

40th Annual
Civil Service Conference
Day One

CIVIL SERVICE

A CHRONOLOGY Washington Law and Practice

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September 2021

- 1883 Pendleton Act – Federal Civil Service
- 1889 State of Washington Incorporation
- 1896 Seattle City Charter
- 1903 Easson v. Seattle,
32 Wash. 405, 73 Pac. 496 (1903)
- 1906 Ryan v. Handley,
43 Wash. 232, 86 Pac. 398 (1906)
- 1914 Clayton Antitrust Act
as amended, 15 U.S.C. § § 12-27
- 1919 Labor Unions Legalized
Chapter 185, Laws of 1919, and
RCW 49.36.010-49.36.030
- 1926 Railway Labor Act
as amended, 45 U.S.C. §§ 151-188
- 1932 Norris-LaGuardia Act
as amended, 29, U. S. C. § § 101-115
- 1933 Injunctions in Labor disputes
Chapter 7, Laws of 1933, Ex. Sess., and
Chapter 49.32 RCW
- 1935 National Labor Relations Act
as amended, 29 U.S.C. § § 151-169
- Civil Service for City Firemen
Chapter 31, Laws of 1935, and
Chapter 41.08 RCW
- 1937 Civil Service for City Policemen
Chapter 13, Laws of 1937, and
Chapter 41.12 RCW
- 1939 State ex. rel. Hearty v. Mullin,
198 Wash. 99, 87 P.2d 280
- 1940 Isham v. Spokane,
2 Wn.2d 392, 98 P.2d 306 (1940)

- 1941 State ex rel Reilly v. Civil Serv. Comm.,
8 Wn.2d 498, 112 P.2d 987 (1941)
- 1947 Labor Management Relations Act
as amended, 29 U.S.C. § § 141, et seq.
- 1954 Stoor v. Seattle,
44 Wn.2d 405, 267 P.2d 902 (1954)
- 1958 Civil Service for County Sheriffs
Initiative Measure No. 23, and
Chapter 41.14 RCW
- 1959 Labor Management Reporting and Disclosure Act
29 U.S.C. § § 401-531
- 1960 State Civil Service
Initiative Measure No. 207, and
Chapter 41.06 RCW
- 1963 Reynolds v. Kirkland Police Comm.,
62 Wn.2d 720, 384 P.2d 819 (1963)
- 1967 Public Employees Collective Bargaining Act
Chapter 108, Laws of 1967, Ex. Sess., and
Chapter 41.56 RCW
- 1973 Interest Arbitration
Chapter 131, Laws of 1973, and
RCW 41.56.430-41.56.490
- 1976 PERC Created
Chapter 5, Laws of 1975-1976, 2nd Ex. Sess., and
Chapter 41.58 RCW
- 1977 Arbogast v. Westport,
18 Wn. App. 4, 567 P.2d 244 (1977)
- 1976- Bellingham Fire Fighters v. Bellingham,
15 Wn. App. 662, 551 P.2d 142 (1976)
- 1978 Firefighters v. Walla Walla,
90 Wn.2d 828, 586 P.2d 479 (1978)
- 1978 State Employees v. Community College,
90 Wn.2d 698, 585 P.2d 474 (1978)


- 1979 Deputy Sheriff's Guild v. Comm'rs,
92 Wn.2d 844, 601 P.2d 943 (1979)
- 1980 Seattle v. Auto Sheet Metal Workers, Local 387,
27 Wn. App. 669, 620 P.2d 119 (1980)
- City of Bellevue,
Decision No. 839 (PECB, 1980)
- 1981 Yakima v. Yakima Police,
29 Wn. App. 756, 631 P.2d 400 (1981)
- 1982 Greig v. Metzler,
33 Wn. App. 223, 653 P.2d 1346 (1982)
- 1983 Pierce County v. Civil Service Commission,
98 Wn.2d 690, 658 P.2d 648 (1983)
- Keeton v. Social & Health Servs.,
34 Wn. App. 353, 661 P.2d 982 (1983)
- 1984 State Employees v. State,
101 Wn.2d 536, 682 P.2d 869 (1984)
- Pool v. Omak,
36 Wn. App. 844, 678 P.2d 343 (1984)
- 1985 Simonds v. Kennewick,
41 Wn. App. 851, 706 P.2d 1080 (1985)
- Cleveland Board of Education v. Loudermill,
470 U.S. 532, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985)
- City of Wenatchee,
Decision No. 2216 (PECB, 1985)
- 1986 Rose v. Erickson,
106 Wn.2d 420, 721 P.2d 969 (1986)
- Micone v. Town of Steilacoom Civil Serv. Comm.,
44 Wn. App. 636, 722 P.2d 1369 (1986)
- Roberts v. Fire Protection Dist.,
44 Wn. App. 744, 723 P.2d 488 (1986)
- 1987 Shoemaker v. City of Bremerton,
109 Wn.2d 504, 745 P.2d 858 (1987)

- 1988 Samuels v. Lake Stevens,
50 Wn. App. 475, 749 P.2d 187 (1988)
- 1991 Crippen v. Bellevue,
61 Wn. App. 251, 810 P.2d 50 (1991)
- Yakima v. Yakima Firefighters,
117 Wn.2d 655, 818 P.2d 1076 (1991)
- 1992 Pasco v. PERC,
119 Wn.2d 504, 833 P.2d 381 (1992)
- 1993 Teamsters v. Moses Lake,
70 Wn. App. 404, 853 P.2d 951 (1993)
- Dawson v. Daly,
120 Wn.2d 782, 845 P.2d 995 (1993)
- 1994 Matson v. Civil Service Board [Tacoma],
75 Wn. App. 370 (1994)
- 1997 Amren v. Kalama,
131 Wn.2d 25, 929 P.2d 389 (1997), and
- Limstrom v. Ladenburg,
85 Wn. App. 524, 933 P.2d 1055 (1997)
- 1998 Civil Service Comm'n v. City of Kelso,
137 Wn. 2d 166, 969 P.2d 474 (1998)
- 1999 Bunko v. Puyallup Civil Service Comm'n, 95 Wn. App. 495, 975 P.2d 1055 (1999)
- Civil Service Commission [City of Kelso] v. City of Kelso, 137 Wn.2d 166 (1999)
- Americans with Disabilities Act (“ADA”),
42 USC §12101, et seq.
- 2001 Bickford v. City of Seattle,
104 Wn. App. 809, 17 P.3d 1240 (Wash. App. Div.1 2001);
review denied, 144 Wn. 2d 1019, 32 P.3d 284 (2001)
- 2002 Chapter 143, Laws of 2002 Amends RCW 41.12.050 (unclassified positions)
- 2004 Seattle Police Officers Guild v. City of Seattle,
151 Wn. 2d 823, 92 P.3d 243 (2004).

- 2005 Leonel v. American Airlines,
400 F.3d 702 (9th Cir. 2005)
- 2006 Yakima County Law Enforcement Officers Guild v. Yakima County,
133 Wn. App. 281, 135 P.3d 558 (2006)
- 2010 City of Seattle Police Dept. v. City of Seattle Public Safety Civil Service Comm'n.,
155 Wn. App. 878 (2010)
- 2010 Skinner v. City of Medina, 168 Wn.2d 845 (2010)
- 2011 City of Seattle v. Werner, 163 Wn. App.899, 261 P.3d 218 (2011)
- 2014 City of Medina v. Skinner, 184 Wn. App. 449, 336 P.3d 1172 (2014)
- 2015 Goding v. King County, 192 Wn. App. 270, 366 P.3d 1 (2015)
- 2016 McGowan v. City of Asotin, 193 Wn. App. 1052 (2016, unpublished)
- 2017 AGO 2017 No. 3 (March 20, 2017)
- 2018 Sprague v. Spokane Valley Fire Dep't, 189 Wn.2d 858, 409 P.3d 160 (2018)
- Sheats v. City of East Wenatchee, 6 Wn. App. 2d 253, 431 P.3d 489 (2018)
- 2019 Bahra v. Cnty. of San Bernardino, 945 F.3d 1231 (9th Cir. 2019)
- 2020 Sidibe v. Pierce County, No. 53484 -3-II (WA Court of Appeals, September 29, 2020)

CIVIL SERVICE: AN OVERVIEW


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Program Outline

- Introduction
- Basics
- Hearings
- OPMA and PRA



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INTRODUCTION

Background

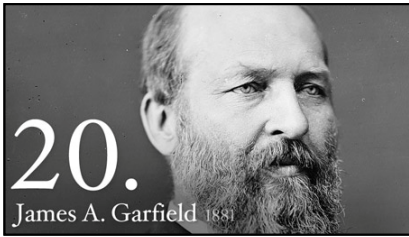


Jefferson
(1801-1809)



Jackson
(1829-1837)

Background



Background

Pendleton Act —
Civil Service Reform Act of 1883

Background



Civil Service Reform Act of 1978

Progressive Era



Systems



Systems - Fire



Ch. 41.08 RCW
(1935)

Systems – City Police



Ch. 41.12 RCW
(1937)

Systems – County Sheriff



Ch. 41.14 RCW
(I-23, 1958)

Other Municipal Systems



BASICS

Basics

- Structure
- Purpose
- Coverage
- Jurisdiction
- Collective bargaining

Structure



Reynolds v. Kirkland Police Commission

Purpose

- Merit
- Tenure
- Independent Commission

Vested Rights?



Greig v. Metzler

Who Runs Department?



Easson v. Seattle

Who Covered?



Teamsters v. Moses Lake

RCW 41.12.050

Persons Included -- Restricted Exemptions:

If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Position	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

RCW 41.12.050

Persons Included -- Restricted Exemptions:

- Assistant chief
- Deputy chief
- Bureau commander, and
- Administrative assistant or administrative secretary.

LABOR RELATIONS

Chapter 41.56 RCW and Collective Bargaining



Public Employment Relations Commission



Subjects of Bargaining – Sword and Shield

- MANDATORY
- PERMISSIVE
- ILLEGAL

Civil Service v. Collective Bargaining



Spokane v. Civil Service Commission

Basics of Civil Service

- Classification of Positions
- Examinations
- Registers and Eligibility
- Certification and Appointment
- Probation
- Discipline and Discharge

Classifications



State ex rel. Reilly v. Civil Service

Examinations: Written or Oral?



Stoor v. Seattle

Examinations: Test Materials



Hellend v. King County

Answer

- A. It is a "crime" because it violates an existing statute.
- B. It is not a "crime" because the statute is obsolete and not usually enforced.
- C. It is a "crime" because the exposure may incite others to more serious crime.
- D. It is a "crime" because the offensiveness to public opinion justifies the use of the obsolete statute.
- E. It is not a "crime" because public opinion would not support the police in taking enforcement action.

See *Helland v. King County*, 84 Wn.2d 858 (1975)

Examinations: Follow the Rules



See *State ex rel. Hearty v. Mullin*, 198 Wash. 99 (1939)

Examinations: Open or Promotional?



O'Brien v. Civil Service Commission

Examinations: Who Tests?



Simonds v. Kennewick

Examinations: Basics

Employment selection procedure is valid if

"Predictive of or significantly correlated with important elements of job performance."

29 CFR § 16-7.5(B)

See, TITLE VII of the Civil Rights Act of 1964,
42 USC § 2000-e2(a)

Examinations: Test Sequence?



See Leonel v. American Airlines

COVID-19 and Testing/Onboarding

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws:

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term



COVID-19 and Testing

- An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer
- According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace. . .
- and therefore the employer may withdraw the job offer
- those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer.

[Last checked 5/17/2021]



Test Sequence

- Civil Service
- Departmental?
 - Background
 - Polygraph
 - Medical?
 - Other?



Commission Review of Registers

- Who tests?
- Who determines candidate eligibility?
- Managing appeals

Register/List: Rule of Three (Or More)?



Seattle Police Officers Guild v. City of Seattle

AFFIRMATIVE ACTION?

“Selective certification coupled with the engineering department’s policy of filling the first of every three vacancies with a qualified minority candidate is not only appropriate, but also essential to eradicate in the instant case the present effects of past discrimination. . . . It is not enough that employment procedures utilized by employers are fair in form. They must be fair in operation.”

Lindsay v. Seattle, 86 Wn.2d 698 (1976)

SELECTIVE CERTIFICATION

"The ethics of our society would judge people on their ability and their individualized worth. But past discriminatory practices incongruent with those same ethics and with the abstract, idealistic perfection of a color-blind society, envisioned by the Fourteenth Amendment, have left minorities to varying degrees educationally and economically disadvantaged."

Lindsay v. Seattle, 86 Wn.2d 698 (1976)

SELECTIVE CERTIFICATION

"In light of the underrepresentation of minorities in the Seattle Fire Department as well as in City employment as a whole, and particularly considering the substantial underrepresentation in upper-level positions, we find the City's interest in employing selective certification to eliminate the racial imbalance in its employment to be compelling. The fact that minorities participate on an equal basis in the tax support of the City further supports this conclusion."

Maehren v. Seattle 92 Wn.2d 480 (1979)

1999: I-200

RCW 49.60.400 prohibits the exercise of racial preferences in any aspect of public employment, regardless of the race of the party alleging injury, and provides a separate cause of action for its violation by incorporating the remedies available under other sections of the Washington Law against Discrimination (WLAD).

I-200

RCW 49.60.400 provides, in pertinent part, that

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment ...

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

Parents Involved in Cmty. Schs v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660 (2003)

We hold that the open choice plan's use of a racially cognizant tie breaker does not violate RCW 49.60.400. The School District's open choice plan does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin as meant by law. To the extent the tie breaker is race conscious, it furthers a core mission of public education: to make available an equal, uniform and enriching educational environment to all students within the district.

While we do not reach the constitutional question, we note that article IX imposes on the State the mandatory and paramount duty to provide an education that prepares students for citizenship. This may require positive steps to provide a diverse, culturally rich and racially integrated educational experience.

Dumont v. City of Seattle, 148 Wn. App. 850 (2009)

Our Supreme Court has been very explicit: systems that are racially cognizant but that do not specifically advantage one racial group to the detriment of another do not implicate the terms "discriminate" or "grant preference" as they are used in RCW 49.60.400. . . . Rather, "racially neutral programs designed to foster and promote diversity ... would be permitted by the initiative." . . . As our Supreme Court has pointed out, the ballot statement in favor of I-200 itself stated that the initiative "does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university."

[Citing *Parents Involved in Cmty. Schs.*, 149 Wn.2d at 687.]

Chapter 14, Laws of 2020

RCW 41.14.060 and 41.14.130 amended:

"The commission shall certify the names of the
(~~three~~) five persons highest on the eligible list . . ."

Certification and Appointment



See *Crippen v. City of Bellevue*

Department Screening?



Probation



HEARINGS

Discharge/Discipline



Reprimands?



City of Yakima (1991)

Resignation



Micone v. Civil Service Commission

Commission Jurisdiction?



Yakima v. Yakima Police Civil Service

Hearing Process

- Quasi-judicial Proceedings
- Be Careful!
- Avoid **Appearance** of Unfairness

Increased Penalties



Pool v. City of Omak

Other Remedies?

- *Bahra v. Cnty. of San Bernardino*, 945 F.3d 1231 (9th Cir. 2019)



Arbitration v. Civil Service



City of Kelso

Cause?

“In Good Faith For Cause” v.
“Just Cause”



Seattle Police Dept. v. Civil Service

Seven Elements of Just Cause

- Employee Knowledge of Rules?
- Rules Reasonable to Job?
- Investigation?
- Investigation Fair & Objective?
- Sufficiency of Evidence/Proof?
- Rules Applied Evenhandedly?
- Penalty Reasonable to Offense/Service Record

Fair Investigation

- Conduct of internal investigation as basis for claim of disparate impact

Sidibe v. Pierce County (September 29, 2020)



OPMA AND PRA

Government in a Greenhouse



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