UNIT DETERMINATION AND REPRESENTATION PROCEDURES IN STATE EMPLOYMENT

DISSERTATION FOR THE DEGREE OF Ph. D.

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GERALD ALAN BALFOUR

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This is to certify that the

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GERALD ALAN BALFOUR

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of the requirements for

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Jack Stieber
Major professor

Date March 4, 1976

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ABSTRACT

UNIT DETERMINATION AND REPRESENTATION PROCEDURES IN STATE EMPLOYMENT

By

G. Alan Balfour

Unit determination and employee representation procedures are underpublicized but important aspects of collective negotiations. As collective bargaining spreads among public employees, these areas are becoming increasingly important. This increase is likely to be intensified by the probable passage of federal legislation requiring rights of collective bargaining for state and local employees. This dissertation examines the special considerations of applying unit determination and employee representation procedures to state employees. It does not cover the right to strike, impasse procedures, or the economic consequences of collective bargaining.

The method consists of a review of the literature on unit determination in all sectors, the nature of state government and state government employment, civil service and merit systems, and the legal basis of bargaining. The history of unit determination is traced from the Wagner Act, through the federal Executive Orders, to state and local legislation. Questionnaire responses were received from 49 states concerning the operation of their unit

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determination policies (if any), and their stated satisfaction with them. Massachusetts, New Jersey, Pennsylvania, Wisconsin, and Oregon were visited to observe the operation of a cross section of unit determination systems and to interview practitioners and representatives of various interests. The author participated in a special colloquium in which executives from six principal public employee relations boards discussed the merits of various systems. The author's work as Research Director for a "blue-ribbon" committee charged with formulating a new unit determination policy for Michigan enabled him to apply his general findings to a specific case study for Michigan. Relevant portions of the state constitution were read, along with Attorney General's Opinions and all state policies, rules, regulations, and procedures dealing with the employment relationship. Members of the Department of Civil Service, state employee organizations, department personnel managers, and the Chairman of the Civil Service Commission (the Commission is the state employer in Michigan) were interviewed. The stated needs of the parties were solicited through 2 1/2 days of public hearings conducted by the "blue-ribbon" committee, and the parties' public reactions to the recommended changes in policy were examined. The committee report was critically analyzed.

The dissertation is divided into three parts. Part I deals with the factors generally influencing state employment unit determination and employee representation

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procedures. Part II applies the general findings to the Michigan case and proposes an original unit determination plan. Part III draws conclusions and produces recommendations for optimal unit determination plans under differing circumstances among states.

In Part I, six factors influencing unit determination are examined: the extent of the obligation to bargain, the scope of bargainable issues, requirements of standardization of benefits, state administrative structure, employee desires, and the political power of the parties. The pros and cons of providing special treatment for managers, supervisors, professionals, craftsmen, state police, security personnel, confidential and higher education employees are explored.

Representation policies and unit-forming mechanisms are examined, including the merits of exclusive versus multiple representation, methods of determining majority status, and the degree to which units should be specified in advance. Unit determination schemes are surveyed, and the differing procedures from the five states visited are examined in depth.

Part II cites the factors influencing a policy change in Michigan, and notes the peculiarities special to the state. The stated needs of the parties are discussed, and the Advisory Employment Relations Committee recommendations analyzed. A proposed alternative to the statewide occupational units recommended is analyzed.

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A trend toward statewide occupational units is noted in Part III, while limitations on their appropriateness in differing situations are analyzed. It is concluded that a workable policy should meet employee needs for representation at both the local and state level and operate at an acceptable financial and convenience dost to the state. Exclusive representation based on secret ballot majority vote elections, representation for supervisors in separate units, and provisions for guarding against the fragmentation of units are recommended.

UNIT DETERMINATION AND REPRESENTATION PROCEDURES IN STATE EMPLOYMENT

By

Gerald Alan Balfour

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TABLE OF CONTENTS

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UNIT DETERMINATION AND REPRESENTATION PROCEDURES IN STATE EMPLOYMENT

CHAPTER 1

INTRODUCTION AND STATEMENT OF THE PROBLEM

Unit determination and employee representation procedures are significant problems which are too often underemphasized in state employment at the expense of more "glamorous" issues such as impasse procedures and strikes. Yet they profoundly influence everyday employee relations. The formation of units influences the selection of the management representative with whom the employee organization will negotiate and whether that representative will have the authority to reply to employee organization demands for local working conditions and/or employer-wide standardized benefits. It influences both the size and the strength of employee representatives and whether special interests will be represented or suppressed. It influences whether employees are grouped with others of similar job assignments or with those employed in the same department, or even whether they may be represented at all. It may even be the controlling factor in determining who is selected to represent the employees. It may influence

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whether the employer can operate efficiently and whether the public interest is served or whether it is subverted by means of excessive proliferation[1] of units.

Yet, despite their importance, these problems have not received extensive attention at the state level. This lack of attention is made more critical by the increasing need for unit determination caused by the increasing collective representation of state employees. This "natural" impetus could receive even further stimulation from proposed federal legislation that would require minimal standards of collective bargaining for state and local governments.[2]

Parties Affected and Their Interests

Four parties are profoundly affected by the results of unit determination: state employees, state employers, employee organizations, and the public.

From the employee's point of view, the unit preferred would allow representation by an effective employee organization, with the employee having an influential voice in the control of that organization. Organizational

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[1]The term "proliferation," while technically incorrect to describe an increase in the number of units, is widely used in the field as a synonym for "fragmentation" and will be used as such throughout this thesis.

[2]Such is the intent of H.R. 8677 currently before Congress. Observors give a bill of this type a "likely chance of passing within the next few years." See Pritchard, "Will Uncle Sam Join You at the Bargaining Table?," p. 7.

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effectiveness might be promoted by either the "strength of numbers" in large units, or, if particular skills or positions are possessed, in small units upon which others are dependent. To promote an effective voice in the organization, the employee might prefer smaller units in which his single vote carries a proportionally greater weight or one in which the majority of employees were of "the same mind." All other considerations being equal, he would oppose units in which representatives may be responsible to many other interest groups, or those in which the representative's headquarters is based in some other location. The employee would prefer a "community of interest" with others in the unit, and the opportunity to interact with and influence his representative.

The employer wishes units that will facilitate standardized application of benefits, promote administrative efficiency and produce peaceful and stable employee relations. For the employer this often means that a small number of large units is preferable for administrative efficiency and convenience, and for the application of standardized benefits. Whether such large units will promote labor peace and stability is often dependent upon whether the employees are grouped so as to share a community of interest, and whether they feel they are being effectively represented, or whether they feel their interests are being submerged under another bureaucracy--that of their chosen representative. Small units are

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generally opposed by state employers since they lead to more administrative effort, difficulties in maintaining standardization, and the problems of whipsawing and "me too, bargaining"--unless the units can be kept small and uncoordinated enough to make their consideration unnecessary.

Simplistically, organizations[3] may be said to favor the largest unit they can win in an election or achieve through voluntary agreement. This must be modified in two significant respects. One, the unit must be appropriate to provide effective representation; in particular, it must be structured to provide negotiations with the manager who has authority to speak for, if not bind,[4] the employer on issues within the permissible scope of negotiations. If the scope of bargaining is wide, including wages and fringe benefits, organizations will want units broad enough to reach the employer with authority to handle such issues. If however, negotiations are limited to local or departmental working conditions, organizations may prefer units designed to enable them to deal with the official who has control over local conditions, usually a department head. The second major caveat to the "largest winnable unit" theory is that the

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[3]Unless otherwise noted, "organizations" refers to employee representative organizations.

[4]Because of the separation of powers, the ability to bind the employer is diffused at all levels of government.

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desired unit should be one in which the organization is not in immediate and continuing danger of decertification. It should be a unit which the organization can physically service, and one in which internal discontent does not present a major obstacle to providing effective representation. This means organizations would often favor units limited either by site and/or job duties, and not necessarily be the largest "winnable" unit, especially if there is a different "winnable" unit available.

The public interest in unit determination requires a system which promotes administrative efficiency, the continuation of uninterrupted services, acceptable levels of quality, the lowest possible cost consistent with the aforementioned, and one that promotes peaceful and equitable employee relations. The public's interest in efficiency is in many ways best served by large units, provided they do not create unnecessary unrest or increase the possibility of strikes.

Scope

The dissertation is divided into three parts. Part One consists of an examination of the general principles of unit determination and employee representation procedures in state government. Part Two is an intensive analysis of the attempts to change the unit determination scheme in Michigan. Part Three consists of the author's conclusions concerning various schemes of unit determination and employee representation.

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To understand the factors influencing unit determination it is necessary to understand the origin of the problem, and the extent to which prior experience might be transferable. To do this, the history of unit determination is traced in Chapter 2 from its private sector beginnings, through the experience of the federal sector under the presidential executive orders, to the experience of state legislation dealing with local and state employees. In each sector, the criteria used in determining a community of interest are noted, and differences among them rationalized. To determine transferability, the differences between private and public sector employment are noted, and the needs of federal, local, and state employees are distinguished. Furthermore, the factors inherent in and peculiar to state government employment, including the functions of the various branches, are identified and explored.

Chapter 3 examines the reasoning behind the special treatment customarily considered for eight classifications of employees: managers, supervisors, professionals, craftsmen, state police, security personnel, confidential and state university employees.

Representation policies, unit determination criteria, and mechanisms for the formation of units are described in Chapter 4. Also included are the merits of exclusive vs. multiple representation, community of interest criteria, standards for the formation of units,

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Chapter 5 enumerates the status of unit determination in all states, and provides an analytical investigation of five states representing a partial cross section of procedures: Wisconsin, Pennsylvania, New Jersey, Massachusetts, and Oregon.

Part Two of the dissertation begins with Chapter 6 which details the procedures currently (1974) in effect in Michigan, the constitutional authority granted to the Civil Service Commission to control employee relations, and the Commission's stance in opposition to collective bargaining. It also traces the creation and procedures of a specially constituted Advisory Employment Relations Committee (AERC) formed to recommend a policy of unit determination and employee representation procedures suitable for the particular needs of Michigan. It also describes the Michigan parties potentially affected by the recommendations of the AERC, and reports their stated needs.

The recommendations of the Committee are summarized and the parties' responses are evaluated in Chapter 7. The AERC Report is evaluated and an alternative, original plan of unit determination is presented in Chapter 8.

Part Three of the dissertation consists of the author's conclusions and thoughts on some of the central issues of unit determination and employee representation procedures, including limitations on the number of units, criteria for community of interest, and the treatment of supervisors. These are reported in Chapter 9.

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Appendix A.

Method

As a starting point, the author surveyed the entire literature on unit determination in state government and much of the literature on this matter in the private, federal, and municipal sectors, and in Canada. Also reviewed were treatises on the nature of state government and state government employment, civil service and merit systems, the legal basis for bargaining, and the representation rights and needs of various classifications of employees.

To trace the origins of unit determination, and to determine what alternatives were explored, the debates on the merits of the Wagner Act were read in the Congressional Record and Legislative History. Also consulted were newspaper articles written at that time, and records of radio speeches by the principal parties to the debate, along with books tracing the history of the act and its repercussions. To trace the spread of policy to the public sector, the federal executive orders dealing with the topic were read, as were articles evaluating their wisdom, need, and impact. The spread to state and local employment was explored through articles, "blue-ribbon committee" recommendations, and reports and legislation published in the Government Employee Relations Report (GERR).[5]

To determine the range and incidence of state unit determination schemes, a questionnaire[6] was mailed to all

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[5] See GERR, Reference File--State and Local.

[6] A copy of the questionnaire is reprinted in Appendix A.

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states, seeking information on each state's unit determination policies (if any), the perceived strengths and weaknesses of such policies, and the level of satisfaction with those policies. Returns were received from 49 states. These questionnaires were used, along with the literature survey, to identify models of unit determination, and to select five states to visit in order to observe firsthand the operation of a cross section of systems. The author spent between two and four days in each state visited and conferred with an average of eight practitioners per visit, always including the chief executive officer of the state labor relations board, the highest management official with the duty to bargain, and the heads of principal unions and employee associations. During these visits, questions were asked and observations made on how policy and decisions were formulated and enacted in the actual operation of all aspects of a system of unit determination and employee representation.

To familiarize himself with the relationship between unit determination and public employment as a whole, the author attended the Great Lakes Assembly held in East Lansing, Michigan, in spring of 1973 dealing with issues in state and local government employment. To solicit opinions on unit determination from expert neutrals, the author, who was research director of the AERC, participated in a special colloquium held in East Lansing in fall of 1973, at which AERC members met with the executive heads

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(or their delegates) of the public employment relations board of New York, New York City, Pennsylvania, Massachusetts, Michigan, and Wisconsin.

To investigate intensively the Michigan situation the author read relevant portions of the state constitution and Attorney General's Opinions on the unique functions of the branches of Michigan state government, along with all state policies, rules, regulations, and procedures dealing with the employment relationship. Members of the Civil Service Commission, Department of Civil Service, and state employee organizations were interviewed. The stated needs of the affected parties in Michigan were solicited over a three day period by means of public hearings sponsored by the AERC in the state capital. Twenty appearances were made, and nineteen briefs filed.

Finally, the AERC Report was analyzed and evaluated, and the author drew his own conclusions about the merits of various issues.

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CHAPTER 2

HISTORY OF UNIT DETERMINATION AND FACTORS AFFECTING STATE EMPLOYMENT

Private Sector History

> It is well nigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit. For this reason, collective bargaining means majority rule. This rule is conducive not only to agreements, but also to friendly relations. Workers find it easier to approach their employers in a spirit of good will if they are not torn by internal dissent. And employers, wherever majority rule has been given a fair chance, have discovered it more profitable to deal with a single group than to be harassed by a constant series of negotiations with rival fractions.[1]

So testified Senator Robert B. Wagner before the United States Senate in 1935 in support of Bill 1958, ultimately to be passed as the National Labor Relations Act.[2]

An endorsement of majority rule requires the determination of the appropriate population, or "unit," from which the majority is to be drawn. The process for

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[1] Congressional Record, Vol. 79, Part 7, p. 7571 (74th Congress, 1st Session, May 6-June 28, 1935).

[2] 49 Stat. 449; 29 U.S.C. §§151-168; FCA 29 §§151-168.

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making this determination has been a matter of dispute from the time the Act was proposed to the present.

Opposition to the majority principle grew out of two concerns in Congress. One school of thought regarded majority rule exclusive representation as injurious to workers in the minority; the other objected to the proposed manner of determining units by a National Labor Relations Board.

The principle of majority rule was opposed, among others, by the United States Chamber of Commerce, the Congress of American Industry, and the National Association of Manufacturers.[3] Representative Rich of Pennsylvania spoke against the principle in the House debate, arguing,

> But are the gentlemen gaining new rights for labor? On the contrary, I think they are inflicting new wrongs upon the worker, for, if his bill is enacted, his right of self-organization and association will not be enlarged--it will be contracted. First of all, the labor board, not himself, will determine the unit of employment which is to select representatives. Unless he is a part of the majority in that unit he will not be represented by an agent of his own selection. As an individual, whether he is in a big or little unit of employment, he cannot make his own contract and sell his own labor if a majority of his fellow employees want to sell it collectively. This is not enlarging the right of self-organization or association. This bill gives fellow employees the right to coerce and intimidate their fellows in the exercise of every one of those rights. It destroys individual bargaining, takes away the right to determine their own unit of employment, and, unless you are part of the majority, the worker will have to let someone else whom he did not select sell his labor for him.[4]

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[3] Congressional Record, op. cit., Part 7, p. 7571.

[4] Ibid., Part 8, p. 9690.

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This type of concern was answered on its merits by Senator Wagner:

> If the employer deals with workers as individuals, the inequality of bargaining power between them is so great that the liberty of contract becomes a fiction. And of course in any large plant, so-called individual treatment means simply despotic rule by management alone. A second alternative, which consists in dealing with various minority groups, gives the unscrupulous employer an opportunity to play one group against another constantly. It foments in the ranks of the workers discord, suspicion, and rivalry at all times. . . . Majority rule is thus the only rule that makes collective bargaining a reality.[5]

From a more political perspective, Senator Wagner was quick to point out that the very organizations then opposing majority rule had been on record as favoring it when they were in control of the situation through their dominance over a company union.[6] He further asserted that their opposition was for purely self-serving reasons, and quoted a former Chairman of the "Old National Labor Relations Board,"[7] Lloyd K. Garrison, as saying:

> It seemed to me last summer, as I sat on the Board and listened to these cases, quite evident that the opposition to this rule came down simply to this, that the

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[5]Radio Address, "National Labor Relations Bill," N.B.C., May 21, 1935. Quoted in Silverberg, The Wagner Act: After Ten Years, p. 19.

[6]Record, op. cit., Part 7, p. 7571.

[7]President Roosevelt had established a board by executive order that bore the same name as the commission authorized by the National Labor Relations Act. It was created in 1934 to give labor the protection of Section 7 (a) of the National Industrial Recovery Act. In the transition period following the passage of the N.L.R.A., it came to be known as the "Old Board." For a discussion of its activities, see Madden, J. Warren, "Birth of the Board," in Silverberg, op. cit., pp. 34-42.

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> employer who opposed the rule merely wanted to avoid doing any collective bargaining at all as long as he could keep his responsibility diffused. So long as he could say, "I will bargain first with this group, then I will bargain with that group, and then I will run back to the first and see what they think of the proposals," and so on ad infinitum, he would end up by reaching no collective agreement at all. And that is why majority rule is opposed.[8]

As a corollary argument there were also extensive allegations that the passage of the Act would require workers to join unions.[9] Proponents of the bill argued that these allegations were misunderstandings of the bill's effect, and that the status of closed shop agreements, which were not forbidden by federal law at the time, but required the consent of both parties to the contract, would remain unchanged.[10]

No further mention of these matters appears in the Record, and no amendment opposing majority rule ever reached the floor.

Of a more procedural nature was the process for selecting units in which a majority would be determined. Senate Bill 1958 carried the following language to the House:

> Senate 9 (b): The Board shall decide in each case whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.[11]

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[8]Record, op. cit., Part 7, p. 7571.

[9]Ibid., p. 7673; Ibid., Part 8, p. 9710.

[10]Ibid., Part 8, p. 9710.

[11]Ibid., p. 9705.

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The lack of criteria for determining appropriateness was not nearly so vehemently opposed as was the final clause providing "or other unit." Many Representatives and Senators favoring, as well as opposed to, labor fought this provision.[12] Representative Taber testified that,

> Consider what this provision does--it permits the board to say that the unit shall be a group in a certain territory. Perhaps in that territory will be plants in which the employees are perfectly satisfied with the conditions of employment, plants where there is not the slightest excuse for trouble, but this power to bring that plant in with other plants can create a situation where these men will be forced entirely out of their rights. I do not like to see any board given power such as that.[13]

The Taber objections reflected the concerns of others.[14] Those who favored the possibility of the Board dictating units wider than a single employer argued that attempts by large unions to organize multiple small employers in an industry would be thwarted, and that industry-wide agreements would be prevented.[15] This dispute was resolved by the observation that units were established only for the purpose of selecting representatives, and there was no prohibition against representatives banding together to increase the size of the negotiating unit.[16]

The House proposed amendments to Senate Bill 1958

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[12]Ibid.; Ibid., p. 9710; Ibid., p. 9728.

[13]Ibid., p. 9705.

[14]Ibid., p. 9710.

[15]Ibid., p. 9728.

[16]Ibid.

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and a Joint Committee made the following recommendations:

> . . . The amendment also added a proviso designed to limit the otherwise broad connotation that might be put upon the phrase "or other unit." The proviso, however, was subject to some misconstructions and the conferees have agreed that the simplest way to deal with the matter is to strike out the undefined phrase "other unit." It was also agreed to insert after "plant unit" the phrase "or subdivision thereof." This was done because the [Old] National Labor Relations Board has frequently had occasion to order an election in a unit not as broad as the "employer unit," yet not necessarily coincident with the phrases "craft unit" or "plant unit"; for example, the "production and maintenance employees" of a given plant.[17]

The language finally adopted gave little direction to the Board in determining the appropriateness of the unit:

> Section 9 (b). The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.[18]

As John Abodeely observed in evaluating this instruction,

> Despite the wide latitude and the importance of this delegation, Section 9 (b) contains the only affirmative standard to guide the Board's choice of bargaining units. A strict application of this standard--"to assure to employees the fullest freedom in exercising the rights guaranteed by this Act"--would require the Board to allow employees any grouping which they desired. This would promote their "fullest freedom" by allowing those who wish union representation to join while permitting the remaining employees to abstain from unionization. Although certainly enhancing employee freedom, such a scheme would be ruinous to long-run industrial relations stability.

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[17] Ibid., p. 10299

[18] N.L.R.A., op. cit., note 2.

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> The rights of the organized would effectively be controlled by the actions of the unorganized.[19]

The obvious inadequacy of the statutory charge to provide guidelines for determining units left virtually complete discretion in the hands of the Board to create criteria on a case-by-case basis. The "fleshing out" process proved to be a politically and emotionally charged issue that caused the Board to incur the wrath of both management and organized labor.

The splitting of the CIO from the AFL was occurring just as the Board began to make its initial unit determinations. The division of organized labor along craft and industrial lines had a profound effect on petitions for unit determinations and on the parties' reactions to Board decisions. The basic question became, "Where is a worker's community of interest? Is it with all those working under the same management (a plant-wide or employer-wide unit); or with those employed at the same task (a craft unit)? This question continues to be important today, and is a central issue in public sector collective bargaining.

In proceeding to establish unit criteria by the "case law" method, the Board first faced the question of separate recognition of craft interests in the Globe

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[19]Abodeely, The NLRB and the Appropriate Bargaining Unit, p. 5.

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Machine and Stamping Co.[20] decision of 1937. In this case the Board was confronted with rival union claims. One wanted a plant-wide industrial unit, three others wanted smaller craft-only units. The Board determined that either choice was feasible, and there was no statutory language prescribing which choice to elect. The Board decided that where alternative units were equally meritorious, the employees of the craft should vote separately from those in the industrial unit to determine if they wished to be included in the wider unit. This initial "Globe Doctrine" recognition of the differences in community of interest between common occupation and common management has been, and continues to be, amplified, modified, and clarified through a series of successor cases.[21]

In determining the appropriateness of a petitioned unit, it should be noted that the Board's charge is not an impartial one--but rather it is its responsibility to decide the issue in the best interests of the employees.[22] Under this instruction the Board has applied the following

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[20] 3 NLRB 294.

[21] See American Can Co., 13 NLRB 1252 (1939); National Tube Co., 76 NLRB 1199 (1948); American Potash & Chemical Corp., 107 NLRB 1418 (1954); and Mallinckrodt Chemical Works, Uranium Division, 162 NLRB 387 (1966). Note also Taft Hartley amendments establishing priorities, usually based on bargaining history, on the rights of craft units to separate representation.

[22] See Beal, et al., The Practice of Collective Bargaining, p. 195.

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tests of appropriateness for community of interest:[23]

1. Extent of union representation interest
2. Bargaining history
3. Union organizational structure
4. Management organizational structure
5. Methods of wage payment
6. Regularity of employment

The National Labor Relations Act and the subsequent Taft-Hartley amendments also determined which categories of employees were to receive special treatment. Section 9 (b) of the Taft-Hartley Act prohibits the inclusion of professional employees in a unit with nonprofessionals unless a majority of the professionals vote for inclusion in such a unit. Plant guards may be included only in a unit composed exclusively of guards, and this unit may not be represented by any organization that admits non-guards to membership.

Certain other groups are not considered employees for purposes of the law. These include independent contractors, agricultural workers, and supervisors.[24] The exclusion of supervisors was a result of a specific amendment in the Taft-Hartley Act. Under NLRB decisions from 1935-1947, supervisors were permitted rights of representation and bargaining. It is possible that this result was never intended in the Wagner Act. The act did not define "supervisors" specifically, but defined "employers" (who were excluded) as "any person acting as an agent of

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[23]Ibid., pp. 194-195.

[24]Labor-Management Relations Act, Section 2.(3).

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an employer directly or indirectly."[25] It has been alleged that this language would naturally include all personnel acting in positions at or above the supervisory level.[26] The Board's failure to adopt this position did permit some experience with supervisory inclusion, and with the creation of separate units of supervisors. Testimony before the Congress argued that experience showed that supervisory units were not independent, and that they were, in fact, controlled by the subordinates' union.[27] This was said to be because the supervisors allegedly needed the support of the rank-and-file to pursue their demands against the employer.[28] A further argument against supervisory representation was that the presence of supervisors in a unit inhibited employee free speech, preventing workers from exercising their fullest rights under the act. But most persuasive of all, according to Larrowe, was the strong lobbying effort of the automobile manufacturers to "return control of the supervisors to management."[29] The automobile industry had experienced substantial

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[25] N.L.R.A., Section 2 (2).

[26] Rains, "Collective Bargaining in the Public Sector and the Need for Exclusion of Supervisory Personnel," p. 279.

[27] Ibid., p. 280.

[28] Ibid., p. 280.

[29] See Larrowe, Charles P., "A Meteor on the Industrial Relations Horizon: The Foreman's Association of America."

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unionization of supervisors during the period and managers plainly felt it inappropriate that supervisors be organized against them and not be entirely beholden to company policy. The result of these arguments was to amend the act in 1947 to exclude supervisors.[30] Since 1972, however, NLRB decisions have questioned whether exclusion ought apply to "managerial employees" not privy to personnel decisions. In at least two instances, the Board has permitted representation of supervisors of non-personnel projects.[31]

Public Employment--Federal

The emergence of collective bargaining and unit determination in public employment did not occur "cleanly" as the result of a single piece of legislation. According to Harold Davey,

> There is nothing new about unionism among government employees. Blue-collar craftsmen working for governmental agencies at various levels have been represented by labor organizations for many years--in some cases quite effectively. Also, in particular circumstances, professionals and technicians have enjoyed an approximation of collective bargaining for long periods of time. . . .[32]

The first widespread incursion of formalized unit determination into public employment, however, occurred in the federal sector with the issuance of President Kennedy's

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[30]Labor-Management Relations Act, Section 2 (3).

[31]See Housemen and Helpers of America, Independent, 206 NLRB No. 85 and Bell Aerospace Co., 196 NLRB No. 127.

[32]Davey, Contemporary Collective Bargaining, p. 341.

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Executive Order 10988[33] in 1962. The purpose of the order was to bring limited rights of collective bargaining to federal employees. The provisions of the order were very rudimentary. Unit determination was left to the discretion of agency heads.[34] True exclusive representation was not ordered. Instead, "informal," "formal," and "exclusive" representation were provided, depending on the percentage of employees organized in the appropriate unit.[35] It was possible and common for more than one employee organization to have some form of acknowledged recognition within a unit. The order further provided that,

> Units may be established on any plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned, but no unit shall be established for purposes of exclusive recognition which includes (1) any managerial executive, (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, (3) both supervisors who officially evaluate the performance of employees and the employees whom they supervise, or (4) both professional employees and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit.[36]

In situations where employee organizations felt aggrieved in the determination of an appropriate unit, procedures were formulated for advisory arbitration of the issues in dispute.[37] The cost of such services was borne

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[33] Federal Register, Vol. 27, No. 13 (1962), pp. 551-556.

[34] E.O. 10988, Section 5.(a).

[35] Ibid., Section 3.(a).

[36] Ibid., Section 6.(a).

[37] Ibid., Section 11.

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entirely by the agency, but the decision reached was not binding. Charles M. Rehmus, author of several unit determinations under this provision, had stated that,

> In general, arbitrators have identified the following five criteria as demonstrating a community of interest, particularly when several are present:
> (1) All of the employees involved work at a common work site.
> (2) All have a common supervisor at the work site or in some reasonably proximate relationship.
> (3) All employees in the proposed unit have a common skill or educational requirement.
> (4) All of the employees involved are part of an integrated work process or contribute to a continuous work flow.
> (5) All of the employees have similar working conditions.[38]

These criteria differ from those utilized by the NLRB for the private sector[39] principally in their focus on the structure of the employee-employer relationship as the relevant unit consideration, rather than on the desires of the employees.

Rehmus also concluded that although federal agencies have "lost" well over half the awards, the arbitrator's recommendations have been accepted in all but one or two minor instances.[40] He implies that this deference is due to the political exigencies of the situation, barring a clearly erroneous decision on the part of the arbitrator.

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[38]Rehmus, Arbitration of Representation and Bargaining Unit Questions in Public Employment Disputes, p. 254.

[39]For a listing of the NLRB private sector criteria, see p. 17, supra.

[40]Rehmus, p. 256.

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The provisions of E.O. 10988 did not meet with universal approval,[41] although they were regarded by some as a worthwhile step in the right direction.[42] The hybrid combination of informal, formal, and exclusive recognition was criticized for "making difficult the fixing of responsibility, the growth of leadership, and the acceptance of obligations."[43] Ironically, these multiple forms of recognition were a pro-employee policy formulated to facilitate the growth of unionization.[44] The order was also criticized for its failure to create units in which managers with sufficient authority to bargain could be brought together with the employee organizations to negotiate.[45]

President Nixon's Executive Order 11491,[46] issued in 1969, took measures to remedy those criticisms. It

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[41]See Berger, "The Old Order Giveth Way to the New: A Comparison of Executive Order 10988 with Executive Order 11491."

[42]See Macy, "Employee-Management Cooperation in the Federal Service."

[43]Berger, op. cit., p. 85.

[44]This is the general "building block theory" that would encourage the growth of employee organizations by permitting rights of representation (and hopefully, demonstration of some results) before needing to achieve majority status--a situation presumed difficult to attain with little prior organizing experience or tradition. The permitting of multiple representatives was intended to encourage participation by employees in an organization of their choice.

[45]Berger, pp. 80-84.

[46]Federal Register, Vol. 34, No. 210 (1969), pp. 17605-17615.

provided for true exclusive representation based on a majority of those voting in a secret ballot election in an appropriate unit.[47] Timetables for phasing out informal and formal recognition (with some provisions for "grandfathering") were provided.[48] A middleground provision was also provided where "national consultation rights" could be accorded to an employee organization representing a "substantial" number of employees in an agency where no employee organization already held exclusive recognition rights at the national level.[49] A change in the language describing an appropriate unit was intended to create units at a high enough level to reach managers with the authority to negotiate.[50] Specifically, under the new order,

> A unit may be established on a plant or installation, craft, functional or other basis which will assure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. . . . (Emphasis added)[51]

The caveat regarding "efficiency of agency operations," taken with the next sentence of the section, "A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have

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[47]E.O. 11491, Section 10.

[48]Ibid., Section 24.

[49]E.O. 11491, Section 9.

[50]Berger, op. cit., p. 83.

[51]E.O. 11491, Section 10.(b).

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organized, . . ."[52] can be interpreted as a reflection of a concern for an administratively inconvenient proliferation of low-level units.[53] Provisions for management employees, guards, Federal non-clerical personnel employees, and professionals remained unchanged,[54] while supervisors were defined[55] and specifically excluded from coverage,[56] with some "grandfathered" exceptions.[57] The removal of supervisors from coverage could be construed as an attempt to bring them more into harmony with the goals of management, and to make less ambiguous their loyalty.[58]

Arbitration of unit determination disputes was abolished. In its place was substituted determination by the Assistant Secretary of Labor for Labor-Management Relations[59] (a Presidential appointee). This provision has been criticized as failing to provide outside, neutral, binding determinations of the appropriateness of units, instead still leaving ultimate authority in the hands of

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[52]Ibid.

[53]See Shaw and Clark, "Determination of Appropriate Bargaining Units in the Public Sector," p. 154.

[54]Ibid.

[55]Ibid., Section 2.(c).

[56]Ibid., Section 2.(b).

[57]Ibid., Section 24.

[58]See Shaw and Clark, op. cit., p. 159.

[59]E.O. 11491, Section 6.(a)(1).

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the employer.[60]

A further order on this matter from President Nixon, E.O. 11616,[61] issued in 1971, finishes the phasing out of informal and formal recognition but leaves other unit formation provisions unchanged.

Despite its imperfections and narrowness of scope, Davey claims that,

> E.O. 10988 had a catalytic impact far beyond the confines of the federal establishment. It was of great value in stimulating the drive for unionization among employees of state, municipal and county agencies. Union growth in these areas has been nothing short of spectacular in the period since 1962. The ferment of unionism has produced a rash of state legislation. . . .[62]

Public Employment--State and Local

The spread of these formalized unit determination and employee representation policies into the state and local sectors by state legislation has been uneven.[63] In the absence of enabling legislation, collective bargaining often arose in practice, particularly at the local level, without the formal protection of law.[64] In these

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[60]Berger, op. cit., p. 81.

[61]Federal Register, Vol. 36, No. 168 (1971), pp. 17319-17322.

[62]Davey, op. cit., p. 342.

[63]Shaw and Clark, op. cit., pp. 152-153.

[64]There had been a flurry of state legislation passed in the years post World War II dealing with government employee relations, but these acts were mostly of a punitive nature dealing with penalties for striking. Characteristically, these laws attempted to prevent

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instances, units were usually determined by whatever the union could force upon management.[65] The first state to provide comprehensive procedures for municipal employees was Wisconsin in 1959.[66] Since that time, more and more states, particularly those in the East and Great Lakes regions, have passed legislation.[67]

The coverage of the legislation has taken many forms, both in scope and in procedure. Some apply only to special groups (police, fire, teachers, municipal, state employees, etc.), while others are comprehensive of all public employees in a state.[68] The method of unit determination varies from state to state. Some possible procedures, discussed infra (see Chapter 5), include neutral agency determination,[69] legislative specification,[70] administrative hearing,[71] or Civil Service Commission edict.[72]

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workers from joining unions that asserted the right to strike, and certainly did not prescribe means for gaining recognition and forming bargaining units. A leading example of an act of this type was New York's Condon-Wadlin Law, Ch. 391, L'47.

[65]Shaw and Clark, op. cit., p. 152.

[66]Wis. Stat. Ann. §§111.70(1)-(5) (Supp. 1971).

[67]AERC Report and Recommendations, p. 18.

[68]Shaw and Clark, op. cit., p. 152.

[69]As in Pennsylvania, New Jersey, and Massachusetts.

[70]As in Wisconsin and Hawaii.

[71]See Lefkowitz, The Legal Basis of Employee Relations of New York State Employees.

[72]As in Michigan. See Part II.

In many instances, the purpose of unit determination in these acts is significantly different from the purpose of the NLRA. Instead of a legislative intention to favor the formation of unions and units in accordance with the wishes of employees,[73] a more balanced approach considering also the needs of the public and state personnel management is often dictated. In response to these interests, several states have requirements,[74] and special committees have recommended,[75] that units be large enough to be administratively feasible.

Factors commonly looked at in the formation of units include:

1. Community of interest, including
   - Similarity of duties, skills, working conditions, and benefits.
   - Employer's organizational structure including supervision.
   - Distinctiveness of the function performed.
   - Extent to which work processes are integrated.
2. Effective dealings and efficiency of operations.
3. Extent of organization.[76]

The criteria here utilized seem to draw heavily from both the NLRB private sector precedents[77] favoring

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[73]NLRA Preamble and Section 9.(a).

[74]E.g., New York Civil Service Law (Taylor Act), Section 207(1)(b), and Pennsylvania Public Employee Relations Act, Title 43, Section 1101.604(1)(ii)(1970).

[75]Report of the Twentieth Century Task Force, p. 11; California Assembly Advisory Council of Public Employee Relations Report, p. 85.

[76]Shaw and Clark, op. cit., pp. 164-167.

[77]See p. 22, supra.

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employee choice (bargaining history and extent of organization), and the traditional federal emphasis on job structure criteria,[78] while adding the dimension of efficiency of operations prescribed in E.O. 11491.

The dramatic growth in public employee unionism witnessed in the 1960's occurred both among those not previously represented, and by the conversion of previously "professional" organizations to collective bargaining tactics.[79] The latter occurred most noticeably among the two largest teachers' organizations, the National Education Association and the American Federation of Teachers.[80] The upsurge in militancy among public employees, fostered by some much publicized strikes, often resulted in legislation designed to impose order and restore stability to the system. While the focus of much of this legislation was on impasse procedures and strike penalties, it nonetheless often proposed a framework for representation policies and procedures for determining units. Many times the new laws were formulated in response to the demands of a particular segment of public employees, e.g., teachers and/or municipal workers, and then applied to other groups of public employees.[81] This sometimes led

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[78]See pp. 26, 27, supra.

[79]Davey, op. cit., p. 341.

[80]Ibid., pp. 366-367.

[81]Experiences of Pennsylvania and New Jersey as reported in personal interviews.

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to the acquiring of rights by groups that had not sought, or had not been able to attain organization rights, on their own.[82] In other instances,[83] separate statutes were passed authorizing different forms of recognition and rights for different classes of employees, such as police and fire, teachers, municipal, and state. In Michigan, the legislature passed a statute granting collective bargaining rights to all public employees except those in the state classified civil service.[84] Police and firemen are included under the act for most purposes but have their own legislation for impasse procedures.[85] State employees' terms and conditions of employment in Michigan are under the constitutional charge of the Civil Service Commission,[86] and are not subject to acts of the state legislature.

An examination of the various unit determination and employee representation procedures available to states, and the rationale of each, requires a specification of the particular factors affecting state government employment.

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[82]Experience of New Jersey state employees as reported in personal interview.

[83]Note, for example, GERR Reference File, Section 51, "State and Local."

[84]Michigan Public Employment Relations Act, Michigan Compiled Laws, Sections 423.201-423.216.

[85]Michigan P.A. 312, L.1969 as amended by P.A. 127, L.1972.

[86]Michigan State Constitution, Article 11, Section 5.

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Factors Affecting State Government Employment

State government employment is, of course, a form of public employment and is influenced by the considerations commonly separating the public from the private sector. These differences are well reported throughout the literature.[87] Davey offers the following "skeletal" list of features common to public collective bargaining that differentiate it from its private sector counterpart:[88]

1. The collective labor agreement is being negotiated with a non-profit organization in almost all instances.
2. The government agency or department in question is performing its service as a true monopoly in most cases, that is, the service in question is not performed by any other agency, public or private, in the particular jurisdiction.
3. The government agency's budget goes largely for employee wages and salaries, thus making any negotiated increases in labor costs highly visible to the legislative appropriating body and also th the true owner of the business, that is, the taxpayers.
4. The scope of negotiations in public sector situations is generally more restricted than in the private sector because many matters covered by contract in the latter are treated by statutes or ordinances in the public sector, for example, civil service classification systems at all levels of government.
5. The personnel makeup of many government agencies is such that it is not always easy to draw lines between "management" and the "rank and file" to be represented by the union or employee organization.
6. Bargaining on a contract to a final solution is frequently more difficult in the public sector because the test of economic strength and bargaining power (ultimate resort to the strike or lockout) is not available to pressure the parties into agreement.

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[87] See Wellington and Winter; Rock; Beal, et al.

[88] Davey, op. cit., pp. 345-346.

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7. When negotiating a contract, difficulties frequently arise in determining who is the employer, partially because of the fiscally dependent status of government agencies on the "third force" (legislative branch) for appropriations, and also because many government agencies are funded from multiple sources and levels of government.
8. The boom in unionism and collective bargaining has underlined the severe shortage of experienced and available negotiators and neutrals, a problem of grave concern to government agencies and employee organizations alike.
9. Finally, a statutory framework for public sector labor relations is nonexistent in about half the states and those states with special legislation enacted in the 1960's are discovering that these efforts can stand improvement in many cases.

These differences make it difficult to transfer the extensively detailed and evaluated experience of the private sector on the matters of unit determination and employee representation. The situation is further complicated by several factors particularly accentuated in state government.

Many states operate under the "weak governor" system[89] wherein many agency heads are not subject to appointment or removal. These officials almost always have significant responsibilities for employee relations, yet are not bound to the same policies as the governor or other agency heads. This can lead to a failure to locate authority, and to inconsistent administration of benefits permitting potential "whip-sawing" by employee organizations, or at least discontent among those who perceive themselves disadvantaged.

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[89]See Adrian, State and Local Governments, p. 191.

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Partially in order to achieve some standardization of benefits, often legislatively or constitutionally required, many states have particularly strong civil service merit systems[90] that attempt to apply a consistent program of employee benefits. These systems usually reduce the amount of discretion possessed by the governor or agency head in matters of employee relations. In instances where legislation has been passed to vest greater authority (or at least to centralize it) in an executive officer or board, established civil service systems and officials may try to maintain at least part of their bailiwick. This can make the rules of negotiation, the topics to be covered, and the managers to be met with unclear, and can create the potential for buckpassing.

Of particular concern to employee organizations is the general lack of authority of the management team to enter into binding negotiations. What the executive employer agrees to is often subject to ratification and amendment by the state legislature, thereby diluting the effects of direct collective bargaining. This non-finality of negotiations, and failure to negotiate directly with the managers with final authority, is often productive of employee organization frustration. More typically, and more commonly at local levels, the lack of finality works to the advantage of employees by allowing them to reach agreement with executive representatives, and then lobby

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the legislative body for additional "sweeteners" to the bargain.[91] This can allegedly discourage good faith bargaining efforts on the part of executive management.[92]

Another factor complicating the negotiating process, particularly in state employment, is the presence of strong civil service of merit principle employee associations. The organizations allegedly are sometimes promoted by employers' desires to avoid more militant representation by forming a "company union."[93] These associations have traditionally opposed collective bargaining and militant private sector tactics, concentrating instead on lobbying efforts.[94] In recent years, with the passage of collective bargaining legislation this stance has been mellowing and many associations are becoming more union-like.[95]

A final factor of importance to state government is the presence of federal intervention in the bargaining process, both actual and potential. The federal government can and does sometimes impose requirements on grants that certain minimal standards or procedures be complied with to obtain these grants, e.g., the establishment of a merit

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[91] Beal, et al., op. cit., p. 485.

[92] Ibid.

[93] Personal interviews with practitioners in Michigan and New Jersey.

[94] Beal, et al., op. cit., p. 484.

[95] Ibid., p. 485.

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system in a state social service agency to administer a Health, Education, and Welfare grant.[96] This adds another dimension to the bargaining process. There is also the continuing call for federal pre-emption of the field, and the establishment of minimum collective bargaining rights for all public employees.[97]

Reform attempts to centralize and identify managerial authority, often in the governor, by means of shortening the ballot, placing all agencies under gubernatorial control, reducing the number of departments to a "manageable" number, and creation of an adequately financed staff of competent aides have been instituted in several states.[98] Theoretically, such procedures should make employee negotiations more functional and meaningful. In practice, most of these reforms remain unproved as to their effectiveness.[99]

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[96]Adrian, State and Local Governments, p. 83.

[97]See, for instance, the Clay-Perkins Bill, H.R. 8677 (1973).

[98]Adrian, State and Local Governments, p. 194.

[99]Ibid.

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CHAPTER 3

OCCUPATIONS REQUIRING SPECIAL CONSIDERATION

Several occupational classifications are commonly considered for special treatment. They are managers, supervisors, professionals, craftsmen, state police, security personnel, confidential, and higher education employees. In all unit determination schemes these employees at least warrant special examination, if not treatment.

Managers

There is general agreement that there should be some group of relatively high level personnel that should definitely be excluded from bargaining and "sit on the other side of the table" as management. Problems arise, however, in determining how low this exclusion should extend in the management hierarchy and how to identify individuals belonging in the class. In general, the state would prefer the largest exclusion possible, while employees might prefer a more narrow exclusion.[1] At stake is

[1]Organizations might have competing interests on the matter of managerial inclusion. On the one hand, they might wish as many people as possible in the unit, particularly those in positions of power and influence. On the other hand, they might wish to keep the organization as "pure" as possible and not include "bosses" with the rank-and-file membership.

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the state's need to have a sufficient team of executives to plan and direct policy and whose loyalty may be expected to be wholly to management. Many persons in state employment who are arguably managers, however, seek the protection of collective representation, contrary to private sector experience.[2] Ostensibly, this is because they fear that their tenure will depend on non-performance criteria. These "managers" feel they need protection from "the evils of spoils systems," and that collective representation is one way to attain it.[3] The actual effects of wide and narrow managerial exclusion on "managerial loyalty" and employee performance have not been measured in state employment. In the absence of such evidence the decision of which managers to exclude must depend upon value judgments and the political power to affect legislation and its implementation, and, as such, varies from state to state. The "bredth of exclusion" possibilities range from a handful of top elected officials all the way down to the first line supervisors.

In cases where the exclusion is narrow, all managerial positions might be specified by statute.[4] In areas

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[2]It has generally been regarded in the private sector work ethic that managers do not seek collective representation, and that they "strive to succeed on their individual merit."

[3]Another significant way "managers" have sought this protection is through the use of civil service or merit systems.

[4]The Rules of the Michigan Civil Service Commission specify which department heads and which of their deputies must be excluded from the state's meet and confer procedures. All other employees may be included.

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where it is wide, it is common to rely on operational definitions, ranging from the very vague[5] to the quite specific.[6]

Supervisors

Supervisory representation questions have proved much more difficult than managerial questions in both the private and public sectors. The private sector experience according supervisors the right to choose to bargain collectively, the subsequent withdrawal of the right by the Taft-Hartley Act, and recent modifications were noted in Chapter 2. The public sector experience of supervisory bargaining has provided more variety of treatment,[7] less decisiveness in results, and more continuing controversy.

The identification and proper treatment of

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[5]For example, the Kansas test of, ". . . any elective official and any appointed officer charged by law with major administrative and management responsibilities." (S.B. 333 L. 1971, Sec. 75-4322(e).)

[6]The Nevada municipal statute describes "administrative employee" thusly: "Administrative employee" means any employee whose primary duties consist of work directly related to management policies, who customarily exercises discretion and independent judgment and regularly assists an executive. In addition, it includes the chief administrative officer, his deputy and immediate assistants, department heads, their deputies and immediate assistants, attorneys, appointed officials and others who are primarily responsible for formulating and administering management policy and programs. (Chapter 650, L. 1969, Sec. 288.025)

[7]The experience of the states in these matters has been most varied, and there is no "general rule." See Chapter V, "The Experience of the States" for examples of various treatments.

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supervisors is everywhere in public employment a significant problem. The private sector experience in this instance is not readily transferable. State-employed supervisors, in the author's opinion, differ fundamentally in five ways: (1) They often perceive their jobs to be dependent upon the capricious actions of their politically selected superiors,[8] rather than on the individual merits of their performance; (2) Supervisory positions are not as often viewed as stepping-stones to the top of the organizational hierarchy; (3) Salaries are commonly determined by a specified schedule, rather than through individual bargaining; (4) Many employees in state government are given supervisory titles, but their work requirements do not equate with private sector supervision; and (5) Rewards and status differentials are seldom commensurate with true supervisory responsibility. These five factors combine to diminish the private sector attitude that collective representation of supervisors is inappropriate, and weaken private sector precedents for total exclusion. Instead, a different balancing of interests may be thought necessary, with the special aspects of public sector supervision considered.

The identification of supervisors by job title is particularly difficult. The word "supervisor" is often

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[8]This fear is diminished to some degree by the protections developed for them, including merit systems and collective negotiations.

placed in the job title instead of giving the employee a raise.[9] The inclusion of "supervisory duties" is very common in job descriptions, despite the fact that these duties often require little discretion or independent judgment. These factors result in a large number of "straw bosses" or work leaders with little independent supervisory authority. These employees' true community of interest is more properly classified with those they purport to supervise than in some supervisory classification that might be separated or excluded for purposes of representation. The problem of identification is further compounded by the fact that in many cases in public employment, the true supervisor also carries out the same tasks (perhaps the particularly difficult ones) as those he or she supervises.

These factors combine to almost always make the identification of supervisors dependent upon a definition applied on a case-by-case basis. The definition employed will customarily be derived from a description of job duties. The definition recommended in the Report of the Michigan Advisory Employment Relations Committee is representative:

> [Supervisors are] Individuals who as a substantial part of their work assignment, exercise independent judgment in assigning, directing, and evaluating employees, or adjust their grievances, or to effectively recommend such action.[10]

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[9]Personal interviews with state management personnel.

[10]Michigan Advisory Employment Relations Committee Report, p. 19.

This language is a modification of that contained in the Taft-Hartley Act, but excludes reference to "hiring and firing" which are customarily beyond the control of individuals otherwise properly classified supervisors in state employment. Other states whose definition of supervisor is strongly based on Taft-Hartley language and reads much the same as that recommended in Michigan include Hawaii, Kansas, Minnesota, Oregon, Pennsylvania, and Wisconsin.

Once supervisors are identified, the problem of what form of representation to allow them arises. There is often the desire, prompted by the private sector experience, to exclude supervisors entirely from representation. It is possible that inclusion could create two conflicts of interest. One, supervisors may dominate the employee organization and rise to positions of leadership, thereby perhaps stifling internal discussion; and conversely, two, if included, there is pressure on the supervisor not to perform vigorously his management functions of evaluation and grievance processing against members of his own organization. The actual effects of such inclusion have again not been measured in state employment. It is clear, however, that to the extent to which the conflicts do exist, the situation produces undesirable results--unless the state wishes to control the employee

organization by infiltrating and coopting it,[11] and this is desirable only in a very partisan sense.

Finding the two potential conflicts of interest to be controlling, along with the desire to separate "an arm of management" from the rank-and-file, the total exclusionists divide into two schools.[12] One holds that supervisors should be excluded, but that the category should be narrowly defined, and should be more or less synonymous with "managerial"--i.e., policy-making employees. This would clearly identify on what side of the table a person belonged and might help provide management with a cadre of policy makers whose loyalties and aspirations were not synonymous with those of other employees' and employee organizations'.

The other school of thought holds that the category should be defined very broadly. This would have the effect of leaving a large number of workers unrepresented--which is precisely its goal. Some practitioners argued that exclusion should be broad and reach quite low in the hierarchy because it is precisely the true "first line"

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[11]It was suggested to the author in personal interviews that states often encouraged membership of both supervisors and rank-and-file employees in state associations, and encouraged supervisors to attain positions of leadership in those organizations so that they might steer the organizations in a direction compatible with the state's interest.

[12]"Schools" are based on comments made by the practitioners listed in Appendix C in confidential interviews with the author.

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supervisors, those who write performance evaluations and are the first step in the grievance procedures, that should be excluded and placed wholly on the side of management and "out of collaboration" with their subordinates. In short, they should know "which side their bread is buttered on."

Total exclusion of supervisors would, however, submerge several interests, such as an historical precedent of representation (usually arising out of meet-and-confer procedures and state employees' association membership), freedom of choice, the need for protection, the differences in expectations of the supervisory role and privileges from the private sector, and the possibility that supervisors might have a greater community than conflict of interest with those they supervise.

Among those practitioners who recommended some form of supervisory representation there was often a desire for units separate from subordinates to help reduce the above-mentioned possible conflicts of interest.

If the decision to accord representation in separate units is made, it becomes necessary to determine "how separate" the units should be. Several degrees of restriction are possible, with the greatest restrictions presumably most successfully combating the alleged tendency of the supervisors' unit to be co-opted by the subordinates' unit.[13] This attempted separation is accomplished by

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[13]The private sector experience with this problem and the reasons therefor were cited in Chapter 2.

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requiring the supervisors' unit to be independent of affiliation with organizations eligible to represent subordinates. In this situation, the needs of supervisors may be left impaired by the weakness of their representative.

Possible representation schemes range from a minimum distinction requiring only that supervisors be in a separate unit,[14] through an intermediate stage that the supervisory unit's representative must be different from the subordinates' unit representative,[15] to the requirement that the supervisory unit representative not be affiliated with any organization eligible to represent subordinates.[16] Each of these schemes is expected to decrease, in greater degrees, the alleged tendency of the supervisors' unit representative to merge interests with the subordinates' unit representative.

These attempts to separate interests may be thwarted in many ways, however. If the supervisors and subordinates perceive a strong community of interest and wish to be represented by the same organization, legal technicalities trying to create different interests, merely by writing words on paper, in the author's opinion

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[14]States with this requirement are Hawaii, Alaska, Minnesota, Pennsylvania, Nebraska, South Dakota, Vermont, and Rhode Island. Data cited in this chapter are reported in composite and analyzed in Chapter 5, "Experiences of the States," infra.

[15]No state is currently using this option, although some cities do.

[16]These states are Wisconsin and New Jersey.

will likely fail. Where the same organization can represent both units, the possibility and probability of internally coordinated goals is apparent. Where different parent organizations are required, a "straw organization" (nominally independent) can be established to win representation rights. The leaders of this organization can then caucus with the subordinates and produce the same cooperation that would have existed had the same organization been allowed to represent both. Such attempts only make more difficult the synthesizing of subordinates' and supervisors' interest--they cannot prevent it, and they do nothing to create the desired loyalty of supervisors to management. The creation of a different community of interest for supervisors goes well beyond the representation units into which they are placed. To expect more from mere changes in representation procedures is asking too much.

There are two basic ways the similarity of interests can be diminished. One is to create perceived differences between the groups. This can be accomplished by rewarding supervisors for the type of efforts expected of them, both in financial and status differentials.[17] The second way is

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[17]The state of Oregon has recognized this problem and faced it squarely. According to interviews with state practitioners, an entire program of financial, status, and privilege differentials was to be instituted at the same time rights of representation for supervisors were withdrawn by changes in the state law to take effect in November, 1973.

to create a different negotiation obligation for supervisors. Wisconsin and Pennsylvania adopted this approach, limiting the scope of negotiations to salaries and fringe benefits, and the degree of obligation to meet-and-confer.

One last possible solution remains. Several states with procedures have made no distinction of supervisors whatever and have not prohibited their being included in the same unit with those they supervise.[18] This response may be indicative of the belief in these states that what is expected of their supervisors is sufficiently different from the private sector counterparts and sufficiently akin to the treatment of subordinates to merit treating them alike.

Professionals

The treatment of professionals is less a problem of conflict of interest than recognition of interest. Working conditions, methods of payment, hours of work, and ethical standards all affect professionals in a fundamentally different way from non-professionals. If professionals are grouped with non-professionals, as in a department-wide unit, their minority status in the unit may prohibit them from pressuring the selected representative into promoting their needs to the employer--they may "get sold down the river." The possibility of this happening is enhanced by

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[18]These states are California, New York, Delaware, New Hampshire, Massachusetts, and Michigan (under its present system).

the differences in goals of the groups, the apparently privileged status often desired by professionals, and by the fact that they are relatively affluent compared to other state employees. For these reasons it is often desirable to create separate units for professionals, or, following the private sector example,[19] to permit them to opt out of a wider unit should they so desire.

The identification of professionals, while usually not as difficult as supervisors, generally requires an operational definition applied on a case-by-case basis. The Taft-Hartley definition for this purpose[20] stressing the intellectual nature of the work, the use of judgment and discretion, and the requirement of knowledge of an

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[19]National Labor Relations Act, as amended, Sec. 9(b)(1).

[20]The term "professional employee" means--(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routing mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study prescribed in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a). (National Labor Relations Act, Sec. 2(12).)

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advanced type has been widely adopted[21] in state employment.

There are three basic ways in which professionals can be given separate representation from non-professionals: (1) Each profession can be accorded a separate unit; (2) Families of related professions can be grouped into a more manageable number of units; or (3) All professionals can be grouped in one all-inclusive unit.

The first solution is generally favored by the professionals themselves, but may not well serve the need of the state for efficient administration by creating more negotiations and potential whip-saw pressures. The state's interest in efficiency is, however, often in competition with its desire to recruit professionals. Since states may have difficulty recruiting and retraining professionals, and professionals allegedly would be unhappy about "inappropriate representation of their interests," the state must take this matter into consideration in advocacy of unit determination.

The compromise second solution could create as many problems as it solves. The grouping of related professions (e.g., physical therapists and nurses) reportedly is often obnoxious to professional sensitivities, offending the "pecking order" that may be of particular importance to

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[21]Shaw and Clark, "Determination of Appropriate Bargaining Units in the Public Sector," p. 173.

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professionals.[22] This plan is generally undesirable in that it is often not endorsed by those parties whose interests it purports to represent, and could create a large number of units.

The third solution is advocated by those most concerned with administrative efficiency. They argue that the similarities among professions create a community of interest. Hence, it is appropriate to place all of them in one unit. This is convenient for the state and arguably does not severely oppose the individual interests of professionals. Further, "pecking order" problems are reduced, according to practitioners advocating this form of representation, by the avoidance of the specification that "doctors and nurses belong together" by allowing that, while there are differences among groups, an overriding community of interest requires also the inclusion of lawyers, engineers, accountants, etc., and that close comparisons of training and importance are not being made. An extremely fundamental problem of such a unit, however, is finding an organization to represent and service it.[23]

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[22]Interviews with practitioners in Wisconsin where such groupings have been instituted.

[23]To date, the only organization able to win representation rights for such an all-inclusive unit (the unit also included scientific and technical employees) is the New York Civil Service Employees Association. In New Jersey, such a potential unit of all state-employed professionals has existed for six years with no organization petitioning to represent the entire unit.

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Craftsmen

There is much private sector precedent for separate units for craftsmen,[24] and ample history at the federal,[25] municipal,[26] and state[27] levels. The representation of their interests does not seem a difficult problem in state employment. Where craftsmen have sought separate representation they have generally received it.[28] The separate representation of crafts interests is made easier than in the professional instance by the craftsmen's general willingness to form a single unit (e.g., a building trades council).[29] The accommodation of the craftsmen's desire for separate representation is also aided by their relatively effective lobbying power resulting in legislation allowing such units.[30]

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[24]The private sector craft-industrial union controversy was noted in Chapter 2.

[25]Presidential Executive Orders 10988 and 11491 determined that units may be based on crafts.

[26]Harold Davey, Contemporary Collective Bargaining, p. 341.

[27]Interviews with practitioners in Wisconsin.

[28]States with a separate unit encompassing all crafts include Hawaii, Wisconsin, and Pennsylvania.

[29]Note the Wisconsin experience (reported in Chapter 5) and the experience of many major cities (New York, Detroit, Cincinnati).

[30]This was the case in Wisconsin.

State Police

State police are often accorded separate representation in recognition of their differing working conditions, often different fringe benefits, the para-military nature of their organization, and the potential requirement of enforcing laws against other state employees.

Two significant problems arise in according separate representation: (1) Should other law enforcement officials be included in the unit?; and (2) Should restrictions be placed on which organizations are eligible to represent the units?

In states employing occupational units, it is not uncommon to find a "law enforcement" unit which includes, besides state police, prison guards, park rangers, game wardens, building security personnel, etc.[31] Such a unit is usually formed because of a supposed community of interest among those charged with enforcement of laws. This type of unit is often desired by the state because it is less proliferating than to accord separate representation for quasi-police classifications. However, these mixed units have not always been internally harmonious[32] because the special conditions requiring separate attention for state police, such as pensions and fringe benefits,

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[31]States with units of this type include New York and Wisconsin.

[32]Interviews with practitioners in states with such units.

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may not apply equally to others in the unit. Further, there is often present an esprit de corps among state policemen giving rise to an elitist feeling that to group them with "lesser" law enforcement officials would be demeaning.[33] State troopers are particularly sensitive to being grouped with prison guards.[34]

Restrictions on organizations eligible to represent state police may arise from an intention of assuring that state police will do their duty in carrying out orders against other state employees. For example, it is presumed that they would be more willing to disperse unlawful pickets if the police representative were not affiliated with the pickets' employee organization. To this end, it is sometimes recommended that no organization representing state police officers be allowed to affiliate with any organization representing other state employees and/or non-state police employees.[35] The effect of such a requirement is, again, an empirical question on which no research has yet been done.

Security Personnel

For reasons similar to prohibitions concerning state police parent organizations, it is often felt

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[33]Testimony of Michigan State Police Troopers Association in Advisory Employment Relations Committee Public hearings, Transcript, p. 26.

[34]Interviews with Wisconsin and Michigan practitioners.

[35]This is the case in Pennsylvania.

desirable to have guards and other security personnel in separate units from other state employees that they are supposed to "police," and to have the representative of such units be unaffiliated with any organization representing non-security personnel. The effects of such rules are, again, empirical questions on which no research has yet been done. The notion of separate representation apparently derives from "common sense" and the similar private sector prohibitions written into the Taft-Hartley Act.[36]

Confidential Employees

Employees privy to information of a confidential nature concerning employee relations might be placed in a conflict of interest if allowed any form of collective representation. To summarily exclude them from representation, however, would leave them without protections to which they might otherwise be rightfully entitled. A common solution to this problem for the relatively few employees to whom it applies is to automatically tie their benefits to those of specified similarly-situated non-confidential employees. The identification of confidential employees is generally applied on a case-by-case basis.

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[36]Sec. 9(b)(3) states that, "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership employees other than guards."

It should be noted that other employees might be privy to confidential information about client records, contracts, or any of a number of matters not related to the personnel function. The rights of representation of those employees should not be abridged because of the confidentiality of their work.

Higher Education

Because of the semi-autonomous status of most state universities and colleges, their workers have often been considered for separate treatment.

Blue-collar university employees have a long history of collective bargaining.[37] Faculty members, where given permission to engage in collective bargaining, have been more reluctant to do so, but this trend is changing.[38] In either instance, the special consideration given these employees derives not so much from their tasks as from the political relationship between their institution and the state employer. Because of this special relationship, a community of interest is sometimes identified, with units separate from other state employees created. The units may be further fragmented by placing faculty from different schools in the same university in different units and different universities in different units.[39]

[37]Milton Derber, et al., Collective Bargaining by State Governments in the Twelve Midwestern States, p. 49.

[38]Ibid.

[39]This is the case in New Hampshire.

Summary

The recognition of special interest employment classifications requires consideration in all models of unit determination. The exclusion of managers and confidential employees, and the separation of craftsmen have produced comparatively little dispute. On the other hand, the issues of identification and treatment of supervisors bring forth very difficult policy questions concerning competing interests. This is often a truly "hot" issue. Separate representation for professionals is often thought appropriate, but is also often subjected to restraint in the interest of the state to avoid multiple negotiations and whip-saw pressures. Separate representational interests for state police and various quasi-police and security personnel are also often recognized and result in separate units with restrictions on affiliation with other organizations.

CHAPTER 4

REPRESENTATION POLICIES, UNIT DETERMINATION CRITERIA, AND MECHANISMS FOR THE FORMATION OF UNITS

Representation policies, unit determination criteria, and the mechanisms for the formation of units vary among states. Some states with recognition procedures have exclusive representation while others have multiple. The criteria for grouping employees into units based on "community of interest" vary, and different criteria can produce different unit forms. The choice of "an appropriate unit," the "most appropriate unit," or specified units also requires scrutiny, as do methods for determining representative status. A final issue of importance in unit determination is whether units should be formed in response to petitions as they arise, or simultaneously and exhaustively, thereby placing a limit on their number.

Exclusive vs. Multiple Representation

California[1] and Michigan[2] currently have "meet-and-confer" employee representation procedures providing

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[1]Government Code, Title 1, Sections 3525 to 3536.

[2]Civil Service Commission Employment Relations Policy: Employee Organization Recognition.

for formal recognition of state employee organizations. Many local government units throughout the country have similar provisions, as did the Federal Civil Service under the now superseded Executive Order 10988.[3] In these systems, the employer is not required to negotiate in good faith to reach an agreement applying to all employees in the "meet-and-confer unit." Since an attempt to reach a single agreement is not required, it is not necessary that only one representative speak for all employees, and in those jurisdictions with only meet-and-confer requirements, representation by more than one employee organization in a unit is commonly permitted.

However, in collective bargaining systems there is a requirement that the employer negotiate in good faith to reach an agreement that will bind all employees in the bargaining unit. The private sector experience has demonstrated that such a system requires a single employee representative to negotiate with management,[4] and that that organization represent all employees in the unit whether they be members of the organization or not.[5]

A legal question arises as to whether provision for an exclusive representative precludes employees in the unit

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[3]E.O. 10988, Sections 3-5.

[4]Jay W. Waks, "The Privilege of Exclusive Recognition and Minority Union Rights in Public Employment," p. 1006.

[5]Ibid., p. 1009.

from forming or joining an employee organization other than the exclusive representative. Eisner has argued that exclusive representation does not, in fact, cannot, be used to prohibit governmental employees' rights to assemble and petition their employer.[6] Such rights are guaranteed by the First, Fourth, and Fourteenth Amendments.[7] On the other hand, while the right of government employees to form multiple representatives despite a policy of exclusive representation cannot be abridged, it is not necessary for the governmental employer to act upon the requests of a non-exclusive representative and, in fact, the employer may legally enter into an employee relations system in which only the exclusive representative may negotiate the terms of the work relationship.[8]

Community of Interest Criteria

Virtually all states with procedures require unit determination based on "community of interest." The criteria are largely similar, with some variety appearing among states in the priority assigned. These criteria and how often they are cited are listed in Table 1. The combination of factors used, and the weight given to each influence whether employees will be grouped with others of

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[6]Michael J. Eisner, "First Amendment Right of Association for Public Employee Unions Members," pp. 438-444.

[7]Ibid., p. 440.

[8]Ibid., p. 444.

TABLE 1

COMMUNITY OF INTEREST CRITERIA TO BE CONSIDERED IN UNIT DETERMINATION LISTED IN THE STATUTES AND REGULATIONS OF THE TWENTY-TWO STATES WITH REPRESENTATION PROCEDURES FOR STATE EMPLOYEES

Factor*	Number of Times Appearing
Bargaining history	6
Similar wages, hours, and/or working conditions or classification	5
Extent of employee organization	4
Avoidance of fragmentation	4
Need for efficient administration	4
Geographical location	4
Structure of managerial authority	3
Recommendations of the parties	3
Requirements of standardization	3
Desires of the employees	2
Minimum number of people in unit	1
Serving the public interest	1

*Many statutes list more than one factor.

similar classifications, or work sites, and whether they will cross departmental employer lines. The forms that units take in each state, and an enumeration and examination of selected systems are discussed in Chapter 5, "Summary of the States," infra, pp. 71-86.

The non-descript term "community of interest" is also often included in lists of unit determination criteria. However, it has no operational meaning apart from the criteria specified to identify it. As such, it is not really a factor influencing unit determination, but rather a rubric used to rationalize a decision reached through other considerations. The result of the decision of which of the other of these factors to honor is then, post hoc, determined to be a "community of interest."

Of the factors listed in Table 1, the "similar classifications" and "requirements of standardization" criteria can be expected to produce units that cross departmental lines where similar classifications exist in more than one department. "Geographical location," on the other hand, tends to result in units of employees working at the same site. These employees are more likely to be employed by the same department than to be in similar work classifications. The remaining criteria do not inherently influence whether employees are grouped by common occupation, common worksite or agency employer, or both.

The "avoidance of fragmentation," "need for efficient administration," and "minimum number of people in

the unit" criteria reflect the needs of the employer to have a system that is administratively feasible.

The "structure of managerial authority" is tied to the scope of bargaining. When issues to be negotiated include items that must be standardized across departments (e.g., wages and benefits), units can be expected to cross departmental lines and provide for negotiations with a central manager.

The "desires of the employees" and the "extent of organization" are employee organization-centered criteria which do not prescribe the form of the unit. "Bargaining history" also does not inherently influence form--it just perpetuates whatever form had previously arisen. The "recommendations of the parties" can be expected to be derived from consideration of the other criteria, as can "serving the public interest."

Standards for Formation of Units

There are three basic standards used by states in determining units: (1) an appropriate unit;[9] (2) the most appropriate unit;[10] and (3) legislatively specified units.[11]

The "an appropriate unit" test originated in the private sector. The NLRB has long held that,

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[9]This standard is basically in use in Minnesota, Massachusetts, Rhode Island, Delaware, and Washington.

[10]States utilizing this standard include New Jersey, Pennsylvania, and, to some degree, New York.

[11]There are legislatively specified units in Hawaii and Wisconsin.

> There is nothing in the statute [National Labor Relations Act] which requires that the unit of bargaining be the only appropriate unit, or the ultimate unit or the most appropriate unit; the Act requires only that the unit be appropriate. It must be appropriate to insure to employees, in every case, "the fullest freedom in exercising the rights guaranteed by this Act."[12] (Emphasis in the original.)

All states having the "an appropriate unit" standard (Minnesota, Massachusetts, Rhode Island, Delaware, and Washington) have more than 100 units, while each of the "legislatively prescribed" states (Wisconsin, Hawaii, and effectively, New York[13]) have 16 or fewer. The states with the "most appropriate unit" criterion that have collective bargaining and are not "just getting under way" (Pennsylvania and New Jersey) each have fewer than 30 units. Although the "an appropriate unit" standard results in greater proliferation, it is also supposed to result in more freedom for employees in choosing their own units, the grouping of truer communities of interest, and the facilitation of organization. All these benefits comport well with the purpose of the National Labor Relations Act--to promote the interests of employees, and to redress an historical imbalance of power in favor of employers.[14] In state employment, however, more interests are commonly balanced in legislative intent and the interests and

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[12] Morland Brothers Beverage, 91 NLRB 409, 418 (1950).

[13] New York's units were determined simultaneously and exhaustively in a single agency hearing.

[14] National Labor Relations Act, Section 1.

desires of employees and their organizations must often be weighed against concerns for efficiency.

This wider area of concern has resulted in some instances in states requiring that the unit be the "most appropriate"[15] or "largest reasonable"[16] one to represent a community of interest. These wider tests are a result of the balancing of interests between employee desires and the needs of the state employer, and a finding that the state's needs be given significant consideration. The result is likely to afford the state employer a more manageable number of units at some expense to employee choice in grouping, and perhaps increased difficulty for employee organizations in winning representation rights.[17]

Both tests imply a choice among alternatives as requests arise. Two states, Wisconsin and Hawaii,[18] have created all their "appropriate" units at one time by

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[15]For example, the New Jersey Public Employment Relations Commission has ruled that petitions for recognition must be for the "most appropriate unit." See State of New Jersey v. New Jersey State Nurses Association in GERR, No. 544, F-1-7 (March 4, 1974).

[16]Such a standard was recommended in the Final Report of the Assembly Advisory Council on Public Employee Relations (California), p. 85.

[17]In New Jersey a "Professional Unit" remains unpetitioned while the New Jersey Nurses' Association's petition to represent nurses only was dismissed as "not a request for the most appropriate unit." See footnote 15 above.

[18]The Wisconsin and Hawaii units are listed in Appendix B.

legislative prescription.[19] This method of unit determination produces several pronounced results. It controls proliferation because there are no employees remaining unallocated to request additional units. (New classifications are accreted into existing units.) Matching of units to managerial lines of authority can also be assured. The employees to be organized are known in advance and representatives can concentrate their efforts on organizing units they know will not be found "inappropriate." Bargaining history might be accommodated or denied, depending upon the wishes of the legislators.

On the other hand, legislated units might subject meritorious unit determination arguments to unrelated political trade-offs and place decisions in the hands of a body largely inexpert in the area.

The actual determination of what units result is, however, often not directly related to the language of the statute. Statutory distinctions between "an appropriate unit" and "the most appropriate unit," while distinguishable academically, do not provide much guidance when measured by results. For example, New Jersey's statute requires units based on "community of interest"[20] but does

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[19]New York produced a similar result. Applying a "most appropriate unit" test, the Public Employment Relations Board in an agency hearing created, at one time, all the units into which state employees could be placed.

[20]The statute charges the Public Employment Relations Commission only with "due regard for the community of interest of the employees concerned," and that the units

not define the term. The units formed there have been state-wide by families of job classifications. In New York, unit determination criteria are more specific,[21] but certainly were not a mandate to create state-wide occupational units. Such an outcome had to be read into the law.[22] In other states, such as South Dakota and Vermont, the language requiring consideration of state-wide interests (and warning against the evils of fragmentation) is stronger,[23] but these states do not have

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separate supervisors, and if they so desire, professionals and craftsmen. (New Jersey Employer-Employee Relations Act, Sec. 34: 13A-5(3).)

[21]The New York law reads:

> . . . the board of government, as the case may be, shall
>
> 1. define the appropriate employer-employee negotiating unit taking into account the following standards:
>
> (a) the definition of the unit shall correspond to community of interest among the employees to be included in the unit;
>
> (b) the officials of government shall have the power to agree . . . to the terms and conditions of employment upon which the employees wish to negotiate; and
>
> (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public. . . . (Sec. 207).

[22]See the Legal Basis of Employee Relations of New York State Employees by Jerome Lefkowitz.

[23]The South Dakota law reads:

> . . . In defining the unit, the labor commissioner shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties. (Sec. 3-18-4.)

The Vermont statute reads:

> . . . the board will not constitute an appropriate unit . . . if recognition will result in over-fragmentation of state employee collective bargaining units. (Sec. 927.)

state-wide units. Therefore, there must be other factors which influence the type of units formed. The examination of the states, reported in Chapter 5 will attempt to determine what these factors are.

Methods for Determining Representation Status

Where the decision for exclusive representation has been made, it becomes necessary to determine, in addition to who is in the unit, whether those employees favor representation, and, if so, by what organization. This problem was first faced in the private sector where extensive precedents on determination of representative status have been established. These precedents are largely transferable to the public sector. Of course, while these precedents and standards are relevant, they are not controlling in state employment. The rationale for the decisions reached is, however, useful.

Recognition of an employee organization most commonly occurs in one of three ways: (1) by employer consent; (2) by a demonstration of majority status through the use of signed authorization cards; or (3) by means of a secret ballot election, usually administered by a neutral agency.

Employer consent is certainly the most expeditious way of gaining recognition, but is also the most subject to abuse of individual employee interest. In employer consent, there is no guarantee that the organization recognized represents the wishes of a majority of the employees. This danger is real because an organization with enough

power may be able to force recognition, perhaps against the wishes of a majority of employees. The system could be further abused by the employer consensually recognizing a favored organization among competitors, again against the desires of a majority of the employees. Because of potential abuses such as these, some states have refused to sanction such recognition.[24]

Authorization cards are also more expeditious than elections but require the administration of safeguards. Private sector employers have complained that recognition based solely on the presentation of cards is inherently unreliable. They claimed the cards' purpose may be misunderstood, that they may be obtained by coercion, and may not present the employer with an opportunity to rebut the representative's claims. The NLRB and Supreme Court have found these claims unpersuasive.[25] They have ruled that regulations can be established requiring the intent of the cards to be absolutely unambiguous, and that coercion can be policed and controlled, and certainly should not be assumed, absent some demonstration of proof. Furthermore, they did not find it likely that an employer would not know of an organizing drive until being presented with the cards. This reasoning seems to apply equally well to state employment.

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[24]See Pennsylvania S. B. 1333, L. 1970, Sec. 602, and New Jersey Ch. 123, L. 1974, Sec. 34:13A-6(d).

[25]See NLRB v. Gissel Packing Co., 395 U.S. 575, 89 Sup. Ct. 1918, 71 LRRM 2481 (1969).

Secret ballot elections are clearly the best measure of employee preference and a safeguard to employers. They are, however, more time-consuming and costly than the alternatives, and may make it more difficult for an organization to gain recognition by requiring a true majority. The holding of elections might also have a cathartic effect in the establishment of new relationships.

In situations where multiple representation is permitted, it is usually not necessary to specify representation precisely, because recognition of one organization does not eliminate recognition of another. In such a situation, management often accepts claims of employee organizations as to the employees they represent, and elections are not commonly required.

Procedures for Forming Units

There have been three procedures used in forming units in state employment. Legislation of units was described above. In California, the employer determines units unilaterally. In all other states with procedures, some form of independent agency or commission resolves disputed determinations.

Agency determination might be expected to promote neutrality, flexibility, expertise, consistency, equity, and relative freedom from political manipulation.

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[26]This is the case in Michigan and California, the only two states with multiple representation.

A case-by-case review of petitions should be expected to permit flexibility reflecting unusual circumstances; continuing review by a permanent, neutral panel should provide consistency and expertise, and the decisions reached should be more equitable because the agency members are not directly beholden to special interests.

CHAPTER 5

SURVEY OF STATES AND ANALYSIS OF SELECTED SYSTEMS

Questionnaire Purpose

To survey the experiences of states on unit determination matters, a questionnaire[1] was designed and sent to the administrative agency head charged with unit determination in those states with such provisions, or in his absence to the Civil Service head in states where appropriate, or failing both of these to exist, to the state personnel director. It was hoped by the author that the questionnaire data would fulfill the following purposes:

1. To provide an overview of procedures.
2. To suggest alternative ways of determining units.
3. To update information and resolve ambiguities and inaccuracies in other sources.
4. To compare statutory language with actual unit determination policy.
5. To determine state models meriting more intensive investigation.

It should be cautioned, however, that a questionnaire examination of the procedures utilized in states is useful principally for determining possible and general methods of unit determination, and is less useful for a

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[1] A copy of the questionnaire is reprinted in Appendix A. The questionnaire was promulgated for the State of Michigan Advisory Employment Relations Committee for which the author was Research Director.

specific enumeration of results. A precise cataloging of methods used is made difficult and of less value because of two factors: (1) the area is very dynamic and what is true for one period of time may be significantly different several months later, and (2) the categorizing of results is difficult because procedures are non-discrete, difficult to quantify, and subject to interpretation and reporting differences.

Questionnaire Results

Data were received from 49 states (only New Hampshire failed to respond), and generally represented the state of affairs as of July, 1973. Based on these replies, the New Hampshire statute, and a survey of published information the following results for employee representation and unit determination were noted.

Twenty-two states have formalized procedures for recognizing state employee organizations; 28 do not. No state in the South has procedures. Of the industrialized, urban states, only Indiana and Ohio do not. Of the states with procedures, 20 have collective bargaining for at least some of their state employees. The only exceptions are California and Michigan, which have "meet and confer" procedures. Only four states permit collective bargaining by local government employees while forbidding it to state employees. They are Michigan, Oklahoma, Florida, and Nevada. These data are updated and depicted in Figure 1, "Collective Representation Rights for State Employees, by State."

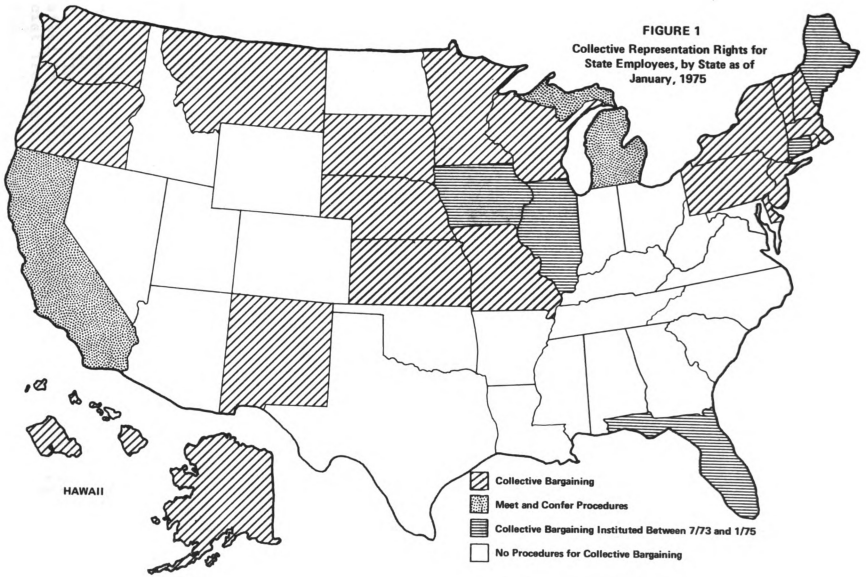

FIGURE 1
Collective Representation Rights for State Employees, by State as of January, 1975

In those states with recognition procedures for state employees, seven have state-wide occupational units. The remaining 15 have units of related work classifications within a single department, or units that include entire departments.[2] Wisconsin, Hawaii, and New York allocated all units at one time, thereby imposing a limit on their number. No other state has done so.

The rights of representation for supervisors vary widely among states.[3] In five states they are excluded from representation entirely. Eight states require units separate from subordinates. Separate units in which supervisors are represented by organizations unaffiliated with unions or associations eligible to represent subordinates, are dictated in New Jersey and Wisconsin. The remaining six[4] states with representation procedures do not distinguish supervisors for special treatment. In all instances, the definition of supervisor can vary among states.[5]

With the previously noted exceptions of Wisconsin, Hawaii, and New York, unit determinations are made as

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[2]A listing of selected aspects of each state's unit determination policies and employee representation procedures appear in Table 2.

[3]These recognition rights appear in Table 3.

[4]Supervisory representation rights have not yet been prescribed in Illinois.

[5]These differences and their consequences were detailed in Chapter 4, "Work Classifications Requiring Special Treatment."

TABLE 2

STATUS OF UNIT DETERMINATION PROCEDURES FOR STATE EMPLOYEES BY STATE

State	Recognition Procedures	Exclusive Representation	Meet and Confer	Collective Bargaining	Compensation Negotiated	Bargaining History Prior to Present Law	Units Restricted to Departments	Statewide Occupational Units	One Predominant Employee Organization	Units Limited in Number
Alabama	No	No	No	No	No	--	No	No	--	No
Alaska	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No
Arizona	No	No	No	No	No	--	No	No	--	No
Arkansas	No	No	No	No	No	--	No	No	--	No
California	Yes	No	Yes	No	No	Yes	Some	Some	No	No
Colorado	No	No	No	No	No	--	No	No	--	No
Connecticut	No	No	No	No	No	--	No	No	--	No
Delaware	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No
Florida	No	No	No	No	No	--	No	No	--	No
Georgia	No	No	No	No	No	--	No	No	--	No
Hawaii	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes
Idaho	No	No	No	No	No	--	No	No	--	No
Illinois*	Yes	Yes	No	Yes	Yes	No	No	Yes	No	Yes
Indiana	No	No	No	No	No	--	No	No	--	No
Iowa	No	No	No	No	No	--	No	No	No	No
Kansas*	Yes	Yes	No	Yes	Yes	No	No	Yes	No	Yes
Kentucky	No	No	No	No	No	--	No	No	--	No
Louisiana	No	No	No	No	No	--	No	No	--	No
Maine	No	No	No	No	No	--	No	No	--	No
Maryland	No	No	No	No	No	--	No	No	--	No
Massachusetts	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No

TABLE 2 (cont'd.)

State	Recognition Procedures	Exclusive Representation	Meet and Confer	Collective Bargaining	Compensation Negotiated	Bargaining History Prior to Present Law	Units Restricted to Departments	Statewide Occupational Units	One Predominant Employee Organization	Units Limited in Number
Michigan	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No
Minnesota	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
Mississippi	No	No	No	No	No	--	No	No	--	No
Missouri	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
Montana	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
Nebraska	Yes	Yes	No	Yes	Yes	Yes	NA**	NA**	No	No
Nevada	No	No	No	No	No	--	No	No	--	No
New Hampshire	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No
New Jersey	Yes	Yes	No	Yes	No	Yes	No	Yes	No	No
New Mexico	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
New York	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes
North Carolina	No	No	No	No	No	--	No	No	--	No
North Dakota	No	No	No	No	No	--	No	No	--	No
Ohio	No	No	No	No	No	--	No	No	--	No
Oklahoma	No	No	No	No	No	--	No	No	--	No
Oregon	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes***	Yes	No
Pennsylvania	Yes	Yes	No	Yes	Yes	Yes	Some	Yes	Yes	No
Rhode Island	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
South Carolina	No	No	No	No	No	--	No	No	--	No
South Dakota	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No
Tennessee	No	No	No	No	No	--	No	No	--	No
Texas	No	No	No	No	No	--	No	No	--	No
Utah	No	No	No	No	No	--	No	No	--	No

TABLE 2 (cont'd.)

State	Recognition Procedures	Exclusive Representation	Meet and Confer	Collective Bargaining	Compensation Negotiated	Bargaining History Prior to Present Law	Units Restricted to Departments	Statewide Occupational Units	One Predominant Employee Organization	Units Limited in Number
Vermont	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No
Virginia	No	No	No	No	No	--	No	No	--	No
Washington	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No
West Virginia	No	No	No	No	No	--	No	No	--	No
Wisconsin	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Wyoming	No	No	No	No	No	--	No	No	--	No

*Units formed according to the above categories have been authorized but not yet effectuated as of July, 1973.

**Information not available.

***Departmentally elected representatives form coalitions to represent employees in central "units" based on job classifications for issues which must be standardized across departments.

TABLE 3

RIGHTS OF SUPERVISORY REPRESENTATION
IN STATES WITH PROCEDURES

States with total exclusion:

Oregon	Kansas
New Mexico	Washington
Montana	

States requiring units separate from subordinates:

Hawaii	Nebraska
Alaska	South Dakota
Minnesota	Vermont
Pennsylvania	Rhode Island

States requiring separate units unaffiliated with organizations eligible to represent subordinates:

Wisconsin	New Jersey

States not distinguishing supervisors for purposes of representation:

California	Delaware
New York	New Hampshire
Michigan	Massachusetts

employee requests appear.[6] The number of units in the various states ranges from less than 10 to more than 100.

The scope of bargaining varies somewhat among states, with the principal difference being the right to negotiate wages and fringe benefits. These issues are included in all states except New Hampshire, Delaware, Washington, Massachusetts, and New Jersey.[7]

To determine if certain representation characteristics were commonly found in combinations, five variables were considered by state to see if they could be arranged into a Guttman Scale. If so, this would suggest, but not prove, a structure of requisite elements. It would imply nothing about causal relationships, but simply describe a modal state of affairs. At best, if such a scale could be formed, it could loosely predict types of unit structures different representation variables would provide.[8]

The variables considered included the presence of formal recognition procedures, collective bargaining, the negotiation of compensation, the presence of units that cross departmental lines (statewide units), and whether

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[6]The Illinois procedure for determining units has not yet been determined.

[7]In New Jersey, there is some disagreement over whether wages can be negotiated. This will be discussed below.

[8]For a justification of the use of Guttman Scales for non-attitudinal data, see Stanley H. Udy, "Administrative Rationality, Social Setting, and Organizational Development," in Etzioni, Amitai, ed., A Sociological Reader on Complex Organizations (2nd Ed.), pp. 480-493.

units were limited in number. The data on these variables were drawn from the questionnaire.

Three variables included in Table 2 were not utilized. "Meet-and-confer" and "departmental units" were discarded as merely reciprocals of "collective bargaining" and "statewide units," respectively. "Negotiating history" was not used because its coefficient of reproducibility was only .68. The status of supervisors was not included because it was not dichotomous, i.e., there are levels of representation rights rather than just existence vs. non-existence.

The attempted Guttman scaling appears in Table 4. For the 22 states with representation procedures for which there are data available, the coefficient of reproducibility is .98. This is well above the .90 Guttman suggests as a minimum for acceptability. This is interpreted to demonstrate that characteristically units are limited in number only when they are statewide, are statewide only when compensation is negotiated, and that compensation is negotiated only within collective bargaining systems.

It is informative to note that the two errors in the scaling occurred in Michigan and New Jersey, two states with marked employee dissatisfaction and upheaval. This can be interpreted to imply that these variables are interrelated and that problems can arise from deviating from the pattern. Specifically, New Jersey has statewide units but does not negotiate the issue (compensation) for which such units are appropriate. Michigan, on the other hand,

TABLE 4

GUTTMAN SCALE OF VARIABLES AFFECTING UNIT STRUCTURE

Rec. Proc.	Coll. Bar.	Comp. Neg.	State-wide	Limited No.	
0	0	0	0	0	27 states
1	1	1	1	1	Wisconsin
1	1	1	1	1	New York
1	1	1	1	1	Illinois*
1	1	1	1	1	Kansas*
1	1	1	1	1	Hawaii
1	1	1	1	0	Pennsylvania
1	1	1	1**	0	Oregon
1	1	1	1	0	Vermont
1	1	1	1	0	Alaska
1	1	1	0	0	Minnesota
1	1	1	0	0	Missouri
1	1	1	0	0	Montana
1	1	1	0	0	New Mexico
1	1	1	0	0	Rhode Island
1	1	1	0	0	South Dakota
1	1	0	1	0	New Jersey
1	1	0	0	0	Delaware
1	1	0	0	0	Massachusetts
1	1	0	0	0	New Hampshire
1	1	0	0	0	Washington
1	0	0	0	0	California
1	0	1	0	0	Michigan
22	20	17	11	5	Total***

*Unit policy has been recommended but not yet implemented.

**Has statewide occupational units represented by coalitions of departmentally elected employee organizations for negotiations of standardized issues.

***Nebraska not included because of incomplete information.

discusses compensation but without an obligation on the part of management to try to reach agreement. It is concluded by the author that the variables are "conditions precedent" and that a state trying to implement "advanced" variables (those further to the right on the Guttman Scale) invites trouble if it does not also provide all variables to the left of the one in question.

An attempt to apply statistical tests to the relationship between "how appropriate" a unit must be ("an" or "the most") and the number of units resulting proved impossible because of a lack of data on the precise number of units in those states with more than 100 units. It does appear clear, however, that the "most appropriate unit" test does result in far fewer units.

Advisory Committee Reports

Also considered, besides questionnaire data, for information concerning the various sytems were the reports of committees in states that had made recent recommendations concerning unit determination and the reasons therefor. While all committees dealt with this subject, only the Michigan Advisory Employment Relations Committee was constituted specifically for that purpose. The recommendations of these committees on the subject of unit determination ranged from one paragraph conclusions through multipaged, reasoned analyses. The Pennsylvania approach is an example of the former.

> The appropriateness of the bargaining unit should be determined in each instance by the Pennsylvania Labor Relations Board pursuant to statutory guidelines such as a community of interest among members of the bargaining unit, protection against over-fragmentation of bargaining units, and the recognition that units should be structured to correspond to the governmental agencies with whom they will deal. We do not favor permitting the appropriateness of bargaining units to be determined by the consent of the employer without bringing to bear the experience of an agency such as the Labor Relations Board.[9]

The Pennsylvania response deliberately left the specification of units flexible and dependent upon combinations of factors. Such a formulation might have been expected to result in a variety of unit types. In fact, it did not. Instead, it resulted primarily in a series of statewide occupational units.

In Wisconsin, an advisory committee weighted the convenience of employee organizations against the evils of proliferation for management, the public, and for employees and their organizations and concluded that fragmentation must be prevented.[10] The committee recommended that the legislature specify a limited number of statewide occupational units into which workers would be assigned by the Wisconsin Employment Relations Commission. The legislature implemented this recommendation.

More elaborate justification for its recommendation

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[9] Report of the 1968 Committee to Revise the Public Employee Law of Pennsylvania, pp. 9-10.

[10] Report of the Governor's Advisory Committee on State Employment Relations (1970), pp. 13-14.

was given in a California advisory council report.[11] This committee concluded that the balancing of interests between the efficiency of a small number of units and the effective representation of specialized interests had to be done on a case-by-case basis by an independent agency. While the committee refused to specify units, or even to place a limit on their number, it did caution against the evils of proliferation, recommending that the Board, "be empowered and directed in the statute to find the largest reasonable unit to be the appropriate one for purposes of collective bargaining."[12] (Emphasis in the original.) The committee particularly specified that the NLRB test of "an appropriate unit" was not sufficient and that the Board should determine the "most appropriate unit."[13] The committee also reached the issue of craft and professional separation and concluded such severance would be too proliferating. The committee recommended that elections not be held until an employee organization petitioned for the largest reasonable unit. Community of interest criteria included the availability of the same impasse procedures, and consideration of: (1) the extent to which employees perform functionally-related services, or work toward established common goals; (2) the history of employee representation in the agency involved

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[11] Report of the Assembly Advisory Council on Public Employee Relations (1973).

[12] Ibid., p. 85.

[13] Ibid.

and in similar employment; (3) the extent to which employees have common skills, working conditions, job duties, or similar educational or training requirement; and (4) the extent to which employees have common supervision.[14]

After continually counseling against the evils of proliferation, the committee then allowed consideration of the following criteria, without specifying how they should be weighed: (1) geographical separation of employees, (2) numerical size of the unit, and (3) the relationship of the unit to the organizational pattern of the agency.[15] Recognition of the first two of these factors, with no specified constraints upon them, might reopen the door to proliferation and seems to charge the Board with an unenviable task of controlling fragmentation while recognizing and accommodating a series of proliferating influences.[16]

A thorough analysis of unit determination was produced by the Connecticut Governor's Commission of 1973 on Public Employment Relations. In the committee's Report and Recommendations, there is a systematic listing of the advantages and disadvantages of various models of unit determination.[17] After study of the various alternatives, the committee recommended a "coalition model" featuring elected

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[14]Ibid., p. 88.

[15]Ibid.

[16]The California Report had not been adopted at the time of this writing.

[17]Pages 14-16.

departmental representatives for negotiation of local working conditions, and coalitions of these representatives for the negotiation of issues standardized across departments.

New York's Taylor Commission recommendations resulted in the Taylor Law[18] of 1967. This act requires the state Public Employee Relations Board to consider three standards in making unit determinations: (1) a community of interest among employees, (2) correspondence of managerial authority to the level of the issues negotiated, and (3) the joint responsibility of the employer and employees to serve the public.[19] The Governor originally advocated three units--one of professional employees of the State University of New York, one of State Police, and one of all the 149,270 remaining state employees. The Civil Service Employees Association joined the Governor in this recommendation. After complex litigation,[20] the PERB decided its charge was best met by the creation of five statewide occupational units, citing that the occupations grouped in a single unit were "too diverse to produce meaningful representation."[21]

State Visits

To observe first-hand a cross-section of unit determination characteristics, five states were visited by the

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[18]New York Civil Service Law, §§200-212.

[19]Sec. 207 (1).

[20]This litigation is detailed in Lefkowitz, op. cit.

[21]State of New York, Public Employee Relations Board, Case No. C-0002.

author, for periods of two to four days each. The states visited and their characteristics of interest were: Wisconsin (legislated, statewide occupational units and long history of public employee bargaining), Pennsylvania (agency-determined statewide occupational units), New Jersey (agency-determined statewide occupational units, strong civil service system, and multiple organizations with representation), Massachusetts (agency-determined departmental or sub-departmental units, multiple employee organizations), and Oregon (agency-determined departmental or sub-departmental units and a unique system of coalition bargaining on central issues).

In visiting states, interviews were conducted with experienced practitioners from administrative agencies, central and departmental management, employee organizations, and civil service where relevant.[22]

Some of the trips proved more fruitful than others, but their combined effect was to produce some definite impressions of what works in reality rather than on paper, and what special conditions need to be present for a system to work well.

Wisconsin

From 1966 to 1972, Wisconsin state employees were given the right to negotiate local working conditions with

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[22]A list of practitioners conferred with on these trips and at special meetings appears in Appendix C.

department heads.[23] Wages, fringe benefits, and matters affecting the merit system were outside the permissible scope of negotiations.

This sytem proved unacceptable to both sides. Employees complained of not being able to negotiate wages, while the employer claimed that its "management's rights" of control and decision making were being constantly eroded as organizations, needing to demonstrate their worth to employees, "intruded" into these areas when more traditional organizational demands could not be used as trade-offs.[24]

The desire to expand the scope of bargaining resulted in the formation of the Governor's Advisory Committee on State Employment Relations which recommended the creation of a limited number of legislated, statewide occupational units. This plan was originally opposed by AFSCME, the largest and strongest labor organization in the state, for whom it was inconvenient (it had established itself along departmental lines),[25] and the Wisconsin Employment Relations Commission, which felt its expertise more appropriate for unit formation than the Legislature's.[26]

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[23]State Employment Labor Relations Act, Wisconsin Statutes, Sec. 111.

[24]Report of the Governor's Advisory Committee on State Employment Relations, p. 6.

[25]Report, op. cit., p. 13.

[26]Interviews with WERC members.

The law was implemented when, according to practitioners in the state, suitable voice in the creation of the units could be given AFSCME in exchange for its support in the Legislature.

The actual legislation of the units, according to AFSCME's lobbyist, ". . . presented no problem. The parties [meaning AFSCME and state personnel management] sat down together and negotiated units acceptable to both sides, which were then introduced in jointly-sponsored legislation."[27] According to other practitioners, these units were not what the advisory committee had recommended, and were not structured for community of interest, but on grounds of who would be the elected representative.[28]

The sixteen units legislated provided some variety of representative organizations. A Building Trades Council won representation in the "blue collar-trades" unit, while various independent and professional organizations were elected in some of the smaller, more specialized units. The larger units were won by AFSCME.

The problem of communications among scattered workers, allegedly a difficult one in statewide occupational units, has been handled by the Building Trades Council by having mailed ballot elections and full membership meetings

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[27]Quotation from personal interview.

[28]These allegations came from parties who could be presumed neutral, and could in no way be considered self-serving.

in Madison for contract ratification. All other statewide business is handled by the council's chief negotiator who keeps in contact with the locals. Ratification is by majority vote of the entire membership--no one craft can veto, and no single craft is large enough to dominate. Since the total membership of the unit is small (485), an occasional general meeting in Madison has not proved unworkable.[29]

Pennsylvania

Pennsylvania was selected because it has statewide occupational units determined on a case-by-case basis by the Labor Relations Board in response to employee petitions, rather than legislative prescription.

In Pennsylvania the passage of an act authorizing collective bargaining was a product of lobbying, picketing, and striking by public employees.[30] In response to a threat of increased public strikes, a collective bargaining law was proposed as the compromised desires of labor lobbyists and state personnel management in 1968. Prior to the passage of the act there had been no lasting organization among state employees.

The passage of the act resulted in spectacular growth for AFSCME. Pennsylvania currently has 113,000 state

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[29] Interview with Building Trades Council State Chairman.

[30] See "Pennsylvania Employee Groups Form Lobbying Alliance," GERR, No. 230, B-8 (Feb. 5, 1968), and "Pennsylvania Teachers Take Action March 4," GERR, No. 234, F-1 (March 3, 1968).

employees. In 1968, AFSCME had 200 members. It now represents 78,000 employees.[31] No other organization represents more than 15,000.

Units are determined by the Pennsylvania Labor Relations Board. It is charged with creating units that take into consideration the problems of fragmentation, the fact that for most purposes the Commonwealth is the employer, and community of interest[32] (which the Board has interpreted to mean similar skills and assignments). Under such instructions, the Board has determined that all units must be statewide by groupings of job classifications. Which jobs should be grouped is determined in each instance by the Board, after petitions from the parties.

Under Board unit determinations, 15 non-supervisory units have been organized, four are unorganized, but petitioned, and one potential unit of 280 employees is unpetitioned. First level supervisors are allowed to form units to "meet and discuss" without formal impasse procedures being specified. Under these rules five supervisory units have been organized and eight remain unorganized. Five years after the passage of the act, 105,000 of the 113,000 state employees are organized or petitioning.

There are three ways to begin determination of a unit. One is a joint petition for recognition wherein an

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[31]See "Pennsylvania AFSCME Wins 2,700 State Employees," GERR, No. 506, B-15 (June 4, 1973).

[32]Pennsylvania S.B. 1333, L. 1970, Article VI, Sec. 604.

employer and employee organization present a petition to the Board that states agreement as to who should be included in the unit (by classification) and agree that the organization represents a majority of the employees in the proposed unit and should be authorized as their representative. In the early days of the Act, when the Board was overworked, any unit petitioned for was authorized, so long as it was statewide. According to Board personnel this effectively became unit determination by extent of organization and pressure on the employer, resulting in some units the Board now thinks inappropriate. While the Board was authorized to amend such proposed units, it seldom did so in an attempt to appear not to be opposing the new bargaining relationships. Now such petitions are given closer scrutiny and this method of determination has become quite rare.

A second form of determination, also quite rare, is the joint petition for election. Here again the parties specify the unit, but the majority status of the organization is questioned and an election is held.

The third and most common method is for the employee organization to petition the Board, claiming majority status in an appropriate unit. The employer may specifically dispute some aspect of the unit, or ask the Board generally to make the determination. In this situation (and in the previous two, if the Board deems advisable), hearings will be held allowing affected parties to present arguments on what the appropriate unit should be, based on the statutory

criteria. For employee organizations, it takes a 30% showing of interest to petition for an election, 10% to appear at a hearing, and 1% to appear on the ballot.

The value judgments given by the parties indicate a generally high level of satisfaction with the system. AFSCME says its members are not pressing for narrower communities of interest, and the state claims the present number of units allows for efficient administration.

Pennsylvania does have some experience handling units with prior bargaining history. The state liquor commission, a semi-autonomous body, had recognized the Retail Clerks as the bargaining agent of the liquor store clerks for a period of years. This was, in effect, a type of departmental recognition. When statewide units were mandated, the Board made an exception and "grandfathered in" continuing recognition in a separate unit for liquor store clerks. This was in deference "to the realization that those clerks would have 'blown the lid off' had they been forced into a different statewide unit"--one subsequently won by AFSCME.[33]

New Jersey

New Jersey passed a collective bargaining law in 1968. It encompassed both state and municipal employees and was drafted in response to lobbying and strikes by

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[33]Interview with Board personnel.

local government employees, principally teachers.[34] State employees, who had been very poorly organized and ineffective, received a "free ride" to organization that they had not been able to win politically on their own.

However, the value of the act to state employees is unclear. The statute specifically does not override other legislation, including Civil Service regulations. (This had not been a problem in Pennsylvania where Civil Service was really more of a personnel office for hiring and testing.) Since the Civil Service Commission is charged with establishing a compensation plan, the effect of this failure to override other law produces a constant source of conflict and lack of clear authority. The law establishes the Governor as the public employer to negotiate collectively on "terms and conditions of employment," yet the act does not permit him (or his designated representative, the Director of the Office of Employee Relations) to bind Civil Service on many of the issues the draftsmen supposedly intended the act to cover. This lack of reconciliation pervades all other actions under the statute.

Prior to the passage of the act, the New Jersey State Employees Association had a checkered history. Its membership ranged from a high of 14,000 in the post World War II era to only 1,000 in 1967, according to its

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[34] Report of New Jersey Public and School Employees Grievance Procedure Study Commission, in GERR, No. 229 at D-5 (Jan. 29, 1968).

representative, because of patronage by Governors unsympathetic with NJSEA's positions. The NJSEA and its counterpart at the municipal level, the Civil Service Association, directed their efforts to lobbying their respective legislatures and allegedly developed a great deal of animosity for each other.[35]

In recent years, however, they have put together an uneasy alliance of resources to petition jointly for and represent several units of state employees. This "union" was forced by the mutual desire to block AFSCME and salvage some form of recognition in the state service, even though the associations opposed the passage of a collective bargaining law and, according to their representative, still disapprove of contracts and exclusive representation. The NJSEA-CSA alliance recently won the right to represent mutually the largest unit in the state (Administrative Services with 10,500 employees), by a 3-1 margin over AFSCME.[36]

The act establishes a tri-partite Public Employment Relations Commission as the agency of unit determination. The statutory instruction requires only that units "comprise a community of interest."[37] From this language, and the experience of other jurisdictions, the PERC decided that

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[35]Personal interviews with New Jersey practitioners.

[36]"Joint Associations Win 10,500 N.J. Employees as PERC Dismisses AFSCME Objections to Election Result," GERR, No. 507, B-1 (June 11, 1973).

[37]New Jersey Employer-Employee Relations Act (Section 34:13A-5(3).)

the units must be statewide by occupation. Many petitions for a local, institutional, or departmental unit had been filed in the early proceedings, but the Commission denied them, waiting for organizations with a broader interest to petition. This created a sizable delay in implementing the law and much ire on the part of the rejected organizations. Two organizations receptive to such a structure finally emerged--AFSCME and the American Federation of Technical Engineers. The only explanations mentioned for AFSCME's late start were allegations of internal mismanagement. PERC entertained the petitions and claimed they established a precedent for the type of units to be recognized in the future.

The initiation of a unit determination is accomplished in much the same manner as Pennsylvania, except that joint requests make up about 80% of the petitions, and disputed units are rare. PERC may amend the composition of the unit (which classifications are to be included), but submissions of scope are always statewide.

The 8,000 professionals are unrepresented at the moment for lack of a petitioner. Several subgroups, including the New Jersey Nurses Association, had petitioned for a statewide unit solely of their profession but PERC is requiring (waiting until someone petitions for) a statewide unit of all professionals. In this instance, and in an undetermined number of others, PERC is really creating the unit by not accepting any petitions that do not conform to

what it wants, even if mutually supported by employee organizations and management.

The question of what may be bargained at the agency level produced some very different responses. Since it was the intention of the act to centralize bargaining through the Governor's Office, it is not surprising that the Director of the Office of Employee Relations claims that all negotiations and agreements go through his office, and that little of significance is decided locally. Both AFSCME and NJSEA disagree however, claiming that few issues are decided centrally (because "few decisions are ever made") and that "all the action is at the local level" where the Department Heads are met and conferred with to produce written memoranda of understanding. Some department heads are reportedly "tremendously powerful in their little kingdoms."

In New Jersey, minority organizations have the right of check-off and to meet and confer with Department Heads so long as agreements reached are not inconsistent with agreements reached centrally by the majority representative. Since it is possible for some local unit or department to have a majority of employees favoring an organization that is in the minority statewide, and for the statewide majority representative to have trouble negotiating a contract, the meet and confer procedure with local authorities takes on added significance and complicates the effects of statewide bargaining.

New Jersey employees have been relatively slow to organize. Five years after the passage of the collective bargaining act, only 30,500 of the 55,000 employees are represented, and of the eight units with representatives, only four have produced a contract. This is a lower percentage than the other states visited. Employee organizations claim this is because "the State can avoid bargaining by buck-passing authority between Civil Service and the Director of Employee Relations, and that the two management representatives are unwilling to work together with employees to settle differences."

There were other negative reactions to the New Jersey system. Some labor organizations believe that PERC is a political tool that is not impartial but is controlled by state administration. This feeling is strong among the organizations of professionals whose petitions were denied. Also, organizations continue to lobby the Legislature to achieve what they cannot get at the bargaining table. With the difficulty in locating managerial authority in the system, these end-runs add to the complications. Department Heads expressed dislike for the system because they have yielded control. On the other hand, the Civil Service Commission has not yet complained of a conflict between collective bargaining and the merit principle.

(Subsequent to the drafting of this dissertation New Jersey granted wage bargaining and clarified the relationship

between the Governor's personnel function and the Civil Service Commission's.) See Ch. 124, New Jersey L. 74.

Massachusetts

Massachusetts represented an attempt to study the combination model of unit determination in the presence of multiple, existing organizations, including a state employees' association.

Massachusetts has 60,000 state employees. The Civil Service System is very weak (covering only 28,000 employees) and is threatened with extinction under a "reorganization plan" to make government "more streamlined and responsive to the people," i.e., to institute a spoils system.[38] The largest employee organizations are the Massachusetts State Employees Association with 10,000 members (down from 22,000 prior to the passage of the collective bargaining law); AFSCME with 7,000; Service Employees International Union (SEIU) with 4,000; and 35-40 independent associations.

Massachusetts has had collective bargaining over working conditions since the passage of enabling legislation in 1964. The act was not opposed at that time by state personnel managers who apparently thought it was inconsequential. Salaries, fringes, and leave policy are determined

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[38]"Governor Calls for More Executive Control of State Positions," Boston Globe, August 21, 1973, p. 1.

directly by the Legislature through the passage of bills administered by the Bureau of Personnel under the Department of Administration and Finance.

For purposes of collective bargaining, the Department Head is the employer and must bargain in good faith about all areas under his discretion, subject to review by the Bureau of Personnel to determine if he has exceeded his authority. Unfair labor practices are defined and prohibited but final impasse procedures are not provided. Units are determined by "community of interest" (largely meaning the extent of organization) and can be agreed to by the parties without administrative agency intervention, or are determined in disputed cases by the Labor Relations Commission.

No one seems concerned with the problems of proliferation and the number of units recognized was estimated (no one knew for sure how many existed) at between 140 and 180.

Units consist of groupings of similar job assignments within a single agency; no units cross departmental lines. An example is the Department of Public Works, which negotiates with eleven units of occupationally grouped employees.

The State Employees Association has become very union-like and now strongly advocates collective bargaining. While it originally opposed the passage of the act, its representatives now proudly point to all the places they

have been able to introduce seniority into the decision making process.

The extreme fragmentation of units is perhaps a testimonial to a lack of any significant bargaining (as alleged by some organizations) and that personnel administrators are not overwhelmed because they are not really involved.

A law proposed in 1972 by a special legislative committee recommends making the Governor the employer and increasing the scope of bargaining to include wages and fringes. The lack of awareness of the problems of proliferation may be evidenced by the following remarks in response to the question whether such expanded scope and change of employer might not require a restructuring (and reduction in the number) of units: "I don't see why; the contracts don't all expire at the same time."[39] Or, too, "How can the employer negotiate 180 separate contracts?" "No one said it would be easy."[40]

The failure to be concerned with proliferation also probably demonstrates that the organizations do not compete with one another. The Public Works Unions' local presidents said that whatever one gets, so do the others, but it does not matter anyway, since none ever gets anything significant. Also, no organization would claim or admit that

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[39]State Senator Mendonca, Chairman of the Legislative Committee.

[40]Committee Executive Secretary Fitzgerald.

it compared itself with others, and the state did not complain of whipsawing or parity claims. Therefore, the presence of multiple organizations was not seen as a problem in Massachusetts.

(On January 1, 1974, Massachusetts General Laws Chapter 150E took effect. This law created the position of Commissioner of Administration and designated the Commissioner as the state employer with the obligation of negotiating wages, hours, and working conditions. Because of the change in parties and scope of bargaining, and at the request of the state, the Labor Commission investigated the appropriateness of the existing bargaining units. It determined that the fragmented units used to negotiate working conditions with department heads would not provide for "orderly administration of government." See Amendment of Rules and Regulations of the Labor Relations Commission, March 3, 1975, p. 12. After examining possible unit representation plans, the Commission created ten statewide units grouped by related occupations. This decision was based on "the experience of other states and the recommendations of highly respected commentators and scholars." See Amendment, p. 31.)

Oregon

Oregon represented a final attempt to study another model, that of coalition bargaining. Oregon has departmental units for local working conditions, and coalitions of these representatives for bargaining central issues with

the State Personnel Division. Oregon was also of interest because it had several small unions and a strong employees' association.

The State has 32,000 employees; approximately 22,000 are members of the Oregon State Employees Association--an organization fairly union-like yet still considered by some to be a friend of management. Outside the universities, only four non-OSEA organizations represent employees: the Oregon Nurses Association, the Typographers, AFSCME, and the Association of Engineering Employees. These organizations' representation numbers only in the hundreds. For the first decade of collective bargaining (the original law permitting bargaining passed in 1963), AFSCME had managed to win the right to represent a total of 160 employees in two units. A recent election victory at the state penitentiary (decertifying OSEA as the prison guards' representative) "ballooned" its representation to 450.

Despite its numbers, AFSCME has had a profound effect on collective bargaining in Oregon. It was instrumental (along with other AFL-CIO affiliates) in securing the passage of the 1963 legislation which permitted agency heads to engage in collective bargaining.[41] Until 1968 this was apparently of no great effect. At that time, OSEA espoused collective bargaining and lobbied through amendments providing for exclusive representation, elections,

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[41]Chapter 579, L. 1963.

unfair practices, and impasse procedures.[42] The bill was a compromise measure with management and was jointly sponsored. In the ensuing elections, OSEA carried virtually the entire state, often running against only a choice of "no representation," as other organizations failed to muster the necessary 10% showing of interest to appear on the ballot. Units were originally expected to be one per department, unless a strong reason existed for recognizing a smaller sub-group. Strong reasons were found often enough to create the present 87 units. Local working conditions were originally thought to be the full scope of bargaining. Pressure to negotiate wages, however, resulted in a management decision to negotiate monetary issues with the organization representing a majority of employees in a classification, regardless of department. This did not present as many problems as it might have since the small organizations had their strength in specific classifications and usually represented a majority there (or were sole representatives) while OSEA represented virtually everyone else, even if in different units. The one stumbling block was AFSCME, which again played a significant role. The State was committed to a policy of consistent pay by classification regardless of geography or affiliation. Accordingly, the Personnel Division negotiated wages for a "physical plant employees class" statewide with

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[42]Chapter 579, L. 1963, as amended by Chapter 536, L. 1973.

OSEA, expecting that the agreement reached would bind AFSCME's 100 workers in Portland. When AFSCME then wished to negotiate wages for its group the State said it would not be whip-sawed and could not vary the rate from the OSEA settlement.

The State refused to meet with AFSCME, and the union filed an unfair labor practice charge with the Public Employee Relations Board, a-leging failure to bargain in good faith. The Board agreed and ordered the State to bargain.[43] According to State personnel management, it was this result which prompted the 1973 amendment requiring coalition bargaining on central issues.

The new legislation requires that the State negotiate in good faith with all the organizations representing employees in a class. If after "a reasonable time," agreement cannot be reached among all parties, the State may settle with the representative of the majority of the class, and all others in the class are bound by the terms of the agreement.[44]

Unfortunately, the Oregon system has not been in existence long enough to determine the feasibility of forced coalitions among unwilling partners. There had been cooperation and coalition bargaining of a consensual nature between three different unions of printers and typographers

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[43]"Oregon's Refusal to Negotiate with AFSCME on Uniform Pay Rates and Its Demand for Coalition Bargaining Held Illegal," GERR, No. 463, B-1 (July 31, 1972).

[44]Sec. 10(1) as amended by Ch. 536, L. 1973.

in the state printing office and two state universities. The coalition formed to negotiate wages was demanded by management but was what management claims these craftsmen would have willingly done anyway and is therefore not much of a test. A more critical analysis will be possible after AFSCME and OSEA have to bargain together, although these two organizations have already reached agreement on a spirit of cooperation for such negotiations, and were in fact, joint sponsors of the legislation along with management.

The problem of fragmentation could have been handled at both the central and local levels--although Oregon has not faced up to it at either. The State is concerned at the local level, but has not yet acted, and the central level escapes the problem only because OSEA chooses to bargain for an integrated pay plan for all classifications for which it is majority representative--that is, everyone but the nurses and printers. Even OSEA has expressed concern at the local level, where its 55 units provide too great an administrative burden. One informal way fragmentation has been handled at the local level in the Oregon Highway Department is to have all employee representatives meet jointly with management until agreement has been reached on all matters affecting employees in more than one organization. This has been accomplished ad hoc (without the force of law), but according to the parties, is working.

Conclusions and Summary

Different states produce different problems and results. What works well in one state may not in another. Statewide occupational units are meeting the needs of the parties in Wisconsin and Pennsylvania, but not the needs of employees in New Jersey. Oregon's coalition bargaining, though still new, holds promise. Massachusetts does not seem to be significantly involved.

Some of the states with viable procedures benefited from fortuitous circumstances. Wisconsin had only one employee organization to consider, Pennsylvania had none. This makes the coordination of differing interests easier. More important, however, is the cooperation ensuing from mutually supported compromise legislation. The states that authorized bargaining in this fashion (Pennsylvania, Wisconsin, and Oregon) have produced mature and stable employee relations policies.

On the other hand, the New Jersey parties have not exhibited a willingness to work together. Their legislation was not the product of joint sponsorship between state personnel management and state employees and their relationship is characterized by dissatisfaction, distrust, distaste for the system, and allegations that certain parties are trying to frustrate it altogether. The principal lesson to be learned from New Jersey is the confirmation that the parties' commitment determines the success of the system.

As a general impression, one could say that statewide occupational units seem to meet the needs of the state and organizations winning elections, while perhaps unnecessarily suppressing the needs and desires of individual workers, and are certainly unacceptable to departmental organizations destroyed by the new boundary lines.

Private sector and Wisconsin state government experience would indicate that anticipated communications problems in statewide occupational units could be overcome at some expense to employee organization democracy; that is, a generally elected, centralized committee could handle all statewide business for the organization, subject to the usual internal lobbying pressures of various interests within a republican form of organization. If the units are well formed for community of interest, and workers do not believe they have some need for continuing face-to-face contact with their representative, the system is workable.

For occupational units to work well, they must be formed by a genuine community of interest, not by the politics of who would represent the unit--as happened to some degree in Wisconsin.

In conclusion, laws do not generally give a great deal of insight into the type of unit created, and virtually no insight at all into the viability of such units. Of much greater importance than form is the sponsorship of the parties.

PART II

AN APPLICATION OF THE GENERAL PRINCIPLES--
THE CASE OF MICHIGAN

CHAPTER 6

THE MICHIGAN SITUATION

Current Michigan Situation

Several factors make the Michigan example quite unique. The foremost is that its classified Civil Service system is probably the strongest in the country in terms of independence from the executive and legislative branches, the scope of employment conditions encompassed, and the percentage of state employees covered.

The Civil Service Commission fulfills the legislative, executive, and sometimes judicial roles of government for state employees by formulating, implementing, and executing personnel policy and arbitrating the disputes arising under those policies. The Commission, not the Governor nor the Legislature, is the state employer in Michigan.

The Commission derives its independence and responsibility from Article XI, Section 5, of the State Constitution.[1] This section grants to the Commission alone the power to regulate all conditions of employment in the classified service, including rates of compensation. These

[1]This Section is relatively lengthy and is reprinted in full in Appendix D.

compensation rates can be altered only by a two-thirds vote of each house of the Legislature, an action that has never been taken. Over 97% of all state non-university employees are classified and fall under the aegis of the Commission.[2] There is no provision for review of Commission decisions by the Governor or Legislature, nor may the other branches promulgate policy affecting conditions of employment in the classified service.

A second uncommon characteristic of Michigan arising pursuant to the provisions of Article XI, Section 5, is the absence of collective bargaining in a state embracing it in other sectors. Michigan's private sector is highly unionized and commonly engages in collective bargaining, as do local government and state university employees. The only exception is the state classified service. In 1966, the Legislature passed a Public Employment Relations Act[3] authorizing collective bargaining with rights of exclusive representation, impasse procedures, and unfair labor practices for all public employees--other than the state's, which were outside its jurisdiction, and police and firemen who were later covered by a separate act. When a special governor's advisory commission evaluating the effects of the PERA recommended that the Commission extend equal rights

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[2]Derived from Table 5 data infra.

[3]Michigan Compiled Laws, Section 423.201 to 423.216.

to state employees,[4] the Commission exercised its independent authority and did not act upon the recommendation. Instead, it continued a system of "meet-and-confer" in which employee organizations and state personnel management engaged in "good faith discussions" about local working conditions, while compensation matters continued to be administered through a bi-partite advisory board.

The State Attorney General has ruled[5] that Article XI, Section 5, prevents the Legislature from mandating collective bargaining. The Commission could institute it, however, should it so choose.

A third complicating factor in Michigan is the Civil Service Commission's conception of its role. From the structure of its administrative arm, the Department of Civil Service, it can be inferred that the Commission conceives of i-self as a "neutral overseer" of employee relations between organizations and "management," i.e., Department Heads and Appointing Authorities. For example, the statewide grievance procedure calls for department management to represent the employer, rather than a delegate of the Commission. The fourth step in the procedure, at the employee's option, can be outside arbitration (on a shared cost basis), or resolution (without cost to the employee) by an "in-house" hearing

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[4]Governor's Advisory Committee on Public Employee Relations Report (1966-1967), p. 26.

[5]Attorney General Opinion No. 4709 (September 4, 1970).

officer employed by the Department of Civil Service--a "neutral" in the eyes of the Commission. Furthermore, appeals from fourth step decisions may be brought before the Commission for review, implying that the department is really the employer, and the Commission represents the interests of both parties, but is not itself the management party.

This failure by the Commission to categorize itself as the employer can also be seen in the compensation-setting process. Here the Commission has formed a Compensation Advisory Board consisting of representatives from employee organizations and department personnel.[6] This Board recommends a pay plan to the Commission (in its role as a neutral) that reflects the joint needs of employees and "management." This structure is in lieu of direct conferences between organizations and the Commission--the body charged with establishing and regulating all conditions of employment. The Commission may then implement or modify the recommendation. While organizations with "formal recognition" have the right to appear and be heard at regular Commission meetings and at special public hearings, these appearances are clearly not considered by the parties to be the forum for discussion of conditions of employment.

The Commission has historically solicited employee

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[6]The composition of this board is described in detail, infra, pp. 122-123.

inputs and been concerned for their needs,[7] while, however, refusing to institute collective bargaining. The Commission has nonetheless not discouraged employees from organizing into unions or associations. This willingness has resulted in a fourth factor demanding particular attention in Michigan--the existence of multiple organizations with representation histories.

The Commission has recognized seven employee organizations in twenty-nine departmental units.[8] In these units, the Appointing Authority represents the state on issues over which he has control. Issues on which the Commission has required standardization are "negotiated"[9] centrally through the bi-partite advisory board described below.

The seven organizations vary in purpose and breadth of appeal to employees. The Michigan State Employees Association (MSEA), with 17,000 members, is by far the largest organization. It seeks to represent all employees, regardless of classification, departmental employment, or supervisory status. It has historically opposed collective

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[7]Personal observation and consensus of Michigan parties.

[8]These units and the organizations having recognition therein are listed in Table 5. The strength and location of representation of these organizations is listed in Table 6.

[9]The term "negotiation" will be used throughout in place of the more cumbersome expression "meet and confer," although it should not be considered synonymous with "collective bargaining."

TABLE 5

MICHIGAN UNITS AND ORGANIZATIONS WITH FORMAL RECOGNITION

Employment Unit (Department of)	Number of Employees	Number Checking Off	Percentage Checking Off	Organizations with Formal Recognition
Administration	997	345	34.6	MSEA
Agriculture	757	395	52.2	MSEA
Attorney General	191	25	13.1	None
Civil Rights	227	38	16.7	None
Civil Service	269	10	3.7	None
Commerce	1,487	919	61.7	MSEA
Corrections				
Administration	330	134	40.6	MSEA
Institutions	1,996	1,487	74.5	MSEA; Corrections Org.
Education				
Administration	1,580	489	30.9	MSEA
Institutions	542	341	62.9	MSEA
Governor	287	24	9.4	None
Labor				
Administration	447	163	36.5	MSEA
MESC	3,457	1,869	54.1	MSEA; 31-M
Legislative Auditor Gen.	133	72	54.1	MSEA
Licensing and Regulation	210	93	44.3	MSEA
Mental Health				
Administration	196	45	23.0	MSEA
Institutions	14,030	8,627	61.5	MSEA; AFSCME
Military Affairs	285	154	54.0	MSEA

TABLE 5 (Cont'd.)

Employment Unit (Department of)	Number of Employees	Number Checking Off	Percentage Checking Off	Organizations with Formal Recognition
Natural Resources	2,371	1,403	59.2	MSEA
Public Health				
Administration	1,210	576	47.6	MSEA
Institutions	321	242	75.4	MSEA; AFSCME
Social Services				
Administration	9,200	4,758	51.7	MSEA
Institutions	651	332	51.0	MSEA; AFSCME
State	1,913	933	48.8	MSEA
State Highways				
Administration	3,783	1,828	48.3	MSEA
Engineers	731	508	69.5	Highway Engineers
State Police				
Administration	779	259	33.2	MSEA
Enlisted	1,748	1,295	74.1	Troopers
Treasury	1,568	732	41.9	MSEA
GRAND TOTAL	51,696	28,097	54.4	

Source: Michigan Department of Civil Service, "Employee Organization Membership--Payroll Ending January 12, 1973."

TABLE 6

STRENGTH AND LOCATION OF REPRESENTATION IN MICHIGAN, BY ORGANIZATION

Department	Member-ship	Percentage of Dept.	Department	Member-ship	Percentage of Dept.
		Michigan State Employees Association			
Administration	323	32.4	Mental Health		
Agriculture	388	51.3	Administration	45	23.0
Attorney General	25	13.1	Institutions	4,010	28.6
Civil Rights	14	6.2	Military Affairs	129	45.3
Civil Service	10	3.7	Natural Resources	1,241	52.3
Commerce	835	56.2	Public Health		
Corrections			Administration	525	43.4
Administration	132	40.0	Institutions	137	42.7
Institutions	589	29.5	Social Services		
Education			Administration	3,815	41.5
Administration	481	30.4	Institutions	193	29.6
Institutions	261	48.2	State	914	47.8
Governor	27	9.4	State Highways		
Labor			Administration	1,534	40.5
Administration	122	27.3	Engineers	115	15.7
MESC	739	21.4	State Police		
Legislative Auditor General	72	54.1	Administration	258	33.1
Licensing and Regulation	92	43.8	Enlisted	438	25.1
			Treasury	729	46.5
			TOTAL	18,193	35.2

TABLE 6 (Cont'd.)

Department	Member-ship	Percentage of Dept.	Department	Member-ship	Percentage of Dept.
American Federation of State, County and Municipal Employees					
Administration	15	1.5	Education		
Agriculture	6	0.8	Administration	8	0.5
Civil Rights	24	10.6	Institutions	87	16.1
Commerce	111	7.5	Labor		
Corrections			Administration	9	2.0
Administration	2	0.6	MESC	61	1.8
Institutions	278	13.9	Licensing and Regulation	1	0.5
Mental Health			Social Services		
Institutions	5,059	36.1	Administration	339	3.7
Military Affairs	25	8.8	Institutions	158	24.3
Natural Resources	203	8.6	State	18	0.9
Public Health			State Highways		
Administration	57	4.7	Administration	371	9.8
Institutions	117	36.4	State Police		
			Administration	1	0.1
			Treasury	3	0.2
Service Employees International Union, Local 31-M					
Administration	13	1.3	Military Affairs	1	0.4
Agriculture	1	0.1	Public Health		
Education			Administration	1	0.1
Administration	1	0.1	Social Services		
Labor			Administration	33	0.4
Administration	32	7.2	State	1	0.1
MESC	1,092	31.6			
			TOTAL	1,175	2.3

TABLE 6 (Cont'd.)

Department	Member-ship	Percentage of Dept.	Department	Member-ship	Percentage of Dept.
Michigan State Police Troopers Assoc.			Michigan Corrections Organization		
State Police Enlisted	1,051	60.1	Corrections Institutions	731	36.6
Society of Highway Engineers			Welfare Employees Union		
State Highways Engineers	396	54.2	Social Services Administration	667	7.3

Note: There are 1,069 dual members scattered throughout the system.

Source: Michigan Department of Civil Service, "Employee Organization Membership--Payroll Ending January 12, 1973."

bargaining.[10] The American Federation of State, County, and Municipal Employees (AFSCME) is the second largest organization, with a membership of approximately 7,000. Although this organization also seeks to represent all employees, most of its membership is confined to the Department of Mental Health. It espouses traditional union goals of collective bargaining.

Five smaller, special interest representatives exist. The Michigan State Police Troopers Association represents only enlisted officers below the level of Post Commander in the State Police. The Michigan Corrections Organization represents only prison guards, while the Welfare Employees Union, an organization espousing clients' as well as employee needs, is confined to the Wayne County (Detroit) Department of Social Services.[11] The Michigan Society of State Highway Engineers and Professional Affiliates has approximately 400 members in an 800 employee unit of professional highway engineers. Local 31-M of the Service Employees International Union seeks to represent all state employees, but has 1,100 of its 1,138 members in one

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[10]This position has changed in December, 1974, in response to dissatisfaction with the Commission's failure to adopt CAB recommendations. See MSEA News, December 19, 1974, p. 3.

[11]This unit is the only one based on geography. An attempt by the CSC to eliminate the unit's recognition was prevented by a temporary restraining order obtained by the WEU.

agency--the Michigan Employment Security Commission.[12] This organization also espouses collective bargaining.

The units and the organizations with formal recognition therein are depicted in Figure 2. In five units there are two organizations with formal recognition; in no unit are there more than two. Four units have no formally recognized employee organizations, while twenty have one. MSEA is recognized in 23 units; AFSCME in three; and MCO, 31-M, Highway Engineers, and State Police Troopers in one unit each. The Welfare Employees Union has recognition by court order in the Wayne County Department of Social Services, a bailiwick not formally recognized as a unit.

The Commission implements its decisions by policies, rules, regulations, and procedures, under which it has established criteria for recognition of employee organizations, negotiating units, a "meet and confer" process, a standardized grievance procedure, and a bi-partite labor-management Compensation Advisory Board to counsel the Commission on wages, hours, and fringe benefits.

The current policy for determining negotiating units is defined only in rough guidelines "consistent with sound employee relations, community of interest, and

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[12]All data from "Employee Organization Membership, Payroll Ending January 12, 1973," Michigan Department of Civil Service, Employee Relations Division.

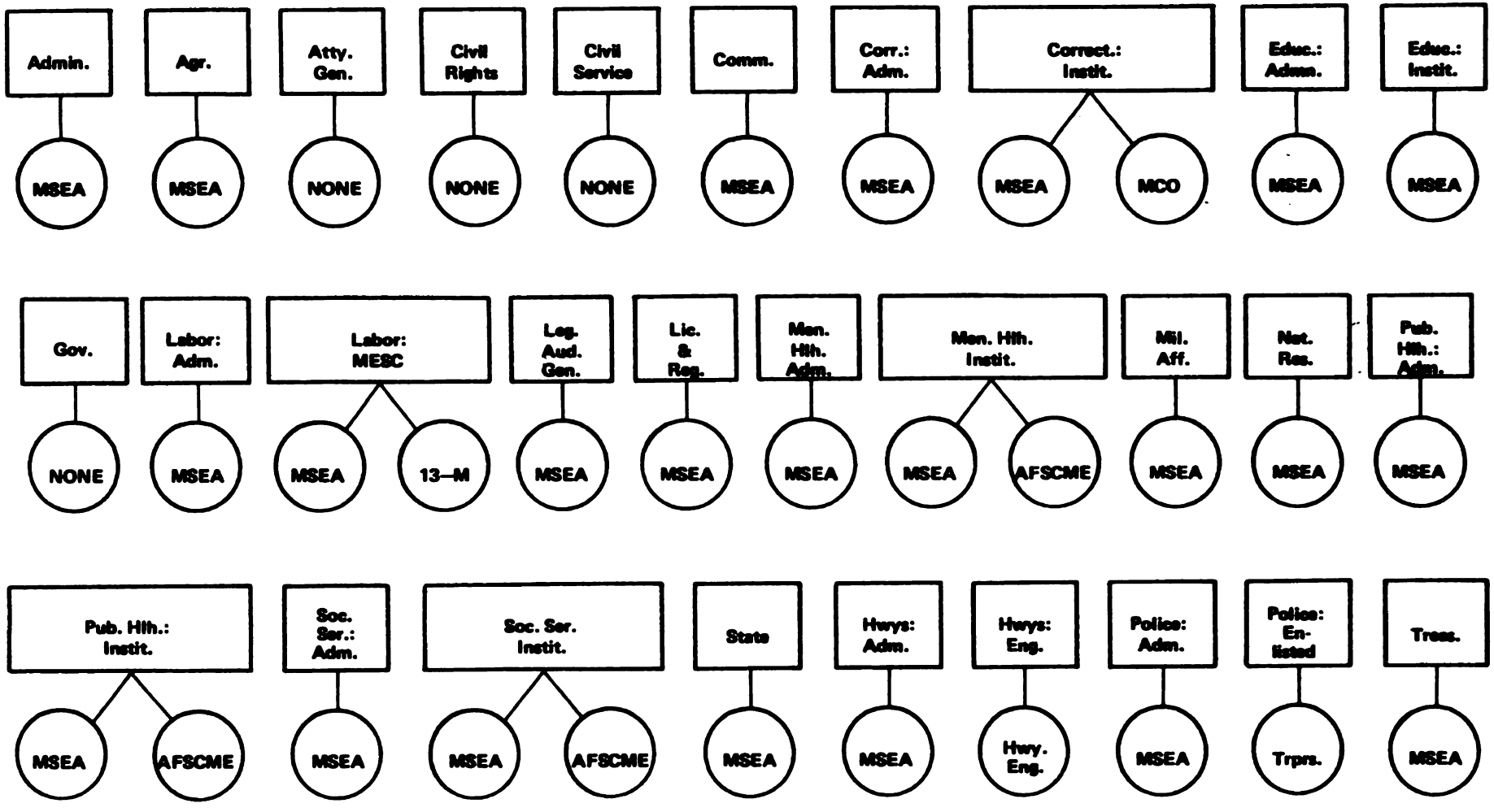

FIGURE 2

Present Structure of State of Michigan Employment Relations for Local Working Conditions Issues: Departmental Units and Organizations with Formal Recognition (Civil Service Commission, Governor, and Legislature not involved)

efficiency of state government."[13] Under this definition, the Commission has recognized fifteen principal department units, divided five principal departments into "administration" and "institutions" units, divided the Department of State Police into "administration" and "trooper" units, and divided the Highways Department into "administration" and "professional engineer" units, producing the total of 29 negotiating units in the state.

In these units, organizations with at least a stable 25 percent membership, measured by authorized dues check-off, have "formal recognition" which entitles them to use of the Commission-established conference procedure. An organization with 76 percent membership is entitled to exclusive representation. No organization has ever achieved this. The Commission has also ruled that an organization must demonstrate a five percent membership within a designated unit to be entitled to rights of dues check-off.

These units were designed for departmental "meet and confer" negotiations of personnel matters historically regulated, in full or in part, by department and local managers.[14] Because differing local needs made uniform regulations undesirable, the Civil Service Commission found it efficient to delegate to the discretion of local managers

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[13]Michigan Civil Service Commission, Request for Study and Recommendations on Employment Units in the Michigan Classified Civil Service, p. 2.

[14]Ibid., p. 3.

certain aspects of its constitutional authority to regulate wages, hours, and working conditions of employees.[15] Recognized employee organizations confer with a Department Head on conditions of employment not pre-empted by the Commission, and confer with the Department of Civil Service on matters pre-empted by the Commission. This recognition includes the right to be heard at Commission meetings and public hearings.

The bi-partite, nine-member Compensation Advisory Board currently allots four seats to Departments and four seats to recognized employee organizations. The Chairman is the ninth member and is a representative of the Civil Service Commission. Organizations receive a seat for each 10,000 members or substantial portion thereof. The Michigan State Employees Association with 17,000 members receives two seats, while the American Federation of State, County, and Municipal Employees, with 7,000 members, receives one seat. The remaining seat has been allocated on a rotating basis and on a proportional vote based on the size of membership of the remaining organizations. Neither of these procedures has met with the approval of the small organizations.[16]

The relationship of the parties affected in the compensation setting process are depicted in Figure 3.

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[15] Ibid.

[16] Interviews with representatives of the smaller organizations and Department of Civil Service personnel.

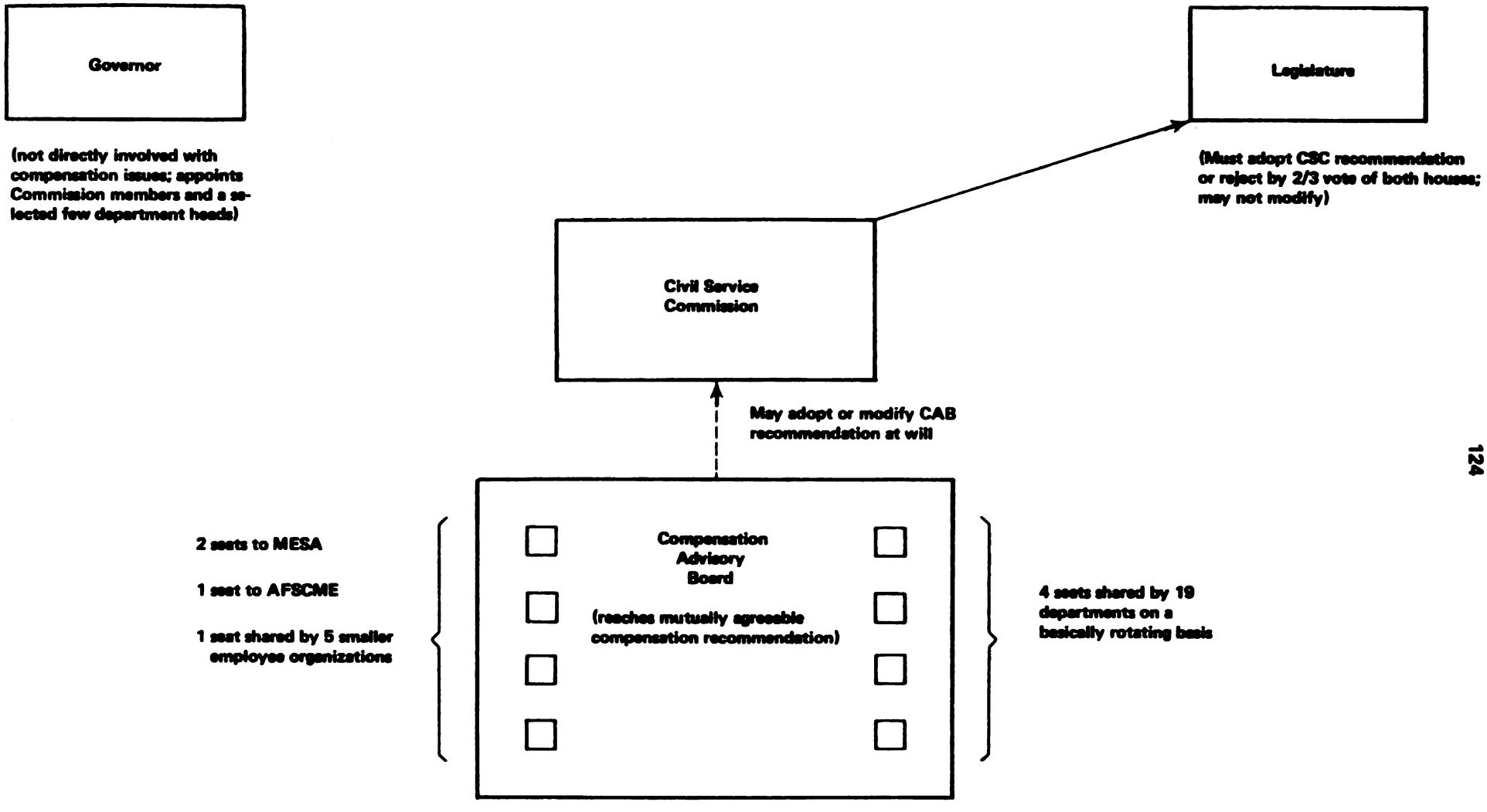

FIGURE 3

Present Structure of State of Michigan Employment Relations for Compensation Issues

The Governor has no direct review in the compensation setting process, while the Legislature's right of review is so circumscribed as to never have been used.

In recent years the Commission has espoused a policy of ever-increasing employee involvement and has been periodically adding to the participatory rights of employees and their organizations. This has led the Commission to consider whether changes in units should be made in response to changes in the relationship between the Commission and employees.

Nature of the Michigan Problem

An examination of the experience of other jurisdictions, particularly municipal, with fragmentation of bargaining units resulted in the Commission's realization that such problems could also occur in the classified service. This prompted the Commission to place a moratorium in June of 1971 on recognition of any new employee organizations, pending the recommendation of a unit determination procedure by a committee of neutral experts. The concern for proliferation was augmented by the realization that the current form of representation on the Compensation Advisory Board was based on a different criterion and community of interest than that of the formal recognition procedure, that is, it was based on total statewide membership across all departments, rather than by the established negotiating units.

This led some employee organizations to believe that

the current structure was not effective at representing employees on matters of wages, hours, and fringe benefits, and that representation should be structured for solving local working condition problems.[17] This belief supported organizations structured along departmental or institutional lines where the person with authority to handle these problems could be conferred with. This approach, of course, could lead to fragmentation with its attendant problems of whip-sawing, inefficiency, and inconsistency in administration of standardized benefits.

The growth of departmentally oriented organizations, with their emphasis on local working conditions, was occurring at the same time the Commission was exercising its authority to increase its areas of statewide standardization to include wages, hours, fringe benefits, leave policy, classification, examinations, appointments, status and tenure, service ratings, demotion, layoffs, training, retirement, dismissal and suspension, appeals, and grievance procedures. A complete listing of areas in which the Commission has superseded the principal departments and formally prescribed policy is presented in Table 7. The effect of this centralization was to decrease the scope of negotiable issues left to the Department Heads.

The combination of the increasing likelihood of harmful proliferation, inappropriate representation on the

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[17]Interviews with officials of the Welfare Employees Union and AFSCME.

TABLE 7

AREAS IN WHICH THE COMMISSION HAS SUPERSEDED THE DEPARTMENTS

Excepted Positions
Exempt Positions
Examination for Agency Licenses
Political Activities
Hours of Service; Holidays
Paid Annual Leave
Paid Sick Leave
Veterans' Preference and Military Leave
Leave of Absence with Pay
Leave of Absence without Pay
Strikes
Classification of Positions
Positions in State Civil Service
Compensation of Employees
Appointments
Examinations
Scope and Character of Examinations
Employment Preference
Employment Lists
Certification and Selection
Probationary Period
Status and Tenure
Service Ratings
Demotion
Resignation
Layoffs
Training
Retirement
Dismissal or Suspension
Appeals
Reports and Records
Modifications, Amendments, and Supplements
Travel Expense
Moving Expense
Pensions

Compensation Advisory Board, and the tendency toward centralization of the most significant aspects of employment relations, prompted a reexamination of the existing unit policy. To accomplish this, the Commission appointed the Advisory Employment Relations Committee (AERC). Members of the AERC were selected by nominations of the affected parties. One each was nominated by MSEA, AFSCME, and the Personnel Directors Council. Two were appointed by the Commission at large. The nominees were not informed of how they were selected or who nominated them. Named to the committee were Barry Brown, Director, State Department of Labor; James R. McCormick, Attorney and Arbitrator; Charles Meyer, Secretary and Chief Examiner, Detroit Civil Service Commission; Theodore J. St. Antoine, Dean, University of Michigan Law School; and Frederick R. Shedd, Management Consultant in Labor Relations. Mr. Shedd died shortly after appointment to the committee and was replaced by Dr. Jack Stieber, Director, School of Labor and Industrial Relations, Michigan State University.

The AERC was instructed to examine specifically the following issues:[18]

Whether there should or should not be a limitation to the number of "appropriate" employment units.

Whether the "most appropriate" employment units should be described by legislative action of the Commission either in general guidelines or in specific and precise designations.

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[18] Request for Study, op. cit., p. 6.

In either case, the extent to which Commission executive and quasi-judicial setting of criteria is desirable or necessary.

The procedure of implementation of unit determination criteria.

The method of invoking procedure for unit determination for recognition in such units.

The showing of employee authorization or membership required for invoking procedures for gaining recognition, and the method of so showing.

The method of resolving contested representation claims.

Whether there should be exclusive or multiple recognition in an employment unit.

Whether there should be an exclusion of supervisors and executive management, or whether there should be separate units for supervisors.

Whether there should be other exclusions or separate units.

The criteria for exclusions, if exclusions are recommended.

Whether profession or craft severance should be possible or required.

What distinct concepts of community of interest exist within the State Classified Civil Service.

The Committee was also instructed that the following matters were not included in the charge.[19]

Collective Bargaining.

Character or degree of negotiation obligation.

Subjects of negotiation (by level of authority).

Impasse procedure in interest or grievance disputes.

Unfair practices.

Employee organization security.

Strike prohibitions or sanctions.

Employee organization responsibility standards.

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[19]Ibid.

Procedures of the AERC

By AERC decision, Dr. Stieber was selected to chair the committee. The author was hired as research director and secretarial support was provided by the Department of Civil Service. The committee held periodic meetings to discuss and analyze the issues and delegated to the research director most of the information-gathering tasks. To familiarize the committee with other states' procedures the members studied unit determination models while the research director surveyed the relevant literature in the field; formulated and processed a questionnaire sent to all states; traveled to and spent several days in Wisconsin, Pennsylvania, New Jersey, Massachusetts, and Oregon; and attended the Great Lakes Assembly conference on issues of employment relations in state and local government. A colloquium was assembled in East Lansing to discuss the issues of unit determination and recognition policy in state government at which AERC members met with recognized authorities and practitioners in the field.[20] Finally, for the purpose of determining the desires, needs, and particular circumstances of the affected parties, the committee held public hearings on May 8, 9, and 10, 1973.

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[20]Those attending the colloquium are listed in Appendix E.

Needs of the Parties

Notices of the opportunity to appear before the Committee were widely distributed.[21] Twenty appearances were made, including one by each of the seven organizations having formal recognition. Seven other organizations seeking recognition appeared, along with the Personnel Directors Council, the State Personnel Director (through the Department of Civil Service), two departmental personnel directors, and two concerned individuals.[22]

Exclusive recognition and managerial and confidential employee exclusion were favored by all parties responding to those questions except the Michigan State Employees Association. Since these issues had clear private sector precedent, such support is not surprising. MSEA opposed exclusivity because "it would reduce competition, thereby breeding casual or less responsible representation."[23] This position is not necessarily self-serving. Because of its widespread strength, MSEA stood to "close out" more competition than any other organization, especially if the units decided upon were relatively wide. It is therefore concluded by the author that MSEA's position on this matter was one of philosophy and judgment. The Association also wanted all employees, regardless of classification, to be

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[21] A copy of the notice is reprinted in Appendix F.

[22] A list of parties appearing is reprinted in Appendix G.

[23] MSEA Summary of Recommendations, p. 2.

eligible to join the employee representative organizations of their choice,[24] again apparently for philosophical reasons.

Consistent with its freedom of affiliation position, MSEA opposed separate units for supervisors. It was joined in this position by two other organizations, the Welfare Employees Union and an unrecognized employee group, the Michigan Engineers in Government. Both these organizations, as well as MSEA, included among their present membership significant numbers of employees potentially classed supervisory. All other parties responding supported separate units for supervisors. None advocated the private sector policy of exclusion. This willingness to allow representation in separate units can be considered an understanding of the conflicts of interests produced by grouping supervisors with subordinates, the special needs of public sector supervisors, and the State not seeing supervisors as an "arm of management." The State made no request to have them excluded.

Six organizations of single professions sought separate representation. AFSCME and the Department of Civil Service sought a separate unit consisting of all professionals. Most parties did not comment on the issue. MSEA advocated inclusion of professionals in units with non-professionals. The WEU opposed professional separation, at

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[24]Ibid.

least nominally, because it saw "the entire department"[25] as the relevant unit for negotiations and professional separation as unnecessary as well as proliferating. The WEU would also have stood to lose membership by professional separation since many of its members would be placed in a statewide professional unit it could not win. The Personnel Directors Council opposed professional separation without stating any reason other than the appropriateness of department-wide units.[26]

A common issue in dispute elsewhere but seldom touched on in Michigan is craft separation. Only one organization, the unrecognized United Highway Employees Association, asked for separate representation on a craft basis. Seven parties spoke against separate representation. The remaining parties did not deal with the issue. No combined group of craftsmen, such as a building trades council, appeared nor had such recognition ever been sought. This general lack of interest can be considered evidence that classified civil service craftsmen are not opposed to representation in wider units.

The method of determining units and whether there should be a limitation on their number drew relatively little response. The State Police Command Officers favored

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[25]Brief for Public Hearings, Welfare Employees Union, p. 3.

[26]Brief for Public Hearings, Personnel Directors Council, pp. 1-2.

recognition of organizations in appropriate units based on Commission determination as the need arose. Four other parties, including AFSCME, favored specification of units by the Commission based on the AERC's recommendations prior to the holding of elections. This would, of course, place a limit on the number of units by allocating all employees at one time to predetermined "appropriate units." The United Highway Employees and the Welfare Employees Union favored the private sector precedent of ad hoc determination by an outside agency--"not the Commission."[27]

MSEA proposed two forms of recognition, general and limited. General recognition would be granted to all organizations having a stable and substantial membership that represented all classes and levels of employees statewide. Limited recognition would be granted in departments to organizations seeking to represent some portion of state employees.[28] The general recognition concept can be considered to create a single statewide (albeit non-exclusive) unit for purposes of negotiating issues beyond the departmental level. This formulation aids MSEA only to the extent that it is readily organizable along those lines. On the other hand, the failure to promote exclusivity would prevent MSEA from exploiting its edge in this area.

The question whether units should be determined on

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[27]Welfare Employees Union, op. cit., p. 3.

[28]MSEA, op. cit., p. 1.

an occupational or departmental basis produced the greatest disagreement among the parties. The MSEA recommendation has been discussed above. AFSCME called for either of two choices: Two units statewide, one of supervisors and professionals and one of all others; or a combination of department-wide units based on similarity of mission while continuing to separate supervisors and professionals. The United Highway Employees favored a flexible, ad hoc determination that could be either occupational or departmental, based on employee needs.

Four organizations representing professionals and the Department of Civil Service favored occupational units. Departmental units were favored by the other two departments replying, the Council of Personnel Directors, and the remaining employee organizations having departmental recognition.

Conspicuous by their absence were the individual department personnel directors. Only two of nineteen (other than Civil Service) appeared to press the concerns of departments in unit determination. The author, in his capacity as Research Director of the AERC, attempted to find out through informal discussions with personnel directors and other affected parties why the personnel directors failed to respond. Their absence was attributed to the following factors. They might not have wished to present positions putting them in conflict with employee organizations. Besides, they did not know in advance

that the State Personnel Director would propose a change from departmental recognition. Also, they may have thought the AERC was unimportant or that it would recognize their needs anyway. And, they might have been too uninformed on the competing considerations to wish to testify in public hearings and cross-examination as to their positions.

The positions of the parties appearing at the AERC hearings are listed by issues in Appendix H. The stated major goals of the parties are reported by party in Appendix I.

Potential Results of Alternatives

If exclusive representation were recommended, different representatives might be elected depending on the criteria used to form units. If the units were formed in response to employee petitions as they arose, no prediction of representatives could be made since constituencies are not known in advance. However, if the AERC were to specify units, some forecast of results could be made.

The following predictions appearing in Tables 8 and 9 are the author's and assume that no major changes in organizational policies other than those necessitated by the proposed changes in units would be made and that each employee organization's membership within the existing units over the past three years would be maintained. The "percentage likelihood of winning unit" is estimated in accord with how great a proportion of a unit's employees an

TABLE 8

PREDICTION OF EXCLUSIVE REPRESENTATIVES BY UNIT
IF CURRENT UNITS ARE MAINTAINED

Unit	Organization	Employees	Percentage Likelihood (of winning unit)
Administration	MSEA	1012	99
Agriculture	MSEA	762	99
Attorney Gen.	AAGs	195	50[1]
Civil Rights	None	233	50[2]
Civil Ser.	None	267	90
Commerce	MSEA	1483	75
Corrections			
Adm.	MSEA	337	99
Instit.	MCO	1996	90
Education			
Adm.	MSEA	1596	99
Instit.	MSEA	543	90
Governor	MSEA	287	50[3]
Labor			
Adm.	MSEA	455	90
MESC	31-M	3381	65
Legis. Aud. Gen.	MSEA	132	99
Lic. & Regs.	MSEA	216	99
Mental Health			
Adm.	MSEA	198	99
Instit.	AFSCME	14051	75
Mil. Affairs	MSEA	287	90
Nat. Res.	MSEA	2373	99
Pub. Health			
Adm.	MSEA	1222	99
Instit.	MSEA	326	50[4]
Soc. Ser.			
Adm.	MSEA	8973	75
Instit.	AFSCME	491	50[5]
State	MSEA	1927	99
State Hwys.			
Adm.	MSEA	3722	90
Eng.	Hwy. Eng.	726	99
State Police			
Adm.	MSEA	789	99
Enlisted	Troopers	1774	99

TABLE 8 (Cont'd.)

Unit	Organization	Employees	Percentage Likelihood (of winning unit)
Treasury	MSEA	1578	99
Total		51330	

[1]If membership claims are accurate, AAAG would easily carry the department. Otherwise, no one will.

[2]Second choice: AFSCME or CREU.

[3]Second choice: No union.

[4]Second choice: AFSCME; could be close with supervisory influence negated.

[5]Second choice: MSEA; could be very close.

TABLE 9

PREDICTION OF EXCLUSIVE REPRESENTATIVES BY ORGANIZATION IF CURRENT UNITS ARE MAINTAINED

Organization	Departments	Employees
MSEA	Administration	1012
	Agriculture	762
	Commerce	1483
	Corrections - Adm.	337
	Education - Adm.	1596
	Education - Instit.	543
	Governor's Office	287
	Labor - Adm.	455
	Legis. Aud. Gen.	132
	Licensing & Regs.	216
	Mental Health - Adm.	198
	Military Affairs	287
	Natural Resources	2373
	Public Health - Adm.	1222
	Public Health - Instit.	326
	Soc. Ser. - Adm.	8973
	State	1927
	State Highways - Adm.	3722
	State Police - Adm.	789
	Treasury	1578
	Total	28218
AFSCME	Mental Health - Instit.	14051
	Soc. Ser. - Instit.	491
	Total	14542
AAGs	Attorney General	195
MCO	Corrections - Instit.	1996
31-M	Labor - MESC	3381
Highway Eng.	State Highways - Eng.	726
Troopers	State Police - Enlisted	1774
None	Civil Rights	233
	Civil Service	267
	Total	500

organization now holds--the larger the percentage above 50, the greater the likelihood of that organization being selected as the exclusive representative. Outside sources of potential policy change, such as a significant and successful strike by others with whom state employees compare themselves, are not accounted for.

If units were made department-wide, the most significant changes would be in the Highway Department, where the Highway Engineers might be absorbed by MSEA; and in the State Police Department, where the MSEA-preferring administrators would be taken in by the Troopers.

If statewide occupational units were recommended, results would be more speculative because there has been no attempt to organize along occupational lines. Results would also depend upon which classifications were grouped and on past experiences with departmental representation. Assuming eight occupational units and very loose predictions as to size, the results predicted in Table 10 might occur. These predictions are based on the departmental representatives in which each of the groups of classifications most commonly occur.

Such central units would give MSEA a somewhat greater majority of employees represented than would departmental units while AFSCME would remain relatively unaffected. The Highway Engineers, the Welfare Employees Union and Local 31-M would be displaced entirely.

TABLE 10

PREDICTION OF EXCLUSIVE REPRESENTATIVES FOR HYPOTHETICAL OCCUPATIONAL UNITS AND THEIR SIZE

Unit	Organization	Size
Professionals	None	6000
Supervisors	MSEA	6000
Technical Services	MSEA	6000
Administrative and Clerical	MSEA	12000
Operations and Maintenance	MSEA	6000
Institutional Services	AFSCME	12000
Security-Enforcement	Corrections Officers	2000
State Police	Troopers Association	2000

A coalition model similar to Oregon's,[29] with elected representatives in the current units and coalitions at the central level could also be expected to produce the results predicted in Table 8. Centrally, MSEA would participate in virtually all coalitions, AFSCME would be limited to discussion of issues affecting classes represented in the Department of Mental Health and the Highway Engineers, Corrections Officers and 31-M would have central input. The Troopers would have exclusive central unit representation. The Welfare Employees Union's future would depend upon the determination of local units.

For MSEA, AFSCME and the Troopers the criterion of unit formation was not critical. They would survive in roughly their same proportions regardless of grouping criteria. For all remaining organizations, however, the recommendations of the AERC are fundamental to their very survival.

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[29]See Chapter 5, "Survey of the States," supra.

CHAPTER 7

THE MICHIGAN RESPONSE

Recommendations of the Advisory Employment Relations Committee

The AERC's recommendations to the Civil Service Commission, reached after a year's study, were unanimous. The principal recommendations were:

(1) Eleven statewide units composed of occupational classifications falling within the following functional categories:

Office and Clerical

Technical

Administrative

Operations and Enforcement

Institutional--Support Services

Institutional--Medical and Mental Care

Institutional--Penal and Rehabilitative Care

State Police--Enlisted Officers

State Police--Command Officers

Supervisory

Professional

(2) Exclusive representation based on secret ballot elections.

(3) "Managerial" and "confidential employee" exclusion.

(4) That procedures be established for elections, certification and decertification.

(5) That the Civil Service Commission or its designated representative meet with certified employee organizations for purposes of consultation and/or negotiation on standardized statewide issues.

(6) That department heads or their designated representatives meet with certified employee organizations for purposes of consultation and/or negotiation on all issues delegated to them by the Civil Service Commission.

(7) That the Commission provide for resolution of disputes arising under the administration of the recommendations by impartial and expert persons.[1]

Rationale

The Committee recommended a limited number of statewide occupational units because the

> most important consideration was the desire to provide for effective employee representation and input into the decision-making process on statewide issues which are standardized across departments, including wages, hours, pensions, fringe benefits and a large and growing number of other conditions of employment.[2]

Of lesser, but significant, importance, the Committee felt occupational units would better control proliferation.[3]

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[1]Advisory Employment Relations Committee, Report and Recommendations on Unit Determination and Representation in the State Classified Civil Service, pp. 1-3.

[2]Ibid., p. 15.

[3]Ibid.

The choice of statewide occupational units was expected to be unpopular with both recognized employee organizations that had established constituencies in the current units, and with department personnel managers whose importance would appear diminished and for whom procedures would potentially be made more complicated. However, the AERC found those parties' alternative submissions of appropriate units to be inadequate for the treatment of central issues. In fact, no party opposing occupational units made mention of how to handle central issues. This might be because they could not treat such issues, or because they expected the traditional Compensation Advisory Board procedures to be continued. For those not concerned with central issues, the current units are not particularly inappropriate. However, the AERC thought central issues to be of greater importance than departmental issues and wanted to provide for appropriate representation to deal with them. It can be inferred that the AERC felt, based on the experience of other states, that the needs of employees and the State would be better served by occupational units, and that employee organizations could adjust. It can also be inferred, based on the parties' briefs, that any single choice would be unpopular with most of the parties, since no consensus could be reached among those favoring departmental units on the depth of the units or among occupationalists on the breadth of the units.

The AERC Report states that the division into the

eleven named units was based on consideration of wage or salary levels, occupational classification, duties, skills, education and training, working conditions, operational efficiency and administrative feasibility, history and extent of organization, and the avoidance of grouping employees with conflicting interests.[4] The units recommended were:

1. Office and Clerical

   This unit includes all classifications involved in the recording, filing, transmission and routine dispensing of information, records, and communications and allied functions. The unit includes typists, file clerks, secretaries, data processors, receptionists, stenographers, eligibility examiners, and kindred classifications.

2. Technical

   This unit brings together classifications requiring application of a skill or scientific discipline normally acquired by education and training beyond the secondary level but below the requirements for the professional unit. Classifications would include draftsmen, lab technicians, X-ray technicians, dieticians, and kindred occupations.

3. Administrative

   This unit includes all classifications above the office and clerical and below the managerial level that are not primarily supervisory requiring application of skill and independent judgment in directing, formulating, and administering programs. These positions commonly require a degree. Typical classifications include public welfare worker, employment counselor, vocational rehabilitation agent, and revenue auditor.

4. Operations and Enforcement

   This unit contains all "blue-collar" occupations such as skilled craftsmen, operatives, construction and maintenance workers, fire and safety officers, all

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[4]Ibid., p. 16.

non-office manual positions, and all non-institutional enforcement, inspection, and security functions. Representative classifications include janitor-watchman, mechanic, carpenter, park ranger, meat inspector, and capital security guard.

5. Institutional--Support Services

This unit includes all those employed in support services, rather than direct resident care, at all medical, mental, penal and corrective, and rehabilitative state institutions. Typical classifications included are cook, laundry manager, and institution worker. (This unit does not include support service employees not directly affected by the peculiarities of an institution's custodial functions, such as office and clerical.)

6. Institutional--Medical and Mental Care

This unit includes all non-professional classifications directly involved in patient care at medical and mental institutions. This unit includes such classifications as attendant nurse, practical nurse, arts and crafts instructor, child care worker, and youth specialist.

7. Institutional--Penal and Rehabilitative Care

This unit contains all non-professional classifications directly involved in resident custody and rehabilitation at penal and correctional institutions. The unit includes such classifications as corrections officer, corrections specialist, and prison officer.

8. State Police--Enlisted Officers

A separate unit for the Department of State Police is recommended because of the organization's potential responsibility for law enforcement against other state employees and their organizations, the quasi-military nature of the occupation, and the historical separation of benefits and recognition for the Department. The unit recommended is the same as that now in existence, i.e., all enlisted state police officer positions, excluding persons having the supervisory duties of Post Commander or equivalent or higher supervisory duties.

9. State Police--Command Officers

Since a separate unit of State Police enlisted officers is recommended, it was deemed appropriate that there be a separate unit of State Police command

officers. The unit includes all officers below the managerial level having the supervisory duties of Post Commander or equivalent or higher supervisory duties.

10. Supervisory

This unit includes all individuals who, as a substantial part of their work assignment, exercise independent judgment in assigning, directing, and evaluating employees, or who have authority to reward or discipline employees or adjust their grievances, or to effectively recommend such action.

11. Professionals

This unit encompasses all classifications applying intellectual discipline normally acquired by a degree in a specific field, often professional or graduate. Illustrative of such classifications are physicians, registered nurses, attorneys, chemists, engineers, and accountants.

The Office and Clerical, Technical, and Administrative classifications all displayed sufficiently different skill requirements to merit separate units. The Operations and Enforcement unit grouped typical blue-collar classifications with many quasi-police functions such as park rangers and building security personnel. While there may not be a strong community of interest between the two, neither is there any apparent conflict. Both demand roughly similar levels of education and training, and they are generally in the same pay range. Alternative ways of handling the quasi-police were thought more inappropriate. Since there were only about 700 employees involved, a separate unit was not desirable. To place them in a Law Enforcement unit with State Police would fail to recognize the State Police's separate benefit and pension program, and

to group them in a Security unit with prison guards would run contra to the guards' and Corrections Department's goal of "professionalizing and making more therapeutic"[5] the job requirements of prison employees. Combining the quasi-police with blue-collar employees was thought the least of evils.

Institutional employees were recognized as having sufficiently different work schedule concerns to merit separate treatment. Because Support Service employees do not deal directly with residents, but have common scheduling concerns, they were not separated by institutional function. The Medical and Mental Care and Penal and Rehabilitative employees were thought sufficiently different in job purpose and stress to merit separate treatment. This division also took cognizance of the desire (noted above) to "professionalize" the prison force coming in contact with inmates.

The State Police-Enlisted Officers unit recognized the separate benefits program for State Policemen, their potential responsibility for enforcing laws against other state employees, the quasi-military nature of the occupation and the elitist attitude of the Troopers. A separate unit of Command Officers was also recommended although it included only approximately 150 employees. It was thought

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[5]Michigan Corrections Organization, Brief of Public Hearings, p. 1. The MCO and Department of Corrections wished to stress the importance of guards being counselors (giving therapy) rather than just "turn-keys."

that Command Officers should be separated for purposes of grievance processing, and to include them in the general Supervisors unit would fail to recognize all the reasons the State Police merited separate representation.

The Supervisors unit was created to avoid conflicts of interest in grievance processing.[6] The AERC considered the definition and treatment of this group "a most difficult problem."[7] After tracing difficulties in identification the Committee recommended the following definition of "supervisors" as:

> Individuals who, as a substantial part of their work assignment, exercise independent judgment in assigning, directing, and evaluating employees or who have authority to reward or discipline employees or adjust their grievances, or to effectively recommend such action.[8]

All non-confidential, non-managerial professionals, except those that supervised other professionals, were placed in a single unit separate from nonprofessionals. Professionals supervising other professionals were placed in the supervisory unit. Fragmenting the professional unit into groups of related professions was not recommended because no satisfactory criteria for such groupings could be found, and the experience of other states with this attempt had not been good.[9] A separate unit for each

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[6]Ibid., p. 19.

[7]Ibid., p. 18.

[8]Ibid., p. 19.

[9]Ibid., p. 20.

profession would have been too proliferating.

Exclusive representation was justified on the basis of experience in the private sector and with the Michigan Public Employment Relations Act, the avoidance of divisive tactics by organizations not favored by a majority of employees, organizational accountability, the employer benefit of knowing the representative speaks for all employees, a unified position in discussions, and the increased likelihood of a constructive relationship.[10]

"Managers" were defined as individuals having significant responsibilities for formulating and administering agency policies and programs, and were excluded so that they would "sit on the employer's side of the table."[11] (Emphasis in the original.)

Representation and certification procedures were largely borrowed from private sector experience.

Anticipated Operation of the Recommendations

The application of the recommendations to statewide and local issues was a fundamental feature of the report. The Committee suggested direct negotiation between elected representatives and the Civil Service Commission or its designated representative. The Committee made no mention of the established indirect negotiation procedures through the bi-partite Compensation Advisory Board. From this it

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[10]Ibid., p. 17.

[11]Ibid., p. 18.

might be inferred that the Committee considered the Commission to be "the management party" and wished to facilitate discussions directly between the parties of interest. The suggestion of direct negotiations between the Commission and employee representatives might be considered an infringement of the Committee's charge not to consider "the character or degree of negotiation obligation,"[12] because such negotiations would change the character of the Commission's role.

The Committee also provided the following mechanism for representation at the departmental level:

> Organizations chosen in Statewide elections will also represent their unit employees on local issues in meetings with department heads or their designated representatives. A few units, such as "Office and Clerical," may have employee members in all or almost all departments, while others will have members in some departments but not in others. Department heads may meet separately with individual organizations on local issues affecting employees in each unit, or with several or all organizations together on issues affecting employees in several or all units in the department. The maximum number of organizations entitled to be represented in a department will be nine, and this number will be reduced if a single organization is chosen to represent employees in more than one unit. Employees in units which do not elect a representative organization will not have the right to be represented at the departmental level. However, department heads may consult informally with such employees or organizations to which they belong.
>
> Under this arrangement, it would be possible, should the Commission so provide, for the Civil Service Commission and department heads to execute written agreements, either with individual organizations on issues affecting employees in their units, or with a combination of organizations representing a majority of all affected employees on issues concerning employees in several or all units. For example: On a statewide

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[12] Ibid., Appendix A, p. 6.

> issue affecting all classified employees, the Commission could reach a settlement by an agreement with any combination of organizations representing a majority of all employees. Similarly, in a department with 10,000 employees and eight different units, of which four have chosen to be represented by Organization A (2,500 employees), B (2,000 employees), C (1,500 employees), and D (1,000 employees), and four units (with a total of 3,000 employees) have chosen to remain unorganized, the department head could settle a department-wide issue affecting all 10,000 employees by an agreement with a combination of Organizations A, B and C or A, B and D.[13]

If the recommendations were adopted, the Committee envisioned the following representation relationships. The Commission or its designated representative would meet with the unit representative on issues affecting that group of employee classifications, or if more than one or all units were affected (e.g., wages and fringe benefits), with representatives from all the units affected.[14] The expected contribution by departments to the recommended units is reported in Table 11 and Figure 4.

The situation for Department Heads negotiating local issues could be more complex. On local issues affecting more than one group of classifications, the Department Head might wish to meet with representatives of all groups affected. The expected representation of central unit representatives in each department is reported in Table 12 and Figure 5. This scheme would have the effect of potentially requiring the Director of the Department of

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[13]Ibid., pp. 22-23.

[14]Ibid., p. 21.

TABLE 11

SUBSTANTIAL CONTRIBUTIONS BY DEPARTMENT
TO RECOMMENDED UNITS

Office and Clerical
- All departments except Auditor General

Administrative
- All departments except Attorney General and Military Affairs

Technical
- Administration
- Agriculture
- Commerce
- Highways
- Labor
- Licensing and Regulation
- Mental Health
- Military Affairs
- Natural Resources
- Public Health
- Social Services
- State
- State Police
- Treasury

Operations and Enforcement
- Administration
- Agriculture
- Commerce
- Corrections
- Education
- Highways
- Labor
- Licensing and Regulation
- Mental Health
- Military Affairs
- Natural Resources
- Public Health
- Social Services
- State
- Treasury

Institutional-Support Services
- Corrections
- Education
- Mental Health
- Public Health
- Social Serivces

Institutional-Medical and Mental
- Education
- Mental Health
- Public Health
- Social Services

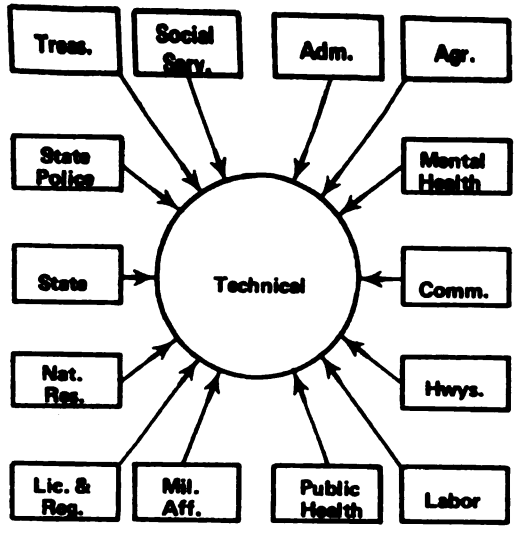
Institutional-Penal and Rehabilitative
- Corrections
- Social Services

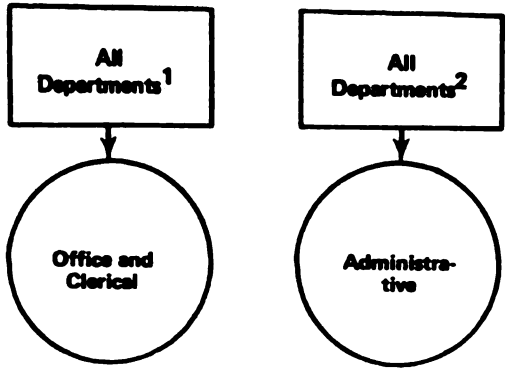
State Police Enlisted Officer
- State Police

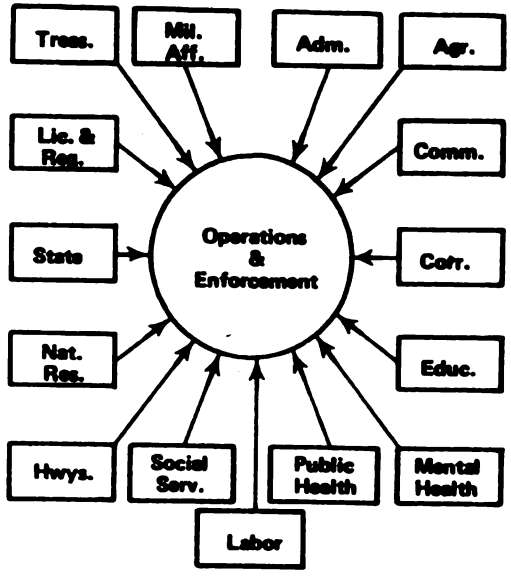
State Police Command Officer
- State Police

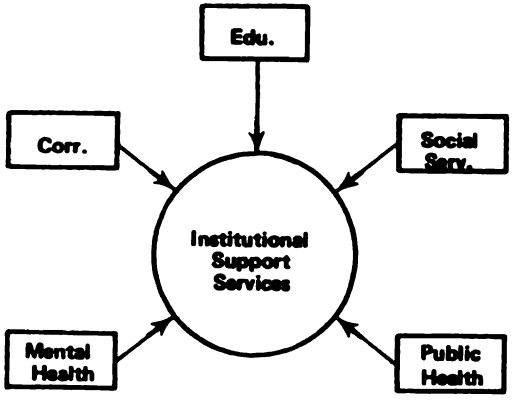
Supervisory
- All departments except Attorney General

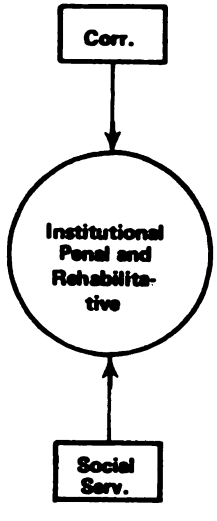
Professional
- Administration
- Agriculture
- Attorney General
- Commerce
- Corrections
- Education
- Highways
- Labor
- Licensing and Regulation
- Mental Health
- Natural Resources
- Public Health
- Social Services











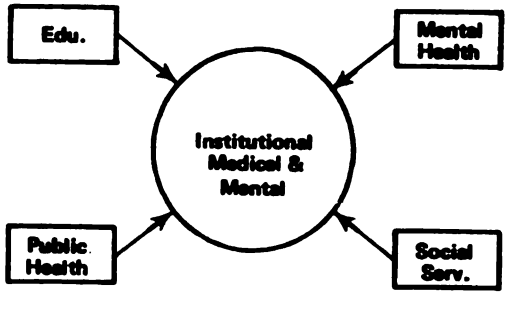
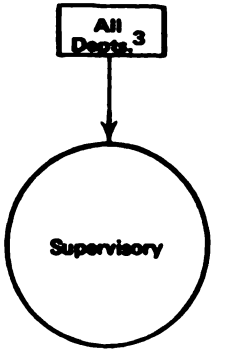
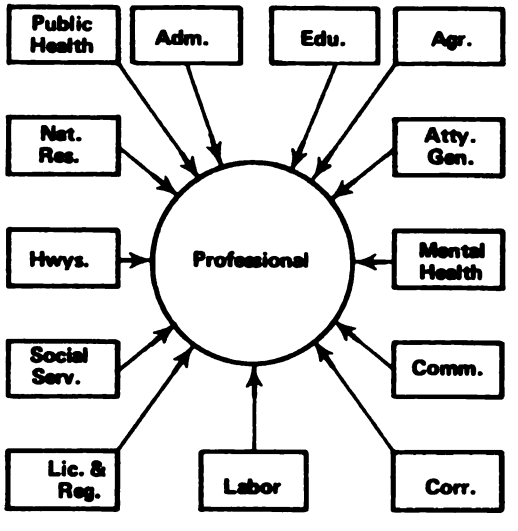


FIGURE 4

Substantial Contribution by Department to Recommended Units





[1]Except Auditor General
[2]Except Attorney General and Military Affairs
[3]Except Attorney General

FIGURE 4 (cont'd.)

TABLE 12

RECOMMENDED UNITS LIKELY TO HAVE REPRESENTATION IN EACH DEPARTMENT

Administration
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Agriculture
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Attorney General
- Office and Clerical
- Professional

Auditor General
- Administrative
- Supervisory

Civil Rights
- Office and Clerical
- Administrative
- Supervisory

Civil Service
- None

Commerce
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Corrections
- Office and Clerical
- Administrative
- Operations and Enforcement
- Instit.-Support Services
- Instit.-Penal and Rehab.
- Professional
- Supervisory

Education
- Office and Clerical
- Administrative
- Operations and Enforcement
- Instit.-Med. & Mental
- Instit.-Support Services
- Professional
- Supervisory

Highways
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Labor
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Licensing and Regulation
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Mental Health
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Instit.-Support Services
- Instit.-Med. and Mental
- Professional
- Supervisory

Military Affairs
- Office and Clerical
- Technical
- Operations and Enforcement
- Supervisory

TABLE 12 (Cont'd.)

Natural Resources
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Professional
- Supervisory

Public Health
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Instit.-Support Services
- Instit.- Med. and Mental
- Professional
- Supervisory

Social Services
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Instit.-Support Services
- Instit.-Med. and Mental
- Instit.-Penal and Rehab.
- Professional
- Supervisory

State
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Supervisory

State Police
- Office and Clerical
- Administrative
- Technical
- State Police Enlisted Officer
- State Police Command Officer

Treasury
- Office and Clerical
- Administrative
- Technical
- Operations and Enforcement
- Supervisory

Source: Author's estimation based on current employee organization membership and Department of Civil Service data on job classification distribution.

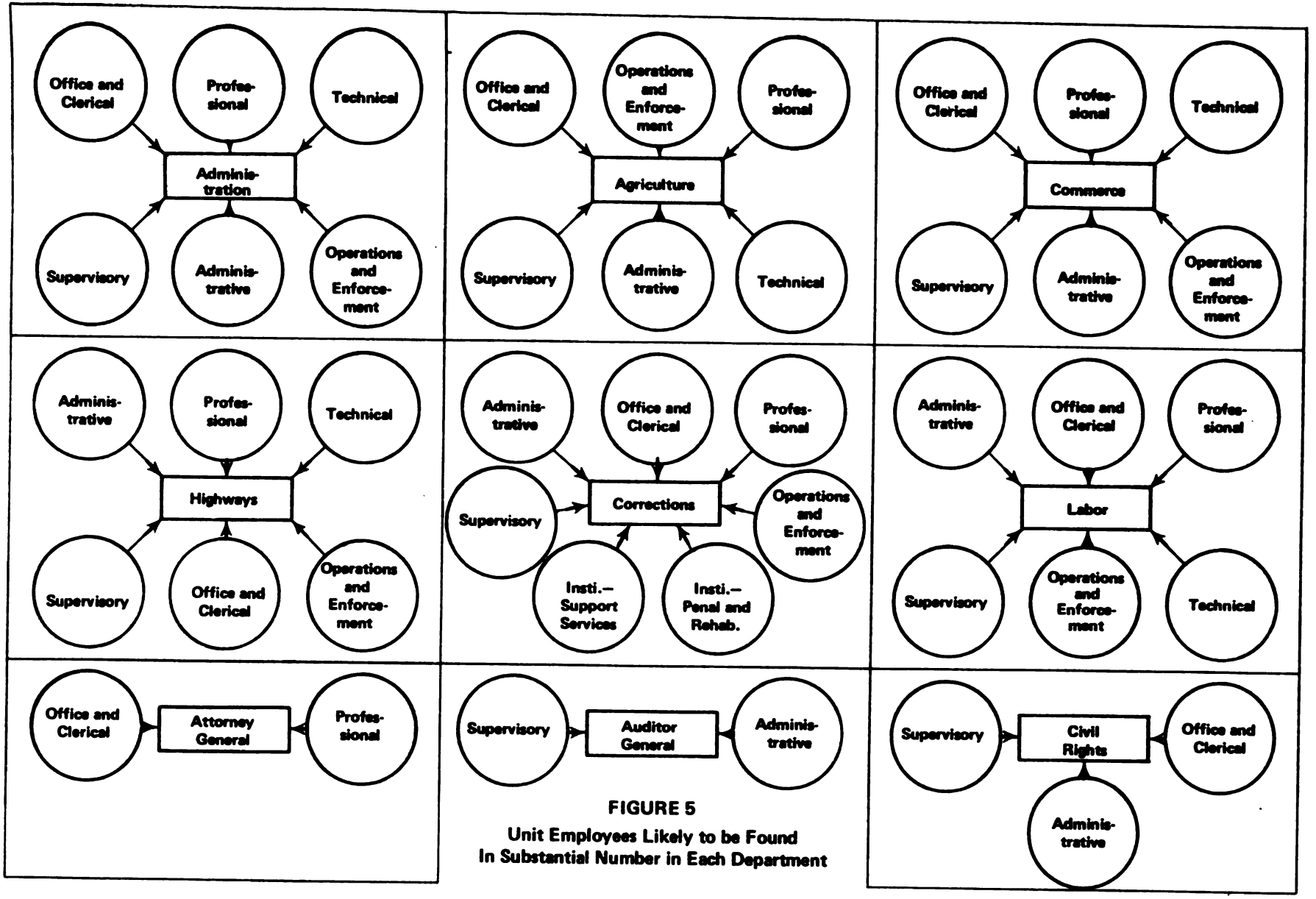


FIGURE 5

Unit Employees Likely to be Found In Substantial Number in Each Department

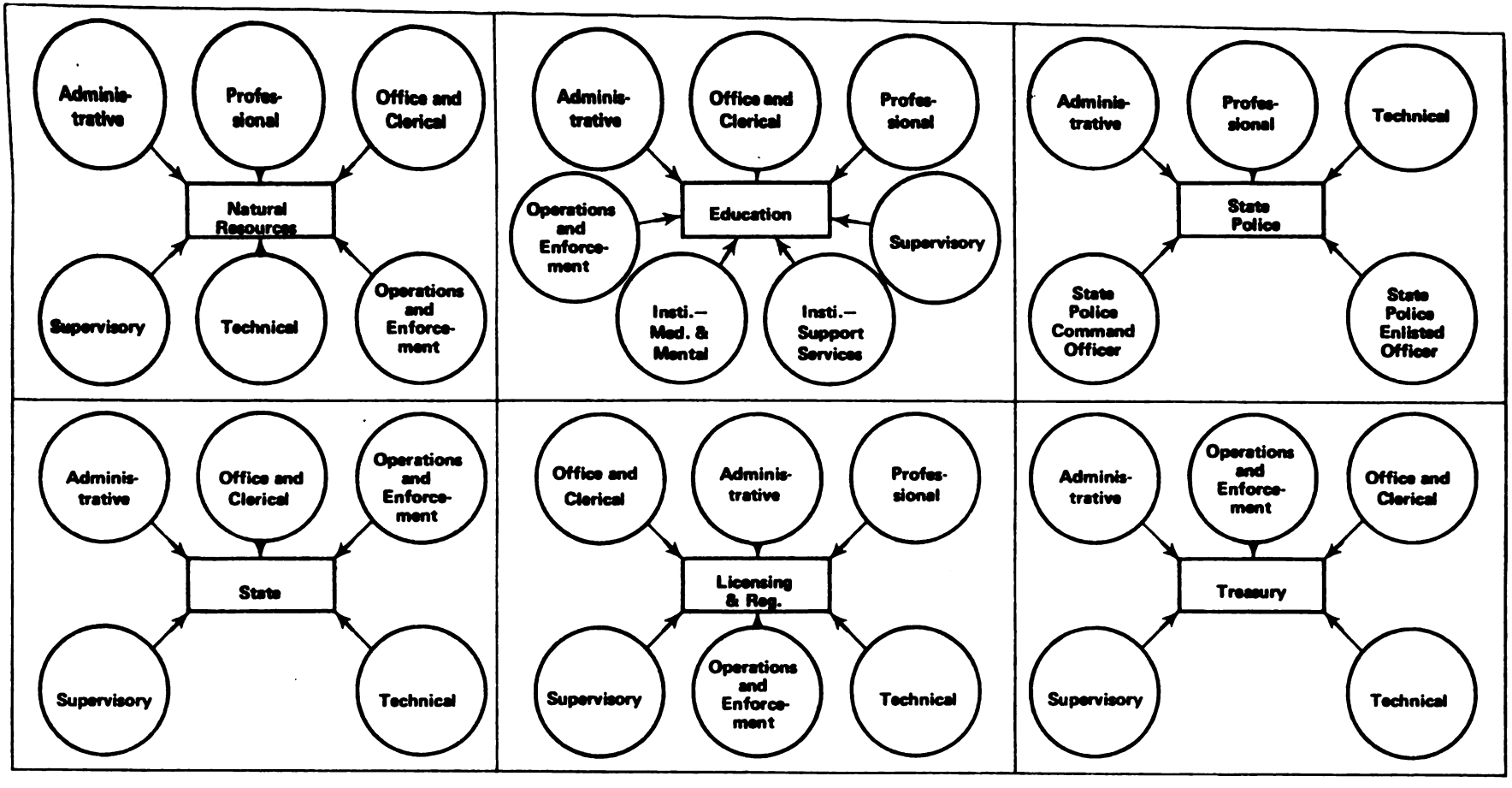


FIGURE 5 (cont'd.)

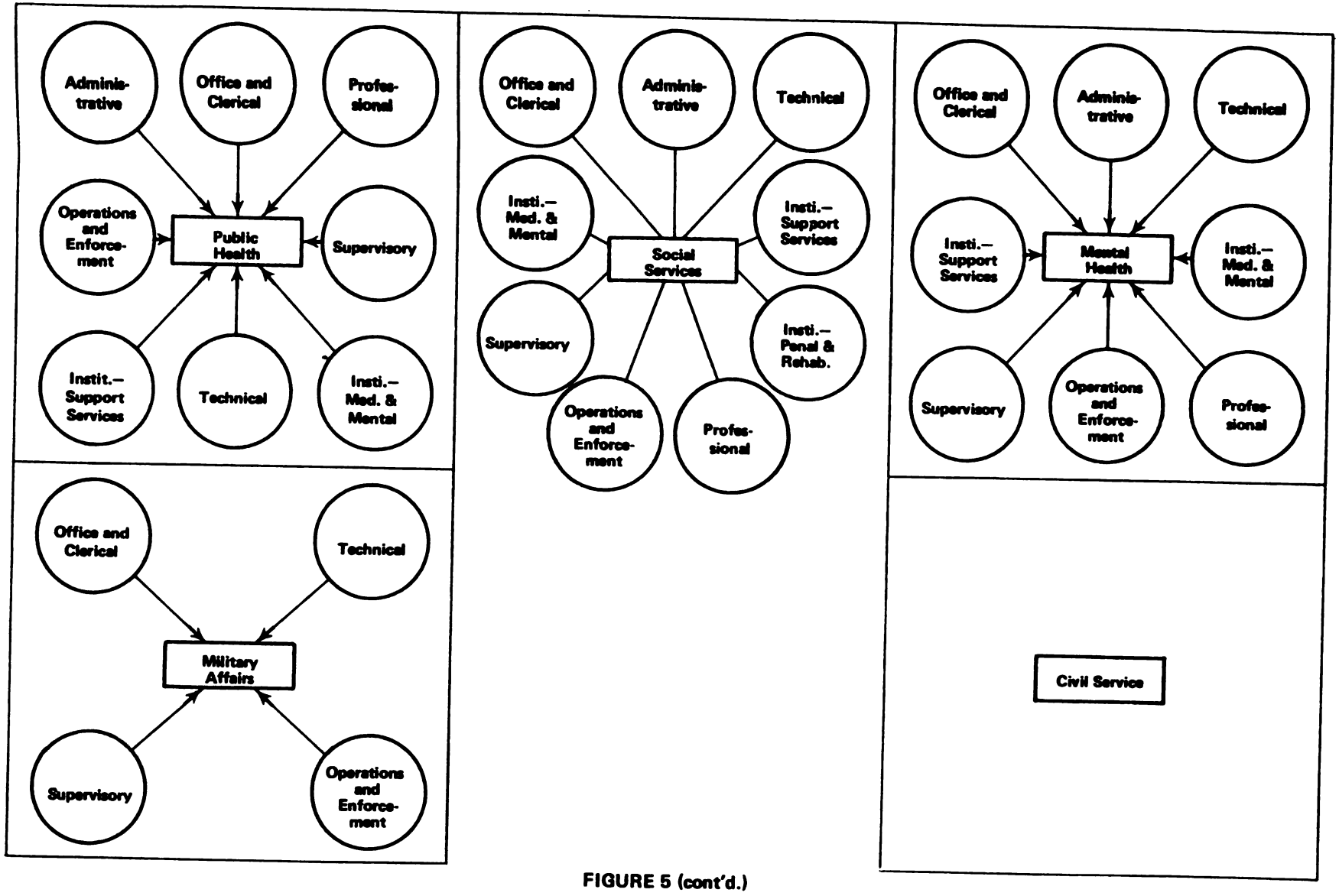


FIGURE 5 (cont'd.)

Social Services to meet with nine employee organizations on all department-wide issues. This number would be reduced by more than one unit electing the same representative or by a unit failing to elect a representative. Other departments have fewer central units represented.

Anticipated Results of the Recommendations

Based on current membership, the author's predicted results of elections in the recommended units are reported in Table 13. These outcomes, if correctly predicted, could contribute to the workability of departmental discussions. Instead of the potential nine representatives in the Department of Social Services, the predicted multiple unit winnings of MSEA would reduce the number to only three, and the Corrections Organization would not be involved in a number of those discussions. In fact, the number of representatives each Department Head would have to deal with would be many fewer than the potential total. The best prediction of actual parties to discussions is presented, by department, in Table 14. No department will have to meet with more than three organizations, while thirteen departments will have a sole representative.

Reception of the Recommendations

During the life of the AERC's study two significant "political" events took place. First, three members of the four member Civil Service Commission issuing the original charge resigned and were replaced. This might have resulted

TABLE 13

ANTICIPATED REPRESENTATIVES IN RECOMMENDED UNITS

Unit	Winning Organization
1. Office and Clerical	MSEA
2. Technical	MSEA
3. Administrative	MSEA
4. Operations and Enforcement	MSEA
5. Institutional-Support Services	AFSCME
6. Institutional-Medical and Mental Care	AFSCME
7. Institutional-Penal and Rehabilitative Care	Corrections Organization
8. State Police-Enlisted Officers	Troopers Association
9. State Police-Command Officers	Command Officers' Association
10. Supervisory	MSEA
11. Professional	None

TABLE 14

PREDICTED ORGANIZATIONS TO BE DEALT WITH
AT DEPARTMENTAL LEVEL BY DEPARTMENT

Department	Organization(s)	Total Number of Representatives To Be Dealt With
Administration	MSEA	1
Agriculture	MSEA	1
Attorney General	MSEA	1
Auditor General	MSEA	1
Civil Rights	MSEA	1
Civil Service	None[1]	0
Commerce	MSEA	1
Corrections	MSEA AFSCME Corrections Organization	3
Education	MSEA AFSCME	2
Highways	MSEA	1
Labor	MSEA	1
Licensing and Regulation	MSEA	1
Mental Health	MSEA AFSCME	2
Military Affairs	MSEA	1
Natural Resources	MSEA	1
Public Health	MSEA AFSCME	2
Social Services	MSEA AFSCME Corrections Organization	3

TABLE 14 (Cont'd.)

Department	Organization(s)	Total Number of Representatives To Be Dealt With
State	MSEA	1
State Police	MSEA Troopers Association Command Officers' Association	3
Treasury	MSEA	1

[1]It is predicted that all Department of Civil Service employees will be deemed confidential.

in a diminution of the new Commission's committee to the AERC report. Second, and more important, the State Personnel Director, the strongest proponent of statewide occupational units among the parties (based on the Department of Civil Service brief), resigned during a controversy with the Commission unrelated to unit determination. While still in office on the date the report was submitted, he was a "lame duck" and did not actively participate in the Commission's evaluation of the report. Furthermore, it was the State Personnel Director, not the Commission, who was concerned that the present departmental recognition scheme was inappropriate and should be changed.[15] Without the advocacy of the State Personnel Director, no one remained to represent the interests of the State as a whole. Instead, each party had an organizational or departmental bailiwick to defend.

This problem was intensified by the manner in which the Commission received reactions to the report and formulated its own course of action. After receiving the AERC's recommendations in a public hearing and distributing copies of the report, the Commission "took the matter under advisement." After the parties had had time to "digest" the report, a question and answer session was held between AERC members and the parties to help make clear the intended operation and rationale of the recommendations, but the

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[15]Interview with Civil Service Commission Chairman James Miller.

Commission was not exposed directly to this exchange.[16] After the session the Commission asked for written reactions to the report to be presented by the parties at a public hearing. At this hearing there was no interchange of ideas or rebuttal of charges. Presentations were merely heard. The AERC, which considered its responsibility to have been completed with the submission of its report, was not invited to participate at this hearing, either for advocacy or clarification of its report.

Not surprisingly, the reaction of the parties was largely negative, with the exception of the largest organization, the Michigan State Employees Association. Only three of twenty parties responding favored the most controversial element of the report, the statewide occupational units. The reaction of the parties on all issues is reported in Table 15.

The two employee organizations favoring the report both stood to benefit by it, while those opposing stood to lose by it. MSEA would likely win representation rights in the units spanning many departments because of its previous cross-departmental approach and the general lack of other organizations with such exposure. The Troopers, on the other hand, are confined to the State Police Department, and their unit would include the entire enlisted corps of non-command officers. In effect, their unit is both

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[16] A transcript was made of this session. The transcript was available to the Commission.

TABLE 15

REACTION OF PARTIES TO AERC RECOMMENDATIONS
OF STATEWIDE OCCUPATIONAL UNITS

	Reaction		
	Favorable	Neutral or with Reservations	Unfavorable
Recognized Organizations			
Michigan State Employees Association	x		
AFSCME			x
Michigan State Police Troopers	x		
SEIU, Local 31-M			x
Welfare Employees Union			x
Michigan Corrections Organization			x
Michigan Society of State Engineers and Professional Affiliates			x
Departments			
Agriculture			x
Commerce			x
Corrections	x		
Mental Health			x
Military Affairs			x
Natural Resources			x
Public Health			x
State		x	
Michigan Employment Security Commission			x
Unrecognized Organizations			
State AFL-CIO			x
Michigan Command Officers' Association			x
Association of Assistant Attorney Generals			x
United Highway Employees			x
Total			
Recognized Organizations	2	0	5
Departments	1	1	7
Unrecognized Organizations	0	0	4
Grand Total	3	1	16

occupational and departmental. Therefore, the Troopers would have been expected to endorse any scheme that did not include them with non-Troopers.

The other organizations, both recognized and unrecognized, uniformly found the report unacceptable. Their dissatisfaction was so great that four organizations, the Welfare Employees Union, the Michigan Corrections Organization, the Michigan Society of State Engineers and Professional Affiliates, and Local 31-M, Service Employees International Union, formed the Coalition of Michigan State Employee Organizations to demonstrate to the Commission the solidarity of their opposition. In some instances the criticism of the report was vituperative, calling the recommendations "a blueprint for disaster . . . a dreadful prescription for employee labor relations."[17] This reaction is not surprising since the adoption of statewide units would likely "sound the death knell" for departmentally specialized organizations (barring fortuitous circumstances such as the Troopers'). Furthermore, the unrecognized organizations also sought narrower units than those prescribed. They perceived the wider units as ones they could not win, or did not desire to represent. For this reason they strongly opposed the recommendation.

It is ironic to note that the two largest employee representatives in the state, MSEA and AFSCME, reversed

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[17]Coalition of Michigan State Employees Organizations, Reaction to AERC Report, pp. 1-2.

their respective positions on significant issues from those recommended at the AERC public hearings to those favored in their reactions to the report.

AFSCME, whose first choice had been two statewide units, one of professionals and supervisors and one of all others[18] claimed in its Reaction to the AERC Report that even a unit consisting of all clerical workers "was too large and diffuse to ever be serviced decently."[19] This change in position was attributed by the organization's new Director to the AERC's "confusion of the organization's consistent position with the varied personal positions of the previous Director during the development of the AERC."[20] MSEA, on the other hand, endorsed exclusive representation and made no mention of its proposed "general and limited recognition" in its Reaction to the AERC Report.[21] In regard to specific inquiries on these issues by the author, the MSEA Executive Secretary responded with a two-page letter dealing with other topics.[22] No further explanation was given.

The departments also reacted strongly negatively, and in greater numbers than when inputs were sought by

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[18]AFSCME, Brief for Public Hearings, pp. 9-10.

[19]Ibid., p. 3.

[20]Letter to the author dated August 12, 1974. (The previous director had been forced by his organization to resign.)

[21]p. 4.

[22]Letter to the author dated September 17, 1974.

the AERC. For the most part, they did not appear at the AERC public hearings to espouse the concerns of departments. Yet when confronted with a recommendation that placed the emphasis on employee relations at the central level, many of them came forward to assert that "the department is where the action is found,"[23] and the representation should be tailored with this in mind.

From the reaction of the parties it is very clear that the criterion by which unit lines were drawn was of greater importance than where the lines were drawn. Few parties dealt with where the occupational lines were drawn, and never with great emotion. Also, the recommendations for exclusive representation, managerial and confidential exclusion, and supervisory separation were generally accepted. The one unit of professionals did elicit complaints from professionals.[24] Clearly, however, the parties found the occupational units recommended to be the matter of greatest concern in the report, completely dwarfing reaction to the other issues.

The overwhelming opposition to the report, detailed in Table 15, is, however, misleading. While sixteen parties opposed the report, to only three favoring it, one of those favoring is by far the most popular organization

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[23]Michigan Department of Natural Resources, Reaction to AERC Report, p. 3.

[24]See, for example, the Association of Assistant Attorneys General, Reaction to AERC Report.

among employees (judged by membership). Furthermore, had the State Personnel Director been able to appear and represent the interests of the State as a whole, he would certainly have generally approved of the report, based on his prior recommendations. Further, in the author's opinion, the positions taken by organizations may reflect the feelings of the officers more than the membership, since the death of their organization might cost them their positions, but not leave the employees unrepresented. In fact, it was the intention of the AERC to provide more effective representation for employees by structuring representation to meet central, not departmental, issues. The employees' sentiments on such a change were not heard, and no organization spoke to the question of representation on central issues.

On the whole, the parties' Reactions to the AERC Report were unsophisticated, limited in scope to issues affecting only their own organizations, and self-serving. In some instances they reflected a factual misunderstanding of the operation of the Report, while in others, assertions of questionable validity are made with absolutely no support offered. For instance, in the Reaction of the Michigan Corrections Organization, the Report is opposed because it "restricts our organization to recruit only in the penal institutions."[25] The Report makes no such

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[25] p. 2.

restriction. Also, the Reaction of the Michigan Employment Securities Commission asserts, "There exist a host of concerns on the part of employees which, at least in number, equal statewide issues. . . ."[26] No such concerns were specified. In no instance were weaknesses of advocated policies explored and shown not to be fatal. Instead, weaknesses were ignored. One result was many parties attacking occupational units and extolling departmental. At the same time, the State Personnel Director was not present to advocate central representation, leaving the Commission exposed to a very one-sided reaction to the recommendations.

The reaction of the parties was, however, neither surprising nor "inappropriate." Most parties had a limited parochial interest to protect. Issues not affecting this interest could not be expected to produce well-analyzed or sophisticated responses. Issues which did affect parochial interests negatively, however, were generally resisted in self-interest. The parties could not have been expected to pursue a neutral role of "the best possible solution for all involved" if that meant damage to their own interests. The parties stated their needs and desires--they left it to the AERC to analyze the merits of their proposals.

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[26] p. 2.

Action Taken on Recommendations

The Commission, after considering the AERC's recommendations and the parties' reactions for nearly one year, took no action on the report. Instead, it reopened the issues to a newly formed "Special Task Force." This time the Commission invited comment on collective bargaining, and broadened the scope of the charge. After continuing dialog with affected parties, the Staff Task Force submitted its Report dated August 5, 1975. The report proposed two alternative plans for further discussion. One is a modified meet-and-confer system similar to that currently in effect. The other is a "true" collective bargaining system. Like the AERC Report, both proposals would require statewide occupational units, although not specified in advance. Unlike the AERC recommendations, supervisors would be excluded from representation under either proposal. The collective bargaining plan also provided for making the Governor the employer, establishing a Classified Labor Relations Board, specified prohibited practices, and provided for last offer arbitration of impasses. The proposals are still under consideration.

CHAPTER 8

EVALUATION AND ANALYSIS OF THE MICHIGAN RESPONSE

Evaluation of the AERC Recommendations

In the author's opinion for a unit determination plan to be workable, it should:

1. Provide adequate employee representation on
   a. Local issues, and
   b. Statewide issues, and
2. Operate at an acceptable financial and convenience cost to the State.

The AERC recommendations did not entirely succeed at meeting these tests. While the recommended central units should meet the efficiency needs of the State, both financially and for convenience, and provide statewide representation for employees, it did not appear to meet the need for local representation. Further, the desires of the employees were not accommodated, as attested by the reactions of employee organizations reported in Chapter 7.

The dissatisfaction of the employee organizations and the departments stemmed from two sources. By emphasizing the importance and increasing number of issues

negotiated centrally[1] and structuring employee representation to those issues, the AERC did not appear to give sufficient recognition to two needs:

1. A chief concern of employees is how their job is to be performed and under what conditions. Employees want effective inputs on these matters, and
2. These conditions are a source of continuing concern and change. They are not decided upon once for the cource of a year. They may require periodic consultation. Effective representation and efficiency of administration demand that local discussion procedures for such matters not be unwieldy.

Both of these needs are best met by some form of departmental recognition. In an uncritical reading the AERC recommendation did not appear to provide such representation. Instead, it appeared to provide for "efficient" discussion procedures on issues negotiated once for the duration of a year, implicitly because they were "the issues of greatest importance to employees," while worsening procedures in the traditional area of departmental discussions by potentially involving more parties.

The AERC was aware, however, of the need to provide a meaningful format for departmental discussions. Because of the predicted outcomes of central elections,[2]

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[1]Advisory Employment Relations Committee, Report and Recommendations on Unit Determination and Representation in the State Classified Civil Service, p. 8.

[2]See Table 14, p. 164.

it was apparent that departments would not be burdened with too many representatives, but this fact, for political reasons, could not be "displayed" in the report. The result was a series of responses from department personnel directors that the AERC recommendations have made it "all but impossible to deal with any reasonable number of representatives on local needs."[3]

The second source of employee organization dissatisfaction was the very different role they and the AERC saw for future discussions. Michigan employee organizations, for purposes of collective representation, for the most part view the departments, not the Civil Service Commission, as their employer.[4] This may be due to the historic structuring of units along departmental lines, a lack of access to the Commission (which the AERC hoped to change), a belief that central issues are largely beyond their control, and that the Department Head is subject to organizational pressures in significant areas--principally working conditions. These circumstances channeled the desires of most employee organizations into departmental recognition. When the AERC met this need in an indirect fashion it appeared to be dictating what the wishes of employees should be in opposition

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[3]Michigan Department of Mental Health, Reaction to AERC Report, p. 1.

[4]Briefs for AERC Public Hearings and Position Statements of Parties in response to AERC recommendations.

to testimony of what they are.[5] Such a policy, if adopted, could not be expected to enjoy employee organization support--and any employee relations policy which is opposed by employee organizations is not likely to produce improved employee relations.

It appears, however, that the AERC believed that the time for a change had come, that the scope of meaningful discussions should include central issues, and that the units should be appropriate for collective bargaining, should the Commission choose to implement it of its own volition. Such a change could be expected to change employee attitudes. Resistance from established organizations was anticipated, but the experience of Wisconsin and Pennsylvania with a widened scope of negotiations indicated to the Committee that employee organizations could adapt to new units, and employees would ultimately benefit.

The critical question was whether there would be greater discussion of central issues in the future and whether there might be collective bargaining. The AERC apparently believed so; the organizations apparently saw no reason to expect this to happen. Without a reason to believe the Commission or its delegate would be directly involved in meaningful discussions of central issues, the organizations had to perceive their interests as still at the department level.

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[5]See Chapter 7, testimony of the parties favoring departmental recognition.

The AERC report could have been made much more acceptable by a sub rosa promotion of the anticipated effects of the recommendations at the departmental level (that there would seldom be more than one representative per department), and a definitive statement from the Commission that it intended to indulge in direct, meaningful discussions of central issues.

On the positive side, the exclusion of managers and confidential employees, and the principle of exclusive representation are relatively non-controversial and readily acceptable. The separation of supervisors is also desirable, while the arguments on restriction of affiliation are relatively balanced.[6] The AERC choice to allow representation of supervisors and subordinates by the same organization but in different units is as defensible as any alternative. The placing of professionals in a single unit, while not the desire of most professionals, is still the least of evils. Sub-grouping, based on the Wisconsin experience noted in Chapter 5, would have affected "pecking orders" and individual units for each profession would have been too proliferating.

Perhaps the most fundamental problem attached to the AERC Report was timing. The Commission appeared to want to have appropriate units for central discussions on significant issues, but it was not willing to commit itself to such

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[6]These arguments were reported in detail in Chapter 3.

discussions until units appropriate for that purpose had been formed. Yet, without a commitment to more meaningful central discussions, units structured for that purpose and apparently deemphasizing local negotiations known to be significant, had to be questioned seriously by the parties. The customary way of changing established units is in response to a new policy or law changing the issues to be covered and the extent of the obligation to bargain. Once the rules have been changed, units appropriate for them are created. The Civil Service Commission wished to reverse the order and have the parties accept on faith or hope that issues and obligations would be tailored to the units, rather than vice-versa. It "put the cart before the horse."

The following alternative plan proposes a way to maintain the many virtues of the AERC Report, improve on some of its weaknesses, and be more politically acceptable.

Proposed Alternative

Virtues

The plan offered here is original and has as its greatest virtue that it can couple effective employee representation both centrally and locally with efficiency of state government operation, and in so doing, receive the support of the employee organizations. It does this by structuring the system so that virtually all significant parties receive benefits from the plan. Further, the system

could be implemented with relative ease.

The plan attempts to meet more specifically the constraints of the Michigan situation than did the AERC Report. It accepts as "givens" that:

1. The parties must realize the benefits to them in the units recommended, and
2. Recommendations of units not endorsed by the parties of power are undesirable to make, unless the parties can be replaced or their endorsement can be gained.

More specifically, the model's significant features are that it:

1. Can control fragmentation.
2. Meets employee needs for both central and local negotiation.
3. Accepts that the Commission will continue to distinguish the departments as "management" through use of the Compensation Advisory Board.
4. Preserves and promotes face-to-face contact between employees and their representatives.
5. Holds inter-organization strife to a minimum.
6. Coincides with the requests of employee organizations for the type of units they think appropriate.
7. Will work well for the current meet and confer procedure and will work better for systems with collective bargaining, if instituted, and
8. Most significantly, could be endorsed, if not applauded, by almost all parties.

Operation

The units already in existence would be retained. In these units, exclusive representatives would be chosen by secret ballot, majority-vote elections. Managers and confidential employees would be excluded. Supervisors would be separated and will be discussed infra. Professionals would continue to be included in the units. The elected representatives of these units would meet with their respective Department Heads and discuss issues under their control, principally working conditions.

The currently recognized departmentally-based units would be retained for two reasons. First, these units arose historically because of a discovered need, agreed to by the State, of smaller than department-wide units to permit appropriate representation on local working conditions.[8] The strength of actual experience on these matters should be honored. Second, contrary to the AERC charge, Michigan is not significantly threatened by proliferation. References to New York City and Wayne County are not appropriate. Units have not grown haphazardly in response to expediency. The State has been complying with an overall general plan. The current 29 units are not too many, especially with no department having more than two. In fact, more units could be carved out in the future if deemed desirable after employee request and careful scrutiny by the Commission.

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[8]Interviews with Department of Civil Service personnel.

For issues standardized statewide, central "units" would be established by groups of related occupational classifications to participate in the Compensation Advisory Board process (each unit would have a seat) and appear before the Commission when appropriate. These units would be, however, only a form of accounting entity. There would be no elected representative. Instead, departmentally-recognized organizations that represent employees in the classifications included in a central unit would appear on behalf of these employees for centrally standardized issues. Since many classifications (and particularly groups of related classifications) would appear in more than one of the existing units, it would be possible, in fact, likely to have more than one organization representing employees in the same classifications grouped in the central unit. In this instance, the two or more organizations would be required to negotiate jointly with the State on matters affecting employees in the central unit. If accord could not be reached between the State and this coalition, the State could reach agreement with the organization or a combination of organizations representing a majority of the employees in the central unit affected, apply its decision to all equally and thereby preserve the required standardization.

When more than one or all central units are affected (e.g., wages and fringe benefits), negotiations would involve all organizations representing employees in the

multiple units affected. If agreement could not be reached among all employee representatives in the state, the State could agree with an organization or combination of organizations representing a majority of employees affected and bind all. If desired, a minimum percentage of employees in a central unit, perhaps five percent, might be imposed to allow participation in central unit discussions. The framework of these procedures is shown in Figures 6, 7, and 8.

Figure 6 portrays discussions involving only one central unit and the central state representative, whether it be the Compensation Advisory Board, the Department of Civil Service, or the Civil Service Commission itself. In this situation the departmentally-elected representatives of employees in work classifications included in the central "unit" form a coalition to represent the central interests of the employees grouped. In the example given, employees in the classifications grouped are found in only three departments. An attempt is made to find a solution to the issue at hand that is acceptable to the state and the locally elected representatives in Departments A, B, and C. These local representatives are not necessarily all different organizations. Given the current employee membership preferences, it would not be unlikely for two or even all three local units to be represented by MSEA. In such an instance it is presumed that MSEA would utilize only one delegate, but that he would represent the sum of the employees in the departments represented for purposes of

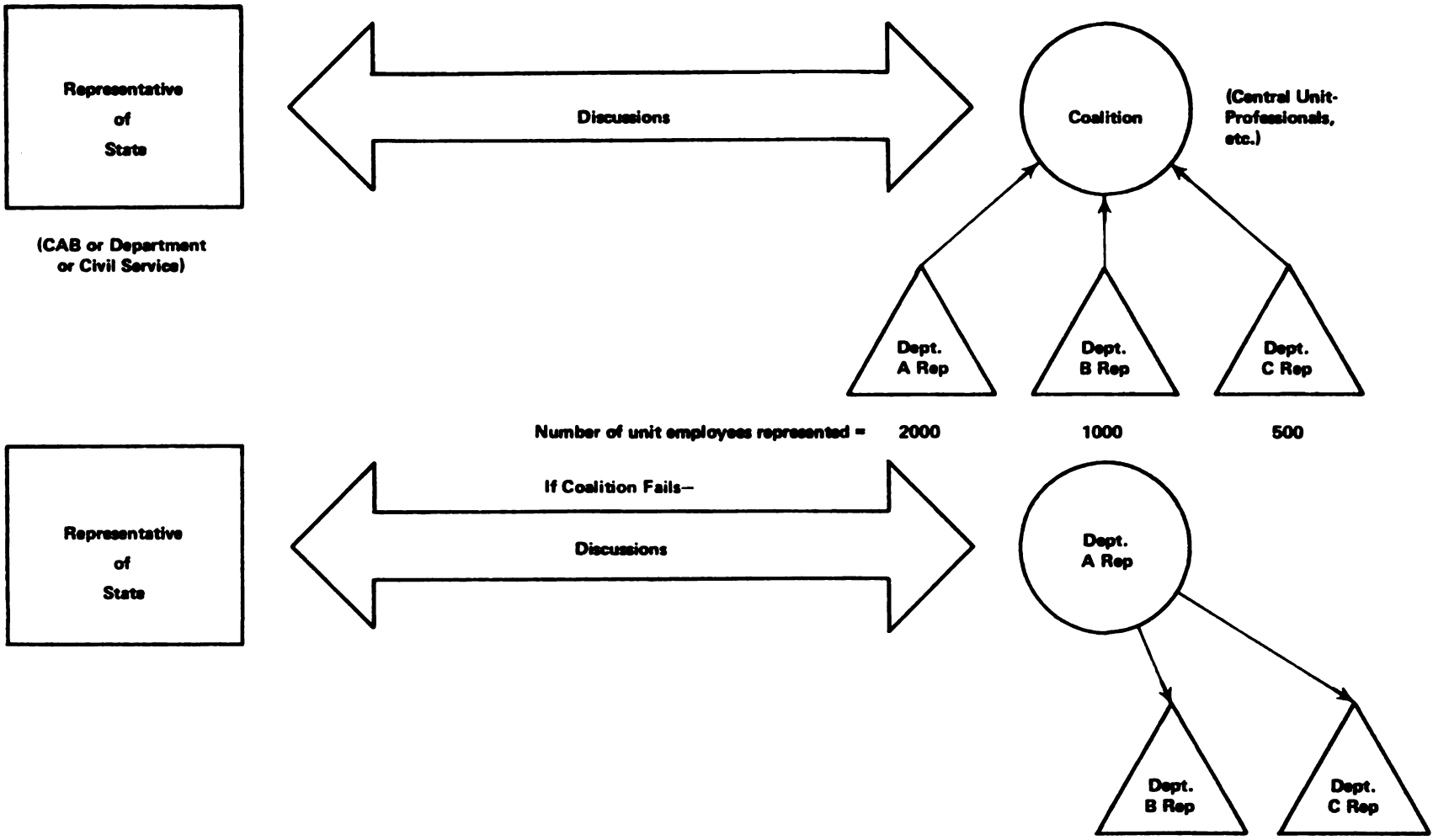
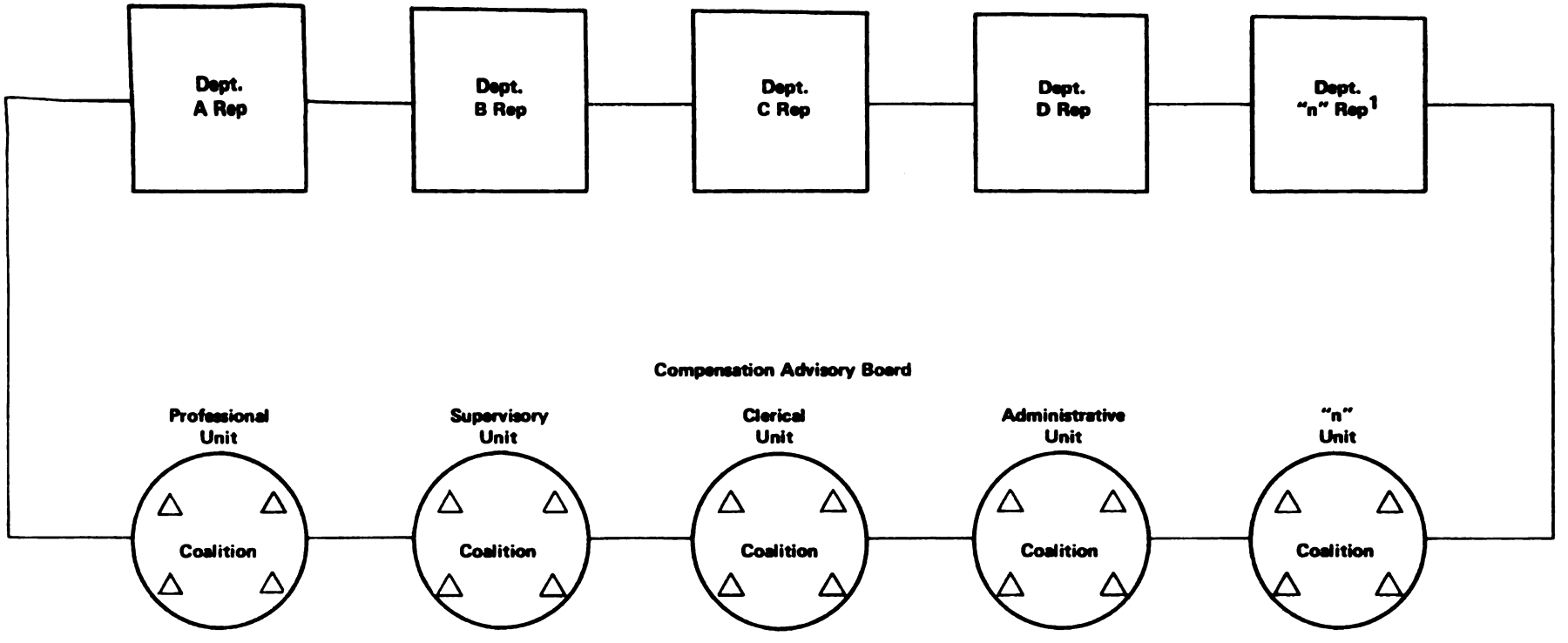


FIGURE 6
Example of Discussions Involving One Central Unit



[1]The number of management representatives and central units would be equal, and is abbreviated here for clarity.

□ Management Representative

○ Central Unit

△ Departmentally elected employee organization representing 5+% of the employees in this unit.

FIGURE 7

Example of Compensation Advisory Board Representation

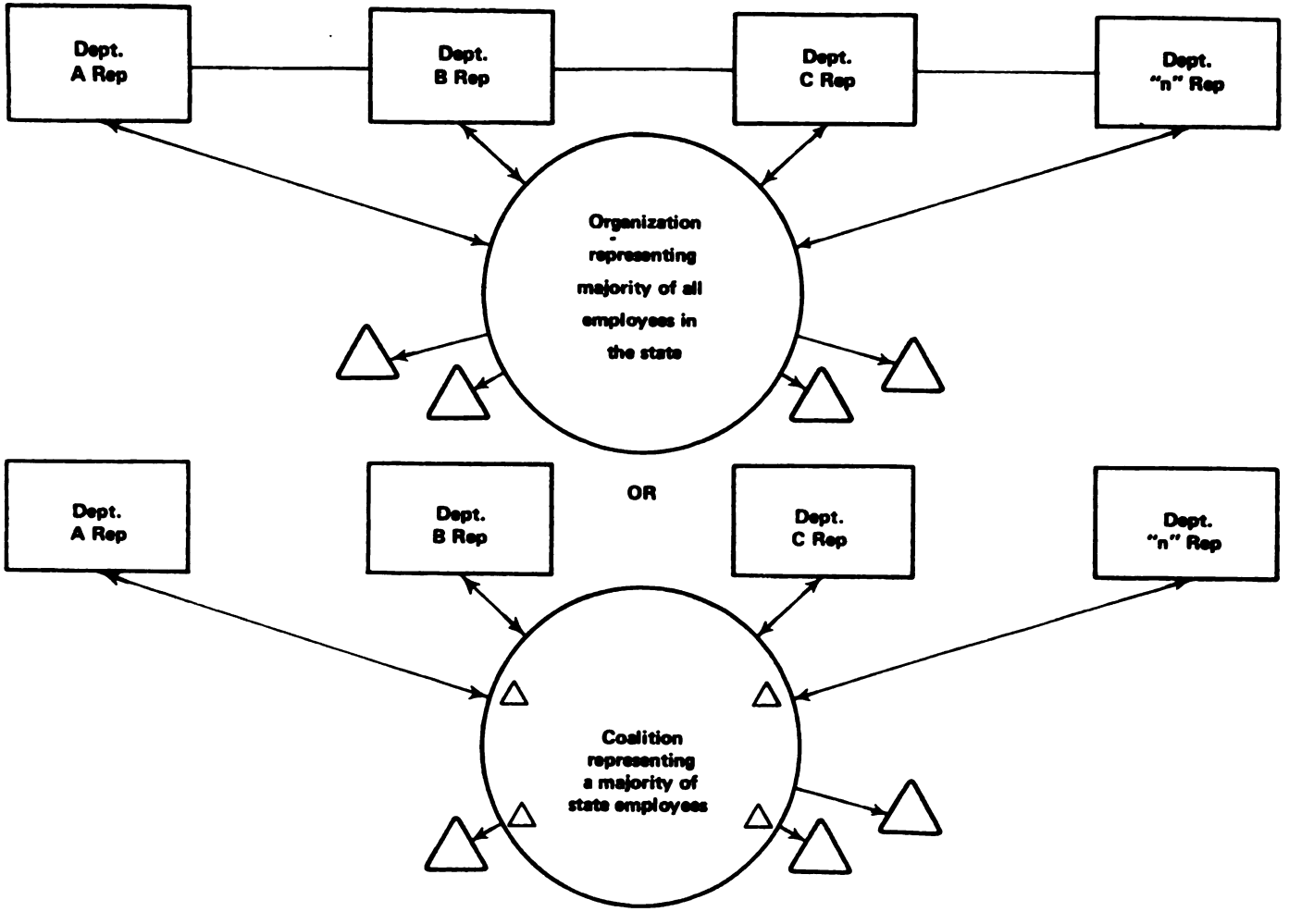


FIGURE 8
Example of Compensation Advisory Board Representation
If Coalition Fails

determining a majority representative, or majority combination of organizations, should the coalition fail.

If mutual agreement could not be reached in the example given, then the Department A representative, by representing a majority of the employees in the central unit (2000/3500) could negotiate to agreement with the state, and the employees in Departments B and C would also be bound by the terms of Department A's agreement.

Figure 7 represents Compensation Advisory Board representation under the proposed format. This situation is considerably more complex than when only the central unit is involved. Coalitions would be formed in each central unit in the manner described for negotiations with a single central unit, but because each central unit competes for a portion of the limited resources, negotiations would also take place with employee representative coalitions in other central units as well as with management. If each of these central unit representatives consisted of delegates from two or more organizations that were different from other central unit coalitions, the actual meeting format would rapidly become unwieldly. Fortunately, each of the various central coalitions are likely to be composed of many of the same organizations. For instance, the clerical unit might be represented by MSEA and AFSCME, as might the Administrative unit. In a manner similar to that proposed above for coalition formation in a single unit, the number of representatives actually sitting around the table is

likely to be reduced to the number of different organizations elected in the local units. If no new organization won recognition, this number would be limited to the current seven or fewer. Each representative of an organization participating in more than one central coalition would then "switch hats" as he negotiated the interests of his constituents in each of the various central units for which he was a representative. This would have the fortuitous effect of relieving some of the burden for maintaining standardization from the state and transfering it to the employee organization. MSEA would be less likely to push strongly in favor of benefits for one central unit at the expense of another central unit it also represents.

Department management representation could be limited to the number of different employee organizations sitting of the board. Department representatives could be chosen on a rotating basis or by whatever criterion management chose.

Figure 8 depicts the form of negotiations if employee representatives cannot reach agreement. One employee organization representing a majority of employees affected (i.e., all state employees under the standardized compensation scheme) would negotiate with management representatives for a package acceptable to the employees' representative. It is likely that MSEA would achieve majority status and bind all others to its agreement, but since it is likely to represent employees in most units,

this would not be expected to be one-sided in favor of one unit over another. Should MSEA fail to represent a majority of all employees, negotiations would take place between some combination of employee organizations representing a majority of employees and management until some common agreement could be found and all other organizations and units would be bound by the agreement.

The central units would be basically the same as those recommended by the AERC. The only exception would be the consolidation of the three institutional units into one. Because direct departmental representation is provided in this plan, it is unnecessary to distinguish types of paraprofessional care from support services, since these will be recognized at the local level. A consolidated but separate central unit is needed, however, to reflect the particular problems of scheduling for employees in continuous operation facilities.

Rationale

This plan promotes the advantages of departmental representation including employee desires, ease of departmental administration, and bargaining history. It permits an acceptable amount of fragmentation locally, while the number of central units can be controlled by their simultaneous and exhaustive creation.

In the coalition negotiations the minority organizations would have input but not veto power. This has the effect of leaving the ultimate authority to accept or

reject in the hands of the majority representative, where, if mutual agreement cannot be had, it should rightfully fall (from the employee side). It also permits the organizations with lesser representation to add inputs to the negotiations--and for their leaders to claim responsibility for results. The locally elected representative that is in the minority in central unit negotiations may be somewhat reluctant to criticize an agreement reached by the majority organization (or organizations) because it has had an opportunity for inputs and its leaders can better appear "to deliver" if they claim participation in the system and credit for the results, rather than demonstrating to their constituents that they were not instrumental in producing decisions affecting their unit's members, but that some other organization was. The plan also gives minority representatives more power and inputs than they would have under most any other plan short of allowing variation in compensation.

The minority representatives' decision on whether to take credit for participation in the agreement reached or to disassociate itself and "blame" the majority representative for the result will be influenced by the minority organization's perception of the likelihood of receiving a unit for itself. If the minority representative could hope, by demonstration of "inadequate representation," to gain recognition in a newly-created unit in which it is in the majority, it might snipe at the agreement reached by the

majority representative or the remaining members of the coalition. If, however, it perceives the creation of a new central unit for itself as realistically (procedurally) impossible, organization leaders who wish to retain their positions have only two reasonable courses of action available. One is to at least appear to participate in the settlement and claim credit for the result. The other is to attempt to win representation rights in enough departments to acquire majority status in the central unit. If new units are not available the organization which fails to follow either of the above courses only draws attention to the fact that it realistically cannot offer its constituents any dividends on central issues, while further demonstrating that other organizations can. In a mature system, which course is taken will depend upon whether a minority organization perceives it can change the units, change the majority status, or change neither and still participate in and receive central benefits (and claim credit for them) and continue to represent its constituents locally.

While effectively "forcing" employees to be represented centrally by an organization not of their choosing is not desirable, neither is it oppressive in this scheme. There is little reason for a minority organization to feel exploited. It can never be "sold out" at the expense of the larger organization--since all are similarly classified, all are bound by the same provisions. The minority organization cannot get "railroaded"--the worst that can happen is

that the majority representative will settle for less than the minority would have.

The non-separability of influence in the coalition is also favorable for minority organizations. Even if their influence were nonexistent, the fact need not be known and organization leaders can claim credit for favorable results. Since they will not be inclined to criticize agreements reached in which they were a party, the only way they are hurt is if the coalition fails--and, as noted above, they will still get benefits acceptable to a majority of employees in the unit.

Still, even with the protection of minority interests, if the coalition fails, it is likely that the coalition will reach agreement. Here the reward accrues for participating in the coalition and there is internal punishment (the best kind) for dropping out. The majority representative always has ultimate control and should not be threatened by the presence of minorities. The minorities, on the other hand, can claim credit for benefits achieved by negotiations and are more reluctant to criticize results in which they were supposed to be representing their constituents' interests. It has to be more viable for the minority representative to say to its constituents, "Look what we (meaning itself, the majority organization, and maybe others) got you.", than to say, "We dropped out and didn't represent you for your dues dollars. Someone else is representing you." This system of rewards should

produce incentive for minority organization leaders to participate in the coalitions.

Also on the positive side, the units would be relatively easy to create. Current units are already established. Attempts to create units coincident with extent of organization are eliminated. Central units do not require elections and representatives to coalitions can be determined by bookkeeping procedures, although an initial allocation of classification to central units must be made.

Predicted exclusive representatives in current units were listed in Table 8. Because of the distribution of classifications, and the dominance of MSEA and AFSCME, central coalitions will also be more facile than the potential nine representatives in some coalitions. In fact, most coalitions would consist of three or fewer organizations. These potential coalitions, based on current membership and classification distribution, are listed in Table 16. The definitions and treatment of managers, supervisors, professionals and confidential employees provided in the AERC recommendations would be suitable for this plan.

This alternative plan should be acceptable to most of the parties. The departments should favor it because their importance is recognized and acceded to while the needs of the State are met by efficient discussion procedures and, hopefully, more effective employee representation creating better work relationships, while the current departmentally recognized organizations could continue

TABLE 16

PREDICTED COALITIONS IN ALTERNATIVE PLAN BY UNIT

Unit	Organization(s)
Office and Clerical	MSEA AFSCME 31-M
Technical	MSEA AFSCME
Administrative	MSEA AFSCME 31-M
Operations and Enforcement	MSEA AFSCME
Institutional	AFSCME MSEA Corrections Organization
State Police-Enlisted Officers	Troopers Association
State Police-Command Officers	Command Officers' Association
Supervisory	MSEA AFSCME Corrections Organization 31-M Highway Engineers
Professional	MSEA AFSCME AAG Highway Engineers

to exist.

The system is, however, not without drawbacks. An organization representing a majority of employees in a central unit might wish to frustrate the coalition knowing it alone can make the final decision. It could wait until it is the sole representative and then try to raid other departmental organizations claiming to employees that "it is their true representative on the important issues of salaries and fringe benefits." On the other hand, a minority organization might try to capture another department to create a majority for itself at the central level. In either case, such inter-organizational strife would be minimized by exclusive representation and an election bar rule.

It is apparent that the use of coalitions would be enhanced if no organization had a majority of a central unit or a majority of all state employees. This condition, however, could not be guaranteed in Michigan. Also on the minus side for this proposal is the fact that there is no experience by which to judge its real-world effectiveness.

While no current system provides effective representation at both the local and central levels, let alone in an administratively efficient manner for state government, this plan offers the possibility of doing so.

Conclusions and Recommendations

The system proposed is not greatly different from the current Michigan procedures. The Compensation Advisory

Board is really a form of coalition bargaining. While agreement between employee representatives and management is not required, it is sought. This plan would restructure the criteria for participation on the Board and would be most advantageous when the agreement of unit representatives is required. Until that time, indirect negotiations on central issues will be considered by employees as less important than departmental issues and representation at the department level should be accorded greater importance.

It could also be argued that "coalitions are not the traditional American way of collective bargaining," and that "exclusive representation has been proved effective." However, the traditional American experience is based in the private sector where differing managerial subunits could vary benefits or one organization represented employees across all units. In such instances, the need to preserve standardization among varying representatives was not required. In state employment it is. Under such conditions the traditional American way may not be controlling and should be carefully examined. New procedures might be in order.

CHAPTER 9

SUMMARY AND CONCLUSIONS

Unit determination affects employees, employee organizations, state personnel managers, and the public. Unit formation influences whether employees will be effectively represented on issues of local working conditions and/or standardized statewide compensation benefits, and whether they will meet with a manager with authority to make decisions. The public is concerned that services not be interrupted, that the state operate at an efficient financial and convenience cost, and that unit determination not unnecessarily interfere with these goals through excessive fragmentation of units.

Unit determination is becoming increasingly important as more state employees organize. Organization can be expected to increase significantly if proposed federal legislation providing collective bargaining rights for state and local employees is passed. If so, all states will become involved. Those already having procedures may have to modify them, while states without procedures may have to institute them. In many instances, state personnel management and employee representatives will not be

adequately informed or prepared to represent their parties' interests. Errors made can be both costly and lasting. Therefore, it is important that positions taken be the product of sound information and judgment, and not be submissions to expediency.

The issues of unit determination were first raised in the private sector. The National Labor Relations Act left the determination of what "an appropriate unit" was to the NLRB, charging only that,

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. Section 9(b).

The private sector result was a lengthy battle over whether predominantly AFL-affiliated craft employees should be in separate units from predominantly CIO-affiliated production and maintenance workers. Little concern was shown by the Board for the efficiency of employer operation. Such a consideration was not in its charge. This has proved to be a fundamental difference from public sector unit determination and makes private precedents considerably less than controlling.

Formalized unit determination began spreading through the public sector with the issuance of President Kennedy's Executive Order 10988 in 1962. Although there were previously established bargaining relationships in federal employment as well as local, these had usually been

arrived at ad hoc and often did not follow a prescribed pattern. E.O. 10988's provisions were rudimentary in terms of private sector collective bargaining rights, but they clearly established a trend. Formalized bargaining rights quickly spread not only in the federal service but among state and local employees as well.

President Nixon's E.O. 11491, issued in 1969, made federal employee representation rights more like their private sector counterparts and, for the first time, required consideration of managerial efficiency needs in unit determination:

> A unit may be established on a plant or installation, craft, functional or other basis which will assure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. . . . Section 10(b).

This concern for employer efficiency has become common throughout public employment.

The occupational classifications of manager, supervisor, professional, craftsman, state policeman, security person, confidential, and higher education employee all require special consideration in state employment.

There is general agreement that "managers" should be excluded from collective bargaining rights. There is disagreement on how "low" in the organization managerial exclusion ought to reach. The effects of wide or narrow exclusion have not been measured.

The question of supervisory exclusion has produced more controversy. Private sector precedents for the

exclusion of supervisors are clear. Public sector supervisors differ, however, in several significant ways: (1) They often perceive their jobs to be dependent upon the capricious actions of their politically selected superiors, rather than on the individual merits of their performance; (2) Supervisory positions are not as often viewed as stepping-stones to the top of the organizational hierarchy; (3) Salaries are commonly determined by a specified schedule, rather than through individual bargaining; (4) Many employees in state government are given supervisory titles, but their work requirements do not equate with private sector supervision; and (5) Rewards and status differentials are seldom commensurate with true supervisory responsibility. These five factors combine to diminish the private sector attitude that collective representation of supervisors is inappropriate, and weaken private sector precedents for total exclusion. Instead, a different balancing of interests is sometimes thought necessary, with the special aspects of public sector supervision considered.

The results have been varied. In some states supervisors are excluded from rights of representation; in others they may be represented but must be in units separate from those they supervise; and in still other states they are in the same units as their subordinates. The effects of such representation policies also have not been measured.

The interests of professionals are often dissimilar to non-professionals with whom they work. In agency-wide

units these professionals are often in the minority. Their relatively few numbers and dissimilar interests have often resulted in their being granted units separate from non-professionals should they so desire, although the granting of separate units for each profession might result in over-fragmentation. Grouping different professions in the same unit for state administrative convenience has been opposed by some professionals whose "pecking order" feelings are offended.

Craftsmen have problems similar to professionals--dissimilar interests from more numerous non-craftsmen with whom they might be grouped. They have presented less of a problem however, because they are often willing to band together and have more demonstrable private sector precedents for separate units. Where they have desired separate units they have generally received them.

State police have also generally received separate units in response to elitist demands, often different benefit programs, the para-military nature of their organization, and the potential requirement of enforcing laws against other state employees.

Security personnel are often separated from non-security personnel on the basis of a "common sense notion" that they might not perform their jobs as well against other state employees if they were in the same unit.

Employees privy to confidential information concerning personnel matters are commonly excluded from

representation rights, although they sometimes have benefit packages "tied" to similarly-situated non-confidential employees.

Because of the semi-autonomous nature of state universities their employees are often subject to different regulations and requirements. This "separate employer" situation situation sometimes necessitates separate units.

There is substantial variety among states concerning representation procedures, unit determination criteria, and the formation of units. All states with representation procedures except Michigan and California have exclusive representation. Michigan and California are the only two states with procedures that have only a "meet-and-confer" obligation.

Statutory listings of criteria determining "community of interest" for grouping employees into units are not definitive. Boards determining units are sometimes more restrictive in the units they will permit than what their statutory language suggests.

The requirement that a unit only be "appropriate" (not the "most appropriate") results in many more units being formed and potentially creates the problems of over-fragmentation--inconvenience and "whipsaw" bargaining.

In Wisconsin and Hawaii all units were created simultaneously by the state legislatures. In California units are determined unilaterally. In Michigan they are determined by the Civil Service Commission. In New York,

all units were created simultaneously based on an agency hearing. In the other states with procedures, units are determined by a neutral agency in response to employee petitions.

There is a strong trend to group employees into statewide units by occupational classifications. This is particularly appropriate where statewide issues which must be standardized are of primary negotiating importance. "Vertical" units grouped along agency lines often arose historically in response to a scope of negotiations limited to working conditions. Where such vertical units exist, and employee organizations have established bargaining histories, these interests have to be considered when the scope of bargaining is expanded and horizontal units become more appropriate. In most states, secret ballot elections must be held to determine employee representatives.

Twenty-two states have formalized procedures for representing employees. Most of these states are in the Northeast and Great Lakes areas. A comparison of five variables across states indicates certain patterns that might be expected to produce stable employee relations, based on the experiences of the state. The variables are the presence of: (1) recognition procedures; (2) "true" collective bargaining; (3) compensation negotiations; (4) statewide occupational units; and (5) a limitation on the number of units. The analysis suggests that these

variables form a hierarchy and that they are cumulative--that a state should not institute a higher number variable without having present each lower numbered variable. Where this has not been the case, employee unrest has evolved.

Applying the experiences of other states to Michigan is difficult for several reasons. The Civil Service Commission is stronger in Michigan than in any other state. It is the state employer. It fulfills the legislative, executive, and sometimes judicial roles for state employees. Pursuant to its constitutional power to regulate state employee relations it has not authorized collective bargaining in a state where such procedures are common. Instead it operates a "meet-and-confer" system under which several employee organizations have established bargaining histories. Furthermore, the Commission does not perceive itself to be "management" (despite its ultimate policy making authority) but instead considers itself a "neutral overseer" between employee and departmental "management."

In 1971 the Commission became concerned that the units for employee representation in effect at that time might be inappropriate for the future. This concern was based on three factors: (1) an observation of the problems caused by over-fragmentation in some large city governments; (2) a trend towards centralizing in itself more decisions affecting employee relations (and conversely, withdrawing them from the departments along which lines representation was based); and (3) that representation on the bi-partite

Compensation Advisory Board was based on statewide employee organizational membership rather than departmental unit recognition.

To formulate a more appropriate policy for the future, the Commission appointed an Advisory Employment Relations Committee (AERC). The Department of Civil Service liaison to the AERC suggested that the unit policy recommended should be suitable for collective bargaining in the future, implying that the Commission might be more inclined to initiate collective bargaining if it had units appropriate for such purposes.

The Committee was also instructed that the following matters were not included in its charge.

Collective Bargaining.

Character or degree of neogtiation obligation.

Subjects of negotiations (by level of authority).

Impasse procedure in interest or grievance disputes.

Unfair practices.

Employee organization security.

Strike prohibitions or sanctions.

Employee organization responsibility standards.

After consultation with affected parties and an independent investigation on its own of the merits of various unit determination schemes, the AERC recommended eleven statewide occupational units which it specified in advance. It also recommended supervisory representation in a separate unit.

Most employee organizations and department heads opposed the recommendations, although the largest employee group, the Michigan State Employees Association favored it. The State Personnel Director, who also would have favored it, had been forced to resign over issues unrelated to the AERC and did not publically endorse the report.

After a year's deliberation the Commission decided to table the report and appoint a "Staff Task Force" to re-examine this issue, and allowed this committee to broaden its charge to include a recommendation of true collective bargaining and attendant procedures. After a year's research, the Staff Task Force has proposed two alternatives, one a typical collective bargaining system, the other a modified meet-and-confer system. Both alternatives propose statewide occupational units created in response to employee petitions. Both would exclude supervisors from representation. No action has yet been taken on these recommendations.

Since the statewide occupational units was the feature most adamently opposed by the critics of the AERC, it is apparent that the Commission rejected the AERC's report for reasons other than its unpopularity with vested interests. The most likely explanation was the turnover in Commission membership during the life of the AERC. With three members out of four having changed from the time the AERC began its study until it issued its recommendations, it appears that the new Commission was not willing to be

bound to its predecessor's limited charge to the AERC, and instead opened the study to make possible more "liberal" recommendations.

A proposal which might have been acceptable to more parties under the AERC's limited charge was presented. It featured recognition along departmental lines with coalition "bargaining" of central issues.

On policy questions it is the author's opinion that to obtain support it is often necessary to compromise "grand schemes" and accommodate vested and parochial interests. Exactly what these interests are varies from state to state, and prescriptions of unit determination procedures should take these into account.

The principal factor influencing grouping-criteria is scope of bargaining. The private sector model with units formed as employee petitions arise has fatal flaws for state employment if any issues which must be standardized across departments are ever to be negotiated. While such ad hoc units are often favored by employee organizations, other interests must also be balanced. Ad hoc units provide no internal mechanism for representation on central issues nor is there any inherent control on fragmentation. If instituted as an intermediate step between no representation and full scale wage bargaining, recognition limited to local issues at the agency level only invites trouble. Employees are likely to want central representation. If they attain it, new units may have to account for established bargaining

history. This might produce interorganizational strife as old units must be abolished, modified or accommodated. In states which have had departmental units for discussions limited to working conditions, a transition to a central form of representation can create controversy.

For a state with no prior organizational history that anticipates wage bargaining, a limited number of statewide occupational units is recommended. They are the most efficient form of representation for central issues, and can be arranged internally by organizations to permit local representation through "chapters" or "locals." Although employee membership would be scattered geographically, this is also true of departmental units. Fears that department heads would be "swamped" with multiple representatives on local issues are largely imaginary. Different central units are often won by the same organization.

When a state already has departmentally recognized organizations for local negotiations and wishes to expand the scope of bargaining to statewide issues, some provision must be made for these established organizations and their partisans. The two-tiered[1] and coalition models attempt to meet this need. The two-tiered model is inadequate. The

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[1]A two-tiered model has one set of units for purposes of representation on local issues and another set of units, with employee groupings based on different criteria, for central issues. It would be possible in such a scheme for an employee to be represented by more than one organization.

divided employee loyalty and potential of different representatives at different levels is too likely to be productive of strife. The coalition model is acceptable, especially where central issues are decided only annually, and departmental heads have significant employee relations decision-making power.

As collective bargaining permeates state employment there will be more of a desire to identify supervisors and "place them on the side of management." In many instances this will be attempted by merely refusing to let supervisors be represented at all, or by at least separating them from subordinates. Neither of these unit manipulations is appropriate to serve the stated purpose. It will have the positive effect, however, of keeping supervisors from stifling internal discussions in subordinates' units. While separation is desirable for that reason, total exclusion is not. In the author's opinion, state-employed supervision is fundamentally different from its private sector counterpart, and these differences merit collective representation for state supervisors in separate units. Exclusive representation and managerial and confidential employee exclusion are well-merited. Elections should be held to determine representatives. Employer consent recognition can fall prey to expediency and can result in proliferation. No adequate way has been found to meet both the desires of professionals and the state.

Specifying units in advance is advisable when

central issues are negotiated since it helps assure the coordination among units required to maintain standardization. Specification in advance also controls fragmentation, allows representatives to tailor organizing campaigns to units already known to be appropriate, and avoids units based on extent of organization which cannot necessarily be efficiently coordinated. There is, however, a danger that legislated units may result in inappropriate groupings. These could be amended through well regulated appeal and "unit clarification" procedures, as is done in Wisconsin by the Employment Relations Commission.

Although there has been a trend toward statewide occupational units in recent years, they are not a universally best response. The appropriate units for any state are contingent upon several factors which vary among states. The principal factors are the:

extent of the obligation to bargain,
scope of bargaining,
requirements of standardization,
desires of the employees,
history of negotiations, and
power of the parties.

As a minimal standard, a unit determination plan should effectively represent employees both locally and centrally and do this at an acceptable financial and convenience cost to the state.

APPENDICES

APPENDIX A

QUESTIONNAIRE ON UNIT DETERMINATION

(Inside Address)

Dear _____:

The State of Michigan has appointed an Advisory Employment Relations Committee to recommend to its Civil Service Commission a policy of unit determination for its more than 50,000 classified state employees. The committee is attempting to provide effective representation for these employees while avoiding the inefficiency of excessive proliferation of negotiating units. Some areas under the committee's charge include the merits of organization by department vs. organization by function; the advisability of supervisory inclusion or exclusion; the merits of multiple vs. exclusive representation: what criteria should be used for establishing units; and, most particularly, what criteria should determine "communities of interest."

Dr. Jack Stieber, Director of the School of Labor and Industrial Relations, Michigan State University, is chairing the committee. Other members include Barry Brown, Director of the Michigan Department of Labor; James C. McCormick, Attorney and Arbitrator; Charles Meyer, Secretary and Chief Examiner, Detroit Civil Service Commission; and Theodore J. St. Antoine, Dean of the University of Michigan Law School.

This survey is being sent to the civil service director or administrative agency head of each state. Your cooperation in filling it out will help Michigan to formulate better a policy of unit determination which meets the needs of all its people.

Sincerely,

G. ALAN BALFOUR
Director of Research
Advisory Employment Relations
Committee

Prompt completion and return of this survey in the enclosed envelope will be appreciated. The committee wishes to file its report on these data before September, 1973. The following questions apply strictly to your state employees. Thank you for your time and effort.

I. Information

1. Does your state have a formalized procedure for interacting with recognized organizations of state employees?

_____ Yes _____ No

If no, proceed to question 22.

2. If yes, what is the authorizing source of that relationship?

_____ State Legislation _____ Gubernatorial Order _____ Agency Rule _____ Other (Please specify)

3. How long have you operated under the present statute or rules?

4. By what method(s) do employee organizations gain recognition?

_____ Election _____ Agency Determination _____ Employer Recognition _____ Other (Please specify)

5. By what criterion (criteria) are units organized?

_____ Occupation _____ Department

_____ Combination of Occupation and/or Department _____ Legislative Decision _____ Other (Please specify)

6. What is the rationale for the criterion (criteria)?

7. Please list units, what organization (if any) represents each, how many employees are in each, and what criteria qualify employees to be included in that unit.

8. What is the standard for employee "community of interest"?

9. Do you have collective bargaining?

_____ Yes _____ No

10. If yes, is it _____ Mandatory or _____ Permissive?

11. Do you have a system of "meet and confer"?

_____ Yes _____ No

12. If yes, is it _____ Mandatory or _____ Permissive?

13. Are impasse procedures specified?

_____ Yes _____ No

If yes, please specify:

14. Are there limitations on the scope of negotiations?

_____ Yes _____ No

If yes, please specify:

15. Who decides what is an appropriate representation unit?

_____	_____	_____	_____
Employing Agency	Independent Agency	Legislative Decision	Other (Please specify)

16. Please specify what criteria must be fulfilled for an employee organization to be recognized:

17. Is representation exclusive?

_____ Yes _____ No

18. Are supervisors permitted to be members of the same unit as those they supervise?

Yes _____ No _____

If no, can they be members of a separate unit?

Yes _____ No _____

If members of different units, can the units be affiliated with the same organization?

Yes _____ No _____

19. Please specify criteria used to determine who is a supervisor:

20. Who makes the determination?

Employing Agency	Independent Agency	Legislative Decision	Other (Please specify)
_____	_____	_____	_____

21. Other than supervisors, are any state employees (i.e., security, confidential, managerial, professional) excluded from unit membership?

Yes _____ No _____

If yes, please specify:

II. Evaluation

22. In general, are you satisfied with the present system of unit determination?

Yes _____ No _____

23. Do you see major problems in the present system of unit determination?

Yes _____ No _____

If yes, please specify as much as possible:

24. Would you recommend changes in your unit determination procedures?

_____ Yes _____ No

If yes, please specify as much as possible:

Signed_____

Title_____

State_____

APPENDIX B

WISCONSIN AND HAWAIIAN UNITS

Wisconsin

- Security and Public Safety
- Blue Collar and Non-Building Trades
- Technical
- Professional Patient Care
- Building Trades-Crafts
- Professional Units
  - Research, Statistics and Analysis
  - Engineering
  - Legal
  - Fiscal and Staff Services
  - Patient Treatment
  - Social Services
  - Education
  - Science
- Clerical and Related
- Professional Supervisory
- Non-professional supervisory

Source: Wisconsin Statutes, Chapter 612, L. 1966 (as amended), Sec. 111.81 (3)(a).

Hawaii

1. Non-supervisory employees in blue collar positions
2. Supervisory employees in blue collar positions
3. Non-supervisory employees in white collar positions
4. Supervisory employees in white collar positions
5. Teachers and other personnel of the department of education under the same salary schedule
6. Faculty of the University of Hawaii and the community college system, other than the faculty
7. Personnel of the University of Hawaii and the community college system, other than the faculty
8. Registered professional nurses
9. Non-professional hospital and institution workers
10. Firemen
11. Policemen
12. Professional and scientific employees, other than registered professional nurses

Units 9-13 were optional. All have elected separate representation.

Source: Hawaii Act 171, L. 1970 (as amended), Sec. 89-6.

APPENDIX C

EXPERTS CONFERRED WITH AND PRACTITIONERS VISITED

Arvid Anderson, Director, Office of Collective Bargaining, New York City

Charles Rehmus, Co-Director, Institute of Labor and Industrial Relations, University of Michigan-Wayne State University

Morris, Slavney, Chairman, Wisconsin Employment Relations Commission

John Kitzkie, Chief Negotiator and Director, Division of Employment Relations, State of Wisconsin

John Lawton, Lobbyist and Counsel for AFSCME and member of "Young Commission" whose report was basis for Wisconsin's legislated units

Verne Knoll, Deputy Director of Bureau of Personnel, State of Wisconsin, and staff author of the "Young Report"

Harold "Babe" Rohr, State Chairman of Building Trades Negotiating Committee (Wisconsin)

Donald Foley, Employee Relations Specialist, Department of Health and Social Services, State of Wisconsin

Abe Belsky, Executive Director, Pennsylvania Labor Relations Board

Christ Zervanos, Director of Labor Relations, Commonwealth of Pennsylvania

Wayne Donnelly, Deputy Director of Labor Relations, Commonwealth of Pennsylvania

Gerald McEntee, Executive Director, AFSCME (Pennsylvania)

Dick Phelps, Assistant Director, Pennsylvania Labor Mediation Board

Maurice Nelligan, Executive Director, New Jersey Public Employment Relations Commission

Al Wurf, Executive Director, AFSCME (New Jersey)

Mark Neimeiser, Executive Director, AFSCME (New Jersey)

Frank Mason, Director, Office of Employee Relations, State of New Jersey

John Saracino, Deputy Director, Office of Employee Relations, State of New Jersey

Lawrence Arcioni, President, New Jersey State Employees Association

Pat Blinn, Principal Personnel Technician, New Jersey Department of Civil Service

William Druz, Chief Examiner and Secretary, New Jersey Department of Civil Service

Joe Lavery, Deputy Examiner, New Jersey Department of Civil Service

Melvin Cleveland, Executive Secretary, Public Employee Relations Board, Oregon

Robert Smith, Chief Budget Director, Oregon

Gene Huntley, Personnel Director and Chief Negotiator for the State Highway Division, Oregon

William Barrows, Deputy Fiscal Officer, Legislative Fiscal Committee, Oregon

Tom Enright, Executive Secretary, Oregon State Employees Association

Everett Stiles, Assistant Executive Secretary, OSEA

Ed Rosenlund, Supervisor of Employee Relations, State Personnel Division, Oregon

John Paul Jones, Executive Secretary, AFSCME, Oregon

Alexander Macmillan, Chairman, Massachusetts Labor Relations Commission

Senator George Mendonca, Chairman, Special Legislative Study Commission of Collective Bargaining, Massachusetts

Leonard Kelley, Employee Relations Counsel, Bureau of Personnel, Massachusetts

George Doyle, Examiner, Massachusetts Labor Relations Commission

Howard Doyle, Executive Secretary, Council 41, AFSCME, Massachusetts

Tom Fitzgerald, Executive Secretary, Special Legislative Study Commission of Collective Bargaining, Massachusetts

Mark Dalton, Counsel, Massachusetts State Employees Association

Frank Sullivan, Executive Secretary, Massachusetts State Employees Association

John Keith, Executive Secretary, Service Employees International Union, Massachusetts

Kevin Kelley, President, Local 780 (Public Works Engineers), AFSCME, Massachusetts

Bernice Doyle, President, Local 1293 (Public Works Clerks), AFSCME, Massachusetts

Howard Bellman, Member, Wisconsin Employment Relations Commission

Robert Howlett, Chairman, Michigan Public Employment Relations Board

Jerome Lefkowitz, Deputy Director, New York State Public Employee Relations Board

Sidney Singer, State Personnel Director, State of Michigan

John O'Connor, Director, Division of Employee Relations, Michigan Department of Civil Service

John Fitch, Employee Relations Administrator, Michigan Department of Civil Service

Richard Meyers, Hearings Officer, Michigan Department of Civil Service

Jim Shrier, Hearings Officer, Michigan Department of Civil Service

Doil (sic) Brown, Executive Secretary, Michigan State Troopers Association

Harold Schmidt, Executive Director, Council 7, AFSCME (Michigan)

Dick Ross, Chairman, Compensation Advisory Board, Michigan Department of Civil Service

John Hueni, Director, Division of Classification and Compensation, Michigan Department of Civil Service

APPENDIX D

CONSTITUTION OF THE STATE OF MICHIGAN

Article XI

SECTION 5

The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, and members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all money unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by the law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

APPENDIX E

ATTENDANCE AT AERC COLLOQUIUM

Arvid Anderson, Director, Office of Collective Bargaining, New York City

Howard Bellman, Member, Wisconsin Employment Relations Commission

Abe Belsky, Executive Director, Pennsylvania Labor Relations Board

Robert Howlett, Chairman, Michigan Public Employment Relations Board

Jerome Lefkowitz, Deputy Director, New York State Public Employment Relations Board

Alexander Macmillan, Chairman, Massachusetts Labor Relations Commission

APPENDIX F

April 2, 1973

TO: ALL DEPARTMENT HEADS, PERSONNEL OFFICERS, EMPLOYEE ORGANIZATIONS, LABOR ORGANIZATIONS, EMPLOYEES, AND OTHERS CONCERNED

FROM: The Advisory Employment Relations Committee of the Michigan Civil Service Commission

SUBJECT: Public hearings of May 8, 9 and 10, 1973 concerning employment unit and recognition determination in the Classified State Civil Service

The Michigan Advisory Employment Relations Committee will hold public hearings May 8-10, 1973, in Lansing to give interested parties an opportunity to provide inputs on the formulation of a policy for determination of employee representation units in the state classified civil service.

The Committee will hear presentations from employer and employee representatives (already recognized or potential), academicians, and other concerned parties expressing their views on questions of the following nature:

* Should representation units be determined by institution, job classification, or other criteria?

* How wide (narrow) should units be?

* What constitutes a "community of interest"?

* Who should be included in the unit?

* Should supervisors be included in the same unit with employees they supervise? In any unit?

* Who is a supervisor?

* Should professional, craft, supervisory, security, and confidential employees have special rights or limitations on employee organization membership or participation?

* Should only one union or association be recognized in any employment unit?

Areas in which the AERC is not charged with recommending policy are:

* Character or degree of negotiation obligation.

* Subjects of negotiation.

* Impasse procedures.

* Strike prohibitions or sanctions.

* The substitution of collective bargaining procedures for "meet and confer".

* Unfair practices.

* Employee organization security.

* Employee organization responsibility standards.

The AERC will consider information from these presentations in recommending a policy to the Commission. It is possible that future public hearings with employer and employee representatives will be held to obtain more detailed inputs. At this early stage, the AERC is seeking to determine what specific employer and employee needs might exist, and what employment relations models in the private and public sector might be recommended for study.

The AERC derives its authority from appointment by the Civil Service Commission which is granted exclusive authority by the state constitution to establish by administrative action an employment relations system for the 50,000 classified state civil service employees. It is anticipated that final recommendations by the AERC will be made by December, 1973.

Members of the Committee are Barry Brown, Director of the Michigan Department of Labor; James McCormick, Attorney and Arbitrator; Charles Meyer, Secretary and Chief Examiner, Detroit Civil Service Commission; Theodore St. Antoine, Dean of the University of Michigan Law School; and Jack Stieber, Director of the School of Labor and Industrial Relations, Michigan State University.

Any interested person or organization may request an appearance at the hearing, submit a written statement without appearance, or attend the hearings without making a statement. Requests for a scheduled appearance should be made by April 20, 1973, to the AERC Office, 3rd Floor, Lewis Cass Building, Lansing, Michigan 48913.

Response will be made by telephone to arrange an appearance. An agenda of apperances will be furnished to any person

you request. Questions or requests for further information may be addressed to G. Alan Balfour, Director of Research, AERC Office. Phone 517-373-3074.

APPENDIX G

PARTIES APPEARING AT THE AERC PUBLIC HEARINGS (In order of appearance)

Michigan State Police Troopers Association

Michigan State Police Command Officers' Association

Michigan Department of Civil Rights

Service Employees International Union, Local 31-M

Chester Bielaczyc, Genesee County Department of Social Services

Professor Bob Repas, Michigan State University

Michigan Nurses Association

United Highway Employees Association

Michigan Council of Engineers in Government

Michigan Department of Civil Service

Michigan Department of Social Services

Michigan Society of State Highway Engineers and Professional Affiliates

Professional Association, Michigan School for the Deaf

Michigan Corrections Organization

Association of Assistant Attorneys General

Michigan Association of the Professions

International Union of Civil Rights and Social Services Employees (including local affiliates, Welfare Employees Union and Civil Rights Employees Union)

Michigan State Employees Association

American Federation of State, County, and Municipal Employees

Council of Personnel Directors

APPENDIX H

POSITIONS OF PARTIES BY ISSUE

The following positions reflect the stands taken by the parties in their briefs and at the hearings. If an organization is not listed as being either opposed to or in favor of an issue, it did not take a stand, or its stand could not be classified. Also, not all issues are covered since not all were addressed by the parties.

1. Exclusive recognition.

Favor	Oppose
21-M--Personnel Directors	MSEA
Repas--AFSCME	
MNA--Department of Civil Rights	
UHE	
Department of Social Services	
WEU	
Department of Civil Service	

2. Separate units for supervisors. (No one favored exclusion)

Favor	Oppose
Troopers	WEU
Command Officers	MSEA
Department of Civil Rights	Eng. in Government
31-M	
Repas	
MNA	
Highway Eng.	
MCO	
Department of Civil Service	
Personnel Directors	
AFSCME	

3. Preferred form of units (Note: Some organizations have eligible members in only one department. Where they have favored a statewide unit including only their own class, they have not been listed since their scheme is both departmental and occupational.)

Occupational*	Departmental*
MNA	Department of Civil Rights
MAP	31-M
Department of Civil Service	Repas
Highway Eng.	Department of Social Services
Eng. in Government	WEU
	Personnel Directors

*MSEA favors an all-inclusive unit for statewide issues, while UHE argues for employee freedom of choice in determining community of interest as the basis of units.

4. Separation of professionals.

Favor	Oppose
All professional organizations	MSEA
AFSCME	WEU
Repas, Civil Service	Personnel Directors

5. Separation of crafts.

Favor	Oppose
Repas	MSEA
UHE	WEU
	Civil Service
	MNA
	AFSCME
	Hwy. Eng.
	Personnel Directors

6. All parties except MSEA favored managerial and confidential exclusion.

7. Preferred method of determining units.

Continuation of Present Procedure	Commission Legislation	Outside Agency
Command Officers	MNA	Repas
MSEA	Hwy. Eng.	UHE
	Civil Service	WEU
	AFSCME	

APPENDIX I

MAJOR GOALS OF PARTIES, BY PARTY

Troopers Association

Separate unit for all officers below Post Commanders (i.e., exclusive statewide occupational unit with supervisory exclusion). Opposed to grouping with other classifications because "no one else has similar working conditions" and oppose supervisory inclusion as a "conflict of interest in grievance processing."

State Police Command Officers' Association

"Preserve the true merit system" and a separate unit from troopers so that command officers would not have to depend upon troopers to process their grievances.

Department of Civil Rights

Separate management and supervisors from subordinates. Exclusive recognition, by department. Unit for supervisors. Separation of confidential employees.

31-M, SEIU

Departmental units. Supervisory separation. Exclusion of managerial and confidential employees. Exclusive representation.

Chester Bielaczyc (Genesee County Department of Social Services)

Supervisory inclusion.

Professor Bob Repas

Collective bargaining. Increased scope of bargaining. Right to strike. Exclusive representation with majority status. Supervisors in separate units. Secret ballot elections. Departmental units to correspond with managerial authority. Occupational units within departments.

Michigan Nurses Association

Representation elections. Occupational statewide units. Separation for professionals and supervisors.

United Highway Employees Association

Unit determined by employee-initiated showing of community of interest. Might be departmental or occupational, depending upon circumstances. Exclusive representation.

Department of Social Services

Institutional or departmental units. Opposed to occupational units. Wide exclusion of confidentials. Exclusive representation.

Highway Engineers

Three statewide units (Supervisor-Professional; State Police; All Others).

Professional Association, School for the Deaf

Separate unit for self.

Corrections Organization

Separate unit for self, with supervisors excluded from unit.

Attorneys General

Separate unit for self (cannot mix with other professionals).

Michigan Association of the Professions

Separation of all professionals from nonprofessionals. Possibly grouping professionals under MAP.

Welfare Employees Union

Departmental units, sometimes geographic. Representation elections for exclusive recognition. Professional inclusion; managerial, confidential, and security exclusion. Inclusion of all others in department in one unit. Supervisory inclusion.

Department of Civil Service

Statewide occupational units. Exclusive representation. Managerial and confidential exclusion. Supervisory units.

Council of Personnel Directors

Departmental units. Separate units for supervisors. No professional or craft separation. Exclusive representation.

AFSCME

Two units (supervisory-professional; all others). Exclusive representation by secret ballot.

MSEA

Organizations should represent all levels and all classes of employees statewide. General recognition given statewide on showing of substantial and stable membership. Limited recognition for organizations structured for local working conditions. Multiple representation. Supervisory inclusion. No special consideration of professional, craft, supervisory, security, or confidential employees.

Michigan Engineers in Government

Statewide unit of engineers with supervisory inclusion.

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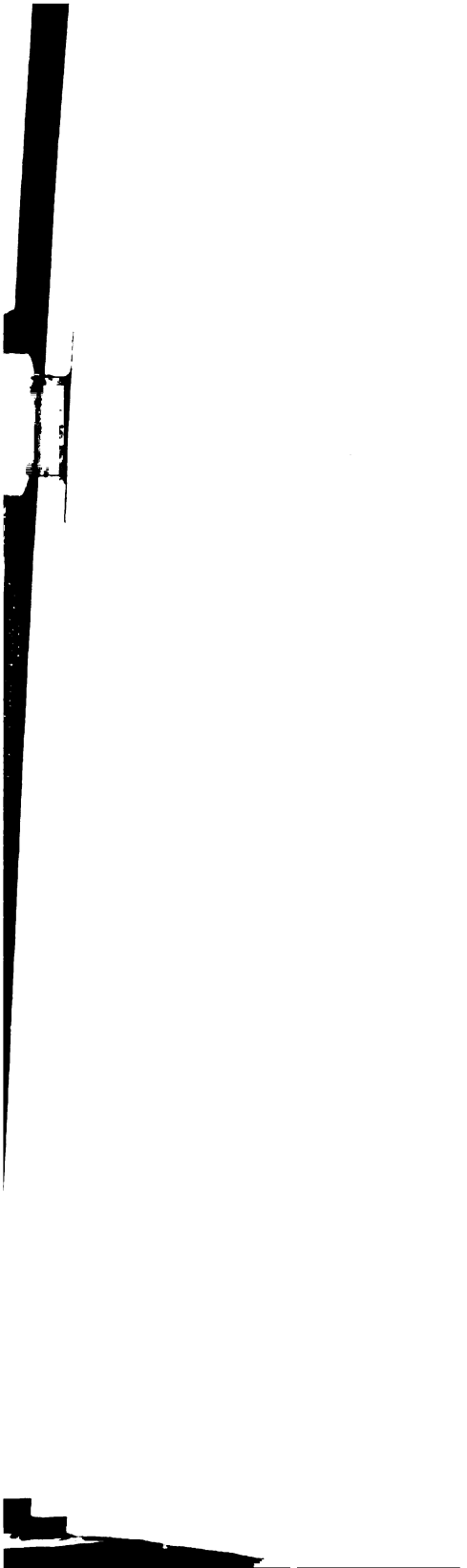

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