between organized labor and management must be improved, beginning with a resolution of the dispute over contracting out. State managers must be able to quickly, yet fairly, tap the competitive efficiencies of the private sector. The public wants -- and is entitled to -- economical services from government. The public does not want a system that invites corruption -- either in the management of state jobs or the private contracting for state work.

Deregulating the civil service will make change possible. But significant improvement in the performance of state agencies will require more cooperation between rank-and-file workers and their managers, as well as between the top representatives of management and labor.

That is the lesson of the private sector. Success no longer depends simply on doing the job cheaper or eliminating poor managers and recalcitrant workers. Success depends on inspiring the best in people, not tolerating the worst. Success depends on innovation, flexibility and cooperation.

Appendices

APPENDIX A

Little Hoover Commission
State Work Force Advisory Committee
(Comprehensive list of those individuals invited to participate)

Eloise Anderson, Director
Department of Social Services

Marlys Anderson, President
Coalition for Women in State Service

Mary Ann Bailey
Legislative Representative
Union of American Physicians & Dentists

Steve Barber
Labor Relations Consultant
Barber & Gonzales

Dennis Batchelder
Labor Relations Consultant
CA State Managers & Supervisors Assn.

S. Kimberly Belshe, Director
Department of Health Services

Ralph Black, President
Disabled in State Service

Bruce Blanning, Executive Assistant
Professional Engineers in California Government

Senator Dan Boatwright, Chair
Senate Business & Professions Committee

Russell J. Bohart, Director
Health & Welfare Agency Data Center

Herb Bolz, Supervising Attorney
Office of Administrative Law

Bradley G. Booth, Chief Counsel
Department of Fair Employment and Housing

Assemblywoman Valerie Brown, Chair
Assembly Select Committee on Restructuring Government

Assemblyman Sal Cannella, Chair
Assembly Public Employees, Retirement & Social Security Committee

Richard "Bud" Carpenter, President
State Personnel Board

Ross Clayton, Director
School of Public Administration, USC

Senator Ralph Dills, Chair
Senate Governmental Organization Committee

Lorn Elk-Robe, President
American Indian State Employees of CA

Dave Felderstein, Consultant
Senate Public Employment and Retirement Committee

Roger Fong
Personnel Services Administrator
County of Sacramento

Donna Giles
Director of Human Resources
City of Sacramento

Gerald H. Goldberg, Executive Officer
Franchise Tax Board

John Grant, President
California Assn. of Professional Scientists

Judy Guerrero
Deputy Director of Administration
Department of Transportation

Nancy C. Gutierrez, Director
Department of Fair Employment
and Housing

Jon Hamm, Executive Manager
CA Association of Highway Patrolmen

Gloria Harmon, Executive Officer
State Personnel Board

Elizabeth Hill
Legislative Analyst

Timothy A. Hodson, Executive Director
Center for California Studies, CSUS

Ruth Holton
California Common Cause

Senator Teresa Hughes, Chair
Senate Public Employment
and Retirement Committee

G. Alan Hunter, Asst. Executive Officer
Franchise Tax Board

Assemblyman Phil Isenberg, Chair
Assembly Judiciary Committee

Cristy Jensen, Director
Graduate Program of Public Policy &
Administration, CSUS

Senator Patrick Johnston, Chair
Senate Industrial Relations Committee

Arthur E. Jordan, Executive Director
Associated California Health Centers

Diane Just
Department of Social Services

Assemblyman Richard Katz, Chair
Assembly Transportation Committee

W.L. Kelley, Chief
Program Management & Professional
Standards Division, CA Highway Patrol

Senator Quentin L. Kopp, Chair
Senate Transportation Committee

Joanne Kozberg, Secretary
State and Consumer Services Agency

Dean Lan
Coalition of Minorities,
Women and Disabled, Caltrans

Senator William Leonard
Member, California Constitution
Revision Commission

Wanda Lewis, President
Black Advocates in State Service

James Libonati, Chief
Personnel Management
Department of Corrections

John Lockwood, Director
Department of General Services

Peter Lujan, Supervisor
Mediation & Conciliation Service
Dept. of Industral Relations

Rick McWilliam
Chief of Labor Relations
Department of Personnel Administration

Char Mathias, Asst. Chief Counsel
Office of Administrative Law

Larry Menthe, Public Employees
International Union of Operating
Engineers, Stationary Engineers
Local No. 39

Clem Meredith, Consultant
Assembly Public Employees, Retirement
& Social Security Committee

James W. Milbradt
California State Supervisors, Inc.

James D. Mosman
Chief Executive Officer
State Teachers' Retirement System

Kenneth Murch, Consultant
Calif. Assn of Psychiatric Technicians

Assemblywoman Grace Napolitano
Member, Assembly Public Employees,
Retirement & Social Security Committee

Michael Navarro
Dept. of Personnel Administration

Walter Norris, Director of Public
Employees International Union of
Operating Engineers, Stationary
Engineers Local No. 39

Don Novey, State President
CA Correctional Peace Officers Assn.

Dennis O'Brien, President
CA Dept. of Forestry Employees Assn.

Fely Salgado, President
Filipino American State
Employees Association

Tom Pettey, Chief
Human Resources Division
Public Employees Retirement System

Mary Philip, President
Asian Pacific State Employees Assn

Assemblyman Richard Polanco, Chair
Assembly Ways and Means
Subcommittee on State Administration

Aaron Read
Legislative Representative
Aaron Read & Associates

Gary Robinson, Exec. Administrator
Union of American Physicians &
Dentists

Sondra Scolfield, President
AFSCME

Floyd D. Shimomura
Assistant Attorney General
Department of Justice

Robert Sifuentes, President
Personnel Management Assn. of Aztlan

John E. Sikora
Labor Relations Consultant
Association of California State Attorneys
and Administrative Law Judges

John D. Smith, Director
Office of Administrative Law

A. Keith Smith, Division Chief
Field Operations
Bureau of Automotive Repair

Yolanda Solari, President
California State Employees Association

Lafenus Stancell
Chief Deputy Director
Department of Finance

James M. Strock
Agency Secretary
Environmental Protection Agency

Rebecca K. Taylor
Senior Vice President
California Taxpayers' Association

Robert Thompson
Deputy General Counsel
Public Employment Relations Board

David J. Tirapelle, Director
Department of Personnel Administration

Edward Trujillo, Chief
Human Resources Division
Department of Veterans Affairs

Daryll Tsujihara, Chief
Personnel Programs Division
Employment Development Department

Robert Turnage
Legislative Analyst's Office

Col. Jay R. Vargas, USMC (Ret.)
Director, Department of
Veterans Affairs

Assemblyman John Vasconcellos, Chair
Assembly Ways and Means Committee

Walter Vaughn, Asst. Executive Officer
State Personnel Board

APPENDIX B

Witnesses Appearing at
Little Hoover Commission
State Work Force Public Hearings

August 23, 1994, Sacramento

Frank Thompson, Executive Director
Commission on the State and Local Public Service, The Nelson A. Rockefeller Institute of Government

Gloria Harmon, Executive Officer
State Personnel Board

Lillian Rowett, Chief Deputy Director
Dept. of Personnel Administration

Darlene Moser, Personnel Director
Franchise Tax Board
Ad Hoc Personnel Officers' Committee

Yolanda Solari, President
California State Employees Assn

Nancy C. Gutierrez, Director
Dept. of Fair Employment & Housing

Char Mathias, Assistant Chief Counsel
Herb Bolz, Supervising Attorney
Office of Administrative Law

Kurt Sjoberg, State Auditor
Bureau of State Audits

November 16, 1994, Los Angeles

Dr. Cristy Jensen, Professor
CSUS, Graduate Program in Public Policy and Administration

Marty Morgenstern, Former Director of the Department of Personnel Administration

James Birch, Governmental Affairs, New United Motors Manufacturing, Inc. (NUMMI)

Michael Asimow, Professor of Law
UCLA

James W. van Loben Sels, Director
Department of Transportation

John O'Leary, Policy Analyst
Reason Foundation Privatization Center

James Tilton, Deputy Director
Administrative Services Division
Department of Corrections

Bruce Blanning
Blanning and Baker Associates, Inc.

Larry Andreuccetti
California State Employees Assn (CSEA)

APPENDIX C
A Brief Synopsis of the State Employer-Employee Relations Act (SEERA)

Government Code Sections 3512-3523.5 contain the detailed provisions of the State's collective bargaining law. SEERA was created in 1977, by legislation introduced by Senator Ralph Dills, and soon after it was signed into law its constitutionality was challenged by the Pacific Legal Foundation. In 1978, the law was ruled constitutional and implementation began. The key elements of the act are outlined below:

- Coverage:

  Any civil service employee of the State, as well as the teaching staff of the schools under the jurisdiction of the Department of Education, except:

  a. managerial employees;
  b. confidential employees;
  c. employees of the Legislative Counsel Bureau;
  d. employees of the Public Employment Relations Board;
  e. professional employees of the Department of Finance engaged in the preparation of the state budget; and
  f. conciliators employed by the State Conciliation Service.

- The Negotiation Obligation:

  The employer and employee representatives are obligated to meet and confer "in good faith." This means that the parties must begin their discussions with an open mind. There is no legal requirement that either side concede to the other, only that they maintain a flexibility for give-and-take discussions during negotiations. The law states that the parties have "the mutual obligation to meet and confer promptly...and continue for a reasonable period of time to exchange freely information, opinions and proposals, and to endeavor to reach agreement..."

- The Scope of Representation:

  The scope of bargaining is limited to wages, hours and other terms and conditions of employment. The scope does not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order. For example, it would not be considered appropriate to discuss state or federal laws pertaining to discrimination, modifications to the State's "merit principles," etc.

- Management Rights:

  "Management rights" are defined and they describe those matters that are reserved to management. They may include "the right to determine the mission of departments, to maintain efficiency of its operations, set standards of service, and determine the procedures and standards of selection for the employment and promotion, layoff, assignment, scheduling and training of staff; to determine the method, means and personnel by which operations are to be conducted; and take necessary actions to carry out its mission in emergencies."

- The Criteria for Determining the Appropriateness of a New Unit:

  When an organization wishes to represent a group of employees, they must seek approval from the Public Employment Relations Board. The Board determines whether or not a new bargaining unit would be reasonable by taking into consideration such criteria as: the similarity of the duties and responsibilities of positions, the educational and/or skill levels required, the geographic location of employees, historical relationships, job danger/safety considerations and the potential effect on an existing employee organization.

- Restrictions on Who is Covered:

  Management and confidential employees are not covered under the terms of collective bargaining agreements. Supervisors have limited rights. The State has an obligation to meet and discuss proposals before it makes a decision but no obligation to go through bargaining before implementing a proposal that might affect this group.

- Recognition:

  Once a unit determination is made and the employees select a union to represent them, that organization becomes the exclusive representative; no other organization may represent employees in that bargaining unit.

- Enforcement Board:

  The Public Employment Relations Board is responsible for overseeing the State Employer-Employee Relations Act and adjudicating issues that arise, such as allegations of unfair labor practices or requests to decertify exclusive representatives.

- Unfair Labor Practice:

  The Act prohibits discrimination, interference, restraint and coercion against employees in the exercise of their rights. It prohibits domination or interference with the formation or administration of an employee organization; refusal of the parties to meet and confer in good faith; and the refusal to participate in good faith in mediation procedures.

- Organizational Security:

  The law provides that there can be "dues checkoff" and "maintenance of membership." These items are negotiable. To date, the State and the employee organizations have basically negotiated payroll deduction and will withhold dues from the wages of employees within a unit.

  Employees do not have to belong to the exclusive representative's organization, but they still must pay what is known as "fair share dues." This is a fee that is slightly less than the regular union member's dues, as it covers all representational unions costs but excludes those costs associated with the

union's political activities. The lone exception is Unit One employees, those in the Administrative, Financial and Staff Services Unit. This group voted that those who were not members of the union would not have to pay "fair share due."

- Impasse Procedures:

  Parties may agree to mediation. If that occurs, the costs are divided. Either party may request the PERB to appoint a mediator. If PERB does, the costs are paid by PERB. Parties may also voluntarily agree to fact-finding.

- Public Disclosure:

  All initial proposals of both parties must be presented at a public meeting. Negotiations cannot commence, except in cases of emergency, until at least seven days after the public meeting.

- The Memorandum of Understanding:

  Once agreement is reached, the union takes it to its members for a vote of approval; the State takes the agreement to the Legislature. If the members or the Legislature do not approve the tentative agreement, the parties are required to return to the bargaining table. If the agreement is approved by their respective parties, it is memorialized in the Memorandum of Understanding -- the contract. Typically, the contracts become effective as of July 1. There is no set period of time for a contract to run; this is a matter for the parties to negotiate. In some instances, it is to the advantage of the parties to negotiate a year-to-year contract; in other instances, it may be desirable to negotiate a multi-year agreement. The present contracts were negotiated for a three-year period and they will expire June 30, 1995.

- Right to Strike:

  The law does not address this issue. For years it had been assumed that public employees did not have the right to strike. The basic view was that 1) a public employee strike is tantamount to a denial of governmental authority; 2) the terms and conditions of employment are not subject to bargaining as in the private sector, 3) granting public employees the right to strike would grant them excessive bargaining leverage, and 4) public employee strikes would disrupt essential public services and threaten the general welfare. However, there have been a series of Court decisions that have found these rationales to be invalid. The key decision was one authored by the State Supreme Court, *County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660, SEIU* (1985) 38 Cal. 3d 564. It held that public employees did have the right to strike so long as a work stoppage did not "pose an imminent and substantial threat to public health or safety." This prohibition against strikes has since been extended to include strikes that might threaten social or educational welfare.

APPENDIX D

State Employment Trends

Fiscal year	All State Employees		Civil Service		State Employees per 1,000 population
	Payroll (billions)	Number of employees	Payroll (billions)	Number of employees	
95-96*	$11.8	274,000	$8.0	185,000	8.3
94-95	$11.4	270,000	$7.6	182,000	8.4
93-94	$10.8	265,000	$7.0	171,000	8.3
92-93	$11.0	260,000	$6.8	178,000	8.3
91-92	$10.9	261,000	$6.6	176,000	8.5
90-91	$10.3	260,000	$6.2	164,000	8.7
89-90	$9.6	254,000	$5.6	156,000	8.7
88-89	$8.8	248,000	$4.9	152,000	8.7
87-88	$8.3	237,000	$4.5	145,000	8.6
86-87	$7.9	232,000	$4.3	142,000	8.6
85-86	$7.0	229,000	$3.9	137,000	8.7
84-85	$6.3	229,000	$3.2	135,000	8.9
83-84	$5.5	226,000	$3.1	139,000	8.9

Source: Governor's Budgets
* Projected

The table shows that nearly all of the growth in state employment has been within the civil service. Civil service is defined as all state employees except exempted executives, higher education, judicial and legislative employees. Despite the growth in absolute numbers of employees, the table also shows there has been a slight decrease over time in the ratio of state employees to the overall population.

APPENDIX E

State and Private Income Trends
(Percent change from prior year)

Year	Consumer Price Index	Personal income (per capita)	Civil Service COLA
	Percent Change		
1995	unavail.	unavail.	3
1994	2.7	unavail.	5
1993	2.6	1.3	-5
1992	3.5	3.4	0/-5
1991	4.0	1.1	5
1990	5.2	5.3	4
1989	4.8	4.9	6
1988	4.4	4.9	3.75
1987	4.2	4.4	0
1986	3.1	4.7	5
1985	4.5	6.1	6
1984	4.8	9.0	14
1983	1.7	5.2	0

Sources: Governor's Budgets, Department of Personnel Administration, California Statistical Abstract.

Table 3 shows the percentage increases in consumer prices resulting from inflation, the increases in income of all Californians, and the increases in income of state civil service workers. The Consumer Price Index is based on prices in California's urban areas. The personal income is calculated on a per capita basis for all Californians. The civil service Cost of Living Allowances represent the net change to most bargaining units within the calendar year. The changes took effect at various times during that year. From July 1, 1992 to January 1, 1994, most state employees took a 5 percent reduction in pay. That temporary reduction was restored on January 1, 1994, and employees were given a 5-percent increase.

Endnotes

ENDNOTES

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LITTLE HOOVER COMMISSION FACT SHEET

The Little Hoover Commission, formally known as the Milton Marks Commission on California State Government Organization and Economy, is an independent state oversight agency that was created in 1962. The Commission's mission is to investigate state government operations and -- through reports, and recommendations and legislative proposals -- promote efficiency, economy and improved service.

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The Commission holds hearings on topics that come to its attention from citizens, legislators and other sources. But the hearings are only a small part of a long and thorough process:

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