SELECTED CURRENT CIVIL SERVICE ISSUES

July 1980

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July 16, 1980

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PREFACE

In October1 1979, the Economy and Efficiency Commission appointed a task force on incentives and disincentives in County government for the purpose of following up on findings by the 1979 Grand Jury that the morale of County employees is low and the employment system in disarray.

In March, 1980, on motion by Supervisor Burke, the Board of Supervisors referred to our commission a report and recommendations by Local 660 of the Service Employees International Union which alleged that the Civil Service Commission operates ineffectively. In May, 1980, the Board of Supervisors delayed public hearings and action on new civil service rules until July 22, partly in anticipation of our task force report.

This report is the first in a series the task force intends to issue on the subjects of the employment system, morale, and organizational development. In the series, the task force plans a comprehensive treatment of the effects of system structure and operations on County performance.

The task force designed this report to address two urgent Board concerns: new civil service rules and operations of the Civil Service Commission. While the report does not contain a comprehensive analysis of the details in the proposed new rules, it reflects the final conclusions and recommendations of the task force on those issues it believes are closely connected to effective management, incentives and disincentives.

In its analysis, the task force first reviews the status of the employment system in view of fundamental unresolved employee relation issues. It then takes up the subject of the civil service rules and the operations of the Civil Service Commission. It presents our recommendations on those subjects within the context of a developing employment system which is at present unstable and marked with controversy because of the absence of agreement on goals for its long-range development.

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SUMMARY

Introduction

This report is the first in a series we plan to issue on the subject of incentives and disincentives influencing the effectiveness of the County's employment system. It contains our task force's conclusions and recommendations on two short range issues which the Board of Supervisors, County management, and employee organizations are presently considering for action: 1) new civil service rules implementing Charter amendments adopted by the public in 1978 to simplify the civil service system; and 2) the operations of the Civil Service Commission as an organization with considerable institutional impact on the County's ability to manage its employment system.

The immediacy of both subjects need not, and should not, obscure their long term significance. Whatever action the County takes now is likely to influence the development of the employment system for some time to come. That system necessarily includes both civil service and collective bargaining. The laws, the courts, and above all County and employee actions have established the two as reality. The underlying issue, therefore, is the long range development in the County of a system which effectively utilizes and balances both elements.

None of the participants in the current controversies - the Board, the State government, the unions, the various commissions - knows with any certainty what that future system will look like. The participants differ strongly over goals and objectives for its development. The immediate, heated controversy over civil service rules and the operation of the Civil Service Commission reflects uncertainty over future development and disputes over the goals of future development. In that sense, then, the various proposals and counter-proposals represent the present strategies and tactics adopted by those who view themselves as adversaries in the system to support their

differing visions and goals. Regardless of the action taken, we expect controversy to remain as long as the parties disagree on the goals of system development. Their various strategies and tactics may change.

In 1973, our commission issued a study and recommendations, Civil Service and Collective Bargaining in Los Angeles County Government. We recommended a design, structure and policy based on the County's objective of developing an effective, equitable and balanced employee relations system preserving merit principles. Some of what we recommended has been accom-plished; some has not. The strategic and tactical issues which were important at the time have vanished or been resolved. The underlying issues, however, remain the same and remain unresolved.

As a pragmatic matter, the County must take action to adopt civil service rules implementing the 1978 Charter amendments and establishing direction for the Civil Service Commission. The Board of Supervisors has asked us to review the various alternatives and proposals and to present our recommendations. In this report, the task force presents conclusions and recommendations for current action after discussing the current system and our view of the long-range design issues. In this section, we summarize the conclusions and recommendations.

The County Employment System

Los Angeles County employs a workforce of approximately 80,000. The County organizes the work of producing and delivering County services into 57 departments, each with an executive who is directly accountable to the Board of Supervisors. The County further organizes the work into some 3000 job classifications. The County assigns classifications and positions in accordance with the mission, needs and finances of each department. Thirteen employee unions organized by authority of State law represent over 90% of the County's workforce. The 13 major unions are further organized

into 56 bargaining units representing specific classes. Slightly less than half of the represented employees are also dues paying members of the unions.

The County Charter defines the employment system as a civil service system. It establishes merit principles of employment governing the basis on which the County may recruit, select, advance and retain employees, assure them fair treatment and freedom from discrimination, and protect them from the effects of political patronage or spoils.

The Charter requires the Board of Supervisors to adopt a system of civil service rules implementing merit principles of employment, to appoint a Director of Personnel who administers the system for the Board and to appoint a Civil Service Commission with five members to act as an appellate body. The Charter requires the commission to adopt rules governing its own proceedings.

State law requires the County to operate an employee relations system providing for the rights of its employees to organize and to bargain collectively on wages, hours and other terms and conditions of employment. The County's Employee Relations Ordinance provides for the rights of employees and the County. Within the framework of the ordinance, the County and employee organizations establish wages, hours and terms and conditions in legally binding contracts known as memoranda of understanding.

The Director of Personnel represents the Board of Supervisors in negotiations with the unions. The ordinance authorizes the Board to appoint a three member Employee Relations Commission to implement and administer the provisions of the ordinance. The commission certifies employee organizations as the majority representative of a group of employees thus entitling them to negotiate for the group; provides for mediation, fact finding or arbitration of disputes over implementation of the ordinance and contracts; and hears appeals of charges of unfair employee relations practices and ordinance violation.

The Federal and State governments and the courts Influence the operation of the County's employment system. The Federal government requires merit principles of employment as a condition for financing County programs. Through its constitutional authority over the County as a political subdivision, the State enforces laws requiring the County to recognize unions. The State also administers and enforces Federal requirements. An accretion of court decisions restricts the County's freedom to act unilaterally, clarifies employees' individual rights, and imposes due process requirements on the County's personnel procedures.

Unresolved Issues

The collective bargaining and employee relations systems have not yet matured in the public sector. All levels of government are struggling with reforms of civil service systems consistent with the development of collective bargaining while recognizing the need to preserve merit principles of employment in political institutions. The consequent tension between the two elements of the objective - effective employee relations and preservation of merit principles - has led to differences over the underlying structure and policy of the system. In contrast, collective bargaining and employee relations are somewhat more mature in the private sector, at least with respect to the basic structure and legal policy.

The principal differences between private and public sector employment systems are pragmatic. It is critically important to recognize that none of these is independent of the others. Resolving each will require resolving all of them. For the County, the unresolved issues are:

1. Management identity and organization. Managers, supervisors, and administrators are not organized into unions in the private sector. They are represented by unions in the County. The reason is, the tradition of civil service has accorded those employees little status or identity distinguishable from those accorded all employees. Managers and supervisors, who were historically members of employee organizations, remained members and provided leadership when those organizations developed into unions.

2. Union Security. In many public and private sector collective bargaining systems, the standard Is to permit the negotiation of requirements that

those benefiting from union representation share in the financial support of that representation. In the County, no such requirement can be negotiated.

3. Roles of Third Party Neutrals. The various respective roles of appeals boards, mediators, arbitrators, and hearing officers are clear in the private sector and incorporated in collective bargaining agreements. In the County, those roles are unclear, ill defined and frequently disputed.

4. Strikes and Job Actions. The rights, limitations, responsibilities, and laws governing unions' use of the strike sanction and management's response are clear as they apply to the private sector. Although most agree that strike prohibitions in the public sector are ineffective, the various alternative policies and their application are not at all clear in the County.

5. Unions' Political Campaign Activity. While employee participation in management is increasing in the private sector, unions have no decisive role in the selection of management or the directorate of corporations. In the public sector, unions contribute labor and funds to support candidates and promote their views on issues. While few would suggest that their contributions or those of others dominate decisions - we certainly do not suggest it - the appearance of a potential for effective influence is an area of substantial difference between private and public employee relations systems. The public nature of governmental decisions and the activities of other constituencies are related, balancing forces.

6. The Scope of Bargaining. In private sector collective bargaining systems the negotiability of issues is seldom itself an issue; the interpretation of what constitutes terms and conditions of employment is fairly standard and procedures to resolve disagreement have been adopted. In the County, the scope of bargaining and the nature of negotiation are still issues in their own right. County contracts now contain management rights clauses - a major advance. Nevertheless, the immediate controversy today is the negotiability of civil service rules.

Our reason for listing these differences is pragmatic. Until the basic structural and policy issues are clarified, resolved, jointly understood and acted on, the system will remain unstable. It will be marked by extensive and costly litigation. It will be characterized by strident militancy and unproductive ideological debate.

It is within this context that we flow take up the task force's recommendations on the short term issues: the civil service rules and operation of the Civil Service Commission.

The Civil Service Rules

County management and labor have been meeting to discuss proposed civil service rules implementing the 1978 Charter amendments. The unions filed an unfair labor practice charge alleging that the County has failed to negotiate the rules in good faith. The Employee Relations Commission has referred the unfair practice charge to mediation. County management has recommended that the Board of Supervisors hold a public hearing and adopt the rules as proposed. The Board of Supervisors has scheduled a public hearing for July 22, 1980.

The Economy and Efficiency Commission has no material role in negotiations and has no interest in interfering with or otherwise influencing the processes of mediation and negotiation. Nevertheless, three proposed rules, on which we have developed recommendations, will have profound long range effects on the County's ability to manage an effective employment system. Our recommendations follow.

County management contends that the Board should adopt the rules as an ordinance. The unions contend that the rules should be incorporated in a memorandum of understanding. The difference is that the Board could change the terms of an ordinance, if necessary, anytime after holding a public hearing. Changing a contract would require agreement by both parties to negotiate on a mutually agreed scope. That is, either party could block even a minor technical change by refusing to discuss it or by insisting on including other subjects in the discussion.

We believe that the flexibility of an ordinance is advantageous. An expeditious amendment process will be necessary as the Board, the

commission, the unions and employees gain experience with the new and untried rules. At the same time, adopting the ordinance form will not in any way inhibit the unions and employees from appropriate participation in their future development or prevent management and the unions from agreeing in the future to incorporate them or elements of them in specific contracts or asking the courts to decide. Therefore,

The task force recommends that the Board of Supervisors adopt the civil service rules as an ordinance.

County management contends that the "rule of three" governing selec-tion and appointment of candidates for County employment should be replaced by a rule which ranks candidates in groups, based on ranges of examination scores. The unions contend that the "rule of three" should be replaced by a candidate-ranking rule based essentially on seniority and limiting selection to the highest ranking individual.

The objective of a personnel rule limiting the ability of managers to appoint whomever they choose to County positions is to implement merit principles. Without such a limitation, appointments in a political system could soon revert to spoils as managers succumbed to pressure to appoint individuals with little demonstrable competence for the position.

The present, traditional rule is known as the "rule of three". It requires managers to select from a list of candidates examined for a position one of the three individuals who scored the highest. Since it demands a strict ranking of individuals based on precise scores, it violates principles of testing established by contemporary authorities on examination reliability. It violates the fundamental principle of managerial accountability by severely limiting the degree of choice that a manager can exercise over his or her subordinates for whose performance the manager should be held accountable. By limiting the choice to three candidates whose scores may differ by tenths of percentage points or even be tied, it weakens the County's

ability to meet affirmative action requirements.

County management's proposal to govern selection by grouping candidates according to ranges of scores on a variety of types of examinations would replace the archaic rule of three with a selection system preserving merit principles by limiting managers' choices to individuals with demonstrable competence based on present state-of-the art examination technology. It will improve the Board3s managerial ability to hold its managers accountable for performance. It supports affirmative action objectives. While it may be reasonable in the future to weight seniority highly in examinations and selection for specific positions, it is unreasonable to incorporate it in a countywide rule intended to implement merit principles. The application of seniority in general, for example to management positions, would contradict principles of incentives and performance established in current research. In addition, seniority rules would impede affirmative action. Therefore,

The task force recommends that the Board of Supervisors adopt the rule of certification and appointment from lists grouped by ranges of examination scores.

County management contends that the role of the Civil Service Commission in hearing appeals of personnel decisions should be limited to allegations of discrimination or other non-merit factors, discharges, reductions and suspensions exceeding five days in length. In all other cases, the final stage of administrative review would be appeal to the Director of Personnel. The unions contend that many additional actions including examinations, components of examination, classification decisions, performance evaluations and others affecting individuals - should remain within the scope of appeal to the Civil Service Commission.

The objective of the Charter provisions on appeal is to protect the public interest by providing a lay citizens' group - the Civil Service Commission - the authority to reverse or modify management actions which are

discriminatory or which arbitrarily abridge employees' rights to employment in violation of merit principles. The objective is in tension with the objective of providing a productive and efficient workforce. This is so because the rights and processes of appeal limit managers' flexibility of action in organizing work, deploying resources, and disciplining employees. The issue in developing an effective personnel rule is to establish an appropriate balance between the two.

We believe that appeals to the commlssi6n should be limited to those involving employees' property rights and allegations of discrimination. We have made no judgment on the detail of what should be the definition of discrimination. We recognize the definition as the issue disputed in negotiations, hinging on how broad or narrow a definition should apply.

The extension of appeals to the commission to include examinations, parts of examinations, classifications and the like has excessively inhibited managers' ability to act on matters which are purely administrative in character. Appeal to the commission can delay appointments, for example, for months while the technical details of an examination are reviewed, The effect has been to depress the morale of managers and candidates alike. The proposed rule would expedite such appeals by directing them to the Director of Personnel rather than the Commission except in cases of discrimination.

In balancing the two public interest objectives, the requirements of effective and timely management action should take precedent over employees' ability to delay action by appealing to the Civil Service Commission, provided that employees' basic Charter rights and fundamental merit principles are not violated. Therefore,

The task force recommends that the Board adopt the proposed rule limiting the matter of appeals to the Civil Service Commission to cases where discrimination is alleged, cases involving discharges and reductions of permanent employees, and cases involving suspensions exceeding five days in length.

We have no comment on the remaining proposed rules, or the text in which they are presented, or their form.

Operation of the Civil Service Commission

Our task force has reviewed the concerns, expressed by Local 660, Service Employees International Union (SEIU), regarding the operations of the Civil Service Commission, its role, the qualifications of its members, its relationship to the hearing officers it employs, the roles and qualifications of hearing officers, and its procedures. It was no part of our charge to evaluate the behavior of any individual and we have not. We focus our review and our recommendations on the commission as one structural element in the County's total employment system within the context of the unresolved structural and policy issues we reviewed above. We emphasize, there is nothing new about controversy over the Civil Service Commission, its members, and its effectiveness. The system is unstable in its relationship to developing an innovative, but not yet mature, system of personnel administration and employee relations. The history in the County is marked by attempts to fine-tune the system by repairing the Civil Service Commission. In our view, this is treating symptoms rather than causes. The commission is only one part of the system, and the system itself is unstable.

Our task force interviewed union representatives, County managers and commissioners on the subject of the Civil Service Commission and the concerns expressed by Local 660. Based on those interviews, our central finding on this subject is that County and union officials, and commissioners themselves, have no clear consensus on the operational role of the commission. As a consequence, the various parties have been acting on differing perceptions of that role. Although the 1978 Charter amendments clearly define its structural role as an appeals body, some believe that role means arbitration; some believe it means mediation. Some believe it is analogous to an appeals

court employing hearing officers to act as a trial court; still others believe it is analogous to a trial court employing hearing officers as fact finders.

The intent of the Charter and all previous Charters is to establish in the Civil Service Commission a third-party neutral to safeguard merit principles. Moreover, the commission is designed as a lay citizens' group rather than an expert or specialized technical panel. The structure assumes that participants from the general public, not technicians, form the appropriate vehicle to protect the public interest by hearing appeals based on merit principles.

The concept of an appeals body requires it to be neutral and impartial with respect to the action taken. The principal thrust of Local 660's analysis of commission decisions was to question its impartiality. We do not discount the value of the analysis as an attempt to quantify and objectively report on this historically emotional subject, nor do we doubt the validity of its motivation or sincerity. The report raises questions which should be addressed. Some of its recommendations should be adopted.

Nevertheless, we disagree with the conclusions and the analysis presented in Local 660's report. First, the classification of commission decisions into "sustains management" and "sustains employee" is faulty. If, for example, the commission reduced a management decision to discharge an employee by ordering a suspension instead, the decision was counted as "sustaining management". The range of commission decisions is a continuum, not a dichotomy. Second, the application of scorecard methods to an assessment of neutrality is invalid, since there is no established standard. The finding, that 90% of decisions sustain management may indicate that management will not permit cases to go to the commission unless it has at least a

90% chance that the commission will not completely reverse its action.

In fact, the characteristic previous complaint about the commission has been exactly the reverse: that it is structured to favor the employee. In 1977, however, the contract auditor of the Grand Jury found no statistical validity for that contention either. The auditor did find widespread management perception, whether or not accurate, of favoritism to the appellant, and a consequent reluctance to act. That is, the perception that discipline is difficult causes management to rarely exercise it.

In addition to the statistics, Local 660's report contains case histories and narratives with detailed substantive critique of the quality of specific commission decisions. While the information is limited to selected cases, we found it valuable in illuminating some of the central issues: no consensus on the operational commission role as a hearing board, fact finder, mediator or arbitrator; no consensus on the reasons for hiring hearing officers who are not commissioners; and no consensus on standards and procedures applicable to case hearings and determination.

It is clear from the Charter that the commission's role is to hold hearings on appeals of management decisions and that the commission may employ hearing officers. The definitions of administrative hearings and several court decisions establish strict rules governing due process, the burden of proof and rules of evidence. The role necessarily includes fact finding. We define fact finding as 1) identifying the issues in dispute, 2) establishing the common and differing positions of the parties, and 3) resolving differences of fact between management and the employee. We exclude from our definition the various subtleties of connotation the term embodies in its strict legal usage because of legislation and court decisions. We intend it to mean the investigatory and reporting functions, finding of fact, which are necessary for the commission to reach a conclusion.

The commission's role excludes mediation. To assist the parties in dispute to voluntarily reach agreement on an action, a mediator may meet with them separately and needs some assurance that neither is irrevocably committed to a prior position. In Civil Service Commission cases, separate meetings with the parties would violate the due process standards for administrative hearings. Moreover, the employee and management are genuinely committed; otherwise, neither would be there. It is one reason why action before the commission is rare. Some of the most telling criticism of the commission by Local 660 and the Coalition bears on exactly this point: individuals hearing commission cases acted on the perception that their role includes mediation.

The commission 5 role excludes arbitration. For arbitration to work, each party to a dispute must agree on three matters: 1) to be bound by the decision of the arbitrator, 2) to jointly select the arbitrator, and 3) to share the compensation of the arbitrator. According to court decisions and the Charter, the Civil Service Commission deals with discrimination and the property rights of employees to safeguard merit principles. Except in cases where it is feasible to incorporate disciplinary procedures in memoranda of understanding, when they would be arbitrable, it is essential in such matters to permit further appeal to Court. We believe that it would be counterproductive to incorporate in commission procedures either of the other two characteristics of arbitration - joint selection and joint compensation - without an agreement to be bound. Such an action would resemble arbitration without its substance and further confuse the commission's role.

For the reasons we have discussed,

The task force recommends that the Board, the Civil Service Commission, the unions and County management agree to specify the commission's role as that of a third party neutral conducting administrative hearings which includes fact finding but excludes mediation and arbitration.

The Role of Hearing Officers

Much of the recent controversy over Civil Service Commission operations derives from differing perceptions of he role of hearing officers and their relationship to the commission. Local 660 and the Coalition of County Unions have recommended that commissioners be excluded from acting as hearing officers. Then, the appeal would be a two stage process. First, a hearing officer would hear the case. Second, the matter appealed to the commission would be the hearing officer's report (rather than the original management action). In the long run, the qualifications of a lay commission to decide on the findings of technicians would be questioned. The practical effects would be to limit the commission's overall discretion over the appeal of management action - and to diminish citizens' participation in the structure.

In our analysis, hearing officers are individuals employed as agents of the commission in the same sense that a trial court employs a special master or consultant to assist it in determining issues and establishing facts. Their role is that of a fact finder. Their reports must contain 1) identification of the issues, 2) description of the common and differing positions and 3) facts. Their reports may include interpretation, opinion and recommendations, including analysis linking the issues, positions, and facts to the recommendations. The commission, however, decides. The opinions and recommendations of hearing officers are purely advisory. Therefore,

The task force recommends that the role of hearing officer be limited to that of fact finding on behalf of the commission. By fact finding we mean 1) identifying the issues, 2) establishing the common and differing positions of the parties, and 3) resolving differences on the facts. Evaluation of the facts and recommendations are optional and purely advisory.

Role of Individual Commissioners

Before 1975, the standard was that individual commissioners or the commission heard all cases. The workload did not require outside hearing officers. Between 1969 and 1975, however, the commission's workload

quadrupled because of rule changes increasing its scope and court decisions imposing procedural requirements. The commission began to hire hearing officers to help clear workload.

Commissioners should be encouraged to act as hearing officers. It is the most effective way to meet essential joint objectives: 1) to ensure citizens' participation in protection of merit principles and 2) to qualify the commissioners in case hearings through experience in the details. Delegation of the function in all cases to specialists would subvert the fundamental intent, that the County draws on the general public to protect the public interest in appeals.

Although the Charter does not require commissioners to meet qualifications, the Board of Supervisors can qualify its appointees as fact finders and adopt procedures to ensure that all commissioners are fully informed of their responsibilities and duties, the time required, and the limitations.

The County should compensate commissioners for acting as hearing officers with the same terms and conditions used for outside hearing officers employed by the commission. We agree with Local 660 that no single commissioner should dominate this activity. However, procedural and accounting controls have been devised to prevent that from occurring. It is unnecessary to eliminate compensation altogether. To do so is to discourage commissioners from serving as hearing officers, even occasionally, and thus reduces their level of participation in the work. A non-zero limit of total compensation, on the order of $12,000 annually, would be a more

effective means of preventing unbalanced compensation of any individual while encouraging the full participation of each commissioner. Moreover, with such a system the commission could minimize its need for outside hearing officers. For these reasons,

The task force recommends that individual commissioners continue to act as hearing officers. Further, we recommend that they be compensated for hearings in the same way as other hearing officers. Finally, we recommend that the Board limit the total annual compensation of each commissioner to a non-zero ceiling, on the order of $12,000 for commission business

Commission Procedures

Local 660 In Its report and the Coalition allege that commission procedures are sometimes inconsistent or inconsistently applied, that commission policies and procedures are not adequately documented, and that some procedures are Improper. We found substance in their statements and recommendations. We are particularly concerned about the allegations of "ex parte" communications, executive sessions of the commission, and the absence of documented general criteria or guidelines on the commission' 5 treatment of specific cases. We are also concerned about the allegation that the commission inconsistently applies standards when it accepts or rejects the reports of hearing officers.

These problems are procedural rather than structural in character. They can be corrected with properly documented and consistently applied procedures. While we do not propose that the commission legislate or attempt to create detailed standards covering every circumstance, it should adopt general guidelines for its own decision making based on its previous actions, court decisions and other generally accepted decisions in labor relations cases.

Finally, commissioners who are newly appointed as laypersons will be required to act on matters involving employee rights. It is unfair and

counterproductive to ask them to accept and discharge that responsibility without effective prior training and orientation in the requirements and procedures. Therefore,

The task force recommends that the Civil Service Commission establish and document policies and procedures with the assistance of County Counsel and the advice of all interested parties. In addition, the commission should establish a program of training and orientation of new appointees in the requirements of the position and the policies and procedures.

Conclusion

The task force firmly believes that the historical and traditional controversy over the operations of the Civil Service Commission and the rules will r;ot subside until the County resolves the basic policy and structural issues remaining in its employee relations system. Resolving those issues, however, is likely to take some time.

On a pragmatic level, the Board of Supervisors has asked us to recommend actions on the short term decisions it must make to adopt civil service rules and to structure the operations of the Civil Service Commission.

Regarding the rules, we recommend that the Board

. adopt them in ordinance form

. adopt the proposed rule of selection by grouping candidates

. according to ranges of scores

. adopt the proposed rule on civil service appeals to the commission which limits them to allegations of discrimination and cases involving property rights.

Regarding the operations of the Civil Service Commission, we recommend that the Board, the commission and other interested parties agree to

. define the commissions operational role to include fact finding but exclude mediation and arbitration

. limit the role of hearing officers employed by the commission to the investigatory function of fact finding

. encourage individual commissioners to act as hearing officers and compensate them for doing so

. establish and document policies and procedures and establish a training program for new commissioners.

I. THE COUNTY EMPLOYMENT SYSTEM

In this section, we describe the current employment system in terms of three major components defined by law: civil service, employee relations and collective bargaining, and intergovernmental and court requirements. In subsequent sections we discuss the current situation as it applies to controversies over the civil service rules and operations of the Civil Service Commission.

Civil Service

Purpose - As amended in 1978, the Charter of Los Angeles County establishes the objectives and governing principles of the County's employment system. The Charter articulates the objectives of the system as follows:

> "[The Civil Service System] shall provide County government with a productive, efficient, stable, and representative work force."

Merit Principles - The language of the Charter defines basic merit principles of employment as the means by which the system is designed to meet its objectives. These are:

> "(1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills relevant to the work to be performed.
>
> "(2) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
>
> "(3) Assuring fair treatment of applicants and employees in all aspects of personnel administration without discrimination based on political affiliation, race, color, national origin, sex, religious creed or handicap and with proper regard for their privacy and constitutional rights as citizens.
>
> "(4) Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office."

Civil Service Rules - The Charter requires the Board of Supervisors to adopt rules to implement these merit principles of employment throughout the system. The rules cover:

(1) classification of the work into employment positions

(2) recruitment and selection of individuals for each position

(3) policies and systems for employee development and the evaluation of performance

(4) procedures for appeal of allegations of various forms of discrimination

(5) procedures for layoff

(6) hearings on appeals of discharge and reduction

(7) transfers and promotions

According to the Charter, the Board of Supervisors also appoints the Director of Personnel and a Civil Service Commission.

Director of Personnel - The function of the Director of Personnel is to administer the County's employment system for the Board, including civil service, compensation and collective bargaining, and employer-employee relations.

Civil Service Commission - According to the Charter, "The function of the Civil Service Commission is to act as an appellate body." Two kinds of appeals must be heard by the Civil Service Commission. They are:

. appeals of alleged discrimination made by County employees and by applicants for employment, including political discrimination and discrimination based on race, sex, color, national origin, religious opinions or affiliations or handicap;

. appeal of discharges and reductions of permanent employees.

The civil service rules may specify that the Commission serves as an appellate body for other appeals, such as appeals of suspensions, transfers, and performance. evaluations.

The Charter permits the Civil Service Commission to conduct hearings or to appoint hearing officers to conduct hearings.

The Civil Service Commission consists of five members. Each is appointed by the Board of Supervisors for a four year term. None may be a salaried County employee, and each must be a County resident. Otherwise, the Charter places no limitations on the Board's ability to appoint commissioners of its own choosing. The Board may remove any commissioner with a four-fifths vote after stating in writing the reasons for removal and permitting the member a public hearing.

Employee Relations and Collective Bargaining

During the late 1960's and early 1970's, the State of California established requirements to ensure that local governments would develop and implement systems providing for the rights of their employees to organize and to bargain collectively on wages, hours and other terms and conditions of employment. Los Angeles County implemented the State laws with an Employee Relations Ordinance. The ordinance has been in effect since 1968. It was last amended in 1975.

Purpose - The general goal of the employee relations system as defined in the ordinance is to "promote the improvement of personnel management and relations between the County of Los Angeles and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and services of County government". The ordinance then articulates general principles governing employee relations. They are:

(1) "recognizing and defining the rights of employees to join organizations of their own choosing for the purpose of representation on matters affecting employee relations or to represent themselves individually in dealing with the County", and

(2) "establishing formal rules and procedures to provide for the orderly and systematic presentation, consideration and resolution of employee relations matters."

Rights and Scope - The ordinance provides for the rights of employees and the County. Employees have the right to form, join, and participate In the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations, the right to refuse to join or participate in the activities of employee organizations, and the right to represent themselves individually.

The County has the right to determine the mission of each of its departments, to set standards of service, to control its organization and operation, to direct employees, to take disciplinary action for proper cause, to relieve employees from duty for legitimate reasons, and to determine the methods, means and personnel by which the County's operations are conducted. Employees and their representatives may confer or raise grievances about the practical consequences of the County's decisions on wages, hours and other terms and conditions of employment.

Within this framework, the County and employee organizations establish wages, hours and other terms and conditions of employment in the form of written agreements, called Memoranda of Understanding. The various memoranda of understanding are contracts which are legally binding on the County and on County employee organizations.

Director of Personnel - The County Charter defines the Director of Personnel as the individual who "makes reports and recommendations to the Board of Supervisors with respect to the compensation of County employees and the administration of rules and procedures to be followed in the County's employer-employee relationships". The Employee Relations Ordinance provides details governing the implementation of this function by specifying the Director of Personnel as the party acting for the County on behalf of the Board in matters of employee relations.

Employee Relations Commission - The Employee Relations Ordinance establishes an Employee Relations Commission. The function of the Commission is to implement and administer the provisions of the ordinance, by

(1) certifying (or decertifying) each employee organization as the majority representative of a group of employees, thus entitling the organization to negotiate on wages, hours and other terms and conditions of employment;

(2) providing for mediation, fact-finding, or arbitration of disputes, grievances and Impasses related to implementation of the ordinance or of memoranda of understanding;

(3) hearing appeals of charges of unfair employee relations practices and ordinance violations.

The Employee Relations Commission (ERCOM) consists of three members. Each is appointed by the Board of Supervisors for a three year term. The ordinance limits the Board's ability to appoint commissioners of its own choosing in two ways. First, the ordinance establishes qualifications for commissioners. They must have expertise in the field of employee relations, must be County residents, and must possess the integrity and impartiality necessary to protect the public interest as well as the interest of the County and its employees. Second, the ordinance establishes a procedure to ensure that both County management (represented by the Management Council) and employee organizations (represented by a designated committee) approve the individual nominees to be considered by the Board. The Board may remove any member of the commission for continued neglect of duties or malfeasance in office, after stating in writing the reasons for removal and permitting a hearing.

Intergovernmental and Court Requirements

The Federal government influences the operation of the County's employment system by promulgating and enforcing regulations governing the expenditure of funds on Federal programs implemented by the County. The State government influences the County's personnel system through statutes

governing County operation as a political subdivision of the State. The Courts influence the system through decisions on cases brought to Court on appeal from decision of the Board, County management, the Civil Service Commission, and the Employee Relations Commission.

Federal Government - The Federal government finances such County-administered programs as welfare and financial assistance, medicaid, and health programs. As a condition for maintaining these programs, it requires the County to comply with standards for implementing merit principles of employment. The Office of Personnel Management has issued standards which delineate merit principles, establish mandatory system requirements and include guidelines for implementation. Although these standards are general, the Board of Supervisors must ensure that the Civil Service rules comply with them.

State Government - The State administers Federal requirements. In addition, the State government has assumed the responsibility for establishing the principles governing County collective bargaining and employee relations systems. The current law requires the County to meet and confer with certified employee organizations on wages, hours and other terms and conditions of employment. The law permits the County to implement the system with its own ordinance providing procedures for certification and for appeals of unfair labor relations practices.

However, the State Legislature has considered several bills designed to create a State-wide employee relations system. These bills, if passed, would replace local certification and appeals boards, such as ERCO** with a State-wide board - the Public Employee Relations Board. Some of the proposed laws also include provisions dealing with public employee strikes, binding arbitration, and union security.

The Courts - As the combined Systems of civil service, collective bargaining and employee relations have developed over the last decade9 the Courts have interpreted the law as applied to specific cases. In particular, the Courts have found that permanent County employees have a property right to their jobs. This requires County management and the Civil Service Commission to ensure that the strongest measures are taken to Incorporate due process in disciplinary procedures. Employees have the right to representation and notification, and rules of evidence must be followed which are nearly as stringent as those which apply in criminal matters. The burden of proof in disciplinary cases falls entirely on management. The Courts have also acted to clarify what must be included in the scope of negotiations between the County and organized labor. In particular, caseloads must be negotiated under Court interpretation of the terms and conditions of employment; the County must meet and confer with employee representatives and hold a public hearing before adopting new civil service rules; such union security provisions as "agency shop" may not be incorporated in collective bargaining agreements in the absence of State law authorizing them. Summary

The Charter of Los Angeles County establishes a civil service system to provide the County with a productive, efficient, stable and representative workforce. Merit principles of employment regulate the recruitment, selection, advancement, retention, separation, fair treatment and protection of employees. The Board of Supervisors adopts rules to implement these merit principles. The Board also appoints a Civil Service Commission to hear appeals and a Director of Personnel to administer the system.

In accordance with State law and public policy, Los Angeles County has developed an employee relations system to provide for the rights of employees to organize and bargain collectively on wages, hours and other

terms and conditions of employment. The Board of Supervisors appoints a Director of Personnel to administer the County's employee-employer relationships and an Employee Relations Commission to certify employee organizations and hear appeals of labor practices.

The Federal and State governments and the Courts influence the operation of Los Angeles County's civil service and employee relations systems. The Federal government promulgates rules governing the implementation of merit principles in the County's employment system and enforces them through its role in financing County programs. The State government regulates collective bargaining and employee relations systems with statutes defining State-wide systems. The Courts have imposed requirements and limitations guaranteeing individual and collective employee rights, particularly the right to due process in disciplinary actions.

II. UNRESOLVED ISSUES

In any analysis of public sector employment systems, it is crucial to understand two major realities.

First, the traditional elements of civil service - protection from political patronage, or spoils, and merit principles of employment - remain and will continue to remain. Those now operating the intergovernmental system are products of those traditions, and their perceptions of the need to preserve them dominate political and managerial decisions with an impact on personnel administration.

Second, a system of collective bargaining and employee relations has not yet matured in the public sector. Laws and court decisions have influenced its development; new laws are continuously proposed and debated. Nevertheless, many issues remain unresolved. Consequently some of the controversies which erupt periodically are essentially little more than reflections of the tactics and strategies adopted by the various parties to improve their relative positions with respect to the underlying unresolved issues and the developing legal structure.

Therefore, any change introduced in either the civil service or employee relations systems must be evaluated in terms of its potential long range impact on the County's employment system.

Long Range Goals

In 1973, our commission issued a report, Civil Service and Collective Bargaining in Los Angeles County Government. In that study, we proposed several major administrative and organizational changes to resolve conflicts between the traditional civil service system and the then emerging collective bargaining system. The proposed changes were designed to resolve conflicts and support development of a balanced collective

bargaining system preserving merit principles. The proposals were:

- a charter amendment to transfer the authority to appoint the Director of Personnel from the Civil Service Commission to the Board of Supervisors;
- a charter amendment to delete the prevailing wage clause;
- a revision of the County's salary system to create a separate and distinct plan for managers, Including a plan to identify managers as a group;
- consolidation of the Civil Service Commission and the Employee Relations Commission into a single five member Los Angeles County Labor Relations Commission.

In 1976 and 1978, the public adopted Charter amendments deleting the prevailing wage clause and transferring authority to appoint the Director of Personnel from the Commission to the Board of Supervisors. In addition, the public transferred the authority to establish civil service rules from the Commission to the Board, removed County department heads and other officials from civil service protection, provided the County authority to contract for services with private firms outside of civil service, and designated the Civil Service Commission as an appeals body.

The Employee Relations and Civil Service Commissions, with agree-ment from the unions and County representatives, have adopted procedures to minimize the potential for jurisdictional conflicts between the two commissions. Nevertheless, the structural goal - a single commission to hear appeals on both merit and employee relations issues - has not been realized.

Our purpose in recommending these changes was to design a comprehensive system of employee relations in Los Angeles County which would meet the joint objectives of preserving merit principles of public employment while providing a balanced and equitable system of collective bargaining.

It is no less true now than it was in 1973 that an effective employment system meeting those joint objectives will require an administrative and appeals structure similar to our proposal. As we have noted, some of its major features have been adopted. It is equally true that that structure - and an effective1 balanced system - are infeasible until the major underlying issues which differentiate public from private collective bargaining systems are resolved in law or by the courts. Those issues remain the same as they were in 1973:

- management identity and organization
- union security
- the roles of third party neutrals
- public employee strikes
- union activity In political campaigns
- scope of bargaining

Management Identity and Organization

In our 1973 report, we recommended the development of a separate compensation plan for County managers. At the time, we were particularly concerned about a growing trend for managerial and executive employees of the County to unionize. It is essential9 we emphasized, in a balanced collective bargaining system, that those representing management be clearly identified and unified.

The County has made progress in Identifying management at executive levels and has established somewhat different compensation plans for department heads. The development of comprehensive incentive systems for all managers, however, is not yet complete. Our task force, the Director of Personnel, the Management Council, the Chief Administrative Officer, and several other County officials continue to work on the design of systems to meet the need for a separate system.

Nothing in the laws or agreements, however, prevents managerial, administrative professional and supervisory employees from forming or joining unions to represent them in negotiating with the County. At present, 18 of the 56 County bargaining units are designated as representing managerial, supervisory, or administrative employees; about 8600 such employees fill represented positions in every County department except the Department of the Board of Supervisors.

Regardless of the various weaknesses in a system with little provision for management identity, and regardless of the legal status of public employee strikes or other job-actions, widespread strikes could paralyze County government under the current arrangement. The option which most private employers have to employ skeletal crews of supervisors and managers to operate the service system may not be practical in all situations during extensive job actions affecting County operations.

Various State laws have been proposed to provide for phasing-out supervisory bargaining units. None has passed, for two reasons. First, police and sheriff's unions lobby successfully against them. Second, some contained such other collective bargaining provisions as interest arbitration or agency shop that were distasteful to local elected officials, who also helped defeat them.

Union Security

Unions survive through the financial support of their members. Unions which must continuously campaign to recruit or retain members have survival at stake. Weak unions must militantly seek victories of all sorts and characteristically take extreme actions or assume extreme positions.

Agreements providing mechanical means ensuring union security are legally negotiable in the private sector. They provide that employees represented by a bargaining unit must either join the union or, if choosing not

to join, must pay the equivalent of the fees and dues paid by members.

The laws governing public sector collective bargaining in Los Angeles County make no provision for union security. Membership and financial support are entirely voluntary. Thus, about half the employees represented by Los Angeles County unions benefit from that representation but pay no part of its costs.

Legislation enabling public sector unions and local government to negotiate for agency shops has been proposed several times in the last decade. The agency shop is a form of union security which requires employees repre-sented by a union to contribute a share of union costs, but does not require them to join the union or participate in its activities. The legislation has been defeated consistently.

As a practical matter, we believe that some form of union security could serve the purpose of stabilizing the collective bargaining system in Los Angeles County. We stated in 1973 that “...when the State law is clarified with regard to this issue, an agency shop or its equivalent should be considered an appropriate subject for negotiation in Los Angeles County." We emphasize that no provision for any form of union security should be adopted in the absence of provisions clarifying controls over the political campaign activities of public employee unions, the representation of supervisorial and managerial employees, public employee strikes, and the role of arbitration. To date, we have seen no example of comprehensive legislation dealing with all of the issues and providing safeguards against the unconstrained influence of secure public employee unions. Third Party Review

Both the civil service system and the employee relations system in Los Angeles County provide for third party review in the case that one party appeals the actions of the other. The Civil Service Commission acts as an

independent third party in cases of alleged violation of merit principles, appeals of disciplinary action or appeals alleging discrimination. The Employee Relations Commission acts as an independent third party in cases of alleged unfair labor practices.

Any one of four forms of third party review may be applicable, depending on the case. Fact finding, mediation, and arbitration are forms of third party review intended to produce agreement between parties to a dispute. Interest disputes are those arising during negotiation of a contract. Rights disputes are those arising from differing interpretations of a contract that is in force.

Fact finding is a form of review that focuses on a) identifying the issues in the case, b) establishing the common and differing positions of the parties, and c) resolving differences on the facts of the case. Fact finders may evaluate the facts and make recommendations for resolving the case.

Mediation is a form of review that focuses on facilitating voluntary agreement among the parties to a case. Mediators function as intermediaries working with the parties to obtain agreement.

Arbitration is a fom of review that focuses on establishing a settlement of the case. The parties a) agree in advance to abide by the arbitrator's decision, b) agree on the choice of an arbitrator, and c) share the costs of the review. The three characteristics are essential, whether the arbitrator's decision is a compromise or favors the position of one on the other side.

The term, "hearing", is used both generically and specifically. It may refer generically to any form of third party review. A hearing officer may be anyone acting as a fact finder, mediator or arbitrator and performing the function of taking oral or written evidence from the parties

and witnesses. In its more specific usage, hearing refers to an administrative process focusing on determining whether an action that has been taken by one party is legal and justifiable.

The appropriate role of third party review in both the civil service and employee relations systems In the public sector is still developing.

The Charter permits the Civil Service Commission to conduct hearings or to employ hearing officers to review appeals cases. This commission role was the subject of the analysis and recommendations filed with the Board by Service Employees International Union Local 660 in March, 1980. We discuss it at length in Section IV of this report.

The Employee Relations Ordinance permits the Employee Relations Commission to employ mediators, fact finders, arbitrators and hearing officers to review cases within its jurisdiction. The Commission assigns cases to each process based on the characteristics of the case.

The appropriate uses of arbitration are particularly unclear. Arbitration binds both parties to a dispute. In instances where the parties disagree on the interpretation or practical application of contracts, rules and regulations, the parties can agree to hand the matter over to an arbitrator for resolution and can limit the scope of their agreement to be bound by the arbitratorus decision. Procedures defining this form of arbitration and its limits are included in the ordinance and in contracts. The arbitrator cannot make an award which would contradict management rights or union and employee rights. In particular, awards which would bind the Board of Supervisors to financial or organizational decisions are excluded.

However, in instances where the parties disagree on the wages, terms, and conditions to be incorporated in a contract, and cannot resolve the disagreement without third party intervention, the binding character of

arbitration causes severe difficulties. This form - interest arbitration - is questionable in the public sector because it could result in binding the Board of Supervisors to financial, budgetary or organizational decisions. Since that would entail delegating the sovereign authority of the County's elected governing body, it is untenable.

The issue of arbitration is curiously bound to the issue of union security. As a practical matter the unions cannot afford extensive use of arbitration, which requires that both parties share the costs. Consequently, unions have not been enthusiastic in seeking arbitration.

State legislation has been proposed which would provide for interest arbitration to balance the potential for crippling strikes, particularly public safety strikes. This legislation has been defeated. First, no unions have agreed to refrain from strikes or other job actions even when the option to arbitrate is available. Second, experience with interest arbitration has led such authorities as the Mayor of Detroit, Coleman Young, and the President of the AFL-CIO, the late George Meany to state that strikes, no matter how painful, are preferable to binding arbitration as a means of resolving interest disputes.

Public Employee Strikes and Job-Actions

As we pointed out in 1973, and as recent events have demonstrated, court and legislative prohibition of public employee strikes is impractical and ineffective law. Laws and court decisions do not prevent strikes from occurring. Penalties for strikes are not enforced, since general amnesty is required and granted as a condition for ending the strike and returning the affected employees to work. Strikes and job actions are the effective sanction unions have to balance the power of their employers. Attempts to eliminate them as an option in a collective bargaining system

are bound to fail.

The real issue, as yet unresolved, is to provide mechanisms to prevent or quickly end strikes when they endanger public health or safety, or to temporarily substitute effective labor for the striking employees. At present, the extensive organization of supervisorial, managerial, and professional employees inhibits the substitution of effective labor. Interest arbitration is frequently offered as a substitute for strikes by police, fire and hospital employees. As we have noted, however, experience with interest arbitration has proven it faulty where it has been tried.

Union Influence in Political Campaigns

One of the issues most frequently cited as differentiating public from private sector collective bargaining is the ability of public sector employees to influence the careers of their employers - elected officials. Public employee unions can and do provide both financial and working support during the campaigns of elected officials sympathetic to their cause; they actively oppose the candidacy of those who are not. In addition, public employees are a voting constituency. Unions in the public sector are therefore in a position to bring pressure on elected officials.

Unions are not, of course, the only organized groups in a position to bring pressure to bear on the decisions of elected officials. The officials represent much larger constituencies, and must respond to the interests of organized public interest and community groups. They must make their decisions in public and accept the accountability for those decisions in reelection campaigns.

One issue, then, is whether the political activities of public sector unions develop enough political power and pressure to overwhelm counterbalancing forces in the community and dominate public decision making processes. A second is, if union activities do create imbalances in the

system, then what measures should be taken to resolve them?

Preliminary infomation on this subject indicates that no single interest group, Including unions, accounts for a significant proportion of total financing or of contributions over $1000 in campaigns for Los Angeles County Supervisorial Districts. Although the conclusion is tentative, it suggests that more concern than may be necessary is placed on the potential power of public employee unions to bring pressure on the decisions of County officials. Nevertheless, during the course of our study of Incentives and disincentives we plan to conduct a more extensive analysis and evaluate the various alternatives that have been proposed to neutralize the ability of interest groups, including unions, to exert undue influence on the outcome of campaigns. Supervisor Ward, for example, has suggested that elected officials refrain from voting on issues affecting contributors. Others have suggested limiting contribution amounts.

The issue is not, of course, independent of the other unresolved issues. Union security provisions, for example, would guarantee mechanical means for unions to improve their financial condition, thus possibly increasing their ability to support campaigns. Similarly, the perception that such reforms as strike legislation or arbitration would favor the unions weakens the ability of those officials who favor them to argue effectively for their passage, because of the appearance of union influence.

Scope of Bargaining

In our 1973 study, we proposed that the scope of negotiations between County management and County unions should be as open and as free of limits as possible. At that time, the major controversies over negotiability were caseloads and job classifications. Both have been resolved. Caseloads are negotiable by Court decision. According to adopted management

rights clauses the County has the right to "exercise control and discretion over its organizations and operations" and to "determine the methods, means, and personnel by which the County's operations are to be conducted". This implies that the parties have agreed to exclude from negotiations the system of classifying County work into positions. Nothing prevents the unions and County management from conferring on the impact that specific classification decisions has on groups of employees. Thus, the specific controversies of 1973 have essentially been resolved. Another major scope limitation has been removed - the prevailing wage clause.

Nevertheless, controversy persists on the same fundamental issue of the scope of bargaining. The specifics have changed. The unions contend that the County must negotiate civil service rules and decisions to contract with private firms. County management contends that such rules and decisions are not negotiable. The unions have filed unfair practice charges on both issues with the Employee Relations Commission. Both may end up in court. Indeed, one recent dispute, over the negotiability of layoff rules, was fought to the Supreme Court, which supported the unions' contention that the layoff rule is negotiable and further ordered the County to meet and confer on the civil service rules.

The incorporation of management rights clauses in the memoranda of understanding and the incorporation of general grievance clauses in some memoranda has meant, we believe, a significant advance in resolving the basic controversy over the scope of bargaining and the County's ability to manage the employment system by setting standards and assigning work. It has not, however, prevented disagreement over the scope of bargaining.

This issue, like the other unresolved issues we discussed in 1973 and summarize here, is bound to the question of developing a mature and effective collective bargaining system. Until they have some form of

union security, the unions will not relax their militancy on every front including the scope of bargaining. Until managers, supervisors and professionals are no longer represented by unions, no one will accept union security provisions. Until managers, supervisors and professionals are treated separately and distinctly in the personnel and salary system, they will insist in their best interests on representation by unions. The unions will not accept limits on strikes unless the County agrees to arbitrate.

Summary

It makes little sense to suggest changes of the civil service rules or the operations of the Civil Service Commission without first understanding the context in which such changes would occur. We have therefore reviewed the proposals, for a balanced and equitable collective bargaining system preserving merit principles of employment, originally presented in our 1973 study, Civil Service and Collective Bargaining in Los Angeles County Government. Several of the reforms suggested in that report have been accomplished; some are still in progress.

An effective collective bargaining system which preserves merit principles has not yet matured in the public sector. In particular, the following issues remain unresolved:

- management identity and organization
- union security
- the roles of third party neutrals
- public employee strikes
- union activity in political campaigns
- scope of bargaining

In the remaining sections of this report, we discuss two specific current issues within the context we have established in this section. The

issues are 1) the proposed civil service rules, and 2) the operations of the Civil Service Commission. We emphasize that our discussion of these current controversial issues has little meaning outside of the context we have discussed for development of a structure and system supporting the overall goal of establishing a balanced and equitable collective bargaining system which preserves merit principles of employment.

III. RECOMMENDATIONS: CIVIL SERVICE RULES

On May 13, 1980 the Director of Personnel requested the Board of Supervisors to hold a public hearing on proposed civil service rules in accordance with Charter requirements, and to adopt the rules as proposed after holding the hearing. In his transmittal letter, the Director explained the effects of the Charter provisions adopted in 1978, reviewed the number of meetings between Department and union representatives to confer on the rules, listed those proposed rules to which both parties had substantially agreed, and stated the recommended County position on those rules on which the Department and the committee representing the coalition of County unions had unresolved disagreement. The Director of Personnel stated: "Meet and Confer sessions on the remaining Rules ended in January 1980 in the belief that further discussions would be fruitless."

On March 11, 1980, the Coalition of County Unions filed a charge with the Employee Relations Commission alleging that the County engaged in unfair ernpl&yee relations practices as defined in the Employee Relations Ordinance. In its charge, the Coalition alleged that the County had failed to meet and confer in good faith with the unions on negotiable matters. The basis of the charge was fourfold: 1) the County had unilaterally set an arbitrary deadline for the conclusion of negotiations; 2) the County refused to incorporate the rules, when agreed upon, in a memorandum of understanding rather than an ordinance; 3) the County had excluded some subjects in the rules from the scope of negotiations; and 4) the County refused to represent the Civil Service Commission in negotiations.

The Employee Relations Commission scheduled a hearing of this charge on May 28, 1980. The result of this hearing was referral of the issue to mediation. Mediation is now in process.

The Economy and Efficiency Commission has no material role in negotiations, and has no desire to intervene in or otherwise influence the processes of mediation and negotiation. Nevertheless, we believe that some of the proposed rules which are disputed have fundamental long-term significance in the development of an effective employee-relations system preserving merit principles as articulated in the Charter. The Rules, and the methods of adopting and implementing them, will influence the effectiveness of our task force recommendations affecting both a County system of incentives and the operations of the Civil Service Commission. We therefore comment on a few of the disputed proposed rules in keeping with our mandate to make recommendations to improve the effectiveness, efficiency and economy of County operations.

We address three subjects. They are 1) the form of the rules, 2) the rule on certification, selection and appointment, and 3) the rule on appeals to the Civil Service Commission. In our review, we have focused on managerial and employee-relations principles we believe should be incorporated in the rules. We have eliminated from our discussion those areas of disagreement between management and the unions which bear on such details of implementation as the definitions of terms and schedules or time limits. Those details are in negotiation. No one should infer from our discussion of the three issues that we have adopted a position on the details of implementation.

Form of the Rules

County management contends that the Civil Service Rules should be in the form of an ordinance. The unions contend that the Rules should be incorporated in a memorandum of understanding - that is, a contract with the unions.

The task force recommends that the Board of Supervisors adopt the civil service rules as an ordinance.

The operational differences between an ordinance and a contract affect the level of difficulty required to change it after it has been adopted.

If the rules are in a contract, they will be difficult to change for three reasons. First, the interpretation of terms and conditions of contracts may be subject to arbitration. Putting the rules in a contract could make subject to arbitration such matters as discipline, County organization, the responsibilities of the Personnel Department and the Civil Service Commission, and the implementation of merit principles.

Second, if it were agreed to exclude the rules from arbitration, changing any rule would require the unions and the County to negotiate on the proposed change. If either party refused to meet and confer on the change, or set conditions unacceptable to the other party, the change would be impossible. The scope of negotiations could then become an issue in itself if, for example, one party insisted on reopening discussion of all the rules in order to change one of them.

Third, the suggestions of such third parties as community organizations or the Civil Service Commission could not be considered if either the unions or the County refused to meet to discuss them.

An ordinance would also require participation by both parties in designing future changes. It would be less difficult to change than a contract because willingness to negotiate, the scope of negotiations, and arbitrability would not be issues. The Charter and relevant court decisions require the County to meet and confer with the unions and to hold a public hearing before adopting the rules. Those requirements prevent the Board from unilaterally changing the rules. In contrast to requirements for changing 8 contract, however, they would not decisively halt consideration of a change on the grounds that one party refused to discuss it. Thus,

adopting the rules in ordinance form will in no way inhibit the unions and employees from participation in their development.

An ordinance is preferable to a contract because changes will be less difficult. This is desireable, in our view for two reasons. First, the rules represent a new* system of implementing merit principles in the County. Management, employees, and the unions will benefit from a facile procedure to modify the details as they gain experience with the new system and its operational impact. Second, the rigid application of detailed rules in the County Charter operated, until 1978, as a significant disincentive to managerial and employee performance. The Charter and court interpretations permitted no flexibility. Changes required a vote of the public. Increased flexibility was one objective of the Charter amendments in 1978.

In the future, as the County and its unions gain experience and the roles of neutrals in the County system are clarified in legislation or court decisions, it may become feasible and preferable to incorporate some of the rules in union contracts. This may be advantageous, in the specific circumstances applicable to one bargaining unit rather than in the current circumstance of developing a universal set of rules and procedures governing all employees. At present, however, we believe that the County should adopt the new rules in the forn of an ordinance.

Certification. Selection and Appointment

County management contends that the "Rule of Three" governing selection and appointment of candidates for County employment should be replaced by a rule which ranks candidates in groups based on ranges of examination scores and limits selection to the highest group. The unions contend that the "Rule of Three" should be replaced by a rule ranking candidates based essentially on seniority and limiting selection to the highest

ranking individual

The task force recommends that the Board of Supervisors adopt the rule of certification and appointment from lists grouped by ranges of examination scores

In the tradition of civil service systems, one key method of implementing merit principles has been to rely on examinations to rank the applicants for a position in terms of their relative ability to meet the requirements of the position. Examinations may include written, oral, or performance tests, interviews, ratings and scores based on experience and records, assessments of ability by current supervisors, and other methods or combinations of methods whose purpose is to provide an objective measure of applicants' ability to perform. Each applicant is assigned a score, which is the weighted average of the scores attained on each part of the examination.

The name of each applicant achieving a passing score (usually 70 of 100 points) is then entered on a list of those qualified for the position. Veterans' credits, when applicable, are added to passing scores. The list is ordered by the ranking of scores. The department head is required to select employees for open funded positions in the rank order of the list and to appoint those able and willing to serve.

The current system requires strict ordering of the eligibility lists - no ties - and limits the department head's selection to the top three names on the list. That is, the County computes examination scores to a level of precision, say two decimal places, permitting strict ordering. Remaining ties are broken by some arbitrary but fixed means, such as the date of application or a random assignment. Supplied with the strictly ordered list, the department head selects one of the top three names and appoints that applicant if available. If the applicant is unavailable, the department head selects another from the top three, and so on until the list

is exhausted. This procedure is known as the "Rule of Three".

The rule of three was designed into civil service systems as a compromise between two general objectives which are in tension with one another. The first is to limit the potential for political patronage or spoils in the selection process by requiring competition for positions and limiting management's ability to disregard the outcome of competition. The second was to permit management some flexibility in appointing subordinates.

The rule of three has several deficiencies. First, it severely limits the department head's accountability by restricting his or her choice of personnel to perform departmental functions. Second, It presumes a degree of precision in testing that contemporary authorities on examination technology say is impossible. No examination yet devised is good enough to consistently predict relative job performance on the basis of precise individual scores. The best examinations can distinguish among groups of individuals based on a range of scores. The scores of individuals within ranges are statistically equivalent; individuals scoring in different ranges can be distinguished. Third, the current rule leads to extremely artificial means of breaking ties. Fourth, the current rule permits no flexibility in the manager's selection of individuals to meet the affirmative action goals of the organization. Veterans' preference points, for example, have discriminatory effects on women under the rule of three. For these reasons, managers have often found the selection process an obstacle to achieving personnel objectives In those instances where the process would not permit them to appoint candidates of their own choosing.

In short, the current system assumes that merit principles require mechanisms to prevent managers from selecting candidates of their own choosing. It assumes that managers will employ a spoils system. It thus violates the fundamental principle of managerial accountability - that a manager must

exercise choice over selection of his or her subordinates before accepting accountability for their performance. It violates sound principles of examination technology, and it weakens the County's ability to meet affirmative-action requirements.

The Director of Personnel has proposed a certification and selection rule which would eliminate these deficiencies, while retaining the County's ability to examine applicants and determine their relative ability to perform. The proposed new civil service rule would change the method of ordering the list and relax some of the restrictions on the ordering of selection and appointment. The basic objectives - competition to prevent spoils and preservation of choice for managers - would remain.

According to the proposed rule, the names of passing candidates would be assembled into groups based on ranges of scores. The lists of certified candidates would be ordered by the ranking of score ranges, with the scores of those within groups considered essentially equivalent. Department heads would be required to select and appoint individuals from the highest ranking group.

Our commission `5 position has always been that the County should replace the rule of three with a competitive selection system increasing managers' ability to exercise choice. During our interviews and during review of earlier drafts of this report, union representatives articulated two contrasting points of view. First, they believe that managers' ability to choose should be limited further rather than increased. Second, they believe that appointments (to positions in represented classifications) should be made on the strict basis of seniority and a "rating from records". The rule of three would be modified to a rule of one. That is, department heads would be required to appoint the most senior available applicant.

A strict seniority rule, applied as a County-wide guideline to all positions in all departments, would severely impair the Board's ability to hold department heads accountable for the performance of their employees and would completely negate the opportunities in the County for advancement of women and minorities. Its result would be to promote those in the system the longest, without regard for other qualifications. We do not see how it could meet the stated Charter objective of providing the County with a "productive, efficient, stable, and representative workforce", except that the workforce could become highly stable.

It appears to us that the unions' objections do not bear so much on methods of certification, selection and appointment as on the detailed nature of the examinations themselves. For some County positions, we believe management could weight candidates' records and seniority heavily in examinations as one measure of ability to perform in those positions. The certification, selection and appointment process would not be affected by such an examination process, except that the groupings of scores might be more narrow for some positions than for others.

The proposed rule will implement a selection system that preserves competition and merit principles, is based on the state of the art in examination technology, improves managerial accountability, and improves the County's ability to advance women and minorities in accordance with the requirements of affirmative action. We disagree with the assumption that increased flexibility for managers will result in increased patronage and spoils. Rather, the system will permit the Board to hold managers accountable for the performance of subordinates, thus reducing the chance that they will risk patronage. Some technical modifications may be reasonable - such as permitting the size of score ranges to vary with types of positions, numbers of candidates, and types of examinations,* or weighting seniority heavily

* For example, the "Rule of Test Reliability" used in the State of Michigan.

in examinations or the selection process for some positions. Except for such variations of the details, the Board of Supervisors should support the Director of Personnel's

proposal to replace the archaic and Ineffective rule of three with a selection rule based on rankings of groups of candidates.

Hearings

County management contends that the role of the Civil Service Commission - in reviewing personnel decisions - should be limited to allegations of discrimination or other non-merit factors, allegations of cases of discharge and reduction of permanent employees9 and cases of suspensions exceeding five days in length. In all other cases, the final stage of administrative review would be appeal to the Director of Personnel. The unions contend that all matters that can now be appealed to the Civil Service Commission should remain within its jurisdiction.

The task force recommends that the Board adopt the proposed rule limiting the matter of appeals to the Civil Service Commission to cases where discrimination is alleged, cases involving discharges and reductions of permanent employees, and cases involving suspensions exceeding five days in length.

Aside from technical and procedural details, the principal issue on the question of hearings is in the matter of cases which are eligible for appeal to the Civil Service Commission.

The County Charter, as amended in 1989, requires the Civil Service Commission to hear appeals of

(1) "allegations of political discrimination and discriminaion based on race, sex, color, national origin, religious opinions or affiliations or handicap made by County employees, regardless of status, and by applicants for employment."

(2) "discharges and reductions of permanent employees."

The objective of the Charter provisions is to protect the public interest by providing a lay citizens' group - the Civil Service Commission -

the authority to reverse or modify management actions which employees allege are discriminatory or which arbitrarily affect their property rights to employment. The issue is, which kinds of management actions should be included to ensure adequate levels of protection to employees while permitting management some flexibility of action.

Under the proposed rule Implementing the Charter, some administrative appeals now heard by the Civil Service Commission would terminate instead In appeal to the Director of Personnel.

Such appeals would include examinations, portions of examinations, application rejection, reclassification, performance evaluations, transfers, lay off, reassignments and other non-disciplinary actions where discrimination on the basis of non-merit factors is not alleged. They would also include suspensions of five days or less.

We believe that appeal to the Director of Personnel provides adequate protection to employees in such cases. The decisions, when an employee does not allege that the reasons for them include discrimination or any non-merit factor, appear to us to be purely administrative in character. They bear on organizing the work and deploying the labor resources to accomplish it where it is needed. While some form of appeal is required - for example in cases involving transfers of work location over a large enough distance to create commuting difficulties or other hardship for an individual employee - the time and complexity involved in full-scale review of such cases by the Civil Service Commission would be counterproductive.

During our initial interviews and during their review of an earlier draft of this report, union representatives stated two objections. First, they contend that employees' rights to appeal management decisions to the Civil Service Commission must not be limited because they believe that management and the Director of Personnel cannot be trusted to administer

the system fairly or to provide fair hearings. Second, they contend that the details of definition and implementation in the proposed rule - non-merit factors and their application - are not sufficiently broad to prevent abuse by management. For example, they allege that the rules would permit managers to harass employees with successive five-day suspensions, or to change the weights assigned to portions of examinations In process if the outcome of the examinations was not to managers liking, or to subvert merit principles by employing punitive transfers of employees for disciplinary purposes.

Our position does not incorporate a judgment on the details of what should be defined as `8discrimination" and "non-merit factors

The issue is the proposed definition of "discrimination" which includes... "other non-merit factors, any of which are not substantially related to successful performance of the duties of the position", and further "Non-merit factors are those factors that relate exclusively to a personal or social characteristic or trait and are not substantially related to successful performance of the duties of the position". If that definition is sufficiently broad to permit reasonable appeals of examinations and the like, the Board should adopt it. During our various discussions, we were not convinced that the definition is too narrow to protect the public from spoils; nevertheless, the details of definition are properly the subject of current negotiations and excluded from our recommendation.

Once the Board adopts a definition, experience In its use, Including possible litigation, will determine its adequacy in balancing the public interest in protecting the workforce from capricious and arbitrary management action with the public interest in permitting management to take effective action.

The fact is, over the years appeals to the Civil Service Commission have reduced managerial effectiveness in filling vacant positions, deploying

forces where needed and classifying work. The appeal process to the commission delayed appointments, for example, while the technical details of examination design were reviewed. The effect has been to depress the morale of managers and candidates alike. The proposed rule would not eliminate appeals in such cases, it would expedite them by assigning review to the Director of Personnel rather than the commission, except in cases where the appellant alleged discrimination.

The rule would thus limit the ability of employees and unions to delay management action with appeals. It would not abridge their fundamental rights to appeal. The task force concludes that, excepting allegations of discrimination, the requirements of effective and timely management action should take precedence over employees' ability to appeal to the Civil Service Commission.

Therefore, aside from technical and procedural details, and aside from the detailed definitions of `discrimination" and "non-merit factors” which are in negotiations, the Board should adopt the rule assigning appeals of administrative decisions to the Director of Personnel.

Summary

Although the Economy and Efficiency Commission has no material role in negotiations and no desire to interfere with the current processes of mediation and negotiation bearing on the proposed civil service rules, we have reviewed those disputed rules which would have significant impact on our study of the County's incentive systems and on the objective of developing a balanced and equitable collective bargaining system that preserves merit principles of employment.

We recommend 1) that the Board of Supervisors adopt the new civil service rules as an ordinance, 2) that the Board adopt a certification and appointment rule replacing. the rule of three with a rule of groupings by

ranges of examination scores, and 3) that the Board adopt a rule limiting the scope of appeals to the Civil Service Commission to those involving property rights of employment or allegations of discrimination.

IV. RECOMMENDATIONS: CIVIL SERVICE COMMISSION OPERATIONS

On March 6, 1980, the Board of Supervisors considered a report and recommendations submitted by Local 660 of the Service Employees International Union (SEIU). The report consists of two parts: 1) a statistical review of cases heard and decided by the Civil Service Commission between January 1, 1977 and December 31, 1979; and 2) an Appendix containing various memoranda and other documentation of specific cases heard by the Civil Service Commission.

The Board of Supervisors referred to our commission those concerns and recommendations in Local 660's report regarding Civil Service Commission operations. It referred allegations regarding the behavior and compensation of Commissioner Frank Work to the Chief Administrative Officer, Auditor Controller, County Counsel and Director of Personnel. Subsequently, after reviewing information, alternatives and recommendations supplied by the Chief Administrative Officer, the Board amended the County's Salary Ordinance to eliminate compensation paid to civil service commissioners for acting as hearing officers on specific cases. In addition, upon expiration of Mr. Work's term on the commission, the Board appointed Alban I. Niles to the position formerly held by Mr. Work.

Others, particularly the Coalition of County Unions and the law firm, Lemaire, Faunce & Katznelson, have supplied supplementary documentation, analysis and recommendations to the Board of Supervisors and to our commission. In a letter to Supervisor Ward as Chairman of the Board of Supervisors, dated March 17, 1980, the Coalition of County Unions recommended 1) the removal of all commissioners from the Civil Service Commission, 2) suspension of all hearings in process, and 3) review of all cases decided since January, 1978, where the decision was adverse to the appellant employee.

In a letter to our commission dated March 31, 1980, the Coalition of County Unions provided detailed infomation, analysis and recommendations, based in part on Local 660's report, to modify the operations of the Civil Service Commission, its method of assigning hearing officers, and its procedures in hearing cases. In letters to our commission dated March 25, 1980 and May 2, 1980, Lemaire, Faunce & Katznelson supplied information on industrial and public employee relations systems and court decisions with application to the issues regarding the County Civil Service Commission and its operations.

In a letter to Supervisor Burke dated March 14, 1980, former Commissioner Frank Work supplied information and analysis replying to Local 660's report and allegations.

The task force has reviewed these documents and other relevant information. Members of the task force and the staff have interviewed concerned County and union officials. We discuss our findings, conclusions and recommendations in this section of our report. We emphasize that our concern throughout this report is the design and development of a balanced and effective employee relations system preserving merit principles. Therefore, no one should infer from any part of our discussion that we have analyzed the merits of any individual case, judged the behavior of any individual, or attempted to determine the validity of positions held by parties to any dispute in negotiations, mediation, arbitration or litigation.

Role of the Commission

According to the Charter as adopted in 1978, the basic function of the Civil Service Commission is `to serve as an appellate body" in cases of allegations of discrimination, cases of discharge or reduction of permanent employees, and any other cases specified in the civil service rules. It determines whether actions taken by management should be upheld, modified,

or reversed. The fundamental issue regarding the operations of the Civil Service Commission is the precise nature of Its role as an appellate body.

The task force recommends that the Board, the Civil Service Commission, the unions, and County management agree to specify the Commission's role as that of the third party Neutral conducting administrative hearing which include fact finding but excludes mediation and arbitration.

Third Party Neutral - The intent of the current Charter and all previous Charters is to establish in the Civil Service Commission a third party neutral to safeguard merit principles. The concept of an effective appeal process requires that the party hearing the appeal of an action be neutral and impartial with respect to the action taken.

The principal thrust of Local 6603s analysis of commission decisions was to question its impartiality. The analyst reviewed commission decisions and classified them into two categories, those sustaining management and those sustaining employees. Based on this classification, he found that 90% of the commission `5 decisions sustained management. He further reviewed commission decisions to adopt or modify the recommendations of its hearing officers. Ninety-five percent of the time, the commission adopted the hearing officer's report. However, the commission modified 14 (or 41%) of those 34 hearing officer reports which recommended complete reversal of the management decision. The report then concluded that the commission is biased in favor of management.

We do not question the value of the analysis as an attempt to quantify an emotional subject and report commission decisions objectively, nor do we doubt the validity of its motivation or sincerity. Moreover, we do not discount the utility of the report. It raises questions which should have been raised. Some of its recommendations should be adopted. Nevertheless, we disagree with the conclusions and the analysis presented in Local 660's report.

First, the classification of decisions is faulty. The analyst defined decisions as sustaining management whenever the commission agreed that some action was justifiable, even when It reduced the department's action. Decisions were counted as sustaining the appellant only when the commission found that no action whatever was justifiable.

Second, cases that appear before the commission are the result of a long and involved process of departmental action and review. During this process, the employee may take definitive action obviating any need for disciplinary action and eventual appeal to the commission. For example, the employee may correct the behavior questioned by management, may agree to rehabilitation or training, or may resign. In such cases, discipline has been effective within the constraints of merit principles, but the statistics on discipline will not include the actions. Similarly, employees may submit to discipline without exercising their right of appeal to the commission. Typically since 1969, about half of the County's discharge and suspension actions are not appealed to the commission. Finally, County departments promulgate and enforce strict guidelines governing the procedures which management must follow before they will permit appealable disciplinary action. Cases which have no merit and cases where proper procedures are absent are seldom appealed to the commission because action is seldom permitted by the department or is reversed at the department level. Statistics on commission decisions do not include such actions. Thus, the scorecard on commission decisions excludes some cases which the commission might have reversed on merits or procedures, because management prevents such cases from reaching the commission.

Third, there is no generally accepted standard by which to judge a scorecard of the decisions of an appellate body and no rationale for accepting standards reported by other jurisdictions. What is an acceptable

ratio of cases sustaining a management decision? Local 660, in its report, adopts the position that 90% is unacceptable and seems to imply by the analyst's use of just two categories that a ratio approximating 50-50 would be acceptable. Nowhere in the report, however, does the union state an acceptable range of probabilities for decisions in one category or the other. The 90% figure might indicate that management permits cases to go to the commission only when it believes it has a 90% chance of being sustained.

Fourth, the dominant statistics on the reports of hearing officers are that they sustain management 80% of the time and that the commission accepts their reports 95% of the time. The finding, that the 5% of cases where the commission modifies a hearing officer's recommendation includes 41% of the cases where the hearing officer recommended reversal of the management decision, adds nothing to the conclusion that the commission favors management.

For the above reasons, we do not agree that the analysis presented by Local 660 shows that decisions by the Civil Service Commission favor management. Were there a basis for showing that the decisions favored management action rather than the appellant, it would not justify a conclusion impugning the commission's neutrality or impartiality, or an allegation that the commission's decisions are characteristically incorrect or improperly derived, or a conclusion that the commission form of appeal is an ineffective device for safeguarding merit principles.

In fact, the tradition in civil service systems has been that discipline of employees is extremely difficult. Thus, Supervisor Edelman in a motion in April, 1977, stated:

> "The ultimate problem with Civil Service for County managers and for the public is that it is extremely difficult to discipline employees who are incompetent or insubordinate. This is demoralizing to the many conscientious employees who must work extra hard beside incompetent or idle employees."

Similarly, the contract auditor of the 1977 Grand Jury stated:

> "County managers often expressed the belief that the Civil Service Commission is biased in favor of employees concerning appeals of suspensions, terminations and substandard performance evaluations. Our review of the statistical summary of Civil Service Commission rulings tends to suggest a reasonable balance for management and employees. We do believe, however, that managers may, as a result of the perception of bias, only be bringing to the Civil Service Commission the most flagrant cases in which the manager has gone to the effort to accumulate necessary documentation."

Statistically, the expectation that civil service employees will encounter disciplinary action is extremely low. Each year between 1969 and 1979, approximately 0.2% of the permanent employee population were discharged and approximately 1.0% were suspended. We do not know of a generally acceptable standard for this statistic, just as we know none for the score-card on commission decisions. Nonetheless, that fewer than 2% of the employees encounter disciplinary action in a system as large and complex as the County tends to support belief that discipline is difficult and rarely exercised.

The task force concludes that the Civil Service Commission's role as an appeals body is that of a third party neutral. We disagree with Local 660's contention that the evidence demonstrates commission partiality to management. In the following, we discuss the nature of the role we recommend for the commission - administrative hearings which include fact finding but exclude mediation and arbitration.

Administrative Hearings - The Charter specifies that the Civil Service Commission holds hearings and grants it subpoena powers. An administrative hearing, on appeals by one party of an action taken by another, is a process in which the appellate body takes evidence for the purpose of determining whether the action should be upheld. The law requires such processes to provide for notice of the proceedings, an opportunity to present evidence, each party's knowledge of the claims of the opposing party, each party's right to meet and examine the opposing party, representation of the parties

by counsel, and other rules and procedures. Court decisions on disciplinary action in civil service systems have imposed other conditions on the administrative appeal, including rules governing the burden of proof and rules of evidence.

Fact Finding - While the concept of administrative hearings is more gen-eral than that of fact finding, it necessarily includes fact finding. That is, the commission must identify the issues in dispute and resolve differences of fact between the parties before it can come to a conclusion.

Mediation - The concept of administrative review of an action under appeal does not necessarily include mediation. Mediation is a process in which a third party neutral actively intervenes in negotiations between two parties in order to facilitate agreement. It has no place in the function of the Civil Service Commission.

The information supplied by Local 660 in the Appendix to its report, together with information we obtained in interviews, reveals considerable confusion and disagreement on the role of mediation in the proceedings of the Civil Service Commission. It is the substance of much of the criticism leveled by Local 660 against the commission, former Commissioner Work, and Commissioner Frankel.

By the time a case reaches the Civil Service Commission, it is unlikely that mediation could be effective. The department, in taking appealable action, permitted the case to pass its procedural and review screening processes. It is likely to believe that the case is ironclad. The appellant, on the other hand, is convinced that he or she has been treated unfairly. The union and its attorneys have decided to support the appellant. In the words of Terry B. Paule, Esq. (memo to Stephen Coony, 1/23/80, Appendix to Local 660's report), "the parties' positions are set". There is no point to an attempt to mediate.

Mediators, as part of their function, may meet separately with the parties to a dispute. Once an administrative hearing has been set, however, to hear appeal of an action already taken, it is the responsibility of the third party (the Commission) to notice the parties and provide opportunity for them to meet, know the charges, examine witnesses, and so forth. Separate meetings, where a member of the appeals body attempts to persuade either party to accept alternatives to the actions appealed, necessarily conflict with the role of the administrative appeals body.

We conclude, therefore, that the commission and any hearing officer it may appoint should exclude from their respective roles any action directed at mediating between the parties.

Arbitration The process of arbitration is one in which the parties to a dispute agree to be bound by the decision of the third party neutral (the arbitrator), agree on the appointment of an individual or board to conduct the arbitration, and agree to share the costs of the arbitration and the compensation of the arbitrator. We believe that the role of the Civil Service Commission is not equivalent to arbitration, because neither party agrees to be bound by its decisions and because the County pays the full cost of commission operations.

While no one has suggested that the commission should adopt a full-scale arbitration role, we discovered considerable confusion and disagreement in this subject during our interviews and in the supplementary information and analysis supplied by the Coalition of County Unions.

Some of the Coalition's recommendations and Local 660's recommendations call for adoption of some of the characteristics of arbitration. Specifically, they have recommended that 1) hearing officers include only indi-viduals qualified as arbitrators, 2) that both parties to a case before the civil service commission agree to the selection and assignment of a hearing

officer to each specific case appealed to the commission and 3) that com- missioners be excluded from acting as hearing officers.

We believe that the recommended process would rapidly begin to resemble arbitration, with none of its advantages. The Charter in no way restricts the qualifications of commissioners, and present commissioners do not qualify as arbitrators in the formal sense of credentials and experience. A system excluding them from acting as hearing officers, while requiring hearing officers to qualify as arbitrators, would necessarily create an issue of the qualifications of the commission to make any judgment modifying or reversing a hearing officer's findings. The procedures for selecting hearing officers would require agreement by both parties - one of the central characteristics of arbitration. The parties would not agree in advance, however, to be bound by the decision.

This concludes our review of the role of the Civil Service Commission. We believe that much of the controversy over the operations of the commission, its effectiveness in safeguarding merit principles, and the behavior of individual commissioners is based on confusion and disagreement over its basic role. We recommend that all interested parties agree that that role is to conduct administrative hearings, necessarily including fact finding, but excluding mediation and arbitration.

Role of Hearing Officers

The task force recommend that the role of hearing officer be limited to that of fact finding on behalf of the commission. By fact finding, we mean a) identifying the issues in the case, b) establishing the common and differing positions of the parties, and c) resolving differences on the facts of the case. Evaluation of the facts and recommendations are optional.

The fundamental issue is the role of hearing officers. In our view, hearing officers are individuals employed as fact finders by the commission, in the same sense that a trial court employs a special master

to assist it in determining issues and establishing facts bearing on the issues. A fact finder may make recommendations on interpretation of the facts and appropriate action, but those recommendations are purely advisory. They are in no sense binding.

Hearing officers for the commission are not arbitrators. The matter appealed to the commission is an action taken by County management affecting an employee who alleges that the action violated merit principles. The matter appealed to the commission is not the report of the hearing officer or the action of the hearing officer. There is no conflict of interest because no commissioner or hearing officer has any interest in the matter actually appealed.

Some visualize the process of appealing to the Civil Service Com- mission as a two-stage process. In the first stage, the hearing officer gathers evidence, identifies the issues, resolves factual differences, and recommends an action to the commission. In the second stage, the commission hears objections to the hearing officer's report as though that report, rather than management action, was the subject of appeal. By analogy, in this view, the hearing officer acts as a trial court and the commission acts as an appeals court.

In our view, the process has one stage: appeal to the commission of an action taken by management. The function of the hearing officer is to assist the commission in clearing its workload.

Role of Individual Commissioners

The unions contend that civil service commissioners should be ex- cluded from acting as hearing officers. Commissioners contend that there should be no such limitation. The Chief Administrative Officer recommended that commissioners be permitted to act as hearing officers and that the total annual compensation for each commissioner be limited to $12,000. The

Board of Supervisors amended the Salary Ordinance to eliminate any compensa-tion for individuals when acting as hearing officers but declined to exclude them from acting as hearing officers.

The task force recommends that individual commissioners continue to act as hearing officers. Further, we recommend that they be compensated for hearings in the same way as other hearing officers. Finally, we recommend that the total compensation of an individual commissioner be limited to a ceiling of $12,000 for commission business.

Prior to the 1978 amendments, the Charter explicitly authorized individual commissioners to hold hearings. The intent, as it is now, was to protect the public interest by involving the general public in the oversight of internal governmental functions. Recognizing this, the courts have established that the findings of such administrative bodies would be liberally construed because they are the product of laymen operating in an unfamiliar field.

Need for Hearing Officers. Before 1975 the commission or an individual commissioner heard all cases. The commission first appointed hearing officers who were not commissioners in 1975. It needed assistance in clearing its workload, which had increased because of rule and policy changes it adopted and because of legal developments. The table below summarizes changes in commission workload, as measured in hearing days, over the period 1969 to 1979.

Commission Workload Trend 1969 - 1979

Calendar Year	Workload (Hearing days)	Annual Percent Change
1969	114	-
1970	111	0.0
1973	306	40.0
1974	348	13.7
1975	483	38.8
1977	611	12.5
1978	777	27.2

The rapid increase in workload between 1970 and 1975 was caused by a backlog of cases that the commission and individual commissioners could not clear. Consequently the commission requested and obtained approval from the Board to hire additional hearing officers.

Commissioners should serve as hearing officers for two reasons. First, as lay representatives of the public, they can thereby develop a detailed understanding of the procedures and issues that the commission reviews. They will be better prepared to act on the report of an expert hearing officer or a fellow commissioner. Second, the intent of creating a lay citizens commission is to institutionalize citizen participation. Delegating the function to specialists or experts discourages full participation and diminishes the significance of lay citizens' oversight as one of the few surviving checks and balances in the County system.

The one reason to question the role of individual commissioners as hearing officers is that the remaining four commissioners would tend to review their reports less critically than those of hearing officer who is not a fellow commissioner. While this may occur in some situations, we believe that the considerations of citizen participation should dominate. That is, nothing in the structure would mandate that commissioners rubber-stamp the output of other commissioners; the commission could devise procedures to minimize the probability that it would occur.

Excluding commissioners from acting as hearing officers would create a much more damaging effect. They, as uninitiated laymen, would be called upon to critically review the output of experts and professionals in a technical field. This would ensure one of three outcomes: l) commissioners qualifications to decide would be questioned, 2) the process would become two-staged with the commission acting as though it is an appellate court, or 3) the process of appeal would become one of expert, specialized legal

review rather than citizen participation.

Qualifications. The qualifications of commissioners depends on their role. That role does not include arbitration or mediation, which require expertise and experience. The qualifications necessary to serve on a citizens' administrative review board include honesty, the ability to grasp issues and determine facts, objectivity and fairness, the ability to understand laws, rules, and procedures and to act in accordance with them, and a degree of tact and detachment in working with interested parties to what may be a heated and emotional dispute on matters affecting individual rights.

The Board's appointment process should ensure that these require- ments are met. In addition, the operational requirements for appointment to the commission should include the availability of time to serve, willingness to serve after being provided with full information on the duties and responsibilities of service, and some applicable experience in a technology related to commission business such as labor relations, personnel, government, law or the like. The Board and the Commission should ensure that these requirements are met and that all new appointees receive full training and information on the requirements of the position before accepting it.

The task force concludes that individual commissioners should be encouraged to act as hearing officers. We also recommend that they be com- pensated for doing so up to a limit of $12,000 annually.

Compensation. The question of whether to compensate the members of lay citizens boards for their activity is difficult. The level of compensation paid Civil Service Commissioners was one of the principal issues in Local 660's report. They alleged that one Commissioner - Mr. Work - had been in the position of earning the equivalent of employment income from the commission while other commissioners took few of the hearings. They contend that, in this situation, commissioners. could develop an economic interest

in the work which is foreign to the concept of citizens' participation.

Based on similar reasoning, our commission bas in the past recom- mended that the Board eliminate stipends for all commissions9 with two exceptions: 1) commissions whose members spend so much time that it erodes their earning ability in other jobs and 2) commissions whose members essentially provide expertise in a specialty that the County wishes to employ outside the civil service system. The first exception excluded from our recommendation such commissions as the Civil Service and Regional Planning commissions; the second excluded commissions like the Employee Relations Commission. We further recommended that the County devise an expense reimbursement scheme to prevent the exclusion from commissions of people who could not otherwise afford to serve.

As a basic principle, the concept of paying stipends and fees, rather than expenses, for commission service is in tension with the concept of citizens' participation. It is also true, however, that some forms of citizens' participation erode earning power significantly enough so that the requirement for service with no payment would effectively restrict service only to those of independent means. The Civil Service Commission is one such form of service. On the average, preparation for a regular weekly Civil Service Commission meeting requires four hours and the meeting one-half to one day. Hearings average about three days. While commissioners can serve and pursue their careers, the time consumed is significant enough to require payment.

The elimination of payment to commissioners for acting as hearing officers does not prevent them from doing so, but it will discourage the activity. The stipend - $170 - is far below what the County would be paying skilled experienced arbitrators on the open market. Fees these days are $300-$500 per day.

The payment of hearing officers, whether or not commissioners, does not create an "economic interest" in the work. The hearing officer has no interest, economic or otherwise, in the matter actually under appeal - that is, management's decision.

If all five commissioners would agree to act as hearing officers, they could conduct nearly all hearings. At an average of three days per hearing, the current annual workload of about 900 cases would require about 60 hearing-days per commissioner per year. That is the equivalent of 25% of a year, or 10 hours per week. At $170 per day, total annual compensation for hearings would be $10,200. Some cases, of extraordinary complexity or length, should be assigned to outside hearing officers.

We believe that a non-zero limit of total compensation, on the order of $12,000 annually (the equivalent at County rates of an $8500 salary), would be a more effective means of preventing an unbalanced compensation of any individual while encouraging full citizen participation. It would limit commissioners to compensation for 52 weekly meetings at $100 ($5200) plus 40 hearing days or about 13 cases. We therefore strongly urge the Board to reconsider its previous action and adopt a ceiling on compensation which will permit paying commissioners for acting as hearing officers.

Commission Procedures

Local 660 in its report and others who supplied us with information alleged that commission procedures are sometimes inconsistent or inconsistently applied1 that commission policies and procedures are not adequately documented, and that some procedures are improper.

We recommend that the commission establish and document policies and procedures, with the assistance of County Counsel and the advice of all interested parties. In addition, the commission should establish a program of training and orientation of new appointees in the requirements of the position and the policies and procedures.

We were particularly concerned about the allegations of "ex parte" communications, executive sessions of the commission, the absence of general criteria or guidelines on the commission's treatment of certain kinds of cases, and the absence of documented standards for acting on the reports and recommendations of hearing officers.

Ex Parte Communications - In these allegations, the unions were sometimes referring to communications of commissioners with hearing officers and sometimes to communications of commissioners with parties to the case under appeal.

Since hearing officers are not parties to the case, and are employed as fact finders by the commission, communications with commissioners are not ex parte in the technical sense. Communications with the parties, when they occurred, were apparently based on the presumption that the role of the commissioner included mediation. Therefore, we do not criticize the com-missioners for these practices.

We do, nevertheless, question the practice in both cases. We believe that commissioners and hearing officers should avoid any communication indi-vidually with the parties. Their roles do not include mediation, and the rules of administrative hearings clearly require notice and the right to meetings. Commissioners should also avoid communications with the hearing officer once the hearing process has started. The hearing officer is an agent of the full commission. Communications, except for pre-hearing direction, could influence or appear to influence the fact finding function of the hearing officer, thus impairing his or her usefulness to the commission.

We conclude that the commission and County Counsel should establish and document guidelines governing communications on cases among the parties, commissioners, and hearing officers.

Executive Sessions. The proceedings of the commission are public under the Charter and the statutes. In particular, administrative hearings require the parties to be notified and present. We see little reason why any meeting or part of a meeting of the commission should be closed to the public, and we see no reason why they should in any case be closed to the parties. We therefore believe that the

commission should ask County Counsel for clarification on this point and work with County Counsel on establishing and documenting guidelines.

General Criteria - Some jurisdictions have detailed9 rigidly constructed and rigidly applied criteria governing the decisions of their appeals boards in virtually every imaginable case. We do not propose that the County Civil Service Commission should develop or adopt such rules. An administrative appeals board should be permitted broad discretion to apply its judgment under the law.

Nevertheless, we believe that the County Civil Service Commission should document and promulgate those policies it now applies in judging cases and other standards which are generally accepted in the labor relations field. We have in mind, for example, the criteria established in an arbitration award for Grief Brothers Cooperage Corporation, which were supplied to us by Lemaire, Faunce & Katznelson. Similarly, the commission could consider adopting documented guidelines to apply in cases of discipline involving off-duty conduct based on its earlier decisions and relevant court decisions.

We therefore conclude that the commission should work with the County Counsel and interested parties to document those general standards it intends to apply consistently when judging appeals.

Hearing Officers' Reports - In its report, Local 660 contends that the cornmission's standards for modifying the findings and recommendations of hearing

officers are not clear and well documented. The local recommends:

> "Recommended decisions by hearing officers should not be treated lightly by the commission.... If the commission, after reviewing the recommended decision and objections thereto, decides to overrule the hearing officer, then the commissioners must review the entire record and make their own written findings and decisions....

We concur with the intent of the recommendation. As we noted above, the commission tends to adopt hearing officers' reports and recommendations: it adopted 95% of them in 1979 according to Local 6609s report. When they modify one, however, Local 660 contends they may do so improperly. During review of an earlier draft of this report union representatives stated two reasons.

The first reason is a principle of administrative law, which states "He who decides must hear." That is, if the commission questions the hearing officer's report (whether or not a fellow commissioner) it should review the entire hearing record or re-open the case. We agree that this is a reasonable standard and believe that the commission should consistently apply it.

The second reason is this: the recommendation of a competent and conscientious hearing officer follows from his or her work identifying the issues and resolving differences of fact; consequently, the recommendation should be adopted in the absence of error in the work. We do not agree that the conclusions and recommendations of a hearing officer necessarily follow from the findings of fact. Judgment may be involved. For example, in the case of Cynthia White cited by the union, the hearing officer stated: "In view of the foregoing and on examination of the evidence presented at the hearing, discharge of the appellant at this time is too drastic a discipline..." Similarly, the hearing officer in the appeal of Harry M. Bauer, M.D., judged the quality of certain testimony: "As the trier of fact, the Hearing Officer has chosen to accept the testimony of Mr. Sheffield as accurately reflecting what occurred." Thus, judgments and opinions may lead a hearing officer to

one conclusion.

The commission should not be restricted from differing with the hearing officer's judgments and opinions or, if it adopts them, from modifying the weight assigned them in the conclusions and recommendations. When the commission does this, however, it should have clear and uniformly applied documented guidelines based on its experience in former cases.

Summary

The unions have charged that the Civil Service Commission favors management and have recommended that its operations be overhauled. We agree with some of their recommendations affecting the system, and disagree with others.

We recommend that the commission's role be defined explicitly as that of a third party neutral conducting administrative hearings which includes fact finding but excludes mediation and arbitration. We recommend that the role of hearing officers employed by the commission be limited to that of fact finding and that no restriction, except a compensation ceiling, be placed on individual commissioner activity as hearing officers. We recommend that the commission document policies and procedures with the assistance of County Counsel and the advice of interested parties, on the following: communications outside of hearings between commissioners and parties or hearing officers; executive sessions of the commission; general standards for decisions; standards for acting on hearing officers' reports. We recommend that the commission establish a training program.