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Toward a High-Performance Workplace: Fixing Civil Service in Massachusetts

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civil service reform

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EXECUTIVE SUMMARY

THE CIVIL SERVICE SYSTEM IN MASSACHUSETTS is no longer up to the important task of helping government recruit and hire the most talented personnel. When the system was created in 1884, the Commonwealth was at the forefront of the battle against patronage in government hiring. Over the course of a century, Massachusetts has fallen well behind the leaders in public sector personnel administration practice.

The Commonwealth's system for managing personnel is about as traditional as they come: The central personnel office controls the whole process, from approving new job titles to generating and scoring qualifying exams, to maintaining lists of candidates, to monitoring agency compliance with the vast array of applicable state and federal laws. There are a variety of preferences extended to veterans, as well as to other groups who have served the country. Agencies must offer jobs to top scorers in turn, working their way down a list of candidates as ranked by score and preference. Agencies that wish to hire out of turn must make the case to the personnel administrator. Promotions are based on tests in combination with credentials, preferences, and seniority. In instances when no list of candidates exists and an agency can make the case for a quick hire or promotion, candidates may be placed "provisionally." Under Chapter 31, provisionals may serve for no longer than one year without being tested, yet this rule is not enforced. It is estimated that as many as 40 percent of state employees in Massachusetts are provisionals, hired outside the civil service system.

Employees hired through the testing process receive permanent status after 6 to 12 months on the job. As with most civil service systems, Massachusetts operates on a "last hired, first fired" basis. If a particular job title within an agency is experiencing layoffs, then the least senior employees with that title are the ones "bumped" out the door first.

The system has predictable results: The central agency is unable to keep up with the testing and classification needs of agencies in the field; lists of eligible candidates quickly get old and out of date; and agencies begin to get quite creative in skirting the rules—not for sinister reasons, but out of necessity.

This paper is a call for continued improvement in a system that in its current form is overly bureaucratic, unresponsive, rule-bound, and control oriented. The changes suggested address three troubling trends that have been gathering momentum in Massachusetts: First, the use of "provisional" hires as a way to sidestep testing and hiring rules entirely. Second, the inclination to exempt entire classes of employees from the civil service system altogether. And third, continued difficulty on the part of specific agencies to compete for the best and brightest job candidates in what is today a fiercely competitive job market.

In at least two dozen states, personnel offices are working hard to reengineer their relationship with their agencies, and personnel executives have begun to view themselves as consultants who work for their "customer" agencies.

The civil service system in Massachusetts is no longer up to the important task of helping government recruit and hire the most talented personnel.

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When a national accounting firm went out of business in Albany recently, the state personnel office in concert with local businesses organized a job fair that brought a wide variety of potential employers—including state government—together with the recently laid off employees to talk about new job opportunities in the Albany area. The Wisconsin personnel department has developed an aggressive, proactive approach to employee recruitment, including doing campus recruitment drives, even recruiting out of state to find candidates for tough-to-fill positions. Pennsylvania’s central personnel office actually has staff dedicated to performing workforce analyses across agencies. The central personnel office then creates recruitment campaigns—even training courses and apprenticeships—designed to bring specific skill sets into government.

In Wisconsin, the state uses written exams to fill only 30 percent of all positions. Kansas and Indiana have eliminated virtually all written tests for prospective hires. In an increasing number of states, hiring authorities in the field are now allowed to make job offers to promising candidates on the spot, pending a review of credentials and references.

What government hiring authorities in the field need today is the freedom to find and hire the people they want without extensive oversight and control from a central office.

Massachusetts has begun to make some positive changes. It is computerizing civil service tests and experimenting with zone scoring (as an alternative to “the rule of three,” where only the top three scorers on a test may be considered for an open position). It is working to collapse job titles into broad bands, which ought to also lend more efficiency and flexibility to the system. Arguably, however, such changes amount to “paving the cowpath,” as the system still relies too heavily on written tests and centralized command and control. What government hiring authorities in the field need today is the freedom to find and hire the people they want without extensive oversight and control from a central office.

Recommendations

Chapter 31 of the Massachusetts General Laws gives the personnel administrator broad leeway in changing out-of-date rules by his own initiative, subject in some cases to Civil Service Commission approval. The administrator—whoever that is—ought to be aggressive and creative in taking advantage of that leeway. Below are some of the changes needed to bring Massachusetts into line with the best practices in personnel management.

- Decentralize the testing and hiring process to individual state agencies, giving them the option to contract back with the DHR for specific personnel services if they wish.
- Reduce the number of positions that are filled through written exams.
- Redirect the energy and resources now devoted to reviewing hiring decisions in the field and creating and administering tests and lists to strategic workforce planning and recruitment.
- Grant hiring authorities in Massachusetts blanket authority to offer qualified candidates jobs on the spot, pending verification of experience and references.
- Create broad band pay scales that would allow management more flexibility in what it can offer to attract high-quality job candidates initially and give managers some flexibility in how they reward veteran staff, as well.

- Extend civil service status to all employees who have been working for state or municipal government for six months and who are considered to be in good standing.
- Reengineer the employee evaluation system and include opportunities for employees to evaluate their managers.
- Streamline due process systems for disciplinary actions.
- Allow municipalities to opt out of civil service and manage their own personnel affairs.

Nationally, state personnel administrators have been aggressively and creatively using discretion available under civil service statutes to overhaul how states recruit, evaluate, and hire staff. If officials in Massachusetts decide that muddling through with an outdated system isn't good enough, then they should follow the lead of these dozens of jurisdictions. Ultimately, the state owes it to taxpayers, to those who seek employment with state and local governments, and to those who day in and day out do the important work of state and local government, to regain its position as a national public employment bellwether. Adopting the suggestions outlined in this paper will set the Commonwealth firmly on the path toward regaining that leadership position.

Toward a High-Performance Workplace: Fixing Civil Service in Massachusetts

Jonathan Walters, *Governing Magazine*

I. INTRODUCTION

WHEN MASSACHUSETTS ESTABLISHED ITS CIVIL SERVICE SYSTEM in 1884, it was on the cutting edge of public administration reform. Acting just one year after the Pendleton Act of 1883 created a federal merit system—in the wake of President James A. Garfield’s assassination by that now renowned “disappointed office seeker”—Massachusetts was well ahead of its peers in battling the rampant and pernicious effects of patronage in government hiring. Only New York acted as quickly in the wake of federal reform to address the clear need for serious changes in government personnel practices.


That was 116 years ago. Bluntly put, time hasn’t been kind to the Massachusetts merit system. Title IV, Chapter 31, of the Massachusetts General Code, entitled “Civil Service,” a ponderous 233-page set of rules and precedents, is no longer up to the big job of helping government in Massachusetts recruit and hire the most talented personnel possible. Over the course of a century, Massachusetts has fallen well behind the leaders in public sector personnel administration practice.

Massachusetts has begun to make some positive changes. It is computerizing civil service tests and experimenting with zone scoring (as an alternative to “the rule of three,” where only the top three scorers on a test may be considered for an open position). It is working to collapse job titles into broad bands, which ought to also lend more efficiency and flexibility to the system. Arguably, however, such changes amount to “paving the cowpath,” as the system still relies too heavily on written tests and centralized command and control. And while the Commonwealth’s central personnel office offers both agencies and municipalities a patchwork of options for taking on some of the responsibility for testing and hiring employees themselves, it is, ultimately, the central personnel office that decides on those exemptions and how generous it will be with them. What government hiring authorities in the field need today is the reverse: freedom to find and hire the people they want without extensive oversight and control from a central office. The trick for the Commonwealth is to find the middle ground between the kind of tinkering represented by efforts to streamline some testing, on the one hand, and the unrealistic and questionable approach of repealing civil service altogether, on the other.

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The Commonwealth of Massachusetts' Human Resources Division's website can be accessed at www.state.ma.us/hrd.



Past Efforts to Reform the System

The closest brush Massachusetts has ever had with radical reform was William Weld's doomed effort at civil service reform back in 1992. If reactions to the Weld plan taught the Commonwealth anything, it was that Massachusetts is no candidate for radical reform.

Weld sought to repeal Chapter 31 outright and then build back in those elements of civil service that reformers believed contributed to an efficient personnel system. The proposal would have significantly decentralized hiring authority, allowing agencies to come up with their own systems for evaluating and hiring new staff. It would have virtually abolished the concept of seniority. Job retention and promotion would be based solely on performance and credentials; seniority would only be a tie-breaker. It would have modified veterans' preference, reducing its importance in moving job candidates to the top of hiring lists. The reform plan also called for streamlining discipline procedures through a greater emphasis on alternative dispute resolution. There was significant emphasis on pay for performance, and the plan would have extended power to agencies to create their own job classifications and pay structures, as each saw necessary to effective functioning. Finally, the reform plan would have cut municipalities loose from the state civil service system. All of this flexibility would be gained in the context of a central personnel office that would act more as a technical advisor and consultant than a control agency. To ensure that personnel functions were being handled well by the various state agencies in the decentralized environment, the plan also called for the central office to beef up its auditing capabilities.

The reform plan was clearly too sweeping to survive in a political environment where key interest groups were deeply suspicious of the new governor's motives. Veterans groups and unions, in particular, quickly lined up in opposition, and the proposal was never even introduced in the legislature. Had it made it that far, its future would still have been in serious doubt. Nationally, legislatures have evinced little interest in pushing civil service reform, radical or otherwise.¹ Politically, there isn't much payoff in dabbling in the arcane world of public personnel management. (No politician ever won a campaign under the slogan "It's about bumping, stupid.") Quite the contrary, there are frequently influential interests that resist reform—even modest reform. Given the political equation—no credit for supporting reform and the possibility of harsh political consequences for pushing it, the political math is pretty easy to do even after eight years—the Weld plan would have had little chance of passing on Beacon Hill.

At the other end of the reform spectrum was the 1996 Special Commission on Civil Service Reform, which produced a report containing a set of relatively modest recommendations, mostly involving the application of technology in some key areas of personnel management.² The report suggested continuous testing for entry-level, non-public safety positions. With continuous testing, applicants can take exams on a "walk-in" basis, instead of having to wait for a set date, when potential applicants are herded together en masse to take the test. Proponents of continuous testing argue such a system makes for a constant stream of interested job candidates. But the report didn't really tackle the larger issues of how to find, recruit, and hire the best and brightest into state and local government service and then keep them there.

¹ Jonathan Walters, "No Protection," *Governing*, August 1997.

² "Civil Service Reform in Massachusetts," preliminary findings of the 1996 Special Commission on Civil Service Reform, November 15, 1996.

In all, the report contained only one recommendation that was arguably very radical. Borrowing from the 1992 Weld reform plan, the 1996 report suggested that as one of only two states that oversee local government hiring (New Jersey is the other), Massachusetts should allow its municipalities to establish their own merit systems, based on accepted principles, subject to state audit. To date, the legislature has not seen fit to cut municipalities loose. Under existing law, localities have the option of taking some control over civil service functions, and a handful have chosen to.³

Some of the other recommendations in the report included embarking on an “essential functions” study—aimed at updating and where appropriate consolidating job titles; giving the Civil Service Commission \$120,000 to reduce its case backlog; and reducing the number of provisional employees working for the state.

While modest in its approach, the 1996 report at least represented progress. It also served to underline an essential point about civil service reform: Efforts aimed at fixing civil service have a better chance of survival than do efforts to kill it outright. While the Georgia State Legislature voted to phase out its entire merit system starting in 1996, that sort of radical reform is the exception rather than the rule. Much more common is for states to focus on key pieces of the personnel system—recruitment, testing, promotion, compensation, and discipline, for example—figure out ways to make those work better, and then make changes administratively or through collective bargaining, rather than by going to the legislature.

While frustrated executives and employees might want to “blow the whole thing up”—the approach most frequently recommended in moments of exasperation—experience indicates that a steady chipping away at the most regressive characteristics of civil service ultimately yields better results.

All of which is to say that this paper will not lay out a plan for dismantling the Massachusetts civil service system. That’s neither realistic nor advisable. Nor will the paper call for an end to special preferences for certain classes of applicants. It will not suggest the elimination of seniority as a fundamental value of civil service. Rather it is a call for continued improvement in a system that in its current form is still overly bureaucratic, unresponsive, rule-bound, and control oriented. The changes suggested in this report address three troubling trends that have been gathering momentum in Massachusetts: First, the use of “provisional” hires as a way to sidestep testing and hiring rules entirely. Second, the inclination to exempt entire classes of employees from the civil service system altogether. And third, continued difficulty on the part of specific agencies to compete for the best and brightest job candidates in what is today a fiercely competitive job market.

Some of the recommendations will rub labor the wrong way; others will nettle management. Regardless, their adoption has the potential to bring significant improvement in the basic and vital enterprise of finding good people to come to work for the Commonwealth and keeping them.

The result of all the rules and rigidity is depressingly predictable: The central agency is unable to keep up with the testing and classification needs of agencies in the field; lists of eligible candidates quickly get old and out of date; speed and efficiency are the last values served; and agencies themselves begin to get quite creative in skirting the rules—not for sinister reasons, but out of necessity.

³ Massachusetts Personnel Administrator’s response to Pioneer Institute draft White Paper on Civil Service Reform, June 19, 2000; see also Title IV, Chapter 31A of the Massachusetts General Law for details on delegation.

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II. CURRENT ISSUES AND PROBLEMS

THE COMMONWEALTH'S SYSTEM FOR MANAGING PERSONNEL is about as traditional as they come: The central personnel office controls the whole process, which, in a very abbreviated form, works like this: Agencies communicate to the central personnel office the need to fill a certain position. The personnel department then generates and gives an exam based on that job title. (As mentioned earlier, the Commonwealth has adopted a program of "continuous testing" for some of the state's more common job titles.) From that test comes a list of "qualified" candidates, and agencies must hire from among the top three scorers on the test. (Again, the state is experimenting with zone scoring on a limited number of tests, which would broaden an agency's choice of candidates beyond the top three scorers.) At the same time, there are a variety of preferences extended to veterans, as well as to children of police officers and firefighters killed in the line of duty and to police officers and firefighters permanently disabled in the line of duty; there are other special preferences given for Congressional Medal of Honor winners and winners of a distinguished service cross or navy cross.⁴ Agencies must then offer jobs to top scorers in turn, working their way down a list in order of candidates as ranked by score and preference.

Agencies that wish to hire out of turn must make the case to the personnel administrator. Meanwhile, agencies that want to create new job titles (not an uncommon occurrence, particularly in areas where work, scope of responsibility, and work requirements are rapidly changing) must petition the central personnel office for those new titles. The central personnel office, if it deems the agency's request worthwhile, will then generate a job description and a test for screening applicants under the new title, administer and score the test, and generate a list of qualified job candidates. Likewise, promotions are based on tests in combination with credentials, preferences, and seniority. In instances when no list of candidates exists and an agency can make the case for a quick hire or promotion, candidates may be placed "provisionally." Under Chapter 31, provisionals may serve for no longer than one year without being tested. This is probably the single most frequently flouted section of the state's civil service law.⁵

Compensation is essentially dictated by job title. Raises come in four ways: Given satisfactory job performance, civil servants will be bumped up incrementally through a "schedule" of pay grades. Such pay increases are essentially a function of time on the job. Annual raises for employees as a whole are typically negotiated through collective bargaining agreements, subject to legislative approval. Significant raises for individuals are won by promotion to a higher position or through targeted raises for specific job titles.

Once hired, all classified employees spend six to 12 months on probation, after which time they gain "permanent status." Permanent status means that the clock has officially begun to tick on seniority (with the tally including the time spent on probation). Seniority is one of the more fundamental values of a civil service system because it establishes an employee's status when it comes to promotions, raises, and downsizing. As with most civil service systems, Massachusetts operates on a "last hired, first fired" basis. That is, if a particular job title within an agency is experiencing layoffs, then the least senior employees with that title are the ones "bumped" out the door first.

⁴ Title IV, Chapter 31, Section 26, Massachusetts General Law, *Civil Service*.

⁵ Massachusetts Human Resources' Division staff estimate around 40 percent of current Massachusetts civil service employees to be serving provisionally. According to "Civil Service Reform in Massachusetts," preliminary findings of the 1996 Special Commission on Civil Service Reform, November 15, 1996, 60 percent of the civil service workforce in Massachusetts was at that time made up of provisional hires, "...and many of these individuals are long time employees who have never had access to a civil service examination," the report stated.

The result of all the rules and rigidity is depressingly predictable: The central agency is unable to keep up with the testing and classification needs of agencies in the field; lists of eligible candidates quickly get old and out of date; speed and efficiency are the last values served; and agencies themselves begin to get quite creative in skirting the rules—not for sinister reasons, but out of necessity.

Public sector personnel experts consider “provisionals”—those employees hired on a temporary basis outside of civil service—to be the “canary in the coal mine” of public sector personnel systems. By that standard, Massachusetts is doing poorly. Among state employees, Massachusetts has a provisional rate of 40 percent. Compare that to New York State, where the provisional rate is under 1 percent.⁶ At the municipal level in Massachusetts it is 25 percent. One municipal human resources director reported that of the 200 job titles held by city employees, the state has tests ready to go for five.⁷ That much hiring going on outside of a civil service system is an undeniable sign that the system is broken. Furthermore, provisionals who have proved that they can do the work technically cannot be promoted and have no protection in times of downsizing. It all adds up to a non-responsive, flat-footed, difficult-to-negotiate, and ineffective way to find and hire qualified people to work in the public service.

Demographic Trends

These are especially challenging times for those in the public sector human resources business. Nationally, state and local governments are looking at an unprecedented wave of impending retirements, a wave that promises to hit particularly hard at the senior executive level. According to a study done by the Iowa personnel department, for example, employees over the age of 45 holding top pay grade positions make up one of the largest employee cohorts in that state’s government.⁸ In Pennsylvania, nearly 40,000 of the Keystone state’s 78,000 employees are between the ages of 45 and 54. The largest single age group in Pennsylvania state government—more than 3,500 employees—is age 52.⁹

Local governments are reporting a similar story. A 1998 workforce analysis in Minneapolis indicated that one-third of the city’s employees would be eligible to retire within the next five years.¹⁰ That sobering statistic inspired the city’s human resources department to launch a more detailed analysis of who might be leaving city employment. A two-department in-depth look at personnel confirmed that large numbers of employees were getting ready to walk out the door, taking well-developed and much-needed skill sets with them.

According to public sector labor analyst Sam Ehrenhalt, a senior fellow at the Rockefeller Institute of Government in Albany, 42 percent of the 15.7 million people working for state and local governments in 1999 were from 45 to 64 years old. That means that from the years 2000 to 2015, two-fifths of state and local government employees will be eligible to retire, raising the specter of the most significant talent and brain drain ever experienced by government. “This is a big locomotive traveling down the tracks and there’s no stopping it,” says Ehrenhalt.¹¹

How hard that locomotive might hit Massachusetts isn’t clear. Because the state is still implementing its new automated personnel management system, it can’t do the sort of strategic workforce planning that states like Iowa, Pennsylvania, and New York

The Iowa Department of Personnel’s website can be accessed at www.state.ia.us/government/idop.

⁶ *Quality Standards/ Innovative Applications; Award Winning Performance from New York State’s New Civil Service*, New York State Department of Civil Service, April 1998, and follow-up interviews with New York Civil Service Department staff.

⁷ Author interview with director of large city personnel department.

⁸ Jonathan Walters, “Older Than Ever,” *Governing*, March 2000.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Samuel M. Ehrenhalt, “Close to Half of All Government Workers are 45 or Older, Private Sector Focuses more on Younger Workers Under 35,” Rockefeller Institute of Government *Special Report*, Albany, New York, August 1999.

‘Starting with the year 2000 someone turns 55 years old every seven seconds, so the question is how can we compete in filling jobs as people retire.’

are now doing, although it should be able to soon. Some Massachusetts state agencies have already done their own analyses. One of the largest reports the average age of its employees to be 49. The central personnel office is clearly aware of the issue. One staffer noted, “Starting with the year 2000 someone turns 55 years old every seven seconds, so the question is how can we compete in filling jobs as people retire.”¹²

The crunch comes at a poor time for government. While the public sector workforce ages, competition for new employees will be increasingly keen, particularly in states like Massachusetts, where the unemployment rate is hovering somewhere below 4 percent.¹³

As Ehrenhalt points out in his national workforce analysis, the number of workers age 25 to 44—prime recruitment fodder for government—is expected to drop by 3 million between 1998 and 2008, even as the number of workers age 55 to 64 goes up by more than 7 million.¹⁴ That means that the competition for those workers just coming into their stride is going to be especially fierce. Meanwhile, other demographic shifts mean that government will be serving an increasingly diverse population—dealing with clientele whose first language isn’t English is already a serious issue for some state and local government agencies in Massachusetts.

Many governments—including some in Massachusetts—are already experiencing difficulty in finding and hiring employees in such key areas as technology, health care, engineering, and social services.¹⁵ Clearly Massachusetts and its municipalities are going to have to be significantly more aggressive, imaginative, and flexible in the future if they plan to fill such positions with competent employees, and if they wish to compete successfully for this new—and shrinking—cohort of potential employees.

Do We Need a Civil Service?

State and local governments are vastly more professional than they were at the turn of the century (or even just 30 years ago), and government ethics laws and tight press and public scrutiny are now the rule. Do we even need civil service laws to stop patronage hiring, or to ensure that government hires the most qualified people for public sector jobs?

As former personnel director for Georgia Dan Ebersole observed shortly after the Peach State passed a sweeping rollback of its merit law, “There is so much media out there in a ‘gotcha’ era. I just think anybody hiring their sorry brother in law does so at their peril.”¹⁶ Other supporters of the repeal argued that even within the strictures of civil service, there were still plenty of instances of clever executives “gaming” the system in order to add the occasional friend, relative, or political supporter to the payroll. Given the ability of seasoned veterans to manipulate the system, critics of civil service argued, Georgia was enjoying the worst of both worlds: patronage *and* the negative consequences of a cumbersome merit system.¹⁷

But Dan Ebersole’s more basic argument in favor of repealing civil service was that in an era when taxpayers are demanding high performance from government, no government—no politician—can afford to lard up a payroll with non-performers.¹⁸ And in that regard, he appears to have a point. The only other state that operates without a civil service system is Texas. In Texas—as in Georgia—the only state workers covered by a current civil service law are employees who are paid through federal

¹² Author interviews with Massachusetts Human Resources Division staff.

¹³ As of July 2000, the Massachusetts Division of Employment and Training reported the state’s unemployment rate to be 2.9 percent.

¹⁴ Samuel M. Ehrenhalt, “Close to Half of All Government Workers are 45 or Older, Private Sector Focuses More on Younger Workers Under 35,” Rockefeller Institute of Government *Special Report*, August 1999.

¹⁵ Jonathan Walters, “Bonus Babies,” *Governing*, December 1999.

¹⁶ Jonathan Walters, “No Protection,” *Governing*, August 1997.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

grants and who, therefore, are subject to federal merit system rules.¹⁹ Texas did not repeal its civil service system, it never had one. Texas is a good place to test Ebersole's proposition.

If a civil service system is essential to state government, Texas should be a public administration basket case, staffed by political hacks and enough "sorry brothers in law" to run any agency or government into the ground. In fact, a 50-state overview of performance in key administrative and financial areas published in *Governing* magazine found no evidence of rampant patronage or cronyism in Texas. Nor, for that matter, did the magazine find such a situation in Georgia. (The magazine did note that the Georgia experiment was a little too fresh to be adequately assessed.)²⁰

There is a much more practical argument to be made here: Replacing tens of thousands of employees with patronage hires in the course of any elected executive's term of office would require a personnel effort of Herculean proportions (and probably would garner the notice of a reporter or two, not to mention the state ethics board). It would no doubt be so disruptive of smooth-running government as to amount to political suicide. A quick glance at Nassau County, New York—currently facing near bankruptcy—reveals the ultimate wages of patronage in today's public sector environment: a loss of political power due to a seriously degraded ability to deliver cost-effective services.²¹ The District of Columbia offers another obvious example of this. The Marion Barry years—characterized by rampant patronage hiring and stunningly bad public service—eventually led to the creation of a federally appointed board to run the city, which led directly to the politically resilient mayor's ultimate ouster. No doubt the time-honored tradition of a powerful legislator or cabinet member trying to install a son or daughter, niece or nephew on some part of the public payroll would continue in any jurisdiction with or without civil service. But the chances are remote that even the wholesale elimination of civil service would bring back the crippling patronage familiar at the turn of the 19th century.

It is interesting to note that in the absence of a civil service system, Texas has de facto collective bargaining, even though public employees in Texas have no blanket right to bargain. The demands of modern public administration have led to regular and rather formal discussions between management and representatives of large classes of employees—like teachers and law enforcement officials—on issues of compensation and work conditions.²² It's the only way to get personnel business done in an efficient way in today's complicated, high-visibility, high-demand public service world.

But returning to Massachusetts—and reality—the chances of repealing civil service in the Commonwealth any time soon are about as good as the Boston Red Sox winning the Stanley Cup. So while it might make for a diverting theoretical discussion, those interested in personnel reform in Massachusetts would do well to drop any notion that Massachusetts will follow Georgia's lead.

How Many Bites of the Apple are Enough?

In heavily unionized states like Massachusetts there is a complicating factor in any discussion of civil service and civil service reform. Is life for public employees ruled by collective bargaining agreements or civil service? Does having collective bargaining and civil service offer a superfluous layer of protection to public employees? What happens when union contracts and civil service law conflict?

Governing magazine's website can be accessed at www.governing.com.

¹⁹ Ann O'M. Bowman, Richard C. Kearney, *State and Local Government*, Third Edition, Houghton Mifflin Company, 1996, p. 190.

²⁰ Katherine Barrett, Richard Greene, "Grading the States," *Governing*, February 1999. The University of Georgia plans to release the first major study of the state's new personnel system in September 2000.

²¹ David M. Halbfinger, "Wealthy Nassau Makes Itself a Fiscal Mess," *New York Times*, October 6, 1999; David M. Halbfinger, "THE 1999 ELECTIONS: NAUSSAU; Nassau County Halts a Century of G.O.P. Rule," *New York Times*, November 3, 1999; Michael Cooper, "Nassau Threatens to Give Pink Slips for Christmas," *New York Times*, December 21, 1999.

²² Richard C. Kearney, *Labor Relations in the Public Sector*, Second Edition, marcel dekker, inc., pp. 76-77.

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The short answer is that where collective bargaining agreements and civil service law conflict in Massachusetts, civil service law prevails. Obviously, well-written collective bargaining agreements anticipate and minimize such potential conflicts. In conversations with various hiring authorities both at the state and municipal levels, there wasn't much concern about collective bargaining versus civil service, even around issues of discipline and dismissal. Employees who challenge disciplinary action by management must choose one avenue or the other—either taking their case to the Massachusetts Civil Service Commission or going through whatever grievance procedures have been set under their collective bargaining agreements.²³

If employees are taking any second bites of the apple, it is by turning disputes concerning disciplinary actions into fights over unfair labor practices or into discrimination cases. And so it is not uncommon for an employee who failed to find satisfaction through a grievance procedure or before the civil service commission, to take the case to the Labor Relations Commission, arguing that management was retaliating in response to union activism, etc., or to the Massachusetts Commission Against Discrimination (MCAD), charging discrimination.

For that reason, some have expressed concern about the Labor Relations Commission or the MCAD's having to field a disproportionate number of cases that amount to little more than disgruntled employees looking for one more chance to get back at management. Clearly those cases do filter up to the two commissions, and occasionally such tactics succeed. One agency personnel director recalls an employee who went for "the hat trick," filing and losing a grievance; filing and losing before the MCAD; and then filing and finally prevailing before the Labor Relations Commission.²⁴ But given the state's commitment to fair labor practices and anti-discrimination policies, foreclosing such avenues to employees who have already pursued and lost either a civil service or grievance claim is neither advisable nor politically realistic. These are extra bites at the apple that the Commonwealth is probably just going to have to live with.

More troubling to some municipal and agency personnel directors is the Massachusetts Civil Service Commission's apparent willingness to expand the types of cases it is willing to hear. For example, provisional employees—who technically have no standing under civil service law—have begun to petition the commission successfully, when in the past such petitions would have been dismissed out of hand. The commission has also evinced a willingness to hear more challenges to civil service tests and even to specific questions on tests.²⁵ Each such case represents an expanded area of oversight for a commission that is already overburdened by its caseload.

Seniority and Veterans' Preference

There is a long tradition of calling for the elimination of seniority and veterans' preference in civil service. And those efforts at civil service reform have a long tradition of complete failure.

Seniority is the bedrock principle of civil service, and there is nothing particularly wrong with that. After all, it is the continuity offered by career government employees that brings fundamental stability to government. As elected and appointed leaders rotate in and out on a more or less regular basis, it is critical that a stable group of seasoned, experienced employees keeps the ship of state on course, *albeit a course that*

²³ Author interviews with Massachusetts Human Resources Division staff.

²⁴ Author interviews with Massachusetts state agency personnel directors.

²⁵ Author interviews with Massachusetts Human Resources Division staff.

may be altered more or less by whomever holds elective office at the time. What has happened over the course of decades, unfortunately, is that seniority has come to trump merit in public employment systems.

Time on the job might now seem to be more important than how that job is being done when it comes to how employees are regarded—and rewarded—in a civil service system. But figuring out a fair, mutually acceptable (to labor and management) way to infuse civil service with on-the-job performance values is not easy. The problem is fundamental and can be laid at the feet of both labor and management, who have become equally complacent about the relative importance of merit versus longevity for determining compensation, job security, and promotions. Too often, employee evaluations are a more or less rote exercise that contribute little to improving an employee's performance or to building employee-manager working relationships.

Labor argues that “merit” will ultimately degenerate into “favoritism” in any system in which employee evaluations have real consequences for compensation or career advancement. And so labor will frequently resist efforts to tie pay or promotions to what they view as judgment calls by managers. Unfortunately, labor may have good reason to be leery of management in this regard. Managers too often would just as soon avoid the issue of assessing on-the-job performance, which can require real engagement on a wide range of human resource management activities, from doing meaningful employee evaluations, to providing real training, to pursuing disciplinary actions in a thorough and professional manner. The simple and unsatisfactory result of this labor and management mindset: Time on the job becomes the default criteria for judging an employee's value.

If meaningful performance evaluations do become the ultimate gauge of an employee's value, then management is going to have to work much harder—and work with labor—to develop smart, sophisticated, reliable, and negotiable systems of employee evaluation. Such systems need to be tied into organizational goals and be much more than the typical sit-down-with-the-boss-once-a-year-and-check-the-“meets” or “doesn't meet”—expectations-box-job-rating-and-be-done-with-it-for-another-365-days that prevails right now. Evaluations should also include a “360-degree” element, whereby employees are given the opportunity to rate their bosses. While the state does have a handbook for how to handle evaluations up on its website, the reports from the field are that job evaluations for non-management staff in Massachusetts just don't mean very much right now.²⁶

Meaningful performance evaluations are also the answer to those who criticize veterans' preference. There is nothing wrong with rewarding those citizens who have dedicated some portion of their lives—and in some cases made very serious physical sacrifices—in the service of their country. Nor is there anything wrong with offering a helping hand to the children of those in the police and fire service lost in the line of duty, as Massachusetts now does.

While classes of job applicants might be granted special preference initially, those individuals should be subject to as rigorous a performance evaluation as any other employee in government. At the moment, the only immediate consequence of a “poor” job evaluation for any Massachusetts employee is being denied a raise. Clearly, any employee whose performance continues to be subpar—given a well-defined and supported opportunity to improve it—should be terminated.

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²⁶ Author interviews with Massachusetts state agency personnel directors.

In viewing the public personnel reform landscape, the trend is clearly in the direction of letting go—of giving line agencies greater authority for personnel management, with no strings attached.

The Impact of Civil Service and Collective Bargaining on Human Resource Management

There are advantages to maintaining both civil service rules and collective bargaining. Civil service lends a certain uniformity and certainty to one's standing on the job. In a climate of positive labor/management relations, collective bargaining agreements can be a vehicle for positive change.

But when it comes to the politics of creating a more responsive personnel system, it is clear that organized labor has become a powerful force for resisting changes seen as favoring management. That labor and management frequently split on issues of civil service reform is unfortunate and often comes down to a matter of trust. It is particularly unfortunate given that both labor and management suffer under inflexible systems for testing, hiring, and compensating employees. The challenge is to create a system that retains both civil service and collective bargaining and also helps government attract and keep top talent.

To do that in today's job market and in light of today's public service demands, human resource management systems need to focus much more heavily on outcomes and much less heavily on following the rules. What rules do exist should serve the essential values of a merit system, "fitness" and "fairness." Systems should be tightly aligned in support of recruiting, hiring, and keeping the most "fit" employees. Such systems should also keep political influence over hiring decisions to a minimum (i.e., they should be "fair"). But systems driven by a rote devotion to arcane rules and complicated regulations deserve serious re-evaluation—by labor and management alike.

A growing group of personnel officials is pushing a new performance-based agenda for the profession. The most tangible evidence of this new approach is the Human Resources Benchmarking/Best Practices Project, initiated in 1996 as a joint effort of the International Personnel Management Association and the National Association of State Personnel Executives. In 1998, the IPMA/NASPE project issued its first summary report.²⁷ Its second report will be issued during the fall of 2000. In it is a broad range of data related to how—and how well—public sector personnel officials are doing the job of helping to staff government, including a catalogue of recognized best practices. The aim of the project is to begin developing basic criteria by which to gauge the effectiveness of state personnel agencies. Currently, Arizona, California, Colorado, Georgia, Idaho, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, Oklahoma, Oregon, Washington, West Virginia, and Wisconsin are actively participating in the effort. Massachusetts is not.

Information on ordering International Personnel Management Association reports can be found at www.ipma-hr.org.

²⁷ IPMA/NASPE Pilot Human Resource Benchmarking Summary Report, International Personnel Management Association, Alexandria, Virginia, 1998.

III. THE NEW WORLD OF PUBLIC SERVICE: How Other Jurisdictions are Meeting 21st-Century Human Resources Challenges

UNFORTUNATELY, CIVIL SERVICE RULE RIGIDITY and enforcement have become something of a self-fulfilling, self-reinforcing proposition. As civil service systems have become more rigid, the inclination on the part of agencies to sidestep the rules has increased and the inclination of central personnel departments to crack down on rogue agencies has increased proportionally.

Growing numbers of jurisdictions—including states and localities—have been able to break this cycle, however. In such places, there has been a gradual but significant shift in the role—and even more important—the attitude of the central personnel office. In at least two dozen states, personnel executives are working hard to reengineer their relationship with their agencies. Some of the leaders in this effort include Florida, Nebraska, Michigan, Connecticut, Wisconsin, Kansas, Washington, and New York. In these states, personnel executives have begun to view themselves as consultants who work for their “customer” agencies.²⁸

This is a powerful and positive new dynamic that is creating a whole new generation of public sector personnel officials who do whatever they can to help agencies find, hire, and keep good employees, including long-term strategic workforce planning. In those cases, the personnel department has itself become the most powerful force for change.

These new-style personnel departments have little interest in spending significant amounts of time and energy double-checking the decisions of agencies and cracking down on those that aren't following the rules. “You need to let managers manage and not assume that if you give them discretion they're going to screw up every time,” says Bob Lavigna, head of recruitment and selection for Wisconsin's personnel department.²⁹ The attitude of the modern public sector personnel executive is straightforward when it comes to rule-breaking: If agencies are chronically trying to sidestep some statute or some set of administrative rules, if they're constantly trying to bypass candidate hiring lists to reach individuals further down, then maybe that statute or those rules are getting in the way of good HR management practices.

Massachusetts personnel officials have made clear and significant steps in reaching out to their constituent agencies. However, there is still a powerful “command and control” ethic in the central office, borne, no doubt, of a feeling of responsibility for the integrity of the system. That is understandable. But in viewing the public personnel reform landscape, the trend is clearly in the direction of letting go—of giving line agencies greater authority for personnel management, with no strings attached.

There is little going on in the rest of the country that couldn't be accomplished in Massachusetts given a little effort and the willingness on the part of labor and management to work together. Some regard labor as a major stumbling block to reform, and there are certainly suggestions in this report that labor won't be inclined to embrace. The current administration seems to have built fairly strong bridges to organized labor. It isn't unreasonable to ask labor and management to begin to use those bridges in a good-faith effort to focus on results, not rules, in how the Commonwealth handles personnel issues. In a number of heavily unionized states—including Wisconsin and

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²⁸ Katherine Barrett, Richard Greene, “Grading the States,” *Governing*, February 1999.

²⁹ Author interview with Bob Lavigna, Director of Recruitment and Selection, Wisconsin Department of Personnel.

The New York State Governor's Office of Employee Relations can be accessed at www.goer.state.ny.us.

New York—significant improvements have been made to civil service that would have died in the absence of a joint labor/management support. In New York State, labor and management worked together on legislation that makes it easier for employees in agencies being downsized to be hired by other agencies that are adding staff. The new law has virtually eliminated layoffs of public employees in New York state even as the state has eliminated thousands of positions.³⁰

In other instances, improvements have come only through hard bargaining. In labor's view, Wisconsin's effort to broad band pay for high-tech workers represents a contract concession. Yet the effort has allowed the state to be a more competitive employer and has led to higher pay for an entire class of public employees.³¹ So who really lost?

In any case, Chapter 31 gives the personnel administrator broad leeway in changing out-of-date rules by his own initiative, subject in some cases to Civil Service Commission approval. The original civil service statute explicitly acknowledges that civil service rules may "from time to time be altered or rescinded...[as] deemed to be desirable for the efficient carrying out of the principles of this act, and for the improvement of civil service."³² The administrator—whoever that is—ought to be aggressive and creative in taking advantage of that leeway.

Recruitment, Testing and Hiring

Clearly, top job candidates aren't going to sit around and wait for civil service exams to be given, scores to be released, and lists to be developed before they are contacted and asked one-by-one if they want the job. By that time, the best prospects are long gone, quickly snapped up by the private sector, where candidates can be interviewed and offered jobs on the spot.

A number of states—including Wisconsin, New York, Delaware, Connecticut, Florida, Nebraska, Montana, Missouri, South Carolina, Virginia, Indiana, Arkansas, Alabama, North Dakota, Washington, Michigan and Kansas—have to some degree reengineered their approach to recruitment and testing.³³ In each of these states, the central office helps recruit talent to state government, particularly in high-need areas. A few quick examples: When a national accounting firm went out of business in Albany recently, the state personnel office in concert with local businesses organized a job fair that brought potential employers—including state government—together with the recently laid off employees to talk about new job opportunities in the Albany area.³⁴ The Wisconsin personnel department has developed an aggressive, proactive approach to employee recruitment, including doing campus recruitment drives, even recruiting out of state to find candidates for tough-to-fill positions.³⁵ Pennsylvania's central personnel office has staff dedicated to performing workforce analyses across agencies. The central personnel office then creates recruitment campaigns—even training courses and apprenticeships—designed to bring specific skill sets into government.³⁶ Iowa is pursuing a similar program.³⁷ Once the Commonwealth's centralized information technology system is fully operational—which it will be this year—there is no reason that Massachusetts shouldn't join other states in this proactive approach to workforce development.

³⁰ Jonathan Walters, "Untangling Albany," *Governing*, December 1998.

³¹ Jonathan Walters, "Pocket Change," *Governing*, July 1999.

³² Title IV, Chapter 31, Section 3, Massachusetts General Law, *Civil Service*.

³³ Katherine Barrett, Richard Greene, "Grading the States," *Governing*, February 1999.

³⁴ Author interview with New York State Civil Service Commissioner George Sinnott.

³⁵ Presentation by Bob Lavigna, Director of Recruitment and Selection, Wisconsin Department of Personnel, at *Governing* Management Conference, September 22-24, 1999, Atlanta, Georgia.

³⁶ Jonathan Walters, "Older Than Ever," *Governing*, March 2000.

³⁷ *Ibid.*

Even more fundamentally, new-style personnel offices have begun to question keeping written tests at the core of the selection process. In Wisconsin, the state uses written exams to fill only 30 percent of all positions. Kansas and Indiana have eliminated virtually all written tests. Washington recently adopted an interesting new “test” for a wide range of its job titles: Does the candidate have a bachelor’s degree? Period.³⁸

Some states, like Virginia, widely acknowledged as one of the best managed in the country, long ago decentralized hiring decisions.³⁹ In an increasing number of states, hiring authorities in the field are allowed to make job offers to promising candidates on the spot, pending a review of credentials and references—New York, Wisconsin, and Washington among them.⁴⁰

A number of states and localities have come up with an entirely new way to “list” potential employees: Anybody who is qualified for the job makes the list of “reachable” applicants. It’s the ultimate in zone scoring. In some states, including Kansas and Wisconsin, officials even allow job candidates to self-qualify by simply filling out an application and providing the necessary back-up documentation, such as a license, degree or certificate, references, and resumes.⁴¹ This is an encouraging trend that has put government on a much more equal footing with the private sector. Preferences for certain classes of applicants—like veterans—still tip the scale, but the candidate pool becomes much wider and deeper when the qualifying process goes beyond a written test.

States are also downplaying the role of written exams when it comes to promoting employees. Kansas and Wisconsin, for example, are turning to experience, specific training, certification, education, and job performance as the criteria by which promotions are granted. Massachusetts also allows criteria beyond written tests to be considered in promotion decisions, but agencies must justify their actions to the central office.

Labor’s position on zone scoring and on qualifying candidates using means other than written tests is somewhat perplexing. The stock argument is that such approaches allow management too much discretion, as if managerial discretion was in and of itself a bad thing. Yet even the most committed psychometrician will acknowledge the fact that tightly bunched test scores don’t differentiate well when it comes to predicting a job candidate’s future success.

Clearly, written tests have some value when it comes to assessing the qualifications of large numbers of job candidates vying for entry-level positions (clerks, prison guards, administrative assistants, police officers, and fire fighters, for instance). But even at the entry level, hiring authorities ought to be able to conduct more personal, in-depth reviews of candidates. As one Massachusetts line agency personnel official put it, the test the state gives currently for entry-level positions in his department does little more than establish “that a person is literate.”⁴² When it comes to hiring more highly skilled employees, written tests don’t seem to add much value at all and may make it even less likely that top candidates will apply. It is a system that, as one state personnel director puts it, leaves the public sector choosing not from “the best and the brightest” but rather “the best of the desperate.”⁴³

The State of Wisconsin Department of Employment Relations can be accessed at www.der.state.wi.us/static/der.htm.

³⁸ Author interview with Washington State Personnel Director Dennis Karras.

³⁹ Katherine Barrett, Richard Greene, “Grading the States,” *Governing*, February 1999.

⁴⁰ Author interviews with George Sinnott, New York State Civil Service Commissioner; Bob Lavigna, Director of Recruitment and Selection, Wisconsin Department of Personnel; and Dennis Karras, Washington State Personnel Director.

⁴¹ Author interview with Bob Lavigna; “Kansas Implements New Hiring Process,” *State Personnel View*, newsletter of the National Association of State Personnel Executives, Winter 1999-2000.

⁴² Author interviews with Massachusetts state agency personnel directors.

⁴³ Presentation by Bob Lavigna, Director of Recruitment and Selection, Wisconsin Department of Personnel, before the National Intergovernmental Auditors Forum, Alexandria, Virginia, March 13, 2000.

Broad banding of job titles...offers employees and managers much greater leeway in accepting and assigning jobs and work.

Broad Banding Job Titles

One other fairly recent reform effort reduces the number of separate tests needed and makes day-to-day personnel administration simpler: broad banding of job titles. Probably the most famous example of the almost comical extent to which jobs had come to be tightly defined was in Philadelphia, which by the early 1990s recognized two classes of custodian: those who would wash walls below shoulder level and those who washed walls above shoulder level.⁴⁴ Those who wanted jobs washing walls above shoulder level, presumably, had to take a test whereby they proved they could climb a ladder. That's obviously an extreme case, but particularly for blue collar and entry-level administrative positions, the proliferation of job titles has come to be recognized as an area of serious system dysfunction.

Dozens of states and localities have collapsed clerical, custodial, and basic administrative jobs into broad job titles and have even begun broadening titles in more skilled positions, including those in information technology. This offers employees and managers much greater leeway in accepting and assigning jobs and work. In times of downsizing, it also allows employees and managers greater flexibility for placing employees "bumped" out of one job into a new one in another part of government.

Part of the goal of the Commonwealth's current "essential functions" study (an effort to update job titles and skill set descriptions) is to review opportunities for broad banding. The Human Resources Department (HRD) has already stated its commitment to pursue such opportunities expansively and aggressively and should be supported in those efforts.

Compensation and Benefits

In order to attract and retain the best and brightest, government obviously has to be competitive in what it pays and offers by way of health care coverage, pensions, vacation time, and so forth. A number of states and localities have made significant changes to their approach to compensation and benefits in order to focus more tightly on retaining good employees. Iowa, a few years ago, went to broad banding pay scales so that managers could offer a bit more money for top employees without having to bump them into new job titles or management positions.⁴⁵ Wisconsin now allows managers to make counter offers to information technology employees who have been offered other jobs.⁴⁶ Massachusetts has pursued a similar option for high-tech workers, although it was handled legislatively.⁴⁷ If it works for recruiting top talent on the technology front, then it's not unreasonable to think it might work for other positions in government where the job market is competitive.

Many states do regular salary surveys to gauge how competitive they are compared to both the regional private sector and public sector job markets. What is obvious from the experience of these states is that gathering the information is one thing, acting on it quite another. According to Washington State officials, it frequently isn't until there is a 20 percent disparity between what the state pays and what the market is offering that the state actually feels compelled to increase salaries for specific jobs.⁴⁸ The Massachusetts HRD, which does regular salary surveys and has established a fairly flexible compensation plan for its managers, should strongly consider building that same flexibility into how it attracts and rewards all its employees. As Wisconsin and Iowa have proved, this is not an impossible task even in a heavily unionized environment.

⁴⁴ Jonathan Walters, "The Chastening of Public Employees," *Governing*, January 1993.

⁴⁵ Jonathan Walters, "Flattening Bureaucracy," *Governing*, March 1999.

⁴⁶ Jonathan Walters, "Pocket Change," *Governing*, July 1999.

⁴⁷ Author interviews with Massachusetts Human Resources Division staff.

⁴⁸ Jonathan Walters, "Pocket Change," *Governing*, July 1999.

Discipline and Dismissal

In the public's mind, the most damning characteristic of a government personnel system is that even the most laggard public employees can't be fired. One of the more famous cases is the Hartford, Connecticut, firefighter who was fired multiple times for being drunk on the job. His job? To drive a fire truck. Each time he was fired, he was reinstated by the state's mediation board.⁴⁹ Those sorts of stories have become so deeply ingrained in the national consciousness that it appears even public sector managers now believe that public employees are unbeatable in the discipline and dismissal sweepstakes.

In fact, public employees can be fired; they are fired every day. Barry Scheinberg, a Connecticut labor lawyer, has a favorite saying: "Give me six months, and I can get God fired."⁵⁰ It's all a matter of proper procedure and documentation. It is true that it can take an extraordinary amount of time and commitment to remove non-performers who decide to dig in and fight, particularly when they have a union to back them up. In most systems, civil service laws or grievance procedures include lengthy and involved avenues of challenge and appeal. But effective, veteran public sector managers have little trouble getting rid of non-performers and most do that by sticking to the basics: For starters, they take the employee evaluation process seriously, and they rigorously apply "progressive discipline" procedures. Employees are given multiple chances to turn their performance around—chances that are well documented by management.

By far the most frequent trap that public sector managers fall into when it comes to removing or disciplining employees is failing to lay the groundwork. Indeed, it's commonplace for managers to ignore poor performers until they become so disruptive that the manager snaps. In such cases, though, there is seldom a paper trail to support decisions on discipline or dismissal. All too often, managers have pursued the path-of-least-resistance policy of punting come employee evaluation time, rating poor performers as "satisfactory" in order to avoid a confrontation. The fact that in Massachusetts "unsatisfactory" ratings are grievable undoubtedly discourages managers from giving them. Even in other heavily unionized environments, like New York, employees are only allowed to appeal poor performance reviews to a supervisor within their agency, not to turn such a rating into a full-blown grievance.⁵¹

So one obvious change that Massachusetts needs to make is to take job ratings off the list of what is grievable under collective bargaining agreements. But there are other, less controversial steps that can expedite disciplinary procedures. In Connecticut, for example, "facilitation" is being used to head off ugly, no-holds-barred personnel battles between labor and management.⁵² Under facilitation, labor can ask a neutral third party experienced in public personnel issues to hear cases and render a non-binding opinion. A facilitator will often point out to one side or the other that given the facts, taking a case all the way to arbitration—or to court—might prove both expensive and humiliating. Settling can be a graceful way out after the heat of an initial shoving match has cooled. The tool has proved valuable enough that management occasionally asks for facilitation on its own behalf—when managers come to realize they have a case that would probably be hard to win.

Massachusetts does encourage the use of alternative dispute resolution, which has the potential to speed up the resolution of disagreements over discipline or dismissal. But the system is entirely voluntary; employees are in no way compelled to look for a less contentious way out of a dispute.

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See the New York State Department of Civil Service's website at www.cs.state.ny.us/pio/contact.htm.

⁴⁹ Jonathan Walters, "The Fine Art of Firing the Incompetent," *Governing*, June 1994.

⁵⁰ Ibid.

⁵¹ Author interview with Al DeMarco, New York-based public sector labor relations attorney and consultant.

⁵² Jonathan Walters, "The Fine Art of Firing the Incompetent," *Governing*, June 1994.

Figure 1. New York's Expedited Process for Time and Attendance Cases

Traditional Arbitration

- Step 1: The employee is handed a notice of discipline.
- Step 2: The employee has 14 days to file a challenge.
- Step 3: If a challenge is filed, the employee's agency schedules a hearing before its internal labor relations representative.
- Step 4: The internal labor relations representative hears the case. More often than not, the representative's decision is appealed to binding arbitration.
- Step 5: The case is scheduled for a hearing before an independent arbitrator. Scheduling backlogs run from six months to a year.
- Step 6: Arbitration, which can involve lengthy and contentious findings, procedures, and testimony, can drag on for months.

Total time from filing the notice of discipline to resolution: Six months to a year and a half, sometimes longer.

Expedited Arbitration

- Step 1: The employee is handed a notice of discipline.
- Step 2: The employee has 14 days to file a challenge.
- Step 3: The case is scheduled for expedited arbitration within 30 days.
- Step 4: The case is decided on the spot by the arbitrator.

Total time from filing the notice of discipline to resolution: 30 to 60 days.

One of the most sensible and straightforward approaches to streamlining discipline has been adopted by New York State in cooperation with its unions. An analysis of grievances filed by employees revealed that "time and attendance" cases were by far the most common cause of friction between labor and management, eating up an inordinate amount of time, money, and energy. And so labor and management have agreed to a simple approach to the matter: Written into collective bargaining agreements in New York is that all time and attendance cases make one stop and one stop only, before an administrative law judge. The judge's decision is final and cannot be appealed. And there it ends. Employees can always take cases to court on other grounds, claiming discrimination or unfair labor practices. But the net effect of this system in New York has been to take hundreds of cases a year out of the regular grievance stream. (See Figure 1.)

Some might question whether labor in Massachusetts would ever go along with an expedited procedure. In New York, management bargained hard for the expedited system, which was adopted in the mid-1980s. Concerned about abuses of sick and personal leave, management threatened to make a reduction in sick and personnel leave a bottom-line requirement of an upcoming contract with the state's largest union, the Civil Service Employees Association. CSEA proposed the

expedited system for resolving time and attendance disputes in return for the status quo on sick and personal leave. Both sides agreed to try it on a pilot basis. It proved so successful that within a few years, the arrangement was made permanent.⁵³

A final observation about discipline and dismissal. Due process is critical to ensuring fairness and equity in any personnel system. Georgia, where all employees hired after July 1 are considered to be "at will," has since eliminating civil service reinstated a formal appeals system for disciplinary actions and dismissals.⁵⁴ Even private sector companies open themselves to serious liability if they don't have a written policy in place for pursuing discipline and dismissal that gives employees the chance to respond, or if they fail to follow their policies closely.

In the final analysis, it is incumbent on management to do the groundwork it takes for disciplinary actions to hold up under appeal—better yet, to work with labor on avoiding conflicts altogether. But the sad fact of public personnel management is that where management and labor don't get along, discipline and dismissal is always going to be the day-to-day battleground. Probably the best strategy is for management to work proactively with labor on building a solid positive working relationship at all levels. And where labor and management do get along, there is always the hope that some creative work might be done in the area of expedited procedures for discipline and dismissal cases.

⁵³ Ibid.; Author interview with Al DeMarco, public sector labor relations attorney and consultant.

⁵⁴ Jonathan Walters, "No Protection," *Governing*, August 1997.

The Role of Technology in Today's HR World

Technology has considerable potential to streamline human resources management. Massachusetts is to be commended for its new payroll and personnel management information technology effort. The legislature would be wise to support such improvements through adequate funding.

A whole range of current technological advances is transforming public sector HR management:

- Many states and localities are now listing all job openings on websites, even allowing individuals the chance to apply for jobs and even pay their civil service exam fees online.
- Computerization of written tests can transform current practices. Several states now have all tests for entry-level positions online, which means tests can be given continuously at remote sites with scores available immediately.
- Computerization of HR systems offers states the chance to do more sophisticated workforce planning, as Pennsylvania's personnel department has shown.
- Even the odious prospect of bumping is made more tolerable and considerably more manageable by information technology systems that allow agencies to map out the process on computer, rather than on paper.

Technology alone, however, won't fix civil service. Continuing the obsolete practices that are entrenched in civil service—only doing them faster or electronically—isn't really going to help governments stay competitive in current job markets.

Meanwhile, as Massachusetts refines its IT system, it needs to work closely with its customer agencies on ensuring that a centralized approach to information management adds value to each agency's day-to-day operations. There has been some grumbling in the field that certain IT functions agencies can now do fairly quickly on their own will be more cumbersome—perhaps even impossible—under the new centralized system. Massachusetts HRD officials, for their part, have stated a commitment to working with line agencies to iron out such difficulties.⁵⁵

Information about Pennsylvania's Office for Employee Relations can be found at the state's Office of Administration's website, www.oa.state.pa.us.

⁵⁵ Massachusetts Personnel Administrator's response to Pioneer Institute draft White Paper on Civil Service Reform, June 19, 2000.

IV. A RECIPE FOR REALISTIC PERSONNEL REFORM IN MASSACHUSETTS

GIVEN CURRENT TRENDS IN PUBLIC SECTOR RETIREMENT and in today's competitive labor market, this is an important time to make significant improvements in how civil service is administered in the Commonwealth. Past efforts to reform the Massachusetts personnel system, generally, and its civil service law, specifically, haven't been wildly successful. Reform initiatives have always turned into more of a political tug of war than a reasoned conversation about transforming personnel practices in the Commonwealth.

Given current trends in public sector retirement and in today's competitive labor market, this is an important time to make significant improvements in how civil service is administered in the Commonwealth.

The recommendations that follow, however, are not rooted in ideology. They are based on the experience of states and localities across the country that have found ways to attract and retain capable staff in an increasingly complicated and competitive labor market.

The overriding theme of the recommendations is granting the flexibility to agencies and localities to handle their own personnel affairs. The reluctance on the part of the HRD to extend flexibility to line agencies seems rooted in the conviction that the HRD is ultimately responsible for ensuring that personnel practice statewide complies with the admittedly estimable array of applicable state and federal laws. And currently, two federal consent decrees in public safety hiring *require* a heightened level of oversight. But other states have made the transition to greater flexibility for line agencies without running afoul of federal or state laws regarding hiring and general personnel administration. Even more to the point: Had the Commonwealth's personnel system been working as it should, the consent decrees wouldn't be in force in the first place.

The recommendations that follow are based on the premise that both labor and management will be able to set aside traditional mistrust and enmity and focus on what's best for government, taxpayers, managers, and employees.

Recommendations

1. Complete the transformation of the central personnel office from a control agency to a partner and consultant to its customers—the hiring authorities in the field. Using his authority under Chapter 31, Section 3, the personnel administrator should begin immediately—and in cooperation with hiring authorities across agencies—to turn over the job of evaluating, listing, and hiring staff to line agencies themselves (except, obviously, where federal consent decrees don't allow it). If the central personnel office wants to monitor agency performance, it should do so through spot audits. Some agencies may not want this freedom and should be allowed to hire the HRD on a fee-for-service basis. If the HRD doesn't think it has the authority to make this change administratively, then it should certainly work with the legislature to allow those agencies that want it the freedom to handle their own personnel affairs.
2. Offer additional flexibility to hiring authorities in the field. The personnel administrator should use his authority under Chapter 31, Section 3, to amend the “rule of three” and institute zone scoring across the board, and not just in relation to its continuous testing program.

3. Reduce the number of positions that are filled through written exams. Ideally, the HRD should extend to agencies the authority to develop their own mechanisms for evaluating candidates, such as experience, licenses, certificates, degrees, and interviews. Again, if HRD doesn't feel it has the authority to pursue this course under Section 3(e) of Chapter 31, it should pursue the matter legislatively.
4. Redirect the energy and resources now devoted to reviewing hiring decisions in the field and creating and administering tests and lists to strategic workforce planning and recruitment. The central office should create a deputy administrator position for strategic workforce planning and recruitment, to operate an office devoted to working with customer agencies on developing specific, targeted recruitment campaigns to help agencies staff up in areas of high competition and high need. That office should be regularly and independently evaluated by the agencies .
5. Grant hiring authorities in Massachusetts blanket authority to offer qualified candidates jobs on the spot, pending verification of experience and references.
6. Reach out to customer agencies to find ways to improve civil service. While the HRD does sponsor an annual conference for state agency personnel staff, there is no ongoing mechanism that allows the central personnel department's customers to have meaningful input into central office policies and procedures. Such a forum should be established, and not on a window-dressing basis.
7. Reach out to personnel offices in other states for ideas and ways to effect positive change in personnel administration. The Commonwealth should become an active participant in the joint National Association of State Personnel Executives/International Personnel Management Association Human Resources Benchmarking/Best Practices Project.
8. Allow municipalities to manage their own personnel affairs. Those municipalities that wish to opt in—particularly when it comes to hiring in public safety—should be allowed to. The central personnel office, through the state's chief elected executive, should continue to work to pass legislation that exempts cities from the state civil service system, with an option to sign back up on a title-by-title and fee-for-service basis.
9. Extend civil service status to all employees who have been working for state or municipal government for six months and who are considered to be in good standing.
10. Reengineer the employee evaluation system. Massachusetts should strongly consider adopting a system similar to Washington State's. There, labor and management have a comprehensive new evaluation system that includes peer review, the chance for employees to rate managers, a direct tie-in of job evaluation to agency mission, and questions about whether employees are getting adequate training and support. For such a system to work in the Commonwealth, labor is going to have to give up the right to grieve unsatisfactory job evaluations. On the flip side, management should be willing to open itself up for review by employees as part of a revamped evaluation system.

These recommendations are not rooted in ideology. They are based on the experience of states and localities across the country... [and] on the premise that both labor and management will be able to set aside traditional mistrust and enmity and focus on what's best for government, taxpayers, managers, and employees.

The State of Washington's Department of Personnel can be accessed at www.wa.gov/dop/statejobs.



11. Create broad band pay scales that would allow management more flexibility in what it can offer to attract high-quality job candidates initially and give managers some flexibility in how they reward veteran staff, as well.
12. Consider “portable” pensions for public employees. Allowing public employees to take accumulated benefits with them if they leave the public service after just a few years opens up a much wider avenue for the rich exchange of employees between the public and private sectors. Moving to a pension system characterized by defined contributions, versus defined benefits, is strongly worth considering. Both are matters that ought to be taken up by the legislature working in concert with the central personnel office, the Massachusetts Treasurer, and the Public Employee Retirement Administration Commission.
13. Streamline due process systems for disciplinary actions. The Commonwealth, on either a statewide basis or agency-by-agency basis, should analyze what types of grievances most typically end up before the Civil Service Commission or arbitrators. The personnel department should then work with organized labor on a *mandatory* mechanism that shunts such cases directly to an administrative law judge for a hearing and final, binding decision. Writing such a system into collective bargaining agreements could save both management and labor considerable time, trouble, and expense.
14. Beware broadening the purview of the Civil Service Commission. While it is understandable that the Civil Service Commission might feel compelled to hear cases brought by provisional employees—inasmuch as a significant portion of the state’s workforce is provisional—it sets a poor precedent. Likewise for the commission’s apparently expanding interest in hearing challenges to civil service exams—and even specific questions on those exams. To the extent that the Civil Service Commission does accept a wide range of cases, it should consider availing itself more freely of the option of diverting them to magistrates within the state’s Division of Administrative Law Appeals.

CONCLUSION

THIS REPORT DIFFERS FROM MOST OF ITS PREDECESSORS in one important regard: It asks very little of the state legislature, which has never evinced much interest in accomplishing reform of civil service. The recommendations instead lean heavily on the personnel administrator—in concert with organized labor—to take the initiative.

No doubt Massachusetts can continue to get by without making the changes recommended in this paper. But it is clear that the personnel challenges facing the Commonwealth in the next five to 10 years call for better than merely getting by. A 21st-century civil service system is the state's best hope for meeting those challenges.

Nationally, state personnel administrators have been aggressively and creatively using discretion available under civil service statutes to overhaul how states recruit, evaluate, and hire staff. If officials in Massachusetts decide that muddling through with an outdated system isn't good enough, then they should follow the lead of the dozens of jurisdictions across the country who are attracting the best and brightest—versus the best of the desperate—to public employment. Ultimately, the state owes it to taxpayers, to those who seek employment with state and local governments, and to those who day in and day out do the important work of state and local government, to regain its position as a national public employment bellwether. Adopting the suggestions outlined in this paper will set the Commonwealth firmly on the path toward regaining that leadership position.

ABOUT THE AUTHOR

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