VETERANS' PREFERENCE AND COLLECTIVE BARGAINING IN MONTANA

by

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ABSTRACT

This paper addresses the problem of possible impacts of absolute veterans' preference on Montana's heavily unionized public sector's collective bargaining process. A comprehensive history of the development of Montana's veterans' preference law and a comparison of the similarity and strength of Montana's preference with those granted by the other 49 states prior to 1983 establishes a frame of reference for a discussion of Montana's 1983 veterans' preference controversy. The controversy followed the 1983 Montana Supreme Court's Crabtree decision that absolute preference was to be granted to minimally qualified veterans and disabled civilians in appointment and employment in Montana's public sector. Two subsequent preference related lawsuits implied possible extension of the issue to retention in employment during layoffs and to promotions. If such an extension of the preference were to occur, Montana's public sector's collective bargaining process potentially could be impacted.

An analysis of data obtained through a survey reveals that absolute veterans' preference could have far-reaching negative impacts on the collective bargaining process, thereby diminishing its effectiveness. This, in turn, could potentially cause turmoil and could negatively affect the operation of Montana's public sector.

CHAPTER ONE

INTRODUCTION

Historically, veterans have been granted special advantages in securing governmental employment. The rationale for such advantages is to reward those who have served their country in the military, to aid in the rehabilitation and relocation of veterans whose life style has been disrupted by military service, and to provide incentives for young men and women to join the armed forces.[1] However, the laws giving veterans preference in public employment in the federal government and in states vary considerably as to the amount of preference given, which ranges from being absolute to relative, the latter in the form of bonus points added to final test scores. Over the years, courts have considered challenges to these laws and upheld their validity.[2]

In Montana, the first state veterans' preference law was passed in 1921, and amended nine times prior to 1983. Then, in 1983, it was completely revised as a direct result of the controversy surrounding the Montana Supreme Court's decision in Crabtree v. Montana State Library. For over 60 years prior to the Crabtree decision, Montana's public sector employers had used veterans' preference as a tie-breaker (relative preference) in appointment and employment decisions. But, the Crabtree decision upheld absolute preference instead in public appointment and employment for any minimally qualified veteran or disabled civilian recommended by Montana's Department of Social and

Rehabilitative Services' Division over all nondisabled civilian applicants in accordance with section 10-2-203 of the Montana Code Annotated (MCA).[3] This preference also included veterans' spouses, surviving spouses, and dependents.

The legislative intent of the preference law before the 1983 revision has not been preserved;[4] and over the years, four Montana Attorneys General interpreted the preference differently. Two said it was relative; the others said it was absolute.

This issue was confusing, and no comprehensive history was available that related Montana developments to events or changes in federal legislation. Additionally, uncertainty seemed to exist about the similarity and strength of Montana's preference compared with veterans' preferences granted by the other 49 states. To understand and assess the 1983 veterans' preference controversy that followed the Crabtree decision, such a framework of reference is necessary.

Moreover, two other lawsuits, Jensen v. State of Montana, Department of Labor and Industry and Hunt v. Schwinden, implied the possible extension of the absolute preference to retention in employment during reductions in force and to promotions. If this had occurred, absolute veterans' preference potentially could have impacted Montana's public sector's collective bargaining process. Negative impacts on Montana's heavily unionized public sector's bargaining process probably could have created additional turmoil if the 1983 Montana Special Legislative Session had not passed a new preference law. Passage of the 1983 law, however, did not settle the issue, as is evident from the 1985 Legislature considering two bills on the same subject. Given this, it

is important to see what impacts an absolute veterans' preference could have on Montana's collective bargaining process at the state level. Particular attention should be paid to the possible problems that could occur in negotiating and implementing contract provisions for promotions, seniority, layoffs, recalls, and grievances.

Methodology

First, a frame of reference is developed in terms of a comprehensive history of the probable reasons why Montana's law developed the way it did and why it was interpreted differently by four Montana Attorneys General prior to 1983, in an attempt to correlate changes in Montana's law with related events and changes in federal legislation. Second, Montana's preference is compared with preferences granted by the other 49 states for the years 1969, 1974, 1975, 1979, and 1982 based on digests of state veterans' laws prepared for the United States Congress. Third, the 1983 Montana veterans' preference controversy and the Jensen and Hunt lawsuits relating to the application of the preference are discussed. Fourth, to assess the possible impacts of absolute veterans' preference on Montana's state public sector's collective bargaining process, a questionnaire was developed using ten open-ended questions divided into four specific categories: (1) promotions; (2) seniority, layoffs, and recalls; (3) grievances; and (4) other thoughts.[5]

The first two categories were chosen for two reasons. First, they reflected areas of management concerns and possible labor problems called to light by the Crabtree, Jensen, and Hunt cases. Second,

seniority is generally favored by unions in layoff decisions and promotions;[6] and even though management rights may place certain items outside the scope of bargaining, decision-making procedures used to implement management policies may be subject to negotiations.[7] The third category was chosen because grievance procedures can vary[8] and because some observers feel special grievance procedures could be used in EEO adjudication.[9] This raises a question as to whether special grievance procedures would be needed, or could be used, to resolve preference statute versus labor contract disputes. The fourth category allowed individuals to freely express other problems or benefits they felt were necessary to mention.

The premise for this study is that absolute veterans' preference would have applied to all new hirings, promotions, retentions in employment during layoffs, and to recalls after temporary layoffs. Because it is hypothetical and respondents can only be asked to provide well-informed personal opinions about possible problems that might have occurred, the questions could require substantial thought. Therefore, considering the time and effort of the respondents, the questions were confined solely to veterans and did not refer to other preference eligibles.

Thirty-three management personnel from 13 state agencies and 28 labor organization personnel were contacted in person. These individuals included labor relations experts, personnel specialists, labor representatives, and other management and labor personnel who are involved with negotiating and/or implementing state collective bargaining agreements. Thirty-four (56 percent) of these people

participated in this study. Not unexpectedly, those who participated preferred to reply to the questionnaire anonymously and return their responses by mail. Hence no distinction could be made between management and labor responses.

Since the vast majority of respondents mentioned multiple problems or ideas in response to the various questions, the number of respondents expressing each general problem or idea are counted. This allows for the development of a continuum for each question showing the most frequently mentioned general problem or idea at one end of the continuum and the least frequently mentioned general problem or idea at the other end (see Appendix E). The arrangement of the paper follows.

Paper Arrangement

The next chapter provides a comprehensive history of the probable reasons why Montana's law developed the way it did and why it was interpreted differently by four Montana Attorneys General prior to 1983.

Chapter Three compares Montana's preference before 1983 with those granted by the other 49 states for the years 1969, 1974, 1975, 1979, and 1982 based on the synopses information in digests of state veterans' laws prepared for the United States Congress.

Chapter Four reviews the 1983 controversy and the Jensen and Hunt cases.

Chapter Five analyzes the survey data regarding possible impacts of absolute veterans' preference on Montana's state public sector's

collective bargaining process, as perceived by those actively involved in the bargaining process.

The final chapter will present general conclusions drawn from this research.

FOOTNOTES

[1]Richard A. Ciambrone, "Sex Discrimination: State Veterans' Preference Statute Declared Unconstitutional Under Discriminatory Purpose Rule - Feeney v. Massachusetts, 451 F. Supp. 143 (D. Mass. 1978), pro. juris. noted, 47 U.S.L.W. 3245," University of Dayton Law Review 4 (Fall 1979): p. 457.

[2]Eloise Taylor, "Constitutional Law: Equal Protection, Sex Discrimination, Veterans' Preference - Feeney v. Massachusetts, 451 F. Supp. 143 (D. Mass. 1978)," Akron Law Review 12 (Winter 1979): p. 557.

[3]Crabtree v. Montana State Library, 665 P2d 234 (Mont. 1983).

[4]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. 3.

[5]When issues are threatening and are subject to pressure for social desirability, self-administered interview questionnaires tend to produce more frank and honest responses because anonymity can be preserved. Also, open-ended questions should be used for threatening subject matter to reduce threat. See, Seymour Sudman and Norman M. Bradburn, Response Effects in Surveys, (Chicago: Aldine Publishing Company, 1974), pp. 40-47. And, according to Stephen A. Richardson, Barbara Snell Dohrenwend, and David Klein, questionnaires are useful because: (1) they can elicit information that may cause embarrassment during oral questioning, and (2) respondents may require more thought and time to answer questions than they are willing to give in a face-to-face situation. See, Interviewing: Its Forms and Functions, (New York: Basic Books Inc., 1965) pp. 18-19.

[6]Richard C. Kearney, Labor Relations in the Public Sector, (New York: Marcel Dekker, Inc., 1984), pp. 176, 187.

[7]Ibid., p. 181.

[8]Ibid., p. 189.

[9]Ibid., p. 296.

CHAPTER TWO

HISTORY OF VETERANS' PREFERENCE

Early Federal Legislation

The only veterans' preference legislation that could have been used in Montana prior to 1921 applied to federal employment. Early federal legislation apparently served as the guide for the wording of Montana's original 1921 veterans' preference law. Therefore, a brief discussion of this early legislation is appropriate.

During the Revolutionary War, Congressional proposals were made to create a lifetime half-pay plan for soldiers. This was the beginning of Congressional efforts to minimize wartime compensation by offering later rewards. Military officers were often appointed as customs collectors, surveyors, internal revenue officers, and loan commissioners in reward for military service.[1]

Congress first directly addressed veterans' employment preference on March 3, 1865, when it passed Resolution Number 27, 13 Statute 571, to express gratitude to Union soldiers for their service during the Civil War. It stated that persons honorably discharged from the military or naval services because of a disability resulting from sickness or wounds should be preferred for appointments to civil offices as long as they possessed the business capacity to perform the job.[2] This Resolution only had whatever impact each appointing

officer wanted to give it because no uniform federal system existed for considering employment applicants.[3]

On August 15, 1876, Congress addressed preference for discharged soldiers and sailors and their widows in Section 3 of Paragraph 11 of the 1876 Appropriation Bill. The two points of significance were: (1) retention rights were to be given to these preference eligibles during reductions in employment of higher grade clerks in the clerical service, and (2) the preference was to apply to individuals who were not disabled veterans.[4]

Then, in 1881, the U.S. Attorney General interpreted the 1865 law as granting a relative employment preference to disabled veterans only when their qualifications were equal to those of other candidates for a position.[5] Later, the revised 1888 civil service rules allowed disabled veterans who scored a 65 on Civil Service examinations to be certified before all other eligibles, and the passing score for all other eligibles was raised to 70.[6] Then, in 1889, an Executive Order issued by President Harrison allowed all honorably discharged soldiers who had been former Government employees to be reinstated in employment without a time limit.[7] This preference was extended to veterans' widows in 1892.

In 1910, the U.S. Attorney General reversed his 1881 predecessor's opinion and stated that veterans' preference for disabled veterans on the Civil Service eligible list was to be absolute.[8] This opinion was further strengthened by the August 23, 1912 Appropriation Act. It contained a provision to retain honorably discharged soldiers and

sailors with good departmental ratings during executive department reductions in force without reducing their salaries.[9]

To summarize the trend prior to World War I, veterans' preference for initial employment was being considered absolute for disabled veterans but not for nondisabled veterans. Preference for nondisabled veterans appears to have had absolute meaning only during reductions in force.

Turning to why Montana's 1921 Legislature passed a veterans' preference law and whether the probable intent corresponded to the federal view of veterans' preference prior to, or following, World War I, one should understand the part Montanans played during World War I.

Montana's 1921 Law

When America entered World War I, 27,567 Montana men (996 per 10,000 population) were accepted for military service. This meant one-fourth more Montana men in proportion to population than from any other state served in the U.S. armed forces during World War I.[10] Due to a miscalculation, the law had required Montana to draft troops on the basis of a population twice its actual number.

During the war, Montana's men won some very key battles for the Allies. For example, when Montana's 362nd Infantry "Powder River" Regiment defeated Germany's elite Prussian Guards in the Battle for Gesnes, it was considered an almost impossible feat that broke the back of the German resistance.[11] A second example is the performance of the Marine Brigade in the famous Battle for Belleau Wood where it used up four German Divisions in a month of close-quarter infantry fighting.[12]

This Brigade had almost a battalion of Montana men in its ranks.[13] Montana not only had more than its share of heroes; it also had more than its share of dead and wounded. The total Montana casualty count was 4,061 men. The lives lost from Montana were about 26 percent greater in proportion to population than from any other state.[14]

Montana's citizens showed terrific patriotism during World War I as reflected by their oversubscription in all Liberty Bond Drives. For example, the third drive exceeded Montana's quota by 195.9 percent. The last drive in 1918 exceeded Montana's quota by 111.88 percent.[15]

In 1919, 22 veterans' associations from throughout Montana combined to form the World War Veterans of Montana. This group affiliated itself with the newly formed national American Legion and became the Montana American Legion.[16] Such an affiliation probably provided political muscle.

Such was the background that most likely spurred the 1921 Montana Legislature to pass the veterans' preference law.

At the federal level, in 1919, the March 3 Census Act was passed. It contained a rider that extended preference in appointments with the classified service in Washington, D.C. to all honorably discharged soldiers, sailors, and marines, and to their widows. This was the first time that appointment preference was extended to nondisabled veterans and to veterans' widows.[17] This Act was further amended by the July 11, 1919 Deficiency Act to include the wives of injured soldiers, sailors, and marines who were not qualified to hold a position but whose wives were qualified to hold the position.[18] The

preference granted by these two Acts applied to all honorably discharged wartime or peacetime veterans.[19]

The trend toward absolute veterans' preference was countered by President Wilson's April 13, 1920 amendment to his March 31, 1917 Executive Order. It permitted either the highest scoring eligible veteran or nonveteran on the Civil Service Commission's competitive examination to be appointed to a civil service position.[20]

Such was the confusing legal environment in which Montana's Legislature passed the 1921 veterans' preference law. It is the first part of this law that proved to be contentious in 1983. Section 1 of this law read:

> In every public department, and upon all public works of the State of Montana, and any County therefore, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the late war with Germany and her allies shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved; provided, however, that none of the benefits of this Act shall accrue to any person who refused to serve on active duty in the Military Service to which attached or take up arms in the defense of the United States.[21]

This wording is similar to federal legislation. However, the words that seem to give an absolute preference meaning are " . . . shall be preferred for appointment and employment . . ." But, was absolute preference the intent of Senator Anderson, the author of Montana Senate Bill 177 which became the 1921 law? Did the law mean absolute preference?

The intent is difficult to determine with absolute certainty in the absence of records. The only existing clues to the probable intent of Montana's law are a February 4, 1921 newspaper article in The Helena Daily Independent and a statement referring to the constitutionality and intent of other veterans' preference laws at the bottom of the law in the 1921 Revised Codes of Montana. The article quoted Senator Anderson as saying:

> This bill is designed to give the soldier boys preference in public employment, providing only that they are of equal ability with other applicants . . .[22]

The statements of constitutionality and intent from other states' court cases referred to in the 1921 Revised Codes of Montana seem to support this quote. If the purpose of citing these statements was to show the 1921 Montana Legislature's intent, then the hiring preference was not meant to be absolute (see Appendix A). This would have corresponded to the view expressed in President Wilson's 1920 Executive Order amendment but would not have reflected the main interpretations of federal law after 1910.

Whatever the intent of the Montana Legislature was, the law passed in 1921 would throw Montana's government into a tailspin 62 years later. The 1921 Montana Act remained untouched until it was amended in 1927.

Montana's Preference Amendments

The 1927 amendment made two major changes. First, the hiring preference was extended to disabled civilians recommended by the Montana State Rehabilitation Bureau. Second, the following three

stipulations were placed on the granting of the preference: (1) non-U.S. citizens were not to be employed in any capacity in Montana's public sector if competent American labor was available; (2) a preference recipient had to be a Montana resident for at least one year immediately preceding an appointment; and (3) an applicant had to be a resident of the city, town, or county in which employment was sought.[23]

Although documentation has not been preserved that explains why disabled civilians were added as preference eligibles, careful comparison of Montana's law with federal law reveals a possible reason. It may have been a political compromise to get disabled veterans' wives included under the preference. Montana's law originally did not give any form of preference to disabled veterans' wives whereas federal legislation had provisions for the inclusion of both disabled and nondisabled veterans' wives.

A clue to the probable reason behind the residency requirements is given in a February 18, 1927 newspaper article in The Helena Daily Independent. According to the article, the amendment was to " . . . prevent public officials from bringing in relatives from other states and giving them places on the public payroll."[24]

A number of years passed; and then in 1934, a Montana Attorney General's Opinion considered the nature of Montana's preference. This opinion referred to the statements of constitutionality and intent listed in the 1921 Revised Codes of Montana (see Appendix B), and held that Montana's law granted a hiring preference to a veteran only when the veteran had qualifications equaling those of the most qualified

nonpreferred applicant.[25] This opinion aligns with federal policy expressed in 1923 and 1929 Executive Orders.

President Harding's March 3, 1923 Executive Order allowed ten additional points to be added to disabled veterans' Civil Service examination scores. Five point additions were allowed for nondisabled veterans, and for veterans' wives and widows. However, both classes of veterans lost the privilege of going to the top of Civil Service eligible lists.[26] President Coolidge's March 2, 1929 Executive Order kept the ten point addition to disabled veterans' Civil Service examination scores and extended it to the scores of wives of disabled veterans who were too disabled to work. Furthermore, disabled veterans, their wives, and veterans' widows regained the right to be placed at the top of the Civil Service eligible lists in the order of their augmented ratings.[27] Both of these federal Executive Orders can be correlated to Montana's 1937 amendment which gave disabled veterans preference over nondisabled veterans.[28]

A second change arising out of this amendment, however, cannot easily be explained. It provided recourse for preference eligibles who did not receive public jobs they believed they deserved. The preference eligible could petition a district court to issue an order for the public employer in question to show cause why the preference eligible had not been hired.[29]

The 1943 amendment to Montana's law is much easier to correlate with events and public sentiment. During World War II, Helena (Montana's Capitol) was no stranger to military activity. On June 16, 1942, The First Special Service Force (later nicknamed The Devil's

Brigade) was formed at Fort Harrison near Helena.[30] Helena literally adopted the Force as part of its population.[31] This probably created a highly patriotic, emotional atmosphere which could have contributed to the passage of the 1943 amendment. However, the most likely reason for the 1943 amendment's passage was a victory won by Montana's 163rd National Guard Infantry Regiment. Having been inducted into active Federal Service of the Army of the U.S. on September 16, 1940, the 163rd was combat ready by the end of 1942.[32]

On January 2, 1943, the 163rd entered the Papuan Campaign against the Japanese in New Guinea. Sanananda, their objective, has been called a "nightmare hell" in which Colonel Kiyomi Tsukamoto's seasoned Japanese troops were in a fierce, stalemated battle with Australian and American troops.[33] In 22 days of action, the 163rd defeated these Japanese troops and gave the U.S. its first major land victory against the Japanese. This victory was so significant that General Douglas McArthur, Supreme Allied Commander in the Southwest Pacific, personally commended the 163rd for its outstanding performance.[34] One can imagine the pride in Montana's fighting men that must have been felt by Montana's Legislative Assembly which was in session when this major victory was won.

Only 40 days later, on March 3, 1943, Montana's Twenty-eighth Legislative Assembly passed a very strong amendment to Montana's veterans' preference law that did three things. First, the hiring preference was extended to World War II veterans. Second, the 1937 enforcement procedures were revised. The district court was given full authority to determine if a Montana public employer should have hired a

bypassed preference eligible and to order the employer in question to hire the eligible. Third, the court could order that back pay be given to the eligible from the date he would have been hired.[35] This amendment stayed in Montana's law until it was amended again in 1947.

Meanwhile, at the federal level, the Veterans' Preference Act of 1944 was passed. This law and its succeeding amendments provided patterns for considering veterans' preference that were incorporated into Montana's law through later amendments.

In 1945, the enforcement provision of Montana's law added by the 1943 amendment was tested. On May 1, 1945, Montana's Supreme Court decided the case Application of O'Sullivan. Emmet O'Sullivan, a World War I veteran, had unsuccessfully sought Harlowtown's city attorney's position. He then invoked Montana's 1943 amendment which gave the district court the authority to order the employment of and wage back-payment to bypassed veterans' preference eligibles. The City of Harlowtown challenged the constitutionality of the enforcement procedure before Montana's Supreme Court on the grounds that the appointing power for officers not connected with the judiciary is an executive function which cannot be delegated to the judiciary. The Court declared the 1943 amendment to be invalid but upheld the 1937 amendment which gave the district court authority to order an appointing authority to show cause why a preference eligible was not hired.[36] However, the question about the preference being absolute had neither been addressed nor answered.

Later in 1945, R. B. Downs, Representative of the State Veterans' Employment Commission, sought an opinion from Montana Attorney General

Bottomly. Because a number of returning veterans applying for Civil Service examinations had inquired about their right to an appointment preference under Montana's law, he wanted to know if a veteran with a grade of 75 was to be appointed over a nonveteran with a grade of 85. Bottomly's December 12, 1945 opinion said yes.[37] Thus, Montana's law had been interpreted for the first time as granting an absolute preference. As Justice Shea stated in his special concurrence in the Montana Supreme Court's October 25, 1984 decision in Jensen v. State of Montana, Department of Labor and Industry, political expediency was clearly the moving force behind the differing opinions of Montana Attorneys General.[38]

Following the O'Sullivan decision, the 1937 amendment enforcement procedure was reinstated by the 1947 amendment to Montana's law.[39] Careful analysis of the 1937 wording reveals a strong similarity to Section 8 of the Veterans' Preference Act of 1944 which stated that an appointing officer only had to consider a Civil Service Commission decision to reconsider a bypassed preference eligible. Section 8 was based on an August 31, 1871 U.S. Attorney General's opinion that Congress must constitutionally leave appointing powers to department or agency heads.[40]

The other 1947 amendment change gave disabled veterans' widows preference over able-bodied veterans. This is along the same lines as the federal government giving a ten point preference addition to Civil Service scores for unmarried surviving spouses of ex-servicemen and women as compared to the five point addition given to nondisabled

veterans under Section 3 of the 1944 Veterans' Preference Act. Two years later, Montana's law was revised again.

Veterans' organizations, especially the American Legion, were actively lobbying for immediate and long-range veterans' benefits during Montana's 1949 legislative session.[41] Their cause was probably motivated in part by Montana's high unemployment which had climbed from 846 in October 1948 to a postwar peak of over 10,000 in January 1949. Individual counties were experiencing unemployment rates varying from 1 per cent in Deer Lodge County to 27.64 per cent in Sanders County. The average rate was 4.89 per cent throughout the state and was expected to continue growing.[42]

A number of changes were made by the 1949 amendment. First, disabled veterans, their wives, and veterans' widows were to have ten per cent of written or oral examination scores added to those scores. All other veterans, their wives, and dependents were to receive five per cent additions.[43] This is similar to the practice of allowing five and ten point preference additions to Civil Service examination scores provided for in Section 3 of the 1944 Veterans' Preference Act, with one exception. The 1944 Act as amended through 1947 had extended preference to veterans' mothers but not to all veterans' dependents. Second, disabled veterans' widows were no longer automatically granted preference over able-bodied veterans. Third, veterans were defined as honorably discharged men and women who served in the U.S. armed forces between September 16, 1940, and September 2, 1945. (September 16, 1940, was the date of the 163rd's induction into federal service, and September 2, 1945, was the day Japan unconditionally surrendered.)

Fourth, in order to receive the preference, veterans' widows could not be remarried. This probably reflected a 1945 U.S. Attorney General's opinion[44] and the July 2, 1948 amendment to the 1944 Veterans' Preference Act.[45] Both of these held that veterans' widows were not entitled to receive employment preference if they had remarried.

One other interesting occurrence in 1949 was a Montana Attorney General's opinion that Montana's veterans' preference was not to be considered absolute. It was to only consist of a certain percentage to be added to a veteran's examination grade.[46] This opinion was in tune with federal legislation.

The next amendment to Montana's law was passed in 1955. It implemented three changes. First, the purpose section used until the law was revised in 1983 was enacted. Second, "The Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive" was added to the list of wars for eligible veterans.[47] (On June 26, 1950, the United Nations Security Council voted to support South Korea and appointed the United States as leader of the U.N. forces.[48] January 31, 1955, was the ending date for the basic service period for the Korean Conflict.[49]) Third, disabled veterans' dependents became eligible to receive an additional ten per cent of their examination scores added to those scores. The probable reason behind this change is that nondisabled veterans' dependents had been granted a five per cent preference addition under the 1949 amendment while disabled veterans' dependents had not been granted any preference.

Five years later, Montana Attorney General Forrest H. Anderson received an inquiry from Chadwick H. Smith, Chairman of Montana's Unemployment Compensation Commission, asking if Montana's veterans' preference applied to retention in employment during reduction in force. Attorney General Anderson's June 9, 1960 letter responded in the affirmative because the preference did pertain to both appointment and employment (see Appendix B). (In 1983, this letter was used as evidence supporting absolute preference in the case Jensen v. State of Montana, Department of Labor and Industry.[50])

The reasoning behind the 1969 Montana amendment is revealed in the February 5, 1969 State Administration Committee minutes regarding Montana Senate Bill 163. Bob Durkee of the VFW stated that the Bill would attempt to conform to federal statutes and would include Viet Nam War veterans. The following changes were actually enacted.

First, World War II service dates were expanded to include dates between September 16, 1940, and December 31, 1946. This was probably an effort to include veterans serving in occupation forces (allowed by federal law) while primarily reserving the preference for veterans who served during actual World War II hostilities. Second, the Viet Nam Conflict was added to the list of wars. Third, preference was extended to honorably discharged veterans who served on active military duty for more than 180 days after January 31, 1955, or who were discharged or released because of a service-connected disability. This corresponds with Public Law 89-358 which amended Section 2 of the 1944 Veterans' Preference Act on March 3, 1966.[51] Fourth, five and ten point preference additions to examination scores replaced the five and ten

percentage system additions allowed since the 1949 amendment.[52] This is a direct reflection of the amended 1944 Veterans' Preference Act.

The next amendment to Montana's law came in 1975 and replaced the words "wives" and "widows" with "spouse" and "surviving spouse" in an effort to eliminate wording that discriminated on the basis of gender.[53] This corresponds to a number of federal changes made between 1970 and 1975.

First, President Nixon's Executive Order 11521 released on March 28, 1970, provided for agency heads to make excepted appointments known as veterans' readjustment appointments for Competitive Service positions up to and including GS-5 for Viet Nam era veterans as long as definite conditions were met. One condition was that the agency could not discriminate because of race, color, religion, sex, national origin, or political affiliation.[54] This stipulation obviously was inspired by the Civil Rights Act of 1964. Second, Public Law 92-187 (December 15, 1971) extended veterans' preference to husbands of disabled female veterans who were unable to qualify for any appointment in the Civil Service or in the government of the District of Columbia. Third, the 1975 Montana amendment definitely corresponds to the anti-discrimination public sentiment expressed by the 1972 Equal Employment Opportunity Act.

The last amendment prior to the 1983 revision of Montana's law was in 1977. It eliminated the prohibition against hiring noncitizens for public employment when competent American labor was available. Testimony concerning the amendment disclosed that such a preference for citizens over noncitizens was unconstitutional.[55]

Summary

Before 1983, Montana's veterans' preference law had been amended nine times since it originated and had been interpreted by four Montana Attorneys General and the Montana Supreme Court's decision in Application of O'Sullivan. However, the question of whether this law was to be considered to grant a relative or an absolute preference had never been resolved before a court of law. In 1983, however, the Montana Supreme Court was forced to come to grips with the issue of veterans' preference. Their decision in the Crabtree case threw Montana's public sector into a tailspin. The principal events leading to the passage of Montana's 1983 veterans' preference law will be the subject of Chapter Four. But, before that, a comparison of Montana's preference with veterans' preferences granted by the other 49 states will be of interest.

FOOTNOTES

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

[2]Con. Res. 27, XIII Stat. 571.

[3]Vaughn, op. cit., p. 667.

[4]Appropriation Bill of August 15, 1876, Ch. 287, Par. 11, Sec. 3, 19 Stat. 169.

[5]U.S. Civil Service Commission, History of Veteran Preference in Federal Employment, 1865-1955, (Washington 25, D.C.: October 1955), p. 2.

[6]Ibid.

[7]Ibid., p. 3.

[8]Ibid.

[9]Appropriation Act of August 23, 1912, Ch. 350, 37 Stat. 360.

[10]Chester K. Shore, Montana in the Wars, (Miles City, Montana: Star Printing Company, 1977), p. 69.

[11]Ibid., p. 80.

[12]Alvin W. Josephy, Jr., ed. in charge, The American Heritage History of World War I, (American Heritage Publishing Co., Inc., 1964), p. 283.

[13]Shore, op. cit., p. 85.

[14]Ibid., p. 69.

[15]Ibid.

[16]Ibid., p. 86.

[17]U.S. Civil Service Commission, op. cit., p. 5.

[18]Deficiency Act of July 11, 1919, Ch. 6, 41 Stat. 35.

[19]U.S. Civil Service Commission, op. cit., p. 5.

[20]Ibid., p. 6.

[21]Laws of Montana (1921), Ch. 211, p. 424.

[22]"Would Give Soldiers Preference Rights in Public Employment," The Helena Daily Independent, Helena, Montana, February 4, 1921, p. 2.

[23]Laws of Montana (1927), Ch. 133, Section 5653 Revised Codes of Montana Amended, pp. 416-417.

[24]"Kelly of Silver Bow Would Amend Preference Act," The Helena Daily Independent, Helena, Montana, February 18, 1927, p. 5.

[25]15 A.G. Op. 417 (Mont. 1934).

[26]U.S. Civil Service Commission, op. cit., p. 7.

[27]Ibid., p. 8.

[28]Laws of Montana (1937), Ch. 66, Section 5653 Revised Codes of Montana Amended, pp. 109-111.

[29]Ibid.

[30]Shore, op cit., p. 108.

[31]Robert H. Adleman and Colonel George Walton, The Devil's Brigade, (New York: Chilton Books, 1966), p. 68.

[32]Shore, op. cit., p. 104.

[33]Ibid., p. 117.

[34]Ibid., p. 112.

[35]Laws of Montana (1943), Ch. 160, Section 5653 Revised Codes of Montana Amended, p. 294.

[36]Application of O'Sullivan, 117 M 295, 158 P2d 306 (1945).

[37]21 A.G. Op. 105 (Mont. 1945).

[38]Jensen v. State, Dept. of Labor and Industry, 689 P2d 1236 (Mont. 1984).

[39]Ibid., p. 1235.

[40]U.S. Civil Service Commission, op. cit., p. 22.

[41]"Naegele Explains State Legion Legislative Plan," The Independent Record, Helena, Montana, January 18, 1949, p. 6.

[42]"Unemployment Hits Postwar Peak with 10,000 Idle," The Independent Record, Helena, Montana, January 29, 1949, p. 5.

[43]Laws of Montana (1949), Ch. 26, Section 5653 Revised Codes of Montana Amended, p. 39.

[44]U.S. Civil Service Commission, op cit., p. 17.

[45]P.L. 888, 80th Cong. (62 Stat. 1233).

[46]23 A.G. Op. 46 (Mont. 1949).

[47]Laws of Montana (1955), Ch. 120, p. 243.

[48]World Book Encyclopedia, 1959 ed., s.v. "United Nations: The Korean War."

[49]P.L. 857, 85th Cong. (72 Stat. 1601).

[50]Jensen v. State of Montana, Dist. Ct., Eighth Jud. Dist., Cause No. BDV-83-706, Petition to Enforce Employment Preference, Exhibit D, June 21, 1983.

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

[52]Laws of Montana (1969), Ch. 49, p. 217.

[53]Laws of Montana (1975), Ch. 535, p. 1499.

[54]U.S. President Executive Order 11521, Richard Nixon, U.S. Code, title 5, sec. 3302 (1976).

[55]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. 6.

The Supreme Court held citizenship requirements for employment in the public sector to be unconstitutional in Sugarman v. Dougall, 413 U.S. 634 (1973), and in Hampton v. Mow Sun Wong, 426 U.S. 88 (1976). However, in 1982, the Supreme Court did affirm the right of states to require citizenship for jobs as low in public service as deputy probation officers [Cabell et al. v. Chavez-Salido et al., 70 L ed 2d 677 (1982)]. See, O. Glenn Stahl, Public Personnel Administration (New York: Harper & Row, Publishers, 1983) p. 99.

CHAPTER THREE

COMPARISON OF STATES' PREFERENCES

The Montana Supreme Court's 1983 Crabtree decision held that veterans' preference eligibles were to receive an absolute preference in employment and appointment in Montana's public sector. And, Montana's law before the 1983 revision also contained a provision for granting additional five and ten points on examinations to preference eligibles.

Prior to the Crabtree decision, Montana's public employers used the preference primarily as a tie-breaker (relative preference) when job applicants were equally qualified. So, when considering Montana's veterans' preference in the light of the 1983 preference controversy, one legitimate question is: How did Montana's veterans' preference employment benefits compare with those granted by the other 49 states during the 13 years prior to Montana's 1983 controversy?[1] (Hereafter, veterans' preference employment benefits will be referred to as benefits.)

The following analysis compares the similarity and strength of the other 49 states' benefits with those offered by Montana under both a relative and an absolute interpretation. Based on the synopsis information contained in 1969, 1974, 1975, 1979 and 1984 Congressional digests of state veterans' laws and on Montana's law, this analysis is divided into two distinct, yet interrelated, parts.

The two objectives of the first part of this analysis are: (1) to determine the types of benefits granted by each of the other 49 states, and (2) to determine if each state granted benefits that were similar to those granted by Montana under a relative preference or an absolute preference from 1969 through 1982. (The types of benefits are compared because many states grant an absolute preference for appointment or employment for certain jobs or positions and a relative point preference on civil service or merit system examinations for employment.)

The objectives of the second part are: (1) to determine the strength of the benefits granted by each state from 1969 through 1982, (2) to show changes in benefit strength from 1969 through 1982, and (3) to determine which state(s) granted the strongest benefits as of 1982.

Part I

The synopsis information for 1969 is used as the baseline data. Analysis of the laws of each state is then completed for 1969, 1974, 1975, 1979, and 1982. (Change, or lack of change, in legislation occurring in 1980, 1981, or 1982 can be determined either by noting dates of statute passage given in the 1984 synopses or by establishing the lack of synopsis information change between 1979 and 1984.)

If changes occurred in the synopsis information for any of the given years, they are noted and examined to determine if they produced any change similar to Montana's benefits. (See the Similarity Comparison in Appendix C.)

A state is considered to have granted similar benefits to those granted in Montana under a relative preference if either or both of the

two following criteria were present: (1) if five or ten point additions, or similar additions, were given on examinations for public employment to a combination of preference eligibles such as veterans, their wives or widows, and/or dependents; and (2) if any combination of preference eligibles was to be preferred in appointment and employment for public jobs.

States are considered to have granted benefits having a weak resemblance to those granted by Montana if: (1) the examination benefits were similar but were only granted to veterans, or (2) examination benefits were granted to both veterans and other eligibles but the digest synopsis did not specify the amount of merit system preference points to be added to examination scores, or (3) benefits were granted to both veterans and other eligibles but the digest synopsis did not specify how the preference was given.

The following five criteria are used to establish dissimilarity to Montana's benefits under a relative preference: (1) if benefits were given only to veterans, (2) if benefits were given only for selected positions, (3) if only absolute preference was given to veterans (and other eligibles), (4) if inadequate information was given to determine how a preference applied to any eligible, and (5) if no benefits were given.

The similarity criteria for an absolute preference comparison of benefits remains exactly the same as the criteria for the relative preference comparison with one change. If veterans received an absolute preference, similarity was established.

If a benefit was given for only one person for a specific position such as the Director of Veterans' Affairs, it is neither listed nor counted in the analysis.

The results of this part of the analysis are shown in Tables 1 and 2. Table 1 shows that the total percentage of the other 49 states having benefits with some type of relative preference similar to Montana's benefits grew from 45 per cent in 1969 to 51 per cent in 1982. Table 2 shows that when states with absolute preference benefits

TABLE 1

SIMILARITY TO MONTANA'S BENEFITS UNDER RELATIVE PREFERENCE

Number of States	Year	%*	Year	%	Year	%	Year	%	Year	%
	1969		1974		1975		1979		1982	
With similar benefits	14	(29)	16	(33)	15	(31)	16	(33)	16	(33)
With weaker resemblance	8	(16)	9	(18)	9	(18)	9	(18)	9	(18)
Total	22	(45)	25	(51)	24	(49)	25	(51)	25	(51)
With dissimilar benefits	27	(55)	24	(49)	25	(51)	24	(49)	24	(49)

* Percentage = number of states ÷ 49. The percentages are rounded to the nearest percentile. Montana is not counted in this calculation. These percentages are provided in order to give a clearer idea of changes that occurred between 1969 and 1982. For example, in 1969, 29 per cent of the other 49 states had very similar relative benefits to Montana's benefits, and 16 per cent of the other 49 states had relative benefits with weaker resemblances to Montana's benefits. This means that under a relative interpretation, in 1969, 45 per cent of the other 49 states granted benefits with some type of similarity to Montana's benefits.

were included the similarity percentage total remained at 65 per cent from 1969 through 1982 with the exception of a small percentage increase in 1974. This information shows that Montana's benefits bore some resemblance to those granted by substantial percentages of the other 49 states under either a relative or an absolute preference from 1969 through 1982.

TABLE 2

SIMILARITY TO MONTANA'S BENEFITS UNDER ABSOLUTE PREFERENCE

Number of States	Year	%*	Year	%	Year	%	Year	%	Year	%
	1969		1974		1975		1979		1982	
With similar benefits	14	(29)	16	(33)	15	(31)	16	(33)	16	(33)
With weaker resemblance	8	(16)	9	(18)	9	(18)	9	(18)	9	(18)
With absolute preference	10	(20)	8	(16)	8	(16)	7	(14)	7	(14)
Total	32	(65)	33	(67)	32	(65)	32	(65)	32	(65)
With dissimilar benefits	17	(35)	16	(33)	17	(35)	17	(35)	17	(35)

* Percentage = number of states ÷ 49. The percentages are rounded to the nearest percentile. Montana is not counted in this calculation. These percentages are provided in order to give a clearer idea of changes that occurred between 1969 and 1982. For example, in 1969, 29 per cent of the other 49 states had very similar relative benefits to Montana's benefits; 16 per cent of the other 49 states had relative benefits with weaker resemblances to Montana's benefits; and 20 per cent of the other 49 states granted absolute benefits. Therefore, in 1969, 65 per cent of the other 49 states granted benefits with some type of similarity to Montana's benefits under an absolute preference interpretation.

However, it should be noted that even though states may have similar benefits, the strength of those benefits in the way they are awarded can vary considerably.

Part II

The second part of this analysis shows the difference in benefit strength based on the awarding of those benefits for 1969, 1974, 1975, 1979, and 1982. The criteria, categories, and indices used in this part of the analysis are patterned after those used by Charles E. Davis in his 1980 survey of veterans' preference legislation,[2] with some modifications.

Two major categories are used. The first is where benefits were given for selected positions in public employment that could have applied to more than a few people. Public works positions are included in this category. The second category is where benefits applied to appointment and/or employment under civil service or merit systems possibly affecting numerous positions.

These two categories are divided into subcategories for disabled and nondisabled veterans, and promotions. The criteria used in determining the strength or weakness of a state's benefits are: (1) the type of preference(s) given and (2) the various individuals who were eligible for the preference. The use of these subcategories and criteria allows for a more precise determination of the actual strength of a state's benefits. For example, one state may actually have a stronger overall benefit rating because a type of benefit is extended

to veterans, their wives and widows, and dependents while another state may extend the same type of benefit only to veterans and their widows.

The indices used to determine the strength of a state's benefits are one (1) point for a relative preference and two (2) points for an absolute preference. When both types of benefits were granted for different positions, the point value for the type of benefit that probably affected the most individuals was used in an attempt to minimize bias in the findings.

In order to facilitate the awarding of the points, the following preference eligible classifications are used for the disabled and nondisabled veteran subcategories: (1) veterans, (2) spouses (or wives), (3) widows, (4) mothers, (5) dependents, and (6) others. For the promotion subcategory, the following classifications are necessary: (1) disabled veterans, (2) nondisabled veterans, (3) widows, and (4) others.

If a type of benefit applied to various classifications of preference eligibles, the points are awarded to each classification. For example, if an absolute preference was granted to disabled veterans, their wives and widows, each classification is awarded 2 points.

A strong overall benefit rating is shown by a total score of 10 points or greater. A moderate rating is represented by a score of 5 to 9 points. A weak rating is represented by a score of less than 5 points.

The analysis considers the overall strength rating of Montana's benefits under both a relative preference and an absolute preference interpretation of Montana's former law.

The Preference Strength Analysis in Appendix C shows the results presented in Table 3. In 1982, thirteen states had a strong rating, nineteen states had a moderate rating, and eighteen states had a weak rating.

Montana had a strong rating when its benefits were considered relative. However, when Montana's benefits were viewed as absolute, Montana and Massachusetts had the strongest of all of the ratings. This part of the analysis further reveals that from 1969 to 1982, only six states had changes that altered the strength rating of their benefits for better or worse. This shows that even though a number of states either added to or deleted from their preference laws those additions and deletions did not necessarily cause an alteration in the benefit strength rating.

Armed with the information presented in Chapter Two as well as here, one is well equipped to understand Montana's 1983 veterans' preference controversy which is the subject of the next chapter.

TABLE 3

PREFERENCE STRENGTH

Preference Strength Rating	State	Total Points	Years	Strength* Changes
Strong	Alabama	10	1969-1982	
	California	11	1969-1982	
	Illinois	12	1969-1982	
	Indiana	11	1969	
		9	1974	Moderate
		12	1979-1982	Strong
	Iowa	10	1969-1982	
	Maine	10	1969-1982	
	Massachusetts	24	1969-1982	
	Minnesota	19	1969	
		8	1975-1982	Moderate
	Montana			
	relative pref.	16	1969-1982	
	absolute pref.	24		
	New Jersey	18	1969	
		20	1974-1982	
	New York	10	1969-1982	
	Ohio	14	1969-1982	
	Utah	15	1969-1982	
Moderate	Connecticut	6	1969-1982	
	Georgia	8	1969	
		2	1975-1982	Weak
	Kansas	6	1969-1982	
	Louisiana	8	1969-1982	
	Michigan	8	1969	
		6	1974-1982	
	Missouri	8	1969-1982	
	Nevada	8	1969-1982	
	New Hampshire	5	1969-1982	
	North Carolina	7	1969	
		10	1975-1982	Strong
	North Dakota	6	1969	
		9	1974	
		5	1975-1982	
	Oklahoma	8	1969-1982	
	South Dakota	9	1969-1982	
	Tennessee	7	1969-1982	
	Texas	8	1969-1982	
	Vermont	6	1969-1982	

TABLE 3--Continued

Preference Strength Rating	State	Total Points	Years	Strength* Changes
Moderate	Washington	6	1969	
		7	1979-1982	
	Wisconsin	8	1969-1982	
	Wyoming	6	1969-1982	
Weak	Alaska	4	1969-1982	
	Arizona	2	1969-1982	
	Arkansas	4	1969	
		6	1979-1982	Moderate
	Colorado	4	1969-1982	
	Delaware	0	1969	
		2	1974-1982	
	Florida	4	1969-1982	
	Hawaii	4	1969-1982	
	Idaho	1	1969	
		5	1974-1982	Moderate
	Kentucky	4	1969-1982	
	Maryland	4	1969-1982	
	Mississippi	4	1969-1982	
	Nebraska	4	1969-1982	
	New Mexico	2	1969-1982	
	Oregon	4	1969-1982	
	Pennsylvania	4	1969-1982	
	Rhode Island	4	1969-1982	
	South Carolina	2	1969-1982	
	Virginia	2	1969-1982	
	West Virginia	4	1969-1982	

*Only changes in the Preference Strength Rating are shown.

If a point change occurred in a given year, only the year when the change took place is listed. For example, Arkansas had no change in points from 1969 through 1978. Then in 1979, Arkansas' point total increased to 6 and the overall strength of its benefits increased in rating to moderate.

FOOTNOTES

[1]The 13 year time span was chosen because the following digests of state veterans' laws prepared for the U.S. Congress are available.

U.S. Congress, Committee on Veterans' Affairs, State Veterans' Laws, House Committee Print No. 3, 91st Congress, 1st Session, February 4, 1969.

U.S. Congress, Committee on Veterans' Affairs, State Veterans' Laws, House Committee Print No. 116, 93rd Congress, 2nd Session, January 22, 1974.

U.S. Congress, Committee on Veterans' Affairs, State Veterans' Laws, Senate Committee Print No. 18, 94th Congress, 1st Session, October 1, 1975.

U.S. Congress, Committee on Veterans' Affairs, State Veterans' Laws, Senate Committee Print No. 2, 96th Congress, 1st Session, January 26, 1979.

U.S. Congress, Committee on Veterans' Affairs, State Veterans' Laws, House Committee Print No. 47, 98th Congress, 2nd Session, February 22, 1984.

[2]Charles E. Davis, "A Survey of Veterans' Preference Legislation in the States," State Government, 53 (Autumn 1980); p. 188.

CHAPTER FOUR

THE 1983 CONTROVERSY

The events leading to the 1983 Montana veterans' preference controversy began in August 1981 when the Montana State Library began recruiting applicants to fill the position of Coordinator of Volunteer Services to make recordings for the blind. Vivian Crabtree, a legally blind person, applied for the position. In September 1981, the library bypassed Crabtree and hired a nondisabled civilian. Crabtree filed a petition in district court in Helena, Montana, to request that the provisions of the 1927 Montana veterans' preference law which extended the preference to disabled civilians be enforced. The 55 year old amendment was resurrected to undo the accepted practice of using the preference as a tie-breaker. The trial was held in October 1981 with Judge Gordon Bennett presiding.

Crabtree's counsel argued that the Library acted arbitrarily in failing to investigate, fully consider, and pass upon the qualifications of all applicants, including Crabtree, for the position of Coordinator of Volunteer Services.[1] The briefs further argued that because Crabtree was an eligible disabled civilian who possessed the capacity, competency, and education to discharge the duties of the position she should have been "preferred over all other qualified applicants, regardless of the relative qualifications of the other

candidates."[2] In other words, the argument was that the employment preference under law was absolute.

Judge Bennett's February 1982 decision found that the Library had not clearly established the minimum qualifications for the position of Volunteer Coordinator and that Crabtree was never given the chance to show that she met the qualifications. It further held that the Library had erred in its interpretation of the preference statute. It declared:

> . . . there has not been, and there is not today, any language in the statute that suggests that the preference is relative to the qualification of any other applicant. The only limiting factor is the ability of the disabled civilian, or veteran, to do the job.[3]

The Library was subsequently ordered to reopen the selection process for the position of Volunteer Coordinator, and the preference was to be given to any minimally qualified veteran or disabled civilian over all nondisabled civilian applicants.[4] The Library appealed this decision to the Montana Supreme Court.

Before the Montana Supreme Court rendered its decision, the 1983 Montana Legislature had a chance to deal with the issues surrounding Montana's veterans' preference law. However, rather than acting on three bills proposed in an effort to stem a possible controversy, both the House and the Senate voted to defer any decision on this issue until the 1985 legislative session. House Joint Resolution 41 provided for an interim legislative committee to study the problem, to identify ambiguities or omissions in the current law, to determine possible conflicts with the rights of other groups, and to decide the purpose and extent of the preference law.[5]

On June 16, 1983, the Montana Supreme Court decided the Crabtree case, unanimously upholding the district court ruling. Thus, Montana's public sector's prior policy of granting the preference as a tie-breaker for employment hiring decisions ended.

Confusion about how the preference should be applied in various employment decisions began to reign in Montana's public sector and was increased by two factors. First, numerous preference related lawsuits involving issues relating to retention in employment, the Fourteenth Amendment of the United States Constitution, the Montana Human Rights Act, retroactive application of the preference, age discrimination, and Due Process were filed. At one point, over a dozen lawsuits were pending against state agencies.[6] Second, several special interest groups began to mobilize either to undo or to defend the absolute preference decision.

On November 18 and 19, 1983, the Joint Interim Subcommittee No. 4 of the 48th Montana Legislature held hearings on legislation concerning the veterans' preference issue. Two hundred twenty-three individuals attended these hearings, and many of these people testified. Among the people attending the hearings were organizational delegates representing veterans; handicapped civilians; higher education; women; school districts; labor; and city, county, and state government.[7]

Initially, Governor Schwinden had not felt that a special legislative session was necessary. However, as both political pressure and court cases increased, not to mention the confusion in the minds of administrators, the Governor changed his mind and called a special legislative session for December 12, 1983, which passed a new law on

December 17, 1983. It granted only a relative preference and became effective December 20, 1983. (A comparison of the 1983 law and the former law is presented in Appendix D.)

However, the passage of the 1983 Montana veterans' preference law did not end the controversy over veterans' preference.[8] Questions began to arise about the validity of court decisions rendered prior to the passage of the 1983 law. Two district court decisions in particular that were filed prior to the 1983 special legislative session are important.

The first case was Jensen v. State of Montana, Department of Labor and Industry. Jensen had been employed with the Job Service Division since March 1961. In September 1981, Jensen was made an Assistant Manager I, Grade 14. In April 1982, William Cady, the manager of the Great Falls Employment Office, retired. Applications were then sought for Cady's vacated position (Manager III, Grade 16). The Department of Labor and Industry viewed the filling of the position as an internal promotion. Only internal applications were accepted and veterans' preference, traditionally granted only in initial hire situations, was not considered.[9] However, Herbert Waltermire, a nonveteran who had been previously terminated, was chosen over Jensen to replace Cady.[10]

Also, in April 1982, an alleged announcement was made that one Assistant Manager position would be eliminated and that a decision would be made between retaining Jensen or Margaret Ensign (an Assistant Manager II, Grade 15) on the basis of past performance and largely on the basis of seniority. Ensign, a nonveteran, was not the most senior employee. On June 15, 1982, Jensen was terminated for the officially

stated reason that reductions in staffing were necessitated by Reagan Administration budget cutbacks at the federal level,[11] while Ensign was retained in employment. Jensen subsequently filed suit. He contended that Montana's veterans' preference applied both to the filling of the Management III position and to retention in employment during reduction in force and that he deserved preference on both counts. On September 19, 1983, Judge Roth from Montana's Eighth Judicial District issued a decision that the filling of the Manager III position was an appointment and not an internal promotion. The decision, however, also held that the appointment was within the scope of the veterans' preference law and that the Department of Labor and Industry had to appoint Jensen to the Manager III position.[12] This decision was appealed to the Montana Supreme Court on June 19, 1984.

On October 25, 1984, the Court decided that absolute veterans' preference as applied in its Crabtree decision could be applied retroactively. It further stated that absolute preference as applied in the district court's ruling did apply to employment and not just to initial hiring. However, the Court ruled that the remedy given by the district court was incorrect. It remanded the case to the district court with directions to order the Department of Labor and Industry to reopen the Manager III position to the original applicants. The reasoning was that the preference applied to all preferred persons and not just to Jensen.[13]

The second case was William E. Hunt, Sr. v. Ted Schwinden, Governor of the State of Montana. Hunt, a Workers' Compensation Judge, had applied to the Montana Judicial Nomination Commission to be

reappointed to the position of Workers' Compensation Judge. He was one of three applicants for the position; and in his application, Hunt showed that he was entitled to claim veterans' preference. Nevertheless, a nonveteran was appointed to the position. Hunt sued. But, the Governor claimed that the granting of the veterans' preference would be an encroachment on his executive power of appointment.[14]

Judge Henry Loble from Montana's First Judicial Court ruled on October 18, 1983, that the position came under the authority of the Department of Administration and was not an executive appointment to the judicial branch. Therefore, the appointment was not an unconstitutional encroachment on the Governor's power of appointment. The decision also concluded that the Office of Workers' Compensation Judge was covered by the Veterans' Preference Act. However, the nonveteran who was appointed as Workers' Compensation Judge had to be included as a party in the case in order for the action to continue.[15]

From an administrative perspective, major objections to absolute preference were raised during the Montana Supreme Court's hearing of the Crabtree case.[16] The first was that the Montana Human Rights Act (and federal anti-discrimination laws) would be violated. Since most veterans are male, concern was expressed that females would be discriminated against; affirmative action plans and goals might be hard to implement and meet; and, consequently, federal funds might be lost.[17] (However, the U.S. Supreme Court's 1979 Feeney decision had held that veterans' preference was not discriminatory because it was gender-neutral and operated to the advantage of both female and male veterans.[18] Therefore, in response to this argument against absolute

veterans' preference, Montana's Supreme Court held to the Feeney decision and further stated that "although it may be true that more men than women are veterans, it follows that more spouses of veterans are women. Spouses are also entitled to the preference, regardless of sex."[19])

A second objection was that absolute preference based on minimum qualifications would fly in the face of the Governmental Code of Fair Practices which requires Montana's Department of Administration to appoint personnel on the basis of merit and qualifications.[20] Concern was also expressed that the quality of government service might decrease because better qualified persons could not be selected if they were not preference eligibles. To this, the Montana Supreme Court responded that minimum qualifications are those of capacity, competency, and education defined by the agency and that a preferred applicant had to meet the minimum qualifications for a position before being hired. This argument was further used by the Court to answer a third objection that local governments would be barraged by lawsuits based on tort of negligent hiring.[21]

And, finally, the Department of Labor and Industry further objected on the grounds that absolute preference would create problems in maintaining morale, especially during government layoffs.[22] The Court, however, did not address this objection in its final decision.

Controversy over veterans' preference in Montana is likely to continue because it is by no means a dead issue. In fact, the 1985 Montana Legislature saw the introduction of two veterans' preference bills. House Bill 111, introduced by Representative Dave Brown from

Butte, proposed expanding the existing preference law to include the State's universities, colleges, and community colleges.[23] House Bill 473, introduced by Representative Robert Pavlovich from Butte, proposed replacing the law enacted by the 1983 Special Legislative Session with a law requiring public agencies to use scored hiring procedures when hiring new employees that would give extra points to veterans and disabled people.[24] (House Bill 111 was killed in committee. House Bill 473 was alive until the end of the 1985 Montana Legislative Session when the Senate postponed hearing on it indefinitely and returned it to the House. However, the issue is not moot because veterans' groups have not rested.)

Given the unsettled preference issue and considering the strong union representation in Montana's public sector and the outcomes of the Crabtree, Jensen, and Hunt cases, the possible impact of an absolute veterans' preference on Montana's public sector's collective bargaining process is worth studying.

FOOTNOTES

[1]Crabtree v. Montana State Library, Dist. Ct., First Jud. Dist., No. 47198, Petitioner's Proposed Findings of Fact, Conclusions of Law, and Order, February 17, 1982, (Mont.), p. 6.

[2]Ibid., pp. 6-7.

[3]Crabtree v. Montana State Library, Dist. Ct., First Jud. Dist., No. 47198, Opinion, Judge Bennett, February 14, 1982, (Mont.), p. 2.

[4]Ibid., Findings of Fact, Conclusions of Law, and Order, p. 5.

[5]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, pp. 10-11.

[6]"Montana's Preference Law," Western Business, November 1983, p. 1.

[7]Minutes of the Montana Legislative Council Joint Interim Subcommittee No. 4 Second Meeting, Helena, Montana, November 18 and 19, 1983, attached registration sheets and summary of testimony.

[8]The 1983 veterans' preference law is found in Title 39, Chapter 30, MCA, from the 1983 Special Legislative Session.

[9]Jensen v. State, Dept. of Labor and Industry, 689 P2d 1232 (Mont. 1984).

[10]Jensen v. State of Montana, Department of Labor and Industry, Dist. Ct., Eighth Jud. Dist., Cause No. BDV-83-706, Petition to Enforce Employment Preference, June 21, 1983, (Mont.), p. 2.

[11]Ibid., p. 4.

[12]Jensen v. State, Dept. of Labor and Industry, 689 P2d 1232 (Mont. 1984).

[13]Ibid., p. 1235.

[14]Hunt v. Schwinden, Dist. Ct., First Jud. Dist., No. 49635, Order Denying Motion to Dismiss, Judge Loble, October 18, 1983, (Mont.), pp. 1-5.

[15]Ibid., p. 6.

[16]Krishna K. Tummala, "Veterans' Preference in the State of Montana: Equal Employment or Affirmative Action?" May 1985 (unpublished).

[17]Crabtree v. Montana State Library, Supreme Ct., No. 82-226, Brief of Amicus Curiae, Department of Labor and Industry, (Mont.), September 3, 1982, p. 10.

[18]Carolyn A. Adams, "Constitutional Law: Veterans' Preference Statute Survives Gender-Based Equal Protection Challenge," Washburn Law Journal 19 (1979-1980): pp. 370, 371.

[19]Crabtree v. Montana State Library, 665 P2d 235 (Mont. 1983).

[20]Crabtree v. Montana State Library, Supreme Ct., No. 82-226, Brief of Amicus Curiae, Department of Administration, (Mont.), September 3, 1982, p. 10.

[21]Crabtree v. Montana State Library, 665 P2d 236 (Mont. 1983).

[22]Crabtree v. Montana State Library, Supreme Ct., No. 82-226, Brief of Amicus Curiae, Department of Labor and Industry, (Mont.), September 3, 1982, p. 12.

[23]"Butte Rep's Vet Preference Bill Approved by Committee," The Montana Standard, Butte, Montana, January 23, 1985, p. 2.

[24]"New Preference Bill Gets Old Arguments," The Montana Standard, Butte, Montana, February 16, 1985, p. 6.

CHAPTER FIVE

IMPACTS ON COLLECTIVE BARGAINING: ANALYSIS OF A SURVEY

Several administrative concerns were publicly expressed during the 1983 Montana veterans' preference controversy. However, not much public mention was made regarding the possible impacts of absolute preference on Montana's heavily unionized public sector's collective bargaining process. At the state level, Montana's public sector deals with 93 bargaining units represented by approximately 18 unions. The State Personnel Division, Labor Relations and Employee Benefits Bureau negotiates 69 of the agreements, and the University System negotiates the other 24. The units range in size from 2 to approximately 800 members; represent approximately 5,250 state employees (about 50 per cent of the state work force); and include professionals, white collar, blue collar, crafts, and law enforcement personnel.[1] (The innumerable local government labor agreements are not part of the study.) Importantly, section 39-31-101 of the Montana Code Annotated states:

> In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.[2]

The application of absolute veterans' preference to retention in employment during layoffs and to promotions might be inferred from the

Jensen and Hunt cases. Moreover, the Montana Merit System Council (which is responsible for establishing employment policies covering employees in state agencies receiving federal funds) decided in July 1983 to apply the preference to promotions and layoffs as well as to initial appointments.[3] And, since the veterans' preference issue appears to be far from settled, it is felt important to gauge the perceptions of those who are actively involved in the state's collective bargaining process regarding the impact of absolute preference. Two assumptions are made: One, in the absence of the 1983 veterans' preference law, absolute preference would prevail. Two, such a preference would apply to all new hires, promotions, retentions in employment during layoffs, and to recalls after temporary layoffs. Given these possibilities, what problems might occur in negotiating and/or implementing state public sector labor contracts? Information on this score is worth the attention of future policy makers if and when this issue comes up again.

To obtain a proper perspective of the possible problems, the 34 participants in this study were asked to respond to 10 open-ended questions that were divided into four specific categories: (1) promotions; (2) seniority, layoffs, and recalls; (3) grievances; and (4) general concerns.

Promotions

The 1972 Equal Employment Opportunity Act states that public employees shall not be discriminated against on the basis of sex, race, color, religion, or national origin. The Montana Human Rights Act

replicates the EEO Act and includes age and both physical and mental handicaps. Considering this legislation, participants were asked what possible problems could occur in negotiating and implementing labor contracts if all promotions were subject to absolute veterans' preference.

Respondents answered from the position that the law presumably would supercede the contract. In fact, no contract is above the law. In this context, four major concerns were expressed: (1) Thirty-five per cent of the respondents mentioned the general problem of court challenges because of conflicts between state law and federal anti-discrimination law. (2) Twenty-nine per cent mentioned difficulty in negotiating contract language not in conflict with antidiscrimination laws. (3) Fifteen per cent mentioned possible impasses and strikes occurring over the antidiscrimination issue. (4) Twelve per cent were concerned about the negotiation of language to protect women, minorities, and nonveterans. (5) Nine per cent felt no problems would occur simply because the law would prevail.

Nine other possible problems in descending order of frequency mentioned are: (1) discrimination against women and minorities, (2) problems in implementing EEO and Affirmative Action, (3) difficulty with implementing seniority clauses, (4) morale problems and hard feelings resulting in the work force, (5) reopening contracts, (6) the possibility of lost federal funds because of not meeting EEO and Affirmative Action goals, (7) reduced quality of public work, (8) a concern that promotions may eventually fill most upper level jobs with preference eligibles, and (9) general problems in filling job positions

because of the lack of advancement opportunity. All these magnify the administrative concerns expressed in the Crabtree case.

The two remaining questions under the promotions category dealt with possible impacts on the negotiation and implementation of the use of performance evaluations in making promotion decisions. This issue was chosen because performance evaluations are a management tool that may have been, and normally are, useful in determining an applicant's minimum qualifications in cases of promotions and retentions in employment during layoffs. And, even though management rights may place certain items outside the scope of bargaining, decision-making procedures used to implement management policies may be subject to negotiations.[4]

When asked about special problems that could arise in negotiating and implementing the use of performance evaluations as a basis for promotions, 56 per cent of the respondents felt evaluations would be valueless if a minimally qualified veteran was available for promotion because the law would supercede the contract. Thirty-eight per cent felt that the only way evaluations could be used is if employees were classed into two groups: (1) veterans, and (2) nonveterans. Then the evaluations could be used for these separate groups of employees in making decisions involving employees within the same class. However, 18 per cent of the respondents felt that attempts to divide employees into classes of veterans and nonveterans would split a union's membership into two factions and would make contracts hard to ratify.

Other primary problems mentioned are: (1) the possibility of less qualified individuals in public employment; (2) difficulty in

negotiating the subjective nature of evaluations; (3) reduced employee morale because no matter how hard a nonveteran worked a minimally qualified veteran would be promoted; and (4) the impact of the use of evaluations could raise negotiation issues such as how evaluations would be used, what weight would be given to each factor in the evaluation, and whether seniority or performance would prevail when considering a promotion decision involving two or more qualified veterans.

The respondents were then asked if the possibility would exist for eliminating the use of performance evaluations as a basis for promotions. Fifty-nine per cent of the respondents answered in the affirmative for the following main reasons. First, outstanding nonveterans would be bypassed, and employees would have to be split into groups of veterans and nonveterans in order to use the evaluations. Second, since the law would supercede the contract, a veteran always could challenge the promotion of a nonveteran made on the basis of an evaluation. Third, it would be a moot point if the preference determined promotions. Fourth, unions prefer seniority.

Twenty-nine per cent of the respondents answered in the negative for the following main reasons. First, evaluations could be used and may be necessary to determine veterans' minimum qualifications. Second, performance evaluations are a separate issue as far as collective bargaining is concerned. Third, a position always could be available where no veterans are involved. Fourth, evaluations are not used that much at the present. And, fifth, their use is not a negotiable subject.

Thus, these perceptions indicate a diversity of views, ranging from the issue being a moot point negating the use of this management tool to it being a nonnegotiable subject for even considering eliminating the use of this tool, that could result in conflict at the bargaining table. Moreover, this diversity indicates that conflict and some serious problems probably could also arise over the use of other management tools such as aptitude or skills tests, and productivity standards if they were to be used as determinants for promotions.

Seniority, Layoffs, and Recalls

When asked about negotiation and implementation problems involving seniority, layoff, and recall clauses, 65 per cent of the respondents felt the law would prevail. Because of this, 21 per cent of these people felt no problems would exist. The rest, however, did feel that some specific problems could arise. Twenty-three per cent thought contracts would need to be renegotiated. Fifteen per cent saw the possibility of negotiation problems caused because of nullification or superceding of seniority considerations or the protection of nonveterans' rights. Six per cent mentioned the possibility of unfair labor charges, impasses, strikes, and lawsuits.

Other general problems mentioned are: (1) absolute preference may necessitate the negotiation of separate clauses for veterans and nonveterans; (2) seniority could be used only as a determining factor among either veterans or nonveterans; (3) seniority would no longer be a way of protecting nonveteran jobs; (4) difficulty could arise in negotiating contract wording; and (5) the problems of less qualified

employees in public service, reduced morale, and discrimination against females and minorities.

The fifth question was asked because federal budget cutbacks under the Reagan Administration have necessitated some state level reductions in force as evidenced by the Jensen case. It asked what problems could occur in implementing job posting/filling articles if a situation were to arise during a temporary layoff involving a promotion or transfer to a different position or classification. The catch in the given condition is that the only available people are those who have been retained because of absolute veterans' preference.

The most frequently mentioned problem was the possibility of grievances and court battles due to cases of discrimination. Other concerns mentioned are: (1) qualified people may not be promoted, or the available applicants may not be very qualified for the job; (2) problems could develop in deciding among veteran applicants; (3) conflicts could arise over the question of the seniority of people on layoff; (4) transfers may have to be made between dissimilar positions; (5) position qualifications would have to be carefully evaluated to determine the necessary minimum qualifications; (6) positions may not be filled; and (7) performance on the job may decline after the article is implemented.

These problems seem to indicate that this type of a situation could be very touchy and messy to handle and could cause considerable unrest in public service.

The next question followed up on possible job posting/filling problems by asking if there are general problems that could possibly

develop in negotiating and implementing these clauses. The majority of those participating mentioned a number of problems that had already been mentioned in response to the first five questions. Listed in descending order of frequency mentioned, they are as follows. First, state law would conflict with discrimination laws, and lawsuits could result. Second, negotiations could be frustrated because of challenges to the legality of state law versus federal law. Third, grievances and arbitrations probably would increase. Fourth, more careful analysis of job qualifications and choices among veterans would need to be made. Fifth, more qualified employees may be lost leading to mediocrity in government. Sixth, contract language could be difficult to negotiate. And, seventh, women, minorities, and nonveterans would be discriminated against.

Additionally, some new concerns did surface in response to this question. First, if veterans' preference is seen as a promanagement provision, management probably would have to make some concessions on other items at the bargaining table. (This would probably be a small advantage for the unions considering what they would probably have to give up.) Second, there could be problems in reserving some job openings for internal applicants. Third, problems could occur in negotiations over how competing claims would be balanced and over what criteria should be used or could be used in the selection process.

The responses to the first six questions repeat similar primary problems. They differ, however, in the frequency with which they are mentioned. What is evident from these responses is that the scope of possible problems could be quite extensive if veterans' preference was

absolute. Also indicated is the possibility of considerable conflict manifesting in one form or another. This definitely would have the potential for disrupting government operations and for giving headaches to individuals involved in negotiating and implementing state labor contracts.

Grievances

Conflict between parties is almost certain to occur to some degree during the implementation of labor contracts. However, the grievance process when properly used should facilitate dealing with confrontations in a healthy atmosphere.[5] But, in the presence of an absolute veterans' preference backed by statute, the question arises as to whether the grievance procedure would remain an effective way to resolve disputes resulting from the application of absolute preference.

Is it possible that a specific grievance procedure with different steps would have to be negotiated for resolving preference related labor disputes? Or, is it possible that a grievance procedure would be ineffective in resolving such disputes in so far as recourse to courts of law is available?

When asked if a separate and specific grievance procedure possibly would have to be negotiated, 74 per cent of the respondents answered "no." Thirty-eight per cent of these people felt that separate substantive clauses could be necessary to negotiate instead of separate procedures. However, about half of these people and a number of other respondents (combined to total 44 per cent of the respondents) felt that the disputes would probably end up in court. Nine per cent felt

that no special procedure would be necessary since a grievance procedure is supposed to be designed to deal with all contract disputes regardless of the cause.

Eighteen per cent of the respondents did feel that the possibility for the need for separate procedures could exist. Their reasons follow. First, preferred persons would have different rights, status, and entitlement to employment. Therefore, different discipline and grievance rights could apply. Second, only another preference eligible probably would grieve a veteran appointment. Third, each master contract has its own procedure with individual agency differences listed in a supplement. (Therefore, separate procedures can exist, and in some cases do exist.) Fourth, the preference may involve permanent employees subject to dismissal in a grievance/discipline proceeding. However, mention was made that the trend has been to have as few separate procedures as possible and that contracts with such separate procedures would be difficult to ratify.

The follow-up question asked what possible problems could arise in negotiating and implementing separate grievance procedures. Thirty-two per cent of the respondents felt two categories of employees would cause problems of equity for females and all nonveterans. Twenty-nine per cent felt problems would arise in negotiating contract language. And, 24 per cent felt such grievance procedures would not solve anything because veterans could take their disputes to court.

The responses to these two questions show how an absolute preference probably could greatly reduce the effectiveness of, or nullify, the principal method for resolving labor contract disputes. If this

occurred, obviously, the potential for strife and unrest in Montana's public sector would substantially increase, considering the number of state employees covered by labor agreements.

Since the first eight questions concentrated on specific areas where possible problems could occur, it was only fair to give the respondents a chance to air their concerns about other problems that might arise and to express their ideas about possible benefits that could result from an absolute preference in relation to the collective bargaining process.

General Concerns

When asked about other problems that could occur in negotiating and implementing public sector contracts, 32 per cent of the respondents saw the possibility for a decline in morale and work quality, and also the possible loss of qualified employees. Eighteen per cent mentioned increased grievances and lawsuits because of discrimination. Fifteen per cent expressed concern about less job security for older and younger nonveteran employees, women and minorities. And, 12 per cent mentioned the possibility of hard feelings developing between co-workers.

Other concerns specifically mentioned are: (1) solving the question of how far to extend the contract; (2) frustrations carrying over to other negotiation issues; (3) problems in administering EEO and Affirmative Action; (4) possible work slowdowns, productivity decreases, and negotiation demands for job security and severance pay; (5) diminished status of seniority as a factor in promotion and

recruitment; and (6) inconvenience in explaining why someone did not receive a job, in working with Affirmative Action plans and goals, and in working with co-workers whose morale is low.

When asked what benefits might result in contract negotiation and implementation, 44 per cent responded "none." Twenty-four per cent thought benefits would be great for preference eligibles, but not for others. And, 15 per cent felt that subjectivity in promotions and negotiations could be removed because the law would prevail. Other specific, but more positive responses further mentioned: (1) grievances may be reduced because seniority and qualifications would not have much bearing on promotions; (2) the use of productivity clauses in determining promotions, layoffs, and recalls may be more accepted; (3) some clumsy contract language may be eliminated; and (4) public employees may realize that the legislature has a greater impact on working conditions than unions and may become more politically active.

Summary

Montana's public sector is heavily unionized as evidenced by 93 bargaining units representing about half the work force at the state level. If absolute veterans' preference applied to all new hirings, retentions in employment during layoffs, promotions, and to recalls after temporary layoffs, the state's public sector's collective bargaining process could be negatively impacted.

This study has shown that problems ranging from court battles and grievances arising from discrimination to the possibility of conflict over the use of management tools such as performance evaluations could

definitely exist where promotions would be in the shadow of absolute veterans' preference. Indications are also revealed that where the issues of seniority, layoffs, recalls, and grievance procedures are concerned the effectiveness of the bargaining process could be throttled, and the grievance process (which is the main method for solving labor disputes) could be rendered almost useless.

The scope of the potential problems for the collective bargaining process resulting from absolute veterans' preference seem to dwarf any possible benefits. Obviously, such a large range of problems indicates a strong potential for increased strife and unrest in the state's public sector. Increased strife and unrest could decrease the efficiency and effectiveness of the public sector's operation; and strife and unrest are what the collective bargaining process is intended to reduce. This illustrates the far-reaching effects of absolute veterans' preference.

FOOTNOTES

[1]This information comes from the Labor Relations Bureau, State Personnel Division, Department of Administration, State of Montana. It was compiled by Peggy Barnekoff. See, Summary of Collective Bargaining for Public Employees of the State of Montana (September 6, 1984) p. 3; and the Labor Relations Status Report #19 (January 14, 1985).

[2]Montana Code Annotated (MCA), Sec. 39-31-101.

[3]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. 15.

[4]Richard C. Kearney, Labor Relations in the Public Sector, (New York: Marcel Dekker, Inc., 1984), p. 181.

[5]Ibid., p. 285.

CHAPTER SIX

SUMMARY AND CONCLUSION

Before 1921, only veterans' preference applying to federal employment could have been used in Montana. The interpretation of this legislation varied as to whether the federal preference was to be considered relative (a tie-breaker) or absolute. In this confusing legal environment, and probably because of the important part Montanans played in World War I, Montana's 1921 Legislature passed Montana's original veterans' preference law. This law gave veterans preference in public sector appointment and employment; but what type of preference was not clear.

Evidence does exist that Montana's Legislature may have intended the preference to be relative. However, no records of intent were preserved; and during the 62 years prior to the complete revision of the law in 1983, the law was amended nine times. Also, the preference was interpreted differently by four Montana Attorneys General. Two said the preference was relative while two held it to be absolute. The issue, however, was never taken to court.

Montana's preference was similar to those granted by a large percentage of the other states during the 13 years prior to 1983. However, a comparison of the way states applied their preferences reveals that Massachusetts and Montana would have granted the strongest

preferences if Montana's preference had been considered absolute in 1982.

Until 1983, Montana's public sector employers had been using the preference as a tie-breaker between equally qualified applicants for appointment and employment. This practice abruptly ended when Montana's Supreme Court's Crabtree decision held that the preference was to be absolute for any minimally qualified veteran or eligible disabled civilian over all other nondisabled civilian applicants.[1]

The public sector confusion during Montana's 1983 veterans' preference controversy was increased by the mobilization of special interest groups to either undo or to defend the absolute preference and by numerous lawsuits. Two lawsuits filed before the law's revision in 1983, the Jensen and Hunt cases, implied that the preference could have been applied to retentions in employment during layoffs and to promotions. Therefore, in the absence of new 1983 legislation, Montana's heavily unionized public sector's collective bargaining process could have been impacted.

Since the veterans' preference issue is by no means dead in Montana, as evidenced by 1985 legislation concerning the issue, this study considered possible impacts that absolute veterans' preference could have on Montana's public sector's collective bargaining process. General conclusions drawn from this study follow.

First, where promotions, seniority, layoffs, and recalls are concerned, the scope of possible problems that could arise under the shadow of absolute veterans' preference reflect and magnify administrative concerns expressed in briefs of Amicus Curiae presented

to Montana's Supreme Court during its hearing of the Crabtree case. These concerns include possible: (1) discrimination against females and minorities; (2) loss of federal funds because of not being able to meet EEO and Affirmative Action goals; (3) loss of qualified employees which could lead to mediocrity in government service; (4) civil liability for negligent hiring; (5) the use of minimum qualifications as the sole deciding factor in making initial hiring decisions; and (6) the maintenance of employee morale, especially during layoffs.[2]

Second, given the above, the effectiveness of Montana's public sector's collective bargaining process could be significantly reduced. If this were to happen, conflict between management and labor would probably increase and thereby increase the very strife and unrest that the collective bargaining process is intended to reduce.[3]

Third, although some benefits to the bargaining process may occur from an absolute preference, such as more simplified contract language, they would probably be far outweighed by resulting problems. Fourth, if the preference were extended to veterans' spouses, surviving spouses, and dependents and to disabled civilians, the number and types of preference eligibles to be considered would increase. This seems to indicate the good possibility that the range of the problems mentioned easily could increase.

Thus, the findings of this study illustrate that absolute veterans' preference could have far-reaching, negative impacts on the operation of Montana's public sector which could reduce its efficiency and effectiveness as perceived by those actively involved with the

State's collective bargaining process. This should be considered in future legislative action concerning Montana's veterans' preference.

FOOTNOTES

[1]Crabtree v. Montana State Library, 665 P2d 234 (Mont. 1983).

[2]This information was presented in three briefs of Amicus Curiae to the Montana Supreme Court during its hearing of the Crabtree case (No. 82-226). These briefs were presented by Montana's Department of Labor and Industry, Department of Administration, and by the City of Missoula and the Montana League of Cities and Towns.

[3]Montana Code Annotated (MCA), Sec. 39-31-101.

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APPENDICES

APPENDIX A

Montana's 1921 veterans' preference act appears on pages 2085 and 2086 in volume 1, Political Code, of the 1921 Revised Codes of Montana. The following reference to constitutionality and intent is found under the act.

> History: En. Sec. 1, Ch. 211, L. 1921.
>
> Constitutionality and intent of veterans' preference laws, see notes in 1 Ann. Cas. 291, 295; 9 Ann. Cas. 1049; Ann. Cas. 1914D, 725; 10 L. R. A. (N. S.) 825.
>
> Discretion of appointing power with respect to appointments under veterans' preference laws, see note in Ann. Cas. 1918B, 999.

These references can be found in the University of Montana's Law Library. The first reference (1 Ann. Cas. 291, 295) is The American and English Annotated Cases, volume 1, pages 291 through 295. Page 291 contains a NOTE regarding the constitutionality and intent of veterans' preference laws which is part of the Kansas Supreme Court's March 12, 1904 decision in the case of H. K. Goodrich v. Porter Mitchell. To quote the NOTE:

> As a general rule, statutes similar to that discussed in the reported case, providing that honorably discharged veterans of the war of the rebellion shall be given preference for employment in the public service, have been held constitutional. . . But these statutes are not to be so construed as to give the veteran preference over all others in the matter of appointment regardless of his qualifications. The veteran must possess at least equal qualifications with other applicants. . . Thus a statute purporting to give to veterans absolute privileges distinct from those of the community in obtaining public office is not constitutional. . . In New York, the constitution of 1894 (Art. V., §9) provides that appointments and promotions in the civil service of the state and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be

ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. This provision has been held to give no preference to veterans of the civil war over other citizens of the state in examinations, whether competitive or noncompetitive, but to mean merely that when, as a result of examination, a list is made up, consisting of those whose merit and fitness have been duly ascertained, then the veteran is entitled to preference, without regard to his standing on the list. Consequently a statute providing that, as to honorably discharged soldiers and sailors of the late civil war, competitive examinations for appointment in the civil service shall not be deemed practicable or necessary in cases where the compensation or other emolument of the office does not exceed four dollars per day, is in conflict with the constitution, and void. . . As between several veterans who have shown themselves eligible to an appointment, the one obtaining the highest percentage upon the civil service examination is not necessarily entitled to preference.

Pages 293 through 295 contain the Kansas Supreme Court's March 12, 1904 decision in the case of Thomas Dever v. J. V. Humphrey et al. The summary of the court's findings is presented below.

Veterans' Preference Law - Qualifications Necessary to Appointment. - To obtain the preference given by chapter 186, Laws of 1901 (Gen. Stat. 1901, §§ 6509-6512), to soldiers and sailors who served in the war of the rebellion, for appointment to public position or employment, it must appear on investigation that they possess equal qualifications for the position or employment with other available applicants.

Ibid. - Investigation of Qualifications. - The character and extent of the investigation under the "veterans' preference law" are not prescribed by the legislature, but the appointing power is expected to investigate in good faith, fairly to determine who is best fitted to perform the duties of the place sought.

Public Employment - Authority to Make Appointments - Supervision by Court. - Where the legislature places the authority of making appointments upon officers and boards, and vests them with a discretion and judgement to determine who is best qualified to serve the public, the courts cannot

supervise the exercise of such authority nor control the discretion and judgement so vested.

The second reference is The American and English Annotated Cases, volume 9, page 1049. Page 1049 contains a NOTE regarding the constitutionality and intent of veterans' preference laws attached to the Iowa Supreme Court's November 21, 1905 decision in Shaw v. City Council of Marshalltown et al.

> Constitutionality and Intent of Veterans' Preference Laws. - It is the purpose of this note to discuss the recent cases passing upon the constitutionality and intent of statutes giving preference to veterans in appointment to places in the public service. For a discussion of the earlier cases on this subject, see the note to Goodrich v. Mitchell, 1 Ann. Cas. 288. And see Dever v. Humphrey, 1 Ann. Cas. 293.
>
> The reported case holds that a statute which provides that in all public works, honorably discharged soldiers, sailors, and marines, resident in the state, who served in the Civil War, shall have preference in appointments, employment, and promotion over other persons of equal qualifications, is not unconstitutional as granting to citizens or a class of citizens privileges which do not belong to others. The court further holds that the right to hold a minor municipal office is not a special privilege within the meaning of the constitutional provision inhibiting the granting of special privileges.
>
> It has been held that the bare competency and good moral character of a veteran are not, standing alone, sufficient to sustain a preference over other competitors, but that the applicant must possess qualifications equal to those of other persons under consideration. However, the fact that a veteran possesses equal qualifications with his competitors does not, standing alone, entitle him to preference, as all the applicants may be disqualified, but he must possess qualifications sufficient to perform the particular duties. McBride v. Independence, (Iowa 1907) 110 N. W. Rep. 157.
>
> It has been held that a veteran employed in the service of a city is entitled to continuous employment in preference to those laborers who are nonveterans, so long as there is work to be done of the kind for which he was employed, and he is competent to perform the work; and there is no distinction in this respect between a veteran who has been registered,

certified, and employed in the labor service of the city and one who has been examined, registered, and employed as a public officer. Ransom v. Boston, 7 Ann. Cas. 733.

The right to preference is not absolute. Thus where veterans and nonveterans are applicants for an appointive office, the appointing power has the discretion to pass upon the qualifications of the respective candidates, and its discretion will not be disturbed unless it is clearly abused. Boyer v. Creston, (Iowa 1907) 113 N. W. Rep. 474. And if a veteran who is seeking appointment to an office does not insist upon the preference at the time of his application or for a long time thereafter, and a nonveteran is appointed, such appointment will be deemed to be lawful, as the failure to insist upon the preference at the proper time is not a mere technical error. . .

As to the qualifications necessary to appointment under the veterans' preference law, see, further, Dever v. Humphrey, 1 Ann. Cas. 293. . .

The third reference is the American Annotated Cases, volume Ann. Cas. 1914 D. It is to a NOTE attached to the Massachusetts Supreme Judicial Court's decision in Phillips v. De Las Casas et al. The intent pertaining to appointment states:

It is the intent of the veterans' preference laws to give preference to veterans in appointment to public office or employment over other persons of equal or inferior qualifications. . . It is not the intent of those statutes to give the veteran preference over those who are better qualified for the position. . . Nor is it intended to exempt a veteran from the provision of the civil service laws, such as a requirement that applicants shall submit to a competitive examination. . . An applicant for appointment under the veterans' preference laws must possess the qualifications which are essential to the prompt, efficient and honest performance of the duties pertaining to the office for which application is made. . .

The power rests with the appointing officer or body to determine between a veteran and another as to their relative qualifications and fitness for the position, and of necessity that officer or body must exercise its own discretion and judgment in determining the matter in hand and making choice among the applicants. . .

The fourth reference is The Lawyers Reports Annotated, New Series Book 10. It is a Case Note to the validity of statutes giving veterans preference in appointment to public office.

> Nearly all the cases bearing on this subject are reviewed either in the majority or the dissenting opinion in the above case. These decisions seem to recognize the power of the legislature, as a reward for past services performed in the Army or Navy, and as a means of promoting patriotism, to give to honorably discharged veterans a preference, where the qualifications are equal, to public offices filled by appointive power resting in some officer of the Federal, state, or municipal government. When the power of the legislature is limited to this class of cases, the difficulties and dangers of such a rule, pointed out in the dissenting opinion, are practically obviated, and the cases therein cited, wherein the power of the legislature to exempt veterans from taxation or other burdens of government, do not apply. In order that a veteran may be entitled to this right of preference, however, it is well settled that he must be equally qualified with other applicants for the position. . .

The fifth reference is the Annotated Cases American and English, Ann. Cas. 1918 B. The case NOTE referred to in this reference simply restates the information in the first four references.

APPENDIX B

ATTORNEY GENERAL OPINION NO. 417

Attorney General Nagle's 1934 opinion on Montana's application of veterans' preference in public employment decisions is in volume 15 of the Report of the Attorney General of the State of Montana.

Held: Section 5653, R. C. M., 1921, as amended by Chapter 133, Laws of 1927, validly gives honorably discharged veterans a preference, where qualifications are equal, to public positions filled by appointment.

The veteran must apply for the position and point out his right to preference.

He may apply to the courts for redress where it appears that he was arbitrarily or capriciously or in bad faith refused the appointment.

January 9, 1934.

You have requested our opinion on the preference rights, if any, of ex-service men in the matter of public employment.

So far as pertinent here Section 5653 Revised Codes of 1921, as amended by Chapter 133, Laws of 1927, provides as follows: "In every public department, and upon all public works of the State of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the late war with Germany and her allies * * * shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved; * * *."

We think this law is a valid expression of the legislative will. Certainly, statutes almost identical with it have been subjected to attack in the courts on one constitutional ground or another and have been invariably upheld. (Goodrich v. Mitchell, 75 Pac. 1034; Shaw v. City Council, 104 N. W. 1121, 10 L. R. A. (n. s.) 825; State v. Empie, 204 N. W. 572;

Swantush v. City of Detroit, 241 N. W. 265; 46 C. J. 958. See, also, Opinion of the Justices, 44 N. E. 625.)

The cases cited recognize the power of the legislature to give to honorably discharged veterans a preference, where the qualifications are equal, to public places filled by appointment by some officer or board of the state, county or municipal government, as a reward for past services rendered in the army or navy in time of war, and as a means of promoting patriotism.

Needless to say the veteran who would benefit by the law must apply for the vacant position and must bring the fact that he is entitled to preference to the attention of the appointing power. (People v. Simonson, 72 N. Y. S. 82; 46 C. J. 959.)

Where the veteran is refused the position sought, and it appears the board or officer making the appointment acted arbitrarily or capriciously or in bad faith, he may apply to the courts for redress. (State v. Addison, 92 Pac. 581; State v. Empie, Supra; State v. District Court, 50 Mont. 289; State v. Board of Examiners for Nurses, 52 Mont. 91; 38 C. J. 598; 46 C. J. 959.)

In conclusion, we believe the statute in question is calculated to serve a useful and beneficient purpose and should be observed whenever possible.

The text of Attorney General Forrest Anderson's 1960 letter used as evidence supporting Jensen's contention in Jensen v. State of Montana, Department of Labor and Industry is presented below.

State of Montana
Office of the Attorney General
Helena

Forrest H. Anderson
Attorney General

June 9, 1960

Mr. Chadwick H. Smith, Chairman
Unemployment Compensation Commission
Capitol Building
Helena, Montana

Dear Mr. Smith:

You have asked whether the veterans preference right to appointment provided by Section 77-501, RCM, 1947, applies also to retention of employment.

The question apparently becomes pertinent only when a reduction in force of personnel is necessary. It could have no applicability to discharge for cause.

Section 77-501 (2), RCM, 1947, in part provides that veterans shall be preferred in every public department and upon all public works of the state of Montana and of any county or city for "appointment and employment."

The addition of the term "Employment" in sub-paragraph (2) indicates that the legislature intended the preference to go to more than appointment.

"The word 'employment' must be construed according to context and approved usage of language ...." English v. City of Long Beach, 176 Pac. (2d) 940, 77 Cal. (2d) 894. "Preference to veterans must be a reality. It cannot be illusory or a mere gesture." Opinion of the Justices, 85 N.E. (2d) 238, 245.

All provisions of the code are to be liberally construed to effect their objects. (Corwin v. Bieswanger, 126 Mont. 337, 251 Pac. (2d) 252, 253)

The object of the Veterans Preference Act is simple and self-evident. The Montana veteran of military service is to be preferred in appointment to state employment. That preference could be rendered a nullity if it did not continue beyond the appointment. If it did not the veteran could be appointed then immediately released.

So, in view of this it seems evident that by stating that a veteran shall be preferred for "appointment and employment" that the legislature intended the preference to apply to retention of employment.

Therefore, it is my opinion that the preference right of veterans under the Veterans Preference Act extends to retention of employment.

Very truly yours,

/s/ Forrest H. Anderson

Forrest H. Anderson
Attorney General

FHA:cp

APPENDIX C

SIMILARITY COMPARISON

The following key was used in comparing the synopses of the other forty-nine states' veterans' preference laws with Montana's law to determine veterans' preference benefit similarities.

KEY

Meaning	Symbol Used
Similar to Montana's preference.	X
Not similar to Montana's preference.	N
Weak resemblance to Montana's preference.	W
There is similarity if absolute preference is considered.	NX
Preference became nonsimilar.	CN
Preference became similar.	CX
Absolute preference is given in:	
Appointment to specific positions	Asp
Appointment and employment under civil service or merit systems	Acm
Appointment and employment	AB
Relative preference allowed on exams:	
Five and ten point preferences	FT
Other point amounts	OP
Number of points not specified	PT

KEY continued.

Meaning	Symbol Used
Type of positions a preference was to apply to:	
Civil service or merit system	CM
Specific positions	SP
Preference allowed but not specified under:	
Civil service or merit system	PACM
Specific positions	PAS
Public employment	PE

ANALYSIS

Year(s)	State	Key	
1969	Alabama	W	Reason: The point preference on the examinations was not specified.
		Asp	Information in Synopsis: State, county, and district service commissioners shall be veterans.
		PT/CM	Preference in State civil service exams for veterans, wives, and widows.
1974		Addition PT/CM	Employment register established under merit system to extend veteran preference to persons with honorable service and, in some cases, to their wives and widows.
1975		No change	
1979		Addition Asp	State, assistant State, county, and district service commissioners shall be veterans.
1982		No Change	
1969	Alaska	NX	Reason: Only veterans given a preference. Absolute preference given to veterans.
		AB	WWI, WWII, Korea, Viet Nam veterans shall be given preference in appointment and employment as state public employees.
1974-1982		No Change	

Year(s)	State	Key	
1969	Arizona	N	Reason: Only veterans given a preference.
		PACM	Preference rights and privileges of veterans under any merit system in force in the State or any political subdivision.
1974-1982		No Change	
1969	Arkansas	N	Reason: Only veterans given a preference.
		PACM	Preference to veterans under State civil service or merit system.
		PT	Preference to veterans in exams for licenses or permits for any profession, trade, or employment in the state.
		Asp	Preference in appointment of veterans as members of the War Memorial Stadium Commission.
1974-1975		No Change	
1979		Addition W PACM	Widows receive preference under civil service or merit system.
1982		No Change	
1969	California	X	Similar to Montana's pref.
		Asp	County service officers must be veterans. Members of California Veterans' Board shall be veterans. Preference shall be given to veterans for employment in the department of veterans affairs.

Year(s)	State	Key	
1969	California	OP/CM	State civil service exams: Disabled veterans receive 15 additional points; all other veterans and veterans' widows receive 10 additional points. All preference eligibles to receive 3 additional points in promotional exams.
		PACM	Preference to veterans under the merit system within classified civil service in certain school districts.
1974-1982		No Change	
1969	Colorado	W	Reason: Only veterans receive similar preference.
		PACM	Firemen's civil service - Preference shall be given to veterans whose qualifications are otherwise equal.
		PAS	County departments of public welfare, consideration to veterans' preference shall be given in making appointments.
		FT/CM	Civil service exams: Disabled veterans allowed 10 extra points; other veterans 5 extra points.
1974-1982		No Change	
1969	Connecticut	X	Similar to Montana's pref.
		FT/CM	Civil service - State - Veterans, their wives and widows allowed 5 extra points and disabled veterans 10 extra points. Municipal employees - 5 point additions for nondisabled veterans; 10 point additions for disabled veterans.
1974-1982		No Change	

Year(s)	State	Key	
1969	Delaware	N	No employment preference given.
1974		Addition	Preference for veterans in hiring under state merit system. (Not mentioned in any digests until 1984. Delaware Code Annotated 1974, 29-5935.)
1975-1982		No Change	
1969	Florida	W	Reason: Only veterans allowed a preference similar to Montana's.
		PACM	Preference in appointment in positions in all establishments, boards, commissions, agencies, political subdivisions, and municipalities of the State.
		FT/CM	5 or 10 point preference allowed for veterans under civil service, merit system, or other competitive exams.
1974-1982		No Change	
1969	Georgia	X	Similar to Montana's pref.
	+	PAS	Preference to veterans, their widows, and dependents for employment with the department of veterans service.
	+	PACM	Point credit allowed for veterans on exams by State boards and commissions, except accountancy. Additional point credit allowed for certain disabled veterans.

Year(s)	State	Key	
1974	Georgia	Addition	Allowance of point credit on competitive civil service exams for employment with State govt. or political subdivision thereof, to veterans who served honorably in the active military service for more than 180 days, a portion of which occurred during a period of armed conflict in which any branch of the U.S. Armed Forced was engaged; additional point credit for disabled veterans.
1975		2 Deletions CN	Denoted by +s under 1969. Reason: Preference only given to veterans.
1979-1982		No Change	
1969	Hawaii	X	Similar to Montana's pref.
		FT/CM	Civil service - 10 extra points on exams for disabled veterans, their wives, or veterans' widows; 5 extra points for other veterans.
1974		No Change	
1975		Word Change	The words wives and widows were changed to spouses and surviving spouses.
1979-1982		No Change	
1969	Idaho	N	Reason: Only veterans allowed a preference.
		Asp	Veterans Affairs Commission - appointees must have served in the Armed Forces.

Year(s)	State	Key	
1969	Idaho	PACM	Employment preference to disabled war veterans in all State, county, and municipal governments, departments, and all political subdivisions.
1974		Additions CX	Employment preference to be given war veterans in employment
	+	PE	in all state, county, and municipal government and departments and all political subdivisions thereof.
		FT/CM	A 5 point preference given to any war veteran and a similar 10 point addition given to any disabled veteran or the widow of any disabled veteran as long as she remains unmarried. Veterans' preference shall be used only for the purpose of initial appointment and not for the purpose of promotion.
1975		No Change	
1979		Word Addition	Veterans must be residents of Idaho. Professional and confidential secretaries are excluded. (Change made to statute designated with a + under 1974.)
1982		No Change	
1969	Illinois	NX	Reason: Only veterans allowed a preference. Absolute preference given on public works.
		Asp	Park policemen and retirement board employees - preference shall be given to veterans.
		Asp/CM	Civil service of Cook County, preference shall be given to veterans.

Year(s)	State	Key	
1969	Illinois	Acm	City civil service - preference shall be given veterans.
		Acm	Chicago sanitary district - preference shall be given to veterans in the classified service of the district.
		Asp/PT/SP	Police and firemen - preference shall be given to veterans in appointments, promotions, etc., and additional points in exams.
		Acm OP	University civil service system - preference shall be given to veterans in appointments; additional 5 points shall be given in exams.
		AB	Public works of the State and its local subdivisions - preference shall be given in employment.
		PAS	State Highway Patrol - preference to veterans.
		PT	State government entrance exams.
1974		Additions PACM	Park Systems - preferential requirements in employment of veterans under civil service system.
		Additions	Illinois Veterans' Commission service officers must be honorably discharged veterans. Preference shall be given to veterans in the selection of members of the commission and service officers.
1975-1982		No Change	

Year(s)	State	Key	
1969	Indiana	X	Similar to Montana's pref.
	#	AB	State, district, and county officers and employees shall be veterans.
		PE	Preference given to veterans, wives, and widows for employment in State service, under the State Personnel Act.
		PAS	Preference to veterans in employment by fire departments in the various cities.
		PAS	Preference to disabled veterans in appointments to civil offices.
	+	PAS	Preference to veterans, their wives or widows, sons and daughters, and former pupils, in appointment or employment in any office or place in the State soldiers' and sailors' children's homes.
1974		Deletion	Denoted by + under 1969.
1975		No Change	
1979		1 Deletion	Denoted by # under 1969.
		2 Additions	
		OP	Preference points of 10 per cent on written exams for employment in full-time jobs by political subdivisions are allowed veterans having an honorable discharge and who served 181 days or more in military service.
		Asp	Employees of Indiana Department of Veterans Affairs shall be veterans if male, or the widow, wife, mother, or daughter of veterans, or a veteran, if female.
1982		No Change	

Year(s)	State	Key	
1969	Iowa	NX	Reason: Points not specified and preference only given to veterans. Absolute preference given in appointment and employment.
		PT/CM	Civil service exams - preference shall be given to veterans in all exams and appointments, if otherwise qualified.
		AB	Appointment, employment, and promotion in public departments and on public works of State and local units, preference shall be given to veterans.
1974-1982		No Change	
1969	Kansas	W	Reason: Preference given only to veterans.
	+	OP/CM	State civil service - competitive exams - disabled veterans with at least a 10 per cent disability shall receive 15 additional points; other veterans receive 10 additional points.
		AB	Veterans shall be given preference in appointment and employment in public departments and upon all public works of the State.
1974		Addition	Viet Nam veterans included under the above laws.
1975		No Change	
		Changes	5 points replaced the 10 points for other veterans and 10 points replaced the 15 points for veterans with a 10 per cent disability in the statute denoted by + under 1969.
1982		No Change	

Year(s)	State	Key	
1969	Kentucky	N	Reason: Not enough information or only applied to veterans.
		PAS	State police department.
		PE	Positions in State and local subdivisions.
		Asp	Kentucky Disabled Ex-Service Men's Board - appointees shall be veterans.
		OP	Civil service - veterans of WWI and WWII entitled to 5 per cent increase on exams.
1974	+	Addition Asp	Kentucky Bureau of Veterans Affairs - appointees shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy (effective June 16, 1972).
1975		Change	Title changed to Kentucky Center for Veterans Affairs - denoted by + under 1974.
1979-1982		No Change	
1969	Louisiana	NX	Reason: Not enough information given to determine type of relative preference. Preference is absolute under civil service law.
		AB	Preference shall be given to veterans and their widows under civil service law and with regard to the merit system for "Federal aid agencies."
1974-1982		No Change	

Year(s)	State	Key	
1969	Maine	X	Similar to Montana's pref.
		FT/CM	Civil service exams - preference of 5 and 10 points to veterans, their wives, or widows, their mothers who are widowed, divorced, separated, or whose husbands are permanently and totally disabled.
		Asp	Department of Veterans Services - Director and employees, except clerical personnel, must be veterans.
1974		Change Asp	Dept. of Veterans Services changed to Bureau of Veterans Services. - Director and employees except for clerical and other than full-time, permanent personnel, shall be veterans.
1975		Addition	Under civil service exams - military retirees, except those that are disabled, are not entitled to preference points. All veterans may only exercise the preference once for State employment.
1979-1982		No Change	
1969	Maryland	X	Similar to Montana's pref.
	++	FT/CM	Classified service, merit system - exams and appointments - disabled veterans and their wives received 10 point additions, other veterans received 5 point additions.
		Asp	Maryland Veterans Commission - members shall be veterans.
		Asp	War Memorial Commission - all members appointed after June 1, 1945, shall be Maryland war veterans.

Year(s)	State	Key	
1969	Maryland +	PT/CM	County or municipal civil service or merit system - credits could be given to veterans and their wives.
1974		Change	Wives changed to spouses in law designated by + under 1969.
1975		No Change	
1979	#	Addition OP/CM	Under classified service, merit system - veterans who served during the period Aug. 4, 1964, through March 31, 1973, receive a special credit of 5 points on exams for initial employment only . (++)
1982		Change	March 31, 1973, was replaced by May 7, 1975, and a cutoff date of June 30, 1984, was set for the preference. (#)
1969	Massachusetts	X	Similar to Montana's pref.
		Asp	Preference shall be given to veterans in employing labor for construction work on rural highways with Federal aid.
		AB	Public works - preference shall be given to veterans on public works of State and local units.
		Acm	Labor service - veterans, their widows, and widowed mothers shall be given preference in appointment to the labor service of the State departments.
		AB	Preference shall be given to veterans in the labor service where civil service rules do not apply.

Year(s)	State	Key	
1969	Massachusetts	AB/CM	Civil service - preference shall be given to veterans, their widows, and widowed mothers under civil service, in State and certain local units.
1974-1982		No Change	
1969	Michigan	NX	Reason: Preference given only to veterans. Absolute preference given on public works.
		Asp	Members of the veteran county and district committees shall be veterans.
	#	AB/CM	Preference shall be given to veterans in county civil service.
		AB	Preference shall be given to veterans in employment in public departments and on public works.
1974		Change W	Veterans have a 10 point "earned rating" preference in county civil service. (An absolute preference became a relative preference.) (#)
1975-1982		No Change	
1969	Minnesota	X	Similar to Montana's pref.
		FT/CM	Competitive exams in State classified service - 5 point preference addition for nondisabled veterans; 10 point addition for disabled veterans, spouses of veterans too disabled to work, and veterans' widows.

Year(s)	State	Key	
1969	Minnesota +	AB	For veterans, veterans' widows, and spouses of disabled veterans in appointment and employment in public departments of the State and political subdivisions including municipalities and school districts - absolute preference is specified.
	#	OP/CM	Provision for preference eligibles to claim a 5 point preference on civil service promotional exams - can only be claimed once.
		PAS	Preference given to veterans where practicable in employment in the department of veterans affairs.
		Asp	Veterans' service officers must be honorably discharged veterans.
		Asp	Trustees for the Minnesota Soldiers Home must be honorably discharged veterans.
		PACM	Sheriff's civil service system.
1974		No Change	
1975		Deletion	Statute granting absolute preference in public departments and school districts. (+) under 1969.
		Addition Deletion	Promotion provision - 5 point additions for the 1st promotion after securing public employment if exam has been passed allowed for veterans with a 50 per cent or more permanent service-connected disability. Replaced (#) under 1969.
1979-1982		No Change	

Year(s)	State	Key	
1969	Mississippi	N	Reason: Preference is only for specific positions.
		Asp	Preference shall be given to veterans as members of the State veterans affairs board and in appointment of the State service commissioner and assistant commissioners.
		Asp	Unemployment compensation commission - preference shall be given to veterans for appointments.
		Asp	Highway Safety Patrol - preference shall be given to former members who have served in the military.
1974-1982		No Change	
1969	Missouri	X	Similar to Montana's pref.
		FT/CM	Civil service - 5 and 10 points are allowed on final exam grades for veterans, widows and wives of disabled veterans under State merit system.
		PAS	State highway commission - other conditions being equal.
		PAS	State Highway Patrol - service in Armed Forces is credited for certain purposes (not specified).
		Asp	Police Department, Kansas City - preference shall be given to former members of the police department who are veterans.
		Asp	Commissioner of war service records and appointees in his office shall be war veterans.
1974-1982		No Change	

Year(s)	State	Key	
1969	Nebraska	N	Reason: Preference given only to veterans for specific positions.
		Asp	Members of the county service committees, all State and assistant State service officers, etc., with certain exceptions, shall be veterans.
		Asp	Veterans affairs director and members of the veterans advisory commission shall be veterans.
1974-1982		No Change	
1969	Nevada	X	Similar to Montana's pref.
		AB	Preference shall be given to veterans in employment in public departments and on public works on State and local units.
		FT/CM	Civil Service exams - 10 point additions for disabled veterans, 5 point additions for other veterans and veterans' widows added to passing grades.
1974-1982		No Change	
1969	New Hampshire	X	Similar to Montana's pref.
		PAS	State liquor commission.
		PAS	Members of the State veterans council and the State veterans service office.
		PE	Preference on public works of State and local units for veterans, wives of disabled veterans, veterans' widows.
1974		No Change	
1975		Addition PAS	Preference in appointing Commandant and employees of New Hampshire Veterans Home.
1979-1982		No Change	

Year(s)	State	Key	
1969	New Jersey	X	Similar to Montana's pref.
		AB/CM	Civil service - State, county municipality, or school districts, preference shall be given to veterans, their wives, or widows, and to mothers of veterans who died in service.
		Asp	Clerical employees of the civil - district courts shall be given credit for military service during WWII; classification by the Civil Service Commission of employees certified without examination.
		PAS/OP	First class city policemen are entitled to advances in promotion.
		PAS/OP	Policemen, firemen, and motor vehicle inspectors allowed credit for war service in determining advancement in grade and increased pay.
		PE	Preference laws are to apply to veterans in any public service.
		PAS/OP	WWI veterans decorated by the French government entitled to advantages in promotions in State and municipal service.
1974		Addition	Under civil service - employment or promotion of veterans awarded Congressional Medal of Honor, Distinguished Service Cross, Air Force Cross, or Navy Cross without complying with civil service rules and regulations.
1975-1982		No Change	

Year(s)	State	Key	
1969	New Mexico	N	Reason: Only veterans allowed a preference for specific positions.
		Asp	Employees of the veterans service commission are required to be veterans.
1974-1982		No Change	
1969	New York	NX	Reason: Only applies to veterans. Absolute preference given.
		PAS	City service officers - appointment of veterans as deputies or assistants.
		AB/CM	Civil service - preference shall be given to veterans in appointments and promotions in the civil service of the State and all of the civil divisions thereof; and in any branch of the civil service, State, county, or municipal.
		PAS	Town service officers - appointments of veterans as deputies or assistants.
		Asp	Veterans Affairs Commission - preference shall be given to veterans in appointment of members.
1974		Addition	Preference eligibility - Viet Nam service period extended to March 29, 1973.
1975-1982		No Change	

Year(s)	State	Key	
1969	North Carolina	N	Reason: Preference only awarded to veterans.
		Asp	County boards of pensions shall be composed of clerk of the superior court and 3 Confederate veterans or children or grandchildren of Confederate veterans.
	+	Asp	North Carolina Department of Veterans Affairs - members of the board and the director shall be veterans, and preference will be given to veterans for other positions.
		OP/CM	A preference rating of 10 points is awarded to all veterans in exams for positions in the State and its departments, etc.
1974		Deletion Addition Asp	Statute deleted is designated by + under 1969. It was replaced by a new statute - Veterans Affairs Commission of North Carolina, Department of Military and Veterans Affairs shall be veterans.
1975		Deletion	Confederate veterans were no longer considered for county boards of pensions. However, 3 children or grandchildren of Confederate veterans were still to be on each board.
		Addition	Under preference in State employment - credit allowed for military service for State employees and teachers towards promotions.
1979-1982		No Change	

Year(s)	State	Key	
1969	North Dakota	NX	Reason: Preference is primarily for veterans and not on a point system.
	+	AB	Public departments and public works - preference in appointments shall be given to veterans.
		Asp	Highway patrolmen - preference for appointment shall be given to veterans.
		Asp	Veterans service commission - preference shall be given to veterans, their wives, or widows.
1974		2 Additions CX PE	Public departments and public works - veterans, spouses of veterans who died in service or from service-connected causes and spouses of service-connected disabled veterans unable to exercise employment rights are entitled to preference in appointment or employment by government agencies.
		PE	Public contracts - contracts for State, county, city, school, district, or township construction, repair, or maintenance must contain provision for giving employment preference to veterans except for engineering superintendence, management, or office or clerical work unless contrary to federal law.
1975		Deletion	Statute deleted is denoted by a + under 1969.
1979-1982		No Change	

Year(s)	State	Key	
1969	Ohio	N	Reason: Preference is primarily for veterans and for specific positions.
		Asp	Members of the soldiers relief commission and service officers appointed by the commission in each county shall be veterans.
		Asp	Preference shall be given to veterans in employment of caretakers of county or township memorial buildings.
		Asp	Preference shall be given to veterans in the selection of officers and members of the board of trustees of town, municipal, or county memorials and in employment on the construction of such memorials.
		AB/CM	Preference shall be given to veterans under civil service in State and local units.
		PAS	Preference given to veterans, their wives, widows, and children in employment by the soldiers relief commission as investigators, etc.
1974-1982		No Change	
1969	Oklahoma	N	Reason: Not specific enough information under merit system.
		Asp	Game and Fish Commission - preference shall be given to veterans of WWI, WWII, and Korea in appointment.
		Asp	Capitol policemen - preference shall be given to veterans with service-connected disabilities.
		PACM	Preference for veterans or their widows under State Merit System.

Year(s)	State	Key	
1969	Oklahoma	PAS	Preference in selection of members of the war veterans commission and employees of the State veterans department.
1974-1975		No Change	
1979		Word Change	Game and Fish Commission - preference shall be given to veterans of WWII, the Korean and Viet Nam wars for appointment as rangers.
1982		No Change	
1969	Oregon	W	Reason: Preference only applies to veterans but is similar.
	+	FT/CM	Preference to veterans - allows 5 to 10 point additions to earned ratings on civil service exams.
		PACM	County employees preference on civil service exams.
		PAS	Preference in appointment of director of veterans affairs and in selection of members of the advisory committee.
		PACM	Preference to veterans under State civil service.
	#	PE	Preference to war veterans in State and local units and on public works where qualified.
1974-1975		No Change	
1979		2 Deletions CN	Designated by + and # under 1969.
		Addition PE	Advantages given to veterans in public employment. Definitions; time limitations (1977 amendments).
1982		No Change	

Year(s)	State	Key	
1969	Pennsylvania	N	Reason: Preference only to veterans, not enough information.
		PAS	Extra credits and preference given in appointment in police civil service.
		OP/SP	Preference to veterans in State police exams of 10 points; preferences in counties of 2d class.
		PACM	Preferences, rights, and privileges of veterans under civil service.
		PE	Preference in public employment.
1974-1982		No Change	
1969	Rhode Island	N	Reason: Not enough information.
		PACM	Preference in State civil service.
		PE	Preference to veterans in public departments and upon all public works.
1974-1982		No Change	
1969	South Carolina	N	Reason: Not enough information.
		PE	Preference in State public departments.
1974-1982		No Change	

Year(s)	State	Key	
1969	South Dakota	NX	Reason: Preference applies only to veterans and for specific positions. Absolute.
		Asp	County service officers - preference shall be given to veterans.
		AB	Public departments and public works of State and local units - veterans shall be given preference in employment and promotions.
1974-1982		No Change	
1969	Tennessee	N	Reason: Not enough information.
		PAS	Preference in the appointment of local service officers and of the staff of the division of veterans affairs.
		PACM	Preference in State and civil service to any veteran, the wife of a disabled veteran, or the unremarried widow.
1974-1982		No Change	
1969	Texas	N	Reason: Not specific enough information.
		Asp	County service officers and assistants shall be veterans.
		Asp	Members of the veterans affairs commission and all male personnel shall be veterans.
		PE	Preference in all State depart ments and upon public works to all veterans and widows and orphans of Armed Forces personnel; conditions.

Year(s)	State	Key	
1969	Texas +	PAS	State public buildings, employment in construction, veterans preference.
	#	PAS	Public welfare department.
		PAS/PT/CM	Preference ratings of veterans on exams under firemen's and policemen's civil service in cities over 10,000.
1974-1975		No Change	
1979		2 Deletions	Designated by + and # under 1969. (Found in the 1984 digest.)
1982		Addition Asp	Creation of the Veterans Affairs Commission; 4 or 6 male members shall be veterans. (1981 statute.)
1969	Utah	NX	Reason: No point system for exams is given. Absolute preference is given.
		PACM	Preference to veterans and widows of veterans under the Highway Patrol Civil Service Act as to qualifications, appointments, and promotions.
		AB	Preference shall be given to veterans or their widows in employment on public works; failure to comply declared a misdemeanor.
1974-1975		No Change	
1979		2 Additions CM OP/CM	A 5 point preference is awarded under the License Examiners Civil Service Act to veterans or widows of veterans who served during national emergencies.

Year(s)	State	Key	
1979	Utah	OP/CM	A 5 per cent preference factor shall accrue to veterans in determining the score of said veteran on the Fireman's Civil Service Commission exam.
1982		No Change	
1969	Vermont	W	Reason: Type of preference not specified. Preference is given to a combination of preference eligibles.
		PACM	State civil service - preference in certification for appointment given ex-service men and women who were honorably discharged and have a service-connected disability or are in receipt of retirement pay, and their wives (under special circumstances) and unremarried widows.
1974-1982		No Change	
1969	Virginia	W	Reason: Preference given only to veterans.
		FT/CM	Civil service exams - veterans shall be given 5 and 10 point preference in ratings.
1974-1982		No Change	
1969	Washington	X	Similar to Montana's pref.
		PT/SP	Entrance credit on fire service exams.
		PT/SP	Entrance credit on police service exams.
	++	PAS	Preference - selection of members of Veterans Rehabilitation Council.

Year(s)	State	Key	
1969	Washington +	OP/CM	Preference of 10 per cent to veterans in competitive exams for public officers, positions or employment in the State and all its political subdivisions, and all municipal corporations.
	#	PE	Preference for veterans or their widows in every public department and on all public works of the State and of any county.
1974		Deletion	Denoted by ++ under 1969.
1975		No Change	
1979		Change	Preference has to be claimed within 8 years of release from active service for the statute denoted by + under 1969.
		Addition	Spouses of 100 per cent disabled veterans were added as preference eligibles under the statute denoted by # under 1969.
1982		No Change	
1969	West Virginia	N	Reason: Preference only applies to veterans. Not enough information.
		PACM	Civil service - preference for veterans under rules of the State civil service commission.
		PAS	Municipal police and fire departments - credit allowed for military service in WWII.
		PT/CM	Preference ratings on written exams allowed under nonpartisan merit system.

Year(s)	State	Key	
1969	West Virginia	Asp	Public Safety Department - preference in making appointments shall be given to honorably discharged veterans.
1974-1982		No Change	
1969	Wisconsin	NX	Reason: Preference given only to veterans. Absolute preference is given.
		Asp	County service officers shall be veterans.
		Asp	Members of the board of veterans affairs shall be veterans.
		Asp	County veterans service commission - members shall be veterans.
		FT/SP	Police and fire departments - 5 and 10 point preferences given in exams.
		AB/CM	Civil service - Preference shall be given to veterans in State civil service. Preference shall be given to veterans in Milwaukee County or city civil service. Preference shall be given to veterans under civil service in cities and villages.
1974-1982		No Change	

Year(s)	State	Key	
1969	Wyoming	W	Reason: Exam points only for veterans. Public employment not really defined.
		PAS	Fire department - preference shall be given to honorably discharged veterans, other things being equal.
		FT/CM	State merit system - veterans allowed 5 and 10 points on exams.
		PE	Public departments and public works - preference in appointment or employment to be given to veterans and their widows.
1974-1982		No Change	

PREFERENCE STRENGTH ANALYSIS

KEY

An absolute type of preference benefit is scored by awarding 2 points.

A relative type of preference benefit is scored by awarding 1 point.

For the disabled and nondisabled veteran subcategories, the following preference eligible classifications are used:

Meaning	Symbol
veterans	v
spouses or wives	s
widows	w
mothers	m
dependents	d
others	0

Note: Explanations are provided when they are necessary to clarify how a classification is used in the scoring process. Points are awarded primarily for the type of preference benefit that would affect the most individuals in a preference classification. When two types of preference benefits are given to a classification, and if each type has the possibility of affecting a number of people, the type that would probably affect the lesser number of people is scored separately. The symbols used in these situations are explained each time they are used.

For the promotion subcategory, the following preference eligible classifications are necessary:

Meaning	Symbol
disabled veteran	D
nondisabled veteran	N
widows	w
others	o

ANALYSIS The baseline year is 1969. Points are tallied only for years when strength changes occurred. For example, if a strength change occurred in 1974 and no change occurred thereafter, the year column will read 1969, 1974-1982. The analysis results are presented in Table 4.

TABLE 4

STATE PREFERENCE BENEFIT STRENGTH ANALYSIS

State Year	Selected Positions Preference			Civil Service/Merit System Preference			Total Points
	Disabled Veterans	Nondisabled Veterans	Promotions	Disabled Veterans	Nondisabled Veterans	Promotions	
Alabama							
1969-1982	2v	2v		1v,1s,1w	1v,1s,1w		10
Alaska							
1969-1982	2v	2v					4
Arizona							
1969-1982				1v	1v		2
Arkansas							
1969	1v	1v		1v	1v		4
1979-1982	1v	1v		1v,1w	1v,1w		6
California							
1969-1982	2v	2v		1v,1w	1v,1w	1D,1N,1w	11
Colorado							
1969-1982	1v	1v		1v	1v		4
Connecticut							
1969-1982				1v,1s,1w	1v,1s,1w		6
Delaware							
1969							0
1974-1982				1v	1v		2

TABLE 4--Continued

State Year	Selected Positions Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Civil Service/Merit System Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Total Points
Florida							
1969-1982	1v	1v		1v	1v		4
Georgia							
1969	1v,1w,1d	1v,1w,1d		1v	1v		8
1975-1982				1v	1v		2
Hawaii							
1969-1982				1v,1s,1w	1v		4
Idaho							
1969	1v						1
1974-1982	1v	1v		1v,1w	1v		5
Illinois							
1969-1982	2v	2v	2D,2N	2v	2v		12
Indiana	o = those sons, daughters, and former pupils eligible for employment in the State soldiers' and sailors' children's home						
1969	2v,1s,1w,1o	2v,1s,1w,1o		1v			11
1974	2v,1s,1w	2v,1s,1w		1v			9
	d = widows, wives, mothers, and daughters of veterans given absolute employment preference under Department of Veterans Affairs						
1979-1982	1v,1s,1w,2d	1v,1s,1w,2d		1v	1v		12

TABLE 4--Continued

State Year	Selected Positions Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Civil Service/Merit System Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Total Points
Iowa 1969-1982	2v	2v	2D,2N	1v	1v		10
Kansas 1969-1982	2v	2v		1v	1v		6
Kentucky 1969-1982	1v	1v		1v	1v		4
Louisiana 1969-1982				2v,2w	2v,2w		8
Maine 1969-1982	1v	1v		1v,1s,1w,1m	1v,1s,1w,1m		10
Maryland 1969-1982				1v,1s	1v,1s		4
Massachusetts 1969-1982	2v,2w,2m	2v,2w,2m		2v,2w,2m	2v,2w,2m		24
Michigan 1969	2v	2v		2v	2v		8
1974-1982	2v	2v		1v	1v		6

TABLE 4--Continued

State / Year	Selected Positions Preference: Disabled Veterans	Selected Positions Preference: Nondisabled Veterans	Selected Positions Preference: Promotions	Civil Service/Merit System Preference: Disabled Veterans	Civil Service/Merit System Preference: Nondisabled Veterans	Civil Service/Merit System Preference: Promotions	Total Points
Minnesota o = spouses of disabled veterans							
1969	2v,2s,2w	2v,2w		1v,1s,1w	1v,1w	1D,1N,1w,1o	19
1975-1982	1v	1v	1D	1v,1s,1w	1v,1w		8
Mississippi							
1969-1982	2v	2v					4
Missouri							
1969-1982	2v	2v		1v,1s,1w	1v		8
Montana o = disabled civilians		Under civil service/merit system, only 1 point is awarded under absolute preference in order to signify that additional points were still given on examination.					
1969-1982							
relative preference	1v,1s,1w 1d,1o	1v,1s,1w		1v,1s,1w,1d	1v,1s,1w,1d		16
absolute preference	2v,2s,2w 2d,2o	2v,2s,2w		1v,1s,1w,1d	1v,1s,1w,1d		24
Nebraska							
1969-1982	2v	2v					4
Nevada							
1969-1982	2v	2v		1v,1w	1v,1w		8
New Hampshire							
1969-1982	1v,1s,1w	1v,1w					5

TABLE 4--Continued

State Year	Selected Positions Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Civil Service/Merit System Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Total Points
New Jersey	o = veterans who received high honor medals			m = mothers of veterans who died in service			
1969	1v	1v	1D,1N	2v,2s,2w	2v,2s,2w,2m		18
1974-1982	1v	1v	1D,1N	2v,2s,2w	2v,2s,2w,2m	2o	20
New Mexico							
1969-1982	1v	1v					2
New York							
1969-1982	1v	1v		2v	2v	2D,2N	10
North Carolina	d = children or grandchildren of Confederate veterans						
1969	2v	2v 2d		1v	1v		8
1975-1982	2v	2v 2d	1D,1N	1v	1v		10
North Dakota	d = all wives and widows under veterans service commission						
1969	2v	2v 2d					6
1974	2v,1s,1w	2v,1w 2d					9
1975-1982	1v,1s,1w	1v,1w					5
Ohio							
1969-1982	2v,1s,1w,1d	2v,1s,1w,1d		2v	2v		14
Oklahoma							
1969-1982	2v	2v		1v,1w	1v,1w		8

TABLE 4--Continued

State Year	Selected Positions Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Civil Service/Merit System Preference Disabled Veterans	 Nondisabled Veterans	 Promotions	Total Points
Oregon 1969-1982	1v	1v		1v	1v		4
Pennsylvania 1969-1982	1v	1v		1v	1v		4
Rhode Island 1969-1982	1v	1v		1v	1v		4
South Carolina 1969-1982	1v	1v					2
South Dakota 1969-1982	2v	2v	2D,2N				8
Tennessee 1969-1982	1v	1v		1v,1s,1w	1v,1w		7
Texas 1969-1982	o = orphans of Armed Forces Personnel 1v,1w,1o	1v,1w,1o		1v	1v		8
Utah 1969-1982	2v,2w	2v,2w		1v,1w	1v,1w	1D,1N,1w	15

TABLE 4--Continued

State / Year	Selected Positions Preference: Disabled Veterans	Selected Positions Preference: Nondisabled Veterans	Selected Positions Preference: Promotions	Civil Service/Merit System Preference: Disabled Veterans	Civil Service/Merit System Preference: Nondisabled Veterans	Civil Service/Merit System Preference: Promotions	Total Points
Vermont							
1969-1982				1v,1s,1w	1v,1s,1w		6
Virginia							
1969-1982				1v	1v		2
Washington							
1969	1v,1w	1v,1w		1v	1v		6
1979-1982	1v,1s,1w	1v,1w		1v	1v		7
West Virginia							
1969-1982	1v	1v		1v	1v		4
Wisconsin							
1969-1982	2v	2v		2v	2v		8
Wyoming							
1969-1982	1v,1w	1v,1w		1v	1v		6

APPENDIX D

COMPARISON OF EMPLOYMENT PREFERENCE LAWS

This comparison of the new and former Montana veterans' preference laws appeared as an attachment to a December 22, 1983, memo to agency directors and personnel officers from the State Personnel Division of the Department of Administration.

	New Law	Former Law
Personnel Decisions Affected	Initial hire to Departments in the executive branch and to agencies in the legislative and judicial branches, cities towns, or counties. (Promotion, layoff, reappointment and participation in federally authorized employment programs are not covered.)	"Initial Appointment and Employment" (possibly includes promotion, layoff, reappointment and retention after layoff).
Persons Provided Preference	Combat era veterans; campaign veterans; disabled veterans; handicapped persons; certain spouses of dead or disabled veterans, of M.I.A.'s and P.O.W.'s, of handicapped persons. (Excludes veteran retirees of military or public employment systems.) Definitions included.	Veterans, veterans' spouses; other dependents of veterans; disabled civilians (no definitions).
Veterans Covered	Veterans of war, campaign, or expedition and all veterans with 30% or more disability who were honorably discharged; excludes non-disabled retirees and reservists.	Wartime veteran, other than dishonorable discharge; after 01-31-55, non-wartime veteran with 180 days service, honorable discharge; retired military; possibly reservists, etc.

	New Law	Former Law
Procedures	Tie-breaker when applicants are substantially equally qualified.	If written exam, disabled veterans--10 points; veterans--5 points; disabled civilian--no points.
Nature of Preference	Relative. Disabled veterans and handicapped persons preference eligibles when qualifications are substantially equal.	Absolute (entitlement) in addition to points.
Terms Defined	Active duty Disabled veteran Eligible spouse Initial hiring Position Public employer Substantially equal qualifications Veteran War or declared national emergency Mental impairment	Veteran Surviving spouse Per cent War or declared national emergency
Covered Employers	Any department, office, board, bureau, commission, agency or other instrumentality of the executive, legislative or judicial branch except community colleges and the University System. Any county, city, or town except school districts, vo-tech centers, special purpose districts, authorities, or other political subdivisions of the state.	"In every public department" and "All public works" (possibly include contractors) and any county and city.
Covered Positions	Permanent or seasonal but not temporary positions; not elected officials or their immediate or first-line aides; not elected officials of boards, commissions, committees, or councils; not appointments by elected officials when provided by law; not	No positions specifically exempted.

	New Law	Former Law
	department heads appointed by a mayor, city manager, county commissioner or other chief executive officer of a local government; not an independent contractor or employment by an independent contractor.	
Length of Preference	15 years after separation or 5 years after effective date. Disabled veterans, handicapped persons and certain spouses receive preference as long as disability exists. Surviving spouses receive preference as long as unremarried.	No limit.
Restrictions on Eligibility	1 year residency for state jobs. 30-day residency for local jobs. U.S. citizenship.	1 year residency for state jobs. Resident at time of application for local jobs. No preference for refusal to serve on active duty or to take up arms.
Informal Enforcement Provisions	Informal review by hiring authority within 15 days of written request.	No administrative review.
Judicial Review	If informal review unsatisfactory, petition to District court within 90 days.	Direct petition to District Court for 2 years.
Remedy	Reopen selection process. Reasonable attorney fees and courts costs. No other relief permitted.	Reopen selection process (possibly back pay and directed hiring).
Rulemaking Authority	Department of Administration. (Must consult with SRS on rules regarding certification of handicapped persons.)	None.

APPENDIX E

QUESTION RESPONSE ANALYSIS

The following continuums show the general responses to the interview questionnaire in the order of the frequency with which they were mentioned. The most frequent problems or ideas are mentioned first.

Question 1: Given existing antidiscrimination legislation, what problems could have occurred in negotiating and implementing contracts if all promotions had been subject to absolute veterans' preference?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem+
An assumption that the law would prevail over the contract.	34	100
Specific problems:		
Court challenges because of state law conflicting with federal antidiscrimination laws.	12	35
Negotiating contract language not in conflict with antidiscrimination laws.	10	29
Possible impasse or possible strike issue could result.	5	15
Negotiating contract language to protect women and minorities and non-veterans.	4	12
No problem because the law would prevail. *Veterans' preference was sanctioned by law even though it had some discriminating elements.	3 1*	9

Question 1 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem+
Women and minorities would have been discriminated against. *Most veterans are male.	13 4*	38
Problems in implementing EEO/Affirmative Action.	7	21
Problems in implementing seniority clauses.	6	18
Morale problems created in the work force. Hard feelings resulting among employees.	6	18
Necessitating the reopening of contracts.	4	12
Loss of federal contracts because of not meeting EEO/Affirmative Action goals.	2	6
Decline in the quality of work because it would not be a criterion for promotion.	2	6
Promotions would eventually fill nearly all upper level jobs with preferred people.	2	6
General problems in filling job positions because of a lack of a chance for advancement.	1	1

+ Percentage = number of respondents ÷ 34. Percentages are rounded. These percentages are used solely for the purpose of gaining an idea of the areas that seem to be of most concern.

Question 2: In your judgment, what would have been some specific problems that could have arisen in negotiating and implementing the use of performance evaluations as a basis for promotions?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
The law would supercede the contract. Performance evaluations would be valueless if there was a minimally qualified veteran versus nonveterans. *Veterans could challenge any promotion.	19 3*	56
Evaluations could be used among veterans as a group and among nonveterans as a group. *This could cause a split in a union's membership making contracts hard to ratify.	13 6*	38 18
Less qualified employees in public employment	5	15
The subject nature of the evaluations would be hard to negotiate.	3	9
Employee moral would degenerate because no matter how hard a nonveteran worked, a minimally qualified veteran would get promoted.	2	6
Law would prevail - therefore no problems.	1	3
No problems because it is not a negotiable item.	1	3
Not a mandatory subject of collective bargaining. However, the impact of an evaluation's use in determining promotions would be negotiable. (continued on the next page)	1	3

Question 2 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Specific problems mentioned by this individual are as follow: Would performance evaluations be used to determine minimum qualifications? Would the most recent evaluation be used? What weight should be given to each factor in the evaluation? When dealing with two or more minimally qualified veterans, would performance or seniority prevail in promotion decisions?		
Responses of "unknown."	3	9

Question 3: Is there a possibility that the use of performance evaluations as a basis for promotions might have been eliminated from promotion clauses because of absolute veterans' preference? Why?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Those answering "yes."	20	59
Specific responses:		
It would be irrelevant because an outstanding performer would get passed over if he/she was a non-veteran and a veteran was applying. To be used, employees would have to be split into veterans and nonveterans with each group being considered separately.	11	32
The law would supercede the contract. A veteran could challenge the promotion of a nonveteran based on a performance evaluation.	5	15

Question 3 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Specific responses under "yes" continued.		
It would be a moot point if preference determined promotions. However, evaluations could be used among preferred candidates.	2	6
However, chances are that a change wouldn't occur until the legislature had a chance to clarify its intent.	1	3
Unions prefer seniority. Preference would prevail where there was a minimally qualified veteran.	1	3
Those answering "no."	10	29++
Specific responses:		
Evaluations could be used (may even be necessary) to determine minimum qualifications of veterans.	5	15
Performance evaluations are a separate issue as far as collective bargaining is concerned.	2	6
A position could always be available where no veterans were involved.	1	3
Unlikely because of infrequent use.	1	3
Not a negotiable subject.	1	3
Those who responded "unknown."	4	12

++ Difference is caused from rounding to full percentiles.

Question 4: Assuming absolute preference, what problems could have occurred in negotiating and implementing seniority clauses/articles, layoff clauses, and recall clauses in public contracts?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Number answering that the law would prevail.	22	65
Specific problems:		
Contracts would have to be renegotiated.	8	23
Because law would prevail, few or no problems would exist.	7	21
Problems in negotiation could arise over the nullification or superceding of seniority considerations or over the protection of nonveterans' rights.	5	15
Problems could include impasses [unfair labor charges (bargaining in bad faith)], strikes, or lawsuits.	2	6
Might necessitate the negotiation of separate clauses; one for veterans; one for nonveterans. Possible that the clause covering nonveterans would never go into effect because of the large number of veterans in Montana.	7	21
Seniority could only be used as a determining factor among either veterans or nonveterans.	7	21
Possibility of less qualified public employees leading to mediocrity in public service.	3	9
Morale problems could be created.	3	9

Question 4 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Difficulties could arise in negotiating the wording of contracts.	3	9
Negotiations would only fill in narrow gaps such as among the veterans, who gets the job? The most senior?	2	6
Seniority system would no longer be a way to protect nonveteran jobs.	2	6
Females and minorities would be greatly affected since they represent a smaller percentage in the military.	2	6
Those who answered "unknown."	2	6

Question 5: Assume that during a temporary layoff a situation had arisen involving a promotion or transfer to a different position (or classification). Also, assume that the only available individuals who could have been promoted or transferred were employees who had been retained solely because of absolute veterans' preference.

What problems could have developed in implementing job posting/filling articles of a contract in this type of a situation?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Grievances and court battles due to cases of discrimination, especially because of people being female or minorities.	12	35

Question 5 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Qualified people may not get promoted.	5	15
Applicants may not be very qualified for the job.	4	12
Problems in deciding among the veterans.	4	12
The law would prevail. Therefore, no problems would exist.	4	12
Conflict could arise over the question of the seniority of people on layoff.	3	9
Work performance could decline substantially after the article was implemented.	1	3
Transfers may not have been made between similar positions.	1	3
Position qualifications would have to have been carefully evaluated in order to determine minimum qualifications that would have been necessary.	1	3
The vacancy would not get filled under such a situation.	1	3
Those that responded "unknown."	6	18

Question 6: What general problems could have developed in negotiating and implementing job posting/filling articles of a contract if absolute veterans' preference had to have been honored?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
The state law would conflict with discrimination laws and court cases could have resulted.	9	26
Negotiations would be frustrated because of challenges to the legality of state law over federal law.	6	18
Grievances and arbitrations would probably increase.	6	18
The law would prevail. Therefore, no problems would result.	6	18
Careful analysis of job qualifications and the determination of minimum qualifications and choices among veterans.	5	15
Loss of qualified employees might lead to mediocrity in government.	5	15
Contract language would have been difficult to negotiate.	4	12
Problems in protecting the rights of women and minorities.	1	3
Because absolute veterans' preference is a promanagement provision, management would probably have had to make some concessions on other items at the bargaining table.	1	3
Nonveterans would have been discriminated against.	1	3
Possible problems in reserving some job openings for internal applicants only.	1	3

Question 6 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Problems in negotiation: How should competing claims be balanced? What criteria should be used or could be used in the selection process?	1	3
Those responding "unknown."	3	9

Question 7: Is it possible that a separate and specific grievance procedure would have had to have been negotiated to deal specifically with grievances arising because of absolute veterans preference? Why?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
"No" answers:	25	74
Specific responses:		
Disputes would probably end up in court.	15 (includes * below)	44
Separate substantive clauses may have had to have been negotiated rather than separate procedures.	13 7 further mentioned that disputes could go to court.*	38
A grievance procedure is designed to deal with all grievances regardless of the cause.	3	9
Yes, because absolute preferred persons would have different rights, status, and entitlement to employment. If a person has an absolute right to a job, then different discipline and grievance rights would apply.	2	6

Question 7 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Probably such a situation would have occurred since only a veteran or a handicapped person (other preference eligible) would grieve a veteran appointment.	1	3
Each master contract has its own procedure with individual agency differences listed in a supplement. It is possible that a separate and specific procedure would have been negotiated. However the trend has been to have as few separate procedures as possible.	1	3
It is possible but such a contract would be hard to ratify because it would be viewed as a superior clause for preferred persons.	1	3
No special procedure would be necessary if the preference did not attach to permanent employees subject to dismissal in a grievance/discipline proceeding.	1	3
Those responding "unknown."	3	9

Question 8 was a follow-up question to question 7. Eight individuals answering question 7 by saying that cases would probably end up in court because of the preference being backed by statute indicated the same answer for question 8. (These are indicated by **.)

Question 8: Assume that one grievance procedure had had to be used for grievances involving nonveterans and that a second and separate grievance procedure had had to be used for grievances resulting from absolute veterans' preference.

What problems could have arisen in negotiating and implementing these separate types of grievance procedures?

Question 8.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
The substantive clauses would need to be different for two categories of employees. This would cause problems of equity for females and all nonveterans.	11	32
Problem of how to word the contracts.	10	29
Veterans could go to court.	8**	24
Because veterans could go to court, a standard grievance procedure may not solve anything.	1	3
No problems. (No further explanation given.)	1	3
No answer to the question or referral to question 7.	5	15

Question 9: What other problems in negotiating and implementing Montana public sector contracts might have been created by absolute veterans' preference?

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Employee morale could be substantially affected because hard work and good job performance would not contribute to success.	11	32
The quality of work might decline because rewards for good work would not be available and success would not depend on competence.	11	32

Question 9 continued.

Problems mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
Loss of qualified employees.	11	32
More grievances and lawsuits because of contract violations or discrimination cases.	6	18
Older and younger nonveteran employees and women and minorities would have less job security.	5	15
Possible hard feelings between co-workers.	4	12
The question of how far to extend the contract would have to be solved.	2	6
Frustrations may carry over to other negotiation issues.	2	6
Problems with administering EEO/Affirmative Action.	1	3
Possible work slowdowns, productivity decreases, negotiation demands for job security and severance pay.	1	3
Diminished status of seniority as a factor in promotion and recruitment.	1	3
It would be inconvenient in explaining to someone why they did not receive a job, in working with affirmative action plans and goals, and in working with co-workers whose morale is low.	1	3

Seven respondents especially mentioned in answers to different questions that the preference also applied to spouses, widows, dependents, and disabled civilians. This would increase the scope of the problems.

Question 10: What benefits in contract negotiation and implementation might have resulted from absolute veterans' preference?

Benefits mentioned	Number of respondents mentioning the problem (* indicates specific mention)	Per cent of respondents mentioning the problem
None.	15	44
Benefits would have been great for the preferred group, but not for others.	8	24
Subjectivity in promotions and negotiations would be removed because the law would prevail. However, the disadvantages outweigh any advantages.	5	15
A lot of grievances may have never happened because seniority and qualifications would have no bearing on promotions.	1	3
There may have been more reception to the use of productivity contract clauses in promotions, layoffs, and recalls.	1	3
Possibly some clumsy contract language could have been eliminated.	1	3
Realization that the legislature has a greater impact on working conditions than unions could increase political activism on the part of employees.	1	3
It is possible that an absolute preference would not have been impossible to live with. The veteran would still have to be minimally qualified.	1	3
Response of "unknown."	1	3