Towards a "Civil" Service from Patronage to Protections

By: Mark A. Porter

"I don't care anything about your politics, all I want is somebody that is honest and competent to do my work."

President Grover Cleveland – 1895

One of the greatest tragedies that come from the passing of generations is that those who remain are unaware of the struggles and triumphs of those who have left.

The term "civil service" to most public employees simply means a structure of testing for hiring and promotions that is supposed to ensure that merit – and not political patronage – is the yardstick for public employers.

For some public employees – especially those at the Federal and State level – it also means the system of employee appeals on matters of discipline and discharge.

The concept of a "civil service system" appears at first glance to be a yawning system of grid charts for classifications and pay – followed by reams of dry decisions that sometimes seem to favor government managers.

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The history of the civil service, however, is anything but boring. It includes the assassination of a President – and efforts by all political parties since 1801 to either protect the civil service or destroy it. Here's a quick history to show why a "civil" service remains important.

Political commentators from both the Right and Left side of the spectrum all agree that rampant political patronage was unstoppable from 1800 through the end of the Civil War in 1865. "To the victor goes the spoils:" and so the *"spoils system"* of political patronage and hiring/firing took over the Federal government.

Federal employees were expected to cough up *"political assessments"* to get hired – and then to remain – in their jobs. With each new presidential administration, Federal departments and employees were broomed-out by the new administration – and the practice began anew.

The first landmark US Supreme Court case, *Marbury – v – Madison,* involved the lastminute appointment of a Federal judge by the outgoing President John Adams in early 1801.

The incoming president who won the 1800 election was Thomas Jefferson – and he refused to have the appointment papers delivered to Marbury. Thus was kicked off the first

full-scale legal battle over political patronage.[1]

The pay-for-hire system of patronage grew dramatically through the mid-1800s, and presidents often found that a great deal of time was spent trying to appease patrons who had supported them, by finding jobs in the Federal government. Congress also began actively pushing patronage hiring.

Then the patronage system exploded along with the Nation during the Civil War, 1861-1865. As often times happens in times of war, government agencies were created and greatly expanded in a hurried fashion to administer everything from uniforms to food and equipment; as well as hospitals; and, sadly, numerous national cemeteries.

By the mid-1860s, efforts were beginning to appear in Congress that tried to create a true "merit" system for Federal employment. None got very far however: the party in power was suspected of trying to protect those employees currently working – and the party out of power needed the political support to keep the funds flowing for the next election cycle.

In 1876, Rutherford Hayes of Ohio accepted the nomination for President. During his acceptance speech on July 8th, Hayes made civil service reform a platform of his candidacy. He decried the "temptation to dishonesty," and said that patronage "destroys the independence of the separate Departments of the Government."

The 1876 election deadlocked; the Hayes was elected by a compromise deal between the political parties. Despite the deal, Hayes again demanded an end to patronage in his inaugural speech – but a close friend noted in 1880 that Hayes' own cabinet members ignored his directives to clean up the civil service.[2]

Then in 1880, James A. Garfield was elected president with the strong support of a civil service reform movement. But because vice presidents were still picked by political insiders, Garfield's backers had picked Chester A. Arthur as vice president. Arthur was a member of a group of pro-patronage politicians called "the Stalwarts," and had been kicked out of a political job in New York City by President Hayes on allegations of "corruption."

Just 12-weeks after his inauguration, President Garfield was shot at point-blank range while walking through a railroad station in Washington DC. The shooter, who quietly awaited his arrest, proclaimed himself to be "a Stalwart," who had been denied a patronage job.

Garfield lingered for over 2-months before dying; and Chester Arthur – who had been picked as vice president because of his Stalwart connections – was sworn in as the 21st president.[3]

The civil service reform movement panicked – but to their surprise, President Chester Arthur actively and aggressively supported legislation by Ohio Senator George Pendleton, and the Pendleton Civil Service Reform Act became law in January, 1883.

The Pendleton Act initially applied to Federal departments with more than 50 employees – at the time, about 11% of the Federal work force. But the next President, Grover Cleveland, rapidly expanded its coverage – and the merit system of hiring and promotion continued to expand until the eve of World War II, in the late 1930s.

The idea of developing a *career* as a civil servant gained increased importance in 1923, when the Federal government adopted a retirement system. In today's times – when pension systems have been gutted and self-funded "retirement funds" have collapsed, I have to ponder again what wisdom has been lost with the passing of former generations.

Another rapid, wartime expansion of Federal responsibilities during World War II seriously damaged the Federal civil service system. In 1949, former President Herbert Hoover led a bipartisan commission that again tried to return to the idea merit and honesty into the public workforce.

In 1978, the Civil Service Reform Act created the Federal Labor Relations Authority ["FLRA"] that controls Federal employee labor relations and disciplinary appeals for those FOP lodge members who carry a badge that reads "U.S."

In 1962 President Kennedy issued *Executive Order 10988*, which began the path towards the "modified" system of bargaining that Federal unions use today. Bargaining, and sometimes ultimate outcomes, are controlled by the Executive Branch through the FLRA. But grievance arbitration and appeals have made their way into some of the Federal contracts and regulations.

Michigan's civil service history – including the seamy history of patronage – closely parallels that of the Federal government.

It must be kept in mind that when we talk about Michigan's "civil service," we are really talking about two entirely separate systems. The first system is for the local public employees of counties, townships, cities, villages, schools and colleges. The second civil service system is for workers who are directly employed by the State.

The 1930s showed two very different paths for these two disparate groups. In 1935, the Michigan legislature passed an act creating "The Firemen and Policemen Civil Service System," or *Act 78*," as it is known today.

The Act applied to any local government that wanted to adopt it through an election – and that "opt-in" system still exists today. 4 Act 78 requires that hiring and promotions be done only through "qualifications and fitness to be ascertained by competitive examinations."[5]

It also limits suspensions and discharges to offenses such as insubordination, incompetency, dishonesty, and immoral conduct – and provides an appeal process to the local civil service commission.[6]

State employees, however, remained as cannon fodder for the Michigan legislature and executive branches during the 1930s. A commentator wrote that Michigan resembled the

Federal government of the 1800s by "carrying the traditional burdens of nepotism, jobbery and spoils."[7]

In 1939, the State legislature passed *"the Ripper Act,"* which "ripped" nearly 40% of the State's employees out of the civil service merit and protection systems – and dumped them back into the cesspool of political patronage.

A political science journal noted that the personnel turnover for State employees who had become patronage patsies immediately jumped to 21%; and *entire* State employee turnover rate jumped to 27.5% in just one year, from 1939-1940.[8]

Finally, in 1940, the voters amended the Michigan Constitution to create a true Civil Service Commission for State employees. A member of the first Commission wrote in 1945 that the turnover and discharges rates for State employees dropped dramatically during the next 5-years.[9]

Over the next two decades, however, public employees still harbored an inherent distrust – many times unfounded – about the civil service systems at the State and local levels. They certainly did not want to return to the "bad old days" of patronage – but they also noted that the State and some local civil service commissioners were appointed or endorsed by the same public employers who wanted to keep the system *status quo.*

Thus the movement for public employee unions began in earnest – spurred on by the successful labor contracts in the private sector. In 1959 Wisconsin passed the Municipal Employee Relations Act, which became the landmark beacon for other states such as Michigan.

The Michigan breakthrough came in 1965 with the passage of the Public Employment Relations Act, or *PERA,* which is the foundation today for the unionization of all public employees who work for local governments; authorities; schools; universities, and colleges.

Although public safety employees tend to recite *"Act 312"* for compulsory contract arbitration, without the bedrock of PERA, there would be no Act 312.[10]

Michigan's Courts have ruled that public employee labor contracts supersede local civil service regulations and Act 78's provisions. 11 That said, many current-day labor contracts still provide two choices for discipline appeals: one to an outside arbitrator – and the other to the local civil service commission. An employee/union, however, can choose only one avenue of appeal.

Michigan's *State* employees, by Article 11, §5 of the 1963 Michigan Constitution, remain in *"the classified service,"* which is directed and administered pursuant to the State's Constitution and statutes by the Michigan Civil Service Commission.

Having represented State employees in civil service appeals, I've found that the State's system closely resembles grievance arbitration through labor contracts. The threshold for showing "just cause" to discipline or discharge a State employee from the classified service is somewhat different than those contained in labor contracts for local public employees.

That said, the State's Civil Service system is above board, tightly controlled by published rules and regulations – and it is certainly more just in its outcomes than those that were endured by State employees in 1939.

There remain today a few outliers who actively fight civil service reforms, merit systems, and the just treatment of public employees.[12]

A few – and thankfully *only* a few – county sheriffs still try and impose political punishment on deputies, corrections officers, and civilian employees who are "suspected" of being "friends" with political opponents.

In those departments, employees find assignments abruptly changed; receive threats of eminent discipline and/or "decertification;" and are subjected to other tactics that supposedly were eliminated in 1883 and 1935.

It doesn't take an armchair psychoanalyst to recognize that those types of bullying tactics are the mark of extremely insecure individuals, masquerading as "leaders" – and who are truly unworthy of the public trust that has granted them the *temporary* honor of wearing a star.

For that reason, the choices made by employees as to which law enforcement union will actively and aggressively represent and defend them remain extremely important. I close by returning to Rutherford B. Hayes' acceptance speech in 1876:

...the true rule is that honesty, capacity and fidelity constitute the only real qualifications for office.

1 *Marbury – v – Madison,* 5 US 137 (1803). The Court denied Marbury's commission, creating the doctrine of Constitutional supremacy as the ultimate law of the land.

2 The memoirs of Thomas Donaldson, at the Rutherford B. Hayes Presidential Center

3 There was never any claim, nor proof of a conspiracy regarding the assassination.

4 MCL 38.517a . A local community can also "opt-out" of Act 78 by election - MCL 38.518; www.mileg.org

5 MCL 30.507

6 MCL 38.514

7 McCloskey, "The Case for 'Foot-in-the-Door,'" National Municipal Review (March, 1945)

8 Litchfield, "Another Chapter in Michigan Civil Service Reform," American Political Science Review (Feb 1941)

9 McCloskey, fn-7 above.

10 PERA at MCL 423.201 et seq; Act 312 at MCL 423.231 et seq.

11 Pontiac Police Officers Ass'n – v – City of Pontiac, 397 Mich 674 (1976)

12 An outlier is somebody who chooses not to be a part of a group or community – a hermit-like outsider.