PREFERENTIAL HIRING CONSEQUENT OF *CRABTREE* IN MONTANA

of

Henry Gordon Hudson

A professional paper submitted in partial fulfillment
of the requirements for the degree

of

Master of Public Administration

MONTANA STATE UNIVERSITY
Bozeman, Montana

August 1984

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ACKNOWLEDGMENTS

I wish to thank the staff of the Department of Administration, Personnel Division, State of Montana for their assistance on my research. Particular thanks go to Mr. Dennis Taylor and Mr. James Nys for their interest and cooperation.

Thanks also to Dr. Richard Haines and Dr. Gil Crain for their time spent reviewing this work and giving direction. Special thanks to Dr. Krishna Tummala who served as chairperson and offered advice and inspiration throughout my studies at Montana State University.

I thank my wife and parents for encouraging and supporting my educational efforts.

Finally, a special thanks to those dedicated personnel specialists throughout Montana State government who assisted this research.

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ABSTRACT

The topic addressed in this paper is hiring preference in the State of Montana. Primary emphasis is on the effects of this preference following the Crabtree Decision of June 1983.

The history of hiring preference at both the Federal level and the State of Montana is examined. This history highlights the expansion of preferred groups and the means used to apply the preference. The historical review culminates with an examination of the crisis precipitated by the Crabtree Decision and the conflict created by the use of an absolute preference.

The paper investigates sixteen randomly selected positions which were involved in recruitment and selection procedures during this period. It includes an analysis of the qualifications of the applicants and a comparison of the qualifications of the successful and unsuccessful candidates.

A method is proposed to analyze and compare the reactions of hiring authorities to this situation. This method draws upon the concepts of conserverism and "Bureaucratic Opposition" to distinguish between the intent of the various reactions.

Based on the evaluations, it is concluded that hiring authorities within Montana State government combined a careful yet innovative response to this situation. It is also concluded that the Crabtree Decision represented a threat to the professional values of Montana's personnel specialists. This threat produced a reaction which embodies many accepted elements of positive personnel management.

CHAPTER ONE

INTRODUCTION

Public administration is an activity which requires the design and implementation of policy to conduct the public's business. It has been described as the art of managing public affairs and the procedure by which laws are enforced and public policy is carried out.[1] Often it is obvious that the "public" has various and frequently conflicting goals. For that reason public administrators must develop policies which address these multiple goals, and somehow offer coherent direction to the activities of government.

Personnel administrators are also facing an assortment of often-conflicting goals. For example, they have been asked to maximize government's efficiency and representativeness. The use of the personnel system as a medium for compensation for past and present injustices, and for reward for past service are also goals of the system.

Personnel systems have adapted to the demands placed upon them by these oftentimes conflicting goals. Policies have been developed which respond, albeit incompletely, to these various demands. However, the system is vulnerable to shifts in direction placed upon it by political or judicial changes in emphasis. These shifts may be rapid and far reaching. At such times students of public administration have the opportunity to observe the methods which are used by bureaucracies to cope with these changes.

The State of Montana experienced just such a change in June of 1983, in the case of *Vivian Crabtree* v. *Montana State Law Library*. The "Crabtree Decision," as it was to become popularly known, dramatically changed the hiring practices for state and local governments.

This paper will analyze the impact of this decision on the personnel practices of the executive branch of Montana State government. Particular attention will be paid to the nature of the candidates hired through the application of absolute preference, and the means with which individual hiring authorities adjusted to the new set of demands placed upon them.

The next chapter will review the historical background of this issue. Methods used by both the Federal government and Montana State government to administer a hiring preference will be examined. In addition, events surrounding the Crabtree Decision and the ensuing special legislative session will be discussed.

The third chapter will examine sixteen randomly selected examples of hiring decisions made during this period. Special attention will be paid to the qualifications of the candidates. Through a comparison of the qualifications of the applicants, conclusions will be drawn regarding the effect of the Crabtree Decision on the degree of merit of successful applicants. Merit in this contract implies the traditional concept of merit as the most qualified for a specific job.

Chapter Four is an analysis of a survey to twenty-three hiring authorities who were engaged in personnel activities during this period. The surveys record various responses to the crisis, as well as attempting to determine whether these responses have remained in effect. The concepts of bureaucratic opposition[2] and conserverism[3] will be used to analyze the responses of these hiring authorities.

The final chapter will propose a framework to aid in the understanding of the bureaucratic response to the Crabtree Decision. Conclusions will be drawn regarding the nature of their responses, and their effect on the efficiency of the state personnel system during this period.

FOOTNOTES – CHAPTER ONE

[1] Jack C. Plano and Milton Greenberg, *The American Political Dictionary* (Holt, Rinehart and Winston, 1979), p. 52.

[2] Deena Weinstein, *Bureaucratic Opposition* (New York: Pergamon Press, 1979), p. 2.

[3] Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown and Company, 1967), p. 96.

CHAPTER TWO

HISTORY OF HIRING PREFERENCE

Preference in appointment to public employment for war veterans has a long history in the United States government. Employment preference in Montana, while not having as long a history as the Federal practice, shares many common attributes. Similar events and national trends played important roles in shaping both programs.

Early in the nation's history it was customary to appoint retired military officers to such positions as customs collectors, surveyors, and internal revenue officers. During the period between the Civil War and WWI, Congress expanded the consideration of employment preference for veterans. During this time preference was extended to include all honorably discharged veterans, whether disabled or not. The requirement that preferred applicants "possess the business capacity necessary" to perform the duties of the position is first introduced at this time. Further considerations also appear during this period. These provisions are for the retention of veterans and widows, and orphans of deceased veterans during reductions in the work force.[1]

In an odd historical coincidence, a further expansion of veterans' preference occurred during an era famous for Civil Service reform. While merit system advocates were developing uniform systems for considering applicants, advocates of veterans preference were creating formal considerations for veterans within those systems. The Appropriation Act of 1922 required the Civil Service Commission to create an efficiency rating system to be used for promotions, demotions and dismissals. This act also required that "no honorably discharged soldier or sailor whose record is rated good shall be discharged, or dropped, or reduced in salary or rank."[2]

During the period between the two World Wars executive rules and regulations created an increasingly formalized system for applying preference. The addition of five or ten points on examinations, the role of the Civil Service Commission in protecting the public employment privileges of veterans, and provisions for reinstatement and examination reopening are examples of this process. These provisions were incorporated into the Veterans' Preference Act of 1944.

Since the passage of the 1944 Act, veterans' preference has been further expanded. Preferred individuals now include veterans of the Korean and Viet Nam conflicts, and all who served on active duty for more than one hundred and eighty days after January 31, 1955.[3]

The nature of the preference, whether it be relative or absolute, is at the center of the controversy which is the subject matter of this paper. The term "absolute preference" essentially means that preferred individuals who meet the minimum qualifications for the position must be hired before any non-preferred applicants, regardless of their relative qualifications. Relative preference is used when candidates are equally qualified. In this case the candidate with the preference is selected, in other words the preference is used as a tie-breaker.

Included in the 1944 Act there is a provision which serves as an example of an absolute preference. Section (3) of this act reads, "Provided, That in examinations for positions of guards, elevator operators, messengers, and custodians competition shall be restricted to persons entitled to preference under this Act as long as persons entitled to preference are available . . ."[4]

Veterans' Preference at the Federal level has withstood several challenges, both legal and political. The constitutionality of the preference has been challenged on the grounds that it denies equal protection of the law by establishing distinctions between classes of

people.[5] Related to this have been arguments that such a preference reduces job opportunities for women because veterans are overwhelmingly male. The courts have also documented such preferential treatment, the most recent being the judgement in Massachusetts v. Feeney (1979). The net result has been that although they constitute 25 percent of the nation's workforce, they constitute 50 percent of the federal employees, holding 65 percent of the top jobs. They are also 98 percent male and 92 percent non-minority.[6] President Carter's 1978 Civil Service Reform Bill also attempted in vain to curtail the use of veterans' preference.[7] Despite these challenges the veterans' preference legislation has been successful in promoting the employment interests of veterans.

The history of veterans' preference in Montana possesses a similar pattern as that of the federal system. The initial legislation of 1921 contains two important provisions. It states that age or disability cannot disqualify an applicant, instead "business capacity, competency, and education" are to be the criteria.[8] The second crucial provision is that this preference shall apply, "in every public department, and upon all public works of the State of Montana, and of any county thereof."[9] It is significant to note that nowhere in this initial legislation does it say the preference shall be relative to the qualifications of any other applicant.

In the following years Montana's veterans' preference law continued to be amended and integrated into the state personnel system. This process began in 1927 with the addition of residency requirements. The process continued in 1937 when the District Courts assumed much of the enforcement power, and disabled veterans were awarded preference over able-bodied veterans. A final addition occurred in 1949 when a provision for points or credit on scored examinations was added.

The expansion of the number of people considered for employment preference in Montana began in 1927 when disabled civilians recommended by the Department of Social and Rehabilitation Services were included. This trend continued. In 1943 veterans of

World War II were added; in 1949 preference was extended to wives of veterans and dependents of disabled veterans; later it was extended to veterans of the Korean War, Viet Nam veterans, and those serving one hundred and eighty days of active duty since January 31, 1955.

As early as 1945 the Montana Attorney General was asked to clarify the type of preference being offerred to those eligible. In a letter dated December 12, 1945, the Attorney General was asked to differentiate between the relative and absolute preference. Specifically, the question was asked, "should not a veteran with a grade 75, who has proven himself to be qualified, receive the appointment rather than a non-veteran with a grade of 85?"[10]

In his opinion, the Attorney General stated, "the fact that a non-veteran may receive a higher grade than a veteran does not deprive a veteran of his right to a preference so long as the veteran has received the required passing grade and is qualified for the position or employment."[11] Thus absolute preference was set, though in practice it has been used as a tie-breaker.

Evidence that relative preference was used as a tie-breaker may be seen in the news media during this "Crabtree period." The *Great Falls Tribune* states, "This interpretation differs sharply from how the two preference laws had been enforced since their passage in 1921 and 1927. These laws had been used to give veterans and handicapped people a tie-breaking preference–but not an absolute preference–in the case of otherwise substantially equally qualified applicants."[12]

An article in the Kalispell *News* reads, "This stems from a June ruling by the Montana State Supreme Court which says 'veterans' preference is to no longer be used as a tie breaking consideration as it has been interpreted in the past, but rather as an absolute."[13]

Finally, a special section of the *Helena Independent Record* summed up the situation accurately.

> For sixty years the Veterans' and Disabled preference did nothing much but take up a little space in the statute books.
>
> But in June the State Supreme Court catapulted it from the law books to the headlines.
>
> In what has become known as the Crabtree Decision, the high court ruled that state and local governments must give absolute hiring preference to veterans, veterans' spouses, disabled veterans' dependents, and disabled civilians if they meet minimum job qualifications.
>
> The rule dramatically changed hiring practices for public jobs.[14]

In June 16, 1983, the Montana State Supreme Court rendered its decision in *Crabtree* v. *Montana State Law Library*. This case was heard on appeal from the District Court, located in Helena, Montana.

In this case the Montana State Library had recruited and selected a co-ordinator for volunteer services. They had selected a non-disabled civilian for the position. Vivian Crabtree, a visually impaired civilian who had applied and been interviewed, but not selected for the position, filed a complaint in District Court.

The complaint included several allegations regarding deficiencies in the Library's procedures. However, the crucial point of the case was her claim that the library had violated the provisions of the State's Employment Preference Law. She claimed that as an eligible, disabled civilian possessing competency, education, and business capacity, she should be preferred over all others, regardless of the relative qualifications of other applicants.[15] In other words, Crabtree, and eventually the Montana State Supreme Court in *Vivian Crabtree* v. *Montana State Law Library*, interpreted the preference as absolute.

The Montana State Law Library responded by saying that the state's policy had always been to interpret the preference as relative. In the court proceedings it was stated that "the employment preference law requires that preferred veterans and disabled persons be hired when their qualifications are substantially or reasonably equivalent to competing applicants."[16] The Department of Administration, assisting in the libraries presentation,

noted that the Governmental Code of Fair Practices directed state government to appoint personnel "on the basis of merit and qualifications," and minimum qualification is not necessarily merit.[17]

In the District Court ruling later upheld by the Montana State Supreme Court, Judge Gordon Bennett decided that the State had erred in its interpretation of the preference statute. In his decision he stated, "there has not been, and there is not today, any language in the statute that suggests that the preference is relative to the qualifications of any other applicant. The only limiting factor is the ability of the disabled civilian, or veteran to do the job."[18]

The outline of the ensuing conflict had been clearly drawn. Were those individuals hired to work in the public sector to be the best individual available, or an individual from a group of qualified individuals, whether the most qualified or not.

Following the Crabtree Decision a period of uncertainty and confusion occurred. This period lasted from June 16, 1983 (the date of the Crabtree Decision) to December 20. 1983 (the date new preference legislation was enacted). The uncertainty of the period was characterized by three different sets of activities; a proliferation of law suits dealing with issues related to preference, the activation of special interest groups to influence the direction of the disorder, and a noticeable disturbance among hiring authorities in the public sector.

Dennis M. Taylor, the Administrator of the Montana State Personnel Division noted that at one point in time over a dozen law suits prompted by the Crabtree Decision were pending against state agencies.[19] The lawsuits included nearly all aspects of employment law. Among these cases were issues pertaining to retention, age discrimination, the Montana Human Rights Act, retroactivity, and the fourteenth amendment of the United States Constitution.[20] The November 1983 edition of *Western Business* noted that the

impact of the Crabtree Decision posed as great a threat to the state's judicial system as it did to the state's bureaucracy.[21]

In September a case was heard which brought several of the outstanding issues to the public's attention. Clare Jensen, a WWII veteran, had been granted a five point preference at the time of his initial appointment in 1961. In June of 1982 he was involuntarily terminated from his position. Jensen claimed that as a veteran he was entitled to a position filled through internal promotion, for which he was minimally qualified. In this case, as may be seen, the scope of preference (to which employment activities does it extend?), and the duration of preference (may preference be used more than once?) were key issues. Jensen was awarded the position with retroactive pay.[22] However, the court did not rule on the promotion issue itself.

On October 18, 1983 a ruling in the case of William Hunt expanded the coverage of preference to some appointments made by the Governor. Hunt, a workmen's compensation judge, was not reappointed at the end of his term. A non-veteran was appointed in his place. Hunt sued. In his decision, Judge Henry Loble stated that the position comes under the authority of the Department of Administration and is not an executive appointment to the judicial branch. For this reason the application of preference is not an unconstitutional encroachment on the Governor's power of appointment.[23]

The mobilization of special interest groups in response to this issue was one of the most dramatic aspects of the entire episode. Beginning with statements of support for the decision by groups representing veterans and the handicapped, the media was soon filled with statements from nearly every organized special interest in the state. An impressive example of interest group participation occurred on November 18 and 19, 1983. On those dates, in the former Supreme Court Chambers of the State Capitol Building, a joint interim subcommittee held hearings on legislation concerning the preference issue. A remarkable two hundred and twenty-two individuals signed the register, many with the intention of

testifying. A multitude of groups were represented, the most notable being veterans' organizations, organizations representing the handicapped, women, government entities such as cities, counties and school districts, labor groups and higher education. The distribution of influence among these various groups, and its effect on the outcome is one fascinating aspect of this issue.

The third area of uncertainty created by this decision was felt among those with hiring authority in the public sector. Montana law specifically requires public employers to seek and hire the most qualified persons available.

> Sec. 49-3-201. (1) "State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications."[24]

The court decision mandating the use of an absolute preference changed the hiring strategy by all departments of the state government, local governments and school districts. The employees of these entities comprise approximately fifteen percent of Montana's total employment. Forced to choose between leaving positions vacant, hiring only preferred applicants, or following the status quo and risking possible legal action, public administrators understandably felt frustrated. It is not surprising that this group was very supportive of a special legislative session.

Originally, the Governor of Montana, Ted Schwinden, felt a special session of the legislature would not be necessary. However, as political pressure mounted and the number of court cases increased the Governor changed his mind. He called the session for December 12, 1983.

On December 17, 1983, after six days of the session, the legislature enacted a new hiring preference law. The new act extends to all three branches of the state government as well as counties and cities. Excluded from the law are school districts, post-secondary vocational-technical centers, community colleges and the state university system. A veteran is defined as one who has served on active duty during a time of war or national emergency.

To claim the status of a disabled veteran it is necessary to suffer a thirty percent disability as certified by the U.S. Veterans' Administration. Other than veterans, the preference is extended to the spouse of a one hundred percent disabled veteran unable to use the preference. A handicapped preference must be certified by the State Department of Social and Rehabilitation Services.

Preference is limited to a tie-breaker, or relative preference, among applicants with substantially equal qualifications. It is also limited to use in "initial hirings" and must be used within fifteen years following separation from the service.

The new legislation resolved the crisis and returned preference to its previous status. The period of time in which absolute preference was the rule created some unique pressures on the personnel system. The effect of this crisis on the composition of the state labor force, and the procedures used for selection reflect these pressures.

FOOTNOTES – CHAPTER TWO

[1] Robert G. Vaughn, "Preference in Public Employment," *American University Law Review* 25 (Spring, 1976), p. 667.

[2] Ibid., p. 668.

[3] Veterans' Readjustment Benefits Act of 1966, Ch. 41, Section 11, 80 Stat. 28.

[4] *Veterans' Preference Act of 1944, Statutes at Large* 58, Sec. 2, p. 388.

[5] Stewart S. Manela, "Veterans' Preference in Public Employment: The History, Constitutionality, and Effect on Federal Personnel Practices of Veterans' Preference Legislation," *George Washington Law Journal* 44 (May 1976), p. 631.

[6] Alan K. Campbell, "Civil Service Reform: A New Commitment," *PAR* 38, No. 2 (March-April 1978), p. 102.

[7] Manela, p. 623.

[8] Act of March 5, 1921, Ch. 211, Laws of Montana (1921), pp. 424-425.

[9] Ibid.

[10] State of Montana, Dept. of Attorney General, "Report of the Attorney General of the State of Montana from January 1, 1945 to December 15, 1946, R. V. Bottomly, Opinion No. 105 (December 12, 1945), pp. 142-145.

[11] Ibid.

[12] *Great Falls Tribune*, September 14, 1983.

[13] *The Kalispell News*, October 12, 1983.

[14] *Helena Independent Record*, December 4, 1983.

[15] Lois Menzies, "Montana's Veterans' and Handicapped Civilians Employment Preference Law: A Report to the Joint Interim Subcommittee No. 4 of the 48th Montana Legislature: August 1983," p. 12.

[16] *Crabtree* v. *Montana State Library*, Dist. Ct. First Jud. Dist., Feb. 14, 1982, J. Bennett, p. 12.

[17] Ibid.

[18] Ibid., p. 34.

[19] *Western Business* (monthly periodical), November 1983.

[20] Menzies, Appendix G.

[21] *Clare J. Jensen* v. *State of Montana*, Dept. of Labor and Industry, Dst. Ct., Eighth Judicial Dist., Cause No. BDV-83-706.

[22] Ibid.

[23] Krishna K. Tummala, "Veterans' Preference in the State of Montana: Equal Employment or Affirmative Action?" July 1984 (unpublished).

[24] Montana Codes Annotated (MCA), Sec. 48-3-201.

CHAPTER THREE

THE EFFECT OF THE CRABTREE DECISION ON SELECTION AND MERIT CONSIDERATIONS

One of the most common criticisms of any deviation from the traditional merit concepts is that it results in a loss of efficiency. The argument is made that open and competitive examination is the surest method of guaranteeing that public employees are selected on the basis of their abilities.

The examination is in many ways the heart of the selection process.[1] In the United States, the Pendleton Act of 1883 set the standard for examinations. This act mandated "open competitive examinations" which "shall be practical in their character, and so far as may be possible shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined."[2] The primary goal of the Pendleton Act was to guarantee the political neutrality of civil servants by creating job-related, non-discriminatory examinations. Although another result of the act was to encourage hiring based on merit, the focus of the act was primarily negative, to prevent patronage. The creation of a merit system was a secondary consideration.

In many cases states have led the way in instituting merit-based civil service selection procedures. In Montana, Sec. 49-3-201 reads "State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications."[3]

Added emphasis on job relatedness has been supplied by the courts. In an effort to protect minority applicants from testing procedures which effectively prevented their

selection, courts have reaffirmed the necessity of validity in selection devices. This emphasis was most strongly stated in the 1971 case *Griggs et al.* v. *Duke Power Company.*[4]

Various types of examinations have been developed to meet the demands of merit-based selection. These examinations are often grouped into three types; assembled, performance, and unassembled. The assembled examination is a series of written or oral questions requiring an answer from the applicant. Performance examinations are often used when specific skills must be demonstrated. Examples of performance tests would be typing tests or a truck driving test. These two methods are often considered the most objective. This is true because all applicants may be measured using standard criteria.

The third type of examination is in some ways not an examination at all. The unassembled examination is actually a summary of vocational and educational experience.[5] This type of examination creates some questions of validity because of the large number of variables involved.

The use of examination-measured merit as the sole criteria for selection has received challenges from several directions. Politically sensitive or policy determining positions have been exempted. The need for a responsive government service has been cited as the justification for this action. As noted in Chapter Two, veterans and handicapped individuals have been allowed special consideration in recognition of past discrimination and sacrifice. Finally, minorities and women have stated a desire to receive some type of consideration in public employment to achieve equity in representation within the bureaucracy and redress for past discrimination.

The traditional definition of merit has given way to the idea of a "representative bureaucracy" and Affirmative Action as a means of achieving this type of bureaucracy.[6] Despite these departures from traditional merit principles, the examination remains the primary method of selecting employees. These departures may serve the interests of the veteran, the handicapped individual, the elected politician, the women and minorities.

However, these departures may also affect the efficiency of public service selection procedures and government in general. When bonus points are added to test scores, or the ranking of applications is based on criteria other than test scores, the selection process no longer represents a merit system based upon job related ability. If we assume that employees who indicate on their examinations that they have greater ability or merit will be more efficient, then efficiency will suffer if candidates are chosen on criteria other than ability as measured by test scores.

To determine the effect of the absolute preference granted veterans and handicapped civilians following the Crabtree Decision sixteen positions were randomly selected for study. These positions were selected from three agencies. All three agencies share common characteristics common to those agencies who employ the majority of the state personnel. They are large agencies located in the state capitol of Helena. Each agency employs personnel specialists and has adopted scored examinations. These examinations include the assembled, performance, and unassembled types.

Positions were chosen from each agency using applicant flow information from the period under study. Positions were selected to represent a range of grade levels from grade six to grade sixteen, and also to represent the majority of EEO categories (see Appendix).

Upon notification of the selected positions the personnel officers of the respective agencies turned over the position files for examination. To insure confidentiality this paper will not include the names of the agencies, the names of the positions, any information revealing the position, or the name of the applicant.

Each of the sixteen selection procedures is unique. In many ways they represent sixteen separate case studies. These individual differences are compounded by the fact that various documents are retained in some files and not in others. For these reasons each selection decision will be analyzed separately. However, common factors will be the focus

of the remainder of this chapter. The separate analysis of each position appears in Appendix A. Following is a summary of the information from these files.

There were one hundred and fifty-six applicants who met the minimum qualifications for these sixteen positions. Of these applicants sixty-three claimed preference under the hiring preference law, and ninety-three claimed no preference. Of the one hundred and fifty-six applicants eighty-five received interviews. Forty-two preferred applications were interviewed as compared to forty-three non-preferred applicants. Of the sixteen positions, eleven were filled by individuals claiming preference and five were filled by non-preferred candidates. This represents sixty-eight and three quarters per cent of the positions studied filled by preferred candidates.

Eight of the eleven positions filled by preferred candidates did not include non-preferred individuals in the interviews. Three of the positions interviewed both preferred and non-preferred and selected a preferred applicant.

Among the five positions filled by non-preferred candidates, not one preferred applicant met minimum qualifications. In other words, in none of the positions was a minimally-qualified nonpreferred candidate hired ahead of a minimally-qualified preferred candidate. The preference was applied in an absolute manner.

The eight positions which excluded non-preferred applicants from the interview process included six positions with the applications available for inspection for all minimally qualified candidates. This allows for a comparison of applicants to determine if the successful applicant is substantially more qualified than the others. To conduct this comparison criteria are selected from the job description or announcement. These criteria are the listed minimum qualifications which correspond to the agency selection process, and also lend themselves to accurate comparison. Typically these criteria represent educational achievement, specific skills measured by tests, and specific job-related experience.

The first position in this category (position A) used a combination of a written test, an interview and preference to make the selection. Education, experience and certain special skills may be used to compare the two candidates who were interviewed and the four minimally-qualified, non-preferred candidates not interviewed. The technical nature of the position allows the qualifications of the various applicants to be qualitatively compared. To facilitate this a scale of one to five, or "limited" (one) to "unusually qualified" (five) is used.

The successful candidate received a score of nine. Among the non-preferred group were scores of eleven and eight.

The results from this first example indicate that the candidate selected is not substantially more qualified than all others from the pool. In fact, there may well be others in the pool more qualified. This pattern is seen throughout this series of positions.

An analysis of position D reveals a similar situation. The successful applicant and eight non-preferred applicants who were minimally qualified were rated either "yes" or "no" on three criteria. The criteria were (1) one year related course work at a college or technical school, (2) three years related experience, (3) skill in the use of related equipment.

Six of those not interviewed appear at least equally qualified as the successful applicant. A more subjective analysis of the applications indicates others which appear more qualified.

The two applicants who met the minimum qualifications for position E appear equally qualified. The possible exception to this is the educational background of the non-preferred applicant. It appears to more closely approach the criteria.

A similar situation exists in regards to position G. Two candidates meet minimum qualifications. According to the factors used to determine the minimally qualified, the two applicants appear equally qualified.

Five preferred and four non-preferred applicants met the minimum qualifications for position H. Only the preferred candidates were interviewed. A comparison of the candidates indicates one non-preferred applicant equally qualified as the person selected. A further examination of the applications indicates neither applicant is substantially more qualified than the other.

A combination of ten weighted factors was used in identifying minimally qualified candidates for position N. One of the non-preferred candidates received a score of one hundred, as did two preferred candidates.

For two of the positions which excluded non-preferred candidates from the interviews no applications are available for review. These are positions C and P.

The examination of this first set of positions indicates a substantial deviation from traditional merit principles. The successful candidates are not substantially more qualified than all other applicants.

Candidates for positions J, K, and L were selected using interviews of both preferred and non-preferred applicants.

Positions J and K were identical positions within the same agency. Identical selection tools using twelve weighted factors were used for each position. One of those criteria was preference. For position J a non-preferred applicant received the highest score prior to the addition of preference points. After preference points were added a tie developed between the earlier highest score and a preferred individual who, prior to the addition of preference points had the third highest score. The preferred individual was hired for the position.

A similar set of events occurred in position K. Two candidates received the identical final score. However, one received points for preference to reach the tie score. The preferred candidate was again hired.

For position L the thirteen candidates meeting minimum qualifications were screened and the selection made without an interview. Twelve criteria were used for the rating, each

candidate received either a yes or a no for each criteria. The preferred candidate who was hired did not appear substantially more qualified than two non-preferred candidates.

Five positions–B, F. I, M, and O–were filled by non-preferred applications. In two of the examples no preferred applicants applied. In the case of position M this may be due to the fact that the job was located in a small community and not in Helena. In the other example the small number of applicants might have been due to the technical nature of the position.

For positions B and I there were preferred candidates, but they did not meet the minimum qualifications. Both positions required specialized skills.

The final position in this category, position F, is rather unique. From a total of sixty-three applicants only two received a test score indicative of meeting minimum qualifications. None of the thirty-seven applicants who claimed preference met the minimum qualifications. The fact that the test for minimum qualifications was so stringent suggests a possible strategy for dealing with this issue.

Results of the study of these selection decisions indicate a significant departure from traditional merit principles. This departure is attributable to the pressures generated by the Crabtree Decision.

Among the six positions studied which excluded non-preferred candidates from the interview process, two of those procedures passed over more qualified applicants who were not in the preferred category. The other four positions excluded candidates who were at least equally qualified as the successful candidate.

Among the three positions which interviewed both preferred and non-preferred candidates, two of the successful applicants received their positions due to their preference. This is quite possibly true for the third position as well.

These are very persuasive statistics. Five of the eight positions which were available for analysis and which hired preferred applicants made their decisions based on preference. It is altogether possible that the others did likewise. Among the five positions which selected non-preferred candidates, no minimally-qualified preferred candidate was bypassed for a more qualified non-preferred candidate. Hiring authorities were not bypassing preferred candidates to hire the single most qualified individual.

During the crisis fear surfaced that qualified non-preferred individuals would become discouraged and stop applying. This small sample does not demonstrate this fact. When the positions are arranged in a chronological sequence (Appendix) there is no evidence that fewer non-preferred individuals applied. Hower, size of the sample makes generalization rather difficult.

FOOTNOTES – CHAPTER THREE

[1] Robert G. Vaughn, "Preference in Public Employment," *American University Law Review* 25 (Spring, 1976), p. 659.

[2] 15 U.S.C. 3304 (A)(1970) Ch. 27, 2 (2), 22 Stat. 403.

[3] Montana Codes Annotated (MCA), Sec. 49-3-201.

[4] Jay M. Shafritz, Albert C. Hyde, David H. Rosenbloom, *Personnel Management in Government* (New York: Marcel Dekker, Inc., 1981), p. 153.

[5] Vaughn, p. 663.

[6] See, David H. Rosenbloom, *Federal Equal Employment Opportunity: Politics and Public Personnel Administration* (New York: Praeger, 1977).

CHAPTER FOUR

BUREAUCRATIC RESPONSE TO THE CRABTREE DECISION

Public organizations exist to implement policies as effectively, efficiently and equitably as possible. When policies change public organizations are expected to adopt their activities to reflect these changes. The manner in which organizations institute these changes has been described in several different ways.

Max Weber was one of the earliest writers to systematically describe bureaucracies.[1] His concepts of organizations and how they function helped form many of the accepted ideas about bureaucracies. His ideas, along with other writers such as Taylor, Gulick, and Urwick,[2] give us what is known as the "classical organizational theory."[3]

Central to the classical theory are such ideas as authority, predictability and efficiency. The organization is seen as a machine-like body with a common purpose shared by all its parts. One of Weber's principal contributions to this theory is that this shared value or purpose confers legitimacy on the organization which leads its members to obey its authority. The organization is hierarchical, commands flowing from the top or peak of the pyramid. Each position in the hierarchy has a fixed jurisdiction with specific duties. Those relationships and duties are based on written documents which serve as a type of contract. This conceptualization of the bureaucracy emphasizes stability and predictability. As might be expected, classical theory has great appeal to upper management because of its emphasis on authority and managerial control.

Classical theory, however, has several shortcomings. It was not prepared to deal with what many managers felt was the "irrational" behavior of employees. This irrational

behavior was later seen to be the product of the psychological nuances, multiple motivations, and political behavior of the employees within the bureaucracy.[4] In an attempt to better understand these behaviors, alternative theories of organizational behavior were developed. These alternatives focused on human relations, behavioral sciences and organizational theories of change and conflict.

In an effort to understand the individual reactions of bureaucrats Anthony Downs developed a typology of officials.[5] This typology organizes bureaucratic motives, and those who exhibit them, into five categories; climbers, conservers, zealots, advocates, and statesmen. Of particular interest in this paper is the role of the conserver.

A conserver is an individual who seeks to maximize security and convenience within the organization. "Conservers consider convenience and security as nearly all-important. In contrast to climbers, conservers seek merely to retain the amount of power, income, and prestige they already have, rather than to maximize them."[6] In an effort to maintain their power, income and prestige, and to minimize their efforts, they maintain a bias against change. The only changes they strongly favor are those that reduce either their effort and inconvenience or the probability that any additional future changes will threaten their positions. Conservers are often found at the middle levels of an organization where they have achieved the position beyond which they doubt they will climb. The more extensively an organization relies upon formal rules the higher the proportion of conservers. Since conservers are risk-avoiders, and decision-making entails risk, conservers may simultaneously make decisions and avoid risk by sticking to the rules. Dr. K. K. Tummala has noted that, "Rules are invoked by the civil servant for a variety of reasons. (1) He may sincerely be trying to follow them to maintain his objectivity. (2) He may follow them to protect himself."[7]

Related, but also distinct from the conservers are those officials engaged in what Deena Weinstein describes as "Bureaucratic Opposition." In the book entitled *Bureaucratic Opposition*, Weinstein portrays these officials as caught between the interests and authority of the organization, "and their personal ideals and moral principles which transcend the interests of the organization."[8] This conception of individuals within an organization is in sharp contrast to the classical theory. Weber presents a picture of a bureaucracy where the authority orders the appropriate actions to reach shared and agreed upon goals. Weinstein echoes others' criticisms of classical theory when she points out that organizations are not machines, fully rationalized and predictable. There is great uncertainty and diversity within most organizations. What managers view as irrationality may also be interpreted as political disputes resulting from diversity and uncertainty regarding criteria for evaluating and methods of achieving goals.[9]

"Bureaucratic Opposition" attempts to change organizations from within by those not necessarily given the authority to institute such changes. Such opposition is risky. However, as Weinstein points out, "such conditions as injustice, dishonor, and incompetence are infractions of administrative rules and provide justification for opposition."[10] He continues along this line by stating, "Thus, opposition to incompetence is often bound up with concern for career advancement, the desire to do meaningful and high quality work, commitment to the norms of just reward and equal opportunity, and concern for the deleterious effects of inappropriate or self-defeating action."[11]

Not all "Bureaucratic Opposition" results from incompetence. Public administration reflects the interplay of the legislative, judicial and executive branches of government. The Crabtree Decision crisis reflects this reality. This interplay often results in inefficiencies and inequities. Often, "these problems are more apparent to those who implement policies than to those who have the authority to make or change them."[12]

"Bureaucratic Opposition" which arises from disputes over policy may be viewed as a process in which the forces for change struggle against those forces promoting stability. With this being the case, the reactions of hiring authorities to the Crabtree Decision may be compared by categorizing these reactions as attempts to maximize stability or promote internal change. To carry this analysis further, the reaction of these people may be placed on a continuum, with those exhibiting Downs' concept of conserverism at one end and those engaged in "Bureaucratic Opposition" at the other.

Weinstein seems to recognize such a continuum when she states, "The degree of commitment to long term employment in an organization is important in determining who is most likely to join an opposition." In other words those who feel proprietorship in their positions and value stability, i.e., the conservers, are less likely to engage in "Bureaucratic Opposition."

In a similar manner Weinstein also notes that the clashes resulting from "Bureaucratic Opposition" often are between administrators and their professional subordinates. Such conflicts often arise between professional norms and standards and organizational demands for loyalty. Professional employees, in this case personnel specialists, may have been caught in just such a conflict as a result of the Crabtree Decision. That tendency identified as conserverism may have influenced these professionals to avoid risk, adhere strictly to the rules and resist change. On the other hand, their professional commitment to merit, efficiency and perhaps equity, may have led them to participate in a form of "Bureaucratic Opposition."

Both Conservism and Bureaucratic Opposition are deliberate administrative behaviors. As such they require the development of goals, strategies for implementing the goals, and the enactment of "strategically appropriate tactical maneuvers."[13] These maneuvers and

strategies, when located on the continuum between conservism and "Bureaucratic Opposition," produce a picture of the response with which the bureaucracy met the Crabtree Decision crisis.

The responses have been gathered from four sources. The first source is the statistical evidence outlined in Chapter Three. The second source is comments and communications between state personnel and applicants which is formed in these files.

The third and fourth sources are from data and comments generated by a survey administrated to hiring authorities with significant selection responsibilities within state government. Thirty-five surveys were distributed, 66 percent of these were returned. All twenty-three of the respondents worked in Helena at the time of the survey. Twenty had the assistance of a personnel specialist. Eight of the respondents were personnel directors, fourteen others were in supervisory positions and one was engaged in a research project.

Respondents were asked to check any of six personnel related activities they altered as a result of the Crabtree Decision. The results of this section of the survey are summarized below.

III. Place a check next to any areas of personnel activity which you altered as a result of the Crabtree Decision.

	Number of total responses
internal recruitment	10
staffing patterns	3
delayed hiring	14
altered job descriptions	14
interviewing techniques	13
application supplements	13
(no response)	1

In addition to the checklist on the survey the respondents were also given the opportunity to add their own narrative descriptions of how the Crabtree Decision affected their recruitment and selection practices. A final question seeks to determine whether the changes caused by the decision have remained in effect and become standard practice since the passage of the new preference legislation.

To aid in the understanding of the behaviors in regards to the Crabtree Decision it is necessary to envision the continuum described earlier. On this continuum behaviors are arrayed according to the extent to which they typify conserverism or "Bureaucratic Opposition." To further this analysis a diagram of such a continuum is found on the following page. To aid in understanding the use of this scale specific behaviors will be arrayed across the continuum.

As shown in the diagram, the left end of the continuum represents those behaviors most readily identifiable with conservism, i.e., risk reduction. These behaviors are the discontinuation or delay of both hiring and internal recruitment (promotion). Grouped with these behaviors is "altered staffing patterns" which represents the necessity of shifting personnel between duties to compensate for absent personnel due to the discontinuation of hiring.

The second category as the continuum shifts to the right represents a behavior second only to the elimination of hiring in its "conserverism." This category represents the use of internal recruitment as the only recruitment method. While there was some uncertainty about whether the preference applied to positions filled internally, most hiring authorities believed this to be a safer route to follow in filling vacancies. Internal recruitment is a procedure which eliminates the need to even consider the qualifications of individuals outside of the organization.

Continuum—Response to Crabtree Decision

Conserverism					Bureaucratic Opposition	
Characteristics	1	2	3	4	5	6
	discontinued or delayed hiring and internal recruitment/altered staff pattern	internal recruitment only	interview preferred	hire only preferred. Interview both preferred	redesign of job description, use of supplements, more exact interview techniques	continue hiring nonpreferred
Data from Survey	Staffing patterns (3) Delayed hiring (14)	internal recruitment (10)			Job Descriptions (14) Interview Techniques (13) Supplements (13)	
Comments from	(2)	(4)	(5)		(20)	(1)
Data from Folders			A,C,D,E, H,N,P,G	J,K,L	F	

The third category represents external recruitment for applicants but then limits the interview process to preferred candidates only. The usual procedure utilized in this category is to screen applications to identify minimally qualified preferred applicants. If such applicants are available then only their applications are considered. While this procedure eliminates the risk of the decision being contested by a preferred applicant, it creates that conflict and clash of values discussed earlier in this chapter. Those hiring authorities who place great value on traditional merit principles may resist such a method.

These first three categories represent responses to this crisis which emphasize the approach of the conserver. They minimize the potential risk of a lawsuit, and allow those who make the hiring decisions to adhere strictly to the rules. The fourth category represents those positions which were filled by preferred candidates after interviewing both preferred and non-preferred candidates. While this does not indicate "Bureaucratic Opposition" it does increase the opportunity for conflict. In some cases the application of preference during the selection process is the deciding factor among otherwise equally qualified applicants. This was the previous, though seldom used, interpretation given to preference. Positions J and K are examples of this. Such occurrences, if frequent enough, could cause a values conflict among those involved in selection who are more committed to standard merit principles. However, the major risk in using this process is the possibility of a preferred candidate challenging the selection of a non-preferred candidate, as was the case in the Crabtree Decision itself.

The fifth category represents a creative approach to dealing with this new situation. It does not attempt to circumvent the requirement to grant preference to minimally qualified preferred applicants. Instead it is an effort to ensure that the individual that is hired is truly the most qualified applicant available.

To increase the likelihood that the candidate selected is adequately qualified for the position three deliberate strategies are utilized. The first strategy is a re-evaluation of the

factors comprising the minimum qualifications of the position. This may be done by performing a new, more up-to-date, job analysis and rewriting the job description to reflect the new analysis. Whether or not an analysis is performed, the minimum qualifications on the job announcement may be changed to more accurately reflect the demands of the position.

This change in minimum qualifications would reduce the number of applicants capable of claiming the preference if the new minimum qualifications were more demanding and detailed. Often in the past minimum qualifications have been kept general and not restrictive to allow for as large a pool of applicants as possible to be generated. This new approach is intentionally designed to decrease the size of the pool.

While it decreases the risk that the selection will be contested by decreasing the number of minimally qualified applicants, it carries other risks. First, the process of altering minimum qualifications may be viewed as a deliberate attempt to circumvent the intent of the preference law and therefore be subject to legal challenge. Second, the decreased size of the pool may result in highly capable applicants being screened out because they fail to meet possibly one of the minimum qualifications. Besides the risks, the process of rewriting minimum qualifications involves a considerable expense in time, resources and inconvenience.

The second technique used in this category is to include an application supplement as part of the process of identifying minimally qualified applicants. A supplement is a device which attempts to ascertain the knowledge, skills and abilities of an applicant by requiring a written statement demonstrating these qualities. Often the supplement is simply a request to indicate which knowledge, skills and abilities are possessed or a series of questions similar to situations encountered on the job. Supplements are used to decrease the size of the pool and to more accurately identify the most qualified applicants. Well designed supplements decrease the chance of a successful legal challenge to a hiring decision while

poorly designed supplements which are not adequately job-related may be the source of a legal challenge. Like changing job descriptions and announcements, supplements entail some risk and inconvenience.

The third strategy used in this category is to alter the interviewing methods used to make the selection. These changes usually entail more standardized and quantifiable techniques with greater job relatedness.

Category five represents the second highest level of "Bureaucratic Opposition" on the continuum. It also appears that the three strategies; altered job descriptions and minimum qualifications, the use of application supplements, and improved interview techniques, are efforts to reduce the risks involved in hiring. To solve this paradox it is necessary to return to the definition of "Bureaucratic Opposition." This definition identified "Bureaucratic Opposition" as the deliberate implementation of strategies to change the effects of policies (or behaviors) developed by organizations which are in conflict with the values of those employees required to implement the policies. In this case the hiring authorities using these strategies view preference as a challenge to their value of hiring the most qualified applicant available. These strategies are used to increase the chance of this occurring. It cannot be denied that these behaviors do not necessarily decrease the number of preferred individuals hired, and may be viewed as risk-avoiding activity. The fact that "Bureaucratic Opposition" may take such a form is a subject dealt with in the final chapter.

The sixth category represents the most extreme form of "Bureaucratic Opposition" on the continuum. This category would include hiring decisions made as if there had never been a Crabtree Decision. There is no doubt that through obstinance, ignorance, or other motives some hiring decisions made in the public sector during this period would fall into this category. However, the nature and severity of the risks involved makes the deliberate decision to ignore the new hiring guidelines unlikely.

Placing the sixteen individual selection decisions from Chapter Three on the continuum demonstrates the degree of conserverism inherent in state government in Montana. Eight of the sixteen positions may be placed in category three. These are the positions for which only preferred candidates were interviewed. Three other positions are included in category four which contains those positions which hired preferred applicants after interviewing both preferred and non-preferred. Category three does not represent behavior characteristic of "Bureaucratic Opposition." It lacks the risk taking element and the adherence to the ideal of open and competitive merit principles. Category four involves increased risk. However, the methods used in selection and the final results of the process do not indicate an oppositionist attitude.

Initially there are three positions which appear to belong in category six. This category expresses the greatest opposition by not recognizing absolute preference. Upon further examination it is noted that for various reasons no preferred candidates applied for two of the positions. It is impossible to attribute the deliberate or intentional quality inherent in "Bureaucratic Opposition" to such a situation.

The third position engaged in a behavior which more appropriately belongs in category five. In this position a pool of sixty-three applicants was screened leaving only two with minimum qualifications. The process, which closely resembles the use of a supplement and altered interviewing techniques clearly does not belong in category six, but does belong in category five. A graphic example of this distribution is found on page 30.

The responses from the checklists in the surveys indicate a wide range of adjustments. Changes in staffing patterns and delayed hiring were interpreted as indications of conserverism. There were seventeen responses among these two categories with delayed hiring being by far the most frequent. Ten respondents indicated they used internal recruitment more frequently. This response may be placed in category two and also represents a "conserveristic" approach. Between these two categories there are twenty-seven responses.

The remainder of the responses are placed in category five. These responses represent the oppositionist activity. There are forty such responses. These forty responses are spread evenly among changes in job descriptions and minimum qualifications, changes in interview techniques, and the use of application supplements.

Judging from these results the behavior of the hiring authorities is not as easily classified as risk-avoiding and geared towards conserverism. There is evidence of increased activity and attempts to maintain the ideal of merit. A graphic demonstration of this may be seen on page 30.

The narrative responses on the surveys reveal a similar pattern as seen on the checklist. By far the largest number of responses indicate that job descriptions and minimum qualifications were the primary areas of change. Ten comments would be classified as representing conserverism. These included statements that hiring had been delayed or not done at all, hiring preference had been adhered to carefully, and recruitment had been limited to internal recruitment. At the other extreme one respondent stated that he had changed nothing. The diagram on page 30 shows this distribution also.

A final source of information regarding the response to the Crabtree Decision is the correspondence located in the sixteen files surveyed in Chapter Three. The purpose of this correspondence was to communicate the preference policy to affected parties and to insure that certain legal protections were maintained.

The process of communicating the methods used to apply the preference and the effect the preference was having was done partly to answer the many questions being asked at that time. However, one effect this correspondence could have is to increase the public and political awareness and possibly disdain for the effects the Crabtree Decision was having. If this were the case then the production of this correspondence could be viewed as a form of "Bureaucratic Opposition."

An example of correspondence which might be viewed as oppositionist appears in the file for position D. Included in the file for position D is a letter from the Department Administrator to the Governor. The Department Administrator states that preference is having a negative impact due to their inability to select the most qualified applicant. He notes that the three positions recently filled were all filled by preferred applicants, and no one, not even employees from the Department, were considered if they did not have preference. He also notes that some recruitment that would have been external stayed within the Department resulting in a smaller pool.

Other correspondence appears aimed at informing the job-hunting public of the existing practices. Both agencies 1 and 2 made reference to the preference issue in their letters to unsuccessful applicants. The letter developed by agency 1 states, "This is to inform you that the Department of _____ has filled the position of _____ from the pool of candidates applying who were able to avail themselves of a preference under section 10-2-201 et. sec. MCA. Because we had a group of qualified applicants who came under this section, we were unable to consider your application."

Agency 2 simply stated in their letter, "The Veterans' and Disabled Civilians' Preference Act was applied in making this decision."

To combat the confusion among those applying for positions regarding selection procedures Agency 2 adopted a statement to be used on position announcements. The statement read, "All qualified applicants are urged to apply; however, consideration will be given to applicants eligible for preference under the Veterans' and Disabled Preference Act."

Agency 2 also adopted a letter to successful candidates which reflects the turmoil caused by the Crabtree ruling. Because so many decisions were being challenged in the courts a message of warning was delivered to successful applicants. The warning used was a

reproduction of a memorandum issued by Dennis M. Taylor, Administrator, Personnel Division, Department of Administration.

> Wherever a decision has been or is anticipated to be challenged the appointing authority must give written notice of the challenge to the individual whose appointment is in question. It is recommended that hiring authorities notify all successful applicants at the time of hire if there were preferred persons in the applicant pool and the decision to hire may be open to challenge.
>
> Any incumbent who has obtained permanent status and who loses a position as a result of a successful challenge by a preferred person will be treated as prescribed in the Reduction in Force Policy 3-0155.

Correspondence regarding position I indicates concern regarding the screening process. A note to the Department Administrator from the hiring authority says, "In the Division's opinion, none of the five met minimum qualifications for the job." A handwritten message across that note and signed by the personnel officer expresses confidence in their screening procedure.

These communications found within the files indicate the concern felt by public administrators. This concern is focused on the loss of discretion in hiring, the possible legal complications and the need to inform applicants of the process under which their applications would be considered. Seven of the sixteen files examined contained some written communication regarding the preference issue. Also of interest is the fact that agency 3 generated none of this communication.

FOOTNOTES – CHAPTER FOUR

[1] Max Weber, *Bureaucracy*, from "Classics of Public Administration," Jay Shafritz and Albert C. Hyde (Oak Park: Moore Publishing Company, 1978), p. 23.

[2] Barry Bozeman, *Public Management and Policy Analysis* (New York: St. Martin's Press, 1979), p. 90.

[3] Ibid., p. 95

[4] Deena Weinstein, *Bureaucratic Opposition* (New York: Pergamon Press, 1979), p. 4.

[5] Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown and Company, 1967), p. 92.

[6] Ibid., p. 96.

[7] Krishna Kumar Tummala, *The Ambiguity of Ideology and Administrative Reform* (Bombay: Allied Publishers Private Limited, 1979), p. 184.

[8] Weinstein, p. 8.

[9] Ibid., p. 30.

[10] Ibid.

[11] Ibid., p. 33.

[12] Ibid., p. 5.

[13] Ibid., p. 58.

CHAPTER FIVE

CONCLUSION

Prior to 1983 the concept of merit as it applied to public employment in Montana had a well-understood meaning. Merit was the degree of excellence, the level of qualification an individual possessed. Merit was closely related to efficiency in the mechanical sense. Employees who possessed the greatest knowledge, skills and abilities, that is those who were deemed the most meritorious, were presumed to be the most efficient. The purpose of the selection process was to locate the most qualified individual in the pool and hire that person.

There had been other considerations. Affirmative Action programs and Equal Employment Opportunity programs existed, and still exist today. Veterans and handicapped individuals received consideration, and still do today. Personnel systems have been asked to perform various and often conflicting activities, and to some extent they have succeeded in partially fulfilling these several goals.

Despite this ability of the personnel system to "serve several masters," one concept has remained paramount, and that is merit. That is the goal of efficiency. The ability to perform the work of government in the best manner possible for the lowest price stands head and shoulders above other goals and objectives as a factor for motivating managers in the bureaucracy known as Montana state government. It stands to reason then that efficiency would form the basis of the definition of merit used in selecting employees to work within this organization. It is also reasonable to assume that this definition of merit is what those individuals who wrote the state's Governmental Code of Fair Practices had in mind

when they directed the state government to appoint personnel on the basis of merit and qualifications.[1]

Recent times have seen a debate on who should be selected to work for the government. As a result of this debate the definition of merit has come under discussion and no longer is as clear in meaning as perhaps it once was. The words of Jay M. Shafritz highlight this confusion ". . . there are different schools of thought as to what its meaning really is. Some define merit as competitive excellence—a process whereby the very best are selected and advanced in the public service. Still others define merit simply in terms of standards or minimum qualification which should be met. The old notion of seeking the best person for the job is no longer tenable. An agency is obligated to seek the best person, male or female, but it might not hire the best candidate if and when he or she is found."[2]

This old notion of seeking the best individual for the job is exactly the notion laid to rest by the Crabtree Decision. To replace it was offerred the alternative of selecting from among the minimally qualified. This idea contracts the definition of merit to include membership in a preferred group.

The two conclusions of this paper are closely related to this confusion regarding what standard of merit should be used. First, the personnel system is not capable of maximizing two goals simultaneously. If employees are not selected solely on their job-related knowledge skills and abilities then the efficiency of state government will suffer. This argument is based on the assumption that applicants who are identified as the most qualified will also be the most efficient.

The survey of positions filled during the Crabtree period, as seen in Chapter Three, demonstrates how significant this effect may have been. It is quite possible that in thirteen of the sixteen positions studied the most qualified candidate was not selected. This, however, is not the only possible effect the Crabtree Decision may have had on the efficiency of government and the quality of the personnel selected. Yet to be determined is

the number of qualified candidates who failed to apply and perhaps took their skills to another state. In addition to these factors it is also likely that efficiency was reduced by delayed hirings, over emphasis on internal recruitment, and altered staffing patterns.

The value of selecting public employees based on their abilities as measured by impartial, job-related tests is a value shared by the great majority of personnel specialists. The second conclusion of this paper is founded on this shared value. Organizational directives which are not based on shared values or goals will not be viewed as totally legitimate by those assigned to implement those directives. It should be of no surprise then to find examples of employees attempting to adhere to their values by engaging in attempts to circumvent the directives. This behavior is what Weinstein describes as "Bureaucratic Opposition."

It is also a quality of bureaucrats to follow rules made by those with authority and to avoid endangering their security by taking risks. This behavior was described by Anthony Downs as "conserverism."

What is unique in this case is that hiring authorities, confronted with the new definition of merit and rules for selection, developed methods of opposition which were acceptable to the organization. It is evident that the majority of positions filled were being filled by preferred applicants. This indicates the hiring authorities were taking care not to risk injuring their organizations or their own positions within those organizations. This is also illustrated by the amount of delayed hiring during this period. However, these individuals were also involved in a set of activities designed to reassert their desire to select the best applicant available. The redesigning of minimum qualifications, the increased use of application supplements and the standardization and quantification of interviewing techniques are examples of behaviors engaged in to support a value which these individuals felt was threatened by the policies of the organization. In other words, "Bureaucratic Opposition."

Yet these behaviors are also recognized as effective personnel practices and actively promoted in the past and have a record of being effective methods of selecting the best candidate accounts for the fact that the majority of personnel administrators and hiring authorities surveyed retained many of these activities after the passage of the new legislation.

The lesson of the Crabtree "experience" is two sided. First, efficiency will suffer if other goals are allowed to interfere with the pursuit of a traditional, merit-based system. This stands as a warning to future policy makers. Second, the group of personnel administrators and hiring authorities currently working within the Montana State bureaucracy, with adequate motivation, were capable of combining the ability to follow rules and protect themselves and their organizations with a creative and positive form of opposition. This bodes well for the future of personnel administration in Montana.

FOOTNOTES – CHAPTER FIVE

[1] Montana Codes Annotated (MCA), Sec. 49-3-201.

[2] Jay M. Shafritz, Albert C. Hyde, David H. Rosenbloom, *Personnel Management in Government* (New York: Marcel Dekker, Inc., 1981), p. 155.

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APPENDIX

Summary of Data

	Grade Level	EEO Type	Date of Application	No. of Applicants With Minimum Qualifications	No. of Preferred Applicants	No. of Interviewed	No. of Preferred Interviewed	No. of Non-preferred Interviewed	Preferred Hired
A	13	B	Oct. 21	21	10	3	3	0	Y
B	9	C	Sept. 21	6	0	6	0	6	N
C	13	B	July 6	23	3	3	3	0	Y
D	10	F	June 23	12	4	4	4	0	Y
E	15	C	Nov. 16	3	2	1	1	0	Y
F	8	H	Nov. 7	2	0	2	0	2	N
G	7	F	Sept. 15	2	1	1	1	0	Y
H	6	H	Sept. 1	22	18	5	5	0	Y
I	9	E	July 1	4	0	4	0	4	N
J	9	B	Nov. 12	16	6	16	6	10	Y
K	9	B	June 19	7	3	7	3	4	Y
L	6	F	June 17	13	2	13	2	11	Y
M	7	F	Aug. 23	3	0	3	0	3	N
N	12	E	Aug. 5, 1983	15	10	10	10	0	Y
O	8	E	Aug. 16	3	0	3	0	3	N
P	16	A	Aug. 9	4	4	4	4	0	Y
				156	63	85	42	43	

Chronological Summary of Data

		Preferred	Interviewed	Preferred Interviewed	Non-preferred Interviewed	Preferred Hired
L	13	2	13	2	11	Y
K	7	2	7	3	4	Y
D	12	4	4	4	0	Y
I	4	0	4	0	4	N
C	23	3	3	3	0	Y
N	15	10	10	10	0	Y
P	4	4	4	4	0	Y
O	3	0	3	0	3	N
M	3	0	3	0	3	N
H	22	18	5	5	0	Y
G	2	1	1	1	0	Y
B	6	0	6	0	6	N
A	21	10	3	3	0	Y
F	2	0	2	0	2	N
J	16	6	16	6	10	Y
E	3	2	1	1	0	Y

Composition of Sample

Sample Grade Level		EEO Category	
Grade Level	No. of Positions Studied	EEO Type	No. of Positions Studied
6	2	A	1
7	2	B	4
8	2	C	2
9	4	D	0
10	1	E	3
11	0	F	4
12	1	G	0
13	2	H	2
14	0		
15	1		
16	1		

EEO Categories	
A	Management
B	Professional
C	Technicians
D	Protective Services
E	Paraprofessionals
F	Clerical
G	Skilled Craftsmen
H	Service/Maintenance

Factors Used in Analysis

Factors Included In the Individual Analysis of the Positions
1) closing date of application
2) number of applicants meeting minimum qualifications
3) number of preferred applicants meeting minimum qualifications
4) number of applicants interviewed
5) number of preferred applicants interviewed
6) number of non-preferred applicants interviewed
7) status of successful applicant (preferred or non-preferred)
8) a comparison of successful and unsuccessful applicants, if appropriate
9) any other communication and observations relevant to this paper

Individual Analysis

Agency 1 Grade 13	Position A EEO Category B
1) closing date of application	10/21/83
2) number of applicants meeting minimum qualifications	21
3) number of preferred applicants meeting minimum qualifications	10
4) number of applicants interviewed	3
5) number of preferred applicants interviewed	3
6) number of non-preferred applicants interviewed	0
7) status of successful applicant (preferred or non-preferred)	P
8) a comparison of successful and unsuccessful applicants, if appropriate	
A combination of a written test, the interview and preference was used to determine the successful applicant. Those without preference were not interviewed. Following is a comparison of the two candidates who completed interviews and the four non-preferred, minimally qualified candidates. The evaluation will use criteria from the position description, (1) education, (2) experience, (3) special skills. Because of the technical nature of the position the qualifications of the various applicants may be qualitatively compared. To facilitate this a 1-5 or "limited" to "unusually well qualified" is used.	
9) any other communications and observations relevant to this paper	
Same letter to unsuccessful candidates as position C	

					Position A
Successful	1*	2	4	3	= 9
Interviewed Preferred	2	2	4	2	= 8
Interviewed Preferred	3	3	3	2	= 8
Non-preferred Non-interviewed	4	4	4	3	= 11
Non-preferred	5	2	4	2	= 8
Non-preferred	6	2	3	2	= 7
Non-preferred	7	2	3	2	= 7

*1 = limited; 2 = average; 3 = good; 4 = very good; 5 = unusual.

Agency 1 Grade 9	Position B EEO Category C
1) closing date of application	9/21/83
2) number of applicants meeting minimum qualifications	6
3) number of preferred applicants meeting minimum qualifications	0
4) number of applicants interviewed	6
5) number of preferred applicants interviewed	0
6) number of non-preferred applicants interviewed	6
7) status of successful applicant (preferred or non-preferred)	N
8) a comparison of successful and unsuccessful applicants, if appropriate None of those meeting minimum qualifications were preferred, no preferred candidates interviewed	
9) any other communications and observations relevant to this paper	

Agency 1 Grade 13	Position C EEO Category B
1) closing date of application	7/6/83
2) number of applicants meeting minimum qualifications	23
3) number of preferred applicants meeting minimum qualifications	3
4) number of applicants interviewed	3
5) number of preferred applicants interviewed	3
6) number of non-preferred applicants interviewed	0
7) status of successful applicant (preferred or non-preferred)	P
8) a comparison of successful and unsuccessful applicants, if appropriate	
9) any other communications and observations relevant to this paper	

Letter to unsuccessful applicants "This is to inform you that the Dept. of ——— has filled the position of ——— from the pool of candidates applying who were able to avail themselves of a preference under Section 10-2-201 et. sec. MCA. Because we had a group of qualified applicants who came under this section, we will unable to consider your application."

Letter from hiring authority to Dept. Head, "As a result of the interviews and written tests and applying the preference factor, we recommend ——— be hired."

July 6 – "Fresh Tracks" Department Newsletter "Because of the recent State Supreme Court Decision involving hiring preference for veterans and handicapped civilians, our department has placed a hold on the four job openings announced June 22 . . ."

Job supplements included.

Agency 1	Position D
Grade 10	EEO Category F

1) closing date of application 6/23/83
2) number of applicants meeting minimum qualifications 12
3) number of preferred applicants meeting minimum qualifications 4
4) number of applicants interviewed 4
5) number of preferred applicants interviewed 4
6) number of non-preferred applicants interviewed 0
7) status of successful applicant (preferred or non-preferred) P
8) a comparison of successful and unsuccessful applicants, if appropriate

   A comparison of the successful preferred candidate with these minimally qualified, non-preferred candidates not interviewed based on criteria from job announcement criteria: (1) 1 year related coursework at college or technical school, (2) three years related experience, (3) still in use of related equipment.
9) any other communications and observations relevant to this paper

Successful Applicants		(1)	(2)	(3)
	1	Y	maybe	Y
Non-successful	2	Y	Y	Y
	3	N	Y	Y
	4	Y	Y	Y
	5	Y	Y	Y
	6	Y	Y	Y
	7	Y	Y	Y
	8	Y	N	Y
	9	Y	Y	Y

From this analysis it appears that six of the non-preferred candidates were equal or more qualified.

Included in this file was a letter from the director of the Department to the Governor. Included in this letter

1) A statement that preference was having a negative impact because of the inability to select the most qualified.
2) A statement that of the three positions recently filled all had been filled by preferred people.
3) No one, not even employees from the department were considered if they did not have preference.
4) Some recruitment that would have gone external has stayed internal resulting in a smaller pool.

Agency 1 Grade 15	Position E EEO Category C
1) closing date of application	11/16/83
2) number of applicants meeting minimum qualifications	3
3) number of preferred applicants meeting minimum qualifications	2
4) number of applicants interviewed	1
5) number of preferred applicants interviewed	1
6) number of non-preferred applicants interviewed	0
7) status of successful applicant (preferred or non-preferred)	P

8) a comparison of successful and unsuccessful applicants, if appropriate

Below is a comparison, based on criteria from the job description of (1) the successful applicant, (2) the non-preferred, non-interviewed, minimally qualified applicant.

	Education	Experience
(1)	BA – unrelated field	6 years
(2)	BS – related field	5 years

9) Supplement included

Agency 2 Grade 8	Position F EEO Category H
1) closing date of application	11/7/83
2) number of applicants meeting minimum qualifications	2
3) number of preferred applicants meeting minimum qualifications	0
4) number of applicants interviewed	2
5) number of preferred applicants interviewed	0
6) number of non-preferred applicants interviewed	2
7) status of successful applicant (preferred or non-preferred)	NP
8) a comparison of successful and unsuccessful applicants, if appropriate Sixty-three people applied for this position, thirty-seven were preferred. An extensive test was administered leaving only two applicants meeting minimum qualifications.	
9) any other communications and observations relevant to this paper Included on the position announcement: "All qualified applicants all urged to apply; however, consideration will be given to applicants eligible for preference under the Veterans' and Disabled Preference Act."	

Agency 2 — Position G
Grade 7 — EEO Category F

1) closing date of application — 9/15/83
2) number of applicants meeting minimum qualifications — 2
3) number of preferred applicants meeting minimum qualifications — 1
4) number of applicants interviewed — 1
5) number of preferred applicants interviewed — 1
6) number of non-preferred applicants interviewed — 0
7) status of successful applicant (preferred or non-preferred) — P
8) a comparison of successful and unsuccessful applicants, if appropriate

Two applicants met the minimum qualifications, one of those was preferred. Only the preferred candidate was interviewed. Four factors were considered in determining minimum qualifications: these were

(1) typing 60 wpm – measured by test
(2) H.S. diploma
(3) two years experience
(4) background in accounting

The two applicants meeting minimum qualifications appeared to be "substantially equally qualified."

9) any other communications and observations relevant to this paper

Two items appeared in this file relating to the preference issue.

(A) An inter-departmental memo from the hiring authority to the department director –"Our two choices for the ——————— (position) opening what closed Sept. 30, 1983 are attached. Because of the qualifications and Veterans' Preference we have chosen ——————.

Twenty-three people applied, 2 met minimum goals, 11 claimed preference, one of 2 was veterans' preference, she was the only person interviewed, got job

Goals

Working knowledge of office practices
Ability to interact with public
Speaking skills
1. typing 60 wpm/exam
   knowledge of printing process
2. H.S. graduate
3. 2 years experience
4. background in accounting

	1	2	3	4
Successful	Y	Y	Y	Y
Unsuccessful	Y	Y	Y	Y

Interoffice memo – "Because of the qualifications and Veterans' Preference we have chosen ——————."

*Also – letter warning about possible appeal.

(B) On the letter to the applicant announcing her selection–"During our discussions we made you aware of the Crabtree Decision.

'Wherever a decision has been or is anticipated to be challenged the appointing authority must give written notice of the challenge to the individual whose appointment is in question. It is recommended that hiring authorities notify

Agency 2 – Position G (continued)

all successful applicants at the time of hire if there were preferred persons in the applicant pool and the decision to hire may be open to challenge.

Any incumbent who has obtained permanent status and who loses a position as a result of a successful challenge by a preferred person will be treated as prescribed in the Reduction in Force Policy 3-0155'."[1]

[1] July 5, 1983 Memorandum from Dennis M. Taylor, Administrator, Personnel Division, Dept. of Administration.

Agency 2 — Position H
Grade 6 — EEO Category H

1) closing date of application — 9/1/83
2) number of applicants meeting minimum qualifications — 22
3) number of preferred applicants meeting minimum qualifications — 18
4) number of applicants interviewed — 5
5) number of preferred applicants interviewed — 5
6) number of non-preferred applicants interviewed — 0
7) status of successful applicant (preferred or non-preferred) — P
8) a comparison of successful and unsuccessful applicants, if appropriate

Five preferred and four non-preferred applicants meet the minimum qualifications. Only the preferred applicants were interviewed. A comparison of the successful preferred candidate with those non-preferred applicants that met the minimum qualifications is based on the following factors.

(1) Knowledge of position procedures
(2) Lift 65 lbs.
(3) Driver's license
(4) High School Diploma
(5) 1 year experience

		1	2	3	4	5
Selected preferred candidate		Y	Y	Y	Y	Y
Non-preferred unqualified	#1	Y	Y	Y	Y	Y
	#2	N	Y	Y	Y	N
	#3	Y	Y	Y	Y	Y
	#4	N	Y	Y	Y	Y

As shown in this diagram two candidates appear equally qualified. Upon examination of the applications neither applicant is substantially more qualified than the other

9) any other communications and observations relevant to this paper

On letters to unsuccessful applicants—"The Veterans' and Disabled Civilians Preference Act was applied in making this decision."

Agency 2 Grade 9	Position I EEO Category E
1) closing date of application	7/1/83
2) number of applicants meeting minimum qualifications	4
3) number of preferred applicants meeting minimum qualifications	0
4) number of applicants interviewed	4
5) number of preferred applicants interviewed	0
6) number of non-preferred applicants interviewed	4
7) status of successful applicant (preferred or non-preferred)	NP

8) a comparison of successful and unsuccessful applicants, if appropriate

Of the five preferred applicants, out of thirty-one total candidates, none met the minimum qualifications and none were interviewed.

9) any other communications and observations relevant to this paper

Note to Dept. Administrator from hiring authority. "In the Division's opinion, none of the five met minimum qualifications for the job."

Handwritten note from Personnel Officer expressing confidence in procedure.

Dennis M. Taylor memo of July 1 included in letter to successful candidates.

Agency 3 — Position J
Grade 9 — EEO Category B

1) closing date of application — 11/12/83
2) number of applicants meeting minimum qualifications — 16
3) number of preferred applicants meeting minimum qualifications — 0
4) number of applicants interviewed — 16
5) number of preferred applicants interviewed — 6
6) number of non-preferred applicants interviewed — 10
7) status of successful applicant (preferred or non-preferred) — P
8) a comparison of successful and unsuccessful applicants, if appropriate

12 weighted factors

A)	high school diploma	(8)
B)	college degree	(8)
C)	related courses	(6)
D)	Experience 1	(12)
E)	Experience 2	(12)
F)	Experience 3	(12)
G)	Experience 4	(12)
H)	Experience 5	(12)
I)	Experience 6	(12)
J)	Experience 7	(12)
K)	Personnel Supervision	(6)
L)	Preference	(5)

Sixteen applicants

	Before veterans' preference scores		(After)
1	26	(26)	9 20 (25)
2	22	(27)	10 10 (10)
3	23	(28)	11 20 (25)
4	20	(20)	12 18 (18)
5	20	(25)	13 20 (25)
6	20	(20)	14 22 (22)
7	16	(16)	15 15 (15)
8	28	(28)	16 15 (15)

The pre preference leader was tied with the person who was third before preference at the end.

9) any other communications and observations relevant to this paper

After preference was applied a tie developed between two applicants. The preferred applicant was selected although his score prior to the addition of preference points was lower.

Agency 3
Grade 9

Position K
EEO Category B

1) closing date of application — 6/19/83
2) number of applicants meeting minimum qualifications — 7
3) number of preferred applicants meeting minimum qualifications — 0
4) number of applicants interviewed — 3
5) number of preferred applicants interviewed — 3
6) number of non-preferred applicants interviewed — 4
7) status of successful applicant (preferred or non-preferred) — P
8) a comparison of successful and unsuccessful applicants, if appropriate

Same description as position J with same method of determining rating. Two candidates received the same final score. However, one received points for preference to reach that tie score. The preferred candidate was hired.

No.	Preference	Score Before	After	
7	N	29	29	Tie caused by adding points
14	Y	18	23	
19	N	23	23	
20	Y	24	29	
23	N	26	26	
29	N	25	25	
31	Y	18	23	

9) any other communications and observations relevant to this paper

Agency 3 Grade 6	Position L EEO Category F
1) closing date of application	6/17/83
2) number of applicants meeting minimum qualifications	13
3) number of preferred applicants meeting minimum qualifications	2
4) number of applicants interviewed	13
5) number of preferred applicants interviewed	2
6) number of non-preferred applicants interviewed	11
7) status of successful applicant (preferred or non-preferred)	P
8) a comparison of successful and unsuccessful applicants, if appropriate	
Applicants are rated Y or N on the following criteria preference one year experience high school courses experience II knowledge telephone skills research experience machine skills experience II	
The candidates hired received one N, two other candidates received Ns only in regards to preference.	
9) any other communications and observations relevant to this paper	

Agency 3 Grade 7	Position M EEO Category F
1) closing date of application	8/23/83
2) number of applicants meeting minimum qualifications	3
3) number of preferred applicants meeting minimum qualifications	0
4) number of applicants interviewed	3
5) number of preferred applicants interviewed	0
6) number of non-preferred applicants interviewed	3
7) status of successful applicant (preferred or non-preferred)	NP
8) a comparison of successful and unsuccessful applicants, if appropriate NA Three applications were received for this position, none were preferred. This might be due to the fact that the position was located outside Helena in a small town.	
9) any other communications and observations relevant to this paper	

Agency 3 — Position N
Grade 12 — EEO Category E

1) closing date of application — 8/5/83
2) number of applicants meeting minimum qualifications — 15
3) number of preferred applicants meeting minimum qualifications — 10
4) number of applicants interviewed — 10
5) number of preferred applicants interviewed — 10
6) number of non-preferred applicants interviewed — 0
7) status of successful applicant (preferred or non-preferred) — P
8) a comparison of successful and unsuccessful applicants, if appropriate

Weighted criteria

Appropriate degree	(50)
Related degree	(10)
Related coursework	(10)
Non-related	(10)
Experience 1	(15)
Experience 2	(15)
Experience 3	(15)
Travel	(5)
Writing	(15)
Demeanor	(15)

NP = no preference

Scores for the fifteen candidates before interviews

	B	A									
1	70	(76.5)	NP	6.	70		NP	11.	45		
2	85	(91.5)		7.	50	(56.5)		12.	100	(106.5)	
3	100	(106.5)		8.	50			13.	95	(101.5)	
4	80	(86.5)		9.	88	(101)		14.	45	(58)	
5	100		NP	10.	70			15.	83	(89.5)	

9) any other communications and observations relevant to this paper
Only preferred candidates were interviewed. When comparing the two candidates who scored 100—successful candidates applications not available.

Agency 3 Grade 9	Position O EEO Category E
1) closing date of application	8/16/83
2) number of applicants meeting minimum qualifications	3
3) number of preferred applicants meeting minimum qualifications	0
4) number of applicants interviewed	3
5) number of preferred applicants interviewed	0
6) number of non-preferred applicants interviewed	3
7) status of successful applicant (preferred or non-preferred)	N
8) a comparison of successful and unsuccessful applicants, if appropriate Three applicants applied, none with preference. Perhaps the reason for so few applications is related to the special skills needed for the position.	
9) any other communications and observations relevant to this paper	

Agency 3	Position P
Grade 16	EEO Category A

1)	closing date of application	8/9/83
2)	number of applicants meeting minimum qualifications	4
3)	number of preferred applicants meeting minimum qualifications	4
4)	number of applicants interviewed	4
5)	number of preferred applicants interviewed	4
6)	number of non-preferred applicants interviewed	0
7)	status of successful applicant (preferred or non-preferred)	P
8)	a comparison of successful and unsuccessful applicants, if appropriate	
	Only applicants having preference were considered. A supplement was used.	
9)	any other communications and observations relevant to this paper	