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Pay grievances in the era of comparable worth: the case for change in Montana's classification grievance process.

Eric Trimble
The University of Montana

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PAY GRIEVANCES

IN THE ERA OF COMPARABLE WORTH:

THE CASE FOR CHANGE IN

MONTANA'S CLASSIFICATION GRIEVANCE PROCESS

By

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Approved by:

[Signatures]
Chairman, Board of Examiners
Dean, Graduate School

June 3, 1987

Date
"It is the nature of things to be unequal. One is worth twice, or five times, or ten, or a hundred, or a thousand, or ten thousand times as much as another. To think of them as equal is to upset the whole scheme of things. Who would make shoes if big ones were the same price as small ones?"

Mencius: Discourses
Circa 300 B.C.

"The value or worth of a man is...his price - that is to say, so much as would be given for the use of his power."

Thomas Hobbes, Leviathan
1651

"Equity is a roughish thing; for law we have a measure. Equity is according to the conscience of him that is chancellor; and as that is large or narrower, so is equity."

John Selden: Table Talk
1689

"He who pays the piper can call the tune."

John Ray: English Proverbs
1670
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Eric Trimble
March, 1987
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EXECUTIVE SUMMARY

The State of Montana is currently pursuing its statutory mandate for pay equity by implementing a new, point factoring method of job evaluation. An anticipated restraint on its successful implementation is the classification grievance process operated by the Board of Personnel Appeals in the Department of Labor and Industry. In its laudable efforts to balance the interests of management and labor, the Board's decisions over time tend to threaten the consistency of the existing classification system.

The present study analyzes ways in which the role and rules of the Board might be altered so that employees' rights are protected while preserving the integrity of the new job evaluation system. Without such modifications the goal of pay equity cannot be achieved.

Based on the analyses reported here, the following recommendations are made:

1. The Board and their Hearings Examiners must develop and accept structures to assure that appropriate restraint is exercised in reviewing the decisions of job analysts.

2. Both the Board and its Hearings Examiners must acquire a greater understanding of and appreciation for the application of the job evaluation methods of the Classification Bureau.
3. A number of changes of the Administrative Rules of Montana governing the classification grievance process are needed. Among these are:

(a) changes to narrow and make more explicit the grounds upon which a grievance is based;

(b) changes to improve the quality of job information provided by the grieving employee;

(c) changes to make available a less formal investigatory process as an alternative to a quasi-judicial hearing; and

(d) changes to add flexibility to the remedies offered by the Board.
CHAPTER I
INTRODUCTION

Statement of the Problem

The purpose of this paper is to describe the current pay grievance process available to state employees, to analyze its weaknesses, and to recommend reforms of the process that would both preserve employee rights and allow pursuit of Montana's statutory goal of comparable worth. The critical assumptions made in this effort are: first, that job evaluation technology in Montana government has grown in sophistication and acceptance beyond the limited approaches of the current grievance process; second, that the general goal of good government in Montana will be enhanced by grievance reforms that reduce the costs of the process while preserving employees' right to consistent treatment and management's right to manage; and, third, that Montana law requires pursuit of a far more explicit model of job evaluation than can be fairly or appropriately grieved within the grievance process as it now operates.

While dissatisfaction with Montana's pay grievance system has been voiced in the past, the addition of the goal
of comparable worth for state employees has added a new urgency to the case for grievance reform. The current grievance process is operating as an alternative classification system with unspecified rules of circumstance and inappropriate principles of compromise. Until the grievance process is nothing more nor less than a guarantee that job evaluation is done consistently and in line with the state's established methods of job evaluation, it will be a major barrier to the Department of Administration in its mandate to assure similar pay for similar work for all state classified employees.

Given the historical conflict in labor-management relations in Montana, it is assumed here that a relatively formal, quasi-judicial process with the involvement of an outside arbitrator such as the Board of Personnel Appeals is proper for Montana's government employees. The case will be made however, that unnecessary "legalism" can and should be removed from the process and that the time is right to revise the pay grievance process to reduce costs and improve outcomes while allowing the advance of job evaluation in Montana to a higher, more explicit level.

The Comparable Worth Context

In spite of the many voices in opposition to it, the theory of comparable worth with its closely related pay equity techniques has advanced steadily, though increment-
ally, in the decade of the 1980s. The persistence of the
debate over comparable worth as an objective in public
sector organizations suggests that no sweeping mandate
equivalent to the passage of the Equal Pay Act of 1963 may
soon be realized. Still, just as equal pay for equal work
was adopted by individual public jurisdictions before
federal adoption of the principle, so too has the principle
of equal pay for comparable work been adopted by various
public jurisdictions. The state of Montana joined this
growing stream in 1983 with passage of a law establishing
the objective of comparable worth in the evaluation of state
jobs.\textsuperscript{1}

The notion of comparable worth is best understood as a
two-tiered policy issue. At one level comparable worth
poses major social policy questions regarding systemic
discrimination against minorities and women in the work­
place. At this level comparable worth is defined broadly as
the elimination of racial\textsuperscript{2} or gender consideration in
determining the rate of compensation for a job. The main
topics of the debate at this level are primarily socio­
economic. Questions are raised as to whether the discrim­
inination is self-imposed or socially imposed on women and
minorities in the educational and career choices they make;
and whether the pay differences are most appropriately
addressed by new corrective social policy or existing
affirmative action approaches that promise to allow women

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and minorities to enter higher paying occupations.\(^3\)

The other level of the comparable worth policy issue concerns operationalizing the concept. It is at this level that public personnel practitioners have focused most of their attention. Perhaps the best operational definition of comparable worth is provided by Helen Remick:

> The application of a single bias-free point factor evaluation system within a given establishment, across job families, both to rank-order jobs and to set salaries.\(^4\)

This operational or pay equity aspect of comparable worth generates a quite different - though related - set of concerns than does the broader socio-economic aspect described above. Well documented in a wide range of research and literature,\(^5\) these concerns include: (a) questions about the technical plausibility of a job evaluation system that meets the rather restrictive terms posited by Remick; (b) controversy over who should choose the values and weights upon which the factor evaluation will be based; (c) concerns about which evaluative factors will be included or excluded and how they will be defined; (d) questions about job analysis both as to accuracy of the information and the added workload of supplying useable information to job analysts; (e) questions about fair implementation of equity based corrections;\(^6\) and, (f) concerns about the cost feasibility of such corrections.

Every public jurisdiction operates with a somewhat
unique blend of policy, law and process pertaining to job evaluation and pay. The addition of pay equity to a jurisdiction's particular compensation formula raises a variety of issues - many of which may be still unseen - that may represent effective barriers to realization of the comparable worth concept. If public organizations such as the state of Montana are to meet the objective of pay equity, all the implications of that goal on present policy, laws, rules and methods must be identified so that plans can be laid and any necessary adjustments made.

Thus, a central question that will be addressed throughout this paper is whether the present pay grievance process can be adapted to a job evaluation method built on the lines prescribed by Remick and other comparable worth advocates. The Remick prescription, as summarized earlier, demands job evaluation that is both open and explicit about the value judgments utilized and precise and reliable about the consistency and comparability of job evaluation results. As the State of Montana moves toward implementation of a pay equity approach, there is increasing urgency to the question of whether the existing grievance mechanism can be modified to accommodate the mandated change. This paper will contend that such changes are unquestionably feasible and considerable explanation will be put forth to suggest the direction of the needed reforms.

While the subject of pay grievance processes in general
has not been extensively studied in the personnel litera-
ture, Montana's process was reviewed by the Governor's
Personnel and Labor Relations Study Commission in 1982. The staff reports and the commission's final report on the
grievance issue provide a diagnosis and a suggested pres-
cription for a number of ills in the process. In many
areas, the problems with the grievance process identified in
1982 correlate with the adjustments that will be needed to
adapt the grievance process to a job evaluation method that
meets the pay equity standard. Indeed, the method of
quantified job evaluation proposed for Montana is a direct
outgrowth of the prescription for improvements made by the
Personnel and Labor Relations Study Commission. For that
reason, it follows that the scope of this paper necessarily
will include a discussion of both long-standing problems
with Montana's classification and wage grievance process and
anticipated problems or adjustments associated with imple-
mentation of the proposed Benchmark Factoring Method (BFM)
of job evaluation.

Chapter Outline

Following the introductory chapter, Chapter II discus-
ses the central issue of the paper in the larger context of
public personnel administration. In the third chapter the
discussion turns to the purpose and evolution of the classi-
fication grievance process in Montana state government, the
historical criticisms of the process, and an argument that reform of the process is still needed.

In the fourth chapter, various proposals are detailed for addressing perceived flaws in the present appeals system. The discussion will include necessary changes in law, rules, policy, procedures and approaches as they relate to various reform prescriptions.

Chapter V takes up the problem of accommodating a new, comparable worth job evaluation method, the Benchmark Factoring Method, within the existing grievance structure. The discussion centers on the feasibility of and strategy for implementing the changes identified. It also suggests the consequences of not implementing such changes. Finally, Chapter V summarizes and concludes the arguments contained in this paper.

In this effort, there is no presumption that the changes discussed here will perfect the grievance mechanism used in Montana. Nor is the question raised as to whether employees should have a grievance process available to them on matters of pay. The purpose here is simply to attempt to contribute to the evolution of Montana's young, centralized classification and pay system. The addition of pay equity as an objective of this classification system poses new challenges that will be outlined in the next chapter and that will only be met by a good-faith effort to recognize the need for change and to adapt to it.
Chapter I

1 Montana Code Annotated, 2-18-208 and 209.

2 The addition of racial as well as gender consideration to the notion of comparable worth is somewhat recent in most of the research and literature in this field. A working paper on the extent of pay discrimination toward minorities has been released in the fall of 1986 by Center for Women in Government, State University of New York at Albany, Drapper 302, 1400 Washington Avenue, Albany, New York. This study is based on a recently concluded exhaustive comparable worth study by the state of New York.

3 For an excellent and terse summary of the comparable worth debate primarily on this socio-economic level, see "The Comparable Worth Controversy" in New Perspectives, Spring, 1985, p. 28-31.


6 This is perhaps the widest reaching area of concern and, at the same time, the least documented. At issue here are such questions as whether only female dominated job classes should receive pay increases; whether only those classes subject to or not subject to a collective bargaining agreement should receive increases; whether so called "overpaid" classes should simply be frozen or reduced until others catch up; and whether the salaries of all employees should be protected from a decrease until they leave the position. It is likely that no general answer can be reached to these kind of questions since the circumstances of the particular jurisdiction tend to dictate their answer.

7 Montana Department of Administration, Personnel Division, Personnel and Labor Relations Study Commission,

CHAPTER II

JOB EVALUATION IN THE CONTEXT
OF COMPARABLE WORTH

The rights of people at work in government have expanded dramatically both in number and in kind over the past twenty-five years. An outgrowth of both the civil rights movement and the union movement, this expansion of employee rights has increasingly taken the center stage in the public personnel arena. Indeed, the growth and relative power of personnel sections in governmental organizations has risen as a direct result of ever expanding equality of opportunity and employee rights within management systems. Where the public personnelist in the United States was once primarily only management's agent for procuring or discharging employees, today she is the keeper of due process and the arbiter of equity in wide ranging labor-management relations.

In the relatively brief period of the past thirty years, American public service has moved in its approach to employee rights from a rigid "doctrine of privilege" to an era of due process so extensive that doctrine and principles have been replaced by individual case law precedents and dynamic "rules of thumb." While once able to define public
employment as a privilege subject to removal and to the arbitrary terms of management, the public employer today faces courts, laws and employees with an expanding notion of the rights of people who work for government.

The premise underlying this current era of due process in employment relations was well summarized by a federal court in 1966. In Hunter v. Ann Arbor, the court found that due process was necessary prior to the dismissal of a city employee:

When the effects of government action on the individual's interest are so wide ranging and basic, it is a constitutional requirement that the government's action not be based on certain types of motives and that it have some rational basis.

The central objective of this paper is a prescription for the maintenance of a fair and responsible employee grievance process for challenging pay decisions in a state government setting in which gender-free pay equity or comparable worth is an explicit goal. This objective can only be properly understood in the context of the present era of due process and widely expanded employee rights. It is the premise of the discussion here that the two components of this prescription -- first, that there should be a mechanism for grieving pay and job evaluation decisions and, second, that a governmental employer can and should use a pay equity model as a basis for setting salaries -- may be in direct conflict. Before detailing this premise of inherent conflict, the genesis of each component should be examined.
beginning first with the notion of pay equity in the public sector.

Pay Equity in Montana State Government

In 1983, the Montana State Legislature enacted into law Senate Bill 425. The bill directed the Department of Administration to:

work toward the goal of establishing a standard of equal pay for comparable worth. This standard for the classification plan shall be reached by: 1) eliminating, in the classification of positions the use of judgments and factors that contain inherent biases based on sex; and 2) comparing, in the classification of positions, the factors for determining job worth across occupational groups whenever those groups are dominated by males or females.

Additionally, the law requires the department to: report to the legislature the status of the study of the comparable worth standard and the extent to which Montana's classification plan and pay schedules adhere to or fall short of the standard of equal pay for comparable worth. The department shall make recommendations to the legislature as to what impediments exist to meeting this standard. The department shall continue to make such reports until the standard is met.

Sponsored primarily by two prominent female senators, this law was particularly advocated by women's rights groups and, more generally, by public sector unions. The debate over the law was largely educational and not confrontational. Most legislators simply sought information about the concept and the law passed both houses with relative bipartisan ease.
The policy guidelines offered in the law to the Department, though somewhat obtuse, are along the lines of the standard for pay equity described by Helen Remick and cited in Chapter I. To meet the guidelines of the law the department would seemingly need to "work toward the goal" of establishing Remick's "single, bias-free point factor evaluation system within a given establishment, across job families both to rank-order jobs and to set salaries."\(^6\)

By adding Section 208, which requires a report to each legislature on the progress of the Department "until the standard is met",\(^7\) the legislature did two things: (1) it specifically endorsed the notion that study and progress toward the goal should take more than a couple of years since the legislature meets biennially; and (2) it effectively gave permission to the executive branch to proceed on the road to comparable worth at whatever pace it might choose. While this section of the law does require desirable accountability of the executive branch in pursuit of the goal, it clearly weakens the state's legal commitment to comparable worth since it allows room for postponing progress indefinitely.

The state's commitment to comparable worth can thus be characterized as guarded, if not ambiguous. Still, the approach of the state's Classification Bureau has been to strive directly toward Remick's prescription for pay equity. While the efforts of the Bureau have been successful in
terms of developing a workable job evaluation system that meets Remick's parameters, the Chief of the Bureau, John McEwen, has noted: "We have found that arriving at a system that is agreeable to a variety of interests (i.e., workers, managers, policy makers and public interest groups) is both technically and politically hazardous and difficult."\(^8\)

The political hazards and difficulties encountered by the Classification Bureau in its pay equity efforts stem from the ambiguous commitment of the legislature, the executive branch, the unions, and women's groups to the concept of comparable worth. The technical difficulties derive essentially from the perceived effects of the more rigorous and explicit job evaluation criteria called for by Remick upon unions, managers, politicians and employees with an interest in the operation of the job evaluation system.

The political difficulties relate to matters that are largely outside this paper, and have been documented elsewhere.\(^9\) Still, some of the more notable sources of indecision over pursuit of pay equity in Montana can be summarized as follows:

1. The cost ramifications are not clear to the policy makers.
2. The law itself sends a mixed message to the Department of Administration as described above.
3. Unions and some non-organized employees have tried to gain from comparable worth revisions without losing any
of the advantages they have enjoyed in the current classification system.

4. The concept of comparable worth is relatively new and discussions of job evaluation are almost always confused and controversial. As a result many of the actors in the process of changing Montana's classification system are either ignorant, suspicious, misinformed or openly hostile.

5. The advocates of the comparable worth policy objective have been generally ineffective in Montana. Especially in terms of the more technical, operational dimension of pay equity, women's groups and unions have been largely silent at best and off the mark at worst. ¹⁰

6. Unlike jurisdictions such as the state of Washington and the city of San Jose, California, Montana has not had a headline-grabbing court challenge to its pay practices. ¹¹ As a result, the benefits of educating the public and politicians while politicizing the issue through the media have not been realized.

Certainly all these issues in combination contribute to the resistance encountered by the State in its efforts to implement a pay equity approach. Perhaps the most important factor, though, is the momentum of the status quo in the area of job evaluation and pay. One of the directors of a large state agency, for example, has been quoted in reaction to proposals to implement a pay equity approach: "Besides
the fact that it is the right thing to do, why should we do it?" Indeed, the general status of job evaluation, even before the era of comparable worth, has been cited as an example of Chris Argyris' organization pseudo-effectiveness - "a state in which no discomfort is reported but in which, upon diagnosis, ineffectiveness is found."  

The technical difficulties causing delay in implementing comparable worth are at once both more profound and more subtle than the political problems. The effect of adding structure and explicitness to an existing classification system predictably causes turmoil for all actors in the system. The problems that arise in this effort stem from the nature of job evaluation in public organizations. Moreover, these problems illustrate that the so called "technical dimension" of job evaluation readily touches political nerves within a public organization.

In the section that follows, the history of job evaluation and the assessment of its effects and defects will be presented. The purpose of this discussion is two-fold: to suggest behavioral reasons why any proposal to change job evaluation methods that promises greater consistency and explicitness will attract opposition; and to establish the context from which the many issues pertaining to job evaluation grievances arise. In short, the nature of job evaluation in public organizations must be detailed to fully comprehend why efforts to change it or to grieve its results
are fraught with contention. When that foundation is laid, the discussion will turn to the specifics of the pay grievance mechanism used in Montana's state government.

Job Evaluation: Its Genesis and Controversies

The role of job evaluation in public organizations has been and continues to be widely disputed. Its proponents have argued that it adds stability, efficiency, management capacity and a degree of democracy to the workings of government. The detractors of job evaluation have argued convincingly that job evaluation limits vital management flexibility, fosters conflict, and creates a separate dimension of dysfunctional activities designed to circumvent it. As Jay Shafritz has succinctly argued:

...it has long been thought that the classification process could aid in revealing organizational defects; yet upon closer observation it becomes obvious that it is frequently the classification system itself that creates these defects. As control devices, position classifications are doubly unsuccessful. First, they prevent program managers from having the discretion essential for the optimum success of their mission. Second, they generate an astounding amount of dysfunctional activity whose sole purpose is to get round the control devices. While the controls are frequently and successfully circumvented, the costs of such activity take away resources from the organization's prime goals.

A review of the history of job evaluation illustrates the unique and contentious role of the practice long before the era of comparable worth. Primarily an American invention, modern job evaluation was developed by the scientific
management advocates of the early 1900s. In their effort to find the one best way to efficiently manage organizations, the scientific management school developed approaches to job evaluation that were similar in many respects to the time and motion studies that they also pioneered. Like tasks that could be broken into small steps to be carried out by specialized machines, the scientific managers viewed jobs as abstract collections of duties that could be performed by interchangeable workers.\textsuperscript{15}

While the scientific management practitioners developed the basic techniques of modern job evaluation, its spread throughout government organizations is a result of the civil service reform movement which began late in the 1800s. Intent on obtaining what has been called the "quest for neutral competence,"\textsuperscript{16} the civil service reformers saw job evaluation as a way to further separate and insulate politics from the administration of government.

As Stahl has observed, the job evaluation model developed in the United States in the early 1900s represented a democratic and egalitarian reform of management practices.\textsuperscript{17} In Europe, by contrast, job evaluation and pay practices were based on the social rank of the employee. A person's pay was largely a reflection of her status rather than her duties and responsibilities. By focussing on the work performed rather than the person performing the work, the American model promised equal pay for equal work to employ-
ees and greater efficiency to employers. At the same time the model reflected the ascendent American political and social value of egalitarianism.

The principles of job evaluation explicated by the civil service reforms were reflected in the 1920 report of the Congressional Joint Commission on Reclassification and Pay:

1. That positions and not individuals should be classified.

2. That the duties and responsibilities pertaining to a position constitute the outstanding characteristics that distinguish the position from, or mark its similarity to, other positions.

3. That qualifications in respect to education, experience, knowledge, and skill necessary for the performance of certain duties are determined by the nature of those duties. Therefore, the qualifications for a position are important factors in the determination of the classification of a position.

4. That the individual characteristics of an employee occupying a position should have no bearing on the classification of the position.
5. That persons holding positions in the same class should be considered equally qualified for any other position in that class.¹⁸

The basic features of job evaluation systems stemming from the efforts of the civil service reformers are:

1) **Job Analysis** - Positions are studied by gathering detailed information about the work performed through interviews, observations and/or review of documentation such as position descriptions and organizational charts.

2) **Factoring or Allocation of Jobs** - When job-content is established, pre-established standards are applied to the job to determine comparability. These standards are typically either compensable factors, class specifications or a combination of both. In systems such as Montana's, which use the traditional approach to job evaluation known as position classification, jobs are allocated to the most appropriate class on the basis of comparison to various class specifications.

3) **Relating Job Evaluation Results to a Pay Schedule** - Once the job has been evaluated and/or allocated to a class, a pre-determined schedule will convert the result to a pay grade. In some job evaluation schemes this process consists of conversion of
point scores to a pay grade. In traditional classification systems grades are assigned to classes in advance based on comparability between classes or market surveys of prevailing wages.

At first glance, the process of job evaluation is simple, logical and uncomplicated. As the critics of the process have argued, however, its simplicity may be its greatest shortcoming. This criticism is supported by the history of job evaluation. In essence, the developmental history of job evaluation ended around 1920 despite the fact that job evaluation practices have flourished and are now pervasive in public and private organizations. As Shafritz has argued, while organizational theory and management techniques have marched on, job evaluation has remained static.19

It is true that a number of technical advances have improved the reliability and acceptability of job evaluation methods since 1920, but the scientific management premises upon which these methods rest, have not changed. Shafritz details a wide range of "dysfunctional" activity spawned by the failure of job evaluation to adapt to advances in industrial psychology and other social sciences:

Because the most basic doctrines of position classification were established prior to World War II, current practices effectively ignore many of the advances in management science and theory that have occurred since then. What other professional
field of endeavor in the United States is so backward? A physician couldn't practice medicine today with the medical knowledge of the 1920s. An engineer or architect could not design very much for today's world limited to the technology of the 1930s. Yet this is exactly what public personnel administrators are doing to the employees of their jurisdictions - engaging in a presumably professional practice while using a technology and tools that are 40 years out of date. While position classification was widely hailed as a managerial tool that would promote equity, it has retained its popularity long after the fiction of its equity has been exposed, because of its usefulness as a control device. Obviously, this is inefficient. 20

Even if one accepts only the direction of Shafritz's argument and not its every tenant, it is clear at a minimum, that there are divergent interests in the outcomes of job evaluation. The major interested parties and their likely behavior in a job evaluation system can be summarized as follows:

Managers and Supervisors

Managers and supervisors want a job evaluation system that simplifies pay practices and work assignment planning while allowing them near total flexibility in applying it. Their concern is far less for equal pay for equal work, than it is for optimal pay for those who work for them. Toward the latter end, they will spend hours embellishing and re-embellishing job descriptions, organizing and reorganizing work units and as Shafritz argues, even lying to obtain their objectives. 21 Yet, when invited to provide input into the standards upon which job evalua-
tions are based or to comment on an evaluation that they do not care about, the same managers often find they have neither the time nor the knowledge to do so.

**Employees**

Employees are especially skeptical of the attempt of job evaluation to separate the person from the position. They know that they bring ideas, approaches and skills to their tasks that set them apart even while the job evaluation methodology systematically says their jobs are the same as others. They generally have a greater interest in equity than supervisors. In most cases, even if they are indifferent about the criteria used, employees will accept the evaluation of their job to the extent that they perceive it to be equitable with the evaluation of the jobs of co-workers with which they are familiar.  

Since the bottom line of job evaluation is the setting of salaries, a certain portion of workers with a financial need will challenge or game the job evaluation system to obtain a pay raise. Thus, the attitude of employees toward changes in the methods of a job evaluation system is based primarily on their perception of the equity of the results of the change and, secondarily on the effect of the changes on their own pay.

**Public Employee Unions**

Public employee unions typically contend that management controlled job evaluation systems are inherently unfair
and should be the subject of collective bargaining. They contend that fairness and consensus about the relative worth of jobs can only be established within the legal framework of collective bargaining agreements. Few public employers, however, are obligated to bargain job evaluation. In most settings, the operation of the job evaluation method is portrayed by unions as a management prerogative from which employees need protection. As a result, unions have attempted to sell membership in the union partly on the basis of services provided to employees in protecting their interests under the job evaluation system. In Montana and other states, these services include providing counsel to union members who grieve their classification and influencing the development of job evaluation standards and rules. In Montana, the interest of a given union in changes to the system of job evaluation appears to reflect whether that union has successfully obtained the desired results from the existing approach or whether they perceive an opportunity to improve their position from the changes. Those unions that have extensively shaped the hierarchy of jobs to the advantage of their members through the grievance process have been most steadfast in their opposition to change.

Job Analysts

The practitioners of job evaluation - job analysts - tend to develop an attitude of "job evaluation right or wrong."
As the columnist, Mike Royko, has observed

"It is the firm conviction of many people who have spent years studying problems of pay administration that there is only one way to do position classification, and that is to do it right—full, one-hundred percent, applied-to-every-case, right. It means, especially doing it right when it hurts—when it means, for example, losing a valuable employee, or not being able to hire an outstanding candidate, or causing someone a financial hardship or when it just means a bit of extra work for the bosses. Over the long haul, an organization benefits from facing up to such unpleasant decisions... The point may seem lost at times, but there is a great deal to be said for the argument that the classification function best serves an organization when its technical decisions are always made to stick".  

To the extent that they take their jobs and themselves seriously, job analysts inevitably develop the belief that the job evaluation system, if applied with righteous consistency, will produce benefits for the organization. Still, to the degree that they are aware of the dysfunctional activity which they seem to ignite wherever they go, job analysts often come to recognize the need for and advantages of change and improvement. Indeed, cycles of change in job evaluation methods have become the hallmark of most job evaluation schemes in state governments. Job analysts typically seek ways to modify their methods to add flexibility and increase acceptability by managers and employees, while preserving the larger mandate of equity and consistency. As a part-time technician of change hoping to marginally improve the job evaluation machinery, the job analyst can use the promise of "a better way" to deflect resistance and address dysfunc-
No matter what method of job evaluation is used by an organization, the process rests on a series of subjective judgements. The job analyst in most jurisdictions determines the relative worth of a job on the basis of a number of discreet, evaluative criteria. These criteria, called compensable factors, are of necessity defined only generally and are thus open to recurring debate. Typically, the factors include

- the kind of work and the knowledge and skills necessary to perform it;
- the latitude with which the work is carried out;
- the degree of control and review exercised with respect to the product;
- the consequences of the work, or the responsibility it carries;
- the degree to which direction of the work of others is entailed; and
- the ultimate accountability and relationship to other activities that are involved.

While this list of factors is only a general representation of those used in most jurisdictions, it does suggest the subjectivity and open-endedness of the evaluation criteria. Consider for instance the second criteria concerning the latitude with which the work is performed. The laundry-room worker might argue that she has complete latitude - that since her training period no one has ever intervened in her decisions about how she does her work. The budget analyst who seeks to rationalize and justify a $25 million budget would, if honest, concede that her work process is
frequently reviewed by her supervisor and that the product of her work is scrutinized and often dramatically revised both within her organization and by the governor or the legislature.

Yet it is almost certain that the job analyst will rate the budget analyst higher than the laundryroom worker in terms of latitude. No matter what rationale is used for doing so (and in most job evaluation systems there would be ample rationale available), what is instructive about this example is that, even in distinguishing widely divergent occupations, a considerable degree of sophistication and explanation is needed from the job evaluation method. If the laundry-room worker happens to be dissatisfied with her pay or her employer, and intent upon testing the "science" of the job evaluation process, the degree of sophistication required will multiply and intensify.

Additionally, given the kinds of subjective decisions that lead to evaluation of a job, the credibility of the job analyst rather than the evaluation result itself can easily become the focus of contention. In nearly every case the holder of the job, the employee, is far more expert than the job analyst on all matters pertaining to her particular occupation. The job analyst knows the evaluation method; the laundry-room worker knows laundry. Conflict typically is heightened by an inherent language problem between job analyst and worker. While the worker desperately wants to
talk about how deserving she is of a pay increase, the job analyst responds with seemingly obscure and evasive inquiries about latitude, consequence of error and task variety. When the occupation under review is highly skilled or technical, such as systems analysis or forensic chemistry, the credibility of the analyst in truly understanding the work tends quickly to become the point of contention rather than the proper evaluation of the job.

When one adds to these problems of subjectivity, language and analyst credibility, the divergent interests of the actors in the job evaluation system as explicated earlier, an equation for persistent conflict emerges. The discussion in the next chapter will suggest that a classification grievance process can become perhaps the ultimate source of conflict and dysfunctional activity spawned by job evaluation. But, whether the issue is a grievance of a job evaluation decision, a change in job evaluation method, or whether a job evaluation system should be initiated, debate seems inevitable and along predictable lines. The outcome of the debate will vary according to the strengths and weaknesses of management, unions, employees and personnelists within a public organization and will offer an elucidating glimpse of the organization's internal workings and values.

Montana as a Case Study in Job Evaluation Revision

After just six years with a centralized job evaluation
system in operation, Montana's State Personnel Division in 1981, proposed adoption of a point-factoring job evaluation method to replace its existing qualitative approach. As earlier noted, this effort was initiated in part to comply with the state's comparable worth laws. It is of equal or greater significance, however, to note that major changes in Montana's system have been proposed almost from its beginning in 1975.

In 1978 the original point factoring approach was replaced by the existing qualitative, position classification method. This change was conceived by the Classification Bureau as a means of increasing the sophistication of job evaluation practices to make the system easier to defend. Within the first three years of adoption, Montana's system had attracted a wide range of increasingly valid challenges from the management of executive agencies, from employees both informally and through grievances, and from employee unions through both grievances and collective bargaining. The present qualitative system was adopted by the Classification Bureau with little fanfare or input from users.

For the most part, the 1978 revision was successful in making the system more defensible for two main reasons: first, new job evaluation factors added to the system raised the level of analysis and the language of decision-making used in comparing jobs to a degree of sophistication beyond
that of the users of the system. The advantage in justifying evaluations thus shifted back to the job analysts where it had been in the first year or two of implementing central job evaluation. Second, the system was still young enough that few users understood the implications of the changes. As a result, no particular opposition arose even after the users of the system discovered the changes engendered by the new system.

Just four years later, the banner for revision was raised again in the Personnel Division. This movement for change, which is still pending implementation, stemmed mainly from a Personnel and Labor Relations Study Commission formed by Governor Ted Schwinden soon after he was first elected governor in 1980. These proposals were more technical than the broad social, egalitarian objectives of comparable worth. The changes envisioned were based on the state's experience with job evaluation primarily from 1978 until 1981. The problems addressed by this Study Commission (hereafter called, the Commission) are a near textbook reflection of the controversies described in the prior section of this paper. Essentially, the Commission reforms were aimed at five main criticisms of the existing system:

1. the decision-making process is too subjective;
2. the system is hard to understand and difficult to explain;
3. the grade relationships are not equitable;
4. the system is not suitable for evaluation of all
types of positions; and
5. the system is easy to manipulate.\textsuperscript{33}

The Commission's reform proposals reflect the concerns
of the four major actors mentioned earlier - management,
unions, employees and personnelists. The policy question of
whether central classification should continue was largely a
given assumption in the process. The Governor made it clear
that the Commission was to speed the evolution of job evalua-
tion by designing major improvements to it. In Governor
Schwinden's words in opening remarks to the Commission,
"It's past time for tinkering; we need a major overhaul in
the state system."\textsuperscript{34} The response of the Commission was a
clear reflection of this mandate. The Commission made the
following recommendations for change:

Maintain the current classification system and
proceed with planned and existing efforts to
enhance it by introducing quantitative methods
where practical as quickly as time and resources
allow. (Vote: passed unanimously).

Enhancement measures planned by the Personnel
Division:

1. Phased introduction over a two and one-half
year period of quantitative methods which will
build on strengths of the current system (maint-
taining the five primary factors of the current
factor comparison method) but use the best features
of the quantitative Factor Ranking and Hay Guide-
chart methods. These include:

a. Separate but coordinated and consistent point
factoring systems for major occupational
groups to better meet the needs of each group
as found in the Factor Ranking System.
Example: Group 1 - executive managers, Group 2 - professional, administrative and technical employees, Group 3 - labor, trades and crafts, Group 4 - clerical, office machine operators and technical employees, Group 5 - special occupations: physicians, attorneys, teachers, law enforcement.

b. Use of classification advisory committees for each occupational group comprised of agency representatives who are employed in, supervise, or are familiar with occupations in the group as found in the Hay Guidechart Method. These advisory committees are to monitor the development of the factor ranking system prior to its implementation, assist the Personnel Division in evaluating classes, recommend grade levels for classes, and assist in allocating positions to classes.

2. Delegation of position classification authority to agencies which demonstrate the capacity to exercise the authority coupled with post-classification audits by the Personnel Division to maintain consistency across agencies.

3. Implementation of these measures with existing staff utilizing staff time saved by the delegation measure.

The Commission also studied the operation of the classification grievance process in Montana, but in the last analysis was unable or unwilling to tackle the issue for reasons that will be discussed in the next chapter. Generally, the view seemed to prevail that by addressing problems within the job evaluation method most, if not all, the problems in the grievance process would subside.

It is now four years since the Commission issued its recommendations. The State Personnel Division has completed the process of developing the recommended quantified methods. Pay equity goals of comparable worth have been incorporated
in the changes. Meanwhile, as the next chapter will suggest, many of the defects in the pay grievance process persist and no official effort to address them has materialized since 1982. The prospects for implementing change in the grievance process, the job evaluation method, or both, remain unclear.

The Montana experience with reform of job evaluation suggests that the momentum for change is extremely difficult to maintain. At the outset in 1981 policy-makers and elected officials, unfamiliar with the history and nature of job evaluation, appeared determined and able to bring about needed reform. Their approach to the task was based on an erroneous willingness to view job evaluation as the equivalent of any other management system, such as those for purchasing or accounting. But, in Montana, as the various interest groups began to respond to the reform proposals, and the contentious nature of job evaluation materialized, the momentum for reform has steadily been depleted. The temptation to let lie the sleeping dragons of job evaluation has become nearly irresistible.

In the rest of this paper the case will be made that change in Montana's job evaluation method and the related grievance process is vital and possible. The case for change of the method, having been well made by others, is here adopted as a premise. Even apart from the proposed change in job evaluation method, the need for reform of the formal grievance procedure is longstanding and should be pursued on
its merits. The focus will thus turn to the pay grievance process with the following basic assumptions made:

1. That Montana's job evaluation practices have grown in sophistication and acceptance beyond the limited approaches used in the current grievance system;

2. That Montana law requires pursuit of a pay equity model that cannot be fairly grieved within the grievance mechanism as it now operates; and

3. That the goal of good government in Montana will be enhanced by grievance reforms that reduce the costs of the process to management and the appeals board while preserving management's right to assign work efficiently and employees' right to be treated consistently.

Chapter Summary

Dramatic changes in the public workplace stemming from the civil rights movement, the union movement and the workforce itself have elevated the expectations and the actual rights of public workers. Like management practices for selection, advancement and discharge, pay practices have now entered the center stage of scrutiny primarily through the movement for comparable worth.

The pay practices of the State of Montana, which include an expansive formal employee grievance mechanism, have not escaped this scrutiny. A major effort has been ongoing in Montana to achieve both pay equity and technical improvement.
of its job evaluation system. To understand the issues raised and the difficulties encountered by this effort, and to understand the difficulties that can be expected in trying to revise the grievance process, a review of the history and nature of job evaluation is vital. Job evaluation, more than other central management systems is subjective and rife with disputes from all corners of an organization. Any proposal to change the formal grievance mechanism of Montana's job evaluation system must be informed by the relatively short history of job evaluation and pay grievances in Montana if the proposal is to have a serious chance of success.
FOOTNOTES

Chapter II


3 Montana Code Annotated, Title 2, Chapter 18, Section 208.

4 Ibid, Section 209.

5 See John H. McEwen, "Job Evaluation and Comparable Worth in a State Setting," a paper to the 47th National Conference of the American Society for Public Administration, Anaheim, California, April, 1986, p. 13-14. As McEwen indicates, the position of the major public employee unions on Montana's attempts to obtain pay equity has been a check-erboard one. Experience to date indicates that the unions have a surprisingly strong investment in preserving the status quo in job rankings - a fact that most likely reflects the advantage they have had in shaping that ranking through the grievance process.

6 Remick, p. 377.

7 Montana Code Annotated, Title 2, Chapter 18, Section 208.

8 McEwen, p. 2.

9 See McEwen, "Job Evaluation and Comparable Worth in a State Setting" and Tewolde Habtemicael, "Equal Pay for Work of Comparable Worth and the Case of Montana State Government". Both documents suggest numerous examples of the arguments and barriers that make the task of pay equity difficult in Montana State government.

10 An example of the kind of misinformation within women's groups who allegedly advocate comparable worth came
in the testimony of a spokesperson for the Intergovernmental Coordinating Committee on Women in November, 1984, in a public hearing on adoption of a point-factoring system. While giving the standard critique of pay discrimination in the U.S. workplace, early in the testimony, the spokesperson concluded with a critique of the state's proposed method on the grounds that it ignored the wage standards of the open job market. The net result was not only confusion of the issue, but the appearance that the Committee opposed rather than supported efforts to obtain comparable worth.

It is a commonly ignored fact that one serious pay equity suit was brought against the state's pay practices in 1983. In the case of Boland, et al, v. Montana State Department of Social and Rehabilitation Services (DC Mt., 1983) CV 81-261, Blgs. A group of county welfare eligibility technicians, almost exclusively female, claimed illegal gender discrimination under the Equal Pay Act. The case had been processed through the classification grievance system prior to filing the federal claim. The grievants claimed that their work was comparable to that of employment interviewers in the state's Labor and Industry Department, but that because the interviewers were nearly all male, they were paid two grades (about 26%) more than the female eligibility technicians. A pre-trial settlement was obtained in this case and the basic grade disparity, with some change, was allowed to continue. Neither the press, the women's groups nor the unions effectively publicized this case despite the fact that it had all the elements of more notorious comparable worth challenges, such as the contemporaneous suits against the state of Washington and the City of San Jose.


Shafritz, p.5.

Ibid., p. 60-62.

Ibid., p. 63.
17 Stahl, p. 41-42.


19 For the best comprehensive discussion of this argument see Chapter 6 of Shafritz, p. 60-73.

20 Shafritz, p.62.

21 Ibid., p. 53


23 In Montana, which has one of the more expansive collective bargaining laws in the United States, job evaluation was a mandatory subject of bargaining by statute from 1975 until 1977. Dissatisfaction with the inequity introduced by mandatory bargaining and with the advantage given to unions in attracting new members, led the state's legislature to change the law to make job evaluation a permissive bargaining subject in 1977. Minnesota's state government operates most permissively of all the states in this area. Essentially, in Minnesota all job evaluation and pay matters including comparable worth adjustments, are accomplished under the auspices of collective bargaining.

24 The Montana Public Employees Association (MPEA), the state's largest union with about seven thousand members is the main example. The MPEA has had the greatest involvement of all unions in providing input into the development and operation of the classification system. During public hearings on proposed changes to the job evaluation system in Montana in December of 1984, MPEA strongly advocated the status quo. The union contended that ten years of appeal efforts and expense had gone into establishing existing relationships in the job hierarchy and these relationships were thus, too valuable to disrupt.


26 This point was especially well made in testimony before Montana's Personnel and Labor Relations Study Commission in 1982. Classification managers from three different states were invited by the Commission to conduct an evaluation and make recommendations for changing Montana's classification system. The representative from Wisconsin especially emphasized the need to reverse "grade creep" and
purge other "impurities" from an evaluation system through periodic method reviews and changes. He stated that in Wisconsin's eighty year history of job evaluation, such change has been recurring and beneficial.


28. Montana's current job evaluation method, much like the federal method, adds to the analysis of an employee's latitude, consideration of the extent to which guidelines or standard practices address all procedures and eliminate or diminish discretion or latitude.

29. A clear example of this sophistication can be seen in a recent grievance filed by a Montana state employee. The employee served interrogatory questions upon the Classification Bureau that included the following: "From Defendant's (Classification Bureau) 1980 evaluation of the position currently identifiable as Investigator, Criminal, Grade 16, please (a) specify how Defendant determined what level of judgement was involved for incumbent of said position or any other investigator or law enforcement officer in being armed or not armed; (b) specify the details of the determination made; (c) specify all objective criteria used in making the determination; (d) specify the details of the determination made; (c) specify all objective criteria used in making the determination; (d) specify all subjective criteria used in making the determination; (e) list all instances, as of the 1980 evaluation, where an incumbent of said position (1) used a firearm or other weapon in self defense or in defense of an innocent third party; and (2) was unarmed and was threatened with a firearm or other weapon; and (f) list (1) each source from which or from whom Defendant obtained the information used in making the above determination; (2) the location and custodian or the address and telephone number, as appropriate, for each source; and (3) the information received from each source." (Classification Bureau Appeal File #1646).

30. The problems faced by job analysts in communicating their findings are classic illustrations of what Ralph Hummel has called "the language of bureaucracy." The language of job analysts is, like Hummel's bureaucratic specialized language, "designed to insulate functionaries from clients, to empower them not to have to listen, unless the client first learns the language. For a client who has learned
the bureaucrat's language is a client who has accepted the bureaucrat's values. Language defines both what problems we can conceive of and what solutions we can think of. Once a client uses the bureaucracy's language, the bureaucrat may be assured that no solutions contrary to his interests and power will emerge from the dialogue."


31 When the state's general classification plan was implemented in 1975, classification decisions were, by law, a mandatory subject of collective bargaining. This law was changed in 1977 to list classification decisions as a permissive subject of bargaining. From 1975 to 1977, while the opportunity to force bargaining existed, the state's largest blue collar unions and the Liquor Store employees, managed to gain separate classification schemes that allow them to earn considerably more than they would on the state's general plan. While this inequity still exists in the pay system, it may well have been the salvation of general classification since it allowed two employee groups with powerful union roots to deal with all pay issues through collective bargaining rather than the classification grievance system. Had these groups been forced to fight classification in its infancy, the classification system may have been a much weaker process today - if it had survived at all.

32 The most notable difference between Montana's experience from 1975 to 1981 and the normal controversies of job evaluation stem from its short history in the state. Prior to 1975, state agencies had a free hand in setting pay. When this discretion was lost, many agency managers resented centralization of pay setting. As a result, in the early years, managers were nearly as critical as employees. Indeed, many employee pay grievances in the initial years were encouraged and supported by agency management even though management had no direct access to the appeal process.

33 McEwen, p.2


CHAPTER III
PAY GRIEVANCES IN MONTANA STATE GOVERNMENT

Overview

Given the degree of conflict and the potential for manipulation ascribed to job evaluation in the previous chapter, it is understandable that almost every job evaluation system includes some kind of formal mechanism for challenging or appealing the results of the particular system. Experience of public organizations with job evaluation confirms the need for a grievance mechanism for two general reasons: 1) to protect employee's constitutional rights to due process and practical interests in the job evaluation system; and 2) to provide an impetus for proper maintenance and use of the system by personnelists, managers and policy makers.

The first purpose, protection of the employee's rights and interests, is an obvious one. Few of the instruments of modern bureaucratic organizations strikes so personal and sensitive an area as the determination of one's pay. Pay decisions can never be fully dispassionate. The Fourteenth Amendment of the U.S. Constitution assures that no person's life, liberty or property can be deprived without due
process. As a quasi-judicial process, the pay grievance mechanism can provide this constitutional due process guarantee.

In the American work force, an employee's level of pay satisfaction is largely a matter of perception:

"...every man expects a certain relationship between, what he puts into his work in terms of effort, skill, etc., and his outcome, what he gets in terms of pay and other forms of satisfaction. When an individual compares himself to another person, he looks at his own inputs and outcomes in relation to those of the other person; for example, if two individuals receive the same pay, but are unequally qualified, then both parties may suffer from cognitive dissonance, even the man who is relatively overpaid. The cognitive dissonance hypothesis includes a prediction that when people suffer from such dissonance, they take steps to reduce it."

Edward Lawler, Rensis Likert and others have shown that pay dissatisfaction will predictably motivate employees to action. Since pay satisfaction has been shown in various studies to rest on one's perception of equity more than on any expressed, rational basis of the level of pay, it follows that pay dissatisfaction will befall any classification system. The pay grievance mechanism channels the dissatisfaction toward some version of resolution.

The second purpose of a pay grievance mechanism has more subtlety. Personnelists endorse and incorporate pay grievance procedures because grievances are a source of corrective feed-back that allows the system to adjust to change in the workplace and to discover inequities that have been masked for any number of reasons. To illustrate,
consider this list of a few of the more prominent benefits that a job evaluation system can gain from grievances:

1. An effective grievance channel can move deadlocked decisions on to resolution. Often, the burden of preparing position descriptions or disagreements over work assignments stifles the job evaluation process. Also, when agencies disagree with the evaluation decision they frequently resort to delay tactics that can be countered by an appeal mechanism.

2. The grievance process focuses decision-making on relevant, job evaluation criteria. Any job evaluation decision can be readily clouded by issues that seemed to an agency or supervisor to be related when, in reality, they are not. Frequently concerns about availability of budgeted funds, the performance, gender, race, personality, honesty or seniority of an employee, and/or collective bargaining issues will influence either the information provided for job analysis or the willingness of management to request a reclassification. By invoking the appeal process, the employee can bring the relevant job evaluation issues forward in a timely fashion while eliminating the tangential issues peculiar to his or her organization.

3. The grievance process assists the job evaluation system by identifying changes in the duties of a job. Especially in an era of rapid adoption of new technologies, it is difficult for personnelists and even for supervisors to discover and understand the implications of change. If an agency does not routinely review the evaluation of their jobs, changes in the work can be identified and evaluated through an employee's grievance. Staying abreast of change is the relentless challenge for any job evaluation system and to the extent that grievances aid this effort, personnelists value the process.

4. Perhaps most importantly, an effective pay grievance avenue adds credibility to the job evaluation process. Job evaluation systems, as described in Chapter II, must balance inherent subjectivity with consistency and equity. In short, the job evaluation process is glued together by system-
ization. Personnelists who maintain the system thus value grievances to the extent that a complaint will reveal and eliminate an inconsistent evaluation. Again, the employee's perception that the evaluation system promotes equity and consistency is the key to pay satisfaction and satisfaction with the job evaluation system. At the same time, the number and kind of grievances in the job evaluation system can be an important form of feed-back to personnelists on the general effectiveness and acceptability of the evaluation system.

Origins and Structure of Montana's Classification Grievance Process

Montana's classification wage grievance procedure was born with the Classification and Pay Act passed by the 1973 Legislature. The structure of the grievance process was heavily influenced by the politics of passage of the act. Montana has traditionally had a strong political role for both public and private unions - especially in comparison to other similar western states (see Appendix A). Because job evaluation is a management system which enhances the power and control of management, the unions representing Montana's state employees were, for many years, unwilling to support a centralized, job evaluation system.

The early 1970s was an era of sweeping state government reform and modernization in Montana. A new constitution was adopted and a major executive reorganization redesigned the structure of state operations. Following failed attempts in the 1950s and the 1960s to develop a job evaluation plan, interest was rekindled by the changes of the 1970s. At the
same time, public employees saw the era as an opportunity to institutionalize public unionization by passage of one of the most comprehensive collective bargaining laws for public sector workers in the United States. Thus, the proposal for centralized job evaluation became a political bargaining chip defined as equal in value to the collective bargaining law.

The Collective Bargaining Act, passed by the 1973 Legislature, was not opposed by management primarily because union interests had agreed to support or not oppose the Classification and Pay Act. The existence of the Classification and Pay Act provided insurance to management that collective bargaining would be structured and somewhat limited by vesting pay decision authority in the Department of Administration. The union's concern about the degree of unilateral control of pay setting by management was offset by the legislature in at least two ways: first, by providing in 1973 for a highly discretionary classification and pay grievance process to be administered by the Department of Labor and Industry; and second, by providing in 1976 for mandatory bargaining of "Anything relevant to the determination of reasonable classifications and grade levels for state employees..."

The latter of these two approaches, the provision for mandatory bargaining of classification, was repealed by a later legislature. The impact of this brief period of
mandatory bargaining substantially affects the present classification system in ways that are beyond the scope of this paper. The first approach, however, bears eminently on the topic here. To understand the criticisms of the grievance process that will be discussed later and to evaluate alternatives for changing the process, it is vital to acknowledge that the grievance process was designed largely for political expedience.

The 1973 Legislature created the Board of Personnel Appeals (hereinafter referred to as the BPA or the Board) to adjudicate and mediate disputes arising from either of the two companion bills on collective bargaining and job evaluation. The BPA was attached to the Department of Labor and Industry for administrative purposes. In addition to serving as an arbitration and mediation service for public sector collective bargaining, the BPA was given the authority to hear classification and wage grievances subject to a "procedure to be prescribed by the Board".

The BPA is a five-member body. All members are appointed by the Governor and one member serves as chair. The Board is staffed by the Employment Relations Division of the Department of Labor and Industry which provides professional and support staff for mediation, arbitration, and the conduct of hearings. The first BPA developed a classification and wage grievance process for adoption into the Administrative Rules of Montana. The procedure was imple-
mented in 1975, the year that the state's first classification plan came into service. Given the somewhat unusual dual role of the BPA as a review body for collective bargaining and classification, it is not surprising that the classification grievance process developed by the BPA is closely based on the grievance arbitration processes typically found in collective bargaining contracts. Collective bargaining grievance mechanisms were well documented and tested by years of experience and court challenges. The classification system, conversely, was a new and largely unknown process in Montana. Also, since the staff serving the BPA had to function in two areas, the original staff was chosen primarily for their experience in collective bargaining. Such experience, unlike classification experience, was available in the Montana job market and collective bargaining was expected to dominate the Board in terms of the amount and importance of the work to be performed.

The classification and wage grievance process can be invoked at any time by any classified employee. Originally an appeal could be filed on any grounds believed by the employee or a group of employees in a particular class to be relevant to their proper classification. In 1981, the state legislature changed the law to eliminate the right to appeal the grade assigned to a job class. Also, the Board modified its original rules (see ARM 26.24.5) in 1981 to specify thirteen appealable classification issues. The employee can
not change an appealable issue in a grievance after the appeal has been initiated unless the employee is willing to begin the process over. Grievances can be filed individually, or in groups. Group appeals must be approved by the Board prior to initiation.

Like most collective bargaining grievance processes, the classification and wage appeal process is organized into separate progressive steps. At each step in the process, if the employee is not satisfied with the response of management, he or she may advance the appeal to the next step. The following is a brief description of each of the four steps in the Montana process:

**Step I:** In this initial step, the employee completes the classification and wage grievance form specifying the appealable issues in contention and submits the form to the immediate supervisor. The immediate supervisor must respond on the form to the appeal request. If the immediate supervisor agrees with the employee's grievance, he or she may take action through the normal agency process to modify the classification of the position. If the immediate supervisor does not agree or if the requested action to upgrade a position is disapproved by the immediate supervisor's boss, the employee can elect to advance the grievance to Step II.

**Step II:** In the second step of the process, the appeal is submitted to the agency director. The director, who is typically a member of the Governor's cabinet, can resolve the grievance by requesting reclassification of the position by the State Personnel Division. If the director does not agree with the employee, the employee may elect to advance the appeal to Step III.

**Step III:** At Step III, the employee advances the appeal to the Classification Bureau of the State Personnel Division. The Classification Bureau typically assigns a job analyst who has not recently evaluated the position under appeal, to investigate the appeal and issue the findings. The findings are
usually presented in a five to fifteen page document detailing the application of the state's classification methodology to the employee's alleged grievance. If the employee concurs with these findings, the position is either reclassified or left in its present classification. The employee who disagrees with the Personnel Division's findings, may continue the appeal on to the Board of Personnel Appeals. The majority of classification appeals are resolved by this Step III investigation.

**Step IV:** When the BPA through the Employment Relations Division of the Department of Labor and Industry receives an appeal at Step IV, the Board has the discretion to conduct a preliminary investigation of the grievance. The Board would then issue a preliminary decision based on the findings of the investigation. Since this preliminary decision is non-binding, either the appellant or the Personnel Division may reject the findings and insist on a formal hearing. If both parties accept the preliminary decision, the grievance is resolved.

While preliminary decisions were used commonly in the early days of the classification appeals process, the Board has in recent years used preliminary decisions sparingly. Most commonly, cases advanced to Step IV proceed directly to a formal hearing. In a formal hearing the issues are limited to those identified at Step I in the appeals process.

At Step IV the classification and wage grievance becomes a matter strictly between the appellant or appellants and the Personnel Division. In effect, the Step IV process is designed to be a review of the Personnel Division's Step III response to the appeal. The agencies employing the appellant have no direct standing in a classification grievance hearing. Agencies typically work closely with the Personnel Division and obviously must be prepared to make any organizational or financial adjustments to accommodate the Board's final decision.

Classification hearings conducted by the Board operate under the guidelines of the Administrative Procedures Act and the Model Rules of the Attorney General. The only consequential guidelines to the Board's review in a hearing is found in ARM 24.26.513 which states, "If the preponderance of evidence taken at the hearing shows the employees aggrieved, the Board shall issue an order requiring action to resolve the employees'
grievance."

After the conduct of the hearing the Board's hearings examiner issues Findings of Fact, Conclusions of Law and a Recommended Order to the parties. Either party may file formal exceptions to the hearings examiner's recommendation. These exceptions are heard in oral argument before the full, five-member Board of Personnel Appeals. By practice, hearings on exceptions by the full board are limited to reviews of procedural error by the hearings examiner or, on very rare occasions, reviews of clearly erroneous decisions by a hearings examiner. Final decisions of the Board are determined by majority vote.

If either party continues to be dissatisfied with the decision of the Board of Personnel Appeals, they may continue the process by filing the case in State District Court. When a case enters the state court system, it is processed according to the law as interpreted by the court. Rulings by the court can, of course, directly or indirectly either overturn or enforce a decision of the Board of Personnel Appeals.

A Comparative Discussion of Job Evaluation Grievance Mechanisms

As expected, the implementation of the state's first central job evaluation system in 1975 generated a number of complaints, confrontations and criticisms from the various actors in the system. The grievance process adopted by the Board of Personnel Appeals attracted, early on, a substantial portion of this discontent. Indeed, changes in the Classification and Pay Act of 1973 pertaining to grievances were made by the 1975 legislature even before the Act was implemented.

Some of the perceived deficiencies of the grievance process were actually reflections of defects in the first
classification methods adopted by the Personnel Division. Other complaints stemmed from a variety of structural or design problems perceived to have been manifested over time. A final category of criticisms are those stemming from the practices of the Board in its first years of hearing classification grievances.

The discussion of prescribed changes in the classification grievance process which will follow must be prefaced by at least a listing if not a full explication of the recurring criticisms and reform proposals directed toward that process since 1975. To address these criticisms, the discussion that follows will focus, first, on perceived design and structural problems, and second, on a variety of longstanding criticisms stemming from the decisions and practices of the Board in its first several years. Problems deriving from defects in the state's job evaluation methods will be briefly discussed in Chapter IV.

Structural Criticisms

Variation is the norm in terms of the procedural features of job evaluation grievance mechanisms. There is consensus that some form of structured review for appeal of job evaluation decisions is desirable, but the practitioners of job evaluation do not agree on the best design for such a process. Several factors tend to shape the kind of grievance process adopted in a jurisdiction. Most prominent of
these factors are:

1. The relative strength and pervasiveness of collective bargaining as a model for labor relations in a jurisdiction;
2. The era in which job evaluation was established in a jurisdiction;
3. The peculiar features of the job evaluation technology used in the jurisdiction - including the degree of credibility and the quality of the method as perceived by employees; and
4. The degree of trust or goodwill existing as part of the organizational culture of the jurisdiction.

It is possible to discuss in general terms the most common approaches to job evaluation grievances used by state and local governments. The objective of the discussion is to establish that workable options do exist and that the practices of other jurisdictions may indicate why certain problems stem from the design of Montana's approach. To streamline this discussion, the various approaches will be categorized into three basic models: the Civil Service Model, the Collective Bargaining Model and the Personnel Board Model.

The Civil Service Model. This model stems from the civil service reform movement of the late 1800s. Grievance procedures in this category are primarily formal and quasi-judicial. In most jurisdictions using this model, the
grievance process is intended for resolution of all personnel disputes ranging from misconduct and termination to ethical infractions and pay questions. As a result, this model tends to offer less specialization and expertise in its review of job evaluation decisions since the hearings examiner and/or civil service body must handle a broad range of personnel disputes.

Like nearly every grievance mechanism, the civil service model is progressive. The process is designed to begin at the lowest levels of authority over the employee and to advance through graduated steps to succeeding levels of authority until it reaches the final authority level in the process. As Merrill Collett has noted, the civil service commission should be the final authority and if the jurisdiction has no commission the final authority should be the administrative chief of the jurisdiction. According to Collett, "Only on the grounds of fraud should appeals be allowed to the governing body directly."

The Collective Bargaining Model. This approach dates from the beginnings of collective bargaining in the public sector - largely a post World War II phenomena in the United States. Most jurisdictions using this approach, do so because job evaluation is a mandatory subject of collective bargaining. Indeed, a survey taken by the Montana Personnel Division in the early 1980s found that Montana was perhaps the only state voluntarily using a traditional collective
bargaining arbitration process for classification grievances.

The collective bargaining model, like the civil service model, is a progressive approach. Normally, there are three or four clearly defined steps in the process prior to final arbitration by the hearings examiner or labor board who represent an agency separate from that of the job evaluation agency. While the arbitration hearing itself is quasi-judicial, the process at the early stages encourages informality. Unlike Montana's classification appeal process as described earlier, final decisions of an arbitrator or labor board can not be appealed to the court system.

The Personnel Board Model. This model is the most modern approach. It typically represents an adaptation of the civil service and collective bargaining grievance procedures specifically to the task of hearing job evaluation disputes. Graduated steps are also utilized in this approach. The "reconsideration process" that follows from the state of Nebraska is procedurally typical of this approach:

007.01 Reconsideration Process. An employee or agency head may request reconsideration, in writing, of the classification of a position to the Director of Personnel and shall explain in detail the reasons for such a request. An employee request shall be forwarded through the agency head to the Director of Personnel. Implementation of any pay changes will be delayed until the reconsideration has been formally concluded.

007.01A The Director of Personnel shall again review the position classification. Unless
additional information is needed from the agency, the Director of Personnel shall forward a decision to the agency head within 20 workdays after receiving the request. If the reconsideration is initiated by the employee, the employee shall also receive a copy of the decision.

007.01B If the employee or agency does not agree with the decision of the Director of Personnel, appeal of the classification may be made to the State Personnel Board. The appeal must be made within 10 workdays after the employee receives the Director of Personnel's decision. The appeal must be in writing and explain in detail the reasons for the appeal and include the Director of Personnel’s decision.

The Chairperson of the Board shall notify the employee or agency, in writing, of the time, date and place the appeal will be heard. The record of the appeal shall be included in the minutes of the Board meeting. The findings of the Board shall be final and binding for a period of 6 months or until a substantial change in duties of the position occurs.

The features of this model are not easily generalized. Typically, however, it is distinguished from the other models by:

1) the absence of a quasi-judicial designation and greater informality in methods;

2) access to the process by management as well as employees;

3) location of the review body within the same agency that executes job evaluation; and

4) membership on the Board by either a current personnel director or by persons with job evaluation experience.
Perhaps the foremost question in comparing and assessing these three grievance models is the question of whether a procedure can protect the due process rights of an employee with a grievance. Kenneth Davis, a noted administrative law scholar, suggests that to protect due process rights any procedure, whether defined as quasi-judicial or informal, must at a minimum assure the following:

1. That each party should have a chance to know and confront the evidence and ideas of the other side.
2. That proceedings leading to a determination are always open.
3. That the body or person making the determination explicitly state the findings and reasons used in the determination.
4. That "systems of precedent should be developed and followed to improve the quality of the justice in the determination."

Generally speaking, as the degree of distrust or tension builds between labor and management measures for formal and explicit protection of employee rights can be expected to increase. Given the background of Montana's entry into centralized job evaluation and its history of relatively powerful union groups, it is not surprising that Montana, relative to other states, has a highly formal, quasi-judicial classification grievance mechanism. There is, thus, little question that the due process rights of employees are protected in Montana's system. Yet, the protection of those rights has imposed an unnecessary cost on the system itself.

To fully appreciate the many dimensions of the problems
of Montana's pay grievance mechanism that will be discussed later in this chapter, it is important to understand that classification grievances are handled in much the same way that collective bargaining grievances are handled. The grievance process in the collective bargaining model is the engine of labor relations. Normally, it is always available to each employee covered by a collective bargaining contract who perceives that they have been aggrieved. Grievances, by design, become "a part of the continuous collective bargaining process." Since collective bargaining agreements are necessarily written broadly, the grievance process is seen as an instrument to give life to the agreement by formalizing the on-going, give and take between employees and employers.

For that reason the arbitrator in a collective bargaining grievance process has a critical and quite flexible role. Her job is to open and maintain the communication between the parties needed to preserve labor peace and to make the contract viable. To do so she must foster an ethic of compromise and accommodation so that both parties can protect their rights and interests within the terms of the contract. The arbitrator is less concerned about the kind of precedents set by a decision than about finding the most appropriate solution to a specific problem. In short, resolution through compromise is the essential attribute of collective bargaining grievance arbitration.
The civil service model stems from a quite different tradition. Its primary aim is not labor peace, but the insulation of government administration from the excesses of politics. Toward this moralistic goal of "good government", grievance mechanisms were devised to determine whether evil such as nepotism, cronyism, influence peddling or retaliation had caused otherwise "neutral" government workers to commit fraud or to neglect their duties. The search is for the odor of rot within the bureaucratic body with the expectation that if it is discovered it can and shall be removed.

As the era of due process has emerged, civil service bodies have increasingly acted as tribunals of organizational justice to protect workers from unfair treatment. They have become internal mechanisms of due process and just cause to validate or reverse the innumerable personnel actions affecting the careers of government workers. Much publicized in recent years have been civil service cases in which due process is used as a shield for "whistle blowers" who seek to reveal errors or fraud within government. Originally civil service processes accomplished much of the work done today by full-time personnel professionals. As the specialization in such personnel matters developed into a separate profession beginning in the early 1900s, the civil service structure increasingly became a kind of shadow to the personnel authority of the jurisdiction. In this
context, civil service boards or commissions have traditionally been composed of members with some identified measure of expertise in personnel law and practice.

The different backgrounds and purposes of the civil service model as opposed to the collective bargaining model is most apparent in the scope of review of the two kinds of bodies. A civil service model typically exercises review to discover evidence of error, negligence, fraud, or interest peddling rather than to forge a compromise with an arbitration remedy. As reviewers of personnel professionals, civil service bodies typically are expected, when they find evidence of incorrect actions, to return them to the personnel administrator with specific recommendations for correction. Unlike arbitrators under the collective bargaining model who see themselves in the middle between two inherently hostile parties - labor and management - the civil service commissioner or hearings examiner sees the role as one of peer review of personnel professionals.

The personnel board model, while a kind of hybrid of the other two models, is more like the civil service model in its basic philosophy. Indeed, this third, most modern approach, stems directly from recognition that as due process rights have expanded, all personnel activities benefit from "the second opinion" of a review body. As has been suggested in Chapter II, in pay and job evaluation grievances, where the topic of debate is the often elusive
and subjective details of job evaluation, the competence of the review body or officer in the field of job evaluation is critical. Since the object of the process is to determine whether a consistent and fair job evaluation decision has been made, the personnel board model recognizes that reviewers must have a working appreciation of the rules, laws and methods applicable to job evaluation decisions.

The criticality of the makeup of the review body in a grievance process has been emphasized by a variety of practitioners of job evaluation. The importance of job evaluation expertise within the review process was emphasized in the Montana Personnel Division's December 1981 report to the Personnel Labor Relations Study Commission on the classification appeals process:

Some of the states that have established a classification appeals process have encountered the same problem of trying to maintain a classification system, while trusting appeals to persons not expert in the methodology of that system. The head of Pennsylvania's personnel function has written that 'we have determined that it could be extremely hazardous to fix responsibility for classification with someone who has no knowledge of position classification.' Similarly, the head of personnel in Indiana has commented, 'it has been very frustrating for us to attempt to be consistent in our classification decisions and then have a non-technical appeals commission make the final decisions on classification'.

In the next section, the discussion will turn to the recurring and most significant problems and criticisms that have been aimed at Montana's classification grievance process. Many of the design limitations and problems that
have been discussed here will be pursued further through reference to the specifics of Montana's experience with classification grievances in the past eleven years.

**Criticisms of the Role of the Board of Personnel Appeals**

In this section the discussion turns to longstanding criticisms of Montana's job evaluation grievance mechanism. The perspective, again, is that of a job analyst and practitioner before the state's Board of Personnel Appeals. As alluded to earlier, both management and employee representatives have had serious misgivings about the state's classification grievance process from its inception in 1975. To its credit, many of these procedural complaints from the 1970's have been resolved by the Board.

Like any new government operation, the classification appeal process has been refined by the lessons of experience. Two examples illustrate this progress. Originally the Board's rules and practices were lax on questions of timeliness. Deadlines were either not explicit or not enforced. Cases were prolonged by the Board's conduct of preliminary investigations by hearings examiners prior to the hearing. Also, since the Board was obligated to adjudicate and mediate collective bargaining disputes, classification cases were routinely delayed and rescheduled. By the 1980s a backlog of more than one hundred cases had developed. The rules and practices of the Board were then
tightened to improve timeliness. Working cooperatively with the State Personnel Division, employees and unions, the backlog and delays were eliminated by the Board's staff by the time that the Governor's personnel study commission issued its report in 1982.

Secondly, the Board's original rules were vague regarding what constituted a valid grievance. Since there was only limited expertise in job evaluation in Montana when the system began in 1975, it is not surprising that the first Board was hardpressed to anticipate the legitimate reasons for filing a classification grievance. As experience was gained and classification methodology developed, both the State Personnel Division and employee unions recognized a need both to limit access to the process and to define specifically all the allowable grounds for appeal. The Board thus modified its rules in 1981 to add at ARM 24.26.508 a list of thirteen "appealable issues" that must be cited by appellants. The new rules of 1981 further specified that appellants can argue only the issues cited at Step One of the process in any later steps or hearings on the grievance.

This change, along with a statutory amendment by the 1981 legislature which disallowed appeal of the grade assigned to a job class, added previously unknown structure and relative predictability to the process. It also illustrated the willingness of the Board's staff to make necess-
ary changes to accommodate the needs of the parties coming before it.

Despite the fact that the Board has made many important changes, when the Governor's Study Commission process began in 1981, the Classification Bureau of the State Personnel Division continued to advocate further reform. The Bureau's reform proposals were detailed in its report to the Commission. At the time of the report, the Bureau's records showed that its decision at Step three was upheld by hearings examiners nearly half of the time.

The great majority of grievances were resolved by upgrading appealed positions at Step three. The Bureau believed that this demonstrated willingness to upgrade more than half of the appellants at Step three indicated that few, if any, of the appellants continuing to a hearing should prevail. The Bureau felt that if the same job evaluation system was employed by the Board, the hearings examiners should, in almost every case, uphold the Bureau's decision. Thus, the Bureau's staff believed that the loss of more than half of its cases before the board was convincing evidence of a flawed grievance mechanism.

In the Bureau's report to the Commission it called for two main reforms:

1. Narrowing the scope of review in Step Four hearings from a substantive, "secondary classification" approach to a procedural review of the job analyst's work; and
2. Improving dramatically the level of expertise of hearings examiners in application of the state's classification methods.

The response of the Board's staff to this report set the tone during the five years since the Study Commission's report. Essentially the Board's staff resisted the call for a narrower scope of review by arguing that courts, in interpreting the statute pertaining to the Board's role, had ruled that the scope of the Board's review and remedy power is not significantly limited by law. As for the alleged lack of job evaluation expertise, the Board's staff asserted that the State Personnel Division needed to document fully all of its classification methodology before the Board could be expected to master it. A consultant's study of Board procedures completed just prior to the study commission, had also concluded that the expertise problem was mostly the fault of the Personnel Division and this reinforced the position of the Board on that issue. Finally, the Board had in the early 1980s hired a former job analyst to specialize in classification hearings and it argued that this would improve the Board's ability to provide informed decisions.

The response of union interests as represented on the Commission and through testimony before the Commission was similarly negative. Primarily, union interests rejected the call for change because:

1. They contended that the actual number of appeals
was small and declining. They predicted that the then recent statutory change disallowing appeals of the grade assigned to a class would dramatically reduce the number of appeals in future years.

2. In addition to the above contention, they argued that even if the process could be said to be flawed or biased, it provided an invaluable and solitary outlet for employees discontent with their classification and pay.

3. They argued that the status quo approach to grievances had substantially proven its effectiveness by reclassifying and rearranging management's original 1975 job rankings in a manner more acceptable to employees. This, they asserted, increased the workability and assured the future of central classification.

Essentially, union interests were inclined to favor the existing approach precisely because the Board's role was similar to its mediation and arbitration practices. Unions wanted and encouraged the Board to solve problems and guarantee the protection of employee interests rather than narrowly ruling on whether, in the classification of a position, the Personnel Division had deviated from the laws, rules, and normal methods of job evaluation. The appeal process had effectively created an alternative classification system that more than half of the time offered decisions favorable to the unions.

For many reasons, when faced with a largely negative response, the Personnel Division reluctantly retreated from its 1981 call for reform of the grievance process. First, the Division was concerned that pressing for reform would detract from its effort to gain Commission support for
changing the job evaluation method. A new job evaluation method was seen as the greater need, and Division staff believed that if a new methodology was implemented the need for changes in the Board's approach would become more obvious to all parties. Also, the Division pressed for the creation of a new Board to be attached to its own Department of Administration to replace the grievance hearing function of the Merit System Council which was terminated in 1982. The Division staff expected to see legislation creating such a board with the classification grievance authority transferred to it. The bill to execute this plan died in the 1983 legislature, however.

In the years since the Commission's 1982 report, a number of events, grievances and trends support the conclusion that the reforms called for by the Classification Bureau are still needed. First, the size of the problem seems approximately the same. The chart below shows the number of individual and group appeals at Step III for the period 1979 through 1986:

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<td>136</td>
<td>87</td>
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<td>Group Appeals</td>
<td>14</td>
<td>12</td>
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The chart does indicate a general decline in the amount of grievance activity. Since the law was changed in 1981,
the number of group appeals has dramatically dropped. But employees, who previously may have formed a group prior to 1981, are filing individual appeals that are either treated collectively at Step III or are grouped later by the Board for purposes of conducting one hearing for a number of similar jobs. This phenomena is behind the high number of individual appeals shown in 1984.

This trend actually has increased the work of the Personnel Division in the conduct of appeal investigations at Step III. While group appeals are normally investigated on the assumption that all the jobs of the group are nearly identical, the recent trend toward individually filed appeals causes the Division additional effort. The Division presently must respond to the peculiarities of each job - even when the differences are not significant in determining the class allocation.

More importantly, since the 1982 Commission report, the effort invested by the Classification Bureau in each investigation has increased for a number reasons. First, in complying with the Commission's recommendation, the Classification Bureau published a methods and procedures manual in 1982 and 1983. The existence of explicit methods and procedures, while assisting job analysts in guiding their judgments, has also increased the standards for precision and the extent of documentation required to justify a grievance response at Step III.
Second, in the period from 1982 to 1984, the success rate of the Classification Bureau in Step IV hearings dropped from around 50 percent to approximately 25 percent. To recover this apparent loss of credibility before the Board's hearings examiners, the Personnel Division 1) expanded the scope of Step III investigation reports, 2) routinely initiated procedures for legal discovery on all cases advancing to Step IV, 3) increased its use of attorneys — both as its counsel in hearings and in pleading exceptions or defending decisions before the full Board or the courts, and 4) modified its relatively conciliatory past approach to grievances by using more witnesses from comparable jobs and generally judicializing the entire process.

Thus, while union interests argued before the study commission that classification grievances were of declining importance, the grievance process was consuming more and more of the resources of the Personnel Division in its effort merely to win at least half of the grievances brought to hearing. Investigation reports of job analysts that ranged from a one paragraph statement to a few typed pages in the period from 1975 to 1982, have ballooned to ten, fifteen and even more than 20 pages since 1982. One appeal investigation and report now commonly consumes three or four working days of a job analyst.

From the perspective of the Classification Bureau, the extra effort invested in appeal work has been fruitful.
Statistics for 1985 and 1986 show that the success rate of the Division at Step IV hearings has returned to nearly fifty percent. The additional effort, however, is an unnecessary cost that could have been at least partly avoided if the Board would have voluntarily adopted the reform suggestions offered by the Classification Bureau in its 1981 report to the Commission. Escalation of the grievance process in terms of legal formality also imposes a cost on employees. As Elkouri and others have argued, resolution of appeals at the earliest steps of the process usually offers the most informal and meaningful answer to the employee.14

The two reforms cited previously from the 1981 Classification Bureau report are still valid in 1987. The updated reform arguments are as follows:

1. **The Board Should Limit Its Scope Of Review Both In Accepting Cases For Hearing And In Devising Remedies.**

   By persistently exercising unstructured discretion in its scope of review and remedy powers, the Board continues to function as a secondary or alternative classification authority. Though Montana's statute clearly gives direct classification authority only to the Department of Administration, the Board has consistently taken that authority away by hearing invalid cases, by requiring and ruling on substantive testimony and evidence pertaining to job evaluation information, and by providing discretionary remedies.
such as changing class standards, inventing job classes and assigning them to grade levels, and ordering upgrades of appellant positions based on comparisons to other positions that are not correctly classified.

The effects of wide-ranging, substantive review upon the classification bureau are extensive, though not obvious to most casual observers. As Chapter II indicates, job evaluation is a judgmental process. Each decision in the process is based on previous decisions or standards which in turn become new standards for future decisions. When an outside party such as the Board makes "alien" job evaluation decisions, the very links that allow a job evaluation method to be systematic are undone. The result is that 1) the intended relationship between jobs changes, 2) the criteria upon which job analysts base their judgements are at best muddied, and at worst, lost, and 3) the chain reaction process known in the personnel field as "grade creep" is escalated at great financial burden to the state and its taxpayers.

The Classification Bureau proposed several changes to the Commission that would have restrained the scope of the Board's review. In practice this restraint could be realized through the following:

a. Hearings examiners could more rigorously hold the burden of proof in a hearing firmly on the employee/appellant. The Board's rules currently place
this burden on the appellant by requiring the appellant to prove her case with a preponderance of the evidence. Despite these rules, in numerous cases, hearings examiners have ruled for the appellant and ordered upgrades on the basis of such things as a single supportive position comparison or one piece of testimony that is not fully rebutted by the Personnel Division. Rather than acknowledge the reality that the Personnel Division can most often produce more relevant evidence merely as a result of greater access and familiarity with the subject matter, some hearings examiners have seemingly tried to balance the "mismatch" by making rulings for the appellant based on marginal or insufficient evidence.

b. Hearings examiners could adopt a standard for review based on consistency of an appealed classification decision with similar past decisions. In many cases, hearings examiners have done so, but no clear standard of review is apparent in the Board's case histories since 1975. The point here is that rather than intervening as a secondary classifier, the hearings examiner could better serve the process by judging whether an employee's job has been treated the same as other similar jobs. Questions of whether all the similar jobs
are treated fairly, or equitably as defined by the
hearings examiner would be addressed as part of
the decision, but left out in fashioning a remedy.
Such restraint would simply acknowledge that
ultimate classification authority by statute lies
with the Department of Administration.

c. Hearings examiners could dramatically alter the
disruptive impacts of grievance results by devis­
ing more creative and restrained remedies. With
but few exceptions, the Board's hearings examiners
have tended to use a simplistic formula in decid­
ing cases. If they find the party aggrieved in
the way that the appellant contended to have been
aggrieved, they have offered the appellant what­
ever remedy she has sought. In most cases the
desired remedy is a higher grade level with full
backpay as allowed by Board rules. In fact, the
Board's remedy powers have been so broadly defined
by the courts that a far wider range of options
less damaging to the classification system are
available. As examples, hearings examiners could
order comparison positions to be reviewed and
reclassified if necessary before a final order of
the Board, they could provide backpay only while
upholding the existing grade level, or they could
require revision of key documents such as disputed
class specifications or position descriptions prior to issuing an order.

While it is true that the district courts have ruled that the Board does have broad discretion by statute, on some occasions the board has exercised restraint by limiting the review to a narrow, procedural check to determine if the decision of the Personnel Division is consistent with law, rules, job evaluation methods and past practice. Given the numerous examples of restraint in its own case records, only an internal commitment on the part of the Board's staff would be needed to end the broad, substantive review that creates an alternative classification process.

2. The Board's Hearings Examiners Must Exercise Informed Review.

Even if the Board adopted exclusively the narrow scope of review described above, the need for expertise in job evaluation on the part of the hearings examiner would remain crucial. Given that the Board's hearings examiners exercise broad substantive review, the need for expertise is great. While this reform is perhaps less critical than the above reform, it represents a greater challenge to accomplish. The Classification Bureau's experience with training job analysts confirms that six months of intensive on-the-job experience is necessary before a new employee can consistently and accurately apply the state's classification method. In 1981, the Bureau believed that publishing their
methods and procedures manual and improving class specifications would greatly improve the hearings examiners ability to provide informed review. The experience since that time, however, does not confirm that belief. Hearings examiners since 1982 have continued to base decisions on vague notions of equity or to invent job evaluation schemes or variations to justify certain ends.

Additionally, the problem of an uninformed review has been compounded by other features of the grievance process. First, in almost every case, the citizen-members of the Board are less informed about job evaluation than the hearings examiners. Over time, the members of the Board have appropriately tried to limit their review of hearing's examiners decisions to questions of clear error or legal issues. But in so doing they have assumed that hearings examiners are experts to whom they should defer. The record of past hearings examiner's decisions, however, does not support this conclusion. Finally, if a case is appealed to District Court, judges who are even further removed from the job evaluation process almost without exception have deferred to the judgment of the Board on substantial issues - again assuming that the Board has the expertise along with the authority to judge correctly.

There is seemingly no simple solution to this problem. The Board could try to hire only examiners with actual Montana classification experience. This is not realistic,
however, since the labor pool in that category is small and the workload of the Board's staff demands expertise in other matters such as Fair Labor Standards law, unemployment benefits determinations, and labor mediation and arbitration. Two opportunities for improvement in this area do, however, exist:

1. The Classification Bureau has left open its invitation to explain and train hearings examiners in a more indepth fashion than has been done in the past.

2. The new point factoring method developed by the Personnel Division has, as one of its most attractive features, the promise that it will be easier to use and to understand.

In the last analysis, given the difficulty of obtaining expertise, the earlier argument for more restrained review from hearings examiners is even more pertinent. Short of removing classification grievances from the Board, this seems the best way to provide an appeal process that protects employees' rights while complementing rather than undermining the state's classification method.

Chapter Summary

It is clear that to assure the continuance of an effective and equitable central job evaluation system, Montana needs a classification grievance mechanism. Given
the nature of labor/management relations in Montana, it is also clear that the grievance mechanism used should be quasi-judicial or at least protective of the due process rights of state employees.

For several reasons, largely political, Montana chose to model its classification grievance method on the grievance processes of collective bargaining contracts. Civil Service traditions and modern personnel board approaches were rejected, even though they seem better suited in most respects to deal with the subjective decision-making of job evaluation. As a result, even though classification is presently neither required nor permitted as a subject of collective bargaining, employees have access to an appeal process which has effectively treated classification grievances as if they were part of a collective bargaining contract. The net result has been to the clear benefit of employees but at considerable expense to the classification system in particular, and Montana taxpayers in general.

Two historical criticisms of the Board's handling of classification grievances are still problems in 1987 that should be addressed by the Board. Raising the expertise of Board hearings examiners would greatly improve the quality of Board decisions by providing the knowledge necessary to protect employee rights without damaging the integrity of the classification system. At the same time, limiting the scope of review of hearings examiners is feasible under
existing law and should be pursued. Hearings examiners would then rely on the expertise of trained job analysts rather than their own knowledge.

Until the appeal process is nothing more nor less than a guarantee that job evaluation is done correctly, rather than an alternative classification system with vague rules of circumstance and compromise, it will be an effective barrier to the Department of Administration in its mandate to assure similar pay for similar work for all state classified employees. Looking to the future, as suggested early in Chapter II, the state's mandate to work toward the goal of comparable worth will be difficult or impossible to meet if changes are not made. As long as an alternative classification system exists, the Department of Administration will be effectively prevented from successfully implementing the greater precision and explicitness of job evaluation methods advocated by the supporters of comparable worth.
FOOTNOTES
Chapter III


3 Montana has seen the use of the appeal process to manipulate budget limitations by both management and employees. Often an employee who has no other recourse because funds have not been budgeted, will invoke the appeal process. But, just as often, managers will support or encourage employee grievances with the expectation that exceeding

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their budget can then be blamed on the appeal process — which they do not control.

The issue of the effects of organizational and technological change upon occupations is a recurring challenge to job evaluation systems. Change seems to outpace even the best designed job evaluation methods and any input, such as a grievance, is welcomed by the keepers of the system as a means of discovering and adapting to change. In Montana, changes incurred by automated data processing have been most notable in demanding corresponding changes in classification.

This statement is based on the assessments of key actors from management, labor and labor mediation. It is also confirmed by a review of testimony in committee on the two bills. In hearings on both bills no opponents offered testimony and both bills passed overwhelmingly in committee.

See Footnote 31 in Chapter II in which the short period of mandatory bargaining is described as a key "release valve" which may have assured the survival of central classification in Montana.

While there are few states nationally that combine the review functions for collective bargaining and classification in one body, it is true that the neighboring states of Washington and Oregon use this approach.

In terms of workload, it should be emphasized that the collective bargaining authority of the Board extends to some 35,000 public employees in city, county and school district jobs in addition to state employees. Only 13,000 state employees are subject to the classification system that the Board reviews.


The Nebraska Department of Personnel, Classified System Personnel Rules and Regulations, 1986, p. 11.


14 An interesting evaluation of the Board of Personnel Appeals can be found in this consultant study. Montana's Board was reviewed as part of a multi-state project to compare labor practices sponsored by the Public Employment Relations Services and the Association of Labor Relation's Agencies. See Muriel Gibbons, James S. Cooper, Parker A. Denaco, Marvin L. Schurke, "Report and Recommendations to the Montana Board of Personnel Appeals," The Public Employment Relations Services Review and Evaluation Team, April, 1981.

14 Elkouri, p. 121.

15 It is beyond the scope of this paper to cite cases supporting this conclusion. In recent years, a decision in a grievance known as the Fitzpatrick case has become the standard citation for asserting the Board's authority to exercise broad review and remedy powers. In that case, the Appellant argued that his work was unlike that of his peers in the same class. The Board then ordered the creation of a new class at a higher grade level just for the appellant's job. This decision was then upheld in District Court by a judge who deferred fully to the expertise of the Board and its hearings examiner.
CHAPTER IV
AN OUTLINE FOR REFORM

The call for reform, reorganization and change is relentlessly heard in the halls of modern bureaucracies. Whether the basis for reform is good or not, the prospects of it occurring depend, in no small measure, on how well the change fits within the parameters of existing circumstance. In the last chapter a diagnosis was made of the pervasive ills of Montana's classification grievance mechanism. In this chapter, the task is to prescribe plausible reforms to address those ills. Once the prescription has been made, the various implications of the changes will be assessed. Before the prescription, however, the parameters upon which it is based will be described.

The Parameters of Reform

The first and most significant of the parameters for the reforms proposed here is the present law regarding classification. The view taken here is that the law, which begins at MCA 2-18-201, is written broadly enough to accommodate the kind of reform that will be outlined. This is an essential point because recent history indicates that
proposals to change the classification statute have little chance of success. Since the 1981 statutory changes prohibiting appeals of the grade assigned to a class, there have been a few, notably unsuccessful attempts by both labor and management interests to change the statute regarding appeals in the 1983 and 1985 legislative sessions.\(^1\)

Problems of timing also suggest that reliance on a change of law to bring about reform is unrealistic. The Classification Bureau, in early 1987, has its new Benchmark Factoring Method ready for implementation. Since the Legislature will not meet again until 1989, reforms dependent on a statutory modification would inhibit full implementation for at least two more years. Therefore, all the proposals that follow in this chapter are designed within the scope of the current classification statute.

A second parameter or assumption in this chapter is that the employees of this state and the state's classification system must continue to have a grievance mechanism. Given the nature of labor-management relations in this state, it is further assumed that the grievance system should be quasi-judicial and protective of the due-process rights of the parties subject to the mechanism. It is true that a lengthy and valid argument could be made for eliminating the appeal process entirely, but it is not an option considered in this chapter.\(^2\)

The next parameter for reform centers on the argument
that most of this paper has sought to develop. Basically, the assumption is that the classification appeals process as it now operates is unnecessarily costly, increasingly legalistic to the detriment of the classification system, difficult for all parties to understand, and characterized by decisions that do not promote equity between classified positions. The reforms proposed here were conceived in response to such problems.

Finally, the reforms proposed in this chapter are intended to allow implementation of the proposed Benchmark Factoring Method (BFM). Therefore, before discussion of the proposed rule changes, a brief outline of this new job evaluation approach is offered.\textsuperscript{3}

The BFM is a quantitative job evaluation method designed closely along the lines of the federal government's Factor Evaluation System (FES). It is like other point factoring systems in its basic construction.\textsuperscript{4} Under BFM, positions are evaluated by making a number of discrete decisions or ratings on different evaluative or compensable factors. The job analyst chooses between various degree levels of each factor and assigns one level for each factor to the position. An example of one of the simplest BFM factors follows:
FACTOR 2: PHYSICAL EFFORT

Level A - Little Physical Exertion
The work is normally sedentary involving such activities as sitting, talking, writing, periodic standing, periodic walking on smooth and level surfaces, driving a car and light manual manipulation from a seated position. It may also include occasional physical activities at level B or C. Examples include most desk jobs and many other jobs primarily performed while seated.

Level B - Regular Light Physical Exertion or Occasional Heavy Physical Exertion.
The work at this level normally or over 20% of the time involves standing while performing manual manipulations or greater or more constant activity than level A. Activities include regular walking on smooth, level surfaces, periodic but not vigorous bending, turning, pushing, or pulling; periodic lifting of 10-25 lbs. or constant lifting of lighter weights. It may also include occasional physical activities at level C. Examples include dentistry, some lab work, filing, and operating duplicating machinery.

Level C - Regular Moderate Physical Exertion
The work at this level normally or over 20% of the time involves more vigorous and constant movement than level B. Activities may include regular bending, turning, pushing and pulling, regular walking on inclined or irregular surfaces, long periods of constant lifting of 10-25 lb. objects or frequent but not constant lifting of 25-50 lb. objects. It may also include occasional activity at level D. Examples include house painting, carpentry, sweeping or mopping floors, ironing clothes, planting, hoeing and raking, and institu-
tional cooking.

Level D - Regular Heavy Physical Exertion
The work at this level normally or over 20% of the time involves vigorous and constant movement such as running; long periods of constant bending, turning, pushing or pulling, long periods of constant lifting of 25-50 lb. objects or periods of regular lifting of objects weighing 50 lbs. or more. Examples include stacking lumber, pick and shovel work, chopping wood, moving bed ridden patients, climbing up and down stairs or other steep inclines, and shoveling.

With reference to the above factor, if level "C" was deemed characteristic of a particular job, a guide chart would provide the appropriate point value for level "C." That point value would be the third highest number of points possible under this Physical Effort factor. The point value, however, would be extremely low relative to other factors since each factor has been statistically weighted according to its relative importance to the total score for the position. The total point value of a position thus represents the sum of all scores on the seven BFM factors. The title and weight given the seven BFM factors are as follows:

1) complexity 25%
2) physical effort 1%
3) knowledge and skills 40%
4) human relation skills 10%
5) work impact responsibility 20%
6) working condition hardships 2%
In terms of the implications of BFM for the appeals process, the key feature of the method is the use of benchmark jobs. Benchmark jobs are jobs that are typical of the positions in a particular class. Though they are derived from actual positions, they are hypothetical and not necessarily representative of any one position. A benchmark document contains a description of the benchmark job and a factor rating of the job on each of the seven factors. (See the sample benchmark in Appendix B). The benchmark jobs are used by an analyst as a guide for assigning factor levels to positions and as confirmation of equity in factor level assignments within a class. The comparison of factor ratings between classes and across occupations also provides evidence of equity and comparability throughout the larger system.

The equity role of the benchmark is similar to that of the class specification in the state's current methodology. Unlike the class specification, however, the benchmark is not the primary basis for allocation of a position to a class. Allocation to a class is determined by the accumulated point value of a position derived from the seven factors. Because the benchmark is merely a guideline for assignment of factor levels and not the basis for assignment to a class, it must not be confused with, nor used as a
substitute for, a class specification.

The relevant point to be made is that an hearings examiner, or even an employee or union representative, in reviewing a classification decision under BFM, will need to dramatically change the focus of their critique. More specifically, the kind of evidence and the weight given that evidence will be notably different in cases under the new method. Hearings examiners will need to learn the various rules of factor level assignment and adapt to the conventions of point factor evaluation.

These adjustments can be made with only a few changes in the Board's rules. The rules, as currently written have proven adaptable to a number of method changes since 1975. For instance, the five compensable factors adapted by the Classification Bureau in 1980 are typically used as the basis for hearings examiner's decisions today, even though they are not specifically referenced anywhere in the Board's rules. Even more to the point, since a quantified system for executive and managerial jobs was introduced by the Classification Bureau in the early 1980s, several hearings have been held on positions subject to that method. In all cases, the hearings examiner recognized the difference in the method and applied it appropriately.5

Some rule modifications are needed, however, to make explicit the changes engendered by point factoring. Also, it is likely that some as yet unknown quirks in the new
method will arise and will require adjustment in the grievance process. Finally, having outlined the anticipated parameters of change, and particularly the implications of BFM, the discussion can now advance to the specific proposed rule changes.

Proposed Changes in the Board's Rules

This section represents a proposal to modify the administrative Rules of Montana (A.R.M.) covering Wage and Classification Appeals before the Board of Personnel Appeals. The full existing rules beginning at A.R.M. 24.26.501, last revised in 1984, are listed as Appendix C. The changes will be presented by citing the proposed rule changes in sequence with the numbered sections of the existing rules. When changes are not prescribed for a given section, that section has been omitted. Those portions of a section which represent language changes or additions have been underlined. Each modified section is followed by a detailed explanation of the rationale for the change.

Proposed Rule Change #1

At A.R.M. 24.26.508 Grievance Procedure at: (1) Step One. Any employee, or group of employees or appropriately designated representatives properly certified by the Board pursuant to these rules at 24.26.513 may utilize this grievance procedure. The individual employee must obtain a State Employee Classification and Wage Appeal Form BPA-C(1) and follow the accompanying instructions. Procedures for initiating a group appeal are in these rules at 24.26.503.
Forms may be obtained from the Board of Personnel Appeals, Capitol Station, Helena, Montana, or from the personnel offices of all departments within the executive branch.

Discussion:

This is only a minor change intended primarily to reinforce proposed changes to 24.26.513, which is the section governing group appeals. Also, the Board's current rules incorrectly reference 24.26.404, which is a section pertaining to personnel grievances in the Department of Fish, Wildlife, and Parks. The proposed language corrects this error.

A good case could be made for removal of the phrase "or appropriately designated representatives" from this section as well. This language reflects that of the classification statute at MCA 2-18-203(2), but elsewhere in the Board's rules and in its past practice it has been largely ignored. It is unlikely that a situation would occur in which a union would want to file an appeal regarding, as MCA 2-18-203(2) states, "the allocation or reallocation of a position to a class" without the cooperation of the individual in the position. Thus, the statutory language and the rule language are superfluous. Since change in the statute would be needed and that has been ruled out earlier in this chapter, removal of the language will not be proposed here.
Proposed Rule Change #2

Continuation of 24.26.508(1) at: (a) The appropriate form when completed shall be submitted along with a current position description or position information questionnaire that has been signed by the employee and represents the employee's understanding of the duties and responsibilities of his or her position.

Discussion:

The Personnel Division's experience indicates that many grievances amount to a disagreement between the employee and management over the assigned duties. The addition of this requirement assures that the employee's version of the assigned duties are clear and subject to rebuttal at all steps in the process. Currently, in many grievances the Personnel Division returns appeals at Step III to the appellant to obtain a job description. Only with a current job description completed by the appellant can an outside party understand whether or how an appellant's understanding of their job differs from that of management. Since the state's current method utilizes a form called the position description, and the new BFM method uses a job description form called the position information questionnaire, both forms have been referenced.

The inclusion of this required job description would increase the chance of resolution at Step One or Two, since it would give management a better opportunity to recognize those cases where the duties of a position truly have changed and should be reclassified. Most importantly, this
requirement promotes a narrowing of the entire grievance at all steps including the hearing, since the basis of the appeal would be more firmly established from the outset.

Proposed Rule Change #3

Continuation of 24.26.508(1) at: (b) To complete the form, the employee must identify one issue motivating the appeal. A list of appealable issues will be provided with the appeal form. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure for clarification.

Discussion:

This proposal changes the section in one significant way. It would allow only one appealable issue. This change relates to the proposal below which would revise the allowed appealable issues. As such, the implications will be discussed in greater detail below.

Proposed Rule Change #4

Continuation of 24.26.508(1) at: (c) All grievances shall be based on the application of the State's job evaluation methods found in the Classification Manual, Volume III and shall be described in terms of one of the following issues:

(i) Substantial changes have occurred in my position to warrant reclassification. Specifically, my position should be allocated to the class titled (name and grade of class) or a new class titled (name and grade of proposed class).

(ii) My position was misallocated to the (name of class) class and should be reallocated to the class: (name and grade of existing or proposed class).

(iii) My position was factored under a point factoring method of job evaluation. The Personnel Division erred in the assignment of factor levels under the factor(s) (list factor(s)). The correct factoring...
should be: (cite proposed factoring).

Discussion:

This proposed change is actually an attempt to bring the Board's rules closer to the statutory law that authorizes the appeal process. The statute (MCA 2-18-203(2)) reads as follows:

Employees and employee organizations will be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class is not an appealable subject under 2-18-1011 through 2-18-1013.

The statute clearly establishes that the only authorized subject for grievances is "to appeal the allocation or reallocation of a position to a class." Since the grade of a class is specifically eliminated by the statute as a subject of a grievance, the law clearly contemplates a far narrower range of appeal issues than the Board presently allows in its rules (see Appendix C). The thirteen appealable issues presently in the Board's rules include issues that are (1) irrelevant to current and proposed classification methodology; (2) issues of pay rather than classification; (3) redundant and somewhat contradictory; and (4) illegal in that they suggest grievances that are outside the narrow range of "allocation or reallocation" specified by the statute. 9

The three proposed appealable issues cover all possible grievances legitimately based on issues of allocation or reallocation to a class. 10 The adoption of these three
issues offers four primary benefits:

1. When coupled with the proposed rule change #3 requiring the appellant to choose just one of the three appeal issues, these changes would provide increased focus to any investigation or hearing. Step III responses by the Personnel Division could be shortened. Hearings at Step IV could also be shorter and less costly. For the appellant, the rule change has the benefit of clearly communicating the burden of proof that is upon her. An appellant would be better able to focus the development of the case on the evidence that is relevant without being diverted by the extraneous and redundant issues often invoked under the Board's present rules.

2. More importantly, in a hearing at Step IV, an examiner would be better able to readily place and maintain the burden of proof on the appellant. With only one issue in contention, irrelevant evidence or testimony could be more easily identified and eliminated. Hearings obviously could then be shorter and less costly. The nature of the hearing itself would also be changed to become a review of the Personnel Division's application of the method of allocating positions to classes, rather than an open-ended search for compromise and some version of "personal justice" for the appellant.

3. A third benefit of this proposed rule is that it explicitly establishes the Board's authority to create job classes as a remedy to a grievance. While never directly given to the Board in statute, this authority was established in a District Court action known as the Fitzpatrick case. In that case, the hearings examiner had ordered the Personnel Division to create a special job class at a higher grade to remedy Mr. Fitzpatrick's alleged grievance. After the full Board upheld this decision, the Personnel Division advanced its exceptions to district court.

In the district court, the judge ruled for the Board and upheld the hearings examiner. He interpreted the statute covering the Board's remedy powers to be almost unlimited in the amount of discretion given an hearings examiner. The Personnel Division argued primarily that such an interpretation effectively negated the Classification Act of 1973 since, by that Act, the legislature had given authority for developing and maintaining a central classification plan solely to the Department of Administration.

The Department essentially still believes that the
Fitzpatrick decision legitimized the Board as a secondary classification authority in defiance of the clear intent of the legislature. In all likelihood, for that reason, the Personnel Division would oppose this proposed rule change on the grounds that it defies the classification statute at MCA 2-18-201. Still, since the Fitzpatrick precedent guides the Board in the scope of its review and remedy powers, it is important that the extent of the Board's willingness to intervene in the classification plan is made explicit in its rules.

In terms of the conduct of hearings, such explicitness would offer the benefits cited in item two above. That is, the proposal to create a new class would be known by both parties from the outset. Evidence for and against the new class could be presented and the hearings examiner could then focus exclusively on that issue. This would immensely increase the protection of both parties' rights, since the creation of a new class could not be vaguely suggested by an appellant or, even worse, drawn out in a hearings examiner's decision like a rabbit from a top hat.

4. Adoption of the third proposed issue, addressing positions evaluated with point-factoring methods would, for the first time, bring formal recognition in the appeals process to point-factoring evaluation. This is vital for both the current job evaluation practices of the state and, most importantly, for the planned job evaluation improvements of the future.

Presently, the Classification Bureau evaluates all managerial and executive jobs under a point-factoring instrument called the Executive-Managerial Evaluation System (EMES). This method was formally adopted in 1980 into the Classification Manual covering methods and procedures. Like all point-factoring systems, the EMES evaluates jobs by assigning degree levels or ratings on various criteria such as complexity of the work, size of the work impact and the number of staff supervised. Point values are recorded for each degree level and are compiled for all factors to produce an evaluative score. The total score is then equated to a pay grade through the use of a carefully designed conversion chart.

The Benchmark Factor Method (BFM) referenced earlier in this chapter operates approximately the same way as the EMES. Any review of decisions made using these methods should reflect the process by which decisions leading
to the allocation or reallocation of a position to a class are made. The proposed third appealable issue is designed to do this and is modeled on the lines of the grievance process used by the State of Michigan. In Michigan all jobs are evaluated under point-factoring methods. As a result, that state's appeal mechanism focuses exclusively on the issue of ratings on the various evaluative factors. Michigan's appeal forms are designed to capture specific information about disputed factor ratings.

The possibility of reducing disputes to a choice between two or possibly three factor level ratings promises to greatly rationalize the appeal process at all steps. In fact, since 1980, the Board has conducted a few hearings on positions covered by EMES. Hearings examiners, members of the Board, and representatives of the appellants and of management have all observed that such hearings are more efficient and easier to understand. Since the Personnel Division plans to implement BFM for all positions in the classification plan, eventually all hearings could be conducted under the proposed third issue.

To understand the final point that must be made about this particular rule change, some background explanation is necessary. The Board's rules originally contained no specified appealable issues. After five years of conducting grievance hearings without specified issues, both the Personnel Division and the largest union of state employees, the Montana Public Employees Association (MPEA), approached the Board to suggest a rule change. The Board's Administrator asked the two parties to propose a list of grievable issues for inclusion in the rules. The thirteen issues presently in the Board's rule were all proposed jointly by the two parties.

A discussion with the Personnel Division's representat-
tive in this endeavor suggests that the basis for the thirteen issues was not the statute but rather the past practices in hearings until that time. In other words, any inconsistencies, redundancies, questions of legality or irrelevance in the thirteen issues merely reflects the presence of those same problems in hearings prior to 1980. It is more than a bit astonishing as a reflection of what these two actors expected from the process to note that their thirteenth allowable appeal issue was "(Other) must specifically relate to position classification". Clearly, the parties saw the process as almost totally unpredictable and wide-ranging. Their main objective in proposing the appealable issues was the hope that first, cases would at least be based on identified, explicit issues, and second, that the range of alleged grievances could be narrowed to no more than three or four in each case.

The genesis of the Board's thirteen appealable issues underscores the final point to be made about the proposed rule changes. Because the thirteen issues reflect actual practices rather than the statute, they are unnecessarily and prohibitively specific to the classification methods used in the first five years of the classification system. As such, the thirteen issues contradict and/or ignore the methodological implications of the proposed Benchmark Factoring Method. This is primarily true in the current issues (i) and (ii) where the reference is to grievances
based on class specifications. Historically these are the appeal issues most used. In the BFM, class specifications are not used and the critical question is whether all the structured decisions leading to determination of a grade level are correct, rather than whether a class specification does or does not describe a position. Also, to the extent that BFM is seen as at least part of the attempt of the Personnel Division to obtain the mandated goal of comparable worth, then the Board's current appealable issues serve as a barrier to that statutory mandate.

Proposed Rule Change #5

Continuation of 24.26.508 at: (3)(b) The Personnel Division shall have 30 working days to review the matter, record its findings in the appropriate section of the form and to issue its recommendation and return it to the employee or the proper representative.

Discussion:

The change here is simply to remove the phrase "issue its recommended adjustment" presently in the rules and to replace it with "issue its recommendation." This is necessary because the Personnel Division regularly recommends no adjustments if its findings indicate that the position of an appellant is correctly classified.

Proposed Rule Change #6

Continuation of 24.26.508 at: (4)(c)(i) The Board shall examine the issue(s) and exceptions identified by the employee. If the issue(s) and exceptions are adequately described, the Board will accept the appeal at Step Four and
immediately serve notice of acceptance on the Personnel Division and the appellant.

Discussion:

This change is primarily an administrative courtesy. The Personnel Division often receives notice of acceptance of an appeal at Step Four weeks after the fact. This imposes a burden in planning and assigning work since the job analyst involved in the investigation of the appeal is obligated to spend many hours preparing for a hearing. It also causes a lengthening of the entire process since the Personnel Division and the appellant could begin the discovery process much sooner if notified immediately. Finally, this change, at least in a few cases, would allow the Personnel Division to monitor the Board's deadlines in rules (ii) and (iii) of this same section. Those rules are designed to force the appellants to explicitly describe their exceptions to the Personnel Division's Step Three findings in a timely manner. If the appellant fails to do so, the entire process can be returned to Step One and the cost liability of the employing agency would be reduced in terms of a potential backpay obligation.

Proposed Rule Change #7

Continuation of 24.26.508(4) at: (d) If in the Board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The Board may carry out any investigation deemed necessary for resolution of the appeal or complaint or the board may enter into a stipulation with the two parties to the appeal to conduct
a prescribed investigation under mutually agreed conditions. The employee or group of employees and Personnel Division shall have ten days to accept or reject the preliminary decision unless all parties have previously stipulated acceptance of the preliminary decision. If the employee or group of employees and the Personnel Division accept the preliminary decision, it shall be final and binding. The Board shall then implement the preliminary decision by instructing the Personnel Division to remedy the situation.

Discussion:

This rule change suggests implementation of a request made jointly by MPEA and the Personnel Division in early 1979. At the time the two parties were faced with a tremendous backlog of appeals and long delays before hearings were conducted. In a memo on the proposal, the two protagonists' suggestion was summarized as follows:

Basically, the proposal recommends re-establishing the preliminary investigation with the following additions:

A) Appeals to be investigated would be identified with sufficient lead time so that both parties could prepare cases.

B) Both parties would exchange case materials two weeks prior to a pre-investigation conference.

C) A pre-investigation conference would be held at which both parties would present their case.

D) The investigator would have a set time frame to complete their investigation, reach a decision and prepare an investigative report.

E) Only exceptions to the investigative report could be continued to a hearing and hearings would be limited to those specific exceptions.

The current administrative hearing process has proven to be inefficient, time consuming and not a very good means for making classification decisions. We feel, and MPEA agrees, that a procedure as outlined above would be much more effective.
The rule change here goes one step further by offering two additional provisions: 1) that the parties could stipulate the scope of the investigation; and 2) that the parties could stipulate acceptance of the investigators decision and waive the right to a hearing or to later court action.

The first provision simply adds protection of rights to the notion of a preliminary investigation by assuring that each party would, through stipulation, be assured that the hearings examiner would consider certain specified documents and/or interview certain key persons. One reason why preliminary investigations have been rarely used in recent years is that the parties are concerned that the hearings examiner may overlook or ignore key elements of their case. This provision could raise the level of trust in the preliminary investigation and restore it as an option for resolution of grievances.

The second provision adds the possibility of binding authority to a preliminary decision. This would increase the Board's interest in conducting such investigations since, as an alternative to a hearing, a preliminary decision would no longer represent a lengthening but a reduction of the process. For the parties to the appeal, the main benefit of this provision would be to shorten the process and to increase the informality of the process while reducing or eliminating the possibility of losing a case on a
procedural issue or legal error. As an example, parties could present evidence in terms that are meaningful in everyday experience without concern for the finer, legal points of proper foundation or hearsay. The hearings examiner who is trained to protect due process could then assess the adequacy or inadequacy of evidence and testimony on his own.

The use of a stipulation process also enhances the flexibility of the process administratively. For instance, arrangements could be made to allow witnesses to cross examine each other. Also, a time and place convenient to just those persons involved in one aspect of the case could be chosen. Other witnesses could be interviewed by phone or at the convenience of the hearings examiner. Since travel cost is of concern to the Board, the preliminary investigation in lieu of a hearing is especially attractive. The essential point is that all three parties to an appeal, would, by stipulation, be able to define the conditions under which a binding decision might be made. Finally, the use of the preliminary decision as an alternative to a hearing would be subject to veto by any one of the three parties. The Board would, of course, retain its discretionary authority in section (e) of this same rule to refuse to conduct a preliminary investigation of any sort.
Proposed Rule Change #8

Continuation of 24.26.508 at: (g) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the Board shall issue an order requiring action to resolve the employee's grievance.

(F) The Board's order of an upgrade can be implemented in one of two ways:

(i) the appellant's position may be reclassified with backpay from 30-days prior to initiation of Step One; or

(ii) the appellant's position may be modified by assignment of duties appropriate to the classes recommended at Step Three by the Personnel Division. The Personnel Division, when using this option, shall provide an appropriate job description to the Board documenting the changes in the position and shall provide the higher pay ordered by the Board to the appellant for a period of not less than 30-days prior to the initiation of the appeal until 180 days following the date of the Board's final order. The appellant may file a new grievance at Step One 180 days after the first hearing order if the appellant believes his/her position has not been significantly changed to warrant the lower grade level. A second hearing may be conducted on this issue, and if the Board finds the appellant's job unchanged, the Board may order an upgrade under the provision of 24.26.508 F(i).

Discussion:

This change is aimed at one particular and common kind of grievance. Appellants often feel that they have, for any number of reasons, assumed duties not originally in their job description. Typically, this has either not been the intent of the supervisor, or the supervisor, in assigning the duties, does not realize that they constituted a higher level responsibility. In such cases, unions and employees have traditionally argued that the intention of the supervisor does not change the principle that employees should be...
paid for the work they actually perform. Hearings examiners normally have agreed and have ordered permanent upgrades for such appellants.

The permanent upgrade creates obvious problems, however. First, agencies have not budgeted for the reclassification. Second, the circumstances causing the change in duties is often temporary. The loss of another worker in the office can, for instance, impact an appellant's job until the co-worker is replaced. Also, if the duties have been self-assigned by the appellant without the knowledge of management, managers lose the opportunity to assign, or otherwise dispose of the duties in another manner. In effect, the Board, by permanently upgrading an appellant, intervenes in a manager's right to manage as she sees fit.¹²

The final part of this rule change establishes a means for an employee to grieve again if they feel that the changes in the position have not occurred. In other words, employees would be protected from retaliation on the part of management not only by the job description submitted to the Board to document the change, but by the opportunity for a second hearing on the matter.

Finally, the provision for 180 days of pay protection at the higher rate acknowledges that employees should be paid for what they do. The 180-day period is in fact the amount of pay protection currently given to employees whose positions are downgraded because of a change in duties under
Proposed Rule Change #9

At A.R.M. 24.26.513: (4) In a case designated as a group appeal by the Board and consisting entirely of positions from one agency, the appeal shall begin at Step Two of the formal appeals procedure provided in 24.26.508 and shall be based on one of the three appealable issues listed in 24.26.508(c).

(5) In a case designated as a group appeal by the Board and consisting of positions from more than one agency, the appeal shall begin at Step Three of the formal appeals procedure provided in 24.26.508.

Discussion:

This proposed rule change is aimed at bringing agencies into the process governing group appeals. Presently, the Board's rules specify that all group appeals should begin at Step Three in the process. This provision was appropriate in the first years of the classification system because unions organized employees from various agencies into groups. Since no one agency could respond to such a group at Step Two, the grievance was begun at Step Three. With the 1981 statute change outlawing appeals of the grade assigned to a class, the number and kind of group appeal has changed (see Chapter Three, page 68). Therefore, the change here would require a response from the agency at Step Two, when all the members of the group work for one agency. The advantage would be that such appeals could potentially be solved by the agency and that, if the grievance was advanced to Step Three or Four, the later participants would be able
to evaluate the agency's assessment of the grievance. Under the current rules, agencies are often confused and sometimes resentful that group appeals can be advanced and resolved without any input from the agency which must then accommodate the budgetary and managerial results of the final decision.

Implications of the Proposed Rule Changes

In terms of the stated objectives of the reforms advocated in this paper, even the implementation of every proposed rule discussed above would not fully address the diagnosed problems of the grievance process. In most areas, large amounts of discretion would still reside with the hearings examiner and the members of the Board. The only proposal significantly reducing the Board's discretion is Proposed Rule Change #8. This change would prevent the Board from permanently resolving what, in many cases, is or could be only a temporary classification problem. With that one main exception, extensive discretion would remain with the Board, and this suggests that a willingness on the part of the Board to redefine its role may be at least as important as any rule change.

The new role of the Board prescribed here would be primarily characterized by:

1. A willingness to restrain the scope of review in hearings.
This posture would be established by firmly holding the burden of proof on appellants while focusing on the narrowest, most specific appealable issue(s). The weight of testimony offered by job analysts would normally be greater than that of testimony of appellants – at least when the focus is on application of the job evaluation method. Finally, when evaluating the relevance and weight of evidence, emphasis would be placed on that evidence relating directly to whether the Personnel Division's Step Three response is correct or incorrect rather than whether the appellant "deserves a raise" or appears to have been treated unfairly by management.

2. A willingness to learn and master the unique intricacies of job evaluation in general and the many provisions of Montana's method in particular.

As portrayed earlier in this paper, the challenge of understanding job evaluation is ongoing and to some extent, overwhelming. But if the Board intends to exercise a kind of secondary classification authority, that challenge must be met at least by the Board's staff, if not by the citizen members of the Board. Training in the field should be arranged. Specialization in classification matters by one or two hearings examiners is a plausible option that the Board once tried with success and perhaps should be used again. The advantages suggested by Proposed Rule Change #4, which reduces the number of appealable issues, can only be realized if hearings examiners are not only willing but able to review the decisions of the Classification Bureau and make informed orders that make sense in terms of equity in the larger system.

3. A willingness to accommodate change in the provisions and organizational climate of the job evaluation system.

Job evaluation was treated with great suspicion by some legislators, employees and unions when it was adopted in 1973. Numerous safeguards were put in place by law, rule and practice to protect the worker's obvious interests. As central job evaluation has gained effectiveness and credibility in the past eleven years, some of these safeguards have been eased or at least circumscribed by changes in the structure of the grievance process. To its credit, the Board has proven both willing and adept at adopting the necessary changes that have allowed the classification system to mature. In a sense the present job hierarchy is a
product of a period of give and take between management and labor, overseen by the Board and directly reflective of the Board's role as an arbitrator of the system.

Today, as the Personnel and Labor Relations Study Commission concluded, the classification system in Montana, having survived its infancy, is ready to walk ahead with much less oversight from the Board. The planned methodology changes and the state's comparable worth law will create the need for changes in the appeal process. While many of those changes have been spelled out here, many others as yet unseen, will arise. If the appeal process is to complement rather than impede these changes, the Board must assume a new role in the process.
FOOTNOTES

Chapter IV

1 In the 1983 session, House Bill 309 which was designed and endorsed by the Personnel and Labor Relations Study Commission, attempted to create a uniform grievance process covering the protection of general employee rights and classification grievances. The key feature of the bill, originally was that it also specified that the Classification Bureau's decision would be upheld unless the appellant proved with "clear and convincing" evidence that the Bureau had erred. This "clear and convincing" standard is legally a higher burden than the present requirement of a preponderance of evidence.

House Bill 309 passed the House but was killed in the Senate on a close committee vote. An attempt was made to amend the bill in the Senate to create a new Board attached to the Department of Administration to hear all grievances. The amended version, however, also failed to pass the Senate.

In the following 1985 session of the legislature, as if in retaliation for management's initiatives in 1981 and 1983, unions backed two bills to dramatically enhance the employees' prospects in a grievance. House Bills 806 and 485 called for statutory change to make most classification activities the mandatory subject of bargaining and/or approval by the unions. This proposal would have revised the 1977 legislature which defined classification as merely a permissive bargaining subject. House Bill 485 was aimed specifically at providing a veto power to unions over the adoption of new or revised class specifications. Since these specifications determine the class allocation of positions, the proposal clearly would have shifted basic classification authority away from the State Personnel Division and the Board in favor of the union. Both Bills failed in committee and did not pass in the House.

2 Over time the Montana Department of Institutions has evolved into perhaps the most persistent opponent to the existence of the grievance process. Their opposition is partly philosophical but mainly practical. Given their highly unionized workforce and the conditions under which their employees work, the Department of Institutions has dealt with a greater number of appeals and has lost more appeals than other state agencies. Conversely, unions would, of course, vehemently resist the removal of the grievance process for obvious philosophical or political
reasons and for less obvious practical reasons. In practical terms, representation in the appeal process is a major selling point to increase and maintain union memberships. Interest in union membership can be and has been generated by the mostly accurate suggestion to employees that with skilled representation, an upgrade can be obtained for almost anyone.


5 See the case files of the following grievances based on a point factoring evaluation for more information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Case Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nachttsheim</td>
<td>1982</td>
<td>1345</td>
</tr>
<tr>
<td>Walch</td>
<td>1982</td>
<td>1363</td>
</tr>
<tr>
<td>Risley</td>
<td>1983</td>
<td>1393</td>
</tr>
</tbody>
</table>

6 One example of this kind of problem would be a situation where the incumbent of a position evaluated by BFM appealed on the basis of error in one factor level assignment. In some cases, if the dispute centers on a factor given little weight, even if the appellant were given the highest level on that particular factor, it would not change the point total for the job substantially enough to cause an upgrade. This creates the prospect of hearings over disagreements that do not effect grade level. As such, the hearing would be an exercise in futility if not gross inefficiency.

7 The inclusion of unions as a party with standing in an employee grievance procedure is but another reflection of the historical roots of the process as described in Chapter III. It clearly represents the attempt in 1973 and 1975 to make classification more palatable to union interests. In many ways it parallels unfair labor practice (ULP) charges in the collective bargaining domain since, presumably, it would allow unions to file general classification and wage grievances to protest the lack of good faith of management in carrying out the classification plan.

According to the Administrator of the Employment Relations Division of the Department of Labor and Industry, only once has a union used this statutory opportunity to
file a grievance. That occurred in the late 1970's when the MPEA filed a grievance to dispute changes in the state's Pay Plan Rules. No hearing was conducted however, as the union eventually vented its concerns to the State Personnel Division.

To illustrate the kind of dispute arising from a job duty, consider this example.

**On the employee's job description:**
Employee counsels job applicants on career development opportunity, advises applicants in training options and negotiates the details of a training plan.

**On the Supervisor's job description for the same employee:**
Employee completes job training forms by explaining services available to the client and scheduling the client for those training opportunities for which he has previously established eligibility. Obviously, the employee either sincerely or dubiously has a much higher opinion of this task than the supervisor. At Step Three or in a hearing at Step Four the job analyst or hearings examiner often must essentially reconcile the difference to make a decision.

To illustrate the problems with the present thirteen appealable issues, a brief commentary on each rule is in order:

(i) The class specification doesn't adequately describe my position duties.

This is a valid issue but it is far too vague as a basis for a full case. Appellants rarely, if ever, rely on just this issue.

(ii) A different class specification is a better description of my position duties.

This is really a companion to issue (i) and is somewhat vague apart from (i).

(iii) The class title is inappropriate for my position.

This is totally irrelevant. Agencies can use whatever working title they choose for a job. Grade levels and pay are not established by job titles but by the level of work assigned.

(iv) The minimum qualifications are not equivalent to those required to do my job.

The minimum qualifications of a job are not used as a measurement criteria in Montana's current system. Most hearings examiners realize this and ignore appellants' arguments on this issue.

(v) Other positions assigned to the same class have less difficult work than my position.

This issue may be relevant when combined with (i) or (ii) but apart from them it usually is meaningless. The
classification method states that jobs are assigned to classes with preset grades rather than assigning grades to positions. Thus, comparisons to other positions only tell part of the story.

(vi) My position duties are more similar to positions assigned to a different class.
This issue is largely redundant and suffers from the same limitations described for (v).

(vii) Other positions assigned to the same class perform duties significantly different than my position duties.
The issue is completely redundant with issue (v) and therefore is not needed.

(viii) The Position Description for my position class does not adequately describe the duties and responsibilities assigned.
This issue is puzzling since employees normally complete their own job descriptions. At any rate, problems over job descriptions should be addressed before the grievance begins.

(ix) There are significant responsibilities assigned to my position which are not included in the Position Description.
This issue is redundant with issue (viii) above.

(x) There are significant duties described in the Position Description which are not performed by this position.
This issue is also redundant with (viii) above.

(xi) There is not a current Position Description available for my position.
This issue lacks relevance as indicated in the critique of issue (viii) above.

(xii) The Pay Plan Rules have been incorrectly applied to my position (specific rule(s) should be cited).
Pay Plan rules are not cited as the basis for a grievance in the establishing statute (see MCA 2-18-203(2)). They are thus of questionable legality and should not be included here.

(xiii) (other) must specifically relate to position classification.
This issue is so open-ended as to be preposterous. It is rarely used and suggests a degree of leeway not supported by the rest of the Board's rules.

It should be noted that if this rule was adopted, the Board would be well-advised to change the name of the process from Classification and Wage Appeals to Classification Appeals. Clearly the statute in addressing only allocation and reallocation as the basis for appeals, does not imply that wage setting or application of the pay rules
is to be included. Presently the Board's twelfth appealable issue specifically allows appeals based on the application of the pay plan rules. While there is language in statute (M.C.A. 2-18-1011) suggesting the Board's authority to hear pay grievances, if the Board intends to do so, separate rules should be developed for pay grievances.

11 The letter cited here is an internal document of the Personnel Division. The letter was written by the Classification Bureau Chief at the time, Mark Cress, and was sent to Mr. Cress's superior, William Gosnell. See Memo from Mark Cress to William Gosnell, State Personnel Division, March 15, 1979, p. 2.

12 Agencies have been effectively handcuffed by past Board decisions. Appellants' jobs are often viewed as untouchable for fear of retaliation charges. As a result, agencies report that they manipulate and sometimes duplicate work assignments to avoid the "problem" position.


14 For a more indepth explanation of this argument, see Chapter III, pages 66-68.

15 This claim is of course a relative one. Compared to the first few years of the system, there are presently fewer classification appeals. This suggests acquiescence if not acceptance on the part of employees. Managers tend to support the concept of job evaluation, though they readily admit their ignorance of its details. Though unions today decry the credibility of the state's current methods when arguing for an appellant, it must be recalled that the MPEA was the most vocal supporter of continuing the present system during public hearings in 1983. For a more detailed assessment of overall effectiveness of Montana's system see - John H. McEwen, "Position Classification in Montana State Government: A Critical Review." A professional paper for the degree of Masters of Public Administration, Montana State University, 1982, pp. 27-45.
CHAPTER V
THE PROSPECTS FOR CHANGE

With the problems diagnosed and some remedies prescribed, this chapter examines the prospects for change in the grievance mechanism. After briefly describing the momentum for the status quo, various reasons to believe that change is indeed possible will be discussed. Next, the discussion will turn to a proposed plan of action to bring about the changes endorsed in this paper. Finally, the chapter closes with a broad perspective on change itself.

The Time is Right for Reform of Montana's Grievance Process

Most of the problems described in earlier chapters are not revelations original to this paper. Criticisms and reform proposals aimed at improvement literally began with the appeal process itself. This, of course, tends to support the classic status quo argument: The situation can't be all that bad if it's lasted this long. Time and past practice are the main line of defense against change. As alluded to earlier, unions, having achieved great success through the appeal process since 1975, obviously still have an interest in seeing appeals conducted like "business as
usual."

The MPEA, having been by far the most active union in classification appeal actions, will appropriately carry a powerful voice in determining whether change occurs and, ultimately, whether it can succeed. The MPEA represents more than half of all unionized, classified employees. With the limitations imposed statutorily on them in bargaining for wages, the MPEA has always contended that even if the appeal process favors the union, it is a small price to pay for labor peace in state government.

In the end, that argument, despite its failure to address the many negative consequences of appeals on the classification system, may well continue to prevail. There are, however, a number of considerations that suggest the time is now right for the kinds of changes prescribed in this paper. Some of these considerations are subtle and subject to more than one interpretation. Taken together, however, they form the basis for the contention here - that change is clearly possible, if not inevitable.

First, in 1987, both Montana and the nation are experiencing an era of fiscal and political conservatism. The political dimension of conservatism has placed unions on the defensive and, some have argued, on the decline.¹ Conservative politicians are not inclined to look after union interests. In Montana state government, total union membership has not changed notably in recent years; however, em-
ployee unrest with declining pay levels and discouraging words from legislators has been manifested in disgruntled bargaining units leaving one union to join another. In this trend, the MPEA has seen some decline in its state employee membership and probably some decline in its influence on state policies.

Fiscal conservatism creates an interest in almost any proposal that might save money. Salaries are the single largest cost in Montana's general fund budget. In its report to the 1982 study commission, the State Personnel Division reported that appeals authorized by the Board from 1975 to 1979 cost $2.6 million. This of course is only the direct, initial cost of these appeals. Once the salaries of a class are raised, they become a permanent increased cost to future budgets. Also, the phenomena of "grade creep" is accelerated as a position upgraded through an appeal is used in comparison to justify the upgrade of other positions. While it is difficult to assign a firm price tag to Board decisions, it clearly is in the millions of dollars. The potential for significant savings based on the assumption that restricted review of classification decisions by the Board would reduce the number of upgrades ordered is certain to attract budget cutters and those who cater to them.

Another important consideration is the movement for comparable worth. As of the writing of this paper, it appears that an attempt to repeal the state's comparable
worth law has been turned back.³ There are at least two implications of this reiteration of commitment to comparable worth:

1. Montana's unions cannot afford to be seen as the only obstacles to changing the grievance mechanism to allow full implementation of BFM. Unions, nationally and in Montana, have been vocal proponents of comparable worth and seemingly they will have to accommodate changes to put it in place in Montana.

2. For perhaps the first time since its inception, job evaluation now has a visible and vocal advocate group in the form of the women's movement. Though in Montana that movement has not yet achieved a sophisticated understanding of the state's classification system, it is reasonable to believe that they will eventually. Potentially then, to the extent that women's interest groups identify an improved classification system as one of their goals, they may be a force for changes in an appeal process that threatens the equity of that system.

The next consideration is that the current appointed members of the Board of Personnel Appeals appear to be anxious for the adoption of BFM. This interest is based on the Board's deliberations in a 1985 case on appeal to the Board.⁴ The hearings examiner in this case, in ruling against the State Personnel Division, had created a point-factoring method in her findings of fact. This "method" consisted of a point scale conversion of each of the qualitative factors now used by the Classification Bureau. The State Personnel Division argued that regardless of whether the hearings examiner had reached the right decision, she had clearly abused her discretion by inventing her own classification method.

The Board ultimately concurred with the State Personnel
Division in this case, but its discussions about point-factoring were most revealing. Essentially, the Board members asserted that reviewing cases that had been point-factored was immeasurably easier and more fair than decisions made under the state's current method. Members of the Board questioned the State Personnel Division's counsel at some length about the status of BFM and their hope that it would be adopted soon. Thus, there is every reason to believe that members of the Board will welcome the improvements of BFM and strive to advance the appeals process into a new classification era in Montana.

A Plan of Action

Since it has traditionally been the perspective of the State Personnel Division that the classification grievance mechanism is in need of repair, the State Personnel Division should take the first steps in that direction. It is recommended here that the State Personnel Division initiate the process of change by formally proposing the rule changes in Chapter IV to the Board. This proposal should be made as soon as the Division has established a timeline for implementation of BFM. 5

The Division should in its formal request urge the Board to establish an informal committee pursuant to the Montana Administrative Procedures Act at MCA 2-4-304 to provide advice to the Board on reshaping its rules. The
purpose of the committee would be to provide an informal forum for all interested parties to discuss reform of the Board's rules and its role in classification hearings. The makeup of the committee might include the chair of the appointed members of the Board, one staff member of the Board, an attorney for the Board, one representative from each of the state's largest public employee unions - the MPEA and the Montana Federation of Teachers - and an attorney and representative of the State Personnel Division appointed by the Director of the Department of Administration.

The importance of the committee is that, as suggested in Chapter IV, a change in the Board's rules will not suffice to address the historic problems of the process as discussed in Chapter III. A new role for the Board must be defined in a way that the parties to the process can understand, if not fully accept. The committee process offers an avenue on which the dialogue regarding the Board's role can take place. The committee would, of course, be only advisory as described in the law and the Board would unilaterally decide whether and how to design changes in its rules.

Along these same lines, it is recommended that the State Personnel Division make arrangements with the interested unions to provide regular input to the BFM implementation process. This could take the form of a permanent
standing committee charged with review and comment on all benchmark jobs as they are adopted for use. This committee could include union appointed employees or union officials along with representatives of agency management and the Classification Bureau. Another alternative would be to use the existing Job Classification Advisory Council, which was created to develop the classification improvements called for by the 1982 study commission. The important point is that unions should be given a greater role in establishing job evaluation criteria while being asked to cooperate in formulating a lesser role for the Board of Personnel Appeals.

If this approach brings an insufficient response, the State Personnel Division should escalate its case for change by preparing statutory reforms for the 1989 legislature. Such reforms could include:

1. Restoring its nearly successful 1983 call for the creation of a new board attached to the Department of Administration to hear all personnel and classification grievances;

2. Asking the legislature to add language to raise the burden of proof upon the appellant from a mere "preponderance of the evidence" to the more demanding burden of "clear and convincing evidence," and/or

3. Asking the legislature to require that all remedies be ordered directly by the Board and that hearings
examiners can only recommend findings of fact to the full board. 7

All these proposals for statutory change, and others not mentioned, could be pursued individually or in combination. Finally, while it is preferable to press for change below the statutory level, the grievance problems are grave enough that the State Personnel Division should have an alternative plan of action, if the rule-change strategy fails.

Closing

The English Philosopher, Francis Bacon, once wrote: "As the births of living creatures are at first illshapen, so are all innovations which are the births of time." 8 This paper is hardly the last word on the subject of grievance reform in Montana. It would be folly, indeed, to believe that change will occur on the basis of this one perspective. Rather, it is hoped that this paper, in putting forth a clearly labeled perspective - that of the daily practitioner of the job evaluation art - will provide a starting point from which management, employees, unions, and the Board can learn and to which they can react. The truest test of the value of this effort is not whether its vision of change prevails, but whether change occurs at all.
FOOTNOTES

Chapter V

1 For a recent summary of the perceived general decline of unions in the Montana political arena see: Charles S. Johnson, "Labor's Influence in Helena Wanes," The Great Falls Tribune, Great Falls, Montana, Monday, February 9, 1987, p. 3A.


3 The reference here is to Senate Bill 169 introduced in the 1987 Legislature. That bill proposed repeal of the Comparable Worth Statute. It received a tie vote in a Senate committee and as of this writing is given little chance of passing during this session. It is worth noting that public unions opposed the bill and thus, supported the state's continued commitment to comparable worth.

4 For a record of these deliberations, see the minutes, or request the taped transcript of the meeting of the Board of Personnel Appeals of October 11, 1985.

5 As of this writing, the State Personnel Division anticipates beginning implementation of BFM in the Spring or Summer of 1987.

6 Clear and Convincing proof is defined as: "That measure or degree of proof which will produce in the mind of trier of facts a firm belief or conviction as to allegations sought to be established; it is intermediate, being more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases. Fred C. Walker Agency, Inc., v. Lucas, 215 Va. 535, 211 S.E.2d 88, 92." Henry Black, Black's Law Dictionary, St. Paul, Minnesota, West Publishing Company, 1979, p. 227.

7 The idea here would be that both parties to an appeal would have an opportunity to propose a remedy to a grievance to the full Board. This could result in improving the Board's ability to adapt a remedy that made sense in terms
of position equity within the classification system.

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Geologist

DUTIES

Performs professional, advanced geological and geotechnical engineering work to provide design recommendations used in highway design, construction and maintenance projects. This position is supervised by the supervisor of the Geology Section.

A. Supervisory/Managerial Duties:

1. Planning
   a. Participates in deliberations on the general nature and content of project operations, and independently plans and carries out specific project operations including methods, work procedures and work flow.
   b. Participates in preparation of workload cost and other estimates needed for the preparation and defense of budget requests.

2. Supervision
   a. Assigns and directs the work of subordinates and co-workers.
   b. Determines technical adequacy of project work.
   c. Provides training to subordinates.
   d. Participates in decisions to reprimand subordinates.
   e. Coordinates project activities with other agency units and individuals outside the agency as needed.

B. Non-supervisory Duties:

1. Geotechnical Field Work
   a. Records and interprets physical features of the earth (surface and sub-surface) to identify conditions that would affect engineering projects; using measuring instruments, geological knowledge and geotechnical knowledge.
   b. Investigates landslides to determine causes of slides in order to submit corrective and economic recommendations; using geotechnical knowledge and analytical skills.
   c. Installs and monitors instruments to measure rock and soil parameters such as soil movement, soil strength and seismic properties; using knowledge of instrument operation and proper instrument placement.
   d. Advises engineers on ongoing construction projects to assure geological accuracy of projects; using geologic plans and reports and knowledge of highway construction procedures.

2. Laboratory Work
   a. Organizes and coordinates the testing of soil and rock to determine their properties for use in geotechnical solutions using
various testing equipment and specialized knowledge of lab procedures.

b. Interprets and evaluates laboratory and visual testing to develop recommendations for highway design.

30% 3. Report Preparation
a. Composes written analysis of data and test results to produce complete design report, using knowledge of proper geological report formats.

b. Formulates and writes specifications concerning geotechnical situations for use in construction contracts.

10% 4. Review and Approval
a. Reviews preliminary and final construction designs and provides comments and corrections to insure geologic soundness of projects.

b. Reviews and edits reports of co-workers to insure accuracy.

5% 5. Miscellaneous Projects As Assigned
a. May testify as an expert witness in legal matters concerning geological problems.

b. Provides geotechnical information and assistance to outside agencies such as universities, Department of Fish, Wildlife and Parks, Department of State Lands, and Department of Natural Resources and Conservation, in solving geotechnical problems.

C. Positions Supervised:

A varying number on a project basis – most commonly three FTE's which can include:

Direct
1 - Geologist I
1 - Geologist II
1 - Civil Engineer I
1 - Civil Engineer II
1 - Lab Technician I
3 - Core Drill Operators
1 - Core Drill Operator

Indirect
1-2 - Core Drill Operator I
1 - Core Drill Operator II

I. Complexity (mental effort) (Factor Level F)

The work involves planning and conducting projects to gather and analyze geological information in order to solve geotechnical problems related to site selection, design specifications and the maintenance and construction of state highways and highway structures. The position is sometimes assigned projects larger than those assigned to lower level Geologists, requiring a higher level of planning and coordination of work.

Standards include preliminary construction plans, design memos, survey and test requests; detailed and extensive U.S. Department of Transportation guidelines and standards on information gathering and analytical procedures; previ-
ous studies conducted by the Geology Section; and technical assistance provided by the Supervisor of the Geology Section.

These standards are generally applicable to most situations. Due to the difficulty of gathering precise data on subsurface conditions and structures and due to the unique nature of geological conditions and formations in many sites to be studied, professional judgement and analysis is required to modify and adapt information gathering, and analytical methods and techniques, or to suggest unique design recommendations. Advanced professional judgement is also required in planning, coordinating, and reviewing the technical adequacy of work performed by other Geologists on large projects.

2. Physical Effort (Factor Level C)

Field work involves climbing and walking on rough and steep surfaces, bending and lifting geologic equipment. Thirty-five percent of work time is spent in the field and 60% of field work involves these strenuous activities. The remaining time is spent at a desk or performing light activities in the field or in the lab while standing.

3. Knowledge and Skill Level (Factor Level G2)

Dimension I - Occupational Knowledge

A. Knowledges and skills needed at entry:
   1. Knowledge of the theories, principles, methods, and techniques of geology pertaining to highway design and construction.
   2. Skill in the use of field and laboratory equipment, and in maintaining or repairing and calibrating sensitive geological instruments.
   3. Knowledge of department policies, procedures, standards, and organizational structure.
   4. Knowledge of how geotechnical design features and specifications have been arrived at in designing highway structures for a broad range of sites with unique geological conditions and formations.

B. Knowledges and skills needed for full performance:

   Same as the knowledges and skills needed at entry.

C. Education/Training and experience needed:

   The minimum combination of education and experience typically needed to acquire listed entry knowledges and skills plus the ability to acquire full performance knowledges and skills within an acceptable time period is a B.S. degree in Geology and four years experience in geotechnical data collection, analysis, and design work as applied to highway construction engineering.

   Additional experience may be required to acquire knowledge and skill necessary to provide leadworker supervision on a project basis.

Dimension II - Supervisory/Managerial Knowledge

Knowledge of the principles and practices of leadworker supervision.
4. Human Relations Skills  (Factor Level B1)

Dimension I - Nature of Contacts

Normal contacts are with personnel and professionals in the Department and other state and federal agencies to gather information needed for field work and design analysis; coordinate efforts; or to explain analysis and design recommendations and resolve design problems.

Occasional contacts are with contractors to clarify contract specifications for geotechnical construction features; or with the Department legal staff to advise on geotechnical matters in legal actions affecting the department and to act as an expert witness; or with property owners to explain and make arrangements for field work to be done on their property. (Permission to conduct field work is obtained by the Right-of-Way Bureau.

Hostile or conflictual contacts sometimes occur when the employee is called in by the Field Project Manager to discuss the meaning of contract specifications.

Dimension II - Significance of Contact

While this position may occasionally be called into a dispute or to act as an expert witness, this occurs only one or two times annually and responsibility for resolving disputes or structuring testimony lies elsewhere. Skill in handling normal contacts (exchanging technical information and resolving technical problems with other units) is important for efficient problem resolution but not as critical as professional knowledge of geology and geotechnical design.

5. Work Impact Responsibility  (Factor Level B3)

Dimension I - Scope

The position benefits people who use sections of state highways by making design decisions which affect the safety, durability and maintainability of highway sections and structures within assigned project areas.

Dimension II - Consequences of Error

If geological surveys were not properly conducted, or the results of a survey not properly analyzed or reported, or if design recommendations were inadequate, geological hazards such as landslides could result, water tables could be affected, highway structures such as bridges could be unstable, or highway surfaces could deteriorate. Since this Geologist is normally in charge of gathering geological information and reporting it, errors in this phase would probably not be detected. Other work is reviewed and faulty analysis could be detected but this Geologist is considered a technical expert and most of the recommendations and analyses would not be questioned unless obviously outside of normal standards.

Thirty-five percent of the employee's work time involves on-the-job safety training and ensuring that safe work procedures are followed, including core drilling procedures and field survey procedures. Responsibilities include checking subordinates for proper safety equipment and checking work sites for hazards. Failure to exercise these responsibilities could
result in major injuries to subordinates or co-workers, although subordinates are also trained in, and responsible for, safety measures.

Failure to take measures to protect work property (including locking all vehicles; proper handling of instruments in rough terrain and on construction sites; and proper maintenance and storage of instruments) could result in loss or damage to equipment with an estimated value of $118,000.

6. Working Condition Hardships (Factor Level C3)

Dimension I - Physical Hardships

Field work is performed outside at construction and field survey sites. It entails exposure to inclement weather, dust, high noise levels and soiling of clothing, face, and limbs. Field work is performed 35% of work time and hardships are present during approximately 50% of field work.

Dimension II - Work Schedule Hardships

Although the work schedule is normally 8:00 a.m. to 5:00 p.m., approximately five nights per month are spent away from home on state business. Unscheduled callups occur approximately four times per year to investigate landslides or unusual problems on construction sites.

7. Working Condition Hazards (Factor Level C)

Thirty-five percent of the work time is spent in core drilling or geological field survey work. Death, cuts, or broken bones could result from being struck by a vehicle, heavy equipment, overhead equipment or drill casings. Field surveys could result in serious falls or being struck by falling rocks. Injury requiring hospital treatment has occurred to a similarly situated employee recently.

Special on-the-job training on proper and safe work procedures involving core drilling rigs and rough terrain surveys is provided. Hard hats, fluorescent vests and safety shoes are required on drilling and construction sites.
BOARD OF PERSONNEL APPEALS 24.26.502

Wage and Classification Appeals

24.26.501 PURPOSE (1) The purpose of these regulations is to provide all classified employees of the State of Montana an orderly and uniform method to file and process appeals arising from the operation of the state employees' classification and pay plan title 2, chapter 18, MCA.

(History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.502 DEFINITIONS (1) "Employee" means any person employed by the state of Montana, except: elected officials and their chief deputy and executive secretary; officers and employees of the legislative branch; judges and employees of the judicial branch; members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials, officers or members of the militia; agency heads appointed by the governor; academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education; personal staff of the executive officials enumerated in article VI, section one of the constitution of Montana.

(2) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(3) "Department" means one of the 20 principal departments within the executive branch, as provided by the constitution.

(4) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department.

(5) "Board" means the board of personnel appeals or its designated agent.

(6) "Personnel division" means the personnel division of the department of administration.

(7) "Inquiry" means the process of gathering and weighing evidence bearing on appeals. This process may include securing documents, holding individual interviews or group meetings, conducting a hearing, or any combination of the above.

(8) "Appeal" means any complaint filed with the board of personnel appeals relating to the operation of the state employees' classification and pay plan, title 2, chapter 18, MCA.
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(9) "Working days" means all calendar days except Saturdays, Sundays, or legal holidays.
(10) "Form" means the State Employees Classification and Wage Appeal Form BPA-C(1).
(11) "Formal appeals procedure" means the appeals procedure provided for state employees in 24.26.508. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the personnel division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the personnel division before initiating the formal appeals procedure. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)


24.26.508 GRIEVANCE PROCEDURE (1) Step One. Any employee, group of employees, or appropriately designated representatives, may utilize the formal appeals procedure. The individual employee must obtain a State Employee Classification and Wage Appeal Form BPA-C(1) and follow the accompanying instructions. In the case of a group appeal, a group of employees must comply with the rules governing group appeals (24.26.404). Forms may be obtained from the Board of Personnel Appeals, Capitol Station, Helena, Montana, or from the personnel offices of all departments within the executive branch.
(a) The appropriate form when completed shall be submitted to the immediate supervisor.
(b) To complete the form, the employee must clearly identify the issue or issues motivating the appeal. A list of appealable issues will be provided with the appeal form. The employee must explain in detail the issue and their reasons for appealing. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure.
(c) Appealable issues are the following:
(i) The class specification doesn't adequately describe my position duties.
(ii) A different class specification is a better description of my position duties.
(iii) The class title is inappropriate for my position.
(iv) The minimum qualifications are not equivalent to those required to do my job.
(v) Other positions assigned to the same class have less difficult work than my position.
(vi) My position duties are more similar to positions assigned to a different class.
(vii) Other positions assigned to the same class perform duties significantly different than my position duties.
(viii) The Position Description for my position class does not adequately describe the duties and responsibilities assigned.
(ix) There are significant responsibilities assigned to my position which are not included in the Position Description.
(x) There are significant duties described in the Position Description which are not performed by this position.
(xi) There is not a current Position Description available for my position.
(xii) The Pay Plan Rules have been incorrectly applied to my position (specific rule(s) should be cited).
(xiii) (other) must specifically relate to position classification.
(d) The immediate supervisor shall have ten working days to examine the appeal, attempt to resolve the complaint, record his or her findings, record steps taken (if any) to resolve appeal, and return the form to the employee.
(e) If the immediate supervisor feels the employee appeal has merit, the immediate supervisor may, initiate a request for reclassification through the agency personnel office; or request an administrative review of the classification of the employee's position, or redesign the position duties to more adequately reflect actual work performed or initiate and complete other steps to address the identified issue. The employee should continue the appeal even if administrative action is underway.
(f) If the employee does not accept the findings of the immediate supervisor, the employee shall have five working days to forward the evaluation and findings of the immediate supervisor to step two.
(2) Step Two
(a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the department head for review.
(b) The department head shall have five working days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.
(c) If the employee does not accept the findings of the department head, the employee shall have five working days to forward the evaluation and findings of the department head to step three.
(3) Step Three
(a) If the employee chooses to continue the appeal, the employee shall submit the form, all appropriate sections completed, to the Personnel Division for review.
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(b) The Personnel Division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.

(c) The Personnel Division's review and findings shall be limited to the issue(s) identified in Step One of the appeal. Any additional issues identified at Step Three will be addressed through informal, administrative procedures as determined by the Personnel Division.

(d) The Personnel Division will prepare detailed written findings in response to the issue(s) identified at step one.

(e) If the employee accepts the Personnel Division's findings and recommendation, the formal appeals procedure is concluded upon the implementation of the Personnel Division's findings and recommendations.

(f) The employee shall have 10 working days to forward the appeal to the board for resolution.

Step Four

(a) If the employee rejects the Personnel Division's findings and recommendation, the employee shall submit the form BPA-C(1), with all appropriate sections completed, to the board.

(b) The employee must identify and record where they feel the Personnel Division's findings are in error.

(c) The board shall have 10 working days to accept or reject the appeal for hearing at Step Four.

(i) The board shall examine the issue(s) and exceptions identified by the employee. If the issue(s) and exceptions are adequately described, the board will accept the appeal at Step Four.

(ii) If the board finds the issue identified at step one to be inadequately described, the board shall return the appeal to the employee. In such case, the employee may redescribe the issue and refile the appeal at step one within 10 working days.

(iii) If the Board feels that the Personnel Division's written findings or the employee's exceptions to the written findings are not adequately described, the Board shall return the appeal to the appropriate party. In such case, the party will expand its findings or exceptions and refile them with the Board within 10 working days.

(d) If in the board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The board may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and Personnel Division shall have ten days to accept or reject the preliminary decision. If the employee or group of employees and the Personnel Division accept the preliminary decision, it shall be final and binding. The board shall then implement
after notice is sent, the board shall approve or disapprove the group appeal. Such decision may be conditional, and may be altered or amended at any time before final determination by the board after a hearing.

(3) Rule 23 shall also govern notice to members of the group, withdrawal of a member from a group, use of his own counsel by a group member, the effect of board findings on a group, maintenance of a group action in regard to particular issues or subclasses, supplementary orders controlling conduct of the action, and dismissal or compromise of the appeal.

(4) In a case designated as a group appeal by the board, the appeal shall begin at step three of the formal appeals procedure provided in 24.26.400. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75)


24.26.518 FAILURE OF SUPERVISOR, DEPARTMENT HEAD, OR PERSONNEL DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT

(1) If the immediate supervisor, department head, or the personnel division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may forward his appeal to the next step in the appeals procedure by forwarding his original copy of form BPA-C(1) and a new copy of form BPA-C(1) to the next step within five days of the expiration of the time limit. (History: Sec 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75.)


24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED

(1) After a final order concerning a position has been issued by the board, a new hearing will be granted only upon a showing of some substantial change in that position which was not considered at the prior hearing and which would warrant a new hearing by the board.

(2) The employee shall include with his petition a signed affidavit stating the substantial change.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ARM 24.26.508 up to step four b.

(4) The staff shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined that the alleged substantial
change warrants a new hearing, the appeal procedure shall proceed as prescribed in ARM 24.26.508.

(b) If it is determined that the alleged substantial change does not warrant a new hearing, the petition shall be dismissed.

(5) The order to dismiss shall be an appealable order.

(History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 12/4/76.)


24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION

(1) If an employee's supervisor, or the agency for which the employee works, directly or indirectly interferes, restrains, coerces or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.

(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion or retaliation.

(3) The Board shall serve the complaint upon the employee's supervisor or the agency for which the employee works and the supervisor or agency shall have ten days from the date of service of the complaint upon them to respond to the complaint.

(4) After ten days have elapsed from the date of service of the complaint, the board shall commence with step four of the formal appeals procedure. (History: Sec. 2-18-1011, MCA; IMP, 2-18-1011, MCA; NEW, Eff. 7/5/75; AMD, 1984 MAR p. 599, Eff. 4/13/84.)