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State Constitutional Issues on the November General Election Ballot - II

Proposal 02-03: Collective Bargaining and Binding Arbitration for State Employees

Proposal 02-03, placed on the November 5, 2002, statewide ballot by initiative petition, would amend Article XI, Section 5, of the 1963 Michigan Constitution to make 3 changes in provisions for the employment of state classified employees:

1. State classified employees would have the right to organize in unions and collectively bargain over wages, hours, pensions, and all other terms and conditions of employment.
2. The state would be compelled to bargain in good faith for the purpose of reaching a binding agreement.
3. Binding arbitration would be available as a right for the settlement of any matters bargained to an impasse.

State classified employees currently are granted the ability to organize and collectively bargain by the Civil Service Commission in its employee relations policies. Collective bargaining may cover any matters of employment excluding selection, classification, subcontracting, and the rules and regulations of the Civil Service Commission. Contention arises from the right of the Commission to modify or reject agreements and a perceived lack of impartiality created by having the Civil Service Commission, the Office of State Employer (OSE), the Employee Relations Board, and other interested bodies located within state government.

The State Workforce

In August 2002, 43,350 classified employees were represented by unions in the collective bargaining process. Proposal 02-03 would alter the bargaining status of 41,574 employees (69.6 percent of state employees). The collective bargaining provisions for state police troopers and sergeants already in the Michigan Constitution applies to 1,776 employees (3.0 percent). A total of 16,360 (27.4 percent) are excluded from collective bargaining for various reasons, primarily the managerial or policy-making responsibilities of their jobs.

Total employee compensation, salaries and wages plus employer-paid fringe benefits such as insurance and retirement, totaled $3.94 billion in Fiscal Year 2001, 10.8 percent of total state government spending of $36.49 billion.

Table 1
Classified State Employees by Bargaining Unit and Non-Exclusively Represented Group Pay Period Ending 8/17/02

Unit	Number of Employees
Exclusive Representation	
Safety and Regulation	2,236
Labor and Trades	3,570
Security	9,802
Human Services Support	884
Scientific and Engineering	2,094
Technical	1,263
Institutional	2,986
Human Services	10,177
Administrative Support	8,562
State Police Enlisted	1,776
Non-Exclusive Representation	
Business and Administrative	4,321
Confidential	2,297
Managerial	1,726
Non-Career and Other	487
Supervisory	7,529
Total	59,710

Source: Michigan Department of Civil Service

Background

The Civil Service Commission was established in 1937 as a remedy to a politically oriented spoils system to create a fair and equal opportunity for public service for all Michigan citizens. The Constitution was amended (Article VI, Section 22) in 1940 to give the Commission permanence and enforceability. The 1961 Constitutional Convention reconfirmed its importance by continuing its provision in the 1963 Constitution (Article XI, Section 5).

Article XI, Section 5, includes a number of checks and balances to recognize the separation of powers in state government and the roles of the different branches of government.

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The Civil Service Commission was established as a 4-member body, with no more than 2 members from a single political party. It is independent of the legislative, executive, and judicial branches of government, instead serving quasi-legislative, quasi-executive, and quasi-judicial roles with plenary authority over all aspects of state classified employment. However, wage and benefit recommendations of the Commission must be submitted to the governor for inclusion in the Executive Budget. The legislature may reject or reduce the recommended increases in rates of compensation authorized by the commission within 60 days of receipt.

Article IV, Section 48, of the 1963 Constitution permits the legislature to enact laws for the resolution of disputes concerning public employees, "except those in the state classified civil service." In 1965, this provision was used to enact the Public Employment Relations Act, Public Act 379 (PERA), permitting collective bargaining for municipal, county, university, and other types of public employees. One effect of this provision was a perceived erosion in the pay and benefit advantages of working for the state. During this same era, several states began granting collective bargaining rights to state employees. Pressure was mounting for state employees to gain collective bargaining rights.

Previous opinions by the Commission, the governor's office, the Attorney General, and union officials all considered a constitutional amendment as a necessary step to provide state employees collective bargaining rights. Additionally, the state police troopers and sergeants used a constitutional amendment to gain collective bargaining rights in 1978. Nevertheless, the Civil Service Commission unilaterally adopted policies in 1980 according collective bargaining rights to a majority of classified employees.

The immediate problem facing the Civil Service Commission upon granting of collective bargaining rights was to restructure its own role from the wage and benefit setting body to a regulatory body, overseeing both the process of collective bargaining and the results produced by those negotiations. The Constitution vested with the Civil Service Commission the power to fix rates of compensation, classify positions, make rules and regulations, and regulate all conditions of employment. However, the Commission could not logically impose upon itself an employer's duty to bargain and at the same time claim the unilateral right to approve contracts. Additionally, the failure of a party to observe a collective bargaining duty constitutes an unfair labor practice. Casting itself as employer might have resulted in the Commission having to enforce an unfair labor practice against itself.

The Commission responded to this problem by delegating certain responsibilities. The Office of State Employer was established in the Department of Management and Budget as the designated representative of the state government as a whole in the setting of wages, benefits, and other conditions of employment, including all primary negotiations. Commission policies were amended to define mandatory and prohibited subjects of collective bargaining, and the Commission retained the right to approve, modify, or reject negotiated agreements before they took effect. The Employment Relations Board also was established to handle certain functions that the Commission opted not to perform directly, including: 1) acting as an appellate body with respect to certain matters; 2) developing a coordinated compensation plan for non-exclusively represented classified employees; and 3) serving as a panel to resolve impasses arising during the course of contract negotiations.

Criticisms of the Current Process. The root of many of the present issues with the collective bargaining process, perceived or real, is the method by which collective bargaining was granted – that is as a unilateral policy change by the Civil Service Commission. The delegates to the 1961 Constitution Convention did not foresee, or perhaps did not intend, the advent of collective bargaining for state classified employees and the Civil Service Commission is ill equipped to deal with oversight of state employment in the context of collective bargaining. In a governmental system filled with separation of powers and checks and balances, a unilateral policy change of the sort taken could not be achieved without the threat of surrendering powers constitutionally granted or infringing on powers constitutionally granted to another body.

The Scope of Bargaining. The Civil Service Commission attempted to walk a fine line when it granted collective bargaining to state employees. While a model existed, both in the public and private sectors, for what a collective bargaining system should resemble, the ability to emulate that model was limited by Constitutional provisions that vested power with the Commission. It clearly had to delegate some of its authority to subordinate agencies, but the necessity of remaining in compliance with Constitutional provisions dictated that the Commission retain adequate decision making authority.

Because the Commission retained certain limited attributes of decision making, some employee organizations view the collective bargaining process as less than complete. The fact that these limitations are not placed on collective bargaining negotiations with other public employers (i.e., cities or school districts), has caused some state employee organizations to feel as though they are not afforded the same rights as other public employee unions.

Lack of Neutrality. A second common complaint is that the collective bargaining procedures are not really neutral. This complaint results from the perception that Office of State Employer, the Employment Relations Board, the Department of Civil Service, and the Civil Service Commission itself are all various layers of the same management structure – state government .

While the Civil Service Commission unilaterally changed its mission from the constitutionally defined role of an active participant in the process to a role of regulator of both the process and the results produced by it, the Commission remains a part of state government and in the role of regulator it must, at times, tell the unions what they can and cannot do.

Michigan's Experience with Collective Bargaining and Binding Arbitration

All Michigan public employees, "except those in the state classified civil service," are covered under the PERA. One purpose of PERA was to standardize the public sector collective bargaining process in Michigan. Under PERA, public employees, regardless of where situated in the state, can look to a single, comprehensive state statute as the source of their collective bargaining rights, rather than to a patchwork of ordinances or charter provisions.

While PERA provided collective bargaining rights to public employees, it also eased restrictions on public employee strikes. Because several police and firefighter strikes ensued, Public Act 312 of 1969 was enacted to provide compulsory binding arbitration for uniformed municipal employees as an alternative dispute resolution mechanism. Police and firefighter employees were singled out by Act 312 because of the potential harm to persons or property. By referencing in Proposal 02-03, "… binding arbitration for resolution thereof the *same as now provided by law for public police and fire departments*," the proposal directly adopts the arbitration process provided for in Act 312.

Collective Bargaining. There are clear parallels between Proposal 02-03 and PERA. As would be the case for Proposal 02-03, PERA created a system for employment relations that was not always consistent with systems, laws, and relationships that were already in existence at the time it was enacted.

The criticism of PERA most relevant to Proposal 02-03 is the view of the courts that PERA prevails over conflicting laws. When PERA was enacted, conflicts arose over the preexisting constitutional powers and the changes enacted under this new power. In response to those conflicts, the Michigan Supreme Court "has consistently held that PERA prevails over conflicting legislation, charters, and ordinances in the face of contentions by cities, counties, public universities and school districts that other laws or the Constitution carve out exceptions to PERA." *Local 1383, International Association of Fire Fighters, AFL-CIO v. City of Warren*, (411 Mich 654; 1981). The Court stated in *Rockwell v. Crestwood School District Board of Education*, (393 Mich 616, 630; 1975), that "the supremacy of the provisions of the PERA is predicated on the Constitution (Const 1963, art 4, sec 48) and the apparent legislative intent that the PERA be the governing law for public employee labor relations."

One result of the dominance of PERA is that "public employers and their affected employees [have] the right to, in effect, negotiate a statute out of existence as to the contracting parties through collective bargaining." (OAG 1983-84, No. 6244 at 369.) This raises serious concerns because the provisions "bargained out of existence" by the parties may contain safeguards that were enacted at the state or local level to limit the scope and size of government. It is doubtful that the people of Michigan, by approving Article IV, Section 48, intended to give it "super law" status, mandating that all other laws, and indeed other provisions of the state Constitution, were to become subordinate to the Legislature's authority to resolve public sector employment disputes. Neither is it clear that the Legislature chose to give PERA an exalted status over laws in related areas. Nevertheless, the cumulative effect of court decisions has been to create this result.

Binding Arbitration. According to the American Arbitration Association, a growing number of companies, organizations and agencies throughout the world have recognized the value of mediation in resolving disputes with their employees, customers and business partners. Mediation allows

parties to work together with the aid of a neutral facilitator - a mediator - who assists them in reaching a settlement of their choosing. Arbitration involves a formal quasi-judicial setting in which each party presents evidence supporting its position to a neutral individual or a multimember board. The report of an arbitrator is considered final and binding on the parties.

In Michigan, a 3-member board serves as the arbitration panel. One member is appointed by the employee union, one by the public employer, and a chairman is selected from a list of 3 arbitrators with each party to the dispute able to strike one name. Act 312 originally provided for conventional arbitration, with the panel able to side with one party or the other, or decide for an award somewhere in the middle. This arrangement was criticized as leading to excessively high awards. It also was not constructive for the negotiating process: parties tended to move to extreme positions, knowing the arbitrator would seek a middle ground. In 1972, the process was amended to retain conventional arbitration for non-economic issues, but to provide that economic issues must now be decided from the last best offer. Each party must make a reasonable offer or risk the arbitrator selecting the other party's offer.

Retroactive Awards. One objection to the Act 312 process by municipal officials is the ability to award wage and benefit increases retroactively. Section 10 of Act 312 provides, "… Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provision to the contrary notwithstanding.…" This objection stems from the failure of arbitration panels to comply with the statutory schedule within which the arbitration process is supposed to take place. This schedule is regularly ignored causing the arbitration process to take many more months and years than was anticipated in creation of this process. While municipal operations continue unchanged during the arbitration process, and police and firefighters continue to serve, they do so without pay increases until a decision is rendered. Since Act 312 established arbitration as an alternative to the strike and it is possible for this process to become prolonged. This provision is simply to avoid punishing police and firefighter workers for using the arbitration process.

In the private sector, where a company's budget is not a public document, the possibility of a retroactive decision with significant associated costs would lead to some anticipatory action. Money would be set aside so that when a decision is finally announced, it does not have crippling effects on the company. While some municipalities are able to use creative budgeting to plan for wage and benefit increases, the ability to make such provisions in the public sector is hampered by tax restrictions limiting the amount of taxes governments can levy. Government budgets often are scanned for cost-cutting possibilities, especially in recessionary periods when tax dollars are expected to go further. A second issue for government is that contract negotiations require a level of gamesmanship, with each party attempting to outwit the other. A reservation of funds created in anticipation of an arbitration award could signal to employee negotiators some of the intentions of the municipal negotiators.

"Budget-Busting" Awards. Other criticisms of the Act 312 process are leveled at the basis on which some awards have been granted to the employee organizations. While municipalities bemoan these awards as "unwarranted" and "budget busting," the arbitrators have found the wage and benefit increases in line with comparable communities and the economic conditions.

While arbitration decisions have caused municipalities to make budget adjustments, these adjustments likely would have been necessary in any case. This issue is frustrating for municipal officials because arbitrators, whose decisions force changes in the budgets of non-public safety departments, are not subject to the processes that mayors and city council members must go through in formulating a budget. Because arbitration decisions are made based solely on the wages and benefits of the police and firefighters and the ability of the municipality to pay, the arbitrator is not exposed to the politics, negotiation, and compromise that is involved in formulating the budget for all other employees and expenses. The need to make cuts in other areas of municipal spending as a result of the arbitration awards are viewed by some arbitrators as budgetary decisions that are not their concern.

State Police Troopers. Examination of measures of salary and other economic indicators for the period since state police enlisted employees obtained collective bargaining and compulsory arbitration in 1978 provides some insight on the effect constitutionally guaranteed collective bargaining may have had on state police employee wages. During the 23-year period from 1978-79 through 2001-02, state police trooper wages have increased slightly faster than other

classified state employees and at the same rate as hourly wages for production workers in manufacturing. All three measures have lagged behind per capita personal income in Michigan and the rate of increase in the Consumer Price Index for the Detroit area. **Table 2** summarizes the changes recorded over this time period. The general statistics provide no clear indication that the wage setting process has benefited state police troopers vis a vis regular state employees or manufacturing employees. Conversely, the data reveal no indication that regular state employees have suffered vis a vis state police employees.

Table 2
Average Annual Increases in Selected Compensation and Economic Statistics: FY1979 through FY2002

Classified State Employees' Salaries	3.7
State Police Troopers' Salaries	3.8
Average Hourly Earnings—Manufacturing	3.8
Michigan Per Capita Personal Income	5.4
Consumer Price Index (Detroit)	4.2

Pre-vote analysis of the 1978 constitutional amendment raised some of the same issues that are raised concerning Proposal 02-03: It was unclear who should represent the state employer, e.g., the Governor's Office, the Civil Service Commission, of the Office of the State Employer (in the Department of Management and Budget). It also was not certain whether the amendment would preclude legislative input in the process, i.e., would this provision supersede all present constitutional provisions affecting the setting of state police compensation including the option of the Legislature to reject or reduce increases in bargained rates? (CRC Council Comments No. 904, September 29, 1978, www.crcmich.org/PUBLICAT/1970s/1978/cc0904.pdf)

These questions remain unresolved. An informal process has evolved in the collective bargaining process for state police troopers wherein the OSE bargains with the union to reach a binding agreement. Consultations are made along to the way to avoid legal complications with the provisions of Article XI, Section 5, and collective bargaining agreements are brought before the Commission at the end of the process. The Commission response has been an acknowledgement of receipt and of the provisions, but no effort to indicate approval. Because contract agreement has not coincided with the state fiscal year, it has been necessary to submit the revised wage and benefit amount to the legislature for funding. The legislature has never voted not to accept the increased amount. While all provisions of Section 5 have legally been adhered to, the process has never been challenged by a failure of the Commission or the legislature to approve the terms of a contract settlement.

Collective Bargaining and Binding Arbitration Elsewhere

The grant of bargaining rights, either through a state constitution or state law, is fairly common, but not universal. According to *Public Sector Employment: In a Time of Transition* (Belman, Gunderson, and Hyatt, eds), the grant of bargaining rights to all public employees is found in 23 states and Washington, D.C.; 16 states grant bargaining rights to only some public employees; and 11 states have no legislation granting bargaining rights to public employees (See **Table 3**). The duty of the state government to collectively bargain with employees is found in 26 states, including Indiana and Washington (See **Table 3** footnotes).

While the provision of collective bargaining is fairly common, the provision of binding arbitration is less common, especially for state classified employees. According to Belman, et al, 11 states have provisions for arbitration to settle unresolved negotiations with state classified employees. Arbitration is compulsory in 4 states: Connecticut and Iowa use final offer arbitration – issue by issue; Vermont uses final offer arbitration for the total package; and Rhode Island uses another format. Three states have mandatory fact-finding with voluntary arbitration if fact-finding fails to settle disputes: Massachusetts, Oregon, and Pennsylvania. Four states offer voluntary arbitration: Hawaii, Maine, Minnesota, and Montana. Significantly, 2 of the states with structured arbitration processes for state employees have built in safeguards to avoid the criticisms associated with Act 312 in Michigan. In Connecticut, the arbitration award can be rejected by the legislature if it finds insufficient funds, in which case the parties then resume negotiations. In Rhode Island, all arbitration awards are advisory only on wages (See **Table 3**).

Table 3
Summary of Features of State Public Sector Bargaining Laws for State Employees as of 1996

	Bargaining Duty	Terminal Resolution Procedure
Alabama	No	
Alaska	Yes	Voluntary Arbitration
Arizona	No	
Arkansas	No	
California	No[1]	Mediation
Colorado	No	
Connecticut	Yes	Final-offer interest arbitration — issue by issue[2]
Delaware	Yes	Voluntary fact-finding
Florida	Yes[3]	Mandatory fact-finding Final resolution by legislative body
Georgia	No	
Hawaii	Yes	Mandatory fact-finding Voluntary Arbitration
Idaho	No	
Illinois	Yes	Voluntary fact-finding
Indiana	No[4]	
Iowa	Yes	Mandatory fact-finding Final-offer interest arbitration — issue by issue
Kansas	No[1]	Mandatory fact-finding Final resolution by legislative body
Kentucky	No	
Louisiana	No	
Maine	Yes	Voluntary fact-finding Voluntary Arbitration[5]
Maryland	No	
Massachusetts	Yes	Mandatory fact-finding Voluntary Arbitration
Michigan	Yes	Mediation
Minnesota	Yes	Interest arbitration — choice of procedures Voluntary Arbitration
Mississippi	No	
Missouri	No	
Montana	Yes	Mandatory fact-finding Voluntary Arbitration
Nebraska	Yes	Mediation[6]
Nevada	No	
New Hampshire	Yes	Fact finding w/ review/ override by legislative body
New Jersey	Yes	Mandatory fact-finding
New Mexico	Yes	Fact finding w/ review/ override by legislative body
New York	Yes	Fact finding w/ review/ override by legislative body
North Carolina	No	
North Dakota	No	
Ohio	Yes	Mandatory fact-finding Parties determine terminal resolution procedure
Oklahoma	No	
Oregon	Yes	Mandatory fact-finding Voluntary Arbitration
Pennsylvania	Yes	Mandatory fact-finding Voluntary Arbitration
Rhode Island	Yes	Interest arbitration — other format[7]
South Carolina	No	
South Dakota	Yes	Mediation
Tennessee	No	
Texas	No	
Utah	No	
Vermont	Yes	Final-offer interest arbitration — total package
Virginia	No[8]	
Washington	No[9]	Fact finding w/ review/ override by legislative body
West Virginia	No	
Wisconsin	Yes	Mandatory fact-finding
Wyoming	No	

[1] Right to present proposals/meet and confer.

[2] Connecticut State Employees Relations Act provides for interest arbitration awards, which can be rejected by the legislature if it finds insufficient funds. The parties then resume negotiations.

[3] The right of public employees to bargain collectively is a constitutional as well as a statutory right.

[4] Governor Bayh issued an executive order on May 20, 1990, granting state employees the right to elect union representation.

[5] Arbitrator's award regarding economic issues is advisory; if majority of arbitrators on panel agree to award on noneconomic issues, it is binding.

[6] All interest arbitration awards are advisory only on wages.

[7] Nebraska: The Nebraska State Supreme Court has ruled that contractually based and statutory binding arbitration – both interest and rights types – under the State Uniform Arbitration Act, are an unconstitutional intrusion into the authority of the courts (see *AFSCME Local 61*).

[8] The law provides, "No state, county, municipal or like governmental officer, agent, or governing body is vested w/ or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or to collectively bargain or enter into any collective bargaining contract w/ any such union or association or its agents w/ respect to any matter relating to them or their employment services.

In 1993, a section was added to permit the formation of employee associations "for the purpose of promoting their interest before the employing agency."

[9] State employees cannot negotiate wages.

Source: Public Sector Employment: In a Time of Transition, Chapter 2—Public Sector Law: An Update, by John Lund and Cheryl L Maranto, (Dale Belman, Morley Gunderson, and Douglas Hyatt, Editors) (Industrial Relations Research Association, University of Wisconsin-Madison, 1996).

Other Issues

Wording of the Amendment

Duty to Bargain. It is not clear if the proposed amendment would place unequal burdens on the state and the unions. The wording would seem to place the duty to bargain solely on the state:

> …. The *state* shall bargain in good faith for the purpose of reaching a binding collective bargaining agreement … [emphasis supplied]

Section 15 of PERA (MCL 423.215) states shares the duty to bargain with both the state and employees:

> A public employer shall bargain collectively with the representatives of its employees … to bargain collectively is the performance of the *mutual obligation of the employer and the representative of the employees*… [emphasis supplied]

If the courts find that the amendment places different burdens on the employer and employees, this could have repercussions for the negotiating process.

Issues of Bargaining. Mandatory subjects of bargaining, both in the private and public sector, are defined by law. Once a specific subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning the subject if it has been proposed by either party and neither party may take unilateral action on the subject absent an impasse in negotiations. Proposal 02-03 says that the state must bargain:

> … over wages, hours, pensions and all other terms and conditions of employment….

This language is similar to PERA. Section 11 of PERA (MCL 423.211) states:

> … in respect to rates of pay, wages, hours of employment or other conditions of employment …

The 1978 amendment to Article XI, Section 5 (for state police troopers) more explicitly defines the mandatory subjects of collective bargaining:

> … concerning conditions of their employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment except promotions which will be determined by competitive examination and performance on the basis of merit, efficiency and fitness…

Act 312 Reference. Proposal 02-03 would refer "unresolved disputes to binding arbitration for resolution thereof the same as *now* provided by law for public police and fire departments," [emphasis supplied] the same wording as the amendment for state troopers in 1978. If this reference freezes into the Constitution the arbitration process as is currently provided for in Act 312, as it appears to, it is not clear what would happen if Act 312 is amended. For example, one criticism of Act 312 is the long, drawn-out process and its implications for retroactive awards. If the legislature amends Act 312 to remedy this issue, the implication changes in the process for state employees is not clear.

Other Provisions in Section 5

Because Proposal 02-03 would add a paragraph to Article XI, Section 5, of the Michigan Constitution without amending any other provisions in that section, it is not clear how the provisions of the proposal is intended to interact with the existing authorities of the Civil Service Commission or the legislature.

Nonexclusively Represented Employees. In both the public and private sector, a class of employees is typically excluded from exclusive employee representation and the right to collective bargaining. The assumption driving this exclusion is that supervisors are part of management and therefore should not be permitted to bargain in league with their subordinates. To do so would create significant role conflicts, force decisions that would make them potentially less loyal to management, and weaken their effectiveness in dealing with disciplinary problems and grievances. The inclusion of administrative assistants reflects the confidential work in which they are engaged, and seeks to avoid forcing them to choose their loyalties.

It is not clear whether the amendment proposed in Proposal 02-03 would continue the Civil Service Commission practice of granting the right to collective bargaining only to non-management positions or be broadened to all classified employees, including employees in policy making, management, and supervisory positions, and their administrative assistants. The proposed paragraph begins,

> *State classified employees* shall have the right to elect bargaining representatives … [emphasis supplied]

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This phrase – state classified employees – defines a broad group. The first paragraph of Article XI, Section 5, states:

> The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

Thus, by using this phrase, the proposal creates the potential for employees not currently included in exclusive bargaining units, those considered non-exclusively represented employees under present Civil Service Commission policies, to organize for the purpose of collective bargaining.

Oversight and Accountability

Because the collective bargaining and binding arbitration processes for state police troopers and sergeants has been made to conform with the current collective bargaining process for state employees, and the roles of different players in the process has not been challenged, a number of constitutional questions remain unanswered. The current collective bargaining process identifies the Office of State Employer, as designated by Commission policies and Executive Order, as the bargaining agent for management. For this arrangement to pass constitutional muster, collective bargaining must be viewed simply as having altered the method by which wages and working conditions are established, without having lessened the Commission's constitutional duty to regulate the overall process. In assuming this regulatory role, the Commission represents neither the interests of management, nor of labor, but rather the long-term public interest in the merit system. Neutrality, however, does not connote an abrogation of constitutional duty. While the Commission does not actively participate in the collective bargaining process, in the sense that it does not bargain on behalf of the state, the Commission does have a constitutional duty to regulate both the process and the results produced by it to ensure that the public interest is protected. Proposal 02-03 would change these relationships. If the Civil Service Commission is unable to modify or reject collective bargaining agreements, it is not clear that it can continue to delegate negotiating power to the Office of State Employer.

The role of the governor and the legislature remains equally unclear. The power to tax and spend money in Michigan rests with the legislature. Accordingly, the legislature is afforded the opportunity to reduce or reject increases in rates of compensation authorized by the Commission. Because PERA and Act 312 do not allow a city council or county commission to amend the results of negotiations, it would appear that Proposal 02-03 supplants this legislative authority. However, while Proposal 02-03 amends Section 5, it does not directly alter the provisions relating to the legislative authority to reduce or reject increases in rates of compensation.