A STUDY OF THE IMPLEMENTATION AND UTILIZATION
OF THE MERIT SYSTEMS PROTECTION BOARD
IN ADVERSE ACTION CASES

DISSERTATION

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by

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The purpose of this study was to examine the effectiveness of the Civil Service Reform Act of 1978 on the federal civil service through the establishment of the Merit Systems Protection Board. The Civil Service Reform Act of 1978 was designed to correct many of the abuses which existed under the Civil Service Commission related to appeals procedures and inefficiency within the federal government.

The majority of data collected for this study were obtained from the Dallas field office of the Merit Systems Protection Board, which covers approximately 275,000 federal employees in a five-state area. Additional data, related to all of the regional field offices of the Merit Systems Protection Board, were obtained from Washington, D.C. Two research tools were used to collect data from the Dallas field office: a questionnaire and a personal interview.

Three hypotheses were examined. Hypothesis I stated that the creation of the Merit Systems Protection Board
has not given presiding officials any additional authority to handle or decide adverse action cases brought within their jurisdiction. Hypothesis II stated that the length of time needed to process adverse action cases has not decreased since the creation of the Merit Systems Protection Board. Hypothesis III stated that the creation of the Civil Service Reform Act of 1978 has made no difference in the number of adverse action cases brought by federal employees against federal agencies. The Chi-square test (two-tailed) and the One-sampled t-test (one-tailed) were employed to determine that none of the hypotheses was supported.

The authority of presiding officials has increased under the Merit Systems Protection Board. The number and the amount of time necessary to process adverse action cases has also decreased under the Merit Systems Protection Board. However, the overall effectiveness of the Merit Systems Protection Board will only be realized after an extended period of time.
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CHAPTER I

INTRODUCTION

Civil service legislation in the United States began with the passage of the Pendleton Act of 1883. This legislation gave Congress the right to regulate and control wages, hours, and other terms and conditions of employment (4, p. 636). The Pendleton Act, also known as the Civil Service Act of 1883, is considered to be the first attempt at introducing a merit system within the federal government. "Reform in 1883 meant starting the process of eliminating the spoil system and implementing a merit system based on the use of competitive examinations in filling federal jobs" (11, p. 196). One of the major aspects of the Pendleton Act was the establishment of the Civil Service Commission, which was responsible for setting and implementing merit system principles within the federal government (7, p. 595). However, the Pendleton Act and the issuance of Executive Orders during the 1960's and 1970's were unable to eliminate many labor problems which occurred within the federal government.

The Civil Service Reform Act of 1978 created the Merit Systems Protection Board, which was designed to eliminate labor problems related to appeals made by federal employees.
The Federal Employee Appeals Authority previously handled appeals made by federal employees (14, p. 3).

The purpose of this study was to determine if the Merit Systems Protection Board has improved upon the effectiveness of the federal government to handle adverse action cases. The Merit Systems Protection Board was compared to the Federal Employee Appeals Authority to determine if the rights of federal employees in adverse action cases have improved.

Hypotheses

Hypothesis I.—The creation of the Merit Systems Protection Board has not given officials any additional authority to handle or decide adverse action cases brought within their jurisdiction.

Hypothesis II.—The length of time needed to process adverse action cases has not decreased since the creation of the Merit Systems Protection Board.

Hypothesis III.—The creation of the Civil Service Reform Act of 1978 has made no difference in the number of adverse action cases brought by federal employees against federal agencies.

Background and Significance of the Study

On October 13, 1978, the President of the United States signed into law the Civil Service Reform Act of 1978. This
piece of legislation became effective on January 11, 1979 (8, p. 1).

Under the Civil Service Reform Act of 1978 (CSRA), the old Civil Service Commission was abolished and replaced by two new agencies. These two agencies are the Office of Personnel Management (OPM) and the Merit Systems Protection Board (MSPB).

The OPM was charged with developing personnel management practices and regulations while the MSPB was given responsibility for protecting the system from political abuses and ensuring that merit principles were adhered to (9, p. 170).

The OPM is considered to be the primary personnel agency for the executive branch of government. This agency is responsible for developing personnel policies and procedures which will improve the efficiency and performance of federal government employees. OPM is given the responsibility to delegate and decentralize personnel practices to the numerous federal agencies within the federal government (17, p. 3). The federal government employs the largest work force in the United States (approximately 2.9 million workers by 1978), and the creation of both the OPM and the MSPB are designed to safeguard the rights of the federal agencies, federal employees, and the public (17, p. 3).

The Merit Systems Protection Board is primarily responsible for protecting the concept of merit principles within
the federal government. The MSPB is an independent, quasi-judicial agency which has the primary responsibility of hearing appeals by federal employees dealing with adverse action. "Employees can appeal as a matter of right and are guaranteed a hearing in all cases appealable to the Board" (15, p. 1). An adverse action taken by an agency against an employee includes removal, suspension for more than fourteen days, reduction in grade or pay, and furlough without pay for thirty days or less (2, p. 1135).

Paula Latshaw, Chief Appeals Officer at the Region 6 Dallas field office in Texas, stated that an adverse action is an action taken by an agency against an employee for disciplinary or nondisciplinary reasons which affects the employment of that individual. However, federal employees have certain rights granted to them with respect to adverse actions. They are listed below.

1. The federal employee must be given at least a thirty-day advance written notice (except in those instances in which it is believed that a criminal act has been committed).

2. The federal employee must be given a reasonable time to reply either orally or in writing and to provide documentary evidence in support of his claim.

3. The federal employee has the right to be represented by an attorney or other representative (including union officials).
4. The federal employee is entitled to a written decision at the earliest practical date by the agency, specifying the reason for adverse action.

5. Finally, a federal employee has the right to appeal an adverse action decision made by an agency to the MSPB (1, p. 423).

Employees who have been affected by an adverse action initiated by an agency must file an appeal with a regional field office of the MSPB within twenty calendar days after the final decision of the agency has been rendered. In adverse action cases, the MSPB has placed the burden upon the agency to establish a "preponderance of the evidence" that it was justified in applying this action. Presiding officials located at the appropriate regional field office will make a decision which will become effective thirty-five days after it has been issued. However, once the final decision of the regional field office or the National Board has been made, this decision can be appealed to the U.S. Court of Appeals or Court of Claims if there are no questions of discrimination involved in the adverse action (15, p. 4).

"Employees in recognized bargaining units may have the option under their negotiated agreements, of asking their union to seek arbitration instead of appealing to the Board. An employee may pursue either route, but not both" (15, p. 2). An arbitrator's award under an adverse action decision can be appealed to a Circuit Court of Appeals or Court
of Claims, but the award cannot be reviewed by the Federal Labor Relations Authority (FLRA) (5, p. 138).

However, in discrimination cases involving only "adverse action," the final decision rendered under the negotiated grievance procedure may be reviewed by the MSPB or the Equal Employment Opportunity Commission (3, p. 102). It should be remembered that if a final decision is not rendered by the MSPB within 120 days, the employee may file a civil action (12, p. 1).

When an employee files a formal complaint with an agency involving discrimination, that employee can obtain judicial review of the agency's final decision or he may file a civil action in court 120 days after the filing of the complaint with the agency if a final decision has not been reached by that agency. The employee, after filing a formal complaint of discrimination with the agency can only appeal to the MSPB if the discrimination is related to adverse action (12, p. 1). If the employee is dissatisfied with the initial decision of the regional field office of the MSPB, the employee can petition the National Board for review of the decision. After a decision has been rendered by the National Board, the employee may file a petition within thirty days after the final Board's decision to the EEOC, or the employee can obtain judicial review of the final Board's decision in a federal district court if that employee does not file a petition with the EEOC (12, p. 1).
The Merit Systems Protection Board has effectively replaced the Federal Employee Appeals Authority (FEAA), and the National Board has also replaced the Appeals Review Board (ARB). The Federal Employee Appeals Authority and the Appeals Review Board were created on July 1, 1974 (13, p. 2). The major distinction between the FEAA and the MSPB can be found in the fact that under the new MSPB system, federal employees have the statutory right to appeal decisions made by their respective agencies. The FEAA and ARB were directly under the control of the Civil Service Commission, but the MSPB is considered to be a quasi-judicial agency that remains independent and not under the control of the Office of Personnel Management. The FEAA performed most of the functions that are now engaged in by the MSPB (13, p. 2).

Definitions

Adverse actions.—Adverse actions are those actions taken by a federal agency against federal employees which results in "removals, suspensions for more than fourteen days, reductions in grade and pay, and furloughs without pay for thirty days or less" (2, p. 1136).

Agency.—An agency includes any federal agency subject to the provisions of the Civil Service Reform Act of 1978. This includes an executive agency, the Administrative Office

**Appeal.**—An appeal is a formal petition filed by a federal employee to the appropriate regional field office of the MSPB to review a final decision of the agency where the decision involves an adverse action. Appeals which are not made within the specified time limit (twenty days after the final decision of the agency) will not be considered unless the federal employee can show good reason for the delay (15, p. 2).

**Appellant.**—An appellant includes any federal employee covered by the authority of the MSPB who has petitioned a regional field office of the MSPB to review the decision of an agency involving an adverse action. Coverage includes federal employees in the competitive service who are not serving a probationary period or who have completed one year of current, continuous employment. Additional coverage includes employees with preference eligibility in an executive agency, and employees in the U.S. Postal Service or Postal Rate Commission who have completed one year of continuous service with the federal government (2, p. 1135).

**Civil Service Reform Act of 1978.**—The CSRA has effectively abolished the Civil Service Commission and replaced it with the Office of Personnel Management and the Merit
Systems Protection Board. This act was designed to eliminate many of the abuses prevalent within the federal civil service (14, p. 1).

**Federal Labor Relations Authority.**—The FLRA was created by the Civil Service Reform Act of 1978. It has effectively replaced the Federal Labor Relations Council and is now responsible for deciding unfair labor practice cases, representative elections, negotiation disputes, and arbitration award reviews. Title VII, which established the FLRA, effectively abolished Executive Order 11491, and provided a statutory basis upon which federal employees may form, join, or assist labor organizations for the purpose of bargaining collectively (10, pp. 8-9).

**Field Offices.**—Regional field offices of the MSPB are located in eleven major cities including Atlanta, Boston, Chicago, Denver, Dallas, New York, Philadelphia, St. Louis, San Francisco, Seattle, and Falls Church, Virginia (14, p. 18).

**Merit Systems Protection Board.**—The MSPB is an independent quasi-judicial agency which protects federal employees’ appeal rights and protects federal employees against political pressure and illegal agency personnel practices. The CSRA gives federal agencies the authority to establish appropriate performance appraisal systems for their
respectively agencies; and finally, it gives federal agencies the right to take adverse action against employees who do not meet agency requirements with decisions appealable to the MSPB (17, p. 5).

**National Board.**--The National Board consists of a Chair, Vice Chair, and Member appointed by the President and approved by the Senate. The three member National Board, which is located in Washington, D.C., reviews petitions for appeals made by federal employees dissatisfied with the decisions of the field offices. The Board members serve seven year overlapping, nonrenewable terms. "Board members may be removed only for inefficiency, neglect of duty, or malfeasance in office" (16, p. 1).

**Office of Personnel Management.**--The OPM is the central personnel agency for the executive branch of government. "Its mission is to develop personnel programs which will improve governmental management and efficiency and, thus, federal productivity" (17, p. 3).

**Office of Special Counsel.**--The Office of Special Counsel is an independent agency established by the Civil Service Reform Act of 1978. The Special Counsel is independent of the MSPB, and the primary responsibility of this Counsel is to investigate and prosecute those federal agencies and agency heads who engage in prohibited personnel practices.
The Counsel also provides protection to federal employees who report to it prohibited personnel practices, mismanage-
ment, government waste, and abuses of authority in the federal government (18, pp. 1-2).

Presiding officials.—Presiding officials are located at the regional field offices and have the responsibility for hearing and deciding adverse action cases brought by federal employees. These officials usually possess a law degree and are well-versed in federal personnel law (1, p. 578).

Region 6 MSPB.—Region 6 is the regional field office of the Merit Systems Protection Board which is located in Dallas, Texas. This region covers approximately 275,000 federal employees in five states.

Scope of Study

This project was limited to Region 6 of the MSPB which includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and Swan Island. The regional field office in Dallas, Texas, was the major source for data collection. The Dallas field office is headed by Paula Latshaw who receives all adverse action appeals from federal employees located in this five state area. Within Region 6, there are 275,000 federal employees covered by the Dallas field office. Statistics covering the number of adverse action cases heard by Region
6 during Fiscal Years (FY) 1979 and 1980 were analyzed. These cases were compared to adverse action cases adjudicated during FY 1977 and 1978 under the FEAA.

Presiding officials working at the Dallas field office under the FEAA and the newly created MSPB were interviewed in great detail to analyze the effectiveness of the MSPB over the previous system. The basic limitation of this study was that it covered only one of the eleven MSPB regions in the United States. However, as previously stated, there are 275,000 federal employees who are eligible to appeal adverse action decisions by their agencies to the Dallas field office.

Methodology

There were two research tools used in this study. A questionnaire (Appendix A) was administered to each presiding official with the authority to hear and decide adverse action cases. A personal interview (Appendix B) was also conducted at the Dallas field office with each of the presiding officials.

These presiding officials are licensed attorneys who have been responsible for hearing and rendering decisions related to petitions for appeals filed by federal employees. At the Dallas field office six of the presiding officials now working under the MSPB were working under the FEAA. The composition of the presiding officials was six men and
four women. All ten of the presiding officials had previous experience in some aspect of the federal civil service. Presiding officials have been placed in all eleven regional field offices throughout the United States.

Each region has one chief appeals officer responsible for executing and administering the duties and responsibilities of their respective region. The Dallas field office (Region 6) covers federal employees in five states which includes approximately 275,000 federal employees.

Paula Latshaw, Chief Appeals Officer for the Dallas field office, administered a four-page questionnaire to each presiding official within her region. The questionnaire (Appendix A) was designed with the cooperation of Latshaw, and she had final approval over the sixteen questions included in the questionnaire. The questions contained in the questionnaire were related to some aspect of the MSPB, FEAA, and the CSRA. The objective of the questionnaire was to collect data from each of the presiding officials in relation to the three hypotheses.

There were ten presiding officials who completed the questionnaire administered to them by the Chief Appeals Officer. The structure of the questionnaire was designed to preserve anonymity. This process allowed each of the presiding officials to answer as he or she thought best.

The questionnaire was supplemented with a personal interview (Appendix B) which was conducted with each of the
presiding officials. The personal interview was designed to provide an in-depth analysis of the opinions and attitudes of the presiding officials as a supplemental tool to the questionnaire. Each presiding official was required to complete the questionnaire before the personal interview was conducted.

The personal interview was composed of twelve questions which were extensive and provided additional support to the questionnaire. Each question contained in the personal interview was followed by a statement asking the presiding officials to state their reasons why they answered as they had in relation to the question. The presiding officials were informed that their responses to these questions in the personal interview were designed to supplement their answers on the questionnaire and complete confidentiality had been maintained. Each personal interview was conducted at the Dallas field office, and a time limit of thirty minutes was placed on each interview session.

Statistical Treatment of Data

The statistical analysis for Hypothesis I was based on questions four and five contained in the questionnaire. Each presiding official had the opportunity to answer either yes or no in relation to these two questions. The personal interview also contained questions one and two which were related to the authority of presiding officials.
To test Hypothesis I, the presiding officials' responses to questions four and five in the questionnaire were analyzed by using the Chi-square test (Goodness of Fit) to evaluate whether there was a significant tendency for presiding officials to answer either yes or no in relation to their authority which they possessed under the CSRA. Since there were only two response categories, one degree of freedom was used at the .05 level of significance (6, pp. 309-311).

Hypothesis II was analyzed by data collected from the Office of Merit Systems Review and Studies pertaining to the processing time necessary to hear and decide adverse action cases under both the MSPB and the FEAA. Data were collected for FY 1975 through 1978 under the FEAA system at the regional level (Dallas). These data were compared to the processing time for FY 1979 and 1980 under the MSPB at the regional level (Dallas). To further support these data, question five in the personal interview was also related to the processing time of adverse action cases. The One-sampled t-test was used to analyze the differences in processing time between FY 1975 through 1978 operating within the FEAA and FY 1979 and 1980 operating with the MSPB (6, p. 225). Three degrees of freedom were used at the .05 level of significance since there was a four year base period from FY 1975 through 1978.
Hypothesis III involved the number of adverse action cases adjudicated under both the MSPB and FEAA. Data related to the number of adverse action cases were collected for FY 1977 and 1978 at both the national and regional level within the FEAA and compared to FY 1979 and 1980 within the MSPB at both the national and regional level. The Chi-square test (Goodness of Fit) was used to determine whether there was a significant increase or decrease in the number of adverse action cases during FY 1977 and 1978 prior to the creation of the CSRA and FY 1979 and 1980 after the creation of the CSRA. One degree of freedom was used at the .05 level of significance since FY 1977 and 1978 were combined with FY 1979 and 1980 to make up two separate categories. These data were supported by questions six, seven, and eight which were contained in the personal interview.

Limitation

Monetary limitations prohibited any personal visits with the National Board in Washington, D.C. In addition to this limitation, there was the question of the novelty of the act itself. Since its initial implementation, little if any information has been accumulated from each of the regional field offices in an attempt to compare their respective activities. However, there has been one important finding related to adverse action cases.
More than 85 per cent of the Merit Systems Protection Board adverse action decisions have upheld agency actions, demonstrating that, from the outset, federal managers are being judicious and careful in their use of the new flexibilities given them by the CSRA (17, p. 4).

Outline of Dissertation

Chapter I contains the introduction and basic purpose of this study. Chapter II contains the development of grievance procedures and civil service reform within the federal government. Chapter III contains the primary data collected from the questionnaires and personal interviews. Chapter IV contains the results of these findings and implications for future research.
CHAPTER BIBLIOGRAPHY


CHAPTER II

DEVELOPMENT OF GRIEVANCE PROCEDURES
AND CIVIL SERVICE REFORM

The purpose of this chapter is to examine the differences between public and private sector labor relations and the evolutionary process of grievance procedures in the public sector. The historical developments in civil service reform are traced through the creation of the Civil Service Reform Act of 1978.

Differences in Labor Relations Between the Public and Private Sector

Labor relations in the public sector have been placed in a different category than their counterpart in the private sector for a number of reasons. The creation of the National Labor Relations Act of 1935, the Labor-Management Relations Act of 1947, the Fair Labor Standard Act of 1938, and the War Labor Dispute Act of 1943 have excluded federal employees from protection in the area of labor relations. This exclusion from coverage has isolated federal employees from employees in the private sector (12, p. 18).

The sovereignty theory further isolated federal employees from employees in the private sector. The
sovereignty theory stated that the "government may not delegate its discretionary authority regarding its personnel, and that recognition and bargaining with unions constitutes such an illegal delegation" (14, p. E-3). This doctrine supported the contention that employees working in the public sector must show loyalty to the programs developed by their employers, and they must sacrifice their employment rights to the rights of the general public (12, p. 32). The sovereignty theory in the public sector has been equated to the theory of management's rights in the private sector. In the private sector, employers have the right to determine and establish those practices which are essential to the normal operations of business organizations. The sovereignty theory also assumed that the government employer was permitted to establish the terms and conditions of employment, and union intervention was not acceptable (21, p. 37).

The theoretical interpretation of the sovereignty doctrine as applied to government employees has been advanced (for nearly one hundred years) by government officials at all levels who believed that there could be no questioning of the decisions made by the state. Their logic was based upon the belief that government service is public in character, belonging to and responsible to the people of our country (21, p. 37).

Employment in the public sector has been viewed by many individuals as a privilege and not a right. Opponents who fear that labor relations in the private sector should not be incorporated in the public sector contend that employees
in the public sector were isolated from many of the abuses which have existed in the private sector. These opponents contend that employees in the public sector do not face the same problems as employees in the private sector. Four major differences exist between employees in the public and private sector.

1. Public employees have a significant influence on the determination of who is management; that is, they can engage in some form of political activity to obtain a more sympathetic employer.

2. Public enterprises cannot move; thus, public employees are free of fear that the employer may close up shop and move to a new location.

3. Public employees, at least those who have acquired an expectancy of reemployment, cannot be dismissed without due process of law; and all public employees are protected by the Constitution from discipline or discharge for discriminatory reasons or for exercising first amendment rights.

4. Public employees frequently have the benefit of an extensive system of statutory benefits which must be bargained in the private sector; among these benefits are tenure and other job security systems, sick leave, vacation pay, and retirement plans (26, p. 423).

These differences have placed employees in the public sector in a unique situation forcing them to justify their reasons why they need the right to bargain collectively. The basic defense used to support the position of public sector employees' collective bargaining rights has been that they need such rights to achieve the same equity which their counterparts have had in the private sector for many years (26, p. 421). Public sector employees contend further that
the process of collective bargaining fosters more labor peace than strife. Through the establishment of collective bargaining, public sector employees including those in the federal government can protect their rights as workers (26, p. 423).

Grievance procedures in collective bargaining contracts have contained the vital link which has assured employees in the private sector that their rights as workers have not been violated. However, grievance procedures in the public sector have not developed along the same lines as those in the private sector.

Grievance Procedures in Labor Relations

Grievance procedures have become an important part of the collective bargaining contract in the private sector for many years. These procedures have been considered the heart of a collective bargaining contract. The term grievance refers to a formal complaint made by an employee who believes that his employment rights have been violated in some manner (3, p. 397). However, grievance procedures have not been limited to employees but may include employers and labor organizations who also have the right to utilize the grievance procedures established under the collective bargaining contract. In 1945, the President's National Labor-Management Conference recommended that collective bargaining contracts contain grievance procedures designed
to eliminate conflict over the interpretation and application of such contracts (7, p. 107). Under the Labor-Management Relations Act of 1947, Section 9(a) stated that

Any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect and as long as the bargaining representative has been given the opportunity to be present at such adjustment (7, p. 130).

This section applied only to employees in the private sector covered by the act and excluded employees in the public sector. The establishment of grievance procedures in the federal government have not developed as rapidly as those in the private sector. The basic distinction between grievance procedures in the private sector and those in the public sector have been found in the development of the civil service system versus the collective bargaining contract in the private sector. In the private sector both labor and management negotiate over the terms and conditions of employment. Once the contract has been negotiated and agreed upon, both parties will submit any questions of interpretation or application to the grievance procedures contained in the contract. Grievance procedures contained in collective bargaining contracts consist of a number of steps, including

1. The employee takes the problem to his immediate supervisor, or he may choose to take it to his union representative and have the latter present it to the supervisor;
2. If the issue is not resolved, it is taken up at increasingly higher supervisory and managerial levels:

3. If the grievance remains unresolved at the highest internal level, it is submitted to arbitration for final and binding decision by an impartial arbitrator (14, p. E-2).

These grievance steps have been used by most parties in the private sector for many years. Both labor and management agree on the types of grievances to be handled and the steps necessary to process grievances. The grievance of an employee becomes an obligation for the union. The union itself may also process grievances on its own behalf (14, p. E-4).

In the public sector grievance procedures including those in the federal government may follow the same steps as those in the private sector except for one major difference. "A civil service commission or board of appeals is designated to have final jurisdiction over the grievance" (14, p. E-2).

The private sector does not allow the intervention of a third party until all steps in the grievance procedures have been exhausted. Arbitration is the last step in the grievance procedure in collective bargaining contracts in the private sector. The arbitrator is considered to be an independent, mutual third party who has been called in to settle a dispute between the parties with the decision being final recourse for both parties. The selection of arbitrators in the private sector is usually specified in the collective bargaining agreement. The American Arbitration Association
and the Federal Mediation and Conciliation Service provide panels of qualified arbitrators to parties which require their services (13, p. 498).

In the public sector the rights of federal employees to engage in the collective bargaining process and resolve grievances were not recognized until Executive Order 10988 was issued by President Kennedy in 1962 (22, p. 17). The establishment of this Executive Order and amended Orders were the first major attempts at resolving grievances within the federal government by providing federal employees with the right to join labor organizations. These Executive Orders were the results of extensive attempts to reform the federal civil service. Civil service reform in the federal government has been traced back to the 1830's with the development of federal labor organizations.

Development of Civil Service Reform

Labor relations in the public sector have faced many problems which have not existed in the private sector. Many of the economic issues which have become a vital part of the collective bargaining process in the private sector have been excluded from negotiation in the public sector. "Congress preempts the economic issues. Wages, pensions, medical care, vacations and holidays and insurance--all vital issues in the rest of the collective bargaining world--are determined by law" (12, pp. 22). In addition to Congressional limitations
over economic issues, public employees, specifically those in the federal government, have to deal with more ambiguous lines of authority. The organizational charts of private enterprises clearly indicate the lines of authority and chains of command for their employees. Public agencies have been faced with the problem of responding to the many different publics to which they have been accountable. "The agency employees may be asked to do something different by the chief executive, an influential member of the legislature, a clientele group, or a consumer group" (2, p. 6). These factors have not stopped federal employees from attempting to reform the federal civil service in a manner which will benefit their rights as employees.

The development of civil service reform has been traced back to the early 1830's with the creation of labor organizations within the federal government. The first labor organizations in the federal government were those organized by blue collar employees. These labor organizations were federal craft unions in the government naval shipyards (22, p. 13). The basic demand of these federal craft unions was the reduction in working hours to the ten-hour workday. President Van Buren in 1840, through the issuance of an Executive Order, granted federal employees the ten-hour workday (22, p. 13).

The period between 1829 through 1883 was considered to be the predominance of the spoil system within the federal
government (2, p. 17). The inauguration of President Andrew
Jackson in 1829 initiated the spoil system within the fed-
eral government.

The changes that Jackson made in the civil service must
be interpreted as those of a reformer anxious to see
the civil service more representative of its national
constituency as well as those of a party leader anxious
to pay off political debts (27, p. 12).

The spoil system continued to grow under the adminis-
trations of Presidents Van Buren, Harrison and Tyler. By
the middle 1800's, the spoil system was incorporated through-
out the federal government. The spoil system was designed
to reward those officials who had provided political favors
to the President in office. The assassination of President
James Garfield in 1881 marked the end of the spoil system
within the federal government. President Garfield, who was
elected on the platform that the federal government needed
to be reformed, was murdered by Charles Guiteau, an un-
successful office seeker (27, p. 9). It was Guiteau's
belief that Vice-President Chester A. Arthur, a corrupt
politician in his own right, would appoint him to a civil
service position. With the help of various associations
supporting civil service reform and the assassination of
President Garfield, the passage of the Pendleton Act of 1883
became reality (2, p. 24). The passage of this piece of
legislation attempted to correct some of the abuses which
had occurred as a result of the spoil system within the
federal government.
Pendleton Act of 1883

The passage of the Pendleton Act of 1883 was designed to resolve many of the abuses which had occurred under the spoil system. The act created the Civil Service Commission, which was responsible for administering the act (1, pp. 210-211). The Pendleton Act of 1883 contained a number of important provisions, including:

1. Authorization for the President to appoint a bipartisan civil service commission to establish and implement rules and regulations for the personnel functions;

2. Establishment of open competitive examinations that would be practical, that is, that would test skills relevant to each position;

3. Appointment of positions in Washington offices among the states according to population;

4. Entry into the service at any level—known as lateral entry or an open system—as opposed to entry only at the bottom;

5. No age limit for entering at any level;

6. Authorization for the President to extend coverage over previously unclassified positions by Executive Order or to remove classes of positions from the protected service;

7. Several specific provisions such as provisions for neutrality of public employees, prohibitions of assessments on public employees by political parties, and penalties for tampering with the examination process (2, p. 25).

The Pendleton Act of 1883 gave Congress the power to regulate and control the wages, hours, and working conditions of employees in the federal government (5, p. 636). The Civil Service Commission was established as an
executive agency, which was under the control of the President, and three commissioners served under the President's discretion. The U.S. Civil Service Commission became the primary personnel agency for the executive branch of the federal government (27, p. 30). The establishment of the U.S. Civil Service Commission, brought about by the passage of the Pendleton Act of 1883, was the first major attempt at eliminating the spoil system within the federal government and replacing it with merit system principles.

Lloyd-La Follette Act of 1912

During the 1880's and 1890's, federal employees began to organize through the establishment of national unions which were used as lobbying devices in Congress to improve their hours, wages, and other conditions of employment (22, p. 14). The first major attempt to counteract activities of federal labor organizations was the issuance of an order by Postmaster General William L. Wilson of the U.S. Postal Service (18, p. 299). The Postmaster General in 1885 gave a directive to all employees in the postal service which prohibited them from trying to lobby in Congress for the purpose of improving the terms of their employment. The lobbying activities of the federal labor organizations continued until President Theodore Roosevelt took office. To counteract the activities of these federal labor
organizations, President Roosevelt issued a gag order on January 25, 1902, which prohibited federal employees from petitioning Congress on their own behalf (18, p. 300). The gag order stated that

All officers and employees of the United States, of every description are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase in their pay or influence or attempt to influence in their own interests any other legislation whatever, either before Congress or its committees, or in any way save through the departments in or under which they serve, on penalty of dismissal from the government service (12, p. 10).

The gag orders continued in effect under Presidents Roosevelt and Taft in an effort to curb the lobbying activities of federal employees. The period between 1902 through 1912 was considered to be the gag order era (12, p. 10).

On August 24, 1912, the passage of the Lloyd-La Follette Act effectively abolished the gag orders issued by Presidents Roosevelt and Taft. The Lloyd-La Follette Act of 1912 gave federal employees the right to join labor organizations and petition Congress for the improvement of wages and other terms and conditions of employment on their own behalf (15, p. 172). Federal labor organizations began to develop with the passage of the Lloyd-La Follette Act of 1912. In 1917, the National Federation of Federal Employees (NFPE) was established; and by 1939, the NFPE had a membership of 75,000 federal employees (22, p. 14).
Labor Reform in the Private Sector

The period between 1935 through 1947 marked a significant change in labor relations in the private sector. The passage of the National Labor Relations Act of 1935 was considered to be a landmark piece of legislation in private sector labor relations. However, this piece of legislation excluded federal employees from coverage (22, p. 15).

President Franklin Roosevelt was concerned about collective bargaining in the federal government and expressed his concerns in a letter sent to the NFEE in 1937. He believed that the collective bargaining process which had been created in the private sector could not be transferred into the public sector without considerable problems. He also believed that the employers in the federal government were the people who had elected their representatives to enact legislation which was consistent with their beliefs (22, p. 14).

In 1937, the President's Committee on Administrative Management recommended that a Federal Personnel Relations Committee be established to handle questions involving majority status and unit appropriateness of labor organizations in the federal government. However, the recommendations of this committee were not adopted by President Roosevelt (12, p. 9).

The passage of the Labor-Management Relations Act of 1947 marked another era which greatly affected labor
relations in the private sector. However, the Labor-Management Relations Act of 1947 once again excluded federal employees from coverage (22, p. 15). In addition to this exclusion, the Labor-Management Relations Act of 1947 made it illegal for federal employees to engage in strike activities; and this act was later superseded by Public Law 84-330 to further reinforce the prohibition against strikes by federal employees (16, p. 329). Section 305 of the Labor-Management Relations Act stated that

It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency (12, p. 18).

The exclusion of federal employees from the National Labor Relations Act of 1935 and the Labor-Management Relations Act of 1947 severely limited labor relations in the federal government. The rights of federal employees to engage in concerted activities for the purpose of collective bargaining were excluded from protection under these pieces of legislation.

Reorganization by the Hoover Commission

The Hoover Commission was created by the Congress of the United States in July, 1947, under the Lodge-Brown Act in an attempt to reorganize the federal civil service (30,
The Hoover Commission was headed by Herbert Hoover, former President of the United States, and it consisted of twelve members with six members from each political party. There were a total of twenty-four problem areas identified by the Hoover Commission. To study these problem areas twenty-four task forces were created by the Hoover Commission to study in-depth the problems which faced the federal civil service.

A total of 300 men and women were assigned to these task forces (30, p. xiv). The task forces examined their particular problem areas; and after a period of ten to fourteen months, reported back to the Hoover Commission with their findings. The Hoover Commission consolidated the findings and then presented their recommendations to Congress.

To improve government efficiency the Hoover Commission recommended a number of changes within the federal civil service. These changes were incorporated into six major recommendations which were presented to Congress.

1. Create a more orderly grouping of the functions of government into major departments and agencies under the President.

2. Establish a clear line of control from the President to these department and agency heads and from them to their subordinates with correlative responsibility from these officials to the President, cutting through the barriers which have in many cases made bureaus and agencies partially independent of the Chief Executive.
3. Give the President and each department head strong staff services which should exist only to make executive work more effective, and which the President or department head should be free to organize at his discretion.

4. Develop a much greater number of capable administrators in the public service in the government where their services may be most effectively used.

5. Enforce the accountability of administrators by a much broader pattern of controls, so that the statutes and regulations which govern administrative practices will encourage, rather than destroy, initiative and enterprise.

6. Permit the operating departments and agencies to administer for themselves a larger share of the routine administrative services, under strict supervision and in conformity with high standards (30, pp. 7-8).

The Hoover Commission still remains as one of the most important attempts by Congress to improve federal bureaucracy. Civil service reform in the federal government was brought to the attention of the general public through the efforts of the Hoover Commission.

The second Hoover Commission was created by Congress in 1953. A total of nineteen task forces were developed to investigate problems within the federal civil service (24, p. 17). One of the major recommendations made by the second Hoover Commission was the establishment of a Senior Civil Service.

A bipartisan Senior Civil Service Board composed of five members appointed by the President is proposed by the Commission to supervise the Senior Civil Service. The members would serve on a full-time basis, and for administrative purposes the board would be under the authority and jurisdiction of the Civil
Service Commission. This new board would select the members of the Senior Civil Service from among those candidates nominated by the heads of agencies. It would regularly appraise the work of the Senior Civil servants and give promotions on the basis of demonstrated competence. It should also have the right to select out employees who are repeatedly passed over for increases in pay (24, pp. 37-38).

The Senior Civil Service would provide the federal government with a continuous supply of highly qualified career administrators who were not politically motivated or appointed by either political party. This recommendation was an attempt to clearly define administrators in either noncareer or career positions (24, pp. 36-37).

Executive Orders 10988, 11491, and 11616

The administration of President John F. Kennedy marked the beginning of a new era of labor relations in the federal government. On June 22, 1961, President Kennedy established a task force to investigate labor relations within the federal government (10, p. 114). President Kennedy expressed his concern for the development of a sound labor relations program for the federal government when he was quoted as saying:

The right of all employees in the federal government to join and participate in the activities of employee organizations, and to seek to improve working conditions and the resolution of grievances should be recognized by management officials at all departments and agencies. The participation of federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business. We need to improve practices which will assure the rights and
obligations of employees, employee organizations and the objective of effective labor-management cooperation in the public sector (10, p. 114).

The task force was headed by Arthur J. Goldberg, who was Secretary of Labor under President Kennedy. The task force reported back to President Kennedy in November of 1961. The major theme underlying the task force recommendations were that federal employees should have the right to join labor organizations for the purpose of collective bargaining. The task force concluded that there were a number of major differences between labor relations in the public and private sector (18, p. 300).

The recommendations of the task force were incorporated into Executive Order 10988, which was issued by President Kennedy on January 7, 1962 (19, p. 289). Executive Order 10988 contained a number of important changes in the area of federal labor relations including the following provisions.

1. Federal employees were granted the right to form, join, and assist any employee organization or to refrain from such activity and no union or closed shop provisions were permitted.

2. Three types of union recognition were established for the first time, based upon extent of employee membership within an appropriate unit including, informal (less than 10 per cent membership with the right to present petitions and be heard); formal (at least 10 per cent membership, but less than 50 per cent, with the right to be consulted); and exclusive (at least 10 per cent membership, and designated by the majority of employees in a unit as representative for all, with the right to bargain collectively).
3. Management officials were required to grant appropriate recognition; to meet and negotiate at reasonable times; and if an agreement was reached, to execute a written agreement.

4. Unions had to represent everyone in the bargaining unit.

5. A strong management rights clause was included giving agency officials the right, without any negotiating requirement, to direct employees; to hire, fire, promote, suspend, assign, and demote employees; to relieve them from duty for lack of work; to determine methods, means, and personnel by which operations are to be conducted; and to take whatever action is necessary in emergency situations.

6. Privileges of the order were not to be extended to any organization that asserted the right to strike against the government, advocated its overthrow, or discriminated as to membership on racial or religious grounds.

7. Impasses of negotiable issues in the formation of a written agreement such as working conditions, promotion standards, apprenticeships, training, job classifications, and safety were to be settled by means short of arbitration.

8. Authorized establishment of a negotiated grievance procedure, with provisions for advisory arbitrations of grievances, as well as those relating to interpretations and application of agreements.

9. No unit for bargaining purposes could be established that included both managerial and supervisory as well as rank-and-file employees in the same units. Advisory arbitration for unit determinations and representation disputes were authorized.

10. The head of the government agency must approve each local agreement (19, pp. 289-290).

These provisions substantially changed labor relations in the federal government. However, Executive Order 10988 was not without its share of criticism. In 1967, President
Lyndon B. Johnson established a task force which was responsible for evaluating the effectiveness of Executive Order 10988 (20, p. 7). The task force, known as the President's Review Committee, evaluated the first five years of Executive Order 10988 in an effort to make recommendations which would improve its effectiveness. The President's Review Committee believed that the Civil Service Commission had been operating in a double capacity as both the personnel arm of the federal government and adjudicator of problems arising under Executive Order 10988. In an attempt to eliminate this problem, the President's Review Committee recommended that an independent agency be established to resolve problems which had occurred under Executive Order 10988 (20, p. 7).

President Richard M. Nixon continued the process of evaluating the effectiveness of Executive Order 10988 through the establishment of the Schultz Review Committee which presented President Nixon with a report on September 10, 1969. There were six major revisions recommended by the committee. These revisions were incorporated into Executive Order 11491, which was issued by President Nixon on October 29, 1969 (10, p. 116). Executive Order 11491 established the Federal Labor Relations Council which was responsible for administering the Order. This was a major change from Executive Order 10988 where it was the
responsibility of agency heads to enforce the provisions contained in the Order (4, p. 201). The creation of a Federal Service Impasses Panel was responsible for settling negotiation impasses when mediation and fact finding techniques failed to work. "Arbitration and third-party fact finding with recommendations could be used only when authorized or directed by the Panel" (20, p. 8).

Executive Order 11491 was amended in August of 1971 by Executive Order 11616, which was issued by President Nixon. The major change was in the area of grievance procedures. Executive Order 11616 required that collective bargaining agreements negotiated between federal labor organizations and federal agencies contain grievance procedures which were limited to the interpretation and application of such agreements. "Other types of grievances must be resolved through agency systems developed under Civil Service Commission regulations or other available agency procedures" (21, p. 387).

The federal civil service continued to be dominated by Executive Orders until 1978 when President Jimmy Carter signed into law the Civil Service Reform Act of 1978. This piece of legislation effectively abolished the Executive Orders pertaining to labor relations. The piece of legislation has provided federal employees with a statutory basis upon which they can form, join, and assist labor
organizations just as employees in the private sector have done for many years.

Civil Service Reform Act of 1978

On October 13, 1978, President Carter signed into law the Civil Service Reform Act (CSRA) of 1978. The passage of this piece of legislation was viewed by many individuals in the federal government as the most important civil service reform to come about since the passage of the Pendleton Act of 1883. The CSRA was created to improve the efficiency of the federal government in carrying out its specific duties and responsibilities and to balance the conflicts which had existed between the authorities of management and the rights of federal employees (29, p. 1). During the official signing ceremony, President Carter was quoted as saying:

This bill changes the rules in a constructive fashion, a carefully considered fashion. It puts incentive and rewards back into the federal system. It allows federal employees to be encouraged, transferred or discharged for the right reasons, if they cannot or will not perform. And it prevents discouraging them or punishing them for the wrong reasons, for whistle blowing or for personal whim in violation of basic employee rights (29, p. 20).

Civil Service Reform Under President Carter

President Carter's civil service reform recommendations were considered to be the basic foundation upon which the Civil Service Reform Act of 1978 was established.
The Federal Personnel Management Project (FPMP) created by President Carter was considered to be a joint venture on the part of the Civil Service Commission and the Office of Management and Budget through their Management Improvement and Evaluation Division. Through their efforts a comprehensive civil service reform package was developed and finally approved by the President (6, p. 76).

The director of the project, Dwight Ink, was appointed by the President because of his expertise in the field of federal bureaucracy. The actual process of developing a comprehensive civil service reform package began with the development of identifying current problem areas within the federal government. Through the efforts of the FPMP, Ink identified twenty-six areas of concern related to civil service reform. These areas of concern were further grouped into nine broad topic areas. "Ink organized task forces around each topic area which would be responsible for diagnosing the problems, developing support for change, and designing recommendations within its jurisdiction" (17, p. 197). The task forces developed by Ink covered nine basic areas, including

1. The federal workforce and its composition;

2. The Senior Executive Service within the Federal government;

3. The staffing processes and procedures utilized by the federal government;
4. Equal employment opportunity and affirmative action programs engaged in by the federal government;
5. The wage and salary structures operating within the federal government;
6. Federal labor-management relations;
7. The training and development of employees, supervisors, and executives within the federal government;
8. The functions, roles, and organizations of personnel management within the federal government; and
9. The interaction between federal, state, and local authorities in the areas of personnel management (17, p. 174).

These task forces developed option papers which were distributed to interest groups and federal employees at field agencies located throughout the United States. "The task forces put together all this information and prepared seven option papers that were sent for comment to about 1,500 individuals and groups, within and outside the government" (25, p. 208). The collection of information from federal employees was accomplished through field hearings in which agency employees within the field were given the opportunity to express their opinions on the problems existing within the federal civil service and the changes that needed to take place to improve government efficiency. A total of seventeen hearings were conducted
throughout the United States. The importance of these field hearings is reflected in the fact that 87 per cent of all federal employees work in the field agencies (25, p. 208).

Through the efforts of the FPMP, the groundwork had been developed for comprehensive reform in the federal civil service. The five major themes contained in the President's reform package centered on the following aspects of reorganization, federal employees appeal rights, the establishment of a Senior Executive Service, development of merit pay, and finally, the area of labor relations (6, pp. 76-77).

Reorganization of the Civil Service Commission

In addition to the passage of the Civil Service Reform Act of 1978, Reorganization Plan No. 2 was also approved by Congress in January, 1979, in an effort to restructure the inefficient Civil Service Commission. This Reorganization Plan effectively abolished the Civil Service Commission and replaced it with two new agencies entitled the Office of Personnel Management (OPM) and the Merit Systems Protection Board (MSPB). In addition to these two federal agencies, the Federal Labor Relations Authority (FLRA) was also established (29, p. 3). The FLRA was given the responsibility of administering Title VII of the CSRA.
Office of Personnel Management

The Office of Personnel Management (OPM) has assumed many of the responsibilities of the Civil Service Commission. The OPM is the central personnel agency for the federal government. This agency has been given responsibility for developing personnel policies and guidelines governing employment in the federal government. "These include central examining and employment operations, personnel investigations, personnel program evaluations, executive development, and training" (29, p. 3). Retirement and insurance programs available to federal employees are administered by the OPM. The OPM will provide leadership and direction to all federal agencies in the areas of labor relations and affirmative action (29, p. 3).

This agency regulates and approves merit pay plans for federal agencies. Each agency must establish and implement a merit pay plan that will be equitable to all individuals within the agency. All merit pay plans must explicitly define how merit pay funds are to be allocated on an organizational basis. Each agency must justify its respective merit pay procedures on the basis of individual and organizational performance. OPM has retained final authority to approve all merit pay plans adopted by federal agencies (32, p. 10).

This office is given final responsibility under the CSRA to approve performance appraisal systems developed by
federal agencies. The CSRA requires all performance appraisal systems to have written guidelines on the critical elements for each job and job-related performance standards based on objective criteria (32, p. 11). By October 1, 1981, all federal agencies must have performance appraisal systems incorporating these two elements. OPM had given final approval to fourteen departments and agencies covering approximately 300,000 employees in the federal civil service by the end of FY 1979. To further implement the requirements that all federal agencies establish performance appraisal systems by October 1, 1981, the OPM has established a performance appraisal consulting unit which provides technical assistance to federal agencies engaged in the process of establishing performance appraisal systems (32, p. 11).

While OPM may advise on and must approve performance appraisal plans, maximum flexibility is given agencies in meeting their own needs. This flexibility was reinforced by the MSPB in its decision in Wells v. Harris that insures each agency will be able to design a system tailored to its needs which will measure the actual performance of each employee (32, p. 11).

One of the primary responsibilities of the OPM has been to evaluate the overall effectiveness of the CSRA in improving the quality of the federal civil service. To evaluate the effectiveness of the CSRA, OPM conducted a survey of federal employee attitudes in May, 1979, to establish a baseline for evaluating the new system. The
survey was conducted to determine the attitudes of federal employees prior to the implementation of the CSRA. This survey has been repeated periodically to determine the effects brought about in employee attitudes as a result of the CSRA. A total of 20,000 questionnaires were distributed to federal employees and 14,000 were returned to the OPM. The data in Table I represent the four major conclusions drawn from the survey reflecting federal employee attitudes under the old civil service system.

**TABLE I**

**FEDERAL EMPLOYEE ATTITUDE SURVEY QUESTIONNAIRE***

<table>
<thead>
<tr>
<th>Question</th>
<th>Likelihood</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>How likely is it that I will be promoted or given a better job if I perform especially well?</td>
<td>Unlikely</td>
<td>56%</td>
</tr>
<tr>
<td></td>
<td>Somewhat likely</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Very likely</td>
<td>17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Likelihood</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unlikely</td>
<td>62%</td>
</tr>
<tr>
<td></td>
<td>Somewhat likely</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Very likely</td>
<td>16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Likelihood</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>When an employee continues to do his or her job poorly, supervisors here will take the appropriate corrective action.</td>
<td>Disagree</td>
<td>53%</td>
</tr>
<tr>
<td></td>
<td>Undecided</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Agree</td>
<td>40</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Likelihood</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Disagree</td>
<td>36%</td>
</tr>
<tr>
<td></td>
<td>Undecided</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>Agree</td>
<td>35</td>
</tr>
</tbody>
</table>


These findings indicate that the majority of federal employees believed that the old civil service system did
not effectively match performance with pay. A majority of federal employees also believed that under the old civil service system corrective action was not taken when poor performance was engaged in by an employee (32, pp. 18-19).

The Office of Personnel Management will continue to monitor the effectiveness of the CSRA in improving the quality of the federal civil service. However, the effectiveness of the CSRA can only be measured after an extended period of time.

Federal Labor Relations Authority

In 1977, based on the recommendations of the Federal Personnel Management Project, President Carter through Reorganization Plan No. 2 called for the establishment of a Federal Labor Relations Authority (FLRA), which has centralized the functions previously performed by the Assistant Secretary of Labor for Labor-Management Relations and the FLRC (8, pp. 2-3). With the passage of Reorganization Plan No. 2 and the CSRA, the FLRA was established as an independent agency operating within the executive branch of the federal government. The FLRA is composed of three members who are appointed by the President and approved by the United States Senate (11, pp. 131-132).

The FLRA has been given the responsibility to insure that Title VII is administered properly. The establishment
of the FLRA was created to closely parallel the activities and responsibilities of the National Labor Relations Board (NLRB), which operates in the private sector. The FLRA has drawn from the experiences and skills of the NLRB in executing its duties and responsibilities under Title VII of the CSRA (23, p. 659). To carry out its responsibilities, the FLRA has been empowered with the following duties, including

1. Determine the appropriateness of units for labor organization representation;

2. Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions relating to the according of exclusive recognition to labor organizations;

3. Prescribe criteria and resolve issues relating to the granting of national consultation rights;

4. Prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations;

5. Resolve issues relating to the duty to bargain in good faith;

6. Prescribe criteria relating to the granting of consultation rights with respect to conditions of employment;

7. Conduct hearings and resolve complaints of unfair labor practices;

8. Resolve exceptions to arbitrators' awards; and

9. Take such other actions as are necessary and appropriate to effectively administer the provisions of Title VII of the Civil Service Reform Act of 1978 (8, p. 8).
The two primary areas of responsibility for the FLRA have been the resolution of unfair labor practice cases and the supervision of representation elections. The FLRA has given the authority to hear unfair labor practice cases to Administrative Law Judges, and a General Counsel has been given the authority to investigate and prosecute unfair labor cases brought before the FLRA (8, pp. 8-9). The data in Table II represent the number of representation cases received by the regional office of the FLRA during the fiscal period January 11, 1979 through September 30, 1979.

A total of 247 representation cases were pending when the CSRA went into effect. In addition to these old system cases, 457 new system cases were received by the regional offices of the FLRA. The total number of both old and new cases reached 704 for the fiscal period January 11, 1979 through September 30, 1979 (8, p. 40).

"The General Counsel has been given the authority to investigate alleged unfair labor practices and issue and prosecute unfair labor practice complaints" (8, p. 33). The authority of the General Counsel can only be exercised after an alleged unfair labor practice charge has been filed with the appropriate regional office of the FLRA. The three major parties given the right to file unfair labor practice charges under the CSRA have been federal agencies, labor organizations, and federal employees (8, p. 33).
### TABLE II

MONTHLY INTAKE OF NEW REPRESENTATION CASES BY REGION PER CENT OF TOTAL REPRESENTATION CASELOAD*

<table>
<thead>
<tr>
<th>Pending Cases 1/11/79</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total FY 1979</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>17</td>
<td>7</td>
<td>4</td>
<td>8</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>New York</td>
<td>17</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Washington</td>
<td>90</td>
<td>24</td>
<td>18</td>
<td>12</td>
<td>9</td>
<td>20</td>
<td>9</td>
<td>11</td>
<td>14</td>
<td>8</td>
</tr>
<tr>
<td>Atlanta</td>
<td>23</td>
<td>7</td>
<td>5</td>
<td>4</td>
<td>7</td>
<td>9</td>
<td>2</td>
<td>11</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Chicago</td>
<td>20</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>6</td>
<td>4</td>
<td>3</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Dallas</td>
<td>21</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Kansas City</td>
<td>20</td>
<td>5</td>
<td>5</td>
<td>9</td>
<td>9</td>
<td>15</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>15</td>
<td>1</td>
<td>-</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>6</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>San Francisco</td>
<td>24</td>
<td>1</td>
<td>9</td>
<td>6</td>
<td>12</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>247</td>
<td>55</td>
<td>48</td>
<td>55</td>
<td>55</td>
<td>70</td>
<td>40</td>
<td>55</td>
<td>47</td>
<td>32</td>
</tr>
</tbody>
</table>

On August 15, 1979, the General Counsel established a sixty-day time target from the date of filing for the disposition of nonmeritorious unfair labor practice cases in the Regional Offices and a seventy-five-day time target from the date of filing for the negotiation of settlement or the issuance of complaint in meritorious unfair labor practice cases (3, p. 32).

The data in Table III represent the number of unfair labor practice cases received by regional offices of the FLRA for the fiscal period January 11, 1979 through September 30, 1979. A total of 531 unfair labor practice cases were pending when the CSRA went into affect replacing Executive Order 11491 (8, p. 33).

There were 2,348 new system cases received by regional offices of the FLRA in addition to these cases which were already pending. The total number of both old and new system cases reached 2,879 for the fiscal period January 11, 1979 through September 30, 1979 (8, p. 40).

In the area of grievance procedures the FLRA has been given a new set of guidelines to work with. First, all collective bargaining agreements must contain grievance procedures which require binding arbitration as the final step. Until the passage of the CSRA of 1978, arbitration was not required as the final step. Under the Executive Orders, questions of arbitrability were sent to the Assistant Secretary of Labor for resolution. The CSRA of 1978 has required that all grievance procedures contain provisions which settle such questions (11, p. 136).
### TABLE III

MONTHLY INTAKE OF NEW UNFAIR LABOR PRACTICE CASES BY REGION
PER CENT OF TOTAL UNFAIR LABOR PRACTICE CASELOAD*

<table>
<thead>
<tr>
<th></th>
<th>Pending Cases 1/11/79</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total FY 1979</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>22</td>
<td>12</td>
<td>3</td>
<td>9</td>
<td>9</td>
<td>33</td>
<td>27</td>
<td>20</td>
<td>44</td>
<td>8</td>
<td>187</td>
</tr>
<tr>
<td>New York</td>
<td>59</td>
<td>10</td>
<td>8</td>
<td>39</td>
<td>47</td>
<td>16</td>
<td>30</td>
<td>39</td>
<td>33</td>
<td>8</td>
<td>289</td>
</tr>
<tr>
<td>Washington</td>
<td>144</td>
<td>30</td>
<td>15</td>
<td>54</td>
<td>74</td>
<td>57</td>
<td>59</td>
<td>65</td>
<td>21</td>
<td>57</td>
<td>616</td>
</tr>
<tr>
<td>Atlanta</td>
<td>55</td>
<td>14</td>
<td>9</td>
<td>27</td>
<td>39</td>
<td>32</td>
<td>25</td>
<td>39</td>
<td>41</td>
<td>29</td>
<td>310</td>
</tr>
<tr>
<td>Chicago</td>
<td>122</td>
<td>18</td>
<td>14</td>
<td>24</td>
<td>40</td>
<td>34</td>
<td>46</td>
<td>22</td>
<td>36</td>
<td>386</td>
<td></td>
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<tr>
<td>Dallas</td>
<td>54</td>
<td>7</td>
<td>5</td>
<td>29</td>
<td>43</td>
<td>34</td>
<td>40</td>
<td>28</td>
<td>45</td>
<td>39</td>
<td>324</td>
</tr>
<tr>
<td>Kansas City</td>
<td>30</td>
<td>7</td>
<td>7</td>
<td>26</td>
<td>42</td>
<td>25</td>
<td>34</td>
<td>53</td>
<td>36</td>
<td>36</td>
<td>296</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>17</td>
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<td>44</td>
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<td>36</td>
<td>264</td>
</tr>
<tr>
<td>San Francisco</td>
<td>28</td>
<td>11</td>
<td>3</td>
<td>8</td>
<td>19</td>
<td>38</td>
<td>26</td>
<td>27</td>
<td>19</td>
<td>207</td>
<td></td>
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<tr>
<td>Total</td>
<td>531</td>
<td>118</td>
<td>68</td>
<td>203</td>
<td>325</td>
<td>332</td>
<td>305</td>
<td>350</td>
<td>354</td>
<td>293</td>
<td>2,879</td>
</tr>
</tbody>
</table>

Final decisions rendered under negotiated grievance procedures may be reviewed by the EEOC when discrimination complaints have been made by federal employees (11, pp. 137-138). Federal employees may also have the final decisions rendered under the negotiated grievance procedures reviewed by the MSPB where discrimination complaints involve adverse action. However, federal employees retain the right to appeal to a federal district court the final decisions of the MSPB in cases involving both discrimination and adverse action (29, p. 7).

**Merit Systems Protection Board**

Reorganization Plan No. 2 established the Merit Systems Protection Board (MSPB). The MSPB is an independent quasi-judicial agency designed to protect the rights of federal employees and preserve merit system principles operating within the federal government (29, p. 3). A basic conflict existing within the federal government was effectively resolved with the elimination of the Civil Service Commission. "Significantly, this would eliminate the conflict of interest that was inherent in having a single entity serve as both rulemaker and adjudicator" (31, p. 1).

The MSPB is composed of three members appointed by the President. The three members on the MSPB are the Chair, Vice Chair, and Member. The adjudication of federal employee appeals has been considered one of the primary functions of
The MSPB. The MSPB has reviewed OPM's personnel regulations in an effort to assure that they are within the legal framework of the CSRA (31, p. 17).

The MSPB has replaced the Federal Employee Appeals Authority (FEAA) and the Appeals Review Board (ARB). The FEAA and ARB were created on July 1, 1974, by the Civil Service Commission to adjudicate federal employee appeals (28, p. 2). The FEAA established eleven field offices throughout the United States which were responsible for reviewing and adjudicating all appeals over which the FEAA had jurisdiction (28, p. 45).

The ARB, located in Washington, D.C., had the authority to reopen an appeal case if either party involved in the appeal could show that new and material evidence was available, that there was an erroneous interpretation of the law, or new unsettled policy questions were affected by the case in question. The Civil Service Commission had direct control over both the FEAA and the ARB; but with the creation of the MSPB, the Civil Service Commission, FEAA, and ARB were abolished (28, p. 21).

There were several major distinctions between the MSPB and the FEAA. First, the MSPB remains independent and is not under the control of any other federal agency. Under the FEAA, appellants had to file petitions for appeals within fifteen calendar days after the effective date of a
personnel action by their federal agencies. The MSPB has increased this time limit, and appellants are now given twenty calendar days within which they must file petitions for appeals. Federal agencies taking actions against their employees must respond to petitions for appeals made by their employees within fifteen calendar days after receiving notices of the appeals (31, p. 18).

The MSPB requires field offices to make initial decisions on petitions for appeals by appellants within 120 days after receipt of such petitions (31, p. 18). Under the FEAA, there were no time limitations placed upon the field offices to make initial decisions when petitions for appeals had been filed by appellants.

The MSPB has introduced standardized appeal forms which eliminated much of the confusion existing under the FEAA system where appellants had no such forms available to them. A major change at the field office level brought about by the MSPB concerns presiding officials who are responsible for hearing and deciding petitions for appeals made by appellants. All presiding officials are required to be licensed attorneys before they can adjudicate petitions for appeals (31, p. 19). Under the FEAA, assistant appeals officers were not required to be licensed attorneys to adjudicate petitions for appeals. The authority of assistant appeals officers was severely restricted by the
chief appeals officers in their regions. Chief appeals officers under the FEAA had the power to overturn the decisions made by assistant appeals officers in petitions for appeals brought within their jurisdiction. However, the Circuit Court of Appeals will only review the decisions of the MSPB and the appellant is not entitled to a trial de novo. The appellant may also take the appeal to the Court of Claims when monetary damages are involved (31, pp. 18-19).

Organizational Structure of the Merit Systems Protection Board

The organizational structure of the MSPB is illustrated in Figure 1. Three members comprise the MSPB, located in Washington, D.C., including the Chairwoman, Vice Chair, and Member. Ruth T. Prokop, Chairwoman, heads the Board's activities in the Washington office. She is considered to be the Chief Executive Officer in charge of operations (31, p. 3).

A managing director has been given authority to oversee the day to day operations at headquarters in Washington and the eleven field offices located throughout the United States. The Office of Special Counsel has been given the authority to investigate allegations related to prohibited personnel practices. Prohibited personnel practices have for the first time been defined under the CSRA. These practices include the following activities:
Fig. 1--The Organizational Structure of the Merit Systems Protection Board
1. Discriminating against any employee or applicant.

2. Soliciting or considering any recommendation on a person who requests or is being considered for a personnel action unless the material is an evaluation of the person's work performance, ability, aptitude, or general qualifications, or character, loyalty, suitability.

3. Using official authority to coerce political actions, to require political contributions, or to retaliate for refusal to do these things.

4. Willfully deceiving or obstructing an individual as to his or her right to compete for federal employment.

5. Influencing anyone to withdraw from competition, whether to improve or worsen the prospects of any applicant.

6. Granting any special preferential treatment or advantage not authorized by law to a job applicant or employee.

7. Appointing, employing, promoting, or advancing relatives in their agencies.

8. Taking or failing to take a personnel action as a reprisal against employees who exercise their appeal rights; refuse to engage in political activity; or lawfully disclose violations of law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

9. Taking or failing to take any other personnel action violating a law, rule, or regulation directly related to merit system principles (29, p. 2).

The Office of Special Counsel has been given the authority to prosecute those individuals who commit such practices (31, p. 22). Corrective action can be taken by the Office of Special Counsel to eliminate such activities.
The Office of Special Decisions has been established to draft decisions evolving from the MSPB. The Office of Appeals has the responsibility for preparing and presenting decisions to the MSPB when initial decisions of the field offices have been reviewed. "An Office of the Secretary was established to serve as the Board's equivalent to the Clerk's Office in a federal court" (31, p. 7). The Administrative Law Judge has been empowered to hear cases and render decisions which are difficult to resolve (31, p. 7).

The Office of Administration has been established to administer the day to day activities of the Board such as procurements and travel expenditures. The Information Office is considered to be the public relations branch of the MSPB (31, p. 8).

The Office of Merit Systems Review and Studies has been given the responsibility for conducting studies related to merit system abuses existing within the federal civil service. A major study was conducted by the Office of Merit Systems Review and Studies related to new system cases processed in 1979 within the CSRA (31, p. 19). The study covered approximately 1,200 cases adjudicated in the eleven field offices during 1979. Over 60 per cent of the cases involved related to adverse action based on unacceptable conduct. Only 2 per cent of these adverse action cases involved unacceptable performance. Over half of the
1,200 cases involving petitions for appeals were dismissed without being reviewed on the basis of their merits because of a lack of jurisdiction or failure to make timely filings called for within the CSRA (31, p. 20).

The Atlanta field office received the largest number of appeals accounting for 18 per cent of the total appeals received by all regions. The four field offices located in Atlanta, Philadelphia, San Francisco, and Washington received two-thirds of all appeals filed by federal employees. "Seven out of ten appeals were actions originating in four agencies—the Army, Postal Service, Navy, and Veterans Administration" (31, p. 20).

Chapter Summary

Labor relations in the public sector have not developed as rapidly as their counterpart in the private sector. Federal employees have been excluded from many of the labor laws which have protected employees in the private sector for over fifty years.

Through the issuance of Executive Orders, labor relations began to develop and greater attention was placed on the protection of federal employees and their rights as workers. The passage of the Civil Service Reform Act of 1978 replaced these Executive Orders and provided a statutory basis for federal labor relations.
The major concentration of research within this study related to the number of adverse action cases processed by the MSPB and the length of time required to process these cases. The authority of presiding officials were also developed.
CHAPTER BIBLIOGRAPHY


CHAPTER III

PRESENTATION OF PRIMARY DATA

The purpose of this chapter is to present and discuss the statistical treatment of the data obtained from the personal interviews and questionnaires in relation to the three hypotheses presented in Chapter I. The collection and analysis of the data were conducted as reported in Chapter I. This chapter will explore the authority of presiding officials, the number of cases, and the length of time necessary to process adverse action cases.

Authority of Presiding Officials

Hypothesis I states that the creation of the Merit Systems Protection Board has not given presiding officials any additional authority to handle or decide adverse action cases brought within their jurisdiction. In order to test this hypothesis, a four-page questionnaire was designed to obtain data from the presiding officials in the Dallas field office. Each presiding official was administered the questionnaire (Appendix A), and questions four and five relate to their authority in relation to the chief appeals officer and the adjudication of cases within their jurisdiction. The data in Table IV represent the presiding
officials answers to questions four and five contained in the questionnaire (Appendix A).

TABLE IV

PRESIDING OFFICIALS AUTHORITY TO
ADJUDICATE ADVERSE ACTION CASES

Does the chief appeals officer under the MSPB have more control over your decisions as a presiding official than the chief appeals officer under the FEAA?

Yes . . . . . . . . . . 0
No . . . . . . . . . . 10

Have the statutes now in existence given you more authority to hear and decide cases as a presiding official under the MSPB than you had as an assistant appeals officer under the FEAA?

Yes . . . . . . . . . . 10
No . . . . . . . . . . 0

Through the use of the Chi-square test (two-tailed) at the .05 level of significance, the calculated value of 10 for questions four and five is greater than the critical value of 3.84 which is sufficient to reject Hypothesis I. All ten of the presiding officials stated that the chief appeals officer under the MSPB exercised less control over their decisions when handling cases within their jurisdiction.

This finding was supported further by question one contained in the personal interview (Appendix B). The presiding officials were asked to state the reasons why they believed that their chief appeals officer exercised either more or less control over them as presiding officials in deciding petitions for appeals since the creation of the
CSRA. Each presiding official indicated that the chief appeals officer under the MSPB has had less control over their activities in hearing and deciding petitions for appeals as opposed to the chief appeals officer who operated under the FEAA. The major reason for their consistent responses were brought out when they were asked to state their reasons for their particular responses.

Each presiding official indicated that under the FEAA system, the chief appeals officer had the final signature power in each case brought within that region. If the chief appeals officer under the FEAA disagreed with the decisions of the assistant appeals officers, then the chief appeals officer could overturn the decisions of the assistant appeals officers. The presiding officials also stated that under the new system (MSPB) the chief appeals officer located in each region could no longer overturn the decisions of the presiding officials. Now the only recourse for these chief appeals officers when they disagree with the decisions of their presiding officials is that they can write a dissenting opinion, but the initial decisions of the presiding officials remain in effect unless overturned by the National Board in Washington, D.C.

Question five contained in the questionnaire (Appendix A) reinforced further the belief by the presiding officials that their authority to hear and decide cases as presiding
officials has increased. All ten of the presiding officials indicated that the CSRA had increased their authority.

Question two in the personal interview (Appendix B) supported the contention that the presiding officials have been given additional authority to hear and decide cases. Each presiding official indicated that Sections 1201.41(b) and 1201.43(a) of the CSRA have increased their authority in deciding cases within their jurisdiction. Section 1201.41(b) of the statutes gives presiding officials the power to

1. Administer oaths and affirmations;
2. Issue subpoenas in accordance with Section 1201.81;
3. Rule upon offers of proof and receive relevant evidence;
4. Rule upon the institution of discovery procedures as appropriate under Section 1201.73;
5. Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;
6. Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on testifying witness;
7. Rule on all motions, witness and exhibit lists and proposed findings;
8. Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
9. Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and nonrepetitious;
10. Impose sanctions as provided under Section 1201.43 of this part;

11. Hold prehearing conferences for the settlement and simplification of issues; and

12. File initial decisions (1, p. 578).

Section 1201.43 of the CSRA gives presiding officials the power to impose certain sanctions against parties in a case who fail to meet requests for additional information by presiding officials, including

A. Draw an inference in favor of the requesting party with regard to the information sought;

B. Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony related to information sought;

C. Permit the requesting party to introduce secondary evidence concerning the information sought; and

D. Strike any part of the pleadings or other submissions of the party failing to comply with such request (1, p. 579).

Question twelve in the questionnaire (Appendix A) relates to the sanctions most utilized by presiding officials in the Dallas field office. Seven of the presiding officials used sanction (A) as the most effective device in alleviating problems related to adverse action cases when additional information has been requested. Sanction (A) deals with inferences drawn in favor of the requesting party seeking additional information. Two presiding officials indicated that they utilized all four sanctions on an equal basis in alleviating the problems arising in
adverse action cases when additional information had been requested. One presiding official indicated that sanction (B) was the most effective sanction in alleviating the problems arising in adverse action cases when additional information has been requested. Sanction (B) "prohibits the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony related to information sought" (1, p. 579).

These sanctions have greatly increased the authority of presiding officials in handling cases brought within their jurisdiction, and these powers were not available to their counterparts under the old FEAA system. The authority of presiding officials to hear and decide cases including those involving adverse action has increased due to the new statutes contained in the CSRA and the limitations which have been placed on chief appeals officers.

Processing Time Required in Adverse Action Cases

Hypothesis II states that the length of time needed to process adverse action cases has not decreased since the creation of the Merit Systems Protection Board. In order to test this hypothesis, data were accumulated from the national headquarters in Washington, D.C., related to the processing time necessary to adjudicate adverse action cases.
Processing time is defined as the number of calendar days necessary to adjudicate an adverse action case from the day that the case is docketed at the field office to the day that an initial decision is issued by a presiding official (2, p. 18). Data were collected for FY 1975 through 1978 under the FEAA and compared with FY 1979 and 1980 under the MSPB. The processing time for FY 1979 and 1980 was accumulated through a random sample of twenty cases at the Dallas field office.

The data in Table V represent the average processing time for adverse action cases under both the FEAA and MSPB.

TABLE V

PROCESSING TIME FOR ADVERSE ACTION CASES*

<table>
<thead>
<tr>
<th></th>
<th>PEEA (Adverse Action)</th>
<th>Processing Time (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 1975 National</td>
<td>........................</td>
<td>93.0</td>
</tr>
<tr>
<td>FY 1975 Regional (Dallas)</td>
<td>........................</td>
<td>117.7</td>
</tr>
<tr>
<td>FY 1976 National</td>
<td>........................</td>
<td>120.1</td>
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<tr>
<td>FY 1976 Regional (Dallas)</td>
<td>........................</td>
<td>126.5</td>
</tr>
<tr>
<td>FY 1977 National</td>
<td>........................</td>
<td>168.9</td>
</tr>
<tr>
<td>FY 1977 Regional (Dallas)</td>
<td>........................</td>
<td>193.2</td>
</tr>
<tr>
<td>FY 1978 National</td>
<td>........................</td>
<td>178.5</td>
</tr>
<tr>
<td>FY 1978 Regional (Dallas)</td>
<td>........................</td>
<td>152.0</td>
</tr>
<tr>
<td>MSPB (Adverse Action)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 79-80 Regional (Dallas)</td>
<td>........................</td>
<td>90.0</td>
</tr>
</tbody>
</table>

Through the utilization of the One-sampled t-test (one-tailed), a comparison between FY 1975 through 1978 with FY 1979 and 1980 at the regional level (Dallas) indicated that there has been a significant decrease in processing time in adverse action cases handled by the MSPB. At the regional level (Dallas), the calculated value of 3.39 is greater than the critical value of 2.353 at the .05 level of significance. At the regional level, there has been a significant decrease in the processing time of adverse action cases by the MSPB. Hypothesis II must therefore be rejected due to the significant decrease in processing time.

All ten of the presiding officials indicated that the new ceiling of 120 days in which cases have to be processed has effectively reduced the processing time in adverse action cases. However, they also indicated that although the processing time has decreased, they are spending more staff hours in preparing for adverse action cases since they now have additional authority to request information vital to the adjudication of adverse action cases. On the national level, the MSPB has been able to process 98 per cent of the adverse action cases within the 120-day ceiling.

The presiding officials indicated that it has become more time consuming for them to process adverse action cases even though the length of processing time in calendar days
has decreased. The presiding officials further stated that the average length of an actual hearing ranged from four to six hours. These hours are consistent with data that were accumulated during the last three years that the FEAA was in existence. The data in Table VI represent the length of hearings in hours conducted by assistant appeals officers under the FEAA for FY 1976 through 1978. Data for FY 1979 and 1980 are not available nationwide.

**TABLE VI**

LENGTH OF HEARINGS BY ASSISTANT APPEALS OFFICERS WITHIN THE FEAA*

<table>
<thead>
<tr>
<th>Type of Complaint (Adverse Action)</th>
<th>Length of Hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 1976</td>
<td>5.33 hours</td>
</tr>
<tr>
<td>FY 1977</td>
<td>4.59 hours</td>
</tr>
<tr>
<td>FY 1978</td>
<td>6.08 hours</td>
</tr>
</tbody>
</table>


The length of hearings have remained relatively constant fluctuating from four to six hours under both the FEAA and MSPB. The presiding officials have tried to maintain the same hearing time as their counterparts under the FEAA.

The unit cost associated with the processing of appeals within the regional offices is another factor of great importance within the federal civil service. The data in Table VII
represent the unit cost of processing certain appeals brought before the FEAA during FY 1976 through 1978. Data are not available for FY 1979 and 1980 under the MSPB.

**TABLE VII**

UNIT COST FOR PROCESSING CASES*

<table>
<thead>
<tr>
<th>Type of Appeal</th>
<th>FY 1976</th>
<th>FY 1977</th>
<th>FY 1978</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adverse Action</td>
<td>$596</td>
<td>$604</td>
<td>$649</td>
</tr>
<tr>
<td>Reduction-in-Force</td>
<td>$323</td>
<td>$241</td>
<td>$345</td>
</tr>
<tr>
<td>Discrimination Complaint</td>
<td>$601</td>
<td>$565</td>
<td>$1,110</td>
</tr>
<tr>
<td>All Appeals and Complaints</td>
<td>$475</td>
<td>$461</td>
<td>$639</td>
</tr>
</tbody>
</table>


Unit cost is the average cost of processing an appeal from receipt through the issuance of the decision. It includes costs of staff time - appeal officer and clerical preparation and reproduction of the decision, transcripts and associated administrative costs. Transcript costs generally were not included in the unit cost of discrimination complaints prior to FY 78. Transcript costs are included in FY 78. The elimination of all remanded cases from accounting significantly inflates the unit cost of discrimination complaints, since the time charged in remanding a case is absorbed by those cases resulting in a recommended decision (2, p. 19).

In relation to discrimination complaints, the MSPB no longer has authority to decide cases involving discrimination unless it is considered to be a mixed case. A mixed case is a case in which a federal employee alleges
that he has been discriminated against by his respective agency because the agency has taken an adverse action against him. The MSPB will have the initial authority to make a decision which involves a mixed case, but the federal employee can request that the EEOC or a federal district court review the decision of the MSPB (4, p. 32).

Adverse Action Cases

Hypothesis III states that the creation of the Civil Service Reform Act of 1978 has made no difference in the number of adverse action cases brought by federal employees against federal agencies. To test this hypothesis data were collected in relation to the number of adverse action cases brought by federal employees during FY 1977 and 1978 under the FEAA and compared with FY 1979 and 1980 under the MSPB. Data were collected on both a national and regional level.

Hypothesis III was tested through the use of the Chi-square test (two-tailed) at the .05 level of significance. The data in Table VIII represent the number of adverse action cases processed on a national and regional level from FY 1977 through 1980.

The combined total for FY 1977 and 1978 on a national level was 6,171 adverse action cases processed by all of the FEAA field offices. The combined total for FY 1979 and 1980 on a national basis was 4,883 adverse action cases processed by all of the MSPB field offices.
### TABLE VIII

**ADVERSE ACTION CASES PROCESSED***

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FEAA (Adverse Action)</td>
<td>3,245</td>
<td>391</td>
<td>2,926</td>
<td>273</td>
<td>2,698</td>
<td>247</td>
<td>2,185</td>
<td>283</td>
</tr>
<tr>
<td>MSPB (Adverse Action)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Data collected from the Dallas field office.*

At the national level, the calculated value of 159.17 is greater than the critical value of 3.84 which reflects the fact that there has been a significant decrease in the number of adverse action cases processed under the MSPB during the first two years of its existence. There has been approximately a 12 per cent decrease at the national level in the number of adverse action cases processed under the MSPB during FY 1979 and 1980 as compared to the FEAA during FY 1977 and 1978.

At the regional level, the calculated value of 17.19 is greater than the critical value of 3.84 which reflects the fact that there has been a significant decrease in the number of adverse action cases processed under the MSPB regional field office in Dallas during FY 1979 and 1980 as
compared to the FEAA regional field office in Dallas during FY 1977 and 1978. The number of adverse action cases processed by the MSPB regional field office in Dallas during FY 1979 and 1980 reflects approximately a 12 per cent decrease in adverse action cases as compared to the FEAA regional field office in Dallas during FY 1977 and 1978. Hypothesis III must therefore be rejected because there has been a significant decrease in the number of adverse action cases brought by federal employees under the MSPB both on the national and regional level.

Question eight and nine contained in the questionnaire (Appendix A) relates to the number of adverse action cases processed under the MSPB and the FEAA. Five of the presiding officials indicated in question eight that there has been an increase in the number of adverse action cases processed since the creation of the CSRA. Question nine deals with the reasons for the increase in adverse action cases processed by the MSPB. All five of the presiding officials who indicated that there has been an increase in adverse action cases believed that this increase was the result of the following factors:

A. The statutory right given to federal employees to have adverse action cases appealed.

B. The elimination of complicated personnel procedures, and the streamlined effect with which appeals can be brought by appellants and processed by the MSPB.
C. The coordination of the MSPB and the FLRA in protecting the rights of federal employees against arbitrary and capricious personnel practices engaged in by agency.

D. The total reorganization of the federal civil service brought about by the Civil Service Reform Act of 1978 to protect merit principles within the federal sector (3, pp. 1-4).

Three of the presiding officials indicated that there has been a decrease in the number of adverse action cases processed by the MSPB. Two of the presiding officials indicated that the number of adverse action cases processed have remained relatively constant.

Question six contained in the personal interview (Appendix B) relates to the number of adverse action cases brought to the MSPB since the creation of the CSRA. The five presiding officials who indicated that there has been an increase in adverse action cases since the creation of the CSRA believed that their individual caseload has increased because federal employees have the opportunity to recover costs associated with cases. Federal employees who win their petitions for appeals may collect attorney fees from the agencies which have taken adverse action against them. The three presiding officials who indicated that there has been a decrease in adverse action cases gave no reasons why their caseloads decreased.
The data at both the national and regional level support the fact that there has been a significant decrease in the number of adverse action cases brought by federal employees before the MSPB. The decrease in adverse action cases does not support Hypothesis III and must, therefore, be rejected.

Chapter Summary

This chapter dealt with the presentation of primary data collected from the questionnaires and personal interviews, which were administered to each presiding official at the Dallas field office. These data were used to examine the three hypotheses which were stated in Chapter I.

Hypothesis I dealt with the authority of presiding officials; and through the utilization of the Chi-square test, Hypothesis I was rejected because the authority of presiding officials has increased. Hypothesis II dealt with the length of time needed to process adverse action cases under the MSPB. Through utilization of the One-sampled t-test, Hypothesis II was rejected because there has been a significant decrease in the processing time of adverse action cases at the regional level. Hypothesis III dealt with the number of adverse action cases processed since the creation of the Civil Service Reform Act of 1978. Through the utilization of the Chi-square test, Hypothesis III was rejected because there has been a significant
decreased in the number of adverse action cases since the act was passed.
CHAPTER BIBLIOGRAPHY


CHAPTER IV

SUMMARY, FINDINGS, AND CONCLUSIONS

The purpose of this chapter is to analyze the findings reported in Chapter III. The creation of the CSRA and the establishment of the MSPB are explored in an effort to show how they have affected the federal civil service. This chapter presents certain findings and conclusions which have been drawn from the data collected.

Legalistic Aspects of the Merit Systems Protection Board

The purpose of this study was to analyze three important concepts expressed in the three hypotheses stated in Chapter I. Hypothesis I, dealing with the authority of presiding officials, was important because these officials determine the outcome of all cases brought within their jurisdiction.

Through the passage of the CSRA, presiding officials have been given the additional authority which they have so desperately needed and were unable to obtain under the FEAA. In Chapter III, it was reported that all ten of the presiding officials believed that their authority had increased because of the new statutes created within the CSRA and the limitations placed upon chief appeals officers within each region.
The complicated nature of adverse action cases has resulted in the requirement that all presiding officials become licensed attorneys in order to hear such cases. Question three contained in the questionnaire (Appendix A) deals with the question of whether presiding officials do indeed need to be licensed attorneys. Eight of the presiding officials indicated that presiding officials should be required to be licensed attorneys. Only two presiding officials indicated that it was not necessary for presiding officials to be licensed attorneys. This finding can be supported by the fact that under the CSRA presiding officials have been given additional authority to adjudicate cases granted them under Section 1201.41(b) and 1201.43(a).

In order for presiding officials to understand the complexities of cases brought within their jurisdiction, they must be very knowledgeable in the areas of rules of evidence, hearing procedures, sanctions, discovery techniques, and the utilization of subpoenas. Many of the assistant appeals officers under the FEAA were not licensed attorneys but personnel specialists who lacked sufficient expertise in the area of federal law. These assistant appeals officers were unable to protect the rights of federal employees through the use of due process because of their insufficient knowledge within the overall area of legal procedures.
Question one contained in the questionnaire (Appendix A) relates to the claim that the MSPB has become too legalistic, and federal employees are often times confused because the new system is too legalistic. Eight of the presiding officials disagreed with this statement, while only two of the presiding officials indicated that the MSPB has become too legalistic for federal employees to understand. However, eight of the presiding officials indicated in question two of the questionnaire (Appendix A) that the MSPB has become more legalistic than the FEAA.

Two of the eight presiding officials who indicated that the MSPB was more legalistic than the FEAA believed that it was the result of three factors, including

A. The new guidelines covering appeal procedures found in the statutes of the CSRA;

B. The requirement that all presiding officials must be licensed attorneys to hear petitions for appeals; and

C. The use by agencies and appellants of more legal representation on their behalf.

Three of the presiding officials indicated that only (A) related to new guidelines covering appeal procedures has resulted in the MSPB becoming more legalistic. Three other presiding officials indicated that the MSPB has become more legalistic as the direct result of (C) which is the use by both agencies and appellants of more legal representation on their behalf. Finally, two of the presiding officials
indicated that none of the factors listed had anything to do with the legalistic aspects of the MSPB.

Question three contained in the personal interview (Appendix B) relates to the type of representation which provides the best support for federal employees in adverse action cases. All ten of the presiding officials indicated that with all things being equal, attorneys usually provide the best legal services to federal employees who bring adverse action cases before the MSPB. Five of the presiding officials indicated that many times union representation was inadequate in helping federal employees reverse the decisions taken by their respective agencies.

The data in Table IX represent the percentage breakdown of representation used by federal employees (appellants) affected by adverse action for FY 1976 through 1978 under the FEAA (3, p. 9).

**TABLE IX**

**PER CENT OF TOTAL REPRESENTATION***

<table>
<thead>
<tr>
<th>Representation</th>
<th>FY 1976</th>
<th>FY 1977</th>
<th>FY 1978</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self Only</td>
<td>27%</td>
<td>28%</td>
<td>25%</td>
</tr>
<tr>
<td>Private Attorney</td>
<td>18%</td>
<td>15%</td>
<td>18%</td>
</tr>
<tr>
<td>Labor Organization</td>
<td>50%</td>
<td>45%</td>
<td>48%</td>
</tr>
<tr>
<td>Veterans Organization</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Other</td>
<td>5%</td>
<td>12%</td>
<td>9%</td>
</tr>
<tr>
<td>Total Appellants Affected</td>
<td>4,133</td>
<td>5,099</td>
<td>4,534</td>
</tr>
</tbody>
</table>

The total number of federal employees affected by adverse action does not represent the number of adverse action cases brought before the FEAA. Many of the adverse action cases involved more than one federal employee.

Labor organizations are the largest category of representation used by federal employees when they went before the FEAA to have the decisions of their agencies overturned. Many federal employees represented themselves in adverse action cases, and this category was the second major source of representation. Private attorneys were the third major category of representation for federal employees. The term "other" indicates other fellow employees representing those individuals affected by adverse action. Veterans organizations were the smallest category of representation used by federal employees under the FEAA (3, p. 9).

All ten of the presiding officials questioned in the Dallas field office indicated that there has been a trend towards the use of more attorneys by federal employees bringing adverse action cases before the MSPB. This factor may be due to the fact that under certain circumstances federal employees can be reimbursed for attorney fees in certain cases brought before the MSPB. The two conditions which must be met before presiding officials will require federal agencies to pay for attorney fees are when federal employees are the prevailing parties and reimbursement is in the best interest of justice (1, p. 577). The OPM has
maintained that these two conditions must be met before the MSPB can require reimbursement of attorney fees. "Thus, default by an agency in response to the appellant's petition for fees is not adequate. Nor is a simple finding that the appellant prevailed" (8, p. 22). The opportunity for reimbursement has resulted in many more appellants seeking the help of licensed attorneys to represent them in adverse action cases.

Reduction in Processing Time of Adverse Action Cases

Hypothesis II deals with the length of time needed to process adverse action cases under the MSPB. The time necessary to process adverse action cases has significantly decreased at the regional level (Dallas) as represented by Table V in Chapter III. The major reason for this decrease has been the creation of the 120-day ceiling in which all cases must be processed. The random sample of twenty adverse action cases heard at the Dallas field office indicated that the mean processing time was ninety days. Of the twenty cases randomly sampled, only two cases lasted up to the 120-day ceiling and no case exceeded the 120-day ceiling. During FY 1979, 98 per cent of all new system cases brought under the statutes of the CSRA were processed within the 120-day time limit (4, p. 17). To reduce further the amount of processing time required to process all cases brought under the MSPB, a deadline of fifteen days has been imposed upon all
federal agencies in which they must respond to the petitions filed by their federal employees.

Although the processing time has decreased at the regional level (Dallas), there are indications by the presiding officials that they are spending more time in the preparation of adverse action cases because of the complexities of such proceedings. As more federal employees turn to licensed attorneys for legal representation, the length of time necessary to process adverse action cases will not extend beyond a certain time limit. Presiding officials must weigh the benefits of providing federal employees with due process and the time and costs associated with an increase in the 120-day ceiling.

Adjudication of Adverse Action Cases

Hypothesis III deals with the number of adverse action cases brought by federal employees against federal agencies since the creation of the Civil Service Reform Act of 1978. The data in Table VIII (contained in Chapter III) indicated that there has been a significant decrease in the number of adverse action cases processed by the MSPB as compared to the FEAA. Comparing FY 1977 and 1978 with FY 1979 and 1980, there has been a decrease of 1,288 adverse action cases filed by federal employees at the national level. At the regional level (Dallas) there has also been a decrease of 134 adverse action cases filed by federal employees.
The reduction in adverse action cases processed by the MSPB both at the national and regional level has probably occurred because of the following reasons.

A. Federal agencies must now follow certain specific steps before these agencies take adverse action against their federal employees.

B. Personnel specialists within federal agencies many times lack sufficient expertise to deal with the specific problems surrounding adverse action cases.

C. The burden of proof standard now required for federal agencies to support their decisions to take adverse action against their respective federal employees is a preponderance of the evidence.

D. The opportunity for federal employees to be reimbursed for attorney fees when their decisions are upheld by the MSPB forced federal agencies to be cautious in their initiation of adverse action decisions.

E. The monetary costs and time incurred by federal agencies to prepare sufficient adverse action cases against federal employees is higher.

All of these factors have contributed to a decrease in the number of adverse action cases brought by federal employees before the MSPB. Federal agencies must be extremely careful in their initiation of adverse action decisions against federal employees because of the protection granted them under the CSRA.
The major reason why adverse action cases have decreased in number since the creation of the CSRA cannot be found in the simple fact that there are fewer federal employees taking their appeals to the MSPB. Federal agencies are now more hesitant to take adverse action against their federal employees because of the CSRA, which has clarified the definition of an adverse action within the federal government.

Unacceptable Performance

Federal agencies are now given the right to take action against federal employees for what has been termed poor or unacceptable performance. Section 4303 of the CSRA deals with the conditions under which federal agencies can reduce in grade or remove federal employees for unacceptable performance (2, p. 1133).

Federal agencies which remove or reduce in grade federal employees for unacceptable performance must provide thirty-day notices to those federal employees affected by unacceptable performance. These written notices involving unacceptable performance must contain two elements, including

A. Specific instances of unacceptable performance by the employee on which the proposed action is based; and

B. The critical element of the employee's position involved in each instance of unacceptable performance (2, p. 1133).

Federal employees also have the right to be represented by legal counsel and given a reasonable amount of time to
reply to the written decisions of federal agencies. Federal employees also have the right to appeal such decisions to the MSPB.

The major distinction between unacceptable performance cases and adverse action cases lies in the burden of proof which federal agencies must provide to support their actions. In unacceptable performance cases brought under Section 4303 of the CSRA, the decisions of federal agencies must be supported by the substantial evidence standard. In all other types of cases including adverse action cases, the decisions of federal agencies must be supported by the preponderance of the evidence standard (2, p. 1138).

The use by federal agencies of the preponderance of the evidence standard in unacceptable performance cases prior to the creation of the CSRA made it very difficult if not impossible to remove or reduce in grade federal employees for unacceptable performance. With the passage of the CSRA, federal agencies can now utilize the less burdensome substantial evidence standard in unacceptable performance cases (8, p. 22).

The major distinction between substantial and the preponderance of the evidence standard can be found in the definitions provided in Section 1201.56(c) of the CSRA. Substantial evidence involves "that degree of relevant evidence which a reasonable mind, considering the record as
a whole, might accept as adequate to support a conclusion that the matter asserted is true" (1, p. 580). A preponderance of the evidence involves "that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true" (1, p. 580). It therefore becomes much easier to prove a case using the substantial evidence standard than the preponderance of the evidence standard.

Through the creation of the CSRA, federal agencies need only apply the substantial evidence standard to remove or reduce in grade federal employees for unacceptable performance, thus making it much easier to eliminate inefficiency within the federal civil service.

During FY 1979, there were a total of eighty-two unacceptable performance cases brought by federal employees before all of the MSPB regional field offices. Presiding officials issued decisions in twenty-nine cases and canceled five cases. At the end of FY 1979, forty-eight cases were pending and transferred to FY 1980 (5, p. 9).

During FY 1980, there were seventy-five unacceptable performance cases received by all of the MSPB regional field offices in addition to the forty-eight cases which were transferred from FY 1979. Presiding officials issued decisions in seventy-two cases and canceled forty-two cases.
There were only nine cases pending before the MSPB at the end of FY 1980 related to unacceptable performance (5, p.17).

The number of unacceptable performance cases brought during FY 1979 and 1980 under the MSPB has decreased as compared to FY 1977 and 1978 under the FEAA. During FY 1977, there were 115 discharges related to unacceptable performance; and during FY 1978, there were 119 discharges related to unacceptable performance (7, p. 5).

The CSRA was designed to alleviate the problems associated with unacceptable performance of federal employees by making it easier for federal agencies to remove or reduce in grade those employees who were inefficient. The major reason why federal agencies have not utilized Section 4303 of the CSRA relates to the fact that in order to use the substantial evidence standard in unacceptable performance cases, federal agencies must have performance appraisal systems already in operation and approved by the OPM (6, p. 11). Most federal agencies are still in the process of developing and implementing performance appraisal systems which will ultimately be approved by the OPM.

Federal agencies have until October 1, 1981, to implement performance appraisal systems within their respective agencies. All performance appraisal systems developed by federal agencies must contain the critical elements for each job and performance standards based on objective criteria (6, p. 11).
Federal agencies can remove or reduce in grade those federal employees who have engaged in unacceptable performance, but their decisions must be based on the preponderance of the evidence standard unless these federal agencies have approved performance appraisal systems which entitle these agencies to use the substantial evidence standard. "Thus, if agencies have not had their performance appraisal systems approved or have not developed critical elements and performance standards for that group of employees, they may continue to use the old procedures" (8, pp. 11-12).

The final effect of the CSRA on the federal civil service in relation to unacceptable performance by federal employees will only be measurable after all federal agencies implement approved performance appraisal systems. These federal agencies can then begin to use the substantial evidence standard in unacceptable performance cases.

Acceptable Level of Competence

Another series of cases which have been related to the performance of federal employees but not considered to be unacceptable performance cases include the acceptable level of competence cases. These cases involve decisions by federal agencies which deny federal employees a periodic within-grade step salary increase because their performance at work was not of an acceptable level of competence (4, p. 21).
The landmark case of William E. Parker v. Defense Logistics Agency represents a key decision by the MSPB in Washington related to an acceptable level of competence. In this particular case, the MSPB established three guiding principles which should govern acceptable level of competence cases.

A. The appellant (employee) bears the burden of establishing that the agency committed procedural error in the action taken against him/her, and that such error was harmful.

B. In reviewing acceptable level of competence cases, the Board is not limited to the administrative record developed during the agency's proceedings, but may engage in further fact-finding where such is necessary to serve the ends of justice.

C. The standard of proof in such cases is that of "substantial evidence" (4, pp. 22-23).

The major controversy which has surrounded these acceptable level of competence cases relates to the application of the substantial evidence standard. Some of these cases which have been brought by federal employees before the regional field offices of the MSPB have complicated this issue. Certain federal employees have contended that in acceptable level of competence cases the burden of proof needed to support such decisions by the agencies should be the preponderance of the evidence standard. Several of the regional field offices of the MSPB have accepted this argument and replaced the guiding principles issued in the Parker case (8, p. 22). The burden of proof used to support
the decisions of federal agencies in these cases remains unclear and will only be resolved when all regional field offices utilize the identical guidelines established in the Parker case.

Conclusion

The establishment of the MSPB by the CSRA has effectively alleviated certain problems which existed under the FEAA. The time necessary to process adverse action cases at the Dallas field office has been effectively reduced by the establishment of a 120-day ceiling placed on all cases brought before all of the regional field offices. This ceiling forces presiding officials to make decisions within a given time period and eliminates the drawn out processes which operated under the FEAA.

The procedural requirements established under the CSRA have effectively placed certain obligations on the part of federal employees and federal agencies if they choose to utilize the procedures set forth in the statutes. Federal agencies as well as their respective employees can no longer delay in their responses to cases brought before the MSPB or presiding officials will rule in favor of the other party. Federal agencies must be careful and consistent in their application of adverse action decisions taken against their employees. The opportunity for federal employees to be reimbursed for attorney fees if certain
conditions exist have forced many agencies to carefully 
evaluate any action taken against their employees.

The statutory rights given to federal employees to 
appeal the decisions of their respective agencies have pro-
vided these employees with the opportunity to be heard and 
the course of due process to take place. These rights will 
continue to protect federal employees from arbitrary and 
capricious decisions made by federal agencies. Through 
the utilization of the MSPB, federal employees have an 
avenue which protects their rights in addition to the rights 
of federal agencies and the public in general.

The actual number of adverse action cases processed 
before the MSPB at both the national and regional level 
(Dallas) has decreased because federal agencies are 
reluctant in initiating actions which cannot be supported 
by the preponderance of the evidence standard. The util-
ization of more legal representation by both federal agencies 
and federal employees has forced both parties to examine with 
care their respective demands in adverse action cases.

The authority of presiding officials has also made the 
MSPB more efficient in a number of ways. Presiding officials 
are now required to be licensed attorneys before they can 
hear cases brought within their jurisdiction. This re-
quirement enables these presiding officials to utilize more 
effectively the new devices available to them under the CSRA.
Through the use of the subpoenas and other discovery techniques, presiding officials now have more control over the total processing of cases within their jurisdiction. Finally, the limitations placed on chief appeals officers have effectively replaced their ability to overturn the decisions of presiding officials.

The question of unacceptable performance can only be answered after October 1, 1981, when all federal agencies must have approved performance appraisal systems in operation. Once these systems are in operation, federal agencies can begin to rid the federal civil service of inefficient federal employees who have decreased productivity within the federal government. However, the ability of the MSPB to eliminate inefficiency with the federal civil service can only be answered after performance appraisal systems are implemented and given time to work effectively.

Implications for Future Research

Future research should be conducted in the area of coordination between the MSPB, FLRA, and EEOC. Data related to the number of grievance procedures utilized by federal employees should be collected to show whether or not federal employees have been utilizing grievance procedures more often than the statutory appeal procedures of the MSPB. Federal employees have been given a viable
alternative in adverse action cases, but there have been no indications to show which of these two procedures have provided the best avenue of redress for federal employees.

Each regional field office of the MSPB has been given complete control over matters arising within their region. Better statistical reporting systems should be required by the National Board in Washington to ascertain exactly what types of appeal cases have become most prevalent within each region. The regional field offices should coordinate their activities in a manner which will lend greater support to the efforts of the National Board in Washington.

The length of time necessary to process adverse action cases should be investigated to obtain additional information from each of the regional field offices. However, it should be remembered that data collected from any of the regional field offices must be approved first by the chief appeals officer in that region. This factor presents a problem which will have to be resolved in the future.

The attitudes and opinions of federal labor organizations about the effectiveness of the MSPB, FLRA, and EEOC should be collected on a national basis. Their utilization of the negotiated grievance procedures contained in collective bargaining contracts should be analyzed to determine the types of grievances brought under grievance procedures.
The future of the MSPB can only be analyzed in relation to its ability to alleviate the problems confronting federal employees when their employment rights have been threatened. The MSPB will continue to be affected by the decisions of the FLRA, EEOC, labor organizations, and federal agencies.
CHAPTER BIBLIOGRAPHY


APPENDIX A
PRESIDING OFFICIALS QUESTIONNAIRE

Please check or fill in the blank your answer to the following questions. Please do not sign your name to the form. This will permit me to preserve anonymity and confidentiality on your behalf.

1. Critics of the MSPB have claimed that the system is too legalistic and federal employees often times are confused because of the legalistic aspects now operating within the system.
   Do you agree? __2__ Or Disagree? __8__

2. Which of the following factors do you believe have resulted in the MSPB becoming more legalistic than the FEAA?
   A. The new guidelines covering appeal procedures found in the statutes of the Civil Service Reform Act.
   B. The requirement that all presiding officials must be licensed attorneys to hear petitions for appeals.
   C. The use by agencies and appellants of more legal representation on their behalf.
   D. None of the above
   E. All of the above

3. Do you believe it is necessary for presiding officials to be licensed attorneys to hear cases brought under their jurisdiction?
   Yes __8__ No __2__

4. Does the chief appeals officer under the MSPB have more control over your decisions as a presiding official than the chief appeals officer under the FEAA?
   Yes __0__ No __10__

5. Have the statutes now in existence given you more authority to hear and decide cases as a presiding official under the MSPB than you had as an assistant appeals officer under the FEAA?
   Yes __10__ No __0__
6. On the basis of your case experiences in adverse action cases, do appellants usually exercise their right to have legal representation with them in such proceedings?

A. Pre-CSRA: Yes 0  
   No 10
B. Post-CSRA: Yes 4  
   No 6

7. On the basis of your case experiences, which of the following types of counsel most often represents appellants in adverse action cases?

   4 A. Attorney
   6 B. Union Official
   0 C. Other representative (specify) ____________

8. Compared to the FEAA, do you feel that the number of adverse action cases processed by you have increased or decreased in number since the creation of the MSPB?

   Increased 5  Decreased 3  No Change 2

9. If you believe that the number of adverse action cases have increased under the MSPB, which of the following reasons do you believe have had the most impact on this increase?

   0 A. The statutory right given to federal employees to have adverse action cases appealed.
   0 B. The elimination of complicated personnel procedures, and the streamlined effect with which appeals can be brought by appellants and processed by the MSPB.
   0 C. The coordination of the MSPB and the FLRA in protecting the rights of federal employees against arbitrary and capricious personnel practices engaged in by agency officials.
   0 D. The total reorganization of the federal civil service brought about by the Civil Service Reform Act of 1978 to protect merit principles within the federal sector.
   5 E. All of the above
   5 F. None of the above
10. As an assistant appeals officer, how many years of service did you have with the FEAA?

   4  A. Was not employed by FEAA
   0  B. Less than 12 months
   2  C. One to two years
   3  D. Three to five years
   1  E. Six to ten years
   0  F. More than ten years

11. As a presiding official how long have you been working in this capacity under the MSPB?

   4  A. Less than 12 months
   6  B. One to two years or since its inception

12. Which of the following sanctions do you find most effective in alleviating problems arising in adverse action cases pertaining to requests for information?

   7  A. Draw an inference in favor of the requesting party with regard to information sought.
   1  B. Prohibit the party failing to comply with such order from introducing evidence concerning or otherwise relying upon testimony related to information sought.
   0  C. Permit the requesting party to introduce secondary evidence concerning the information sought.
   0  D. Strike any part of the pleadings or other submissions of the party failing to comply with such request.
   0  E. None of the above
   2  F. All of the above
13. When an agency takes adverse action against an employee, which of the following requirements imposed by Section 1201.21 (Notice of Appeals Rights) do most agencies refuse or overlook to express to their employees?

- 0 A. Notice of the time limits for appealing to the MSPB and the address of the appropriate MSPB field office for filing the appeal
- 3 B. A copy of the MSPB's regulations
- 0 C. A copy of the Appeals forms
- 0 D. Notice of any applicable rights to a grievance procedure
- 7 E. None of the above

14. Which type of adverse action case normally requires the longest amount of time to hear and render a decision? Example: Removal for poor performance, conduct on the job, conduct off the job, etc.**

**All ten presiding officials selected removal for poor performance.

15. Adverse action cases cover (1) employees in the competitive service not on a probationary period and who have completed one year of continuous employment, or (2) those employees who are preference eligible and in an excepted service. Based on your experiences as a presiding official which of the two types of federal employees file the most adverse action cases?**

**Nine presiding officials indicated (1); one presiding official indicated (2).**

16. Please rank in order the number of cases processed, those adverse action cases you handle most often as a presiding official.***

- 1 A. Removal
- 3 B. Suspension for more than 14 days
- 2 C. Reduction-in-grade or pay
- 4 D. Furloughs for thirty days or less

***Seven presiding officials answered as indicated above. Three presiding officials indicated that they processed B more often than C.
PERSONAL INTERVIEW WITH PRESIDING OFFICIALS

1. Has the chief appeals officer in your regional field office exercised more or less control over you as a presiding official in deciding cases brought within your jurisdiction since the creation of the CSRA? State your reasons.

2. In your opinion, do you believe that the authority of presiding officials to hear and decide cases brought within their jurisdiction has increased or decreased? State your reasons.

3. Which type of representation provides the best support for federal employees in adverse action cases? State your reasons.

4. With the new administration in Washington, do you believe there will be more reduction-in-force cases brought by federal employees before the MSPB? State your reasons.

5. Does it take more or less time to hear and decide adverse action cases under the MSPB as compared to the FEAA? State your reasons.

6. Do you believe that there has been an increase or decrease in the number of adverse action cases filed with your regional field office since the creation of the CSRA? State your reasons.
7. Are there more or less federal employees being discharged for unacceptable performance since the creation of the CSRA? State your reasons.

8. Are more federal agencies discharging federal employees for conduct on the job since the creation of the CSRA? State your reasons.

9. Do you believe that federal agencies are more careful in their application of adverse action decisions taken against their federal employees? State your reasons.

10. What federal agency do you believe violates the rights of federal employees the most within the federal government? State your reasons.

11. In your opinion, do you believe that the reversal rate in adverse action cases has increased or decreased? State your reasons.

12. Do you believe that the MSPB is more or less efficient in handling the appeals of federal employees as compared to the FEAA? State your reasons.
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