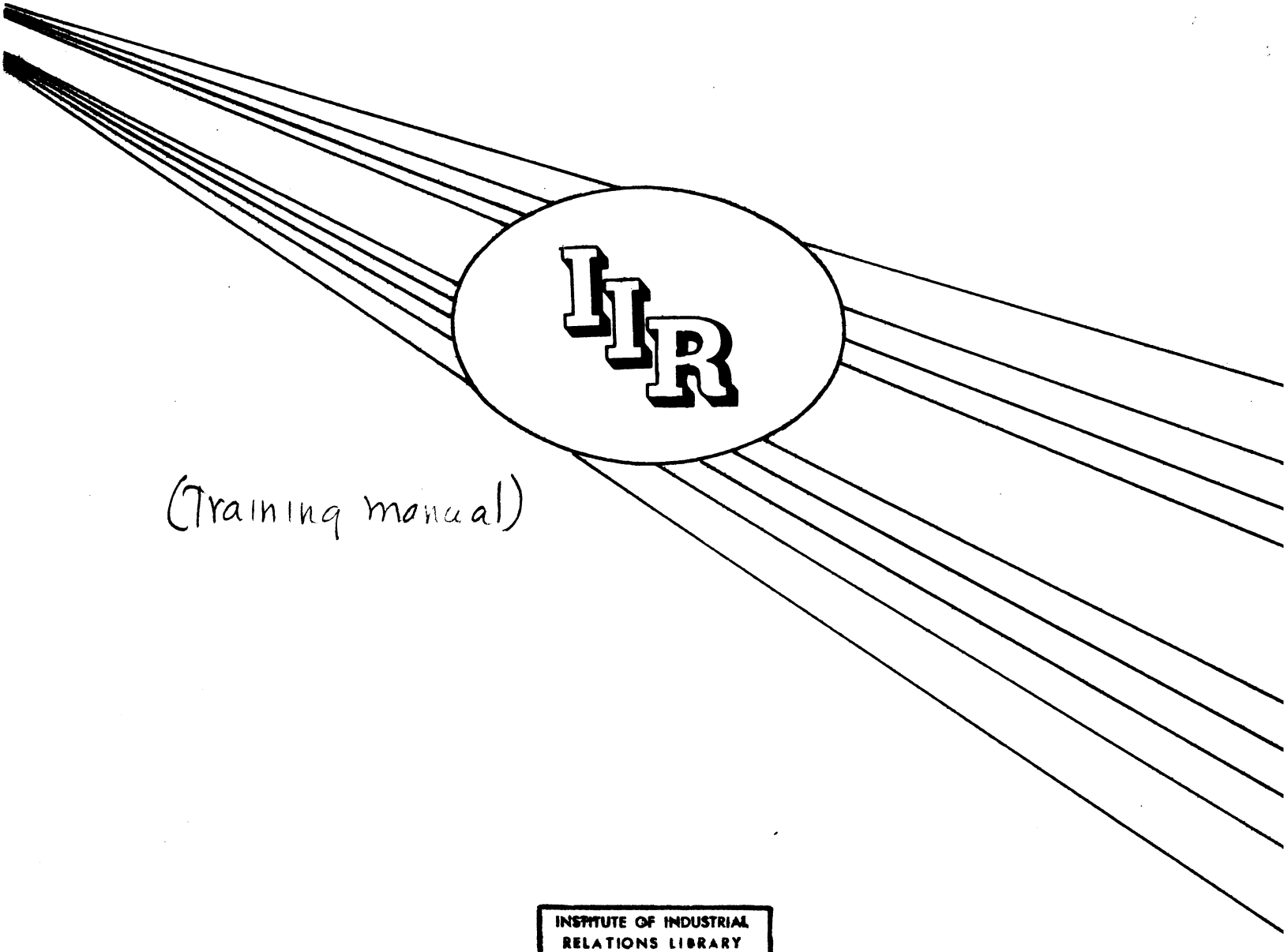
BUILDING YOUR MANAGEMENT TEAM
A FRAMEWORK FOR PUBLIC SECTOR LABOR RELATIONS



(Training manual)

INSTITUTE OF INDUSTRIAL RELATIONS
UNIVERSITY OF CALIFORNIA-LOS ANGELES

Published in 1976

Copies of this volume may be purchased at $8.00 each from

Institute of Industrial Relations
University of California, Los Angeles
Los Angeles, California 90024

[California. University.]

BUILDING YOUR MANAGEMENT TEAM: A FRAMEWORK FOR PUBLIC SECTOR LABOR RELATIONS

Prepared under the Supervision of

John A. Spitz, Administrator

Center for Management Research and Education

INSTITUTE OF INDUSTRIAL RELATIONS (Los Angeles)

Frederic Meyers, Director

Daniel J.B. Mitchell, Associate Director

Contributors

Susan G. Astarita

Blair Levin

Editor

Felicitas Hinman

(Training manual)

This training manual was developed under contract to the State of California Agriculture and Services Agency through a grant from the U.S. Civil Service Commission under the Intergovernmental Personnel Act (P.L. 91-648).

Cover design by Marna McCormick

Price: $8.00

[Los Angeles, 1976]

INSTITUTE OF INDUSTRIAL RELATIONS STAFF

Frederic Meyers, Director

Daniel J. B. Mitchell, Associate Director

Geraldine Leshin, Executive Assistant to the Director and

Coordinator of Institute Programs

CENTERS

LABOR RESEARCH AND EDUCATION

Jack Blackburn	Administrator
James Gallagher	Coordinator
Gloria Busman	Coordinator
Helen Mills	Program Representative
Janis Okida	Program Representative
Karen Hogan	Program Assistant

MANAGEMENT RESEARCH AND EDUCATION

John A. Spitz	Administrator
Angus MacLeod	Coordinator
Bernard McMahon	Coordinator
Joan Gusten	Program Representative
Sandra Lind	Program Representative
Rita Stearn	Program Assistant

INFORMATION SERVICES

Felicitas Hinman	Principal Editor
Marlene Shaughnessy	Assistant Researcher
Susan Astarita	Writer
Blair Levin	Assistant Writer

FOREWORD

The Institute of Industrial Relations is happy to present this, the seventh in a series of training packages completed under the terms of a contract between the State of California and the University of California, Los Angeles. With funds provided to the State by the Federal Government, the State asked the Institutes at UCLA and Berkeley to assist in the training of state and local public managers and employees in the conduct of labor relations. A major portion of our role is to prepare and provide training materials.

One of the most fundamental differences between the public and private sectors in the bargaining context is the structure of management. Depending on the political structure of the jurisdiction, the public sector management must, under the separation of powers principle, refer a collective agreement to the elected chief executive and/or the legislative body with final authority for a decision on funding. The private sector manager typically has only to gain approval for a collective agreement from his Board of Directors.

Equally fundamental to the differing management structures in the public and private sectors is the presence or absence of the profit motive. In the private sector, pressure can be exerted on the private manager to perform at a level which will maximize production output and minimize production losses, in order to assure profits. In the public sector, a manager's primary function is to implement public policy, to make decisions for the agency and to see that they are carried out with the approval, through the legislative process, of the ultimate consumer--the voting public. Of course, he is responsible for efficiency - the expenditure of public funds to achieve given public policy goals.

Given these fundamental differences, the public manager must, nevertheless, develop an integrated plan to deal with labor relations on a daily basis, in the formal bilateral collective bargaining relationship, and in the event of a work stoppage.

This manual attempts to deal with the special problems of the public sector manager and covers such topics as the impact of public sector unionism on the structure of public management, the building of management philosophies, strategies, and inter-relationships for effective labor relations, and the provision of prestige items, incentives, and rewards through which public sector management groups can identify themselves as managers and remain loyal to the management position in negotiating and administering a contract.

It is our hope that this manual will be useful to practicioners charged with responsibility for labor relations in the public sector.

November, 1976

Frederic Meyers
Director

OVERVIEW

The materials included in this manual were selected for public sector managers who are confronted with one of the foremost problems in local government today -- Preparing an Effective Labor Relations Team.

The problems of management's fragmented authority and the union's sophistication, particularly their appeals to elected officials, demand that managers in local government act like "Management" in the private sector sense,operationally and structurally.

A total strategy is emphasized -- including a disciplined, cohesive and prepared management team, whose compensation is based upon performance in all areas of their responsibility, and who are represented by a qualified management advocate.

Additional background material including suggested state and local labor relations legislation is appended.

I would like to acknowledge the special contributions of: Donald Becker of Julian, Becker and Associates; Larry Curtis of Musick, Peeler and Garrett; Fran LaMountain, Consultant to Management; and Kenneth Simon of Hill, Farrer and Burrill, in the preparation of this manual. Special credit is due to Susan Astarita and Blair Levin of the Institute's staff for their tireless research and writing efforts. Special thanks is also due to Rita Stearn without whom this project could not have been accomplished.

November, 1976 John A. Spitz

TAB A

TAB B

THE TOP MANAGEMENT STRUCTURE IN PUBLIC SECTOR COLLECTIVE BARGAINING

.. Initial Response of Local Government to Collective Bargaining

.. Problems with Typical Initial Response

.. Shifts in Bargaining Structure After Initial Response

.. Centralization or Diversity?

THE MANAGEMENT TEAM: A FRAMEWORK FOR EFFECTIVE COLLECTIVE BARGAINING

.. Basic Management Posture Toward Labor Relations

.. Building Intra-Management Relationships

.. Management Structure for Negotiations

.. The Need for Coordination

CHOOSING THE MANAGEMENT ADVOCATE

.. Major Objectives in Labor Relations

.. Selecting an Agency Employee

.. A Consultant Negotiator

.. Major Considerations in Hiring a Consultant Negotiator

PROS AND CONS OF HAVING INDEPENDENT ATTORNEY AS LABOR RELATIONS ADVOCATE, AND RELATIVE MERITS OF HIRING ATTORNEY VS. LAY CONSULTANT

MULTI-EMPLOYER BARGAINING IN THE LOCAL GOVERNMENT SECTOR

.. Public Sector Management Multi-Structures

.. Experience with Multi-Employer Bargaining in State & Local Sectors -- Positive & Negative Arguments

.. Applicability of the Multi-Employer Approach in Your Jurisdiction

TAB B (continued)

APPENDICES

TAB C

A SYSTEM FOR COLLECTIVE BARGAINING

TAB C (continued)

Chart I Example of Detail Contract Negotiation Project Plan in Private Sector

Chart II Example of a Bargaining Book Outline in Private Sector

Chart III Example of Contract Bargaining Goals

Chart IV Contract Settlement

Chart V Contract Bargaining Status Book

CHECKLIST FOR "MEET AND CONFER"

APPENDICES

I The Strike Team

II Elements of Strike Contingency and Resolution Plans

III Communications and Responsibilities in Event of Work Stoppage

TAB D

MANAGEMENT COMPENSATION

.. Review of Compensation Policy: Public and Private Sector Differences

.. How to Devise a Management Compensation Plan in the Public Sector

.. General Recommendations for Compensation Policy Development

APPENDICES

I Cities Reminded to Cherish Management

II California County Management Benefit Survey, Spring, 1975

TAB D (continued)

III City of Torrance (Management Benefit Package) (1976)

Ordinance No. 2678 Providing for Management Benefits

Procedure for Performance Analysis and Bonus Consideration (Department Heads)

Management Performance Evaluation Outline

IV City of Palm Springs

Resolution No. 11813 Amending the Executive Compensation Plan

Resolution No. 11814 Amending Management, Professional, and Supervisory Compensation Plan

V County of Solano

Section XI - Personnel and Salary Resolution, "Management Benefit Package"

VI Management Benefit Pamphlet - County of Ventura

VII Los Angeles County - Management Evaluation Plan

TAB E

SUPPLEMENTARY MATERIALS AND GLOSSARY

Suggested Employer-Employee Organization Relations Resolution

.. Commentary on Resolution

.. Resolution - Table of Contents

TAB E (continued)

Meyers-Milias-Brown Act

Introduction to "Acceptable Bill" for Statewide Labor Relations

.. Analysis of "Acceptable Bill"

A Bill for an Act Concerning Labor and Providing for a System of Peaceful Public Employer-Employee Relations

Glossary of Terms

A

TAB A

INTRODUCTION

Public sector management faces two major difficulties in handling labor relations. The first is internal; fragmentation. Fragmentation, the overlapping authority and power of many parties within management, complicates the task of handling labor relations.

The second difficulty, external to management, is the employee organization. The organization will constrain management's ability to set and administer policy unilaterally, creating further problems for public sector management.

These two problems are interrelated. This section describes and analyzes fragmentation and public employee organizations.

To begin this section, we have included an article which we believe identifies the basic areas of concern to be dealt with in this section and, indeed, the entire module.

COPING WITH PUBLIC EMPLOYEE BARGAINING

There seems to be a trend among public managers newly exposed to the process of collective bargaining to under-estimate the impact and requirement of effective labor negotiations. For those with exposure to collective bargaining in government, the impact of this process is only too clear and many times learned too late.

Many public managers tend to react to collective bargaining by treating it as they would other one-time personnel problems such as applying the provisions of the Fair Labor Standards Act or creating an affirmative action plan to comport with Title VII of the Civil Rights Act of 1964. Once these statutes are complied with, the public manager can devote attention to other problems of government.

Unfortunately, collective bargaining is not one of those administrative problems that is susceptible to a simple solution. On the contrary, labor negotiations can impact upon the public manager as no other regulatory scheme. The unique, quasi-adversary nature of collective bargaining puts pressure on public managers to be on their guard at all times during negotiations. Employee organizations will literally take all they can get at the bargaining table.

Samuel Gompers, leader of the American Federation of Labor, described the goals of organized labor many years ago. His shorthand expression for union

---

Reprinted with permission from "Across the Table" published by the New York State Conference of Mayors and Municipal Officials, December, 1975, pp. 138-143, 6 Elk Street, Albany, New York, 12207 John Galligan, Administrative Assistant.

goals was "more, more, more!" Public management must be acutely aware of this basic union philosophy and realize that it is manifested by the presentation of many demands from employee organizations during negotiations. Reacting to unreasonable employee demands will require a degree of insight and tenacity not yet experienced by many uninitiated public officials.

Managers must realize how severe the impact of collective bargaining is on the day-to-day workings of their jurisdictions and then must begin to develop a perspective towards dealing with this phenomenon.

The roots of this perspective can be seen in an analysis of the manager's role in government. Public management has one prime function. That function is to make decisions in the area of government administration and see to it that those decisions are carried out. If those decisions are perceived to be faulty by the ultimate consumer, the voting public, then action may be taken to insure more palatable decision-making by the government manager or his or her replacement. Thus, the public manager is accountable for decisions as is his or her private sector counterpart.

However, in the public sector authority may be unclear and responsibility ineffective. Years of reaction to political motivations may have created barriers to accountability in government as a defensive technique for the irrational reactions created by political forces. Collective bargaining promises to change this practice of limited authority and responsibility because unions will demand to negotiate only with persons able to make authoritative decisions.

When public employees are granted the right to bargain collectively they are placed in a unique position vis-à-vis other local community interest groups. They have a particularly effective method which provides a powerful input into the resource allocation process of local government managers. In a recent article, Professor Clyde W. Summers pointed out why collective bargaining provides public employees a unique input into the budget-making process not available to other interest groups:[1]

(1) Once a majority union becomes the exclusive representative of all employees in the bargaining unit, it becomes the official spokesman speaking with a single authoritative voice for all employees. Thus, dissonance or indifference in the employee group is submerged, giving the employee's voice increased clarity and force which can overshadow other less effective interest groups.

(2) Through the mandate of good faith bargaining, the public manager must meet the employee representative at the bargaining table and negotiate until agreement or impasse over bargainable issues. This process is not a mere official courtesy such as meet and confer, listening to presentations, or engaging in discussion as is afforded other interest groups.

> "When the union presents its demands, the public official or his representative must respond, not with evasive ambiguities or non-committal generalities, but with hard answers. He must give reasons, support them with facts, and expose his position to extended argument on each point. Ultimately, he may be required to submit the proposed budget to critical examination, justifying the priorities implicit in its size and allocation."[2]

(3) The employee group is provided a closed forum for inputting into the resource allocation process not shared by other community interest groups. Other competing groups are not present during presentation and discussion of bargaining issues and may not know of them until the contract is ready to be approved by the legislative body. The only spokesperson for competing interest groups is the management representative who is assigned the duty to protect the larger community interests by virtue of the representational status implicit in his or her role as a public manager.

(4) Once an agreement is ratified, further reconsideration of the agreed upon terms is precluded for the contract period. Thus the binding nature of a collective bargaining agreement is unlike terms established by ordinance or regulations which can be changed unilaterally by an appropriate legislative process. Under a labor contract, changes can only be made with consent of the exclusive employee representative.

This special procedure afforded public employees has changed the traditional resource allocation process of government. This change, although fundamental, is not necessarily evil.

Public employee salaries and benefits account for a large percentage of local government budgets. When a general wage increase is being considered for public employees, they must compete with many other voices crying for increased services and facilities which are not wage related. If the employee voice is not effective, a deserved wage increase may be easily defeated in favor of other political considerations by the public manager. Collective bargaining

> provides a method for vigorous competition by public employees and, if functioning efficiently, can lead to fair settlements based on objective standards such as budget limitations and comparative pay scales.

A major implication of this evolving process is that public managers are going to experience greater pressures for resources than ever before. Under the traditional system or resource allocation, government managers learned to deal effectively in a politically oriented process.

Now, collective bargaining demands a new series of skills in the area of labor negotiations. Government leaders have no time to return to school and learn the mystical language of collective bargaining nor can they easily acquire skills in the art of negotiations. Yet collective bargaining is here today and the public manager is held as trustee of the public welfare in an adversary process which he or she may not fully understand.

When confronted with the prospect of bargaining collectively with public employees, government leaders must be willing to change old patterns of decision-making. The local executive must effectively delegate reasonable authority to a person or group of persons assigned to deal with labor negotiations. This negotiating body must go to the bargaining table with a certain degree of authority to engage in negotiations. If the bargaining team is perceived to be ineffectual by employees, negotiations will be a meaningless exercise.

Labor relations and collective bargaining are full-time responsibilities which begin prior to negotiations and continue on through contract administration and begin all over again with negotiations over new contract term. Thus, a process is established which will become a major part of the administrative structure of local governments. It follows logically that adequate resources must be allocated to effectively deal with this on-going process.

Lee Shaw and Theodore Clark have stated the following considerations public management must establish to effectively cope with collective bargaining:[3]

(A) Create Motivation in Public Management

First, every effort should be made to impress upon public managers that it is their duty to represent and protect the interests of the governmental agency just as it is the duty of unions to represent public employees. In short, the public negotiator must understand that negotiations are a contest most akin to the adversary system of litigation.

Second, negotiators in the public sector should be imbued with the need to retain the right to manage. In the long run this is of primary importance. In the private sector, successful companies have recognized the need to retain the right to operate efficiently, to utilize technological change to reduce labor costs, and to avoid restrictive work rules. . . . Public managers must therefore be motivated to detect and avoid restrictive and inefficient work practices.

Third, all persons who hold supervisory positions should be considered part of the management team. In the public sector there is pressure from employee groups such as the National Education Association and the International Association of Firefighters to include supervisory personnel in collective bargaining units because such people have long been members of these associations prior to advent of collective bargaining. Inclusion of these supervisors in the bargaining unit would destroy the managerial group and weaken the role of supervisors as managers.

Fourth, an attempt should be made to provide public managers some of the financial rewards for outstanding performance which their counterparts in private industry receive. . . . At a minimum, serious considerations should be given to providing different salaries and working conditions for management personnel. . . . The advent of collective bargaining required that a system under which the salaries of administrators are directly tied to the salaries of bargaining unit personnel be carefully re-examined, if not entirely eliminated.

(B) Create a Basic Negotiating Philosophy

Unions should not be allowed to encroach upon exclusive managerial functions. The doctrine of management rights must be firmly adopted as a managerial philosophy. Unions themselves realize this fundamental principle and with few exceptions will abide by it.

The education sphere is the major battleground for management rights. Because teachers feel as "professionals," they should have equal voice in such decisions as educational philosophy, textbook selection, curriculum, and other matters of school operations.

However, such pressure should be resisted because it is the public manager not the bargaining unit employee who is accountable to the taxpayer. If the manager cedes to excessive employee control and administrative havoc ensues, it is assured that the employee organization will not be the first in line to accept responsibility.

According to Shaw and Clark:

> "The management rights doctrine provides a test by which to analyze contract demands. Thus, to preserve the public employer's right to carry out its designated public function and to manage efficiently its operations, one fundamental question should be asked as each union demand is placed on the bargaining table: Does the proposal prevent the public employer from taking actions necessary to implement the public policy goals entrusted to it by law in an efficient manner? If it does, the proposal should be resisted. Further, proposals such as 'mutual agreement' or 'veto' clauses that require the public employer to first obtain the union's agreement before acting in such areas as discipline, scheduling of overtime, or subcontracting are contrary to the management rights doctrine and should be avoided."

> The union's function under a collective agreement is one of a reactor to management decisions. The union must police the contract and file grievances where alleged violations of the contract exist. If the contract is carefully drafted to protect management rights, the union role as reactor can be very effective in maintaining an arms-length, professional employer-employee relationship.

Successful collective bargaining can only come about through mutual respect of the parties toward each other's role in the negotiations process. This respect can only be learned over time. There is no simple technique for creating a smooth employer-employee relationship. As labor practitioners in the private sector learned years ago, time and effort lead to a maturing of the bargaining process to the point where ill feelings and hyerbole are minimized and true problem solving can be accomplished at the bargaining table.

In order to facilitate the necessary level of maturity in public sector collective bargaining, certain changes must be made in the traditional model of government structure. The personnel function in a governmental unit, which accounts for 60 to 70 percent of the financial resources, must be streamlined. The existing personnel model is characterized by fragmentation and confusion which has led to diminished employee morale and losses in productivity.

Today's worker wants to feel a certain role in the government work-force. Many well educated persons entering the public service are soon discouraged

by the lack of concern for the identity of the public employee. Part of the reason for this discouragement is the recent mushrooming of government employment and the resulting confusion from crash programs. Another reason is the weak role of the personnel function. The development of collective bargaining promises to change this prevailing pattern.

High level government managers are quickly realizing that collective bargaining is a highly sophisticated process which calls for a great deal of time and expertise. They are also realizing that the stakes in negotiations are high. Elected officials can no longer afford to assume direct roles in negotiations because they lack the requisite time and expertise nor can the responsibility for bargaining be assumed, on a part-time basis, by staff officers who are not trained in the collective bargaining process.

Studies have indicated that the executive branch of government is gaining a major role in contract negotiations and new positions are being created to allow hiring of staff members who are capable of effectively dealing with labor relations.[4] Placing the responsibility and authority for collective bargaining in the executive branch has certain clear advantages.[5]

Management is able to present a unified position when dealing with a number of employee organizations which can prevent whipsawing that has existed when various management representatives have dealt with different employee organizations. Management can coordinate preparation and bargaining strategies through a single agency which also has the responsibility for administering collective bargaining agreements.

By centralizing the labor relations function, management can take advantage of available technical expertise at a minimum cost to the jurisdiction. Full-time labor relations specialists can assume the overall duty of collective bargaining thereby reducing the need to rely on other staff officers such as business managers or personnel directors who do not have the time or expertise to handle labor negotiations and contract administration.

In jurisdications which are not of the size to warrant full-time labor relations specialists, management can rely on outside sources such as labor consultants on an ad hoc basis. These outside labor experts can be called in to handle issues such as bargaining strategy, contract language drafting, mediation, fact-finding, arbitration and administrative agency proceedings such as unfair labor practice charges.

In either situation, whether using full-time staff expertise or ad hoc consultation, the important point is that the responsiblity and authority for collective bargaining must be centralized in a jurisdiction in order to streamline the bargaining process and create a unified basis for coping with the challenges of employee bargaining.

Conclusion

The person responsible for contract negotiations serves as a gatekeeper to the resources of the jurisdiction. When public employee organizations demand "more, more, more," the negotiator must hold ground and insure that the interests of the community at large are not compromised by the demands of the employees. While forestalling excessive demands by employees, the

manager must simultaneously strive for smooth employer-employee relations in order to insure the highest worker morale and productivity possible. These two countervailing concepts may, at first glance, seem irreconcilable, but in actual practice, they are not. Seasoned employee representatives know full well that management cannot afford to "give away the shop" and still function effectively. Employee representatives expect a tough battle at the bargaining table and respect a strong well-reasoned management position. Victor Gotbaum, a well-known public employee union leader from New York has said an honest and tough adversary relationship should exist between public management and labor and that exaggerated feelings between the parties has stymied the development of a proper professional attitude in the public sector.[6]

Adoption of a tough but reasonable bargaining attitude by management can lead to a higher degree of employee morale and productivity based on mutual respect and professionalism. Before this highly desirable goal can be achieved, however, public officials must establish a strong management team instilled with a proper management bargaining philosophy and a high degree of authority and responsibility for contract negotiations. This team should be well-rewarded and never undermined in the eyes of employees. If gearing up for collective bargaining calls for changes in management structures, they must be made in order to insure a cohesive management group which can successfully negotiate and administer labor agreements with various employee organizations.

These changes in attitudes, resource allocation and government structures are absolutely necessary if management in the public service is to achieve

that level of sophistication in labor matters required to maintain a mature employer-employee relations program which will, in turn, serve the greater public interest.

FOOTNOTES

1. Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L. J. 1156, 1164-68 (1974). For summary see Appendix I.

2. Id., at 1164.

3. Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 UCLA 1 Rev. 867 (1972).

4. Burton, Local Government Bargaining Management Structure, 11 Industrial Relations No. 2, 123 (1972).

5. Id.

6. Gotbaum, Collective Bargaining and the Union Leader in Public Workers and Public Unions (S. Zagoria ed. 1972).

PUBLIC EMPLOYER MANAGEMENT: STRUCTURES AND CONSIDERATIONS

In the private sector, management faces the problem of determining the proper bargaining unit. Once determined, the lines are clearly drawn; management tries to minimize labor costs, the unions try to get more for their members.

Public sector management not only faces the problem of determining the proper bargaining unit but it also faces the problem of determining who should bargain for the employer. Whereas in the private sector, authority ultimately rests in one group or person, authority in the public sector is fragmented and overlapping.

Many parties could claim authority in public sector collective bargaining. The chief executive, such as a mayor, the legislative body, such as a city council, independent commissions, such as a school board, and department heads could all claim the right to be represented during collective bargaining sessions. Even some taxpayer groups claim they should be involved with negotiations. But no one is specifically responsible for collective bargaining. No one is specifically involved in the agency's labor relations to promote the agency's interest.

Each government jurisdiction is organized in a different fashion. The particular politics and players, which often have more to do with the outcome than governmental structure, also vary with each situation. The process involved in each situation is unique and often complex.

However, there are common situations and pitfalls of which all local governments should be aware.

Types of Organization

Local governments can be organized in a variety of ways. The manner in which the government is organized helps determine how collective bargaining is handled.

City Manager

Following the reform movement of the early twentieth century, cities sought to improve the quality of local government by having the chief officer be a trained professional. The City Manager form of government was thus born. The manager, who has administrative authority, is hired by the elected council and serves at their pleasure. He is not responsible to individual council members, but only to the council as a whole.

While this form of government is popular among reform minded city planners, it does not provide strong executive leadership. Large cities, which need such leadership, seldom have a city manager form of government.

In this form of government the council is supposed to set policy, and the manager is supposed to administer policy. In practice, the distinction is blurred. The way in which a manager administers policies can create policy. The manager often makes recommendations to the council, which also creates policy. Although the manager is supposed to be nonpolitical in his approach, he may be forced to make decisions which align him with some council members against others.

The relationship between the council and the manager is critical as to how collective bargaining will be handled. The council may give the manager suggestions of what it hopes the labor relations policy will be. The manager has to translate that policy into practice. If the manager has the confidence of the council, he will be able to proceed with little interference. If the council is divided in its opinion of the manager, negotiations with unions will be tougher, as the manager has to negotiate with both the union and the council.

Strong Executive

A strong executive form of government concentrates administrative responsibility with the executive while the executive and the city council share policy-making responsibilities. The executive appoints department heads, coordinates the activities of government, and is responsible for preparing and administering an annual budget.

Generally, under such a system, the executive and his representatives handle negotiations with unions. Politics, however, will strongly affect the process. If the executive and the council hold similar views and do not have conflicting political ambitions, negotiations will be easier for the city. If there are conflicts between the council and the executive, they will most likely arise during the bargaining, and the process will be subject to many complicating tactical ploys such as end runs. [1]

---

1 . See section on Political Activity.

Weak Executive

In a weak executive form of government, the executive lacks major administrative authority. He may recommend legislation and have some veto power, but he has limited appointment and policy making power. Employer functions are performed by the city council and relatively independent commissions.

The problem of fragmentation is highly apparent in this form of government. The executive, council, and commissions may all be competing, both for political and for administrative reasons, for power in negotiations -- or they may try to surrender responsibility. Such an ill-defined situation puts the city's representative in negotiations in a difficult position.

Los Angeles is an example of a weak-executive form of city government. The mayor has little power under the city charter. If he wants to accomplish anything, he has to have the cooperation of the council.

Players in the Process

No matter what form of government has been established, each branch of the government will have its own roles and its own characteristics.

Chief Executive

The role of the chief executive varies with each government jurisdiction. However, it almost always overlaps with the roles of the legislative branch and of the department heads since all will be in

some way responsible for setting budgets, setting policy, and overseeing that the policy is properly administered.

The chief executive's power exists only in relationships to the power of the legislative branch. That is, the more power the executive has, the less the council will have, or, if the council has more power, the executive will have less. The parameters of power are rarely well-defined, and labor relations will, as well as many other issues, become a battleground for executive power vs. legislative power.

The power issue is critical in California because all municipal elections are non-partisan. With no political party in control, policy-making then becomes even more fragmented. Although the chief executive may play many different roles, he will probably be the one individual who, in the public mind, represents the position of the jurisdiction.

The Legislature

The legislative body can also play many roles. Members of the legislature can be actively involved with the negotiations or simply ratify whatever agreement is reached. No matter what their role, they will be the group most strongly subject to political pressure. Some of them will be vulnerable to union lobbying, while others may be beholden to, say, taxpayer groups who favor a hard line toward unions. And since council members have smaller constituencies than the chief executive, they are more sensitive to political pressures. A political contribution for a council member (or a threat of one to an opponent) carries greater weight than a similar contribution to a candidate for chief executive.

Regardless of sensitivity to pro-union and anti-union pressures, in almost every situation some council members will be more favorable to the union than others. Furthermore, there will always be some who, even if they agree on the issue, have conflicting ambitions which may affect the negotiations.

The Judiciary

The judiciary plays a smaller role than the legislature in labor relations disputes. The courts have generally supported the principle of individual self-regulation. They have endorsed arbitration as the preferred method of resolving rights disputes. They tend to stay away, except in cases of illegal job actions from involvement in interest disputes.

Even when it has jurisdiction, the judiciary usually defers decisions in collective bargaining to other branches of government. This policy is welcomed by city officials who prefer to keep the power, and generally by unions who consider court battles costly, long, and a forum where the union's muscle and political power, carries little meaning.

However, the courts can, on occasion, play a decisive role. Private citizens sometimes call on the courts to rule on the legality of elected officials committing taypayers to certain contract terms. Courts can be called on to judge a case relating to contract administration or public employee regulations. For example, the California Court of Appeals recently ruled that the caseload assigned to Los Angeles Couty Welfare workers is a working condition, not a reserved management right,

and therefore a mandatory subject of negotiations under state and county law (GERR 515 B-17). Another California judge ordered El Dorado County Supervisors to meet and confer with the county employees association on the termination of county mental health employees (GERR 516 B-18). However, the judiciary will play a minor role in the negotiations themselves.[2]

Department Heads

The role of the department heads is determined by a given situation. That is, in most cases the department head will simply carry out policy formulated by the executive or the legislature, and provide those bodies with any information requested. The line between administering policy and setting policy can be ill-defined; department heads thus can, if they assume enough responsibility, play a major role in the process.

The chief executive may choose to use department heads as his spokesmen, or, conversely they may differ in opinion. Department heads who are civil service appointees are more likely to come in conflict with the chief executive.

It should be remembered that department heads are expected to perform their traditional administrative duties along with new functions brought about by collective bargaining. This can be time-consuming and, therefore,an unsatisfactory situation.

---

2. The judiciary does use its political weight in negotiations involving employees who serve the court, such as deputy probation officers and court clerks.

Independent Commissions and Boards

Most large cities and many smaller ones have boards, commissions, and agencies that administer functions for the city but are formally independent of the legislative or executive branches. Water and Power Departments, School Boards, and Civil Service Commissions are typical examples. They are often involved in labor relations because they either employ workers to carry out their functions -- e.g., school boards -- or they are involved in personnel relations -- e.g., the civil service commission. Their involvement, irrespective of their relationship with the other parties, further fragments the negotiating position of the city.

Other Government Jurisdictions

In addition to the divisions within a local government, other government jurisdictions play a role in shaping collective bargaining within a public agency. Local governments have to handle labor relations (and taxation to underwrite the cost) within the framework of state laws.

Other jurisdictions can also affect the terms of a collective bargaining agreement. Recently, while Los Angeles County was trying to hold down salary increases, the city of Los Angeles raised top executives' salaries by 11.5 percent. This action put pressure on County administrators also to raise salaries. The state, on the other hand, raised all state employees' salaries by $70.00 per month. While this provided a higher than average percentage increase for lower-paid workers, it also put pressure on California towns and municipalities to increase salaries for lower-paying positions.

In sum, no matter how the city government is organized, the central problem remains the same. That problem is fragmentation -- overlapping authority in matters affecting labor relations. Fragmentation, inherent in our political system, makes it difficult to handle labor relations effectively.[3]

Fragmentation exists because many different parties are involved in labor relations, all having different concerns and motivations. The question of who represents the employer is thus difficult to answer.

Fragmentation

Fragmentation exists because of checks and balances built into our political structures. Our Founding Fathers, fearing the potential of an all-powerful leader, built checks and balances into our Constitution. Thus neither Congress, the President, nor the Supreme Court can govern without the approval from the other branches. That philosophy of limiting the powers of any one branch exists at the state and local level as well. Whoever negotiates for a city does so under the watchful eye of others who also represent the city. No one branch has enough authority to make a final decision on its own. Cities face a further problem. Much of what they do must be legally sanctioned by state law or approved by the state legislature.

---

3. For a fuller treatment of this problem, see in Appendix I "Public Employee Bargaining: A Political Perspective," Clyde W. Summers.

Fragmentation also exists because of conflicts between political and economic goals. Economically, everyone wants the city to function as efficiently and effectively as possible. Politically, there is a variety of goals which may conflict with the economic objectives. Some persons may want certain programs to be funded which others see as unnecessary. Some persons may automatically support the union position to receive union support in an election while others may automatically oppose the union position to garner the anti-union sentiment. The political goal of "the right of all workers to organize" may conflict with the economic goal of lessening the cost of local government.

Fragmentation, therefore, leads to a number of problems in the face of which it is difficult to make policy. One major problem facing city administrators is making policy in the face of union political activity today.

CHART I

CONTINUUM OF PUBLIC SECTOR LABOR RELATIONS POSTURES

ELEMENT	DEFINITION	UNILATERAL DECISION MAKING			BILATERAL DECISION MAKING		
		PATERNALISM	MEET & LISTEN	MEET & CONFER	MEET & CONFER WITH SIGNED MEMORANDUM OF UNDERSTANDING	COLLECTIVE BARGAINING	JOINT MANAGEMENT
MANAGEMENT DECISION MAKING PROCESS	Degree to which mgmt. can exercise its decision making prerogatives.	Exclusive decision making authority w/ attitude of knowing what's best for empls.	Exclusive decision making authority w/ employee input on selected subjects.	Exclusive decision authority on all issues. Good faith exchange of views & alternatives between mgmt. & employees or their reps. to reach consensus on those issues determined by mgmt.	Meet & Confer/written agreements. Exclusive decision making authority except for those issues which mgmt. has agreed to meet & confer on. (Public Sector subj. matter may be determined by statute). Consensus is reduced to writing & 3rd party impasse resolution may be provided.	Mgmt. rights are negotiated as part of collective bargaining agreement except when provided by law (Public Sector).	Mgmt./employee team decision.
EMPLOYEES BARGAINING RIGHTS	Rights of employees.		Right to present concerns to mgmt.	Employee has right to representation by law. Employee may initiate meeting w/ mgmt.	Employee has same rights as "Meet & Confer". Also right by law to have agreement reduced to writing.	By law empls. have right to negotiate contract w/ mgmt.	Employees reach agreement with mgmt. as to employee's role in managing organization.
SCOPE OF BARGAINING	Actual subject matter which mgmt. & employees discuss at the bargaining table.	None	Generally, working conditions.	Within scope of appointing authority, e.g., wages, hours, working conditions, policies & procedures.	Same as "Meet & Confer".	Same as "Meet & Confer" w/ addition of items negotiated by both parties.	All inclusive.
MANAGEMENT RIGHTS	Rights specifically reserved to mgmt.	All rights.	All rights.	Hiring & Firing Programs & Staffing Organization structure.	Same as "Meet & Confer".	Generally, program & staffing decisions & mgmt. rights.	None.
UNION SECURITY	Provisions which protect employee associations against employers, non-association employee, and/or raids by competing associations. Union survival.	Generally none.	Generally dues check-off.	Dues check-off.	Dues check-off.	Usually determined during contract negotiations.	Union fully protected.

CONTINUUM OF PUBLIC SECTOR LABOR RELATIONS POSTURES

ELEMENT	DEFINITION	UNILATERAL DECISION MAKING			BILATERAL DECISION MAKING		
		PATERNALISM	MEET & LISTEN	MEET & CONFER	MEET & CONFER WITH SIGNED MEMORANDUM OF UNDERSTANDING	COLLECTIVE BARGAINING	JOINT MANAGEMENT
GRIEVANCES	When an employee believes he has in any way been adversely affected in his employment by any action or failure of action by his appointing power, a supervisor.	Effort made to resolve grievs. through some process. Decision still unilateral. Employees encouraged to submit griev.	Formal written griev. process. With several levels of appeal. Decis. still unilateral. Normally empl. has right to have representative.	Formal written griev. process. With several levels of appeal. Decis. still unilateral. Normally empl. has right to have representative.	Formal written process which may be subject to negotiation w/ empl. org. May provide for 3rd party neutral resolv. impasse.	Griev. procedure part of negotiated contract w/ empl. org. Usually provides for 3rd party neutral to resolve impasse.	Employees have right jointly w/ mgmt. to resolve griev. of employees.
IMPASSE RESOLUTION	The means by which a deadlock in negotiations between mgmt. & empl. org. representatives over the terms & conditions of employment is decided.	None.	None.	Central gov. body may resolve impasse.	Same as "Meet & Confer" w/ possible addition of Central Public Relations Board. Also provisions for mediation & fact-finding.	Mediation fact-finding arbitration strike.	None.
STRIKE POLICY	The manner in which public jurisdictions deal w/ the problem of public employee strikes. Some public statutes legitimatize strike action. Others prohibit it (a) either through specific prohibitions or (b) in the absence of wording allowing it.	Prohibited.	Prohibited.	Prohibited.	Prohibited in most public sector situations. Limit right to strike has been in some jurisdiction provided no danger to "public health, safety and welfare".	Right to strike negotiated as part of bargained contract, may be limited in Public Sector by controlling legislation.	

Political Activity by Unions

In the private sector, labor relations policy and collective bargaining agreements are derived solely from negotiations between the parties--the employer and the union. In the public sector, these matters contain other elements.

In the public sector, in which the employer is the public, public employees can influence public employer policy as members of a union and as public citizens.

More specifically, public employees can have an impact on labor relations policy through negotiations and through the political process. The latter, particularly, is a tool not available to the private sector employee. And it is a tool often used by the public employee.

Public employees frequently engage in political activity in attempting to influence the terms of their negotiated agreement. By political activity is meant activities within the political process, excluding job actions such as strikes or slowdowns which influence the quantity and quality of services supplied to the public agency. In this section we are primarily considering activities by public sector unions aimed at altering, through the political process, the terms and conditions of their employment. It should be noted that public sector unions sometimes call on private sector unions help with such activities, but such help often is not forthcoming.

All political activities by unions are based on two principles: First is the principle of the "end-run"; if you can't get it at the bargaining table, go someplace else; if you fail with the negotiators, try influencing the city council; if you fail with the city council, try the mayor; if you fail with the city, try the state government; and if you fail with government officials, try the public. The end-run can be very effective because of the fragmentation problem, discussed above. With so many players involved with the process of negotiations, unions have the opportunity to influence policy in many places. End-runs are most likely to be successful when only a few groups of employees are organized. When most of the employees are organized, legislators may be faced with setting off a chain reaction which will escalate budget costs.

Tied to the end-run is the second principle of the weak link. If all the government agencies having some jurisdiction and authority over the collective bargaining agreement can be compared to a chain, then it can be said that the union is searching for a weak link in that chain. A weak link is a voice favorable to the union and with the power to act. The end-running takes place until a weak link is found. The union will try every possibility to influence an agreement favorably until it finds a management voice who will exert that favorable influence.

Two Major Union Tactics

The union may use two kinds of tactics: The first involves a quid pro quo; the union does something for a public official or candidate for public office, and the public official is expected to reciprocate by doing something for the union.

Discussed below are examples of quid pro quo:

1) Endorsements

Endorsements are the most common form of public sector union political activity. However, endorsements--a public announcement of preference for a candidate--have questionable value. The public, viewing public sector unionism as a major cause of rising taxes, seldom responds favorably to such endorsements. And politicians feel that endorsements, so easily given and without much impact, do not add much strength to union political muscle. Unions seldom have much choice as to whom to endorse; one candidate is almost always more pro-union than his opponent, and it is doubtful that any candidate will change his views in order to receive a public employee union's endorsement.

There is also a danger with endorsements. If the candidate loses, the union will have an enemy in public office. Therefore, union endorsements are made with great caution.

2) Financial Support

Financial backing of candidates seems to have the greatest impact of any type of support. Politicians seem to understand that contributions require some kind of payment in return. Since financial support results in direct positive benefits for a candidate, this method can be used by unions to influence a tight contest. A large contribution in a tight race, where the marginal impact is great, is highly effective for winning friends among influential people.

3) Manpower

Unions can also supply candidates with manpower. This type of contribution can take two forms. Unions can mobilize massive groups to work for candidates, ring doorbells, make telephone calls, put out mailings; and unions can lend candidates or political parties specilized manpower, on a longer term basis, to handle special assignments or simply serve as staff assistants. Unions can also lend candidates equipment such as sound trucks and related supplies.

4) Providing a Forum

A less important but still potentially valuable form of support is supplying a candidate with a forum to present his case. The union thus gives a candidate a chance to speak to its membership, or it can offer a candidate its mailing lists. (In the latter case, the union most likely will offer to mail the letters itself.)

5) Support for Independent Union Candidates

If none of the candidates are acceptable to unions, the unions might choose to enter their own candidates in a political contest. This is rarely done, however, and even more rarely successful because of widespread public antagonism to public sector unionism.

The second major tactic employed in union political activity involves sheer union power. As discussed above, in quid pro quo tactics the union's influence was determined by the amount and timing of contributions. Power tactics, however, simply involve the union's strength. For example, firefighters have traditionally done very well in achieving parity of wage increase and fringe benefits with policemen -- not because of political contributions by their unions or associations, but because of their strength as an effective and powerful organization.

1) Lobbying

Prior to the growth of collective bargaining in the public sector, lobbying was the primary, and often only, method used by public employee organization to improve wages and working conditions. Next to endorsements, it was the most common political activity engaged in by unions, and it is generally regarded as the most effective. Lobbying in this context means supplying information, educating, or otherwise attempting to influence legislators with respect to legislation or a collective bargaining agreement.

Lobbying keeps communications open between legislators and the unions in an attempt to insure that legislators have whatever information is available to support the union position. Lobbying is also a means of applying political pressure at times other than during the course of a campaign.

Direct lobbying involves man-to-man communication. A union lobbyist talks directly to a legislator. Indirect lobbying involves letter writing campaigns, newspaper articles and other indirect forms of reaching a legislator.

Where the lobbying takes place depends upon the nature of the issue. If a particular collective bargaining agreement is at issue, the union will lobby the group, e.g., a city council, that has to approve the budget allotment. If the issue is broader, such as pension plans or occupational health and safety matters, lobbying probably will occur in state legislature where the actual bill is being drafted.

Lobbyists may deal with more than union-related issues. Unions have endorsed bills such as National Health Insurance Bills because they feel it would be advantageous to their membership. Public employee unions in particular often lobby for bills which benefit the local public employer, e.g., state subsidies of schools, public transportation. While there is no direct benefit to the employees, such subsidies create additional demands and funding for public employee services. Moreover, public employers are expected to look more favorably upon public employee unions which have aided the employers to get additional funding.

Lobbyists can, and sometimes do, pursue their objectives at higher levels. If they fail with the city council, they may try the mayor; if they fail with the city government, they may try the state government. Their tactics depend on the issue involved and on the politics of the moment, but they always have many different options.[4]

2) Publicity Campaigns

Sometimes a union will mount a publicity campaign, usually in reference to a particular issue. The issue is generally one that would gain public support. The publicity campaign may include the use of such media as paid advertising, billboards, press releases, and informational picketing.

---

4 . For further information on union strategy, see "Union Techniques for Political Persuasion," and "Employee Evaluation of Employee Relations Atmosphere," in Appendix. The first details how the union obtains relevant political information. The second details how unions obtain information about the work place.

3) Referendum on Wages and Benefits

Unions sometimes try to increase their wage and benefit structure through public referendum. For example, in Los Angeles in 1971, city firefighters and police contributed $347,000 to support two propositions that provided increased retirement benefits for municipal employees. Such an approach is seldom used, but has proven to be successful. Again, the issue must be one that appeals to the public.

4) Threats to Disclose Mismanagement

One of the toughest union tactics is a union threat to disclose mismanagement. A form of political blackmail usually accomplished through the press, the threat of revelation creates political leverage for the unions. For example, New York City lifeguards threatened to walk out on July 4 several years ago. They indicated they would publicly announce that they were walking out because of a lack of adequate oxygen at the beaches. When the city agreed to a 27 percent wage increase over two and one-half years, the lifeguards called off the walkout. The exposure threat was a ploy to pressure the city into granting the increase and to gain public sympathy in case of a strike. The lifeguards were never that concerned about the oxygen.

Legal Constraints on Political Activity [5]

There are legal constraints on public employee political activities. Such constraints are aimed more at individual employees rather than their unions. The basic law in this respect, the Hatch Act, says nothing about unions. However it does prohibit individual state and local public employees covered by the Act from being candidates for public elective office in a partisan election, from influencing a state or local employee or officer, from making a contribution to a political purpose, or from using their position to affect the result of an election.

The California Supreme Court has taken a very active role in defining government regulation affecting public employees' political activities. The court requires that the government show a compelling reason for restricting such activities, and that restrictions be narrow and specific.

Unions by themselves are not subject to much regulation. However, they are subject to the many new campaign spending and lobbying laws recently passed in Sacramento and in Washington. These laws have had a limited effect on political activities; they are hard to enforce and have limited applicability.

Further Difficulties in Policy-Making

Another potential bottleneck in negotiations caused by fragmentation is the "who gets credit" problem. In any dispute, someone is going to

---

5. For full treatment of topic see Appendix VII, Public Employees Political Activities Manual" by Larson, et. al. "Summary Statement Regarding Political Activity of State or State or Local Officers and Employees", Appendix VI.

come out looking good and someone is going to come out looking bad. (How they look may not reflect the truth -- indeed, some disputes are resolved with built-in face saving measures so that the real winner may look like the loser, and vice versa.) If the city succeeds in substantially lowering union demands, many will claim credit for their role in having taken a firm stand. If the city gives in to union demands, those same people will be busy pointing accusing fingers at everyone else. Negotiations may be hurt by someone who, in the midst of the negotiations, claims credit resolving something that has not been resolved. If an agreement will benefit an elected official, political opponents may even oppose the agreement.

Tied to who gets credit issue is a problem of transferring responsibilty. A mayor might quietly agree to all the union demands at the outset, and thus force the council to do the hard bargaining. Then the mayor might indict the council, no matter what the outcome.

These political problems may not come up, but they always have the potential of preventing the resolution of a dispute.

The constrainst of laws and the taxing powers also affect policy-making. Legislation, for example, state laws prescribing how local taxes may be raised, may make it impossible to meet union demands. Sometimes tax increases have to be approved by the state, making it impossible for city officials to agree to higher benefits because they simply don't have the funds.

A related problem arises when governmental bodies, such as school boards, make commitments for funds they themselves are not responsible for raising. For example, if the city council is legally obligated to pay for school board commitments, there can be a great many problems. If, on the other hand, the council is not legally required to provide the requested funds, it can compel the board to bargain within set limits. Although allowing the council to overrule agreements made by a board frustrates the bargaining process,the risk can be minimized through informal discussions between council and board members prior to any agreement. Even if bargaining and financial responsibilities are separate, the process can function effectively if the taxing authority retains the right to refuse funds.

Negotiations beyond budget deadlines can be another problem for public agencies. Private industry can afford to be more flexible with the timing of their budget. Public jurisdiction, due to taxing, revenue sharing, and other such financial considerations, has less flexibility concerning budget timing. Additionally, contracts are often effective for a period of time longer than the annual budget.

Constraints on Governing

With the advent of collective bargaining, there will be constraints on the ability of government to function. Just as the existence of a judiciary constrains the power of an executive, so the existence of collective bargaining constrains the powers of a government, placing limits on its discretion to manage.

Collective bargaining places certain roadblocks in the way of governing. The time and money spent on labor relations will increase with collective bargaining, taking those resources away from other areas. And public resources, being scarce, can be gravely depleted if they must be used to resolve labor disputes.

Political difficulties also will mount, further restricing a politician's ability to govern. For example, assessing the inconvenience that strikes may cause his constitutents, elected officials face very difficulty decisions. Furthermore, labor disputes often polarize society by raising delicate political issues that compel elected officals to make decisions that seem to be made on ethnic or racial grounds. An anti-union position in certain cities may seem to be an anti-minority decision.

Increased unionization also raises the critical question of parity in salaries. Government workers are very aware of salaries in the private sector and make demands based on the pay of others. They sometimes have their pay packages tied to the pay scales of other unions. These demands can lead to constantly escalating pay increases. When questions of parity arise, settlements become more difficult.

Management will not have as much flexibility in making policy due to union pressures. While most unions have not tried to interfer with policy formation, there are some exceptions: union representing policemen have sought to influence policy on such issues as crowd control and preventive detention; teacher's unions have tried to negotiate curriculum and materials; welfare workers have fought for

liberalizing welfare standards. These policy considerations do relate to material benefit and job satisfaction, and further union attempts in such policy areas can be expected.

Working conditions are another area to be impacted by collective bargaining. What is bargainable and what is not bargainable is difficult to determine, and bargainable issues overlap with questions of policy. While scheduling of work hours is generally a management preogative, unions have been able to negotiate, for example, the end of split shifts in a hospital. Or, buying equipment is sometimes the sole decision of management, and sometimes unions are involved, too.

Personnel Administration will also have to undergo some change due to the advent of collective bargaining. Unions have won the right, through a bargain, to a grievance procedure ending in arbitration; they have started to influence hiring, training, evaluation, and promotion procedures; and, of course, they have negotiated on wages and benefits.[6]

Unionization as it affects the process of governing means in essence one thing-- more bilateralism in administration. Government policy makers who are used to making decisions unilaterally on government and personnel policy may now have to develop policy in conjunction with the unions.

---

6. See Paul Prasow, et al, "Collective Bargaining & Civil Service in Public Employment: Conflict and Accommodation," IIR Training Manual.

There are no hard and fast rules that prescribe when policy can be determined unilaterally and when it should be developed bilaterally. But public management must realize that it still retains certain management rights. Part of the reason for current encroachment on management policy is that management officials do not take strong stands. Arvid Anderson, Chairman of the New York City Office of Collective Bargaining,made the following comments in reference to this problem:

> I have noticed a marked distinction in the attitudes of the public official toward what he believes he has the authority to do and what his counterpart in the private sector believes he can do.
>
> Public administrators think they can only do what they are expressly authorized to do and in the absence of such authority they will not act.
>
> The private manager, the private lawyer does not think in these terms. He thinks in terms of whether the action proposed is wise or unwise. Whether he wants to take action is another question. But he assumes that unless specifically prohibited, he has the authority to act.
>
> Attorneys for the union and union representatives do not think in terms of inhibitions on their ability to act.
>
> There are real fiscal and legal restraints on the ability of some local governments to accommodate collective bargaining concepts and procedures to existing state and municipal laws. But lawyers and public officials can figure out how to get things done as well as how not to take action.[7]

---

7. Arvid Anderson, "Statement," in Wilbur H. Baldinger (ed.), City Problems of 1970, Proceedings 1970 Annual Conference, United States Conference of Mayors (Washington, D.C.: U.S. Conference of Mayors, no date), pp. 85-86.

Management should attempt to define, early in the negotiating process, the various areas of management rights. Some areas are obviously shared, and in these unions have a right to participate in any decision-making, for example, areas such as wages and benefits, grievance procedures, and physical working conditions. Other decisions are clearly the sole prerogative of management, such as program objectives, organization structure, financing programs, and similar decisions.

There is also the area of management rights that is cloudy and open to union challenge. Decisions concerning classification, work assignments, and disciplines can be handled in a number of ways.

Public employers are entrusted with the purpose of serving the public interest. The public interest must be a prime consideration in resolving any disagreement with the union. The employees derive their rights from basic employees' rights granted all employees, but this does not grant them the right to manage -- or to govern.

In light of these constraints, the functions of government should be reconsidered. Careful thought should be given before government takes on new tasks. If the appropriateness of the government's performing a function is doubtful, public sector collective bargaining should weigh against government taking it on.

Some thought might also be given to contracting out certain public tasks to private enterprise. Private enterprise is in a better position to handle labor disputes since it does not have to worry about political objectives. Its goals are not fragmented by the interests of different parties, and its motivation -- the maximization of profit -- serves to facilitate negotiating with organized labor.

An additional advantage would accrue in case of an impasse, when government can act as a neutral to step in and help resolve the dispute. Political leaders, put under less political pressure to resolve the problem, have more flexibility to handle such matters.

Contracting out does have serious drawbacks, however. The poor, for example, who would have to pay for certain services directly, would be penalized. Vouchers could be used to minimize this danger, but public accountability in general may suffer. However, contracting out is one option that should be considered by local governments who face serious labor problems.

---

* * * * * * *

Most of the information in this section is taken from:

David Stanley, Managing Local Government Under Union Pressure, The Brookings Institution, 1972.

Harry H. Wellington, and Ralph K. Winter, Jr., The Unions and The Cities, The Brookings Institution, 1972.

Paul F. Gerhart, Political Activity by Public Employees Organization at the Local Level: Threat or Promise, Public Employees Relations Library #44, 1974.

CALIFORNIA PUBLIC SECTOR EMPLOYEE ORGANIZATIONS

Public sector unionism has grown very rapidly. Although full-scale organizing efforts began only in the last decade, already a higher percentage of employees have been organized in the public sector than in the private sector. And though employee associations in the public sector have a long history, already union membership in that sector is almost three times larger than association membership.

The extent of union membership varies among employee "types." Firefighters tend to be the most organized, followed by policemen, public welfare employees, public utilities workers, public works employees, and park and recreation employees.[1]

Experience suggests that each public sector agency will face collective bargaining in a different way, with the structure of union membership varying from place to place. The most common arrangement for a city is to have to deal with three unions -- one for the firemen, one for the policemen, and one representing all the other unionized workers. However, there are many exceptions.

In reviewing public sector unionism, we find complexity and variety rather than simplicity and consistency.

---

1. "Project: Collective Bargaining and Politics in Public Employment." UCLA Law Review, August, 1972, Vol. 19, No. 6.

Types of Public Employee Organizations

Three types of organizations represent public sector employees: all-public unions, mixed unions, and employee associations.

All-Public Unions:

An all-public union is one which represents only workers in the public sector. The largest all-public union is the American Federation of State, County, and Municipal Employees (AFSCME), with 700,000 members. AFSCME, an affiliate of the AFL-CIO,[2] includes employees in all state and local government functions except teachers and firefighters. It also includes employees of quasi-public, non-profit, or tax-exempt agencies of a public, charitable, educational, or civic nature. Its membership is thus widely distributed by type of employer and by occupation of employee.

AFSCME is organized at three levels:[3] the international, the councils, and the locals. The international is the highest policy-making body. Besides coordinating international activities, it sets national policy and conducts political activity on the national basis. The councils are the basic operating units, coordinating the activities of the locals. The local is the basic unit of the unions. The locals negotiate the contracts and handle the grievances for their members. AFSCME locals are, in general, smaller than locals of other unions. Therefore, in view of basic economies of scale they cannot afford to be as autonomous as locals in other unions. The power in AFSCME is highly concentrated in the international.

---

2. See Chart A and accompanying explanation for structure of the AFL-CIO.

3. See Chart B.

Leadership in AFSCME rests with the elected full-time officers and, in particular,the president. AFSCME conventions are generally more open, volatile, and less disciplined than those of other unions, though this approach seems to be decreasing with time. A relatively large staff, serves the international and,to some extent, the councils. In general it has little governmental experience, resulting in high turnover of personnel. Union dues are relatively high and go in large percentage to the international.

Though about two-thirds of its manpower and energy is utilized in organizing campaigns, AFSCME has turned much of its attention to political action at the national level. Because of their concern over the budgetary constraints of local and state agencies, AFSCME has joined lobbying efforts for greater federal assistance, and is strongly advocating a national public employee collective bargaining law. AFSCME negotiators are noted for their particular interest in their minority group constituency and have helped employers set up training programs to promote affirmative action goals. AFSCME was active in the recent Democratic primaries. It was part of a nine-union group that made a special effort to get the union delegates to the Democratic convention and that was also responsbile for helping stop George Wallace in the South. AFSCME president Jerry Wurf made his position clear that "Electability is a prime consideration for labor." (Los Angeles Times, April 13, 1976)

In recent years, AFSCME strikes have decreased in number and intensity. AFSCME has suggested voluntary arbitration as a means of settling impasses Thus far, that position has received little employer support.

Mixed Unions:

Mixed unions are those which have members in both the private and the public sector. This kind of organization is the most common form of unionization found in the public sector. Mixed unions draw a majority of their members from the private sector.

There are three major mixed unions in the public sector: the Service Employees International Union (SEIU), the Laborer's International Union of North America, and the Teamsters Union. A 1970 survey found 35 other mixed unions, but these did not have many members in the public sector; any of the big three has a larger membership than the other 35 have together.

The SEIU, affiliated with the AFL-CIO, is the largest mixed union, having its public sector membership mostly in state and local government agencies. Its jurisdiction is broadly defined to cover employees who work in maintenance, servicing, security and operating of equipment in various types of institutions. SEIU has been most successful in organizing employees in hospitals, schools and social service agencies.

The Laborer's Union also affiliated with the AFL-CIO is open to all workers; it has been most successful among blue-collar workers. Most of its members are employed by the federal government, but it also has some members in state and local agenices.

The Teamster Union only recently began organizing in the public sector. Open to all workers, the Teamsters have had their greatest success in the public sector with street maintenance, sanitation, and highway departments, and are starting to make inroads in police and fire departments. In San Diego both firefighters and police have hired the Teamsters to serve as bargaining agents, though they have not actually joined the Teamsters union.

The mixed unions have a structure similar to AFSCME. The locals of these three unions have greater autonomy and power than the locals of AFSCME. Of the three, only the Laborers have a special unit to handle public sector issues at the national level. The leaderships of the mixed unions have changed in recent years; however the changes were all quitely handled at the top. The staff predominantly involved with private sector organizing is concentrated in the locals and likely to come from union membership. The dues are generally less than the dues of AFSCME, and more of the money stays with the local.

The tactics and priorities of the mixed unions also vary. SEIU, though somewhat less militant than AFSCME, has used racial and other social issues in its organizing campaigns. SEIU has also called for the complete legalization of public employee strikes, and recently set up a national strike fund. All strikes have to be approved by the union's international president.

The Laborers Union has stated that it has no reluctance to strike public agencies, but most of its strikes have occurred over issues of recognition rather than terms of a contract. Politically identifying with some of the more conservative unions, the Laborers have endorsed extending the the National Labor Relations Act to cover state and local government employees.

The teamsters have a reputation for being one of the most aggressive unions. They have been focusing efforts on orgainizing, or bargaining for police and firefighters. The Teamsters advocate binding arbitration of interest matters for police and firefighters in lieu of the right to strike.

Employee Associations:

Employee Associations, many of which were founded between 1920 and 1950, began as efforts to start retirements systems, gain benefits like life insurance, civil service systems, or simply to serve as social clubs. Very few dealt with wages and direct benefits. Now most of them lobby for favorable legislation and handle grievances, acting increasingly more like unions but opposing unions of public employees. They are often informally consulted by management on matters relevant to their membership, but lack formal recognition.

There are two types of employee associations, one based on the type of employer such as the California State Employees Association, and the other based on the members' occupation, such as the National Educators Association. The State Associations are loosely linked in the Assembly of Government Employees (AGE). AGE lobbys in Washington, D.C., but has little power due both to the looseness of the confederation and the inability of its members to agree on key issues, such as the right of public employees to strike.

Local associations have no ties with one another. Associations have organized a significant number of state employees, but have been largely unsuccessful with local employees. Occupational associations, or professional associations,generally have some national organization. Teachers are the

prime example, but other professionals, such as doctors, lawyers, and engineers, are now also represented by professional associations. Many of these have expanded their function to include collective bargaining.

Leadership functions of these associations rests with the staffs, rather than the elected leadership. Unions have often charged that associations are really dominated by supervisors and other management personnel since persons normally considered management are allowed to join and have taken active roles. Most state associations have full-time staff, drawn from a variet of sources, but only large local associations have full-time staff.

California is an example of progressiveness with its Employee Associations. Staffs from local organizations organized the Public Employee Staff Organization (PESO) to facilitate communication between local organizations. Generally association dues are lower than those of unions, though higher in California relative to the rest of the country.

AGE is politically more conservative than most unions. The focus of its lobbying effort is the protection and futherence of the merit system. Opposed to the National Public Employees Relations Act, AGE has introduced its own National Public Employee Merit System and Representation Act.

Uniformed Services:

Uniformed services, firemen and policemen, have generally had their own organization; they are often differentiated from other public employees in the laws, as well as by the essential nature of their work, their strong identification as a unit by itself, and the history of public employee organizations.

It took a long time to organize policemen. These obstacles stood in the way of police organization efforts: (1) police chiefs thought organizing the police was unprofessional; (2) politicians like controlling the police force for political and patronage reasons; (3) and unions hesitated to organize police because they felt that the police were controlled by the forces that were opposed to the labor movement.

Only recently have unionization efforts been successful. AFSCME, the International Brotherhood of Police Officers, affiliated with the SEIU, and the Teamsters are the three largest public bargaining units. They tend to include patrolmen and officers in the same locals.

These unions, though growing, have small memberships compared to those of the two national police associations -- the Fraternal Order of Police and the International Association of Police Associations. These large associations, however, are very loosely structured and have little real influence. Essentially lobbying and information organizations, neither acts as a union. As mentioned previously, some police groups are hiring unions as bargaining agents, but state and local employee associations are more important in this respect because police operate under state and local laws. The two national police assoications are very autonomous. Except in large cities, the leadership rests with policemen who must also work full-time. Recently, the associations have tended to give leadership roles to patrolmen, indicating greater militancy and a greater sense of job security for patrolmen,who are no longer afraid to run against officers for leadership positions. Staff is virtually nonexistent, except for lawyers who may be kept on retainer. The dues are very low and stay with the local organization.

The overwhelming majority of firemen belong to the International Association of Fire-Fighters, (IAFF), affiliated with the AFL-CIO. The IAFF is the only public sector union that does not face any competition from the other unions seeking to organize its potential members. It is organized in more cities than any other public sector union. Approximately three-fourths of all U.S. cities with populations of over 10,000 have IAFF locals.

The IAFF is a union composed of small locals; however, the power is shifting to the larger, stronger, and more militant local unions. The International is powerful, but less so than those of other unions. State Fire-Fighting Associations are primarily lobbying and research groups. Leadership depends on elected officials and a small staff. The elected officials are full-time firemen, but their working hours allow them to spend off-hours in full days for the unions. Dues are low and are kept at the local level. However, larger unions, more militant and usually wealthier, are using their influence to increase their dues.

The IAFF is actively involved with lobbying, research, education, as well as with strikes and other forms of work stoppages. The IAFF favors final and binding arbitration to resolve interest disputes, but they may retain use of their power to strike in the absence of legislation providing binding arbitration.

Inter-Union Competition

Since the various unions are often competing for the same membership, disputes inevitably arise between unions. In the public sector, most of these disputes have involved AFSCME (see Chart C). Confusion and conflict over AFSCME's jurisdiction date back to the union's chartering in 1932. The first disputes involved the American Federation of Government Employees (AFGE),

a union primarily representing federal employees then, in 1941, disputes arose with the Laboorers Union, and since 1951 there have been disputes between AFSCME and SEIU. In 1962, the AFL-CIO created an internal disputes plan (see Appendix to TAB A) to resolve jurisdictional disputes between affiliates. The original internal disputes plan, created in 1955, was designed to prevent raiding of locals after the AFL-CIO merger. The plan sets up umpires, primarily prominent and respected persons in labor relations to judge the cases. Unions that do not comply with the decisions of the umpire are denied protection under the plan and all affiliates are prohibited from assisting that union.

Many such cases have arisen in the public sector. Most involve a union attempting to organize employees already organized by another AFL-CIO affiliate. Others involve charges of using defamatory material by one union against another in an organizational campaign. Although there are still charges and disputes, fewer conflicts arise as the unions have become more experienced in dealing with the plan.

The Teamsters, not affiliated with the AFL-CIO, are not subject to the internal disputes plan though all unions are subject to some constraints as mandated by the National Labor Relations Act. It should be noted that Teamsters have not been charged with any more raiding than some AFL-CIO affliates. Teamster locals often sign bilateral no-raiding agreements with AFL-CIO affliated public sector locals and they have even, in certain situations, joined forces. When disputes arise, their most frequent opponent, similar to SEIU or the Laborers, has been AFSCME. In such

disputes, the SEIU, Laborers, and Teamsters all have a common advantage over AFSCME inasmuch as they can draw on private sector unions for support in the form of political pressure, funds, and manpower.

Bitter conflicts still exist between unions and associations. Unions continue to see associations as insurance brokers or "company unions." Associations point to the advantages of less dues, more local autonomy, and a broader membership (they can include supervisors) as reasons for joining an association instead of a union. Unions are generally stronger in head-on conflicts due to their backup organization and experience in such matters.

In some cases there is cooperation and, occasionally, a merger. In 1971 the Los Angeles All City Employees Association merged with AFSCME, and the Los Angeles County Employees Association merged with the SEIU. In the latter case, the merger was completed after a very bitter battle for members.

The police and firefighters compete in a different way, they compete for local funds instead of members. Until the 1950's the uniformed services generally worked closely together. Then, however, racial conflicts, concern for law and order, and the increasing professionalism of the police lead to a split. Police and firemen often were paid on the same salary scale, but as the police developed greater political clout their demands for higher pay grew. In some jurisdictions only tradition and the strength of the IAFF prevented pay differences.

The IAFF was able to draw on its own strength and on the strength of affiliated AFL-CIO unions and labor councils. The police were more often "loners" who only occasionally associated themselves with others in dealing with city officials. Great differences exist city by city. In some there is cooperation between firefighters and police, in other they never talk to each other.

The IAFF doesn't face any competition for membership. There is some competition and conflict among police unions, because of the wide variety of organizations representing policemen. AFSCME, after long ambivalence, has finally started organizing police and now representing them more than any other union. The SEIU and the Teamsters have also started organizing efforts. The police are ripe for organizing due to both the gap in organization and because they are among the angriest of municipal employees.

Organized Labor and The Public Employee Unions

For a long time organized labor was not much involved with public employee unions -- now they are substantially involved. Besides helping to organize public sector locals, organized labor plays an important role in lobbying for legislation, strike support, and support in impasse situations.

Organized labor doesn't always support public employee unions. The labor movement has been known to oppose public employee strikes, as well as pro-public employee legislation. During one dispute in Cleveland, AFSCME president Jerry Wurf charged that some of AFL-CIO unions had "turned themselves into scabs in the classic sense of the word."

This division exists for a number of reasons. Private sector union members tend to be more concerned about taxes, whereas private sector unions are politically more conservative. Furthermore, organized labor is concerned with a wide variety of state and local legislation with public sector matters generally being accorded a low priority except on an ad hoc basis.

However, organized labor does get involved with some public sector labor relations issues. In the AFL-CIO platform proposals, presented to the 1976 Democratic and Republican National Conventions, the AFL-CIO, for example, supported the right of public employees to organize and called for reforming public sector pension systems.[4]

---

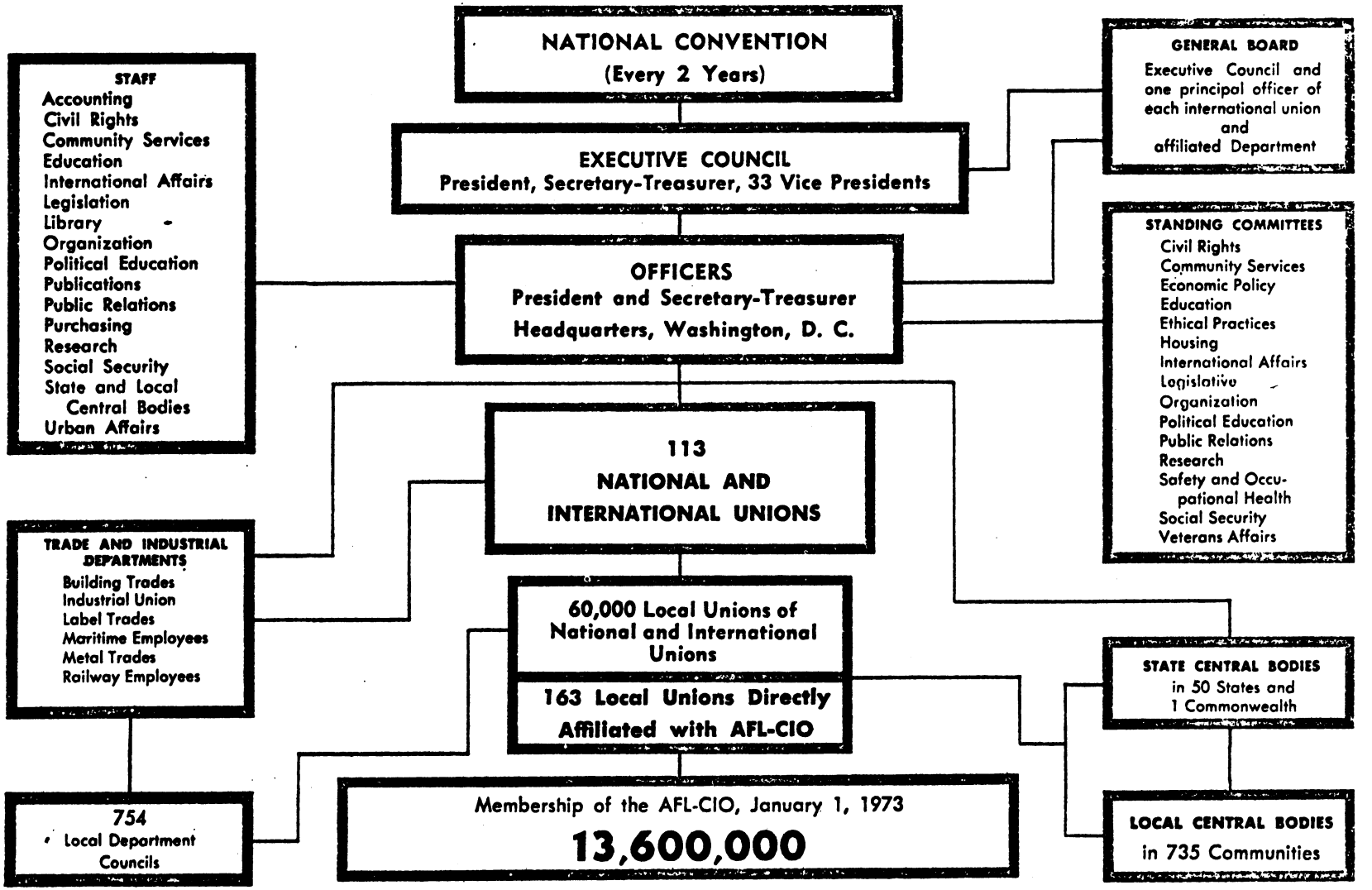
4. See appendix AFL-CIO Platform Proposals for full statement of position.

* * * * * * * * * * *

Most of the information for this section is based on Jack Stieber, Public Employee Unionism, The Brookings Institute, 1973, and "Collective Bargaining for Public Managers (State and Local)" U.S. Civil Service Commission, Bureau of Training, Labor Relations Training Center.

CHART A

STRUCTURAL ORGANIZATION of the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



Structure of the AFL-CIO

Membership

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is made up of 113 national and international unions, and a school administrators organizing committee, which in turn have more than 60,000 local unions.

The combined membership of all the unions affiliated with the AFL-CIO, as of Jan. 1, 1973, was 13,600,000 workers.

Affiliated Organizations

In addition to the national and international unions, the AFL-CIO has state and city central bodies and trade and industrial departments.

There are *state central bodies* in each of the 50 states and in Puerto Rico. The state bodies, composed of and supported by the different local unions in the particular state, function to advance the state-wide interests of labor and represent labor on state legislative matters.

Similarly, in each of 735 communities, the local unions of different national and international unions have *formed local central bodies,* through which they deal with civic and community problems and other local matters of mutual concern.

The *Trade and Industrial Departments* are separate organizations within the AFL-CIO which seek to promote the interests of specific groups of workers which are in different unions but have certain strong common interests.

Many of the national and international unions are affiliated with one or more of the six such departments: Building and Construction Trades, Industrial Union, Maritime Trades, Metal Trades, and Railway Employees. The sixth, the Union Label and Service Trades Department, seeks to promote consumer interest in union-made products and union services by urging the purchase of those products which bear the union label.

Policy Determination and Application

The basic policies of the AFL-CIO are set by its *convention,* which is its highest governing body. The convention meets every two years, although a special convention may be called at any time to consider a particular problem.

Each national and international union is entitled to send delegates to the convention, the number of delegates determined by the size of the union. Other affiliated organizations are entitled to be represented by one delegate each.

The governing body between conventions is the *Executive Council,* which is made up of the federation's President, Secretary-Treasurer, and 33 Vice-Presidents, all of whom are elected by majority vote of the convention.

The Executive Council carries out policies laid down by vote of the convention and deals with whatever issues and needs may arise between conventions. It meets at least three times a year.

The *executive officers* of the AFL-CIO are its *President,* George Meany, and *Secretary-Treasurer,* Lane Kirkland. They are responsible for supervising the affairs of the federation.

The President appoints a number of *standing committees* on particular subjects and directs the committees and staff departments in providing services to labor through organizing, legislative, international, public relations, educational, economic research and other activities.

A *General Board,* made up of the Executive Council members and a principal officer of each national and international union and each trade and industrial department, meets at the call of the President or the Executive Council to consider policy questions referred to it by the officers or the Executive Council.

American Federation of Labor and Congress of Industrial Organizations
George Meany, ***President***
Lane Kirkland, ***Secretary-Treasurer***
Washington, D. C. 20006

CHART B

AFSCME GOVERNMENT

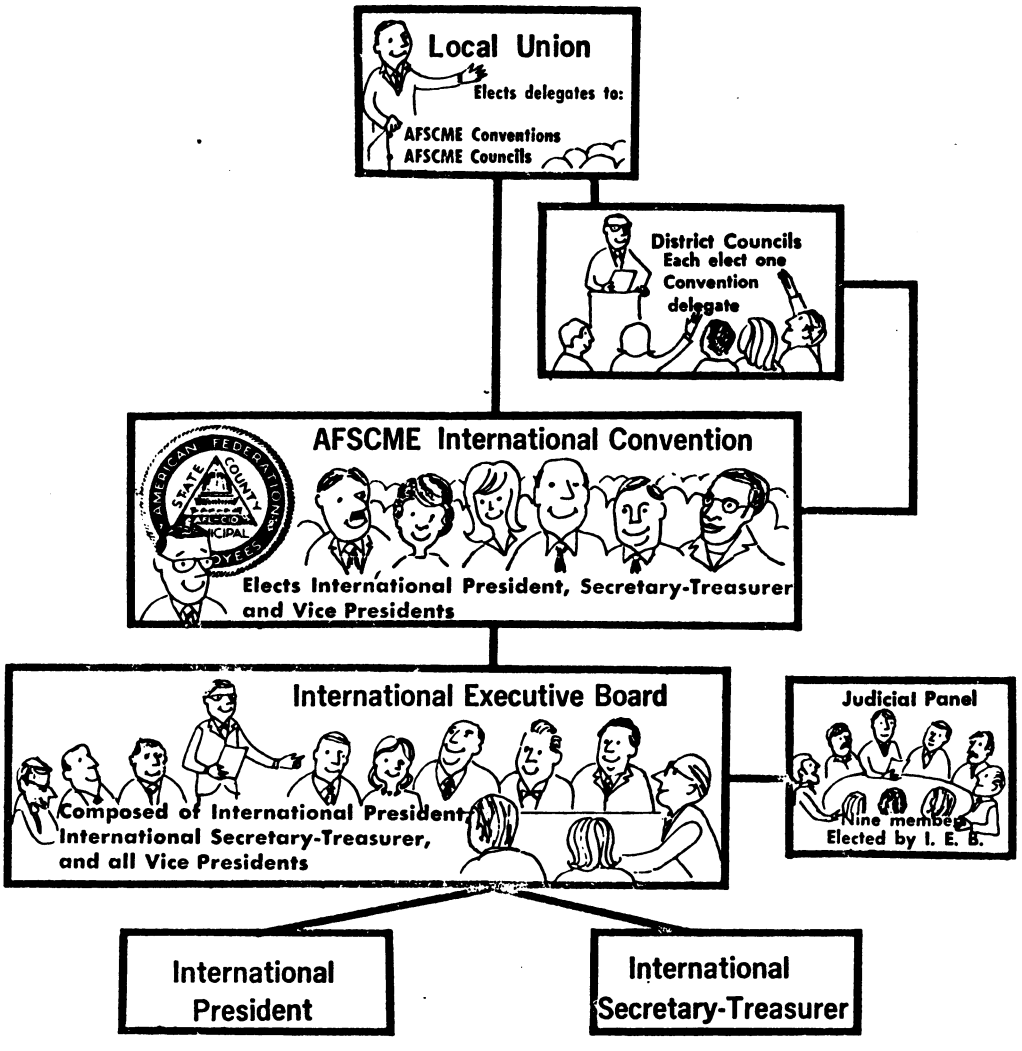


CHART C

Contending unions	Number of cases	Number of cases sustained for				
		AFSCME	SEIU	Laborers	Other union[b]	Neither contestant[c]
AFSCME-SEIU	16	6	9	...	...	1
AFSCME-Laborers	14	12	...	2	...	...
AFSCME-Other union[b]	13	6	...	...	4	3
SEIU-Other union[b]	7	...	5	...	2	...
Laborers-Other union[b]	2	...	...	2	0	...
Other unions	4	...	...	...	4	...
Total	56	24	14	4	10	4

Sources: AFL-CIO, Index Digest of Determinations of the Impartial Umpire Under the AFL-CIO Internal Disputes Plan, 1962-69 (AFL-CIO, n.d.); and individual case decisions for 1970.

a. First seven months only of 1970.
b. Union other than AFSCME, Laborers, or SEIU.
c. Both unions found to be in violation of Article 20 of the AFL-CIO constitution (1969).

APPENDIX TO TAB A

APPENDIX I

Public Employee Bargaining:** A Political Perspective

Clyde W. Summers

Collective bargaining in public employment is different from collective bargaining in private employment. The introduction of collective bargaining in the private sector restructures the labor market. In the public sector it also restructures the political process. While it does not follow from this proposition that practices in the private sector cannot be transplanted to the public sector, it does follow that public sector bargaining must be examined as part of a political process. The purpose of this paper is to try to analyze public employee bargaining from this political perspective.*

Some preliminary considerations

Before attempting this analysis, it is essential to articulate certain basic characteristics of public employment.

(1) Decisions as to terms and conditions of employment for public employees are governmental decisions made through the political process. Market forces influence those decisions, but this influence is filtered through the political process, where they conjoin with noneconomic forces and considerations to produce a political decision.

(2) In public employment the employer is the public--in ultimate political terms, the voters to whom the public officials are responsible. Members of the public, as purchasers and users, are motivated by economic considerations; they want to maximize services and minimize

---

** Summary. For full text see Clyde Summers, Yale Law Review, Vol. 83, 1974

* The analysis is limited to collective bargaining in local government units, since its role at the state or federal level might be quite different.

costs. The public employees' interest in lighter work load and higher wages conflicts with their employers' interest in more service and lower taxes. As in private employment, the economic interests of the employer and his employees are adverse.

(3) The voters who share the employers' economic interests far outnumber those who share the employees' economic interest. This does not mean that public employees are politically helpless, but it does mean that, to the extent people vote their pocketbooks, public employees are at a significant disadvantage when their terms and conditions of employment are decided through a process responsive to majority will.

(4) Public employees, even without collective bargaining, can and normally do participate in determining the terms and conditions of employment. Many can vote and all can support candidates, organize pressure groups, and present arguments in the public forum. Because their terms and conditions of employment are decided through the political process, they have the right as citizens to participate in those decisions which affect their employment. Such a right is not enjoyed by employees in the private sector.

From these four characteristics of public employment there emerges more clearly the central significance of public employee bargaining. Introduction of collective bargaining into the public sector alters the governmental process. Clear recognition of this fact helps us frame what I believe is the central question of this study: How can the political process best be structured for determining the terms and conditions of public employment?

II. Collective Bargaining and Budget Making

Budget-making for a city, behind its facade of rationality, is a complicated political bargaining process in which various interest groups seek to have larger shares of the budget allocated for particular purposes. There is a second interrelated bargaining process concerning the size of the budget which pits those who want increased services against those who oppose higher taxes. This sharpens the contest among the interest groups for shares in a budget which is insufficient to meet all of their demands. The budget is ultimately a political document summarizing a complex accommodation of these multiple competing and overlapping interest groups. Within this budget-making process public employees constitute one interest group.

Collective bargaining significantly changes the role of public employees in the budget-making process, providing them with a special procedure through which they can participate which is not available to other interest groups. The first crucial change is that, following the pattern of the private sector, the majority union becomes the exclusive representative of all employees in the bargaining unit. It becomes the official spokesman, speaking with a single authoritative voice for all employees. Dissonance or indifference in the employee group is submerged, giving the employees' voice increased clarity and force.

The second, and more crucial, change is that a responsible public official must bargain in good faith until either an agreement or impasse is reached. This means that a public official representing the city must deal with the union face-to-face, and at length. When the union presents its demands, the public official or his representative

must respond not with evasive ambiguities or noncommital generalities, but with hard answers. Thus, the bargaining table provides public employees with an official forum and a specially effective process for persuading public officials in budget-making.

The third, and perhaps most important, change is that collective bargaining provides the union a closed two-sided process within what is otherwise an open multi-sided process. Other groups interested in the size or allocation of the budget are not present during negotiations and often are not even aware of the proposals being discussed. Their concerns are not articulated and their countervailing political pressures are not felt except by proxy through the city's representative at the bargaining table. If a tentative agreement must be approved by the legislative body, the other interest groups may then have their say, but an agreement reached at the bargaining table carries great weight in deciding both the size of the budget and its allocation.

Finally, once a collective agreement is concluded by whatever body has ultimate authority, its terms are binding for the duration of the agreement.

We must now confront the question whether the change worked by collective bargaining in the political process can be justified. Can we properly give public employees a special procedure that enables them to bargain separately from, and in some respects prior to, other interest groups in the budget-making process? The basis for their claim to a special procedure, has three major elements. First, payroll costs in most cities constitute 60 to 70 percent of the total operating budget. Any significant general wage increase leads almost inescapably

to a budget increase. The employees, in lobbying for increases, cannot persuasively argue that the necessary funds can be obtained by reductions in other expenditures, nor will they willingly argue that increased wage rates can be paid by reduction in the number of employees.

Second, in the political bargaining among competing interest groups seeking shares of the total budget, the employees are not simply one group among many bargaining on the same basis. On the contrary, the employees' demands run directly against the demands of each other interest group.

Third, public employees seeking general increases have few natural allies and only limited ability to form coalitions. The budget cost of a general wage increase is normally too great, and the employees have too few votes, to make the employee group an attractive political partner to other interest groups.

In the absence of collective bargaining, the budget-making process, I believe, leaves public employees unable to protect their interests adequately against those whose interests are opposed. Collective bargaining creates a structure which is responsive to the political reality and gives the employees a more effective voice in the political process.

B. Two Assumptions

The preceding analysis is built on two assumptions which are not always true. The first assumption is that decisions as to general wage levels are an integral part of the budget-making process so that demands for wage increases are considered in terms of budget cost and ultimate tax impact at the same time as demands for increased

personnel, supplies and equipment and added services.

However, authority to determine wage levels is often exercised by those who are not responsible for budget decisions. There is then no direct confrontation between the competing claims of employees on the one hand and taxpayers and users of public services on the other. A similar disjunction between authority and political responsibility occurs in a more visible form when school boards which do not have independent taxing power are authorized to make binding collective agreements. If the school board can negotiate increases and require the city council to find the money, the school board may lack the necessary incentive to resist the added pressures generated by collective bargaining.

The second assumption is that most voters are taxpayers and therefore have reason to oppose increased wages which result in increased taxes. This assumption has greatest validity when the principal source of revenue is the property tax and most voters are home owners. The validity of the assumption decreases, however, as the number of renters increases. Although property taxes are paid out of rent, few renters are sensitive to increases in mill rates and therefore may be indifferent to or even support wage increases for which they must indirectly pay. The impact of collective bargaining on the political process, therefore, will depend in part upon the size and density of the city and its tax structure.

Centralized versus Fragmented Bargaining

In the preceding discussion, we treated both employees and employers in the public sector as members of a single, unified interest group. However, in practice, such solidarity is rare and decision making of both groups is often fragmented.

Fragmented Bargaining

Fragmentation of authority on the public employer side significantly changes the relative weight and interplay of interest groups in the decisionmaking process and greatly increases the employees' leverage in negotiations. A union, confronting a department head across the bargaining table, is in the strongest possible position. Bargaining narrows the department head's focus to the interests of the employees, with which he tends to sympathize. No users or other interest groups are present to remind him of competing claims. In fact, he may view an agreement with the union providing for higher wages as reinforcing his own request for an increased departmental budget.

As each department joins in this game, competing with every other department to obtain more, the upward pressure on the total budget and the downward pressure on the level of services becomes nearly irresistible. Political responsibility becomes obscured because restraints do not directly impinge on the officials negotiating the agreement and the city appears helpless before the demands of its employees.

Centralized Bargaining

When bargaining is unified on the public employer's side and bargaining decisions are made by a politically responsible representative, that representative is the focal point for all of the interests opposing the employees' demands. Collective bargaining may give employees a specially effective means of access to the political process, but his advantage is offset to some degree because the union is compelled to bargain against a consolidation of opposing interests. If some employees bargain collectively and others do not, those who bargain gain an advantage over the others because it increases their political effectiveness. If all, or most, of the employees bargain collectively, though in separate bargaining units, and if bargaining decisions are centralized or coordinated on the employer side, the bargaining process will create pressures for uniformity and thus tend to reduce disparities between groups. This does not mean that all groups will necessarily be given identical benefits: It means only that the differences must be perceived as "fair" and not based solely on differences in political power. We view this as the "equal treatment" principle. This principle becomes an important consideration in analyzing the impact of non-wage bargaining subjects on the political decision process.

IV. Subjects of Bargaining: Variations on the Theme

The preceding analyses have been limited to describing the political process when determinations of wage levels are involved. But employees are concerned with more than their paychecks and the city is concerned with more than its monthly payroll.

In the determination of wage levels or wage increases, the political process centrally involved is budget-making, which creates a special alignment of political forces contesting the size and allocation of current expenditures. Other terms and conditions of employment involve other alignments of political forces and the impact of collective bargaining on the interplay of those forces may be quite different. The purpose of this section is to examine some of the variations in the political process when other subjects of bargaining are involved.

A. Indirect Wage Payments

This category includes employer payments for such benefits as hospital and medical insurance, group life insurance, fully funded pensions, meal allowances, and uniform allowances. They are simply other forms of wages which require current expenditures by the public employer and which therefore have the same dollar impact on the current budget as direct wages. The political forces will respond to increases in these categories in substantially the same manner as to increases in direct wages, at least so far as taxpayers and users of public services are involved.

On the employee side, however, the pressures may be somewhat different. In one round of bargaining different groups of employees may press for different benefits--the police for increased pensions, office employees for more medical insurance, and truck drivers for more life insurance. If each is successful in obtaining the various benefits, in the next round each group is likely to demand the

particular benefits the others enjoy, the claim for equal treatment adding extra weight to those demands. Thus, many cities which have given special pension benefits to policemen and firemen have discovered that they have thereby strengthened the claim of other employees to more costly pension plans.

B. Deferred Wage Costs

Negotiation of benefits which impose no burden on the current budget but defer costs to future budgets significantly changes the political pressures felt at the bargaining table. Granting pension benefits without a current budgetary charge equal to the annual cost of funding those benefits provides an instructive example.

The deferred pension costs will, of course, ultimately appear in the budget and will at that time increase the resistance to wage increases. However, the "equal treatment" principle will then work in favor of the union's demands for take-home pay in line with the prevailing pattern of current increases. The total increase in wage costs over time will thus tend to be greater than if the pension costs had not been deferred but rather subjected to the full weight of taxpayer and user opposition.

Deferral of costs to later budgets may also be accomplished by long-term collective contracts. Such deferral will have much the same political effect as a postponement of pension costs. Taxpayers and users of services respond more strongly to current tax increases and current deterioration of services than to future taxes and future services. In the year following expiration of the long-term contract,

opposition to another round of increases may result from the previous year's budget rise. But again opposition will be mitigated by the "equal treatment" principle which works in favor of demands for a wage increase in line with that year's prevailing pattern.

C. Reduction in the Level of Service

Shorter work weeks, longer vacations, or additional holidays mean that each employee renders less service. This diminution can be, and in the long run often is, offset by an increase in the number of employees, which of course necessitates a budget increase. Such terms of employment can thus be seen as simple counterparts of wage increases. However, when reduced work load terms are negotiated, the parties seldom contemplate asking for an increase in the budget to hire more employees; the tacit assumption is that, at least in the short run, services will be reduced.

Because taxpayers react more immediately and vigorously to increases in current taxes than to reduction in the services those taxes will buy, they generate less opposition to union demands for reduced work loads than to increased wages.

D. Increase in the Level of Service

Some employee demands for reduced work load may increase rather than decrease the service level. For teachers, reduction in class size means easier and more enjoyable teaching; for parents, it means an improvement in the quality of education. As a result, teachers and the parents will join to press for smaller classes. Similarly, demands by social workers to limit their case loads will be supported by those

who seek more police protection and more individualized social services.

This alliance between a group of employees and users of the particular service changes the configuration of political forces, but it does not necessarily shift the political balance. However, if bargaining is not unified or centrally controlled on the public employer's side, negotiation of terms which both reduce the employees' work load and improve the quality of service may preempt the exercise of any meaningful political restraints.

E. Determination of Goals and Methods

Not all potential subjects of bargaining involve budgetary considerations. Professional employees, in particular, may want to participate in determining the goals to be achieved by the agency and the methods to be used in achieving those goals. When teachers seek greater control over choice of textbooks or student discipline policies, budget costs and levels of service are not in question; the only issues are the purposes of the school and the means of their accomplishment.

Collective bargaining on such subjects enables the union to speak with a single voice as representative of those holding opposing views and gives the union increased political effectiveness when it is confronted not by a coalition but by a fragmented opposition. More important, the union does not bargain with the representative of those holding an opposing view on "goal" issues; it bargains with the representative of those who seek lower taxes and more services. The

government representative is thus under pressure to accept the union's demands on nonbudget items in return for union concessions which will keep down the cost of the agreement.

V. Some Implications of the Political Perspective

This analysis has treated employee bargaining as a part of the political process. Obviously it has important implications for how bargaining should be structured and conducted in order to make it fit appropriately within that process.

A. Integration of Bargaining and Budget-Making

The most obvious implication of this political analysis of public employee bargaining is that collective bargaining on terms which substantially affect budget allocations and levels of service must be integrated with the budget-making process. To achieve such integration collective bargaining policies and decisions must be centrally coordinated and controlled. The effective power to formulate these policies and render decisions must be merged in the public official or body which is politically responsible for the budget.

Centralization of bargaining authority is much easier to advocate than to achieve in practice, for budget-making authority in cities is often widely diffused, various departments and agencies possessing a substantial measure of budgetary autonomy. As employees organize department by department, the simplest and least disruptive response is to authorize each department head to bargain with the union representing his employees. The bargaining system develops as fragmented as the budget-making system on which it is based. Once this fragmentation has

occurred, centralizing control over bargaining may be nearly impossible because it would threaten too many established patterns and vested interests. Centralization can be encouraged, if not compelled, however, by public employee bargaining statutes which expressly place the authority and responsibility for concluding collective agreements on the chief executive or the legislative body.

When authority is not fragmented along departmental lines, it still remains divided between the chief executive and the legislature: The executive lacks legal authority to enact a budget and the legislative body lacks practical ability to negotiate an agreement. This division of responsibility can create serious problems if the relative roles of the chief executive and the legislature are not clearly defined and if those roles are not the same in collective bargaining and budget-making. Coordinating the bargaining and budget-making roles of the two branches is not difficult conceptually. Just as the mayor prepares a proposed budget to be approved or disapproved by the council, so he may negotiate an agreement with the union subject to its approval by the council.

One danger of this division of authority is that a union which has failed to win a wage increase in bargaining with the mayor may try to induce the council to include it in the budget. Such "end runs" may be successful when only a few groups of employees are organized. When most of the employees are organized, however, legislators soon learn the folly of setting off a chain reaction which will escalate budget costs.

A greater danger is that the chief executive will agree to a costly contract and attempt to shift to the legislature the onus of either rejecting the union's demands or approving increased taxes. This tends to frustrate the bargaining process because there is no established procedure for negotiations between the union and the legislature to work out compromises which should have been made at the bargaining table. It is doubtful, however, that such maneuvers seriously distort the political process, for both the chief executive and the legislature are politically responsible for the budget. If the costly contract is approved, both will be answerable to the taxpayers.

School districts which do not have independent taxing power raise special problems, for in such districts the school board negotiates the collective agreement but the city council provides the money. If, however, the city council is not legally required to provide the requested funds, it can determine the school budget in conjunction with other departmental budgets and compel the school board to bargain within those limits or return to the council for additional funds. The council may thus upset an agreement negotiated by the school board. While such a risk tends to frustrate the bargaining process, it can be minimized by informal discussions between members of the school board and members of the council prior to making the agreement. Experience has suggested that even though bargaining responsibility and financial responsibility are separated, the bargaining process can function efficiently if the taxing authority retains the effective power to refuse the requested funds.

Grants-in-aid from federal or state sources reduce the financial burden on the local government, but whether such grants disjoint the bargaining and budgeting functions depends upon the form of the grant. Fixed grants of less than the full cost of a department or service do not change the basic political process, for whatever additional sum the city decides to spend must be paid from the city's own budget. Employees' demands for increased wages will still be resisted by the taxpayers and users of public services.

Matching grants have a somewhat different impact. They encourage liberality in collective agreements as in other expenditures, because the gain to employees is double the cost to taxpayers. This phenomenon can have dangerous "equal treatment" radiations where one department receives large matching grants and there is no centralized control over bargaining. Generosity in that department will trigger costly increases in other departments.

Grants-in-aid which are appropriated at the state level in order to enable local officials to reach an agreement can result in a total evasion of local political pressures. In a number of instances disputes over teachers' salaries have been resolved by the state providing a supplemental grant to meet the costs of the agreement. Decision-making as to bargaining and budgeting is then split between local and state officials. The local officials who make the agreement escape the pressures of local taxpayers and users of local services; the state officials who provide the money are largely insulated by low visibility from pressures by state taxpayers.

B. Number of Bargaining Units

From the political perspective it might first appear that all employees of a public employer should be united in a single bargaining unit. Closer examination, however, suggests that if there is adequate centralized coordination of bargaining on the public employer's side, then fragmentation of the employees into a number of bargaining units, each represented by its own union, creates no unmanageable problems.

Fragmentation on the employees' side obviously makes centralized coordination on the employer's side more necessary and more difficult. Confronted with multiple bargaining units, the public employer can exercise control over bargaining only by establishing some guidelines, at least as to the size of the wage package, and limiting deviations from that guideline. In practice, one negotiation and agreement will establish a pattern to which most other agreements will be required to conform, with only limited deviations. The pattern will control not only the wage package but also such work load terms as holidays, vacations, sick leave, and length of work week. Thus one union effectively bargains for the size of the wage package and common work load terms. The other unions are limited largely to bargaining over how the available wage dollars are to be allocated among pensions, insurance, and take-home pay. Each union, however, retains the ability to bargain concerning the conditions that are unique or of special interest to the employees it represents.

Pattern bargaining leads to practices which run counter to legal rules developed in the private sector as to what constitutes good faith bargaining, particularly when the pattern-setting agreement is not the

first one negotiated. The public employer's refusal to settle with other unions until it has settled with the pattern-setting unit would be, according to traditional notions, bad faith bargaining. When the employer makes offers to other unions, they will want assurances that, if the pattern settlement is more favorable, they will receive equal benefits. The pattern-setting union may then object that it is being required to bargain for employees not in the unit, contrary to traditional notions of good faith bargaining.

Because public employee bargaining differs significantly from private bargaining, the legal rules from the private sector cannot be imported uncritically into the public sector. The principle of "equal treatment" virtually ensures that every visible increase granted one group will be translated into a general increase. Since the latter is the significant figure for budgetary purposes, some technique such as pattern bargaining must be devised to correlate an increase granted one group with its ultimate budgetary cost. Multiple bargaining units thus may require the public employer to establish and follow a pattern in bargaining. Pattern bargaining means, in effect, that one union will bargain for all those bound by the pattern. It should not be considered bad faith for the parties to bargain in accord with these political and economic realities.

If the pattern-setting union which bears the burden of bargaining or the unions which are bound by the pattern find the practice burdensome or oppressive, they can form a bargaining coalition to negotiate together those terms determined by the pattern and to bargain separately for those terms which fall outside the pattern. Such

two-level bargaining seems to serve the best interests of both the employees and the public employer, for it enhances integration of decisionmaking where necessary and permits diversity where desirable.

C. Subjects for Bargaining

Collective bargaining in the public sector, from the perspective of this inquiry, is a specially structured political process for making certain governmental decisions. The primary justification for this special process is that it gives the employees increased political effectiveness to help balance the massed political resistance of taxpayers and users of public services. One consequence of public employee bargaining is at least partial preclusion of public discussion of those subjects being bargained. And the effect of an agreement is to foreclose any change in matters agreed upon during the term of the agreement. Because it constitutes something of a derogation from traditional democratic principles, collective bargaining should be limited to those areas in which public employees do indeed encounter massed resistance. In other areas, disputes by public employees should be resolved through the customary channels of political decisionmaking.

Borrowing concepts of bargainable subjects from the private sector can be misleading for two reasons. First, in the private sector collective bargaining is the only instrument through which employees can have any effective voice in determining the terms and conditions of employment. In the public sector employees already have, as citizens, a voice in decisionmaking through customary political channels. The purpose of collective bargaining is to give them, as employees, a

larger voice than the ordinary citizen. Therefore, the duty to bargain should extend only to those decisions where that larger voice is appropriate.

Second, in defining bargainable subjects in the private sector, the government is establishing boundaries for the dealings between private parties. In the public sector, however, government is establishing structures and procedures for making its own decisions. The private employer's prerogatives are his to share as he sees fit, but the citizen's right to participate in governmental decisions cannot be bargained away by any public official.

The special political structure and procedure of collective bargaining is particularly appropriate for decisions where the employees' interests in increased wages and reduced work load run counter to the combined interests of taxpayers and users of public services. Therefore, decisions as to wages, insurance, pensions, sick leave, length of work week, overtime pay, vacations, and holidays should be considered proper subjects for bargaining. Collective bargaining, however, lacks the same claim of appropriateness for decisions where budgetary or level of service considerations are not dominant and where the political alignment of taxpayers and users against employees does not occur.

For example, a decision concerning the content of the school curriculum does not centrally involve salary levels or work loads of teachers on the one hand, or the size of the budget or the level of service on the other. Rather, the decision requires a choice of the kinds of services to be provided within the limitations of the funds

available. On such an issue there is no reason to assume that the teachers' view can be summarized by a single voice, nor is there reason to believe that taxpayers, parents, or users of other services have any unified positions. Two-sided bargaining on such issues misrepresents both the range of views and the alignment of interests which should be considered in making the decision.

To say that curriculum content is not a proper subject of bargaining does not mean that teachers have no legitimate interest in that subject or that they should not participate in curriculum decisions. It means only that the bargaining table is the wrong forum and the collective agreement is the wrong instrument. This analysis, which restricts collective bargaining to subjects that substantially implicate budgetary issues, provides some guide for separating bargainable and nonbargainable subjects in the public sector. Yet it cannot provide a clear boundary line.

If teachers demand reduction in class size or policemen demand minimum manning of patrols, the interests of the employees may coincide with the interests of users of the particular service; the clear confrontation created by wage demands does not then exist. However, there remains the opposition of taxpayers and users of other services. Granting the union demands would almost certainly require increased appropriations for the schools or the police department. Even some parents may prefer that any increase in the school budget be spent to improve other aspects of the educational program. The configuration of political interest groups remains sufficiently similar to make the collective bargaining structure appropriate for resolving such issues.

Collective bargaining might initially seem inappropriate for subjects such as seniority, promotions, work assignments, and discipline, which do not directly affect budget allocation. But union demands on these subjects are commonly resisted on the grounds that they reduce efficiency and efficiency is an interest shared by both taxpayers and users of public service.

If the union's demands do not in fact affect efficiency, then the dispute is simply one between the employees in the bargaining unit and their supervisors, department heads, or personnel department. Such disputes do not involve the public's interest but rather concern the relative roles of opposing interest groups within the government in determining the terms and conditions of employment. These competing interests are represented at the two-sided bargaining table; the proper parties are on each side of the table. The structure and procedure seem quite appropriate for reconciling their interests and working out the rules to govern their relationships.

Demands by policemen for disciplinary procedures which effectively foreclose use of a public review board further illustrate the need to examine each subject to determine whether it should be decided within the special political process of collective bargaining. In making such a demand the union probably represents the consensus of the employees and can thus properly speak with a single voice. However, such a demand has no identifiable budget cost. Those who favor a public review board are those who fear that policemen will act abusively or unlawfully and that their superiors will not take appropriate disciplinary action. The interests of this group are not represented

at the bargaining table. Collective bargaining thus does not provide an appropriate political process for full discussion of the issue or for weighing and reconciling the competing interests.

Again, the conclusion that this subject should be nonbargainable does not mean that policemen have no legitimate interest in whether their conduct should be subject to public review. They certainly have a right to participate in that decision, but only through the ordinary avenues of the political process which are equally open to all competing views and interest groups.

D. Public Information and Discussion of Negotiations

Collective bargaining in the public sector is an integral part of the political process, a procedure for reaching a political decision. The political officials can be held responsible at the polls, but without some knowledge of the positions of the parties at the bargaining table the voter is handicapped in making a judgment. For the political process to be responsive and reliable, members of the public need to know the issues being negotiated and have an opportunity to make their views known before agreement is reached. Some degree of moderate publicity need not disrupt the bargaining process.

Conclusions

The choice is not whether public employees' wages and other conditions of employment are to be decided through the political process, but how that process should be structured to make the decision. The task is to construct not only collective bargaining but also the other governmental institutions and procedures so as to make them all fit together as an integrated fabric. However valid the political

perspective may be, the view it offers is troubling, for it makes us see that the wages and working conditions of public employees depend upon the play of political forces, and to perceive that fair but not overly generous treatment for employees depends upon devising arrangments which achieve a rough balance of these forces.

APPENDIX II

UNION TECHNIQUES OF POLITICAL PERSUASION

What They Are and How They Use Them

A. Why Information Is Important

In order to apply pressure tactics properly the team has to know and understand the jurisdiction's legislative board and its negotiating team.

1. The negotiating strategy cannot be properly devised without such information.
2. Such understandings will reduce miscalculations.
3. Information is vital to know how and with whom a deal can be made.
4. Information will help one be able to predict how different members will react.

B. What Information Is Important

Information on Board Members

1. Age
2. Number of years on board
3. Organizational membership
4. Religious affiliation
5. Estimated income
6. Property ownership
7. Employment
   a. Is he with a company or self-employed?
   b. Is he union or non-union?
   c. What are his relationships with his employer and other employees?
   d. Does having public office help advance his job or business connections?

8. What were his reasons for seeking public office?
   a. His concern about education or government?
   b. His concern about taxes?
   c. His desire to enhance his reputation?
   d. A desire to contribute to his community?
   e. His desire for political advancement?
9. Marital Status
10. Number of children
   a. What schools do his children attend?
11. Political registration
   a. What is his voting record in elections?
   b. What is his voting record on the board?
   c. What voting block on the board is he with? Who does he vote with?
   d. How is the block represented on the negotiating team?
   e. Which members can influence him?

C. How To Get Information

1. Check teachers or public employees in community.
2. Contact employee association representatives who attend board meetings.
3. Have association representative who is a registered party member contact local party chairman for information.
4. Get to know people who are acquainted with board member and/or his family.
5. Establish a contact on the board.

D. How To Apply Pressure Tactics To Resolve A Particular Issue In Your Contract

1. Consult your association/union executive director.
   a. Tactical advantage must be weighed against animosity of the board, community or association.
   b. Judge the use of tactics against the long term effects on relationships between the board, the community and the association or union.

2. If you are going to use pressure tactics.
   a. Find community pressure points.
   b. Consider bringing in an outside heavy (an international rep.?)
      1. He can bear brunt of resentment -leave town afterward.
   c. Alternate humor with application of pressure at the table; to cool emotions and prevent confrontations.
   d. Adapt language and tactics to what the board understands
      1. Do they relate to logic, power or pragmatics?
      2. Do they respond to effects such as pounding on the table?
   e. Use time as an ally.
      1. Keep your team well-rested.
      2. Wear down board team - physically and psychologically.
         (a) Ask for clarification or explanation of bargaining position.
         (b) Review legal language.
         (c) Repeat yourself.
   f. Use the media and personal contacts.
      1. Large urban board may be susceptible to what is said in the papers.
      2. Small board may be susceptible to friends and neighbors.
      3. If a particular board member is obstructionist - get the message (with reasons) to the community.
   g. Consider a veiled or implied strike threat.
      1. Use care - affluent suburban communities may be more vulnerable to this tactic than blue collar, labor-oriented communities.
   h. Apply pressure by appealing to community pride.
   i. Apply pressure to ego of opposing chief negotiator.
      1. Get to know him and how he can be used.
      2. Charge unfair labor practice to put board in defensive position with community.
      3. Attempt to split the board on crucial issues.
      4. Misrepresent issues to public through press releases.

j. Attack carefully and subtly the credibility on board negotiating team.

   1. Board team will spend time answering member's question about association/union charges rather than planning negotiating sessions.

   2. Apply pressure to board team on cost of living increases, service productivity.

APPENDIX III

Union Checklist to Evaluate
A Worksite Employee Relations Atmosphere

Unions may use checklists to determine the employee relations atmosphere at a worksite. The following is such a checklist in which the employees are asked to rate the performance of their manager.

Date:_____

Return this evaluation to your employee organization representative. This evaluation is confidential. The employee organization will make suggestions for improvement of administration based on all evaluations received. Leave blank any item beyond your knowledge.

RATING SYSTEM - To the right of each descriptive item, write the number which in your opinion best describes your supervisor's performance according to the following system:

1 - OUTSTANDING: Greatly exceeds the requirements of the position.

2 - STRONG: Exceeds the requirements of the position.

3 - AVERAGE: Meets the requirements of the position.

4 - WEAK: Performs below the requirments of the position.

5 - UNSATISFACTORY: Performs greatly below the requirements of the position.

DESCRIPTIVE ITEM	RATING NO.	COMMENTS
1. Demonstrates leadership; stimulates participation		
2. Provides clear and consistent direction		
3. Is resourceful in coping with unexpected problems		
4. Anticipates problems		
5. Has good rapport with employees		
6. Maintains a rich, creative work environment		
7. Supervises evenhandedly without favorites		
8. Evaluates employees only after sufficient observation		
9. Directs operations for the convenience of employees, not the administrative office		

DESCRIPTIVE ITEM	RATING NO.	COMMENTS
10. Promotes mutual respect among employees		
11. Practices the conviction that administration is a service to employees		
12. Shows more concern with effective work output than with public relations		
13. Protects employees from unnecessary interruptions		
14. Supports the judgement of employees		
15. Encourages employee initiative and innovation		
16. Defends employees against unwarranted attacks and criticism		
17. Plans and conducts meaningful meetings only as needed		
18. Establishes schedules and efficient routines to meet needs		
19. Welcomes criticism, makes good use of it		
20. Understands complex ideas; acts logically		
21. Displays emotional maturity & stability		
22. Exhibits sense of humor, is not vindictive		
23. Is responsible and dependable in assisting employees		
24. Is an aid not a hinderance to achievement		
25. Makes supplies and equipment easily available		
26. Fosters high morale		
27. Avoids a sterile,military by-the-book atmosphere		

DESCRIPTIVE ITEM	RATING NO.	COMMENTS
28. Promotes harmony by discouraging spying and tale bearing		
29. Settles grievances fairly		
30. Exercises managerial influence so as not to discourage or undercut negotiations or organizational activity		
31. Conducts relations with higher administration in a manner which is not overly cautious or subservient		
32. Respects employee rights established by law or contract		
33. Has established a firm trust-level between management and employees		
34. Is sensitive to racial & ethnic needs of employees and community		
35. Promotes community cooperation and support		
36. Is an aid not a hurdle to creative projects		
37. Gives extra-duty assignments without favoritism or inequity		
38. Gives recognition to achievements of individuals		
39. Reprimands only for just cause based on knowledge not heresay		
40. Exercises administrative discretion in a manner which is not arbitrary, capricious, unfair or unreasonable		
41. Provides employees with assistance in becoming competent & successful in their assignment		
42. Is firm, not domineering or vacillating in using authority		

DESCRIPTIVE ITEM	RATING NO.	COMMENTS
43. Promotes a relaxed, open & adult atmosphere among employees		
44. Keeps professional & personal confidences of employees		
45. Avoids make-work		
46. Is respected by employees		
47. Is respected by community		

OVERALL PERFORMANCE RATING_____

I recommend that this Manager:

☐ be retained in service

☐ be discontinued in service

☐ be conditionally retained in service but that his work be evaluated with extreme care

REMARKS AND/OR SUGGESTIONS FOR IMPROVEMENT:

Optional_____
Evaluator's Signature

Number of years employed in the agency _____

Department _____

APPENDIX IV

AFL-CIO INTERNAL DISPUTES PLAN

ARTICLE XX

SETTLEMENT OF INTERNAL DISPUTES

Section 1. The principles set forth in this Article shall be applicable to all affiliates of this Federation, and to their local unions and other subordinate bodies.

Sec. 2. Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employes as to whom an established collective bargaining relationship exists with any other affiliate. For purposes of this Article, the term, "established collective bargaining relationship" means any situation in which an affiliate, or any local or other subordinate body thereof, has either (a) been recognized by the employer (including any governmental agency) as the collective bargaining representative for the employes involved for a period of one year or more, or (b) been certified by the National Labor Relations Board or other federal or state agency as the collective bargaining representative for the employes.

Sec. 3. Each affiliate shall respect the established work relationship of every other affiliate. For purposes of this Article, an "established work relationship" shall be deemed to exist as to any work of the kind which the members of an organization have customarily performed at a particular plant or work site, whether their employer is the plant operator, a contractor, or other employer. No affiliate shall by agreement or collusion with any employer or by the exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate. This section shall not be applicable to work in the railroad industry.

ARTICLE XX—Settlement of Internal Disputes

Sec. 4. In the event that any affiliate believes that such special and unusual circumstances exist that it would be violative of its basic jurisdiction or contrary to basic concepts of trade union morality or to the constitutional objectives of the AFL-CIO or injurious to accepted trade union work standards to enforce the principles which would apply in the absence of such circumstances, such organization shall nevertheless observe such principles unless and until its claim is upheld in the manner prescribed in Section 17 of this Article.

Sec. 5. No affiliate shall, in connection with any organizational campaign, circulate or cause to be circulated any charge or report which is designed to bring or has the effect of bringing another affiliate into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation.

Sec. 6. Dispute settlements and determinations under this Article shall not determine the general work or trade jurisdiction of any affiliate but shall be limited to the settlement or determination of the specific dispute on the basis of the facts and considerations involved in that dispute.

Sec. 7. The President shall establish procedural rules for the handling of complaints under this Article so that all affiliates involved in or affected by a dispute will have notice thereof, will have an opportunity for the voluntary settlement of the dispute, and, in the event of a failure to reach a voluntary settlement, will have a full and fair hearing

before an Impartial Umpire. The rules shall be such as to insure a speedy and early disposition of all complaints arising under this Article.

Sec. 8. The President shall establish a panel of mediators composed of persons from within the labor movement. The members shall serve at the pleasure of the President. Any affiliate which claims that another affiliate has violated this Article may, by its principal officer, file a complaint with the President. Upon receipt of such complaint the President shall designate a mediator or mediators, selected by him from the mediation panel, and direct that all affiliates involved or affected meet with such mediator or mediators in an effort to effect a settlement.

Sec. 9. A panel of Impartial Umpires composed of prominent and respected persons shall be established. The members of the panel shall be selected by the President with the approval of the Executive Council. If voluntary settlement of a dispute is not reached within fourteen days after the appointment of a mediator or mediators, a hearing shall be held before an Impartial Umpire selected from such panel. Impartial Umpires shall be assigned on a rotating basis, subject to their availability to conduct hearings. The terms of employment of the members of the panel shall be established by the President, with the approval of the Executive Council.

Sec. 10. The Impartial Umpire shall make a determination, after hearing, based upon the principles set forth in this Article. He shall make such determination within a time specified by the President, unless an extension of time is agreed to by the parties. The President shall transmit copies of the determination to all affiliates involved. He shall, at the same time, request any affiliate which the Impartial Umpire has found to be in violation of this Article to inform him as to what steps it intends to take to comply with such determination. Any response received, or the fact that no response has been received within a time fixed by the President, shall be communicated to the other parties to the dispute.

ARTICLE XX—Settlement of Internal Disputes

Sec. 11. The President may extend any time limit if, in his judgment, such extension will more readily effectuate an early settlement or determination of a dispute. Whenever, in the judgment of the President, pressing reasons require an accelerated settlement or determination, he may shorten or eliminate the mediation process or refer the dispute directly to an Impartial Umpire.

Sec. 12. If no appeal is filed from a determination of the Umpire within five days as provided below the determination shall automatically go into full force and effect. Any affiliate which is adversely affected by a determination of the Umpire, and which contends that the determination is not compatible with this Constitution, or not supported by facts, or is otherwise arbitrary or capricious, may file an appeal with the President within five days after it receives the Umpire's determination. Any such appeal shall be referred by the President to a subcommittee of the Executive Council.

ARTICLE XX—Settlement of Internal Disputes

Sec. 13. The subcommittee of the Executive Council may disallow the appeal, in which event the determination of the Umpire shall be final, and subject to no further appeal and shall go into full force and effect; or the subcommittee may refer the appeal to the Executive Council, in which event the determination of the Umpire shall be automatically stayed pending disposition of the appeal by the Executive Council. The determination of the Umpire shall be sustained unless it is set aside or altered by vote of a majority of all of the members of the Executive Council. The decision of the Executive Council where an appeal is granted shall be final, and shall be effective as of the date therein specified.

Sec. 14. Any affected affiliate may file a complaint with the President that another affiliate has not complied with an effective determination of the Impartial Umpire or of the Executive Council on appeal. Upon receipt of such a complaint the President shall immediately convene a meeting of the subcommittee of the Executive Council referred to above. If non-compliance with the determination is found at such meeting, notice of such non-compliance shall be issued by the President to each affiliated national or international union and department.

Sec. 15. Immediately upon the issuance of such notification, the following shall apply:

(1) The non-complying affiliate shall not be entitled to file any complaint or appear in a complaining capacity in any proceeding under this

ARTICLE XX—Settlement of Internal Disputes

Article until such non-compliance is remedied or excused as provided in Section 16;

(2) The Federation shall, upon request, supply every appropriate assistance and aid to any organization resisting the action determined to be in violation of this Article;

(3) The Federation shall appropriately publicize the fact that the affiliate is not in compliance with the Constitution;

(4) No affiliate shall support or render assistance to the action determined to be in violation of this Article.

In addition, the Executive Council is authorized, in its discretion, to:

(1) Deny to such an affiliate the use of any or all of the services or facilities of the Federation;

(2) Deny to such an affiliate any protection under any of the provisions or policy determinations of the Federation;

(3) Apply any other authority vested in the Executive Council under this Constitution.

Sec. 16. Any affiliate which has been found to be in non-compliance and which has been deprived of its rights under this Article may apply for restoration of such rights. Notice of such application shall be given to all of the affiliates involved in the determination or determinations as to which there is non-compliance. If such affiliates consent, the President shall be authorized to restore the rights of the non-complying affiliate after it states its intention in writing to comply thenceforth with the provisions of this Article. If any affiliate involved in the cases

of non-compliance opposes the application, the rights of the non-complying affiliate shall be restored only under the following conditions:

(a) The non-complying affiliate states its intention, in writing, to comply thenceforth with the provisions of this Article;

(b) The non-complying affiliate has undertaken whatever measures may be necessary and practicable to remedy the situation;

(c) The application for restoration of rights is approved by two-thirds vote of the Executive Council, or by a majority vote of the convention.

Sec. 17. Any affiliate which claims justification under Section 4, for action, which would, in the absence of such justification violate the provisions of this Article, shall process its claim, prior to taking action, under the provisions of this Section. Such claim shall set forth the basis upon which the claim is made and the action which the affiliate proposes to take. The claim shall thereafter be processed as provided in this Article except that the determination as to whether the facts justify the proposed action shall not be made by the Impartial Umpire. The Impartial Umpire shall determine whether the proposed action would violate the provisions of this Article in the absence of justification, shall find the facts with respect to the claim of the justification, and submit a report to the Executive Council. The Executive Council shall determine on the report of the Impartial Umpire whether the proposed action would violate the provisions of this Article in the

ARTICLE XX—Settlement of Internal Disputes

absence of justification; and, if it concludes by majority vote that the proposed action would so violate it shall find such justification only by a vote of two-thirds of the membership of the Council.

Sec. 18. The President shall be authorized to delegate to such person or persons as he may designate any of his powers or functions under this Article except the authority granted by Sections 12, 14, and 16.

Sec. 19. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be complied with prior to the invocation of the procedures provided in this Article. If such agreement provides for final and binding arbitration, and an affiliate party to such agreement claims that another such affiliate has not complied with a decision under that agreement, it may file a complaint under the provisions of Section 14 of this Article and the procedures provided in this Article in the case of non-compliance shall be applicable. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between affiliates but involves or affects an affiliate not a party to such an agreement, the affiliate not a party to such agreement may invoke the procedures provided in this Article for the settlement and determination of such dispute.

Sec. 20. The provisions of this Article with re-

ARTICLE XX—Settlement of Internal Disputes

spect to the settlement and determination of disputes of the nature described in this Article shall constitute the sole and exclusive method for settlement and determination of such dispute and the provisions of this Article with respect to the enforcement of such settlements and determinations shall constitute the sole and exclusive method for such enforcement. No affiliate shall resort to court or other legal proceedings to settle or determine any disputes of the nature described in this Article or to enforce any settlement or determination reached hereunder.

Sec. 21. The provisions of this Article shall take effect on January 1, 1962. Upon such effective date, the provisions of Article III, Section 4, of this Constitution, except the first sentence thereof, shall be of no further force and effect. However any dispute which has become subject to a formal complaint under such provision prior to January 1, 1962, shall be disposed of under the procedures and principles theretofore applicable and not under the procedures or principles set forth in this Article, except that any recommendation of the Impartial Umpire issued subsequent to January 1, 1962, shall be subject to the provisions of Sections 14 through 16 of this Article.

Sec. 22. Notwithstanding any other provision of this Constitution this Article shall be subject to amendment by the convention by a majority vote of those present and voting either by a show of hands, or, if a roll call is properly demanded as provided in this Constitution, by such roll call.

APPENDIX V

AFL-CIO SELECTED PLATFORM POSITIONS

Public Employees

The right of collective bargaining, including the right to strike, is a fundamental right of all workers. Public employees have been enjoined, harassed, dismissed, and otherwise mistreated in their attempts to organize and bargain collectively with their employers. Unfortunately, continued efforts by public employees to change intolerable conditions through union organization and collective bargaining are too often limited by repressive legislation and judicial decisions.

The AFL-CIO continues to support legislation which would guarantee the right of all public employees to organize, bargain collectively, and would insure the right to strike.

Furthermore, the AFL-CIO supports provisions to protect the job rights, employment conditions and other benefits of workers involved in any federal, state and local legislation to reorganize or consolidate the delivery of public services.

The AFL-CIO also urges enactment of federal legislation as soon as possible to provide effective and appropriate protections for the pension rights of employees of state and local government agencies.

Pension Legislation

The Employees Retirement Income Security Act was enacted in 1974. This law will go a long way toward making the private pension system work better on behalf of retiring workers. The legislation provides minimum standards of vesting, funding and fiduciary responsibility. By creating a termination insurance program, the new law also insures that American workers will receive their pensions if their employers go bankrupt or out of business.

One of the shortcomings of the new law is that it applies only to pension systems in the private sector. The reason given for this limitation was that public pension systems did not need these protections because of the financial stability and strength of state and local governments. Recent developments have made all Americans acutely aware that state and local governments also can go bankrupt. Effective and appropriate protections for the pension rights of employees of state and local government agencies should be enacted as soon as possible. Public workers should have the same rights as all other workers.

Reprinted from AFL-CIO Platform Proposals. Presented to the Democratic and Republican National Conventions,1976.

APPENDIX VI

Summary Statement Regarding,
Political Activity of State or Local Officers and Employees

Two bills, AB 4352 and AB 4351, have been passed by the California State Legislature and signed by the Governor to be effective January 1, 1977. The bills modify restrictions on political activities of state, local and school district employees. The following discussion summarizes the provisions and effects of these bills. A Summary Statement Regarding Political Activity of State or Local Officers and Employees (as of October, 1975) follows the bill summaries in this section.

AB 4351 - State and Local

Existing state law restricts the solicitation and receipt of campaign contributions while officers and employees of state and local government agencies are on the job. It also restricts the use of government facilities and an employees' official position for political purposes. A state employee may not engage in political activities to the extent such activity has been declared to be incompatible with his duties as a state employee. This bill would repeal the above provisions of state law except those relating to incompatible activities of state employees. It would provide that subject to the exceptions specified in the bill and federal law no restriction may be placed upon the political activities of officers and employees of state and local government agencies.

The bill would reenact an existing provision prohibiting an office holder or person seeking election or appointment to office from using the influence of his position for political purposes. It would also reenact provisions prohibiting a local agency employee from participating in political activities while in uniform or on duty.

Note: Each state agency may have an individual compatibility statement. Employees in federally funded positions are still governed by the Hatch Act.

The bill bars local agency employees from directly soliciting political funds from other agency employees; allows local agencies to bar their employees from engaging in political activity during working hours; and allows local agencies to bar all political activities on their premises.

Note: The local agency is not under obligation to enact such regulations. It may also modify its own regulations.

AB 4352 - Schools

This bill would repeal the existing provisions of law which place restrictions on the political activities of school boards and school officers and employees and in lieu thereof provide that no restrictions other than those provided for in this bill and under federal law shall be placed on the political activities of any officers or employees of a county superintendent of schools, a school district, or a community college.

This bill would prohibit school officers and employees from using or attempting to use their positions to in any way affect the employment of a person upon consideration or condition that such person vote for, support, or oppose a particular candidate, office or party.

This bill would provide that no school district funds could be used to urge the passage or defeat of any school measure of the district

except that: 1) the governing board of a school district may prepare and disseminate information urging the passage or defeat of such measures, 2) an administrative officer may make appearances before citizens groups to discuss a board measure, 3) An officer or employee may solicit contributions to promote the passage or defeat of a bond measure.

This bill would also permit governing bodies to establish rules and regulations regarding the political activities of contributions by school officers and employees.

Summary Statement Regarding Political Activity of State or Local Officers and Employees

(October 1975)

Section 401 of the Federal Election Campaign Act Amendments of 1974 amended the Federal Hatch Political Activities Act (5, United States Code, 1501–1508) by removing the restriction against certain partisan political activities by State and local government employees in Federally aided programs. Under the new law, which was effective on January 1, 1975, such employees are no longer prohibited by Federal law from taking an active part in political management or in political campaigns. (These activities, however, may continue to be prohibited by some State or local laws or regulations.) Other Hatch Act restrictions on the political activities of State and local employees described below are unaffected.

Here is a summary of the provisions of the law, in its amended form. This summary reflects the U.S. Civil Service Commission's interpretation of the law, through September 1975, as found in 5 CFR Part 151.

Coverage

In general, the law covers officers or employees of a State or local agency if their principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. An employee subject to political activity laws and regulations continues to be covered while on annual leave, sick leave, leave without pay, administrative leave, or furlough.

In many State, county, and municipal governments the following programs receive financial assistance from the Federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry, highways and public works, conservation, agriculture, civil defense, aeronautics and transportation, anti-poverty, and law enforcement.

The law, by its own terms, does not apply to:

1. an individual who exercises no functions in connection with the Federally financed activity; or
2. an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

Prohibited Activities

A State or local officer or employee who is subject to the provisions of the Hatch Act, *may not:*

1. use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
2. directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
3. be a candidate for public elective office in a partisan election (candidacy for political party office is not prohibited).

Use of Official Authority: Coercion: These prohibitions are aimed at activities such as threatening to deny promotion to any employee who does not vote for certain candidates; requiring employees to contribute a percentage of their pay to a political fund (''2% Club''); influencing subordinate employees to buy tickets to political fund-raising dinners and similar events; and matters of a similar nature. These prohibitions principally affect supervisors, but are applicable to any covered employee. For instance, employees still may not coerce, command, or advise other covered employees to make political contributions or to contribute their time or anything of value for political purposes.

Candidacy: A State or local officer or employee subject to the Hatch Act may not be a candidate in a partisan election for any public office. Primary and runoff elections to nominate candidates of partisan political parties are partisan elections for the purposes of the law. Candidacy for political party office, including that of committee member or convention delegate, is not prohibited, even where such office is voted on in a partisan election.

U.S. Civil Service Commission
Bureau of Intergovernmental Personnel Programs, 1900 E Street, N.W., Washington, D.C. 20415

The law permits officers and employees to be candidates for public office in nonpartisan elections. These are elections in which none of the candidates is to be nominated or elected as representing a political party whose candidates for presidential elector received votes at the last preceding presidential election.

Permitted Activities

A State or local officer or employee who is subject to the provisions of the Hatch Act, *may*:

1. Express his or her opinions on political subjects and candidates,
2. Take an active part in political management and political campaigns, and
3. Be a candidate for political party office.

Expressing Political Views: State or local officers or employees subject to the Act may as in the past express their individual opinions on political subjects and candidates. This is frequently done by employees wearing badges or buttons, or displaying stickers or posters on their cars or houses. While the Federal law does not prohibit this, regulations of the State or local government may limit in some ways the free expression of their employees' political views. For example, an agency may logically differentiate between employees whose work requires them to meet the public constantly and those who seldom, if ever, meet the public in performing their duties.

Political Management: Restrictions on political management were repealed by the amendment. Membership and office holding in a political party, organization, or club is permitted. Affected employees may attend meetings, vote on candidates and issues, and take an active part in the management of the club, organization, or party, and may be candidates for political party office in a partisan election.

Attendance at a political convention and participation in the deliberations or proceedings of the convention or any of its committees are permitted activities. Employees may be candidates for, or serve as delegates, alternates, or proxies at such a convention, even though such candidacy involves a public partisan election. Volunteer work for a partisan candidate, campaign committee, political party, or nominating convention of a political party is permitted.

Political Campaigns: Under the amended law, an employee may campaign in a partisan election by making speeches, writing on behalf of the candidate, or soliciting voters to support or oppose a candidate.

An employee may attend a political meeting or rally including committee meetings of political organizations, and may serve on a committee that organizes or directs activities at a partisan campaign meeting or rally.

An employee may sign nominating petitions for candidates in a partisan election for public office, and may orginate or circulate such petitions. An employee may drive voters to the polls as a convenience to them. Previous restrictions against transporting voters to the polls as part of the effort of a candidate or political party to win a partisan election are no longer applicable to State and local employees under Federal law.

Contributions: Employees may make a financial contribution to a political party or organization. They may solicit and collect voluntary political contributions. They may not, of course, coerce, command or advise another covered employee to make such contributions.

Public Office: The law that prohibits political activity does not prohibit holding a public office. Hence, if an employee holds elective office when appointed to a covered State or local position, the employee may continue to serve but may not be a candidate for reelection in a partisan election. Likewise, an employee may accept an appointment to fill a vacancy in an elective office while concurrently serving in a covered position. Such an employee should, of course, ascertain from his or her employing agency if acceptance of such an appointment may constitute a conflict of interest.

An employee may serve at the polls as an election official or clerk or as a checker, watcher, or challenger for a political party candidate in a partisan election.

State Laws

Where State or local laws or regulations establish more strict prohibitions on the political activity of State and local employees, these prohibitions remain in effect. It was not the intent of Congress to preempt or supersede, by the amendment, any existing State law.

The Hatch Act is enforced by the United States Civil Service Commission. If you have any questions as to whether the law applies to you or whether specific political activities are allowed, ask the U.S. Civil Service Commission for help in resolving them. *Contact the Office of the General Counsel, USCSC, Room 6H31 1900 E Street, N.W. Washington, DC 20415, or telephone 202/632-7600.*

Additional copies of this summary may be obtained from the regional offices of the U.S. Civil Service Commission. Please note that, as a result of regulations issued by the USCSC on September 16, 1975, the November 1974 Special Issue of *Intergovernmental Personnel Notes* on the amended Hatch Act is now obsolete.

APPENDIX VII

PUBLIC EMPLOYEES
POLITICAL ACTIVITIES MANUAL

JOHN H. LARSON

COUNTY COUNSEL

COUNTY OF LOS ANGELES

1975

Compiled By

LABOR RELATIONS DIVISION

Daniel C. Cassidy, Division Chief

Steve Houston, Deputy County Counsel

This Manual is designed solely

as a reference tool

November 1, 1975

"As the number of persons employed by government and governmentally-assisted institutions continues to grow, the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights they require, imperil the continued operation of our institutions of representative government." [1]

---

[1] Bagley v. Washington Township Hospital District, 65 Cal. 2d 499 at 510-511, 55 Cal. Rptr. 401 at 409 (1966).

SUMMARY

TABLE OF CONTENTS

Public Employees Political Activities

INTRODUCTION

Legislatively imposed restrictions on the political activities of public employees have come under increasing judicial scrutiny with the tremendous growth of public sector employment. The courts' activism in this area has been stimulated, at least in part, by the inability of legislative bodies to define the interest of the government as "employer" in a manner which does not substantially impair the political rights of government employees. The courts have sought to ameliorate this conflict through the development of constitutional doctrine.

It has been argued in the past that government benefits, including public employment, represented "privileges" rather than "rights," and further, that the government could condition the receipt of such benefits on the recipient's waiver of important interest, including constitutional rights.[2] This attitude is perhaps best reflected in the famous dictum of Justice Holmes in his reference to the granting of public employment: "The petitioner may have

---

2 See generally Van Alstyne, The Constitutional Rights of Public Employees: A Comment on the Inappropriate Uses of an Old Analogy, 16 U.C.L.A. L. Rev. 751 (1969).

a constitutional right to talk politics, but he has no constitutional right to be a policeman."[3] In recent years, while perhaps conceding that government may have no constitutional obligation to provide benefits such as public employment, many courts have required that once public employment or any other benefit is granted, the government cannot condition that grant on the recipient's waiver of constitutional rights.[4] While there are some interests which the government holds as employer that are sufficient to support demands which it could not make upon a person with whom it lacked an employment relationship, increasingly, state and federal courts are requiring that the government always operate under constitutional constraint, even when performing non-obligatory functions.

The following discussion, while not intended to be an exhaustive treatise on public employee First Amendment

---

3 McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517 (1892)

4 Sherbert v. Verner, 374 U.S. 398, 10 L.Ed. 2d 965, 83 S.Ct. 1790 (1963); Pickering v. Board of Educ., 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731 (1968); Keyishian v. Board of Regents, 385 U.S. 589, 17 L.Ed.2d 629, 87 S.Ct. 675 (1967). See generally Comment, Another Look at Unconstitutional Conditions, 117 U. Pa. L. Rev. 144 (1968).

political rights, will analyze the current status of federal, state and local restrictions on the political activities of County officers and employees. It is hoped that this analysis will suggest some meaningful guidelines to assist County management in its sometimes difficult task of advising County officers and employees as to their rights and duties in the highly sensitive area of political activities.

GENERALLY

In recent years, the permissible restrictions that may be imposed upon the political activities of County officers and employees have been severely circumscribed by the California Supreme Court.[5] However, it does appear that at least the following restrictions imposed by the Government Code, judicial decisions, current County ordinances and Charter sections are valid and enforceable:

1. An officer or employee of the County may be restricted or prohibited by ordinance or departmental rule from participating in political activities of any kind during working hours or while otherwise on duty.[6]

---

5 Bagley v. Washington Township Hospital District, 65 Cal.2d 499, 55 Cal.Rptr. 401 (1966).

6 Fort v. Civil Service Commission, 61 Cal.2d 331 at 338, 38 Cal.Rptr. 625 at 629.

2. Solicitation or receipt of political funds:

A. An officer or employee of the County in the classified service may be prohibited from, directly or indirectly, soliciting or receiving political funds or contributions for any political party or political purpose whatever at any time[7] with the following exception:

Such officers or employees may, however, solicit or receive political funds or contributions from other officers or employees of the County for the purpose of promoting the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of the officers or employees of the County, although the County may prohibit or limit such activities during working hours.[8]

B. Except as provided for in subparagraph "A" above, an officer or employee of the County in the unclassified service may not, directly or indirectly, solicit or receive political funds or contributions from other officers or employees of the County or persons on the employment list of the County at any time.[9]

---

7 Los Angeles County Charter (1973 Ed.), Section 42.

8 Government Code Section 3206.

9 Government Code Section 3202;Los Angeles County Charter (1973 Ed.), Section 42.

C. The County may not prohibit or restrict off-duty County officers or employees in the unclassified service from soliciting or receiving political funds or contributions from members of the general public during non-working hours, although the County may restrict or prohibit by ordinance or departmental rule such officers or employees from using their status or position to in any way assist in or influence the solicitation or receipt of political funds or otherwise to identify themselves as County employees when soliciting or receiving such funds.[10]

D. Under the County's "Solicitation Ordinance" (Ordinance No. 2292), members of the general public as well as County employees are prohibited from soliciting contributions, signatures, or other forms of support for political candidates, parties, ballot measures, or other political purposes within or upon County buildings, facilities or property at any time.[11]

3. County officers and employees are under a duty to prohibit the entry into County facilities or property of any person or persons for the purpose of making therein, or giving notice of, any political assessment, subscription or contribution.[12]

---

10 Fort v. Civil Service Commission, 61 Cal.2d 331, 38 Cal.Rptr. 625; Bagley v. Washington Township Hospital District, 65 Cal.2d 499, 55 Cal.Rptr. 401.

11 See also Government Code Section 3203.

12 Government Code Section 3203(a).

4. County officers or employees may not use, promise, threaten or attempt to use their County position to influence the political actions of other County officers or employees or any member of the general public.[13]

5. No officer or employee of the County may participate in political activities of any kind while he is in uniform.[14]

6. An officer or employee of the County may be restricted or prohibited by ordinance or departmental rule from campaigning for or against his immediate superior or a superior whom the employee serves in a close or confidential capacity.[15]

7. An officer or employee of the County in the classified service may not favor or discriminate against any County employee or person seeking County employment because of his political opinions or affiliations.[16]

---

13 Government Code Section 3204.
Fort v. Civil Service Commission, 61 Cal.2d 331 at 338, 38 Cal.Rptr. 625 at 629.

14 Government Code Section 3204.5.

15 Fort v. Civil Service Commission, 61 Cal.2d 331 at 338, 38 Cal.Rptr. 625 at 629.
Bagley v. Washington Township Hospital District, 65 Cal.2d 499 at 508, 55 Cal.Rptr. 401 at 408.

16 Los Angeles County Charter (1973 Ed.), Section 41.

In addition to the foregoing specific restrictions, the County or its departments may adopt rules further limiting the political activities or conduct of County officers and employees. Extreme caution should be exercised in adopting such rules, however, to ensure that the rules are specifically and narrowly drafted and that they otherwise comply with the three-part test set forth by the California Supreme Court in Bagley,[17] to wit:

(1) That the political restraints rationally relate to the enhancement of the public service;

(2) That the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights; and

(3) That no alternatives less subversive of constitutional rights are available.

On the federal level, the Federal Hatch Political Activity Act[18] further limits the political activities of many County officers and employees. Certain provisions of the Act apply to any County officer or employee whose principal employment is in connection with programs or

---

17 Bagley v. Washington Township Hospital District, 65 Cal. 2d 499 at 501-502, 55 Cal.Rptr. 401 at 403

18 5 U.S.C. Sections 1501-1508 (hereinafter referred to as "Hatch Act" or "Act").

activities financed in whole or in part by loans or grants made by the United States or a federal agency. For instance, all County employees hired with federal money or whose primary job is in connection with federally funded activities are covered by the Hatch Act. Such employees may be found, for example, in the Department of Public Social Services, Department of Health Services, Probation Department, Facilities Department, and many other County offices and agencies. The primary restrictions of the Act are contained in Section 1502, which provides in part:

> "(a) A State or local officer or employee may not--
>
> (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.
>
> (2) directly or indirectly coerce, attempt to coerce, command, advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
>
> (3) be a candidate for elective office."

Although a violation of the Hatch Act may be penalized by loss of public employment, the County's responsibilities in regards to enforcement of the Act are limited to fully advising County employees by departmental rule that they are subject to the provisions of the Hatch Act and further advising those employees as to the primary provisions of the Act. It does not appear, however, that the County has any affirmative duty to report alleged violations of the Hatch Act to the federal agency involved or to the United States Civil Commission. It is the individual employee's responsibility to ascertain whether or not a particular political activity or conduct constitutes a violation of the Hatch Act. All questions regarding the application of the Federal Hatch Act to a particular County position or a particular kind of political activity should be sent for an official ruling to:

Office of the General Counsel
United States Civil Service Commission
Room 6 H 31
Washington, D.C.

STATE AND LOCAL RESTRICTIONS ON POLITICAL ACTIVITIES OF COUNTY OFFICERS AND EMPLOYEES

As previously noted, a great percentage of the County's employees are subject to the provisions of the Federal Hatch Act.[19] It should be stressed, however, that the

---

19 5 U.S.C. Sections 1501-1508.

California law applicable to political activities of governmental or public employees is applicable to all employees of the County, including those subject to Hatch Act regulation. Thus, before proceeding to a discussion of the implications of the Hatch Act to County employees, it would be instructive to consider the status of applicable California law regarding the political activities of all County employees.

The California Supreme Court has been extremely responsive to the constitutional conflict implicit in the governmental regulation of political activities of public employees. In two landmark cases, the Court expressly articulated several governing principles by which it determines the constitutionality of political restrictions on public employees.

In Fort v. Civil Service Commission,[20] a medical doctor who served as the director of a county alcoholism center was dismissed from his position because he was

---

20 61 Cal.2d 331, 38 Cal.Rptr. 625 (1964).

active in a gubernatorial campaign. The County Charter provision[21] which was the basis of his dismissal prohibited public employees from taking part in any political activity except to vote and privately express their opinion. The Charter provision not only prohibited partisan political activity, but non-partisan political activity as well. The scope of that prohibition led the California Supreme Court to invalidate the challenged portion of the Charter provision and order the reinstatement of Fort to his public position.

The Court noted two conditions which the government must satisfy in order to regulate the political activities of public employees. First, it is necessary for the state to show a compelling reason for restricting the political rights of public employees. In the course of its opinion, the Court emphasized the importance of maintaining efficiency and integrity within the public service and suggested several political activities which

---

21 The applicable portion of the County Charter states as follows:

> "No person holding a position in the classified civil service shall take any part in political management or affairs in any political campaign or election, or in any campaign to adopt or reject any initiative or referendum measure other than to cast his vote or to privately express his opinion. Any employee violating the provisions of this section may be removed from office."
>
> Alameda County, Cal. Charter Section 41.

the state could lawfully restrict: (1) using official influence to coerce political actions; (2) soliciting political contributions from fellow employees; (3) taking part in political activity during working hours; and (4) campaigning for public office against a superior. Notwithstanding these suggested areas of regulation, the Court clearly indicated that where the government seeks to restrict the political activities of public employees, such regulation does not obtain the normal presumption of validity. Rather, the state must evidence compelling reason for such interference.

Second, even in those cases where the state can sustain its burden to justify regulation, only restrictions drafted with narrow specificity will be permitted.[22] It was the absence of this latter quality which rendered the Charter provision in Fort unconstitutional. The Charter provision, in restricting virtually all political activity, was not responsive solely to the need for governmental efficiency, nor was there sufficient evidence that the provision was necessary to insure integrity within the public service. The Court succinctly stated the test as one of nexus:

---

22 61 Cal.2d at 337, 38 Cal.Rptr. at 629.

" . . . the more remote the connection between a particular activity and the performance of official duty the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service."[23]

Undoubtedly the most important case to discuss the law applicable to regulation of political activities by public employees is Bagley v. Washington Township Hospital District.[24] In that case, the California Supreme Court again emphasized the importance of political rights of public employees and the heavy burden placed upon government to justify regulation of those rights.

Bagley, a nurse's aid, was discharged from the defendant Hospital on the grounds that she actively participated in a campaign election for the recall of certain Directors of the Hospital in violation of Government Code Section 3205, which reads:

"No officer or employee whose position is not exempt from the operation of a civil service

---

23 61 Cal.2d at 338, 38 Cal.Rptr. at 629.

24 65 Cal.2d 499; 55 Cal.Rptr. 401 (1966).

> personnel or merit system of a local agency shall take an active part in any campaign for or against any candidate, except himself, for an office of such local agency, or for or against any ballot measure relating to the recall of any elected official of the local agency."

During the course of the campaign, the Directors issued a directive further advising the employees that "participation in any political activity for or against any candidate or ballot measure pertaining to the . . . District" was unlawful and would "constitute grounds for disciplinary action and/or dismissal."[25]

Justification for Bagley's dismissal was based on the grounds that her campaign against her superior threatened governmental efficiency. There was no attempt by the District, however, to demonstrate that the political restrictions in any way related to the general purpose of civil service legislation. Rather, the Hospital District relied exclusively on the dictum in Fort, which suggested that a public employee may constitutionally be prohibited

---

25 65 Cal.2d at 502, 55 Cal.Rptr. at 404.

from campaigning against a superior officer. But as in Fort, however, the Court found the provisions relied upon by the District to dismiss Bagley proscribed political activity in no way related to the working efficiency of an employee or the integrity of the public service. While the Court stated it could not accept the suggestion that government may never condition the receipt of benefits or privileges upon the non-assertion of constitutional rights,[26] it indicated that a public agency which would require a waiver of constitutional rights as a condition of public employment must demonstrate:

1. That the political restraints rationally relate to the enhancement of the public service;

2. That the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights; and

3. That no alternatives less subversive of constitutional rights are available.[27]

---

26 "Just as we have rejected the fallacious argument that the power of government to impose such conditions knows no limits, so must we acknowledge that government may, when circumstances inexorably so require, impose conditions upon the enjoyment of publically conferred benefits despite a resulting qualification of constitutional rights." 65 Cal.2d at 505, 55 Cal.Rptr. at 406.

27 65 Cal.2d at 501-502, 55 Cal.Rptr. at 403. Accord, City of Carmel-By-The-Sea v. Young, 2 Cal.3d 259, 85 Cal.Rptr. 1 (1970). In affirming the test applied in Bagley, the California Supreme Court held a California statute requiring financial disclosure on the part of every public officer and every candidate for office unconstitutional.

What this means in non-technical language is that if a governmental agency wants to restrict the political activities of its employees, it must draft legislation or adopt regulations which rationally relate to the improvement of the public service, provide benefits that outweigh the restrictions, and restricts constitutional freedoms as little as possible. In imposing such restrictions, the Court noted the government bears a "heavy burden" of demonstrating the practical necessity for such limitations.[28]

The constitutional objection to Government Code Section 3205 and the District's directive stemmed from the prohibition of conduct which extended beyond the valid governmental interest of prohibiting an employee from either running for office or campaigning against his own superior.[29] The directive, by prohibiting employee

---

28 65 Cal.2d at 505, 55 Cal.Rptr. at 406.

29 The Court did not reach the issue of whether the working relationship between the plaintiff and the board "was so immediate that the board might be considered her 'own superior'." 65 Cal.2d at 508, 55 Cal.Rptr. at 408.

participation in "any ballot measure pertaining to the District," and Government Code Section 3205, by prohibiting employees from any campaigning for or against any candidate . . . for an office of such local agency," brought within their scope employee conduct which did not threaten the governmental interest against administrative disruption and were therefore unconstitutionally overbroad. By focusing on administrative disruption rather than the ambiguous phrase "integrity and efficiency of the public service," the California Supreme Court narrowly delineated the scope of permissible governmental interest to reach conduct in the official course of public business or conduct which directly impairs close working relationships.

Thus, not only did Bagley invalidate Section 3205 of the Government Code, but it severly circumscribed the limitations that may be placed on political activities of public employees. Any such limitations must now clearly meet the three-part test specifically set forth in Bagley and reiterated in later cases.

It should be observed, however, that the remaining Government Code provisions dealing with political activities of public employees seem to adequately meet the Bagley three-part test and are otherwise narrowly drafted and

aimed at specific abuses.[30] In any event, these Government Code provisions must be deemed controlling to political activities of County employees at least and until they are further defined or limited by judicial decisions.[31] These provisions include the following:

Government Code Section 3202

"An officer or employee[32] of a local agency[33] shall not, directly or indirectly, solicit or receive political funds or contributions, knowingly from other officers or employees of the local agency or from persons on the employment list of the local agency."[34]

---

30 See The Supreme Court of California 1966-1967, 55 Calif. L.R. 1059 at 1085 (1967).

31 Government Code Sections 3201-3206 apply to chartered counties but do not preempt non-conflicting local regulations. 43 Ops. Cal.Atty.Gen. 236

32 Government Code Sections 3202-3206 apply to all officers and employees of a local agency except employees of a school district. Officers and employees of a given local agency also include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency. [Government Code Section 3201]

33 Government Code Section 3201 defines "local agency" as a county, city, city and county, political subdivision, district, or municipal corporation.

34 See also Los Angeles County Charter (1973 Ed.) Section 42.

Government Code Section 3203

"(a) Every officer or employee of a local agency shall prohibit the entry, into any place under his control, occupied and used for the governmental purposes of said local agency, of any person, for the purpose of therein making, or giving notice of any political assessment, subscription, or contribution.

"(b) A person shall not enter or remain in any such place described in subsection (a) of this section for the purpose of therein making, demanding, or giving notice of any political assessment, subscription, or contribution.

"(c) This section shall not apply to any auditorium or other place used for the conduct of public or political rallies or similar events, nor to any park, street, public land or other place not being used for the governmental purposes of said local agency."

Government Code Section 3204

"No one who holds, or who is seeking election or appointment to, any office or employment in a local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority or influence, whether then possessed or merely anticipated, to confer upon or secure for any person, or to aid or obstruct any person in securing, or to prevent any person from securing, any position, nomination, confirmation, promotion, change in compensation or position, within said local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration."

Government Code Section 3204.5

"No officer or employee of a local agency shall participate in political activities of any kind while he is in uniform."

Government Code Section 3206

> "Notwithstanding the provisions of Sections 3202 and 3203, this chapter does not prevent an officer or employee of a local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such local agency, except that a local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours."

In addition to the foregoing Government Code provisions there are at least two provisions in the County Charter specifically dealing with political activities of County employees. The first of these provisions, Section 43 of the Charter (providing that: "No person holding a position in the classified service shall take any part in political management or affairs or in political campaigns further

than to cast his vote and to express privately his opinions.") has been declared unconstitutional by judicial decisions.[35]

A more difficult case is presented by Section 42 of the County Charter, which reads:

> "No officer or employee of the County, in the classified service, shall directly, or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political party or political purpose whatever. No person shall, orally or by letter, solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose whatever from any person holding a position in the classified service."

---

35 See Fort v. Civil Service Commission, 61 Cal.2d 331 (1964); Kinnear v. City of San Francisco, 61 Cal.2d 341 (1964); Schumann v. Los Angeles County Civil Service Commission, L.A. Co. Sup.Ct. No. 826470 expressly holding Section 43 to be unenforceable; and see County Counsel Opinions to the Board of Supervisors dated July 17, 1964 (71 O.C.C. 216) and to the Honorable Evelle J. Younger dated March 6, 1967 (74 O.C.C. 95).

In view of the rather restrictive limitations which Bagley and later California cases have imposed on the ability of a governmental entity to limit the political activities of its employees, there is some doubt whether Section 42 of the County Charter would now be upheld by the courts.

On the other hand, in the recent case of Broadrick v. Oklahoma,[36] the United States Supreme Court upheld the validity of an Oklahoma statute which contained language almost identical to that found in the first sentence of County Charter Section 42.[37] In that case, appellants, state employees charged by the Oklahoma State Personnel Board with actively engaging in partisan political activities (including the solicitation of money) among their co-workers for the benefit of their superior, in alleged violation of

---

36 413 U.S. 601, 37 L.Ed.2d 830, 93 S.Ct. 2908.

37 Section 818 paragraph six of Oklahoma's Merit System of Personnel Administration Act provides in pertinent part: "No employee in the classified service, . . . shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; . . ." Broadrick v. Oklahoma, 413 U.S. at 606, 37 L.Ed. at 835-836.

Section 818 of the State Merit System Act,[38] brought suit challenging the Act's validity on the grounds that two of its paragraphs[39] were invalid because of overbreadth and vagueness.

The Supreme Court rejected the argument that the statute was impermissibly vague and overbroad and upheld the constitutionality of the law on its face:

> " . . . Section 818 is . . . not so vague that 'men of common intelligence must necessarily guess at its meaning.' (citing cases) Whatever other problems there are with Section 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out 'explicit standards' for those who apply it. (citing cases) . . . Words inevitably contain germs of uncertainty . . . But what was said in Letter Carriers, . . . is applicable here: 'there are limitations in the English language with respect to being both specific and manageably brief, and

---

38 Okla. Stat. Ann., Tit. 74, Sec. 801 et seq.

39 Section 818, par. 6 and 7.

it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.'"[40]

As the foregoing discussion indicates, the United States Supreme Court has taken a more conservative approach in its views as to the permissible scope of public employee political activity while the California Supreme Court has evolved in a more liberal direction. This divergence of judicial opinion is due in part to the different legal philosophies prevailing on the respective Courts and in part to the tendency of the California Supreme Court to base its decisions regarding public employee political activity on independent state constitutional grounds as well as on United States Constitutional grounds.

For instance, in Fort v. Civil Service Commission, supra, the California Supreme Court invalidated as over-broad a section of the Alameda County Charter which

---

40 413 U.S. at 608-609, 37 L.Ed. at 837.

prohibited County employees in the classified service from taking an active part in political management or affairs in any political campaign or election.[41] While, in reaching its decision, the Court relied on Federal case law associated with the First Amendment of the United States Constitution, it also cited Article I, Section 2 of the California Constitution.[42] In the Bagley decision, supra, which invalidated Section 3205 of the Government Code as overbroad, the Court did not indicate whether the source of the constitutional right involved was State or Federal, but it did refer to both the Federal First Amendment[43] and the Fort case.[44]

---

41 61 Cal.2d at 333-334, 38 Cal.Rptr. 626-627.

42 Id. at 334-335 and 627.

43 65 Cal.2d at 508, 55 Cal.Rptr. at 408.

44 Id. at 501, 507-509 and at 403, 407-408.

Since both the California and the United States Constitution are cited in Fort, and since the Bagley decision relies extensively on Fort, the California Supreme Court may continue to pursue its liberal approach to public employee political activities on independent State grounds. Section 42 of the County Charter, therefore, remains in some jeopardy. It does not necessarily follow, however, that any restrictions imposed by ordinance or departmental rule limiting the right of a County employee or officer to solicit or receive political contributions or funds would or should be considered invalid. Instead, as was suggested by the California Supreme Court in Bagley, the County may by ordinance[45] or departmental rule[46] impose reasonable restrictions upon the activities of County employees which meet the three-part test of Bagley and which are otherwise

---

45 See, for example, the County's "Solicitation Ordinance" (Ord. No. 2292).

46 Under Section 93 of the County Administrative Code (Ord. No. 4099) a department head is authorized to adopt such rules not inconsistent with that Code, general law or the County Charter as he may think necessary for the governance of his office or department and the promotion of efficient service therein.

narrowly drafted so as to prohibit specific abuses. It is, therefore, premature to declare County Charter Section 42 invalid at this time.

In summary, the restrictions upon the solicitation or receipt of political funds or contributions by County officers and employees imposed by the Government Code, County Charter and various ordinance sections provide:

1. An officer or employee of the County in the Classified service may be prohibited from, directly or indirectly, soliciting or receiving political funds or contributions for any political party or political purpose whatever at any time.

2. An officer or employee of the County in the unclassified service may not, directly or indirectly, solicit or receive political funds or contributions from other officers or employees of the County or persons on the employment list of the County at any time.

3. An officer or any employee of the County may solicit or receive political funds or contributions from other officers or employees of the County for the purpose of promoting the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other such working conditions, except that the County or its departments

may prohibit or limit such activities during working hours.

4. The County may not prohibit or restrict off-duty County officers or employees in the unclassfied service from soliciting or receiving political funds or contributions from members of the general public during non-working hours, although the County may restrict by ordinance or departmental rule such officers or employees from using their status or position to in any way assist in or influence the solicitation or receipt of political funds or otherwise to identify themselves as an employee of the County when soliciting or receiving such funds.

5. Members of the general public as well as County employees may not solicit contributions, signatures, or other forms of support for political candidates, parties, ballot measures, or other political purposes within or upon County buildings, facilities, or property at any time.

As previously discussed, it should be noted that all employees of the County, including those subject to Hatch Act regulation, are subject to at least the limitations

and restrictions on political activities discussed in this section.

HATCH ACT LIMITATIONS ON POLITICAL ACTIVITIES OF COUNTY OFFICERS AND EMPLOYEES

The single most comprehensive program of legislation restricting the political activities of public employees is the Federal Hatch Political Activities Act.[47]

Passed in 1939, the Hatch Act was the product of two Congressional enactments[48] and was intended to prevent what Congress deemed to be "pernicious political activities"[49] among certain federal,[50] state, and local[51] employees. In the opinion of one author, the purpose of the Act was to ensure the political neutrality of federal bureaucracies because "political neutrality among career civil servants

---

47 5 U.S.C. Sections 1501-1508.

48 Act of Aug. 2, 1939, ch. 410, 53 Stat. 1147; Act of July 19, 1940, ch. 640, 54 Stat. 767.

49 Id.

50 5 U.S.C. Sections 7321-7327.

51 5 U.S.C. Section 1501-1508.

is a necessary corollary to efficient and responsible administration."[52] It has been claimed that the Act, by eliminating partisan political activity among federal employees, combats four evils: the Act prevents the bureaucracy from becoming a united political power bloc; it prevents the party in power from using government workers to promote the continued dominance of the party; it prevents competition between the party and the department head for the employee's loyalty; and it prevents employee demoralization which results from promotions and rewards based on politics rather than merit.[53]

In 1940, the Hatch Act was extended[54] to cover officers and employees of state and local agencies whose principal employment was in connection with any activity which was financed in whole or in part by loans or grants made by the United States. The 1940 Amendment prohibited

---

52 Esman, The Hatch Act-A Repraisal, 60 Yale L.J. 986, 995 (1951).

53 Id. at 994-995.

54 Act of July 19, 1940, ch. 640, 54 Stat. 767.

state and local employees subject to its provisions from engaging in three forms of activity: (1) use of official authority or influence for the purpose of interfering with or affecting the result of an election;[55] (2) direct or indirect coercion of another employee to contribute anything of value to a person, a party, or organization for political purposes;[56] and, (3) taking "an active part in political management or in political campaigns."[57] It was the third prohibition which made the Hatch Act particularly noteworthy. In general terms, this prohibition against active political management and campaigning included campaigning for candidates, working for partisan political parties, clubs, or organizations, or running for partisan political office or office in a partisan political organization. The Act expressly

---

55 5 U.S.C. Section 1502(a)(1).

56 5 U.S.C. Section 1502(a)(2).

57 5 U.S.C. Section 1502(a)(3).

provided that an employee retained the right to vote as he chose and could express his opinions on political subjects and candidates.[58] A public employee was also allowed to belong to partisan political organizations so long as he took no active part in them.

Although the courts have consistently upheld both the constitutionality of the Hatch Act and the provisions which impose conditions or restrictions on the grant or loan of federal funds to a state or local agency,[59] Congress

---

58 5 U.S.C. Section 1502(b).

59 See, for instance, the leading Supreme Court cases United Public Works v. Mitchell, 330 U.S. 75, 91 L.Ed. 754, 67 S.Ct. 556 (1946); Oklahoma v. U.S. Civil Service Commission, 330 U.S. 127, 91 L.Ed. 794, 67 S.Ct. 554 (1947) and U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO, 413 U.S. 548, 37 L.Ed.2d 796, 93 S.Ct. 2880 (1973) [Upholds validity of the Hatch Act against claim that the Act is unconstitutionally vague, overbroad and violates First Amendment guarantee of free speech.] Also see Palmer v. U.S. Civil Service Commission, 297 F.2d 450 (7th Cir. 1962); In re Higginbothan, 340 F.2d 165 (1965) [Removal of maintenance mechanic with Washington County, Pa. Housing Authority who ran for and was elected to position of Alderman]; and Jarvis v. U.S. Civil Service Commission, 382 F.2d 339 (6th Cir. 1967) [Manager of local office of Kentucky Department of Economic Security who called meeting of his 10-12 employees for the purpose of selling $100 tickets to party fund-raising dinner].

recently amended the Act[60] to eliminate the provision[61] which prohibited voluntary political campaign activities by state and local employees working for agencies which receive federal funds. In the absence of state and local regulations to the contrary, the new legislation, which was operative January 1, 1975, permits County officers and employees to take an active part in partisan political campaign activities, except that such employees still may not become a candidate for partisan elective office. Non-partisan candidacies, however, are permitted. This means that unless state or local laws or personnel rules and regulations prohibit such activities,[62] County employees may now serve as officers of national, state, or local

---

60 Public Law 93-443, Title IV, Section 401(a), Oct. 15, 1974, 88 Stat. 1290; effective Jan. 1, 1975.

61 5 U.S.C. Section 1502(a)(3).

62 State law regulating the political activities of State and local officers and employees is not preempted or superseded by the 1974 amendment to the Hatch Act. [See Volume 3 of the United States Code Congressional and Administrative News, 93rd Congress, Second Session (1974), p. 5669.]

political parties, organize or reorganize political clubs, sell tickets to political fund-raising functions, manage campaigns, solicit votes, act as challengers or poll watchers during elections, or help in car pools ferrying voters to and from polling places. In addition, such officers and employees also may now run for election to a school board, city council or state constitutional convention, so long as the employee runs as an independent and is not affiliated with a party which participated in the last elections. It should be stressed, however, that while the most severe restrictions on local employee political activities have been eliminated, the provisions of the Hatch Act prohibiting use of official influence to affect the result of an election or nomination for office[63] and attempts to influence state or local employees to contribute anything of value for political purposes[64] were left intact by Congress and are still very much enforceable.

For our purposes, the key provisions of the Hatch Act found in Title 5, United States Code (as amended) include:

---

63 5 U.S.C. Section 1502(a)(1).

64 5 U.S.C. Section 1502(a)(2).

1. Section 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

"(a) A State or local officer or employee[65] may not--

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.[66]

---

65 For the purposes of the Hatch Act, a "*** local officer or employee" is defined as: "*** an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include--
(A) an individual who exercises no functions in connection with that activity ***." [5 U.S.C. 1501(4)]

66 Section 5 U.S.C. 1502(c) specifically exempts individuals holding "elective office" from the prohibition set forth in 1502(a)(3).

"(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates. * * *"

2. Section 1503. Nonpartisan candidacies permitted.

"Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected."

3. Sections1504-1508 provide in effect[67] that when a federal agency, which allocates or disburses federal funds to a local governmental agency[68] for financing in whole or part of a program of the local agency, has reason to believe that an officer or an employee of that local agency

---

67 See generally 75 O.C.C. 95.

68 5 U.S.C. Section 1501(2) defines "local agency" as "the executive branch of a State, municipality, or other political subdivision of a State or an agency or department thereof."

has violated Section 1502, the federal agency controlling the funds must report the matter to the United States Civil Service Commission. When such matter is reported to the United States Civil Service Commission, it in turn shall conduct an investigation including a formal hearing at which the party charged and/or the local agency is entitled to appear with counsel. After that hearing, the Civil Service Commission must determine whether a violation of Section 1502 occurred, and additionally, whether the violation warrants the removal of the officer or employee of the local entity. If the Civil Service Commission determines that a violation did occur which warrants the removal of the officer or employee, it must so notify the local agency as well as the individual officer or employee concerned. If the officer or employee is not then discharged from his employment within thirty (30) days after notification by the Commission, or if the employee is reinstated within eighteen (18) months after his removal, the Commission must then order the appropriate federal agency controlling the funds involved to withhold from its loan or grant to the local agency an amount equal to two (2) years pay of the employee or officer found to have violated the Act. Furthermore, a party aggrieved by

a determination or order of the United States Civil Service Commission may within thirty (30) days after notice of that determination institute proceedings for review thereof by filing a petition in the U.S. District Court.

It should be observed that, except for the prohibition against running for partisan elective office, the Hatch Act is no longer primarily directed at local employee involvement in partisan political activities. On the other hand, by express provision, County officers or employees may be candidates for nonpartisan political offices (see Section 1503 set forth hereinabove). Additionally, the Hatch Act expressly provides that a County officer or employee may "express his opinions on political subjects and candidates" which has been interpreted to permit the wearing of political badges or buttons, the usage of bumper stickers on private vehicles, or the posting of pictures or posters in the windows of employees' homes (see Section 1502(b) hereinabove; and see "Political Activities of Federal Officers and Employees," U.S. Civil Service Pamphlet No. 20, May, 1966).

There is no statutory obligation upon the local entity to report any potential or possible violations of the Hatch Act to the federal agency furnishing the funds in question. The only direct responsibility for enforcement

of the Hatch Act is lodged with the federal agency administering the funds. Furthermore, there does not appear to be any other requirements of law which might impose an affirmative obligation on the County to refer possible Hatch Act violations to the federal agency or United States Civil Service Commission for further action.

Additionally, it should be noted that although there has been many years of experience under the Hatch Act including numerous administrative adjudications by the Civil Service Commission, it is still apparent that each individual case must be determined on its particular facts. The nature and degree of the violation as well as the level of responsibility of the employee or officer allaged to have committed the violation appear to be major factors in determining whether or not the Civil Service Commission will find a violation warranting the imposition of the sanctions provided for by law. Accordingly, it does not seem particularly helpful nor appropriate to rely upon previous administrative adjudications of the Civil Service Commission as establishing firm guidelines governing the conduct of County employees subject to the Hatch Act. This is particularly true now that the Act's application to such employees has been so

extensively altered. It may well be that a particular action found to be a violation in one circumstance would not be found to be a violation if it occurred in an entirely different context and under entirely different circumstances. For the foregoing reason, it would not be appropriate to include a list of specific acts reportedly constituting violations of the Hatch Act in County departmental personnel manuals.

In summary, the County's primary responsibility in relation to the Hatch Act is to advise its employees who may be governed by the Act of the provisions contained therein. However, responsibility for insuring that an employee does not violate the provisions of the Act must necessarily be imposed upon the employee. In any event, the function of enforcement of the Act is by statute given only to the federal agency loaning or granting the funds to the County and to the United States Civil Service Commission. Although employees should be advised of the existence of the Hatch Act regulations and of the fact that violations of the Act may constitute grounds for their dismissal, the County is not in a position to advise individual employees as to whether any specific action or conduct on their part would or would not constitute a violation of the Hatch Act.

EXAMPLES OF PERMITTED/PROHIBITED POLITICAL ACTIVITIES

The following list of permitted/prohibited activities applies to all County officers and employees including those County officers and employees subject to the provisions of the Hatch Act. Such activities are listed by way of example only.

Permitted Activities

An officer or employee may:

(a) Vote

(b) Express opinions on all political subjects and candidates.

(c) Become a candidate for nomination or election in any partisan or non-partisan campaign--national, state or local. [Note: County employees subject to the Hatch Act may not run for partisan elective office.]

(d) Engage in partisan and non-partisan political activities as an individual or as a member of a group.

(e) Contribute to political campaign funds (but not in any County building or to any County employee)

(f) Join political organizations and vote on any questions presented.

(g) Organize and manage political clubs; serve as officer, delegate or alternate, or as members of any committees; address such club on any partisan - non-partisan political matter.

(h) Participate actively in political conventions such as by making motions or addresses or preparing resolutions.

(i) Attend political meetings, rallies, caucuses, etc. and organize, prepare or conduct such gatherings.

(j) Participate actively, or serve as officer or on any committee of a political organization, such as: precinct committeeman, or chairman of food committee at campaign dinner.

(k) Join labor union, civic betterment group, or citizens associations.

(l) Initiate, sign or circulate partisan or non-partisan nominating petitions; distribute campaign literature badges, etc. [But not during working hours or on County property.]

(m) Wear badges or buttons; display bumper stickers, pictures or posters on automobile or in window of home.

(n) Speak publicly, or write letters or articles for or against any political candidate; endorse or oppose such candidate in a political advertisement, broadcast, campaign literature or similar material.

(o) Own stock in, publish, or be connected with the management or editorial policy of a partisan newspaper.

(p) Manage the campaign of a political candidate.

(q) Make unsolicited political contributions. [except to other County officers or employees]

Prohibited Activities

An officer or employee may not:

(1) Engage in any political activity whatsoever during working hours or on County premises.

(2) Place or attach any political poster, sticker, sign or similar material on County property.

(3) Solicit, receive or handle political funds or contributions for any political purpose at any time. [Note: applies only to employees in the classified service] Example: sale of dinner tickets of political party organization; furnishing names of employees for purpose of political solicitation.

EXCEPTION:

County officers and employees may solicit funds for passage or defeat of a ballot measure affecting their pay, hours, retirement, civil service, or other working conditions.

(4) Solicit contributions, signatures, or other forms of support for political candidates, parties or ballot measures within or upon County property at any time. Example: A County employee or a member of the general public may not solicit signatures for a nominating petition in a County building or on County property.

(5) Directly or indirectly use official authority to interfere with any election or to influence the political actions of other County employees or any member of the general public. Example: County employees may not attempt to influence anyone's vote by such methods as promising, or threatening to withhold, a job, promotion or other benefit.

(6) Favor or discriminate against any employee or person seeking County employment because of political opinions or affiliations. Example: Members of the Nazi Party or the Ku Klux Klan may not be barred from County employment solely because of their affilation with such groups.

(7) Participate in any political activities of any kind in uniform. Example: Sheriff deputies, fireman, ambulance crews and security guards may not participate in political activities of any kind while in uniform.

(8) Campaign for or against an immediate superior or a superior served in a close or confidential relationship. Example: An employee of the CAO's office may not actively campaign for or against an individual member of the Board of Supervisors.

(9) Participate in activities which impair the efficiency, integrity, or morale of the County or its employees.

(10) Participate in any other political activities which the County or its departments desire to prohibit and which otherwise comply with the three-part test set forth by the California Supreme Court in Bagley v. Washington Township Hospital District.

NOTE: The granting of leaves of absence without pay to engage in political activities is discretionary with the Department Head. [Civil Service Rule 17.02]

NOTE: Employees who are subject to the basic political activity prohibitions while on active duty are equally subject to such restrictions when on paid or unpaid leave. [See Political Activity Guidelines adopted by the Board of Supervisors on July 2, 1974.]

TABLE OF CASES AND AUTHORITIES CITED

United States Constitution

California State Constitution

Code Provisions

California Government Code

Title 5, United States Code Annotated

Los Angeles County Charter Provisions

Miscellaneous

In general see Project: Collective Bargaining And Politics In Public Employment, 19 U.C.L.A. L.R. 887.

B

TAB B

THE TOP MANAGEMENT STRUCTURE IN PUBLIC SECTOR COLLECTIVE BARGAINING

Successful collective bargaining at the local government level depends, in large part, on the building of an effective management authority structure to deal with this new relationship. In the public sector, prior to the emergence of collective bargaining a major characteristic of management structure has often been fragmentation of authority for personnel issues. Thus, depending on the specific issue under consideration, a newly formed union or employee association might be required to negotiate with the chief executive officer, the finance committee of the legislative body in the jurisdiction, the civil service commission, the personnel director, the departmental manager, the budget director, the controller, the city attorney, and still others. This multiplicity of authority centers is one of the factors which distinguishes public sector collective bargaining from private sector bargaining. In the latter, the authority to deal with personnel issues involving labor relations is more likely to be concentrated at a specific level within the managerial structure, a level that is easily identifiable to the new union.

This section covers, first, the postures taken by management and the problems encountered in the early stages of collective bargaining, and, second, emerging trends in participation in collective bargaining by the executive and the legislative branch of government.

Initial Response of Local Government to Collective Bargaining

In general, the initial response of local government to the establishment of a bargaining relationship has been to impose the system of collective bargaining on the existing authority structure with little or no modification. That is, the primary responsibility for negotiating is assigned to either the executive or the legislative branch, but the existing management authority structure is not subordinated nor is its influence greatly diminished. This response is likely to occur in the early stages of bargaining, whether the relationship is one of informal bargaining (where the result is not a written agreement, but other evidence of union presence such as an amended city ordinance, a revised personnel manual, or an oral agreement) or formal bargaining in which the parties negotiate a written agreement.

In an initial bargaining relationship, (a municipality with an executive budget), the chief executive or his fiscal officer (budget director), meets informally with employee organizations prior to the formulation of a final budget. Employee organizations are permitted to petition or to "meet and confer" with city officials and make proposals on pending wage and fringe benefit increases. Since the primary interest of employee organizations often involves economic issues, the budget director represents the city in these informal discussions, and he may try to retain this representation function after the establishment of formal collective bargaining.

Problems with Typical Initial Responses

At first glance, two compelling reasons would seem to justify a management response to bargaining that seeks to maintain the status quo: (1) utilization of existing experience or expertise, and (2) keeping intact established authority relationships. Over time, however, the initial delegation of bargaining authority to a budget director, the personnel director, or other staff official may be inadequate. Staff officials usually are not professional labor negotiators and may not match the expertise of professional, experienced union negotiators. Labor relations, especially in larger jurisdictions, require the time and attention of a full-time official who should not have other primary responsibilities. The constraints of time are especially important in these areas -- the administration of contracts, grievance handling, supervisory issues -- to insure compliance with negotiated standards.

It must also be noted that delegation of authority to an existing staff official does not solve the problem of fragmented authority in labor relations. It is difficult, in a city, for the budget director, personnel director, or even chief executive, to transcend existing authority relationships. For example, semi-independent departments, not subject to budgetary control by the mayor and city council, are left untouched. Likewise, the authority of line managers to negotiate over issues within their discretion remains undefined and the legislative body thus retains the ability to overrule negotiators on contract provisions.

A result of this situation is the fact that multiple centers of authority force the labor organization to negotiate with numerous city officials;

at the same time, the lack of clear lines of authority within management may give the union an advantage to choose which representatives of management it will negotiate with on specific issues.

Although various city officials will negotiate with a union in the belief that they will strengthen their tradition of autonomy and authority, the city, as a whole, is subject to whipsawing, with favorable terms granted by one part of the city being used to justify similar terms for other employees. The granting of non-standardized terms complicates the city's administrative tasks and invites employee dissatisfaction.

Shifts in Bargaining Structure After Initial Response

There are various schools of thought with respect to the impact of collective bargaining on management structure in local government. Academics who have studied the structural effect of unionism and collective bargaining on government conclude that the impact of new labor relations programs has tended to centralize previously fragmented personnel decision-making systems.[1]

One commentator suggests further that a stable collective bargaining relationship emerges only as tensions within the management structure are reduced, and that, in addition, new organizational forms and a restructuring of previous authority relationships are required.[2] But others would choose

---

1. Raymond D. Horton, David Lewin, James W. Kuhn, "Some Impacts of Collective Bargaining on Local Government: A Diversity Thesis," Administration and Society, Vol. 7, No. 4, February, 1976, p.509.

2. John F. Burton, Jr., "Local Government Bargaining and Management Structure," Industrial Relations, Vol. 11, No. 2, May, 1972, p.130 and ff.

a diversity approach, pointing out that although fragmentation of managerial structure and authority is an impediment to the development of effective labor relations in the public sector, there are several reasons for a lack of confidence in the "presumed centralizing effects of new labor relations programs and institutions." Horton, Lewin, and Kuhn note in a recent article:

> First, the formal dispersion of political power, particularly at the local governmental level in American cities, is so well-advanced that political "end-runs" around newly designated labor relations agencies and actors remain possible. Second, and closely related to the above point, one must distinguish between formal and informal power structures. The mere act of creating new labor relations institutions and delegating to them responsibilities to make decisions previously reached elsewhere in government does not mean, in fact, that the locus of control over decision-making also changes. Third, in certain cities where public employees are well-organized and politically strong, formal bargaining programs may result in a redistribution of power from public officials to municipal unions. This may represent a form of centralization, but not of the kind customarily anticipated by academics or public officials.[3]

Given this caveat noted by proponents of the diversity model, we can nevertheless suggest clear trends in the structuring of management for labor relations. These tendencies in the executive and legislative branches, and the civil service system will be discussed below.

Executive Branch

Three general trends in the executive branch can be noted:

1. First, the executive branch is gaining in effective authority over labor relations while there is a corresponding loss of

---

3. Horton et al, p.509.

influence over these matters in the legislative branch and independent agencies (i.e. civil service commissions and pension boards).

2. Second, within the executive branch authority over labor relations is being centralized in order to coordinate management's position on all issues.

3. Third, assuming that the executive branch is the dominant factor within the management structure, bargaining authority is being removed from staff officers and is transferred to full time labor relations specialists who are responsible for negotiating and administering collective bargaining agreements. In some larger cities, new organizational forms (such as the Office of Labor Relations in New York City) are being developed to assume this particular authority. Of course, the use of specialists, in most cases, brings a skilled negotiator to the management side of the bargaining process, and eliminates possible conflicts of interest which can impair the process when an existing staff officer is used.[4]

Legislative Branch

The legislative body may represent a separate jurisdiction in labor relations in counties which do not have chief executive officers and in municipalities without executive budgets. A city council or a standing committee of a city council may have ultimate legal authority to make binding commitments.

---

4. For example the personnel director with authority for labor relations may trade off higher wage increases in exchange for less union encroachment in areas important to personnel policy.

Moreover, direct control over labor relations may enhance this legislative body's influence on the outcome of bargaining and let legislators share in political benefits that may flow from granting wage increases to a significant constituency. Usually, participation of elected officials in negotiations wanes and responsiblity is transferred to the executive branch. For a variety of reasons, legislators are not effective in handling labor negotiations. They may lack knowledge of many items routinely subject to negotiations, e.g., work rules, grievance procedures, union security. Moreover, many legislators serve on a part-time basis and do not have an opportunity to develop expertise or to participate in time-consuming negotiations.[5]

Delegation of Legislative Authority

If the executive branch assumes primary responsibility for negotiations and contract administration, formal or informal arrangements must be developed to insure effective delegation of authority from the legislative branch (which has authority to decide personnel issues in pre-bargaining stages) to the chief negotiator (usually a member of the executive branch).

For example, the state of Connecticut eliminates the role of the legislature with respect to non-wage issues and restricts its ratification powers on the balance of budget issues. Connecticut state law vigorously supports executive authority and responsibility in labor relations matters. The 1965 state labor relations law (An Act Establishing a Municipal Employee

---

5. Milwaukee is an exception to the rule that authority for labor relations is being shifted from the legislative to the executive branch. The city has a "weak-mayor" form of government, and the city council never lost control of labor relations.

Relations Act) assigns all responsibility for labor negotiations to the chief executive or his designee in every unit of local government, with additional provisions enhancing executive authority:

- Negotiated agreements ratified by the executive body are binding, even if they modify existing rules and regulations of other governmental agencies (i.e., civil service commissions and police or fire commissions).
- The legislative body reviews only those provisions of a negotiated agreement requiring funds for implementation or conflict with existing charter ordinance or regulation.
- Administrative items such as union security, grievance procedures and work rules are not subject to legislative veto.
- The legislative body may only return a rejected agreement to the executive for further negotiations.
- The legislative body may not amend or participate directly in negotiations - management has only one spokesman.
- Agreements submitted to the legislature for approval are considered approved if the legislative body fails to approve or reject within fourteen days.

As yet no other state has followed the Connecticut precedent, and many legislatures still actively participate in labor negotiations.

The Status of Civil Service

In the continuing debate over the role of civil service in a collective bargaining relationship, those predicting demise of the civil service seem to have overstated their position. What bargaining appears to do is

> . . . reduce the scope of issues over which civil service commissions and their functionaries exercise exclusive control. In Los Angeles and elsewhere, organized public employees evidenced strong concern only about some personnel issues such as classification, promotion, and discipline, but little if any interest in others, for example, recruitment, selection, and hiring. Whether these employees will in the future develop an all-encompassing interest in the public personnel function is uncertain, but at present their objectives in this area are limited, thus leaving to civil service commissions and personnel departments some important, if narrowed, responsibilities.[6]

Centralization or Diversity?

The case for centralization should not be overstated. Several points may be made: First, in particular jurisdictions centralization of public management authority does not totally multiply sources of authority and, thus, multilateral bargaining in government. In both the City and County of Los Angeles

> . . . departmental, bureau, and agency heads indirectly participate in the negotiation of MOU's and in the administration of these agreements. In the City, furthermore, the Personnel Department, departmental commissioners, the City Council, the Council's Personnel Committee, the ERB, the CAO, and the Mayor have all been participants to one degree or another in municipal labor relations. The County's organizational structure is less complex than that of the City, but here, too, there have been multiple management actors in labor relations--the Personnel Department, the CAO, the ERCOM, and the Board of Supervisors. Even in local governments that have established separate staff offices to handle labor relations, fragmented

---

6. David Lewin, "Local Government Labor Relations in Transition: The Case of Los Angeles," Labor History, Vol. 17, No. 2, Spring, 1976.

   (For an understanding of the complex interrelationships between a civil service system and a collective bargaining relationship, see Civil Service and Collective Bargaining: Conflict or Accommodation, a training module published by the Institute of Industrial Relations, UCLA, August, 1976.)

> managerial authority remains a fact of life and probably will continue to be so as long as politics and the formal separation of government powers characterize the public sector.[7]

Second, public employee unions differ as to their structures, characteristics, and objectives, and may have various impacts upon public sector management.[8] Third, through collective bargaining unionism may push government into a more explicit consideration of management functions. This is apparent in efforts to identify public managers, to devise incentive systems appropriate to their functions, and to hold them accountable for performance of their departments, bureaus, and agencies.[9]

THE MANAGEMENT TEAM: A FRAMEWORK FOR EFFECTIVE COLLECTIVE RELATIONSHIPS

There are three essential elements that are needed in building an effective public sector management team: (1) a basic posture or attitude; (2) the creation of intra-management relationships; and (3) a structure which allows for coordination and the effective resolution of internal management conflict. They will be discussed in turn.

Basic Management Posture Toward Labor Relations

Beyond the objective of merely complying with state laws, public sector management must believe that sharing the formulation of personnel management practices with employees is a progressive development as well as a

---

7. Lewin, p. 211.
8. See Tab A of this module.
9. Ibid. p. 212.

constructive relationship in which a public agency can maintain its reputation for managerial excellence. Employees should have a voice, if they wish, in determining employment conditions which directly affect them, their safety and well-being, in performance expectations and opportunities for advancement and job-fulfillment. While unions may play a role in resolving problems inherent in the employer-employee relationship, management must understand that its own needs and interests as well as those of the the union may be -- in some respects -- adversary differences, even with good will on both sides, may grow into disputes which require the intervention of third parties. Beyond this basic posture, there are certain specific tenets management must support in order to promote an effective bargaining relationship.

In any case, management should be prepared to stand by its convictions on certain issues while conceding to the union the legitimacy of doing likewise.

1. Employee Freedom-of-Choice - Employees must be assured freedom to decide whether they wish to join unions and, if so, which union; whether they wish a union to represent the bargaining unit in which they are included and, if so, to choose among competing unions.

2. Management Attitude Toward a Certified Union - Once a union has won the right to represent employees by majority vote, management officials will attempt to develop and maintain a cooperative, constructive and cordial relationship with the union.

3. The Public Interest is Paramount - Public interest is the prime factor of consideration in a public agency's performance of its mission.

Building Intra-Management Relationships

One of the most difficult problems facing public agencies during the transition to collective negotiations is the development of a management team effectively to represent the agency:

Managers must be designated.

Managers must be treated like managers.

Managers must feel they are managers.

Managers must act like managers.

Managers must work together to assume their essential roles as members of the management team.

A UNIFIED MANAGEMENT TEAM IS ESSENTIAL! Development of a cohesive team requires change--in structure, in policy, in attitude, and in behavior.

Identification of Managers

Historically, many management officials have felt a closer relationship to their subordinate employees than to the general manager of the public agency or to its elected governing body. In the past, in many cases line managers have assumed the role of principal spokesmen for their subordinates, representing their employees' interests for increased wages and improved working conditions. In those agencies in which line managers have taken this role, a slow and painful transition can be expected.

If management is effectively to represent the public agency at the negotiating table, the development of a unified management team is essential. One of the first steps required to prepare managers for their new role in collective negotiations is to identify those management positions in the public agency with responsibilities and the occupants of such positions as members of the agency's management team.

The Meyers-Milias-Brown Act, in Section 3507.5, designates Management and Confidential Employees as follows:

> In addition to those rules and regulations a public agency may adopt pursuant to and in the same manner as in Section 3507, any such agency may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.

In general, management comprises those officials and their principal assistants who have significant responsibilities for formulating an agency's or a department's policies and programs, OR who are accountable and responsible for the administration of the agency's and their department's policies and programs, OR who are responsible for representing the public agency in negotiations with employee organizations, OR who have significant responsibilities to represent their department in administering agreements with employee organizations.

Management includes, first, the elected chief executive and the elected members of the legislative body. It also includes the appointed chief executive, elected department heads, appointed department heads, chief deputies, and administrative deputies, division chiefs and section heads who have authority and responsibilities for formulating or administering the policies and programs of the public agencies.

This first step in defining management is essential and has been overlooked by some public agencies. As a consequence, some public managers

have been included in representation units with their subordinates, creating a problem for the official who is responsible for representing the agency in negotiations.

Recognition of Managers

Obviously, the mere designation of someone with responsible line authority as manager does not make him a manager, or, more important, persuades him to accept his new role as a member of the management team. He must be recognized and treated as a manager by his subordinates, the union, his peers, and his superiors, especially by the members of his elected governing body. He must feel personally that he is a manager with the necessary authority as well as responsibility, and he must understand and accept his role as a member of the public agency's management team.

Elected governing bodies must be prepared to accord the same degree of recognition and status to public managers as that enjoyed by management in private industry.[10] Until managers in public agencies enjoy this level of recognition by their elected "Board of Directors," it will be virtually impossible to develop among them a feeling of being part of the management team which is essential if public agencies' employees relations programs are to be effective. Until public managers feel like managers, public agencies may be faced with requests to negotiate and administer agreements, but there will be no management team effectively to support the general manager and the negotiator for the public agency.

---

10. See Management Compensation under Tab D of this manual.

More important, the principal responsiblity for administering the negotiated agreements rests with the line managers, whose loyalty to the public agency must be beyond question. Again, until elected governing bodies recognize this reality in public employee relations, many management personnel will seek the same kind of representation in employee relations matters as that afforded to their subordinates under the law. No public agency can develop an effective employee relations program under such circumstances.

Role of Elected Officials

In some public agencies the elected members of the governing body view themselves as neutrals, with the role of resolving disputes between management and public employees. Members of elected governing bodies cannot for long wear two hats when the agency is required to enter into good-faith negotiations with representatives of its employees. The elected body has at least two essential roles in public employee relations: (a) determine the general policy for the public agency including establishing for the agency's designated representatives the parameters in negotiations with employee organizations; and (b) act as the legislative body approving the memoranda of agreement reached through negotiations, as such agreements would modify public policy and increase the budget for the public agency.

The elected governing body must perform these two essential duties which cannot be delegated or assigned to any nonelected official. Therefore, it is unrealistic for the elected governing body also to act as neutrals in the event of an impasse in negotiations since they have established

the policy guidelines for one of the two parties to the dispute and will be called upon to take the necessary legislative action when the dispute has been resolved and an agreement submitted to them for approval.[11]

Modification of Attitude and Behavior

Mere structural changes including the identification of line managers and management in the negotiations process do not insure that the individuals designated as "management" will function effectively as a group. Members of the management team will, no doubt, need to acquire new ways of behaving and relating--both in day-to-day relationships with their management peers and in interactions with public agency employees.

When the following critical conditions exist, the probability of effecting a successful team development is great:

- Key individuals within the management group must feel they have a problem to solve.
- Key members must want to solve the problem.
- Individual managers must feel optimistic about accomplishing change or improvement.
- Managers must have a feeling of "ownership" of the problem-solving process (for example, the data regarding administrative problems are "theirs").

---

11. The preceding discussion is adapted from John R. James "Government Management Problems Under Collective Negotiations." A paper prepared for a Symposium on Labor Relations for Government Managers, January 22-23, 1975, Management Center, Institute of Industrial Relations, UCLA.

- Each member of the management team must accept his share of the overall responsibility and recognize the interlocking links with others required to solve the problem.
- Managers have to experience, help create, and broaden a climate of "freer" expression (including feelings).
- They must have or develop determination to achieve or effect a change.
- Managers need to perceive a continuous and increasingly effective (rewarding) set of events or processes.
- They must identify and deal with the totality of the problem (technology, organization, interpersonal, personal).[12]

The formal label attached to creating a systematic environment for management growth within a public agency is "organizational development." This process generally includes three steps: a diagnostic phase in which management styles, structural hierarchies, communication networks, and authority patterns are assessed in terms of readiness for change; a prescriptive phase in which training is proposed to facilitate group process activities and socio-technical concerns; and an implementation phase in which cognitive learning techniques and group interaction processes are used for self-analysis of the management team and exploration of alternatives. (The present module does not deal with organizational development, but merely suggests this approach as appropriate to a particular labor relations setting.)

---

12. These "critical conditions" are excerpted from team development materials used by TRW Systems Group, Redondo Beach, California.

Management Structure for Negotiations

A management structure is proposed in this section which seems to meet two objectives: (a) use of the negotiation process to serve as an effective channel for resolving union-agency differences, and (b) an organizational structure that facilitates continuing internal management coordination and conflict resolution, vis-à-vis the negotiation process. Essential roles that each group of management officials can play in formulating bargaining policies and in negotiating, ratifying and administering the agreement, are discussed below.

1. The role of the Labor Negotiator. Sufficient power must be delegated to the management labor negotiator to bargain effectively. Cities should designate one administrative official to serve as chief negotiator. The negotiator's position should be full-time and filled by a person with prior negotiating experience or formal training which would enable him to deal with issues raised in negotiating and administering a labor agreement. In smaller jurisdictions the role might be filled by the personnel director, someone on his staff, and/or consultant representing management in several jurisdictions.

2. The role of the Personnel Director. The city personnel director should be primarily responsible for formulating and administering a range of personnel issues--compensations, training, selection, promotion. Whether or not he is called an administrator under the civil service system, his role should include advocating and insuring that core merit system principles are effectively represented and maintained. Since it seems difficult to maintain an independent civil service commission to represent merit principles in matters that also may fall within the scope of

collective bargaining, the personnel director should reflect the merit principle in personnel administration. Although the role of the personnel director should be independent of the labor negotiator's, the two officials should work closely to coordinate policy on traditional civil service and compensation issues. Both officials should be accountable to a chief executive who would rule on unresolved conflicts between them. In an actual negotiation process, the personnel director should act as consultant and advisor to the negotiator and perhaps observe negotiations when issues within his jurisdiction are discussed.

3. The role of the Civil Service Commission. The civil service commission should have a limited role in issues covered by the scope of collective bargaining. Civil service commissions should deal only with selection, promotion, and other personnel issues that fall outside of scope. Several reasons are suggested for this limited role:

(1) The goal of maintaining the merit system principles is valued by other management officials and, thus, an independent commission is not needed to advocate them.

(2) Civil service commissions may act as an additional interest group competing for power and opposing reductions in their authority that are inevitable when the city enters a bargaining relationship with an employee organization; this presence of the commission adds to intramanagement conflict.

(3) While preserving merit principles is a worthy goal, it may be preferable to have the personnel director, accountable to the chief executive, represent this interest rather than an independent commission.

(4) Civil service commissions are generally recognized as city management by public employees. Thus the original concept of a neutral commission to isolate employment relations decisions from political pressures seems outdated. Civil service commissions may continue to provide an avenue of appeal to all employees on matters and actions falling outside the scope of a written agreement. On matters falling within scope of the written agreement, appeals are handled through a negotiated grievance procedure.

The National Civil Service League stated that viewing civil service commissions as a neutral agency is inappropriate in the current context, and shares the opinion that they should play a limited role. The most constructive contribution of civil service commissions to policy-making and administration may be to insure that valid, non-discriminatory, and affirmative action procedures are used to carry out recruitment selection and promotion policies.

4. The role of Department Administrators. Top administrators of various city departments (fire chiefs, police chiefs, etc.) should supply information and advise the labor negotiator on the appropriate response to union demands on departmental rule and work procedure changes. When such issues are being discussed, it may be advisable to have the department head or one of his representatives sit in on negotiations.

Prior to actual negotiations, the negotiator and the departmental administrator should attempt to reach consensus on an appropriate course for the city to follow.

In budgetary matters, a department head may identify with his employees' need to receive higher wages and benefits. He may seek to increase his overall budget responsibility and, thus, strengthen his power position vis-a-vis other departments. Some department heads, then, may not see management as a unified team, but focus on the fact that they are in competition with other departments for funds. Conflict arising out of such situations should be decided by the chief executive.

Lines of communication between the negotiator and department heads should be open in order to avoid incorporating changes into an agreement that may cause severe operational problems. Conversely, department heads should be clearly informed about the issues raised in negotiations and the intent of clauses incorporated in agreements, since these are the persons who administer and implement the agreement on a day-to-day basis. In short, the informational role played by a departmental administrator is important, and he is in a position to advise the management negotiator on potential impacts of policies. These impacts, of course, would be well-known to the union negotiator who is involved daily with employee operations in his department.

5. The role of the Mayor or City Manager. As chief executive officer, the mayor or city manager should have ultimate responsiblity for setting policy in labor negotiations. Of all the actors in the process, he has the greatest ability to commit the city to an agreement. He can answer questions quickly, and can utilize the press and other media to present the city's position to the public. The labor negotiator should be directly accountable to him.

The primary role of the chief executive should be that of overseer--settling potential conflicts over bargaining policies that subordinate officials cannot resolve, and setting broad parameters on the range of discretion allowed the labor negotiator in the bargaining process. While the chief executive should not sit at the negotiations table, he should monitor the process closely, at times using inside pressure to force agreement. The negotiator should keep the executive informed and refer to him for further instructions if an agreement cannot be reached within the specified parameters. The chief executive should review tentative agreements reached by the negotiator and submit them to city council with a recommendation message.

6. The role of the City Council. City councils should retain the power to accept or reject and refer back for further negotiations tentative agreements reached between the union and city representatives. In most cities, the councils also have power to modify various aspects of tentative agreements. This procedure may be less advisable than the Connecticut solution, discussed above, in which the council cannot modify specific items but can only accept or reject agreements in toto. The Connecticut solution may help to reduce the possibility of end runs by the employee organization as well as possible attempts by council members to argue for alteration or elimination of a particularly objectionable provision. While the Connecticut plan is debatable, it seems unwise for council members to play a direct role in negotiating a tentative agreement.

City council members should not be present at the bargaining table. If the council wishes to influence the position a city takes in bargaining,

it should do so by formally advising the labor negotiator of its position by resolution or by establishing a council labor policy committee to jointly oversee, in conjunction with the chief executive, the work of the management negotiator. (See Chart I)

The Need for Coordination

A clear organizational structure such as the one discussed above will not, by itself, insure effective coordination for negotiations. The labor negotiator, as the individual who takes responsiblity for representing management in negotiation, must take the initiative in coordinating diverse interests represented in city management prior to bargaining at the table.

There are two dimensions to the negotiator's role: (1) an internal conflict-resolution or coordinating dimension, and (2) an external bargaining dimension. In the internal dimension of his role, a negotiator must act as a mediator/coordinator of the diverse interests in city or agency management which impact on negotiations. At times, he must act assertively and attempt to influence policies which would alter the course of negotiations, in order to deal effectively with union pressures. On the other hand, any concerted effort by the negotiator to dictate the city's bargaining position will jeopardize the negotiator's ability to deal effectively with internal management conflicts on a day-to-day basis. Management negotiators may think of themselves as leaders or professionals who should establish bargaining policy and contribute to general employee-relations decisions. However, management negotiators should pay close attention to the mediating aspects of their role.

Management labor negotiators who refuse to emphasize the mediating or coordinating function ignore the realities of the distribution of power within management, and fail to consider the legitimate interest of other city officials in bargaining issues.

Emphasis given to the mediating and assertive functions in making city policy may vary at different stages of the negotiations process:[13]

1. Generally speaking, mediating activities should be emphasized most prior to the start of negotiations. The negotiator should anticipate key issues and calculate the effect these issues will have on the goals of various internal management interests. Potential conflict areas can be identified and methods of accommodation explored. Strategies for trying to modify the positions of some officials can be developed. Use of the mediating role in the early negotiations process can avoid early commitment to a position which later proves untenable due to union pressure or pressure from other management officials. At this early point, the negotiator should seek input on management preferences and assess feasible alternatives.

2. Armed with adequate relevant information to develop a strategy, the negotiator should begin to take an assertive role in management decision-making. Within limits, he should oppose policies that will jeopardize his ability to reach agreement with an employee organization or his leverage in negotiations.

3. After preliminary probing of the intent of union and management proposals, the negotiator must actively assert his power as chief management representative. He must decide on an appropriate response(s) to union demands, and control the timing of the response. Due to prior coordination and his current position as active participant in negotiations, he has a good grasp of feasible positions.

4. In final negotiations, the negotiator must be in command of city positions on the issues and have flexibility and power to make changes in these positions, if necessary, to settle differences. He must know the limits of concessions, and,

---

13. The following points are summarized from the discussion in Thomas A. Kochan "Resolving Internal Management Conflicts for Labor Negotiations," Public Employee Relations Library, No. 41, International Personnel Management Association, Chicago, Illinois, p.36-37.

for all practical purposes, operate alone, without further mediation of diverse management preferences.

5. After tentative agreement on contract terms with a union, the negotiator must assert his own interests in obtaining ratification. He argues for acceptance of the total package and should, during implementation stages, make sure the intent of provisions is carried out.

All differences between management interest groups may not be resolved prior to negotiations. Some may persist because there is little incentive for reconciling differences at the early stages of negotiations. New differences may develop as implications of union demands become clearer. If left unresolved, the effects of management conflict may carry over into negotiations. To preserve a unified negotiating posture, the management representative/negotiator must exert pressure to resolve differences and must, at times, seek support from management personnel interested in preserving the centrality of the negotiations process in order to form a strong coalition capable of bargaining with the dissident management faction.

The need for intra-organizational bargaining tactics is an outgrowth of dual pressures facing the labor negotiator. He must develop and maintain a coherent, reasonable bargaining position at the table, while fostering an atmosphere of accommodation and compromise between and among management officers.

CHART I

PUBLIC ADMINISTRATION AND COLLECTIVE BARGAINING: ONE IMPRESSION OF CHANGED ROLES

Policies Governing Pay and Fringes		Other Personnel Policies[1]		Formulation of Program Policy[2]		Implementation of Program Policy[3]	
Before C B [a/] [b/]	After C B	Before C B	After C B	Before C B	After C B	Before C B	After C B
1. Legislature	1. Unions Chief executive	1. Legislature	1. Legislature	1. Legislature	1. Legislature	1. Chief executive	1. Chief executive
2. Chief executive	2. Legislature	2. Civil service commission	2. Unions Chief executive	2. Pressure groups (excluding unions)	2. Pressure groups (excluding unions)	2. Department heads (including budget director)	2. Department heads (including budget director)
3. Pressure groups (excluding unions)	3. Pressure groups (excluding unions)	3. Chief executive	3. Civil service commission	3. Chief executive	3. Chief executive	3. Pressure groups (excluding unions)	3. Pressure groups (including unions)
4. Unions	4. Budget director and department heads	4. Department heads	4. Department heads	4. Department heads	4. Unions	4. Legislature	4. Legislature
5. Civil service commission and budget director	5. Civil service commission	5. Pressure groups (excluding unions)	5. Pressure groups (excluding unions)	5. Unions	5. Department heads	5. Unions	5. General public
6. Department heads	6. General public	6. Unions	6. General public	6. General public	6. General public	6. General public	
7. General public		7. General public					

1. Recruitment, promotion, transfer, lay-off, reinstatement, service rating, training, disciplinary, and other personnel processes.
2. Determination of the content of legislation dealing with substantive programs of goverment.
3. Policies made in carrying out substantive program authorized by the legislature.

a/ CB means collective bargaining.

b/ The order indicates the importance each body or group has in tetermining those policies.

CHOOSING THE MANAGEMENT ADVOCATE

by Don Becker

In this section we will consider some of the arguments for and against hiring an outside consultant-negotiator or using an agency employee negotiator. After exploring this topic we will point out some factors to be considered if a consultant is used. We'll discuss the process of choosing a consultant, and what should be covered in the consultant's contract from the agency's point of view.

Major Objectives in Labor Relations

The major objectives of any good labor relations policy should be to achieve a peaceful relationship with agency's employees and with the organization that represents them. These objectives should be accomplished while (1) minimizing cost, being consistent with the need to retain well-trained employees with reasonably good morale, and (2) retaining as much as possible the ability of management to take whatever action it believes necessary to maximize its delivery system. In short, management wants to give up as little as possible while making employees feel that the agency is a good place to work.

There are at least two ways of accomplishing this: One is to pass a resolution which unilaterally implements wages, hours and conditions of work, and also contains a clause which says "employees will be ecstatic." A second method is to be sure your labor relations program is guided by the best labor relations professional you can find, thus optimizing

your chances of reaching your objectives. It is obvious that labor relations is an extremely critical function in any agency, having an impact on every aspect and member of the agency. One need only to recall the monetary crisis of New York City, the San Francisco Police and Fire Fighters strike, the County of Los Angeles Sanitation Workers strike, strikes in the counties of Los Angeles, Santa Clara, Alameda, Santa Barbara, and in the cities of Hayward and Lakewood, to realize the impact of the labor relations program on public employees, public managers, citizens and elected officials. Therefore, the selection of the individuals who will guide the agency's employee relations program is critical.

Selecting an Agency Employee

In making this selection, the key question to be answered is whether or not the program will be guided by an agency employee or by an outside consultant. The major advantages of using an employee is her/his full time commitment to the agency, and knowledge of the agency.

1) The Availability Problem: availability is always a concern, but especially so during negotiations when meetings cannot always be arranged to coincide with the negotiator's schedule. Often negotiators must be available to meet with the elected officials on the day the latter normally meet. If the negotiator is an outsider having her/his own schedule, it may be difficult to arrange a meeting on short notice. An agency employee, however, is almost always able to rearrange meetings to suit the elected officials.

The availability problem is compounded by the fact that many elected bodies meet on Tuesdays, which increases the consultant negotiator's difficulties in personally meeting with each elected body he represents. Not only can an agency employee be more available to meet with the elected officals, but he can also be more available to meet with employees in negotiation sessions. This becomes quite critical toward the end of negotiations, especially when there is a threat of strike or some other type of work action. Finally, once negotiations are completed, an employee negotiator is more immediately available to answer questions of contract interpretation, respond to grievances, and generally assist departments in their day-to-day life with the negotiated agreement.

2) It is argued further that an employee negotiator knows the agency, how it is financed, what the are economics are, what people are earning in comparable jobs within the local area, the agency's history of compensation and classification, and other such specific local issues. This knowledge is not only helpful at the negotiating table, but is useful during the year when the agreement is being administered.

Also, an agency must develop an "institutional memory." That is, there must be a record of problems that have been discussed during negotiations and of solutions that have been offered; reasons for refusing and for accepting proposals; knowledge of what compromises and exchanges of value occurred in arriving at the final result. If the negotiator is an employee, then he should be able to accomplish these objectives for the agency. In sum, availability and knowledge of the agency are principal advantages to having an employee conduct the negotiation.

A Consultant Negotiator

Now, what are the advantages of retaining an outsider?

The major advantages of hiring a consultant are:

1) the person spends full time in labor relations;
2) the consultant has knowledge of many government agencies;
3) she/he has more direct access and influence on the elected agency heads;
4) she/he has no personal "stake" in the result; and
5) the strong feelings generated at the table are directed at the outside consultant rather than at the agency management.

1) Labor relations in the public sector are in a constant state of change. Earlier this year, this author participated with the County Supervisors Association of California (CSAC) and the League of California Cities (LCC) in a series of public offical briefings. Included among the topics was an update on judicial decisions affecting labor relations. At each of the briefings at least one new court decision affecting labor relations was discussed. Not only are the courts constantly effecting change, but also there seems to be a barrage of legislation which in major or minor ways affects labor relations. Additionally, many cities, counties and special districts are trying new approaches to labor relations. The public "Sunshine" bargaining procedures of the cities of Walnut Creek and San Leandro and the county of Sacramento are notable examples. There has been a veritable explosion of published material on California public sector labor relations.

If an individual is not committed to labor relations on a full-time basis, it seems unlikely that he will have the interest or time to keep abreast of these developments. Normally, if the agency is even of moderate size, the employees will be represented by an employee organization that has a full-time employee relations professional. If the employees are represented by an AFL-CIO union, than the employer not only faces a professional labor relations expert, but also a back-up organization that is dedicated solely to the field of labor relations.

Often management is not aware of the cooperation between and among local unions. One example of inter-local cooperation is a compendium of contract clauses assembled by one large AFL-CIO union. This includes a listing, by subject, of all clauses in contracts with agencies having employees represented by each of that union's locals. How many managment negotiators have access to this document, or, in fact, even know it exists? Not only do unions cooperate, but also there is cooperation among the non-affiliated organization through the California Public Employee Federation. Such cooperation among the employee organizations can be offset by a professional labor relations consultant's full-time commitment to remain a knowledgeable expert in the field.

2) In addition to being acquainted with various labor relations materials, the professional consultant has experience in other agencies: this increases his knowledge of satelite agencies and may affect the agency the consultant represents. (An inside negotiator must be

aware of the labor relations impact of all comparable agencies. The consultant negotiator must do this for each agency she/he represents. The more client agencies the consultant's firm represents, the more direct knowledge that individual will have of other agency practices, pay, experiments, etc.

3) For four years this author was an employee negotiator for the County of Los Angeles. Now, as an outside consultant I know many employee negotiators who agree with my own experience and observation that insiders do not have the same ability to impact the legislative body as the consultant negotiator. One reason for this is that often there is at least one administrative level between the inside negotiator and the elected officials. Therefore, the employee negotiator often does not work directly with the top legislative group. Also, when the negotiator is an insider, negotiations can appear to be influenced by her/his personal rather than professional objectives. That is, it may seem as though the negotiator agrees or disagrees with a proposal because it will result in an improved benefit for the negotiator as an employee, or because it will be politically beneficial to the negotiator's career. Elected officials who are aware of this potential situation for self-help can be wary of employee negotiators' objectivity and, to that extent, may be skeptical about their advice.

In contrast, a consultant negotiator rarely benefits personally from an increase in employees' benefits. In fact, normally the consultant will benefit more directly by keeping employee increases to a minimum.

As an outsider the consultant will not have career ambitions within the agency, and, therefore, will not make decisions or recommendations on a basis of how it will affect his promotability. For these reasons, the consultant negotiator can appear to be much more objective than the employee negotiator. Also, since the elected body will undoubtedly have made a special effort to "buy" the consultant's expertise, its members will be more inclined to take advantage of that expertise.

4) During many negotiations sessions, strong feelings are generated at the bargaining table. This is especially true when an agency decides to take a firm stand on many issues. Though one of the principal tenets of negotiations is to keep issues impersonal, this posture is almost impossible for an employee organization that is facing little or no movement in money matters -- especially if the employee organization negotiator is also an employee of the agency. Even though the management negotiator is representing a position developed by the overall management team, the employee organization almost always will hold the agency's chief negotiator personally responsible. In this situation the scenario tends to go like this:

> We the employees are convinced that our position is true, good and beautiful, and that any reasonable person who analyzed their position would recognize its intrinsic merit. Management doesn't recognize this, probably because their chief negotiator isn't properly communicating our position to the management team. Therefore, he is a bum that somehow we must bypass, and generally discredit. Having done so, we will reach a more reasonable group of people who will see the merit of our position and give us the mere pittance we are justifably requesting.

For reasons resulting from this scenario and since it is too frustrating to "bang your head against city hall," employee organizations need a symbol upon which to vent their wrath, which almost certainly will be managements' chief negotiator. When this happens, it is extremely difficult for a normal relationship to be re-established so that business as usual can be carried out subsequent to negotiations.

The hard line taken by the management negotiator will have a direct impact on the number, kind, and type of grievances that arise during the contract term unless the heat of the bargaining moment can be deflected from the individuals who must live with the agreement during its life. A very effective way to accomplish this is hiring an outsider to handle negotiations and take the heat away with him. This allows the agency employees who administer the agreement to be somewhat sympathetic when the employee representative says what a hard-nosed, unreasonable person the consultant was. Since the negotiator is an outsider on contract, it is easier to change negotiators if such action should become advantageous.

In considering the advantages of a consultant versus an employee negotiator, cost comparison is an important factor. When totaling the cost of an employee handling negotiations, one must include the salary of the negotiator as well as the clerical and administrative staff that assist the negotiator. One must also consider space, equipment, supplies and general overhead costs for each of these individuals involved. Negotiations almost always generate substantial overtime which is normally compensated in some manner.

Most readers now will probably say, "Gotcha"? We use our own negotiator for other things, too. When negotiations are over, there are other functions to perform. Right. But the problem with that argument is that other job functions overlap the negotiation period. Either these jobs are ignored during negotiations, or the negotiator cannot give full attention to negotiations. This is especially true when someone from the Chief Administrator's office, City Manager's office or the Personnel Director handle negotiations, since they are usually also involved in the budget planning and all the problems that entails. Also, many of the benefits derived from having a full-time professional negotiator are lost; for example, the part-time negotiator just doesn't have the time nor incentive to stay current with the state of art.

Major Considerations in Hiring a Consultant Negotiator

Now, if you decide to hire a consultant negotiator in your jurisdiction, what should you look for? Without too much editoralizing, let me suggest some factors to consider:

1. Experience: The consultant should have experience in actual negotiations. The number of years in the business is important, but seven consecutive years with one unit in one agency is probably not as helpful as three years with four different agencies, one unit each. Also, the consultant should have had experience in the other aspects of labor relations, i.e., classification, compensation, grievance handling, presenting arbitration, unfair practice charges, and factfinding. In addition, the potential consultant will preferably have had experience with an agency of your size and type.

2. Availability: The consultant should be able to commit a certain amount of time in days or hours per week or month in terms of availability. The consultant should belong to a firm that has other negotiators with similar experience, who will act as backup in case of emergencies or provide quick telephone information when the consultant is not immediately available.

3. References: If possible, contact all agencies listed, but at least contact one. Talk to the person or persons who were at the table with the consultant. Find out how the consultant handled operations there. Did the consultant seem organized? Did he have meeting objectives laid out? Were they reached? Were meetings canceled? If so, why? Were commitments kept? Were overall objectives reached? Will they use the consultant again?

4. "Chemistry": Is the consultant someone with whom the people in your agency can work?

Once the selection of an outside negotiator is made, here are a few matters the agency should consider for inclusion in her/his contract:

1. Specific listing of services including termination dates, if any.
2. Person who administers contract for agency.
3. Name of consultant or consultants who will provide service to agency.
4. Specifics on how and at what intervals or after what services are provided, will the contractor be paid.
5. The ability to audit contractor's record concerning performance of services to agency.
6. What assistance the agency will provide contract, e.g., place to negotiate, management team, supplemental clerical work.

PROS AND CONS OF HIRING AN INDEPENDENT ATTORNEY AS A LABOR RELATIONS ADVOCATE, AND RELATIVE MERITS OF HIRING ATTORNEY VS. A LAY CONSULTANT

by

Kenneth Simon, Attorney
Hill, Farrer & Burrill

I. HIRING AN ATTORNEY

A. Pros

1. Gives the agency equivalent advice that the employee association will be receiving from its counsel, as to what it may or may not do, and strategies and tactics.

2. Allows agency to best avoid commission of unfair practices by getting professional advice in advance on whether contemplated action or communication is legal.

3. Creates "buffer" at bargaining table which fosters caucuses and permits delays when desired by attorney (if he is spokesman) stating that he has to check the point with his client, or by agency spokesman stating he has to check with counsel for response, advice or approval.

4. Provides agency with expertise on matters of labor law and collective bargaining strategy and tactics, which labor law counsel specialist possesses and staff counsel to agency normally lacks.

5. Allows small agencies to pool funds and obtain expert advice through consortium hiring the attorney to serve all members.

6. Provides special skill to agency in drafting language of proposals or contract which is technically sound and legally proper.

B. Cons

1. Attorney may be resented by employee association as "outsider" not necessary to interfere with good relationship of parties.

2. The best advice may be too costly for the agency. (This may be offset by use of Alternatives #C.1. and 2. below.)

3. Attorney most probably lacks familiarity with, or experience with, or understanding of, the practical, day-to-day operations of, or budget processes or problems of, or decision-making authority structures of, the agency.

4. Private-sector client matters may require so much of specialist attorney's time that he cannot devote needed time to agency matters (assuming either inadequate supply of full-time public sector labor relations law specialists, or need by such specialists to supplement income from lower-fee public sector work [due to agency budget limits] with private sector work.)

C. Alternative Methods of Using Attorney

1. As spokesman for the agency.

2. As back-stop, who advises agency representatives acting as spokesmen, on strategy and tactics, legality of proposals, language for counter-proposals, etc.

3. As trainer of agency staff to perform labor relations functions.

4. Combination of above

-- First as #1, then as #2, then as #3, then not at all (with perhaps consultant then on retainer and attorney consulted only on legal points.)

II. RELATIVE MERITS OF ATTORNEY VS. LAY CONSULTANT

A. Attorney

1. Attorney provides ability to take appeals of litigated matters to court by same person who handled the matter previously and is thus familiar with all facts and developments, thereby permitting less costly appeal.

2. Can advise on whether contemplated action or communication violates applicable statute or regulation.

3. Attorney's are customarily bound by rules of professional ethics.

4. Has resources and expertise to advise agency on changes and developments in law and regulations.

B. Consultant

1. Less costly in hourly rate (but may take longer to accomplish work than trained attorney, producing higher total fee.)

2. Can advise on whether contemplated action or communication violates applicable statute or regulation subject to review, if desired, by staff counsel.

3. Can devote sufficient time to agency matters.

4. Usually has experience and familiarity with agency workings.

5. Lesser risk of resentment by employee association (may be key reason for choosing consultant over attorney.)

MULTI-EMPLOYER BARGAINING IN THE LOCAL GOVERNMENT SECTOR

Large membership public sector union organizations provide funds and expertise to support the bargaining relationship and effective representation of employee demands at the local and national levels. Union representatives can lobby for beneficial laws and regulations and spend dues for research and training in areas of their concern.

These important objectives are achieved because public employees at all levels of government are willing to band together. Mutual assistance brings economic and political power--which may then be given back to members in the form of job-related benefits.

Public managers complain about the escalating power of public sector unions, but often make little, if any, attempt themselves to act as a group or to establish effective joint relationships in areas of mutual concern.

Multi-employer bargaining in the public sector is an area in which the public manager may begin to establish cooperative relationships, in part to offset the power of organized unionism. Use of the multi-employer approach cannot guarantee success in negotiations, but an analysis of the potential risks and benefits involved may suggest to the practicioner that it is an idea well worth consideration. Many bargaining relationships are approaching de facto multi jurisdiction negotiations; provisions of separate agreements covering the same

categories of employees are becoming standardized; and management groups negotiating for local government are coordinating information or even bargaining activities across states or regions.

Definitions and Terms

Most private sector "multi" structures are a variation of one of the following.

> A single union bargaining with more than one employer for a single contract.
>
> A single employer bargaining with more than one union for a single contract.
>
> A joint union team bargaining with a joint management team for a single contract.

In essence, these structures represent a formal bargaining arrangement that often transcends a single bargaining unit, a single union, or a single management.[1]

Additional informal structures are found in certain private sector relationships. In the automobile industry, for example, "pattern" or "leadership" bargaining is common. Characteristically, these industries include a relatively small number of large employers. Each of these employers trusts the ability of the other to bargain a contract which would be as good as any contract obtained by an employer individually. Some attempt at group activity is found in the public sector where certain cities or districts have chosen to establish "parity" with wages and benefits offered in neighboring cities or districts. In contrast to pattern bargaining in the private sector, the "parity" concept is a one-way relationship.

---

[1] Richard Pegnetter, "Multi-Employer Bargaining in the Public Sector: Purposes and Experiences." Public Employee Relations Library, No. 52, International Personnel Management Association, 1313 E. 80th Street, Chicago, Illinois, p. 3.

Multi-employer bargaining has become the norm in many of these districts (particularly in Los Angeles and Orange Counties). Although these agencies could operate independently in labor relations, the relatively small size of each and their virtual identity of interest make it impractical to do so. In addition, all employees share community of interest, identical supervision and work within a highly integrated operation. Thus, a single bargaining unit for each general category of employee is entirely appropriate and inevitably leads to negotiations with a single labor union.

Second, a number of public sector agencies having similar but separately formed bargaining units can merge for the purpose of negotiating a single agreement. Such units exist at a level lower or smaller than the total configuration. The agencies themselves control any changes in bargaining structure. Thus, if a multi-agency arrangement is unsatisfactory, one or more individual agencies can return to negotiating as single employers, if notice of their desire to do so is given in a timely and clear manner.

Experience with Multi-Employer Bargaining in State and Local Sectors

It is reported that use of the second type of multi-employer agreement, discussed above, is limited in state and local government. One successful and two failing examples are on record.

The Multi-Employer Approach: Some Examples

In the Minneapolis area a single local union, Local 49, Operating Engineers, negotiates with the Minnesota Twin City Metropolitan Area

Public Sector Management Multi-Structures

Public sector management multi-structures are likely to have certain characteristics. For example, they tend to have a geographic base derived from a political configuration such as a county. (See Appendix I for Joint Powers agreement covering three jurisdictions in Alameda County.) Within a geographic multi-employer structure there may be similar conditions such as comparable work or comparable services provided by several employers (e.g. sanitation or mosquito abatement districts); the use of similar or identical job classifications and the assignment of similar duties to employees (e.g., personnel functions in small geographically contiguous cities).

There are, in general, two different legal foundations for multi-employer bargaining; first, the formal establishment of a multi-jurisdictional employer by a specific legislative provision or by the action of an administrative agency such as a public employment relations board. One example of the legislatively authorized multi-jurisdiction employer occurs in California sanitation districts. Many counties contain numerous sanitation districts with overlapping governing boards consisting of city and county officials. Under the California Health and Welfare Code Secs. 4840 et. seq. these districts may enter into operating agreements for joint administration, the joint employment of employees, and the sharing or pooling of joint facilities and equipment. (Appendix II)

Managers Association for a contract which covers more than thirty local communities. In the Minneapolis area management was relieved of one-upsmanship of individual negotiations, and the union found that wage rates resulting from multi-unit negotiations were more attractive, especially to members in lower-paying and lower-ability-to-pay communities.

In Alameda County, California, the cities of Pleasanton and Livermore and Valley Community Services District attempted a joint contract with their respective firefighter units. The three jurisdictions signed a "joint powers" agreement which created a new governmental "negotiations agency"[2] composed of the chief administrative officer or his representative from each party to the agreement. (See Appendix I) The Joint Powers arrangement stipulates that the agency, through a negotiating committee of five appointed from among its members shall "negotiate collectively on behalf of some or all of the parties to this agreement with one or more of their respective employee organizations in the matter of wages, hours and other terms and conditions of employment under the provisions of the applicable statutes of the state."

Item 10, titled Employment of Negotiator, specifies that "nothing in this agreement contained shall prohibit the employ by the agency of a person, firm or corporation skilled in labor relations and negotiations to conduct on behalf of the agency the duties herein described pertaining to the committee." Thus, the purpose of this agreement was to create a single umbrella agency to conduct bargaining for several jurisdictions at one table.

---

[2]At least one management advocate has suggested that this may indicate the success of this arrangement.

Several causes for the failure of this multi-jurisdictional attempt to produce a negotiated agreement have been suggested. First, the negotiation agency was more or less imposed on the employee representatives; second, the three local unions were not members of the same international, with the result that one union refused to participate in any joint negotiations and a second of the two remaining local unions broke off joint negotiations before agreement was reached. The negotiating agency continued to function as the bargaining agent in separate negotiations.

In another example of failure, multi-employer negotiations between five suburban communities and five international associations of Fire Fighters (IAFF) locals began in 1971-1972 in Minnesota's Twin Cities. In that case, both sides were willing to engage in multi-unit negotiations, but difficulties developed in regard to the bargaining positions of the parties. Unions sought a contract that took the best community provision and made it the standard for all. Community management wanted the lowest ranking provision established as the base on each issue. Joint negotiations were supplemented by separate deals with individual locals, and multi-employer negotiations were soon dropped.

The Contractural Arrangement or "Consortium" Approach

Far more common is a contractural or "Joint Powers" (6.C. § 6500 et. seq.) agreement between school districts or other jurisdictions in which the parties simply agree to utilize jointly the services of an attorney,

group of attorneys, or consultant who provides advice and counsel on the various aspects of labor relations including the negotiating process.

This approach has become increasingly popular in recent years, especially among public employers offering similar or identical services and in close proximity to one another. Actual bargaining at the table under this contractural arrangement is still accomplished on a district-by-district or agency-by-agency basis.

This arrangement is also commonly called the "consortium" approach, and is not an example of multi-employer bargaining in the strict sense--that is, a unified bargaining position maintained by several jurisdictions and put forth at a single bargaining table.[3] For example, in December, 1975, thirty-one school districts in Tulare County, California agreed to enter a "Joint Powers Agreement" for the purpose of exercising their powers and responsibilities relating to employee relations under the Rodda Act (SB 160), and jointly to retain legal counsel. The agreement stipulates that the parties will jointly retain the Los Angeles law firm of Musick, Peeler, and Garrett to provide advice in the form of advisory memoranda, drafts and interpretation of labor agreements, review of rules, regulations and policies, and to provide on-site training programs or counsel for management, confidential and supervisory personnel. (See Appendix III)

The arrangement does not create an independent multi-jurisdictional agency (although similar arrangements in other areas have done so).

---

[3]However, a "unified" bargaining position at multiple bargaining tables often occurs when local agencies or local employee associations utilize "model" contact proposals. At the present time these models are prevalent in school district negotiations.

Under this agreement, the separate District employers can benefit from shared information, data, and expertise, on matters of common concern; but actual negotiations are carried on in each separate district and the opportunity for pattern-setting and possibility of union whipsawing still exists. There is no unified or coordinated employer bargaining position, except as may result from the utilization of similar written proposals, or from common acceptance of jointly-rendered legal and tactical advice.

Multi-Employer Bargaining

The Positive Arguments

Briefly stated, the benefits accruing from multi-employer bargaining are:

(1) a unified employer position based on greater countervailing power when dealing with a large international union, and the pooling of financial resources allowing for the provision of greater expertise at the table;

(2) better communications between employers;

(3) fewer delays and costly duplication which may accompany individual employer bargaining.

Neil M. Gundermann suggests the methods a union may use when dealing with several employers to secure a favorable settlement for its members in the several jurisdictions:

> When the same union has succeeded in organizing a major number of employers who perform the same work, utilize identical job classifications and assign the same duties to employees, the union approaches bargaining in one of two ways; it may attempt to establish a pattern, or it may attempt to compound its settlements. When attempting to establish a pattern, the union will select an employer who, for any number of reasons, may be willing at that particular time to grant a favorable agreement. Once these initial concessions have been secured, the union will argue the existence of a pattern from which it cannot or will not deviate. As a consequence of this approach to bargaining certain employers, consciously

> or unconsciously, become pattern-setters. With the introduction of fact-finding to the bargaining process this takes on added significance as fact-finders may look to "emerging patterns" in bargaining to assist them in framing their recommendations.
>
> In seeking to compound its settlements the union reaches an agreement with Employer A on a favorable wage, then negotiates a favorable fringe benefit from Employer B and when bargaining with Employer C seeks both, arguing comparability between Employer C and Employers A and B.[4]

Using the format of multi-employer bargaining, employers can combat me-tooism, whipsawing and leapfrogging with a position based on a consensus of employers. By so doing, employers deprive the union of the essential element in pattern setting, that is, a base agreement with an individual employer.

In reaching a consensus position, employers must communicate and share data and expertise in negotiating and administering agreements. Using such pooled information, employers are in a better position to refute union claims regarding actions taken or contemplated by other employers.

The time consumed in determining a consensus position may be offset by elimination of time consumed in negotiations. Of course, the multi-employer format is voluntary and only lasts as long as it is beneficial to the parties concerned.

---

[4]Neil M. Gunderman, "Multi-Employer Bargainings: For and Against" Labor Management Relations Service Newsletter, Vol. 2, no. 9, September, 1971. Pattern bargaining, however, may not be all negative, witness the experience in the auto industry.

Some argue that multi-employer bargaining improves the union's ability to stage a successful work stoppage. However, strike actions in the private sector are often successful because they may be taken at a common contract expiration date. Likewise in the public sector, most unions have contracts which expire at similar budget dates. Thus unions could strike effectively whether or not employers are engaged in multi-unit bargaining.

The Negative Arguments

Those who argue against multi-employer bargaining make the following points:

(1) The competition factor which motivates private sector employers to equalize wages over large areas does not exist in the public sector. Moreover, the public sector employer does not have the option of suspending operations or "going-out-of-business" if he is unable to pay negotiated rates.

(2) Smaller agencies or jurisdictions may be forced by pattern setters in a unified arrangement to adopt a high wage pattern sooner than if they were left to negotiate individually.

(3) In a unified format, demands relating to a single employer in a unique or unusual circumstance may be dropped.

(4) An individual employer may lose any potential gains that would accrue from a harmonious day-to-day relationship with the union. In fact, the union may base its demands on rectifying the conduct of an employer who has been guilty of misconduct.

(5) The individual employer loses control of his decision-making authority to the group. Multi-employer bargaining may affect the accountability of public officials elected to serve their constituents and make decisions regarding bargaining.[5]

(6) The emergence of multi-employer patterns on the management side may encourage unions to engage in coalition bargaining in which several unions bargain with an employer as a single union.

---

[5]As long as the individual governing board retains final authority to ratify a jointly negotiated agreement, this element of accountability remains intact.

This tactic has been used in Los Angeles County by Service Employees locals, AFSCME, and CAPE.

(7) The Boards of each jurisdiction must be able to establish an atmosphere of trust and mutual respect, and avoid any tendency to allow an individual member to respond to specific outside pressure.[6]

(8) It is less likely that a group of public agencies can effectively back-up their mutual bargaining position by the imposition of a lock-out as is frequently done in the private sector.

Applicability of the Multi-Employer Approach in Your Jurisdiction

Before considering the multi-employer approach, an individual employer should answer the basic question: Would multi-employer bargaining result in a better agreement than could be obtained by individual bargaining? That is, would your jurisdiction's labor relations benefit from a "strength in numbers approach."

If the decisions of other employers tend to influence or control your actions, then a multi-employer setup may be advantageous. If other factors are equally important in your negotiating decisions, then perhaps an individual bargaining relationship is preferable.

If the decision is made to use the multi-employer format, an individual employer should become part of a negotiating group[7] in which:

---

[6]See Tab A of this module, Political Activity by Unions.

[7]In actual negotiations each individual employer typically has a representative at the bargaining table.

all employers have approximately the same ability to pay;

the bargaining units are similar in numbers of employees in the unit, terms of work performed, job classifications utilized, duties assigned employees, and identity of union representative;

all employers have an opportunity to participate in making a unified decision;

the other employers do not regularly experience unusual difficulties with the union.

Having considered these factors, you should be able to decide whether any form of multi-employer structure is appropriate for you. If you decide that it is, you may choose the consortium approach, a true multi-employer bargaining structure, or a limited approach to multi-employer cooperation. (See Appendix IV)

The courts and the legislature are more and more imposing the private sector experience upon public agencies. In terms of bargaining structures, it may behoove the public agency to learn from the positive as well as negative private experience. Multi-employer bargaining has often proved to be a positive experience in the private sector.

APPENDIX TO TAB B

Appendix I

Joint Powers Agreement for Labor Relations Consolidated Bargaining

"THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (commencing with Section 6,580 of the California Government Code relating to the joint exercise of powers by and between City of Pleasanton, a municipal corporation, City of Livermore, a municipal corporation, and Valley Community Services District, hereinafter collectively referred as as 'parties'.

"WITNESSETH:

"WHEREAS, the Meyers-Milias-Brown Act provides a statutory procedure for the formation of employees organizations, their recognition, and the guidelines by which wages, salary and other matters shall be discussed, and hopefully agreed upon, between such employee organizations and their governmental employer; and

"WHEREAS, the Meyers-Milias-Brown Act provides procedures supplemental to the traditional methods of setting employees' salaries and wages through civil service or merit systems; and

"WHEREAS, public employees have become organized and, in many cases, are represented by associations which employ, or which have on their staff, persons experienced in the techniques of collective bargaining; and

"WHEREAS, the parties to this agreement are geographically close enough so as to draw on, in many cases, the same labor pool and the hours, wages and working conditions of their respective employees are not dissimilar; and

"WHEREAS, it is the intent of this agreement to provide for an agency created through the exercise of joint powers to provide a means for the consolidated accumulation and dissemination of statistics, data and other information on matters relating to labor relations among the various parties, and also for the parties' actual negotiation for the wages,

hours, and other terms and conditions of employment for their respective employee organizations and to provide the terms and conditions under which the parties agree with each other and with the joint powers agency as to how the power will be exercised; and

"NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and conditions hereinafter contained the parties to this agreement do hereby create a public entity pursuant to the authority of the joint exercise of powers provision of California law, herein denominated as the 'Joint Governmental Negotiation Agency' and referred to hereinafter as 'Agency', which will exercise those powers and perform those functions which are hereinafter described.

"IT IS FURTHER AGREED as follows:

" 1. PURPOSE: The Agency shall negotiate collectively on behalf of some or all of the parties to this agreement with one or more of their respective employee organizations in the matter of wages, hours and other terms and conditions of employment under the provisions of the applicable statutes of the State.

" 2. COMPOSITION OF AGENCY: Each party to this agreement shall appoint either its Chief Administrative Officer or his designated representative to serve as a member of the Agency.

" 3. NEGOTIATING COMMITTEE: It shall be the duty of the Agency to appoint from among its members a negotiating committee consisting of not to exceed five (5) persons. It shall be the duty of such committee to negotiate on behalf of the Agency the terms and conditions of agreements with the employee organizations recognized by the governing body of the parties to this agreement.

" 4. MECHANICS: Each party shall be responsible for submitting no later than March 1st of each year to the Agency such information regarding wages, hours, and other terms and conditions of employment as such pertains to their jurisdiction. Included with such information shall be salary surveys, determination of prevailing wages, studies on fringe benefits, and other information as the parties voluntarily collect or are required to collect by law. Such material shall include all determinations where required of civil service boards, commissions or other parties charged to be made by the organic law of the party.

"All instructions from the governing body of the party in regard to inflexible requirements of the party shall be made known to the Agency. The Agency shall review all information submitted to it and shall determine what deviations shall be permitted because of variances in size, location or employee organizations of the various

parties, because of economic ability to pay, personnel turnover, longevity and variations in work responsibility within classifications and any other affecting related matters. The policy so determined with all variances and any further instructions required to be made by the Agency shall be given, in writing, to the committee who shall thereafter meet as occasion demands with representatives of employee organizations.

" 5. JURISDICTIONAL VARIANCES: So as to reflect the obvious variances to the several jurisdictions due to size, geographical location, economic status, employee numbers and organizations, or other pertinent influences, it may be advantageous to group the parties, for negotiating purposes, into whatever affiliation best resolves or minimizes such variances. Thus the negotiation process of each such group would be separate and distinct from any other engaged in by the Agency.

" 6. AGREEMENT: It is the intent and purpose of this joint powers agreement that the Agency will maintain regular and continuous communications with all parties during the negotiation process and will seek to obtain wherever possible agreement with employee organizations. Such agreement, or agreements, shall be binding on all the parties to this joint powers agreement unless rejected by the respective governing body by a vote of not less than 4/5 of all its members. In the event of such a rejection, the Agency shall be relieved of any further responsibilities with regard to the subject agreement. Nothing contained herein shall be construed to allow any party to avoid the provisions of an agreement following acceptance of the terms thereof.

" 7. MULTI-YEAR CONTRACTS: The Agency shall, when it is in the interest of the parties to this agreement, enter into agreements with employee organizations for in excess of one (1) year but not exceeding five (5) years.

" 8. ORDINANCE: The governing body of each party to this agreement does hereby indicate its intent to adopt an ordinance providing that the governing body will not reject an agreement with an employee organization, proposed pursuant thereto, or combination thereof, unless by a 4/5 vote of all of its members.

" 9. ADOPTION OF WAGES, HOURS AND OTHER WORKING CONDITIONS BY THE PARTIES: Each party to this agreement shall, upon presentation to it of the agreements applicable to it, thereafter adopt the provisions of such as its organic law. In the event of an agreement for any year is not reached prior to commencement of the fiscal year, such may be adopted for the remaining portion

of such fiscal year or retroactively to the commencement of the fiscal year at the option of the party and thereafter annually as may be provided by such agreement.

"10. EMPLOYMENT OF NEGOTIATOR: Nothing in this agreement contained shall prohibit or be deemed to prohibit the employ by the Agency of a person, firm or corporation skilled in labor relations and negotiations to conduct on behalf of the Agency the duties herein described pertaining to the committee. No such person, firm or corporation shall be employed unless all of the parties shall be selected to perform such duties as are enjoined by the Joint Exercise of Powers Act (Section 6500, et seq., Government Code). Any person required to be bonded under said Act will be so bonded.

"Upon termination of this agreement any funds contributed by the parties remaining undisbursed and unencumbered shall be returned to the parties in the same proportions as contributed.

"11. RULES AND POLICIES: The Agency shall from time to time make such rules and policies as may be necessary to fulfill the intent of this agreement; provided, however, that such rules and policies shall not conflict with the intent, expressed or implied, of this agreement.

"12. AMENDMENT OF AGREEMENT: This agreement may be amended from time to time as the parties deem necessary.

"13. WITHDRAWAL: Any party to this agreement may withdraw and rescind this agreement upon giving all other parties not less than sixty (60) days notice of its intent so to do; provided, however, that such shall not be effective to rescind or reject any agreement with an employee organization made by such party so long as such agreement is reached with an employee organization, such may be rescinded only as provided in Paragraph 6 above.

"IN WITNESS WHEREOF, the parties to this agreement have caused it to be executed by their officers thereunder duly authorized so to do as of the_____day of_____, 1975."

APPENDIX II

State of California Health and Welfare Code

Article 8

JOINT OPERATIONS

Sec.

Cross References

Joint sanitation projects, see Government Code § 55000 et seq.

§ 4840. Joint operation by districts; participation in state employees' retirement system

Whenever two or more sanitation districts find and declare by resolution adopted by their respective district boards that it is for the interest or advantage of the districts to do so, the districts by their respective district boards may enter into an agreement for the maintenance of a centralized and joint administrative organization to care for the general administration of the affairs of each of the districts, and the construction, supervision, operation, and maintenance of the work of each of the districts, and for that purpose the districts may

agree to employ the same engineers, surveyors, counsel, and other persons needed to carry out the purposes of the districts.

Such agreement may also provide for participation by said sanitation districts in the State Employees' Retirement System of the State of California and for the payment of apportionments of costs and the collection, receipt and distribution of pension payments by one district designated for the purpose and acting on behalf of all districts participating in the agreement in the same manner as provided by Sections 4841 and 4842 of this code. When the agreement so provides, the designated district shall have all the powers and perform all the duties of a public agency for the purposes of the State Employees' Retirement Law, both in respect to the joint officers and employees of the participating districts and in respect to the officers and employees separately employed by the participating districts.

(Stats.1939, c. 60, p. 587, § 4840. Amended by Stats.1945, c. 490, p. 988, § 1.)

Historical Note

The amendment of 1945 added the last paragraph.

Derivation: Stats.1923, c. 250, p. 498, § 19a, added Stats.1927, c. 178, p. 324, § 1.

Cross References

Joint sanitation projects, generally, see Government Code § 55000 et seq.
State retirement system, see Government Code § 20000 et seq.

Library References

Health ⇐4.

C.J.S. Health § 5.

Notes of Decisions

I. In general

Where nine Los Angeles County sanitation districts organized under §§ 4710-4718, have, under this article agreed to joint operation of all districts by one of them, in order to participate in the State Employees' Retirement System under State Employees' Retirement Act, § 38c the contract for participation must be entered into by the board of directors of each of the individual districts, and not by the district acting as agent to conduct the administrative affairs of all the districts. 4 Ops.Atty.Gen. 76.

§ 4841. Proportionate share of expenses

The agreement shall specify the proportionate amount to be paid by each district toward the costs and expenses of the organization and the salaries, wages, or other compensation of all persons employed jointly by the districts.

(Stats.1939, c. 60, p. 587, § 4841.)

Derivation: Stats.1923, c. 250, p. 498, § 19a, added Stats.1927, c. 178, p. 324, § 1.

§ 4842. Payment of proportionate shares into funds of one district

For the purpose of facilitating the payment of the joint costs, expenses, salaries, wages, or other compensation, the agreement may also provide for the payment by each district of its proportionate share of the costs, expenses, salaries, wages, or other compensation, into the funds of any one of the districts which may be designated for the purpose, and the designated district shall thereafter pay all the costs, expenses, salaries, wages, or other compensation incurred by, or to be paid in connection with the maintenance of the joint organization.

(Stats.1939, c. 60, p. 588, § 4842.)

Derivation: Stats.1923, c. 250, p. 498, § 19a, added Stats.1927, c. 178, p. 324, § 1.

§ 4843. Contracts with other governmental agencies for joint facilities or use of district facility

Joint facilities. The district may contract with the Federal Government of the United States or any branch thereof, or with any county, city and county, municipal corporation, district or other public corporation or with any person, firm or corporation, for the joint acquisition or construction or use of any sewer or sewers or other works or facilities for the handling, treatment or disposal of sewage or industrial waste from the district and such other area as may be designated in said contract, when in the judgment of the legislative body of said district it is for the best interests of the district so to do. Any such contract may provide for the construction and maintenance of such sewer or sewers, or such other works or facilities, and for the payment by or for the parties thereto of such proportionate part of the cost of the acquisition, construction or maintenance of such sewer or sewers or other works or facilities as may be stated in said contract, the payments to be made at such times and in such amounts as may be provided by said contract. Any such contract may provide for the joint use of any sewer or sewers, works or facilities for the handling, treatment or disposal of sewage or industrial waste upon such terms and conditions as may be agreed upon by the parties thereto, and for the flowage, treatment or disposal of sewage or industrial waste from such area for each of the parties thereto as may be described in the contract.

Use of district facility. Any district which has acquired or constructed or which proposes to acquire or construct, any sewer or sewers, or works or other facilities for the handling, treatment or disposal of sewage or industrial waste, may contract with the Federal Government of the United States or any branch thereof, or with any county, city and county, municipal corporation, district or other pub-

lic corporation or with any person, firm or corporation for the use of any such sewer or sewers, works or facilities by any such county, city and county, municipal corporation, district or other public corporation, or for the flowage, treatment or disposal of sewage or industrial waste from any area designated by such person, firm or corporation so contracting, upon such terms and conditions as may be provided in said contract.

(Added by Stats.1949, c. 168, p. 397, § 6; Stats.1949, c. 843, p. 1597, § 3.)

Historical Note

The section set out was added by Stats. 1949, c. 843. Another section 4843 was added by Stats.1949, c. 168. They read the same except that the section added by chapter 843 contains the additional words "or industrial waste" after "disposal of sewage" wherever those words appear.

Cross References

Joint sanitation projects, generally, see Government Code § 55000 et seq.

Notes of Decisions

1. In general

City sanitation districts had right to sell their sewage effluent without permission of county water district, under statutes. City of Taft v. West Kern County Water Dist. (1968) 68 Cal.Rptr. 675, 262 C.A.2d 291.

APPENDIX III

JOINT POWERS AGREEMENT

Employee Relations

THIS JOINT POWERS AGREEMENT is made and entered into by, between and among those California Public School Districts (hereinafter "Districts") who are, or who hereafter become, parties to this Agreement for the purposes set forth below.

WHEREAS, each of the Districts possesses the powers and the responsibility for the maintenance of programs, policies and procedures relating to employee relations pursuant to the provisions of California Education Code, Section 13080, et seq., and, commencing April 1, 1976, will have further responsibilities for such matters upon the various effective dates of the provisions of California Government Code, Sections 3540, et seq.; and

WHEREAS, pursuant to the provisions of California Education Code, Section 1016.5, the governing board of each District has determined, and by entering into this Agreement acknowledges, that it wishes to retain the law firm of Musick, Peeler & Garrett to provide specialized legal services in matters relating to employee relations; and

WHEREAS, the County Counsel of Tulare County has expressed his views concerning such retention, pursuant to California Education Code, Section 1016.5; and

WHEREAS, effective January 1, 1976, the Tulare County Superintendent of Schools will possess the authority, pursuant to California

---

Editor's Note: Because of the length of this document certain portions have been edited for content.

Education Code, Section 945.1, to enter into this agreement, and has the same common concerns, rights, and duties as all of the other Districts (the term "District" wherever used in this Agreement shall, on and after January 1, 1976, be deemed to include the County Superintendent of Schools); and

WHEREAS, the specific areas of concern and the specific requirements for specialized legal services as set forth below are common to each of the Districts; and

WHEREAS, the provision of such specialized legal services on a joint basis will result in benefits to each of the Districts that are directly in proportion to its size, and will result in the provision of such services at less cost to the taxpayers of each said District than if such services were separately provided; and

WHEREAS, the provisions of California Government Code, Sections 6500, et seq., empower the Districts to exercise jointly any powers common to them;

NOW THEREFORE, the Districts, and each of them, do agree as follows:

I. PURPOSES

The purposes for which the Districts agree to jointly exercise their powers, and to jointly utilize the services of the firm of Musick, Peeler & Garrett, shall be as follows:

a. The drafting and interpretation of regulations for the implementation of California Government Code, Sections 3540, et seq.

b. The provision of not less than 32 hours per calendar month of on-site counseling at mutually agreed upon locations in Tulare County.

Such counseling shall include, but not be limited to, the conducting of joint training programs for the management, confidential, and supervisory personnel of the Districts, in matters relating to their duties, rights, and responsibilities in matters of employee relations.

c. The drafting and presentation of advisory memoranda to the various Districts concerning matters of general application in the field of public school employee relations.

d. The negotiation, drafting, and interpretation of labor agreements between the Districts and various employee organizations when such matters involve areas of common concern.

e. The review of existing District rules, regulations and policies relating to employee relations, counseling regarding such matters, and the drafting and presentation of model rules, regulations, and policies.

f. Representation before the Educational Employment Relations Board or other appropriate agencies in matters of rule adoption, recognition demands, unit determinations, unfair labor practices, or other matters of common concern.

g. Representation in litigation on employee relations matters of common concern.

h. Representation and counseling regarding any other employee relations matters, that are determined to be of common concern to the Districts.

V. DISPUTES

In the event of any dispute of disagreement among the Districts regarding any matter which is the subject of this Agreement, each District shall, within ten calendar days, appoint one representative to participate on a panel for the sole and specific purpose of resolving such dispute. Within five calendar days thereafter, the panel shall meet for the purpose of resolving the dispute. A majority of the designated representatives of each of the Districts shall constitute a quorum, and the vote of a majority of the members of such quorum shall constitute a final and binding determination as to such dispute among the Districts, unless the District in which the dispute arose has previously exercised its right to terminate its participation in this Agreement, as set forth below.

VII. TERM

This Agreement shall continue in full force and effect during the period December 1, 1975, through June 30, 1976. On or before June 15, 1976, the Districts, the Coordinator, and the firm of Musick, Peeler & Garrett shall meet to review the scope of services provided pursuant to this Agreement, and to determine whether such Agreement shall be renewed for the period July 1, 1976, through June 30, 1977. (Editor's Note: The Agreement has subsequently been received).

VIII. MISCELLANEOUS

a. No District may assign or transfer its interest or any obligation in this Agreement without the written consent of all Districts.

b. Nothing contained in this Agreement shall be deemed to cause or imply the formation of any public entity separate and distinct from any of the Districts.

c. A copy of any written notification required by this Agreement shall be provided to Musick, Peeler & Garrett, One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017.

IN WITNESS WHEREOF, each of the Districts has caused this Joint Powers Agreement to be executed by its duly authorized representative on the respective dates set forth below, such signature being pursuant to authority granted by the governing board of such District.

_____
DISTRICT

By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____

_____
DISTRICT

By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____

_____
DISTRICT

By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____

_____
DISTRICT

By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____

_____
DISTRICT

By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____

_____
DISTRICT

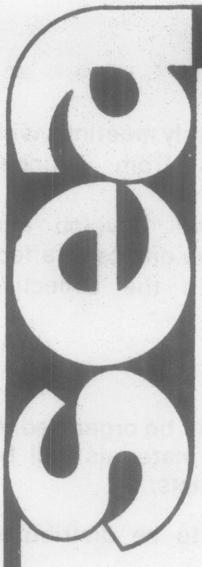
By_____
(Title)

Date of Execution:

_____

Date of Governing Board
Approval

_____



SCHOOL EMPLOYERS ASSOCIATION

9300 EAST IMPERIAL HIGHWAY • DOWNEY, CALIFORNIA 90242 • (213) 922-6155

The School Employers Association (SEA) will provide to member districts:

- **SERVICES**
- **INFORMATION**
- **EDUCATION**

The Association is a consortium of districts joined together as a legal entity for the purpose of assisting school districts and county offices in meeting the challenges of collective bargaining in the public schools of California

Robert W. Babcock, *Director*

OFFICE OF THE LOS ANGELES COUNTY SUPERINTENDENT OF SCHOOLS

GOVERNANCE

The SEA is governed by an Executive Committee of nine members. The members of the Executive Committee represent the member districts. This committee is elected annually by the membership.

This group establishes policy and provides direction for the Association. These policies and directions will be implemented by the Director of the Association.

INTERIM EXECUTIVE COMMITTEE

Executive Committee Chairman
Bruce Peppin, Superintendent
Alhambra City and High School Districts

Executive Committee Members
Clark L. Cox, Superintendent
Lancaster S.D.

Richard Guengerich, Superintendent
Bellflower U.S.D.

Lloyd Jones, Superintendent
Torrance U.S.D.

Richard Key, Superintendent
Duarte U.S.D.

John Nicoll, Superintendent
Newport-Mesa U.S.D.

Eldon E. Pearce, Superintendent
Mt. San Antonio C.C.D.

Clyde Smyth, Superintendent
Hart U.H.S.D.

SERVICES

- The Association will coordinate efforts to represent the general employer interest in cases before EERB.
- The Association will coordinate efforts to develop appropriate general management positions on current issues through monthly meetings with negotiation teams from member districts.
- The Association will develop and coordinate legislative efforts to affect needed changes in the collective bargaining law.

INFORMATION

A Central File Library will be organized. A catalog listing available materials will be provided to member districts.

Examples of materials to be distributed include:

- district policies, rules, regulations
- collective bargaining proposals from unions and management
- model management proposals
- information from and about EERB
- collective bargaining agreements
- arbitration and fact-finding rewards
- reports regarding collective bargaining information from throughout the nation
- a recommended list of arbitrators and fact-finders

Reporting collective bargaining information to SEA members will take the form of regular newsletters and special bulletins.

Surveys concerning total compensation packages for both classified and certificated employees will be compiled and published for SEA members.

EDUCATION

Seminars and **workshops** will be offered on a wide range of subjects related to collective bargaining.

ROLE OF THE LOS ANGELES COUNTY SCHOOLS OFFICE

SEA can become the preeminent organization of its type in California. It can be of immense help to its member districts. It can work in harmony with the various other organizations that are providing negotiation support services, and thus can be a positive force in building effective employer-employee relations in California.

The School Employers Association, in addition, can be a model of integrity, leadership, and constructive action. As an association of employers, it should develop an image in which we can all take pride.

SEA represents, truly, the ability and desire of school employers to respond quickly and effectively to a need, with deliberate, sound, and wise action. It has responded in a way that will create a climate in which "meeting and negotiating" can function effectively in California under the provisions of Senate Bill 160.

The County Schools Office, apart from its participation in forming SEA, will continue to: (1) provide support services where appropriate and when needed, and (2) perform functions assigned to it in the Joint Powers Agreement.

Like all other employer members, we feel a commitment to the purposes of SEA, and will strive to help achieve them.

Richard M. Clowes
Superintendent

ROLE OF THE SEA EXECUTIVE COMMITTEE

The School Employers Association exists because of the new demands collective bargaining places upon everyone involved with the management of schools. This is an unfamiliar mode of operation. If we are to fulfill our responsibilities to parents and public and have fair and equitable treatment of employees, we must have data and information and the ability to communicate with one another. SEA provides these things. SEA reflects the concerns and interests of boards of education and superintendents. It deals specifically with the needs of school managers and it offers the resources of the Office of the Los Angeles County Superintendent of Schools, plus an outstanding group of advisors. It does not offer direct bargaining services, nor does it replace or interfere with a district's relationship with other consultants. SEA enhances the assistance received from other sources.

Continuing concern with needs of the membership is guaranteed by a governing board comprised of and elected by the members. SEA can be a significant voice for school management. Joining will add your input to that of other districts and County offices.

Bruce Peppin
Executive Committee Chairman

MEMBERSHIP FEES

Enrollment	Annual Cost
0 - 200	$ 100
201 - 900	200
901 - 1,500	400
1,501 - 2,500	600
2,501 - 5,000	800
5,001 - 7,500	900
7,501 - 10,000	1,000
10,001 - 15,000	1,200
15,001 - 20,000	1,350
20,001 - 30,000	1,500
30,001 - 60,000	2,000
60,001 -	2,500
County Superintendent of Schools	1,000

SEA PANEL OF EXPERT ADVISORS

The SEA Panel of Expert Advisors

- will provide consultative assistance to the Association relative to its operations, organization, and services
- has proven expertise in the field of employer-employee relations, and
- will serve the Association without compensation

John Bukey
Law Firm of Biddle and Walters

Bruce Julian
Julian and Associates

Dick Fisher
Law Firm of O'Melveny and Myers

Bud Miller
Vice President
Merchants and Manufacturers Association

Joe Ben Hudgens
Principal Deputy County Counsel
Los Angeles

Gordon Nesvig
Director of Personnel, L.A. County

Steve Houston
Deputy County Counsel
Los Angeles

Mike Taggart
Law Firm of Patterson and Taggart

c

TAB C

A SYSTEM FOR COLLECTIVE BARGAINING

by Fran LaMountain

Introduction

Collective bargaining is traditionally viewed as a highly volatile confrontation between adversary parties whose goals are contradictory. It is this author's opinion that if these are the assumptions by the parties to the collective bargaining process, the results will be less productive and the likelihood of significant disagreements (even strikes) is substantially increased. Bargaining need not be based on a win-lose philosophy. The experience of the last fifty years in labor-management relationships clearly demonstrates that while the labor movement has improved the economic lot of the worker, it has increased the possibility of major labor disputes in the process, but not without the help of negative management attitudes.

It should be quickly pointed out that not all collective bargaining in the win-lose environment ends in disagreement. Indeed, Department of Labor statistics clearly show that only 5 percent of all collective bargaining end in a labor dispute. True enough - but these statistics do not fairly describe the magnitude of the impact on our economic system by those few giant strikes which have paralyzed communities, entire industries, and at times even the economic health of the nation and its security. Further, adequate statistical information is not available that would indicate the quality of the labor agreements negotiated in the win-lose climate.

What is the alternative? First, change your assumptions regarding the bargaining process, the goals of the other party, and what may appear to be inherent, conflicting attitudes at the bargaining table. Second, demand that a discipline be added to the preparation process prior to collective bargaining that not only sharpens your understanding of the issues to be resolved, but that forces a wider organizational involvement in the entire process of bargaining and bargaining preparation.

These are the two issues which are addressed below. Restated they are:

(1) how do you build a win-win bargaining attitude;

(2) how should you manage the bargaining process to ensure more effective results?

Win-Win Collective Bargaining

In order to build a more positive approach to collective bargaining, we first need to examine where it is today. Employee and management groups have been observed to have certain attitudes or assumptions about collective bargaining. (See Exhibits A & B)

Employees generally view bargaining as a logical process which will solve their problems and, therefore, are frequently confused by the results of bargaining because they don't fully understand the imperfections in the "give and take" process. This approach calls

for greater energy to be directed at establishing more realistic expectations among the rank and file prior to negotiations. Management must play a more important role in this area.

Similarly, we find most management groups have a mental attitude that is equally off target as those of their employees. The "win-lose" mentality of a typical manager raises many threatening issues; therefore he blocks out the potentially positive forces that might be mobilized in the collective bargaining process. Defensive and perhaps even highly destructive behavior takes over. His need for control and unquestioned authority somehow appears to be slipping away. As a result he becomes combative, rigid and closed to real employee problems.

Given these attitudes we can see that mutual problem-solving is nearly impossible, particularly of issues which require trust relationships and mutual understanding. Any agreements arrived at in such a bargaining climate are generally the routine, conventional contract clauses that normally deal with pay, fringe benefits, and standard work rules. The employer doesn't want to give in because he fears he will be seen as weak. The employee sees the employer as unfeeling and without any desire to listen to employee problems. As a result, an opportunity is lost that could have given rise to an improved work experience for the employee as well as higher productivity for the employer.

What can be done to change this? The first step in fully utilizing the bargaining process as an important force to cause change to occur in the organization is to change the assumptions that are brought to the bargaining table. (See Exhibit C)

For example, if the parties to the agreement view bargaining as an opportunity to improve the entire process by which employees are managed and work gets done--then, and only then will significant changes take place. The employer must acknowledge the fact that there are "real" employee issues that need to be resolved and that he is not dealing with a group of troublemakers who are out to create problems. On the other hand, the union leadership must meet management with responsible attitudes and goals that are problem oriented--not self-serving and politically oriented.

These notions may strike you as very pious sounding, hopes that will never really quite materialize. Over the past few years, critics charge that "....it just doesn't work that way," or "....collective bargaining by nature is a power game and as such, someone wins, and therefore some must lose." But there is room for positive thinking. There are too many experiences that have demonstrated that a positive, problem-solving approach to collective bargaining can produce more effective results than adversary bargaining.

A Few Notions About Collective Bargaining

Employers and employees who have never experienced the bargaining process often ask: "What will be different in the relationship between the employee and employer when collective bargaining becomes part of the employee relations process?" Perhaps the best way to respond is to rephrase the question. There seem to be two sides to this coin:

One has to do with the changes that will occur (or be added) to the employee-management process as a result of bargaining; and the second focuses on what collective bargaining takes away. (See Exhibits D and E.)

Employees who choose to be represented by a labor organization normally do so because their employer has failed to be responsive to their needs. Characteristically, we find a management process which provides little opportunity for the employee to be heard. Frank, open discussion between the employee and employer is either non-existent, or is so superficial in nature that the employee comes away feeling unheard, controlled and frustrated. Add a normal amount of management ineptness to the situation, and you have set the stage for union representation and contract bargaining.

The bargaining table guarantees a new forum for employees to be heard. It forces management to recognize employee groups and to listen to their problems. As was pointed out earlier, listening in this setting leaves a great deal to be desired; but the important point is, the employee does have "his day in court." The mediation and arbitration processes add other listening mechanisms as well as the machinery (imperfect as they may be) for resolving honest disagreement and conflict.

But what are the negative aspects of negotiation--what, if anything, does it take away? The most important consequence of union representation is that the natural process for employee-problem resolution is essentially eliminated. A system of managers and employees dealing

directly with each other to resolve differences around work issues, compensation issues, and so forth, is the most effective approach to problem solving and building mutual trust. For the most part, this is lost because when employees elect to have union representation, they introduce an impersonal (and often political) system known as the grievance procedure for working out problems.

It is true that having a grievance procedure is better than not having any system at all for dealing with an employer on employee problems. However, the typical grievance procedure is a weak system at best, and frequently promulgates paper shuffling by union stewards in order to serve their own personal needs, rather than resolving real employee issues. Managers, on the other hand, find a grievance procedure a good opportunity to completely abdicate their responsibility of solving employee problems. If they had been incapable of resolving problems before the union arrived on the scene, they tend to get even weaker after its arrival. The manager's attitude eventually becomes one of indifference and resentment. How often have you heard, "They wanted a damn union - well, now they got it! Tell 'em to grieve!"

Preparing for Collective Bargaining

There is no substitute for thorough preparation, planned execution, and consistent administration of the labor agreement if your goal is to build harmonious labor-management relations and avoid unnecessary labor disputes. The process by which you collect data, set bargaining goals, develop strategies and manage the bargaining sessions is the underpinning for success. Collective bargaining need not be a vague, unguided,

endless series of meetings in some dark, smoke-filled room where loud voices and disagreements dominate the atmosphere. All this can be--and frequently is--replaced by well-ordered presentations by both parties of the issues at hand, the reasoning offered to support opposing viewpoints being within the framework mutually agreed upon for rules of conduct. The process by which the management group prepares itself is critical for assuring that the desired results of bargaining are achieved. A typical bargaining preparation system is described below and outlined in summary form in Exhibit E.1.

Phase I - Preparation Phase

The task of organizing and preparing for collective bargaining demands that an order or sequencing of events be laid out in detail in what we refer to as the Project Plan. This plan is the document by which the management organization mobilizes itself to collect, sort, collate and analyze literally hundreds of pieces of data so that the data may be transformed into accurate, useful information. A current and complete file of information will then form an important base for bargaining priority and goal-setting, and we will refer to it as the Bargaining Book.

The process for data collection should begin six months prior to either the expiration of an existing labor agreement or a desired contract settlement date, in the case of a first agreement. Essentially two meetings should occur in order to initiate the preparation procedure:

Meeting I (See Exhibits F and G)

The participants at the initial planning session should include the negotiations project manager (normally this will be the Manager of Labor Relations), legal counsel, the senior operating manager, and various staff managers as appropriate. The meeting is to:

1. Describe the collective bargaining process (or system) that will be used.

2. Share information (reports are made by various participants) that describes the labor relations climate in the organization. Topics such as *the history of collective bargaining in the organization or community, employer-employee relations climate - current status of employee concerns, issues and outstanding grievances,* are reviewed; organizational goals- the senior manager describes the short and long-term outlook for the organization and, where possible, the critical issues are identified.

3. The Project Manager presents the Project Plan to the group, detailing the various responsibility assignments with due dates. (See Chart I, pages 1-6 which illustrates a private sector example of a Project Plan) and lists the wide range of data that must be collected.

4. Describe the purpose and basic elements of a strike plan. Discussion should focus on understanding the need for a strike plan and what resources are required to develop a realistic approach to such an undertaking. (Editor's note: See Appendix "The Strike Team" for a discussion of this subject.)

The conclusion of this work session should include a review of additional action steps needed to complete the bargaining book preparation, identification of special issues or data which need further analysis prior to the second preparation meeting. The first preparation meeting will usually last 4-6 hours and should be conducted at a location where normal day-to-day operating matters do not disturb the participants.

Meeting II (See Exhibits H, I and J.)

After allowing sufficient time for completion of the assignments spelled out in the Project Plan, the same management group should meet again to review the "Bargaining Book" which has been assembled. (See Chart III, pages 1-10) The Bargaining Book will be used to develop preliminary management goals and strategies. The agenda for this meeting would be as follows:

1. Review the highlights and recommendations by the various responsible managers. This is not intended to be an elaborate review of the detailed data, but rather an opportunity for the total team to grasp issues and broad meaning emanating from the reporting managers' analysis, conclusions and recommendations.

2. Identify the various management proposals (topics - not verbatim contract language) that will be presented in bargaining. The proposal candidate list should be sorted out as to critical (strike) issues and those which could be negotiated away.

3. Select the bargaining team and identify the roles of each member. The level of authority which is to be delegated to this team should be thoroughly discussed to ensure understanding.

4. Evaluate estimated union demands which are likely to be received. A determination should be made to establish a sense of what the group feels will be critical to the union, and how, or if, these various items conflict with previously determined high priority management proposals or issues.

5. Set tentative bargaining limits based on management needs and anticipated union demands. (See Exhibit J - definition of the three levels of possible contract settlements.)

At the conclusion of the second contract preparation meeting, the management group should have a reasonably clear understanding of

the critical issues that will have to be dealt with and the risks inherent in achieving the desired bargaining goals. Gaps in the data collected to date should be noted and assignments made.

During the ensuing weeks, the responsible operating manager must communicate up in the organization to establish support of the tentative goals and strategy set by the management negotiations team. The entire collective bargaining process is destroyed unless there is a clear, realistic understanding at the higher organizational levels as to what the bargaining team is attempting to accomplish at the bargaining table. If these prior agreements are not thoroughly worked out, the results of bargaining will be confusing to higher management. More importantly, the negotiating team will not feel confident of the authority limits which have been delegated to them. "Second guessing" will become the game of the day and will obviously undermine the team's confidence in achieving their goals.

Phase II - Pre-Negotiations Phase

Two or three weeks prior to the first bargaining session, the bargaining team should meet with the senior operating manager to finalize the goals and strategies which have been approved (refer to Exhibit K and Chart IV, pages 1-4 which details a sample set of management economic and non-economic goals). The emphasis during this work session is to focus on:

1. Cleaning up the details
   -management proposal language
   -new data added to the BB
   -administrative details attendant to the bargaining sessions themselves (e.g., where, time of day, facilities needed, special equipment, etc.)

2. Establishing a desired timetable that will satisfy the needs of both parties to resolve issues and to ensure rank-and-file support of ratification. The pacing of the bargaining sessions normally is controlled by the union negotiating team since the burden of selling the tentative agreement falls on them. (See Chart V pages 1-5 which illustrates a typical tentative agreement. This document was used by the union bargaining team to explain the terms and conditions of the contract settlement at a ratification meeting.) The experienced union negotiator will know how to handle this aspect of bargaining and will give ample clues to management when he needs more or less time.

Phase III - Contract Bargaining

Since the process of bargaining has been thoroughly reviewed elsewhere, the reader is referred to the attached Exhibits L and M which describe the pattern normally followed by both management and union negotiators. It should be emphasized that the bargaining process is ultimately successful only when both parties engage in and are willing to COMPROMISE. Settlements on difficult issues are usually arrived at when there is giving and receiving of important concessions.

Keeping track of the many tentative agreements in the process of bargaining can often prove to be a complicated chore which traditionally is assumed by the management team. A simple system of recording the minutes of each meeting is a must. In addition, it is recommended that a contract bargaining status book be kept which provides ready access to each major contract section and its status on an ongoing basis. (See Chart VI, pages 1-6 which illustrates the step-by-step progress in bargaining of a Management Rights clause. Note: The process is of the essence here, not the language of the clause used as an example.)

Phase IV--Follow-on Phase

Once the labor agreement has been ratified by the union membership, the management group must now communicate the terms and conditions of the agreement to all management employees, the various affected insurance carriers, and the staff functions (payroll, personnel, etc.) to ensure timely effectiveness of the contract. In addition to these conventional action steps, there are other important matters that need attending to and that have little to do with the contract language itself. Specifically, management needs to focus on resolving problems that were highlighted in bargaining on such matters as weak or authoritarial supervisors, inconsistent administration of policies, practices and, indeed, the labor agreement, poor employer-employee communications regarding the status of the business today and the outlook for tomorrow, etc. These are management problems that only management can properly resolve. The labor organization generally will identify the symptoms of these management shortcomings, but it demands an open attitude by the management organization and a willingness to take action to correct the fundamental problem. (See Exhibit N for other follow-on action items.)

EXHIBIT A

TYPICAL EMPLOYEE ASSUMPTIONS ABOUT COLLECTIVE BARGAINING

1. Logical Process
2. Employee Needs Are #1 Priority
3. Employee Gets Control For A Change
4. Low Risk Because The Employee Has Control:
   - The Strike Vote Can Be Controlled
   - He Has Been Told: "The Employees Are The Union"
5. Collective Bargaining Insures Justice
6. Important Employee Issues Get Resolved In Collective Bargaining

EXHIBIT B

TYPICAL

MANAGEMENT ASSUMPTIONS

ABOUT

COLLECTIVE BARGAINING

1. IT'S A HIGH RISK BATTLE FOR CONTROL

2. IT'S A NEGATIVE CHORE FORCED ON MANAGEMENT BY A GROUP OF TROUBLEMAKERS

3. EMPLOYEE GOALS ARE IN CONFLICT WITH THE GOALS OF THE ORGANIZATION

4. COLLECTIVE BARGAINING IS A TEST TO SEE HOW LITTLE MANAGEMENT CAN GET BY WITH

5. IF MANAGEMENT GIVES IN - IT WILL BE SEEN AS WEAK

6. EMPLOYEES ARE UNREASONABLE IN THEIR DEMANDS

EXHIBIT C

WHAT COLLECTIVE BARGAINING CAN BE

NEW ASSUMPTIONS

WIN-WIN	NOT	WIN-LOSE
EVERYONE CAN CONTRIBUTE	NOT	ALL THE KNOWLEDGE IS AT THE TOP
PROBLEM SOLVING	NOT	"I GOT U!"
THERE ARE ISSUES TO WORK OUT	NOT	IT'S A POWER GAME
LOOK FORWARD	NOT	RELIVING HISTORY
TRUST	NOT	DEVIOUS, SELF-SERVING GOALS

EXHIBIT D

WHAT DOES COLLECTIVE BARGAINING CHANGE IN EMPLOYEE/MANAGEMENT RELATIONS

- FORCES MANAGEMENT TO DEAL WITH EMPLOYEES
- LEGITIMIZES DISSENT
- ESTABLISHES MACHINERY FOR RESOLVING CONFLICT
- PROVIDES AN ACCEPTABLE FORUM TO DISCUSS COMPENSATION
- PROVIDES A NEW FORCE OF CHANGE
- FORCES AN EXCHANGE OF OPPOSING VIEWPOINTS

EXHIBIT E

WHAT DOES COLLECTIVE BARGAINING TAKE AWAY FROM EMPLOYEE/MANAGEMENT RELATIONS

- NATURAL PROCESS OF SOLVING EMPLOYEE/EMPLOYER PROBLEMS (ONE - ON - ONE)

- FLEXIBILITY IN THE MANAGEMENT OF THE HUMAN SYSTEM (RESTRICTIVE CONTRACT LANGUAGE)

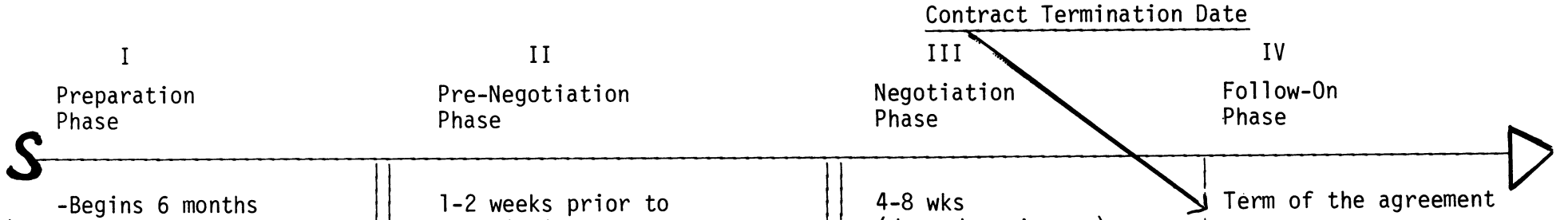
- JOB AND ECONOMIC SECURITY

- ADVERSARY CLIMATE TENDS TO REPLACE TRUST

- THIRD PARTY INTERVENTION:
  - IT WEAKENS THE ROLE OF SUPERVISOR
  - IT ADDS A THIRD SET OF NEEDS

EXHIBIT E.1

COLLECTIVE BARGAINING SYSTEM



	I Preparation Phase	II Pre-Negotiation Phase	III Negotiation Phase	IV Follow-On Phase
TIME: (APPROX)	-Begins 6 months before Col. Bargaining begins -Two Meetings- -6 mos. prior -3 mos. prior	1-2 weeks prior to negotiations Notice to terminate 90-60 days prior to expiration date	4-8 wks (depend on issues)	Term of the agreement
TASKS:	-Outline data -Org. bargaining team -Identify local issues -Establish timetables -Coaching local team (e.g. strike plan)	-Finalize data -Set bargaining goals, strategy & tactics -Set spokesman & bargaining team -Review bargaining plan (Sequence of events) -Cost goals (min-max) -Finalize mgmt. proposals	-Bargaining begins -Obtaining union demands -Costing demands -Presenting mgmt. proposals -Re-evaluation of goals -Counter proposals, etc.	-Critique the process -Implement the contract -Plan the employee relations plan -Brief the first level supervisors
NOTE:	Key purpose of 2nd mtg. -Set tentative bargaining goals -Evaluate risks -Involve the 1st level supervisor	Emphasis here is goal setting, risk evaluation & comm. upward in organization to avoid 24th hour surprises.	-Bargain non-economic issues first -Evaluate strike issues & risks -Sell the contract to -Mgmt. -Union committee -Rank & file	

EXHIBIT F

COLLECTIVE BARGAINING SYSTEM

PHASE I

PREPARATION PHASE

MEETING ONE (6 MONTHS PRIOR TO BARGAINING)

AGENDA:

I- DESCRIBE MANAGEMENT APPROACH TO BARGAINING

- PHASES
- PROBLEM SOLVING
- BARGAINING BOOK OUTLINE
- TIME LINES

II- STATUS REPORTS

- LABOR RELATIONS HISTORY
- UNION/MANAGEMENT RELATIONS
- UNION BARGAINING GOALS/PHILOSOPHY

III- BARGAINING RESOURCE EVALUATION

- STAFF RESOURCES
- HISTORY
- PRIOR EXPERIENCE

EXHIBIT G

IV - EMPLOYEE RELATIONS CLIMATE

- GRIEVANCE EXPERIENCE
- EMPLOYEE ATTITUDES/CONCERNS
- DESCRIPTION OF EMPLOYEE/EMPLOYER COMMUNICATIONS

V - MANAGEMENT OBJECTIVES

- SHORT TERM/LONG TERM
- MAJOR ISSUES
  - ARE THEY STRIKE ISSUES?

VI - STRIKE PLAN

- DESCRIPTION OF A STRIKE PLAN
- WHY DO YOU NEED ONE?
- RESPONSIBILITY ASSIGNMENTS
- TIMETABLE

VII - ACTION ASSIGNMENTS

- DATA COLLECTION
- CLAUSE ANALYSIS (& PRIOR AGREEMENT)
- WRITTEN PROJECT PLAN
- SET DEADLINES
- DEVELOP ROLES & BARGAINING TEAM
- SUPERVISORY MEETINGS (DATA COLLECTION)

EXHIBIT H

MEETING TWO (2 MONTHS PRIOR TO COLLECTIVE BARGAINING)

AGENDA:

I - BARGAINING BOOK REVIEW

- TOPIC AREA HIGHLIGHTS (ACTION RECOMMENDATIONS)
- LEGAL ANALYSIS
- SPECIAL PROBLEMS, ISSUES
- STRIKE PLAN REVIEW
- ARE THERE ANY GAPS?

II - MANAGEMENT CONTRACT PROPOSALS

- DEVELOPMENT/AGREE ON LIST
- IDENTIFY CRITICAL ISSUES
- EXPLORE DEGREE OF MANAGEMENT SUPPORT OR ADDITIONAL APPROVALS NEEDED
- DEVELOP SECONDARY MANAGEMENT DEMANDS

III - SELECT THE BARGAINING TEAM

- WHO
- ROLES
- AUTHORITY
- MODE (FORMAL/INFORMAL)

EXHIBIT I

IV - EVALUATE ESTIMATED UNION DEMANDS

- ECONOMIC DEMANDS
- NON-ECONOMIC DEMANDS
- EMOTIONAL ISSUES
- CRITICAL (STRIKE?) ISSUES

V - SUPERVISOR MEETINGS/BRIEFING

VI - SET BASIC MANAGEMENT STRATEGY/TACTICS

- SUMMARIZE IMPORTANT ISSUES
- SET LIMITS: MINIMUM, MOST LIKELY, MAXIMUM
- KEY TEST: "WILL IT FLY?"

VII - SUMMARY

- SCHEDULE BARGAINING TEAM MEETING
  (2 WEEKS PRIOR TO BARGAINING)
- REVIEW OPEN ACTION ITEMS

EXHIBIT J

- MAXIMUM CONTRACT
  - POINT BEYOND WHICH WE WON'T GO - WE WILL TAKE A STRIKE

- OPTIMUM CONTRACT
  - BEST POSSIBLE COMPROMISE, THAT WILL SELL WITHOUT A WORK STOPPAGE

- MINIMUM
  - THE LOWEST POSSIBLE SETTLEMENT WE FEEL THAT CAN BE REACHED
  - HIGH RISK OF FORCING A WALKOUT IF OUR HUNCHES ARE WRONG ABOUT UNION PRIORITIES
  - MAY HAVE TO FORCE ALL "DUE PROCESS" TOOLS (E.G., MEDIATION, FACT FINDING, CONTRACT EXTENSION STRONG COMMUNICATIONS CAMPAIGN, ETC.)
  - CONTINUOUS FLOW OF STATUS REPORTS UP IN THE ORGANIZATION

EXHIBIT K

PHASE II

PRE-NEGOTIATIONS PHASE

MEETING AGENDA:

I - FINALIZE GOALS/STRATEGY

- SET LIMITS
- COMMUNICATE UP
- ESTABLISH BARGAINING AUTHORITY
- EVALUATE RISKS

II - REVIEW MANAGEMENT PROPOSALS

- ECONOMIC
- NON-ECONOMIC
- HI/LOW PRIORITY

III - SET BARGAINING GROUND RULES

- ROLES (SPOKESMAN, RECORDER, ETC.)
- FORMAT FOR NEGOTIATIONS STATUS BOOK
- BARGAINING SITE
- BARGAINING TIMES/FREQUENCY
- PAYMENT OF WAGES
- COMMUNICATIONS AND CONFIDENTIALITY ISSUES
- USE OF CAUCUSES

IV - SET BASIC BARGAINING SEQUENCES

- NON-ECONOMIC
- ECONOMIC
- SPECIAL PROBLEMS

EXHIBIT L

PHASE III

CONTRACT NEGOTIATION PHASE

I - MEETING I

- CLIMATE SETTING STATEMENT BY MANAGEMENT
- SET PATTERN FOR BARGAINING NON-ECONOMIC FIRST, ECONOMIC LAST
- RECEIVE UNION DEMANDS: ASK CLARIFYING QUESTIONS ONLY
- PRESENT MANAGEMENT PROPOSALS (OPTION IS TO HOLD FOR SECOND MEETING)

NOTE: BETWEEN FIRST AND SECOND SESSIONS. COMPANY SHOULD COST OUT UNION PROPOSALS AND PREPARE A A MANAGEMENT POSITION RELATIVE TO THE ECONOMIC ISSUES. RE-EVALUATION OF ORIGINAL GOALS AND LIMITS SHOULD BE DONE HERE.

II - MEETING II

- MANAGEMENT RESPONSE TO UNION NON-ECONOMIC PROPOSALS
- PRESENT MANAGEMENT COUNTER PROPOSALS

III - ALL REMAINING MEETINGS

- SETTLE NON-ECONOMICS
- SETTLE ECONOMICS
- VERBAL AGREEMENT
- TENTATIVE LETTER OF AGREEMENT (SUMMARY)
- B/U RATIFICATION
- FORMAL (DETAIL) MEMORANDUM OF UNDERSTANDING

EXHIBIT M

IV - STRATEGY FLEXIBILITY - WORKING THE PROBLEM

- CONTINUOUS STRATEGY DISCUSSIONS
- ON-GOING PROCESS AS EACH SIDE:
  - MOVES
  - GIVING/RECEIVING
  - COMPROMISES
  - THE FORCES OF CLOSURE

- OBJECTIVES ARE:
  - DEVELOP A SALEABLE PACKAGE
    (LEVERAGE POINTS/SALEABLE UP, DOWN & AT TABLE)
  - ECONOMICS ARE NORMALLY TIED TO THE TERM OF THE CONTRACT
  - BUILD TRUST
  - SOLVE PROBLEMS

EXHIBIT N

PHASE IV

FOLLOW-ON PHASE

I - IMPLEMENT THE CONTRACT

- INSTALL ECONOMIC & NON-ECONOMIC ITEMS
- COMMUNICATE TERMS, LANGUAGE AND INTENT OF SETTLEMENT TO ALL MANAGEMENT PERSONNEL
- PERIODIC REVIEW TO INSURE CONFORMANCE
- PRINT THE CONTRACT
- NOTIFICATION OF INSURANCE CARRIERS

II- CRITIQUE THE NEGOTIATIONS PROCESS

- PREPARATION
- GOAL SETTING
- ROLES/TEAM
- BARGAINING
- FUTURE IMPLICATIONS
- RESULTS

III- UPDATE EMPLOYEE RELATIONS PLAN & PRIORITIES

- WHAT ARE THE NEW EMPLOYEE/EMPLOYER ISSUES THAT HAVE EMERGED
- HOW DO WE HANDLE THEM
- ESTABLISH OUR PRIORITIES

CHART I

EXAMPLE OF

DETAILED CONTRACT NEGOTIATION PROJECT PLAN IN PRIVATE SECTOR

(Contract Termination Date - Feb. 15)

PROJECT PHASE	DUE DATE	TASK	RESPONSIBILITY	REQUIRED ACTION
1	Aug. 28	Prepare Project Plan		(This Document)
DATA COLLECTION	Aug. 29	Management Planning Meeting		Attendees & Agenda
	Aug. 29	Review Status of Other Data Collection Items Listed Below		Follow-up & Setting Priorities
	Aug. 30	Establish Timetable for New Production in Central System		Prepare Plan to Solve the Current Incentive System Problems
	Sept. 3	Employee Profiles		Seniority by Age Seniority by Sex Other?
	Sept. 3	Contract Clause Analysis		Copy to Staff
	Sept. 3	Typical Average Earnings Chart (NOTE: B.B. refers to Bargaining Book)		Copy to LR Mgr. for B.B.
	Sept. 3	8 year Review of Economic Benefit Improvements		Survey by Year of all Economic Changes in Employee Benefits Copy to LR Mgr. for B.B.
	Sept. 3	3-5 year Review of Non-Economic Improvements		Same as above except focus is on Non-Economic Items
	Sept. 3	CDI and/or COL Index Figures		-1964 to Date -1973 & 1974 by Month Copies to B.B.
	Sept. 4	Home Address & Phone Nos. of Key Management Personnel		Copies to B.B.
	Sept. 6	Average Hourly Earnings		Copies to LR Mgr. for B.B.

DUE DATE	TASK	REQUIRED ACTION
Sept. 6	Local Wage Survey	Comparison to Starting Rate, Ranges & Average Hourly Earnings of both Union & Non-Union Companies in the Local Labor Market
Sept. 9	Prepare "First Cut" for B.B.	Binders, Tabs, Etc.
Sept. 13	Local Benefit Survey	Inclue all Fringe Benefits - Where There is Cost (who pays) Also include Non-economic Benefits
Sept. 13	Local Wage Settlements	Keep Newspaper & Other Media Releases
Sept. 20	Internal Job & Wage System -List of Jobs & Rates -Documentation of Job Classification System	Copies to B.B.
Sept. 20	Employee Turnover Rates -If possible, by Dept. -Disciplinary Action -Turnover by Seniority	Copies to B.B.
Sept. 20	Absenteeism Statistics	Copies to B.B.
Sept. 20	Foremen Input on Problems In Administering the Labor Agreement	Copies to B.B.
Sept. 20	Documentation on All Unwritten Policies, Practices which should be Included in the Labor Agreement	Copy to B.B.
Sept. 20	Typical Employee Profile (Bi-Model)	Copy to B.B.
Sept. 23	Business Factors	Copy to B.B.
Sept. 23	Productivity Analysis -By Dept. -By Shift -By Product (Whatever Makes the Most Sense)	Copies to B.B.

DUE DATE	TASK	REQUIRED ACTION
Sept. 23	Hourly Workers Work Schedule by Shift, by Dept.	Copies to B.B.
Sept. 23	Past trends in Costs & Selling Price	Copies to B.B.
Sept. 27	Grievance Analysis	Copy to B.B.
Sept. 27	Analysis of Status of Sensing Comments & Problems	Copies to B.B.
Sept. 27	Cost Analysis of Various Pension Revisions Note: Employee Profiles (Average Earnings, Etc. Must be Completed by 9/3/74)	Copy to B.B.
Sept. 27	Costs of Additions to, or Improvements in Plant & Equipment During -During Last 5 Years by Year -Estimate Over Next 3 Years by Year, if possible	Copies to B.B.
Sept. 27	Financial Data -Current & Projected Sales (3 years in future) -Costs ($ & % Goals) -Labor Costs (% of Cost) -Material Costs (% of Cost) -Overhead Costs (% of Cost) -Other as Appropriate	Copies to B.B.
Sept. 27	Cost Analysis of Current Fringe Benefits ($ and as a % of Management Costs) -Life Insurance -Medical Insurance -Ltd -Pension -Holiday Pay -Vacation Pay -Jury Duty -Military Pay -Educational Reimbursement -Workman's Compensation -Social Security -State Disability (if any) -Other Pay for a Time Not Worked (Paid Sick Leave, etc.)	Copies to B.B.

	DUE DATE	TASK	REQUIRED ACTION
	Sept. 27	Strike Plan 1st Draft	Copy to Div. Mgr. & Staff LR Mgr.
	Sept. 30	Organization Chart	Copies to B.B.
	Sept. 30	Overtime Earnings - For Last Year or Two	Copies to B.B.
	Sept. 30	Employee Benefits as % of Payroll	Copies to B.B.
	Oct. 1	Grievance Procedure	Copy to B.B.
	Oct. 1	Cost Coversion Chart -300 Employees -350 Employees -400 Employees -450 Employees	Copy to B.B.
	Oct. 1	Assemble B.B.	
	Nov. 1	List of Employees & Their Current Base Rate - Previous Weeks Earnings Without Overtime	Copy to B.B.
	Nov. 1	Seniority Lists	Copies on File in Personnel
	Nov. 22	Union Bargaining Committee Profile	Copy to B.B.
11 PRE- NEGOTIATIONS	Oct. 2	Management Meeting to Review B.B. Data & Start Establishing Goals & Targets -Review B.B. -Select Negotiations Teams/Roles -Review Clause Analysis -Work Management Economic & Non- Economic Goals -Develop a Sense of Union Demands -Develop Management Proposals -Assign Follow-up Action Items	Set Agenda & Set up Mtg.
	Oct. 11	Report Results of Management Strategy Meeting	Copy to Div. Mgr. & LR Mgr.
	Week of Oct. 14	Review Management Goals with Unit V.P.	As indicated
	Oct. 15	Review Strike Plan Status	
	Nov. 1	Final Draft of Strike Plan	Copy to B.B.

	DUE DATE	TASK	REQUIRED ACTION
	Nov. 8	All Material Not Already Included in B.B. Delivered to LR Mgr.	Copies to B.B.
	Nov. 10	Assemble Final B.B.	
	Nov. 10	Distribute B.B. to Top Team	
	Nov. 15	First Draft of Management Proposals	Use Labor Attorney as Appropriate
	Dec. 1	Decisions on Final Non-Economic & Economic Contract Changes	
	Dec. 9	Set Up First Bargaining Session	
III Negotiation	Dec. 15	Negotiations Team Meeting Review General Plans and Strategy	Arrange for Meeting, Set Agenda, Etc.
	Dec. 16	First Negotiations Session -Receive Union Demands -Review & Clarify Union Demands -Set Date for Next Session (Early January)	Spokesman
	Jan. 6	Cost Out Union Proposals	Copies to Team
		Prepare Management Response on Union Non-Economic Proposals	Copies to Div. Mgr. & Spokesman
	Jan 8	Review Meeting of Management Responses	Set-Up Meeting Copies to B.B.
	Jan 9	Second Negotiations Session with Union -Respond to Union Demands -Present Management Proposal Non-Economic -Establish Order in Which We Will Discuss Negotiation Items	Respond to Union Demands Spokesman
	Jan 14	Third Negotiations Session	Focus on Non-Economic Issues
	Jan 15	Prepare Company Position on Economic Issues	Minimum to Settle Maximum Before Strike Most Likely to Settle

DUE DATE	TASK	REQUIRED ACTION
Jan. T6	Distribute Cost Data & Company Position on Economics	Final Review with unit V.P.
Jan. 21	Fourth Negotiations Session (Still Non-Economic)	
Jan. 22	Management Meeting Review Status on Non-Economic Issues -Set Strategy and Tactics on Economic Issues	Set Up Meeting & Plan Agenda & Attendees
Jan. 24	Complete Cost Analysis of All Union Demands, Actuaries and Company Proposals, Etc.	Copies to B.B.
Jan. 28	Fifth Negotiations Session -Start Negotiations Session Economic Issues Note: Essentially from this point on, the number of bargaining session topics to be discussed will be adjusted to meet the needs of both parties as they develop	
Feb. 11	Prepare Flier for Union Leaders to Sell Agreement	Copies to Spokesman
Feb. 12	Prepare Memorandum of Agreement	Copies to Team
Feb. 13	Signing of Memorandum of Agreement	

IV FOLLOW-ON — This Phase "Plan" Will be Prepared by LR Manager with help from Bargaining Team at a Later Date.

CHART II

EXAMPLE OF
A BARGAINING BOOK OUTLINE IN PRIVATE SECTOR

Section I. CURRENT CONTRACT

Section II.

A. COMMUNICATIONS PROGRAM

1. Letters
2. Mass Meetings
3. Press Releases
4. Small Group Meetings
5. Topics:

(a) Business Factors of Company

(i) Products
(ii) Competition
(iii) Importance of Profits and How Wages Relate

- Profits Determine Investments

(iv) Flexibility Needs

(b) Improved Efficiency and Productivity
(c) Business Outlook
(d) Others

B. BUSINESS FACTORS

1. Organization Chart
2. Productivity Data Chart

- Units Sold
- Net Sales Dollars
- Direct Labor Dollars
- Sales $ / Direct Labor $
- Units Sold / Direct Labor $

3. Financial History Chart (Past 10 Years)

(a) Sales-Profit Before Taxes - Profit %- Units
(b) Sales / Direct Labor $ - Direct Labor Pop.
Cost / Unit

4. Principal Products
5. Delivery Times
6. Principal Competitors
7. Principal Customers
8. The Industry

- Average Prices and Types of Products
- Industry Sales

C. INTERNAL JOB AND WAGE DATA

1. Rate Chart

Avg. Hrly Direct Rate	No. Of Empl.	Direct Low Rate	Direct High Rate	Same For Indirect Labor

/By Depts/

/Total Union Empls/

/Avg. Base Rate/

2. Wages and Area Comparison

Job Classifications	Company Avg.	Area Low	Area High	Area Average

3. Overtime Costs Chart

1971	1972	1973	1974 to Date

/By Depts/

4. Labor Grade Chart

Grade	Job Classifications Within The Grade	Job Rate

5. Job Classification Descriptions

D. BENEFIT COSTS CHART

	Annual $	% To Gross Payroll	Av. Cost/Employee Hr.	Wk.	Yr.
1. Payroll-Related					
Vacations					
Holidays					
Sick Pay					
Rest Periods					
Miscellaneous					
Subtotal:					
2. Insured					
Pension					
Life Ins.					
Hosp/Surg/Med					
Wkly Sick & Acc.					
Major Medical					
Other					
Subtotal:					
3. Legally Required					
Social Security					
Unemployment					
Workmen's Comp.					
Subtotal:					
4. Total					

E. BENEFIT LEVELS CHART

Benefit	Company	Competitors	Area
Holidays			
Vacations			
Sick Leave			
Group Life Insurance			
Hospital Insurance			
Hosp.			
Surg.			
X-Ray			
Major Medical			

(Continued)

Benefit	Company	Competitors	Area
Pension			
S & A			
Stock Savings			
Jury Duty			
Bereavement Pay			
Shift Premium			

F. COPIES OF INSURANCE TRUSTS AND BOOKLETS

G. EMPLOYEE STATISTICS CHARTS

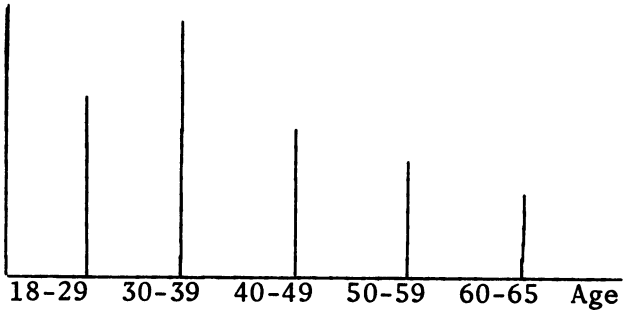
1. Seniority

Length of Service	No. of Employees (By Job Grade) 1	2	3	4	Total
Less than 3 mos.					
3 - 6 mos.					
6 mos. - 1 yr.					
1 - 2 yrs.					
2 - 3 yrs.					
3 - 5 yrs.					
5 - 7 yrs.					
7 -10 yrs.					
10-15 yrs.					
15-20 yrs.					
Over 20 yrs.					
Total:					

2. Sex, Marital Status, Age

Job Title (By Grade)	No. Males	No. Females	Marital Status S	M	D	No. Depends.	Avg. Age.
Total:							

Age Profile Graph



3. Wage Chart

Grade	Empl. Name	Seniority Date	Job Title	Current Rate

4. Vacation Eligibility Chart

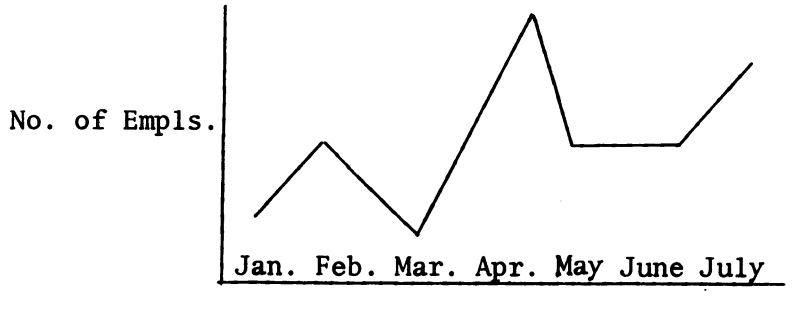
3 weeks	50 X 3	=	150
2 weeks	100 X 2	=	200
1 week	25 X 1	=	25
Total Weeks:		=	375

H. TURNOVER

1. Detail Chart

Date	Grade	Job	Avg. # Empl.	Average Years of Seniority	No. of Separations Vol. and Invol. Leave of Absences
Total:					

2. Activity Graph



3. Layoffs During Past 12 Months

Date	Dept.	Job	# of Empl.	Temp.	Permanent

4. Discharge Cases Last 12 Months

Date	Department	Reason	Name

5. Number of Employees on Recall List

Grade	Job Title	No. on Recall List

I. GRIEVANCES

1. Grievances Settled

Shift	No. of Grievances	Settlements Step I	Step II	Step III

Total:

2. Issues

% of Grievances	Issue
%	Transfers
%	Overtime Distribution
%	Holiday Pay
%	Job Bidding
%	Layoff
%	Seniority

3. Settlements

_____% Favor of Company

_____% Favor of Union

4. Grievances Unsettled: Pending Arbitration

Name of Grievant	Issue

5. Description of Grievances During Current Contract

a)

By Contract Article	Date	Name	Dept.	Issue	Contract Violation Claimed	Stlmnt

b)

By Foreman	Foreman Name	Shift	No. of Grievances

J. ECONOMIC DATA

1. Current Settlement Trends

(a) This Union
(b) Generally

2. Average Hourly and Weekly Industry Earnings

(a) This Area
(b) Nationally

3. Consumer Price Index Trend

(a) This Area
(b) Nationally

4. Strike Trends

(a) This Union
(b) This Area
(c) Generally

K. RECENT SETTLEMENTS OF RELEVANCE

/Articles or other reports by Area or Industry/

L. UNION DATA

1. Labor Relations History of Company

(a) Date Organized and Vote
(b) Number of Contracts
(c) Number of Strikes
(d) Major Issues Last Negotiation
(e) Number of Meetings Each Contract
(f) Current Climate for Negotiations

2. Anticipated Union Bargaining Committee

Name	Status	Description

Section III.

A. PRE-NEGOTIATIONS ANALYSIS OF CONTRACT CLAUSES

Article	Section	Recommended Change	Reason

B. COMPANY SPECIAL PROBLEMS - OTHER

Problem Study Report Solution Recommended

C. UNION PROPOSALS

/File as Received/

D. COSTS OF UNION PROPOSALS

E. COMPANY PROPOSALS

/File as Given/

F. COSTS OF COMPANY PROPOSALS

Section IV.

A. MINUTES OF EACH NEGOTIATIONS MEETING

B. RUNNING SUMMARY SHEET ON "NEGOTIATIONS STATUS" OF EACH CONTRACT ARTICLE AND SECTION

C. COST TABLES

1. Penny Chart: What Each 1 Cost Increase Costs In Thousands of Dollars

$1.00

$ .01 _____

/Also express in chart as $ per week, month, year of each cent to $1.00/

2. Other, By Item

/e.g., cost of giving 3 weeks' vacation after 5 years/

3. Costs of Giving Same Improvement to Non-Unit Employees

SECTION V.

A. MEMORANDUM OF SETTLEMENT/AGREEMENT

B. COSTS OF SETTLEMENT

C. REVISED CONTRACT

D. NEGOTIATIONS CRITIQUE

E. FOLLOW-ON PROJECT PLAN

CHART III

EXAMPLE OF
CONTRACT BARGAINING GOALS

Non-Economic:

1. Clean up the old, out-dated agreement to fit the new business at one location and organize functionally.
2. Improve our major non-economic policy and practices to more closely conform to what we are actually following today or want to practice today.
3. Retain our seniority position of departmental bumping as an integral part of our management of the business.
4. Develop a sensible, working relationship with this new bargaining agent for the employees.

Economic:

1. Get a one year agreement with no COLA.
2. Minimum settlement (3-5%) for 1 year or one year agreement - nothing now but a wage re-opener in 6 months.
3. Minor improvements in Benefits (disability insurance, holiday pay and vacation pay).
4. No change in Pension Plan or any other Health and Welfare items.

The key issue in this negotiation is how to help the new union sell a non-economic contract to the rank-and-file in this first agreement for the union. We feel we can do this through a short term agreement with a 6 month controlled wage re-opener. We feel this will be an important step in our future relationship and negotiations with this union. A modest economic package is critical to the financial health of the division for the next 12-15 months.

Strike Forecast:

The history at this business argues for our forecast of no work stoppage. On the other hand, the union has a well known reputation for first contract work stoppages.

Outlook and Timetable:

We see seniority and wage package in combination with the short contract term as the critical negotiations points. Our hope is to settle some time in mid-April.

Attached is a detailed review of our estimated settlement goals on a min/max and most likely basis.

"Most Likely"

COST ESTIMATE (All figures for one (1) year)

	% Inc.	Cents Per Hr.	TOTAL COST Salary	TOTAL COST Hourly
Wages	4.8	$ .160		$ 83K
Fringes 20.3%	1.0	.033		17K
Overtime Pay	.1	.002		1K
Disability	.5	.015		8K
Medical Ins.	1.6	.053	$6.5K	21K
Pension	.6	.020		10K
Holiday	.4	.013		7K
Vacation	.4	.012		6K
TOTALS	9.4%	.303	$6.5K	$ 153K

Assumptions: $159.5K

1. Average wages $3.30 per hour.
2. 250 hourly employees.
3. 2 employees working overtime on Saturday (regardless of 40 hours worked) 8 hours - 40 weeks.
4. 150 hourly and 50 salaried employees - family coverage.
5. Disability will cost $2.75 more per employee per month.

COLLECTIVE BARGAINING GOALS

Estimate Settlement Levels

	Maximum	Optimum	Minimum
1. Term	3 years (with COL)	1 year	1 year
2. Wages **	9 - 6 - 6%	5% (retroactive to February 15)	3% - 5% now or wage re-opener in Fall with 6% - 8%
Inequities	All classifications but Assembly area	those already in paycheck	those already in paycheck
3. Incentive System	No change	Eliminate it or make changes	Eliminate it
4. Shift Differential	10% for hourly earnings	No change	No change
5. Overtime pay	1½ time for Saturday work (regardless of 40 hrs worked) 2 times for over 10 hours in one day.	1½ time for Saturday work (regardless of 40 hrs. worked)	1½ times for Saturday work (regardless of 40 hrs. worked)
6. Life Insurance	Double amount for accidental D & D. Retirees retain 50% in force but not less than $5,000.	No change	No change
7. Disability	75% of weekly earnings for 26 weeks. Begin disability on 4th day.	$60.00 (from $40.00) for 13 weeks	$60.00 (from $40.00) for 13 weeks

** Assuming no change in incentive system at time for ratification.

	Maximum	Optimum	Minimum
8. Medical Insurance			
Cost	50-50%	25-75% for dependent coverage	Joint Union Company Committee to study this
Coverage	No change	No change	No change
9. Pension	Prior years service (only if necessary to avoid strike). Changes required by ERISA of 1974.	(same)	Changes required by ERISA
10. Holidays	1½	1½	1½
11. Vacation	6 months - 3 days 1 year - 1 week 2 years - 2 weeks 10 years - 3 weeks 20 years - 4 weeks 30 years - 5 weeks	(same)	(same)

CHART IV

CONTRACT SETTLEMENT

TERM

THREE YEAR CONTRACT
4/1/74 - 3/31/76

WAGES

	1st YEAR	2ND YEAR	3RD YEAR
Across the Board	4½%	21¢	4½%
Effective	4/1/74	4/1/75	4/1/76

SKILL ADJUSTMENTS

- An average of 11¢ per hour in additional pay.
- Individual increases will vary based on Labor Grade.
- Effective 4/1/74.

COST OF LIVING

- Effective October 1, 1975, 6¢ cost of living maximum.
- Effective October 1, 1976, an additional 6¢ cost of living maximum.

HOLIDAY AND HOLIDAY PAY IMPROVEMENT

-One additional holiday in first year, a floating holiday to be decided by the Union and the Company each year.

-When a holiday is worked you now will earn double time for the first eight hours and triple time for work in excess of eight hours in addition to your holiday pay!

OVERTIME PAY IMPROVEMENT

- Double time for all hours worked in excess of ten hours in any work day!

LIFE INSURANCE IMPROVEMENT

- The Company will pay the full cost for all Basic Optional Life Insurance for all active employees effective April 1, 1974.

MAJOR MEDICAL INSURANCE IMPROVEMENT

- Maximum coverage increased from $10,000 to $25,000.
- Effective April 1, 1976, your Major Medical Insurance for both you and your family will be fully paid for by the Company.

VACATION IMPROVEMENT

- Four weeks vacation after 20 years of service effective in third year
- Three weeks vacation after 10 years of service effective in third year.
- Pay for vacation time off has also been improved, based on years of service.

  Example:

  8% of employee earnings after 20 years service instead of 7%.

- You will now receive full credit for all years of service from date of hire in determining your vacation hours.

Employees terminated for any cause are guaranteed all earned vacation pay.

FOR YOUR SAFETY

- Employees in the Plating, Acid Solder and Screw Machine Departments will now receive work clothing and/or other protective equipment at Company expense.

TRAINING PERIOD IMPROVEMENTS

- The total training period for new employees and learners has been shortened from 39 weeks to 24 weeks. We have speeded up the wage rate progressions during the training period.

Example:

70% at 8 weeks
80% at 16 weeks
90% at 24 weeks

OTHER IMPORTANT IMPROVEMENTS

RED CIRCLE RATES

- No excess wage rates will be paid unless ALL EMPLOYEES in the classification receive them.

LABOR GRADES

- For the first time, all job classifications have been grouped into Labor Grades in order to simplify your job and pay system.
- In addition, all job classifications and wage rates will be listed in your labor agreement.

IMPROVEMENT IN RECALL RIGHTS

- Employees on layoff who are qualified to perform the work for an open job will be selected and given the same consideration and job training that would be given to a new employee.
- Your starting rates upon recall have been spelled out more clearly.

For example:

(a) Recall to old job - job rate.
(b) Recall to higher rated job - old rate or 90% of new job rate, whichever is greater.
(c) Recall to lower rated job - lower rate.

ADDITIONAL BUMPING RIGHTS

-Employees on the active payroll as of April 1, who have five years seniority, or who thereafter attain five years seniority, will be able to bump into additional jobs as follows:

(a) Each job classification which previously could bump into the Solderer Operator classification, as well as the Solderer Operator, will now be able to bump into the new job classification of General Assembler.

(b) Instructor may bump into the new job classification of Relief Operator and vice-versa. Relief Operator may also bump into the classification of General Assembler.

- 631 Machine Operator may now bump into the job classification of 725 Solderer Operator.

PAST PRACTICES

- We have agreed that all important but unwritten past practices will continue during the life of this Agreement.

GENERAL

- Your contract language has been clarified and improved in other respects:

  - Maternity Leave Clause - changes to broaden the rules for Pregnancy Leaves.

  - Grievance Language - changed to permit an employee and/or the Shop Steward to present grievances.

  - Obsolete job classifications have been eliminated.

  - Severability - provides that if any contract clause is found to be illegal, it will not affect any other contract clause.

  - Zipper Clause - provides that the contract contains all proposals by both the Company and the Union.

CHART V

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 Management Rights (Title)

PARAGRAPH: 1 PROPOSAL # 1

UNION'S RESPONSE

UNION'S FIRST PROPOSAL DATED: 2/11/75

1. The Employer shall have the right to exercise customary and regular functions of management, except as otherwise provided for in this Agreement. However, the right of the Union to bring a grievance alleging abuse of these rights is recognized.

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 — Management Rights (Title)

PARAGRAPH: 1, 2, 3, & 4 — PROPOSAL # 1

COMPANY'S RESPONSE

GENERAL: The Company rejects the Union's demand of 2/11/75 and proposes the following:

COMPANY'S COUNTER PROPOSAL #1 — DATED: 2/11/75

1. The Union agrees that the Management of the Company including the right to plan, direct, and control operations, the direction of the working force, are the exclusive rights and functions of the Employer.

2. The Union agrees that the Employer has the right to make rules and regulations and to change such rules and regulations from time to time which rules and regulations will not be inconsistent with this agreement.

3. The Company shall have the right to select and train its employees, to discipline and discharge them for proper cause; to transfer employees temporarily or permanently to new duties; to relieve employees from duty because of lack of work or for other legitimate reasons; to schedule its operations or to extend, limit, curtail or reschedule its operations, when in its sole discretion, it may deem it advisable to do so; providing that any claim by the Union that these rights are being exercised in violation of specific provisions of this agreement might be brought forward as a grievance and shall be dealt with in accordance with the grievance and arbitration provisions of this agreement.

4. The parties agree that the foregoing enumeration of Management's rights shall not be deemed to exclude other recognized rights and functions of Management not specifically covered by this agreement. The Employer therefore retains all rights and functions not otherwise specifically covered in this agreement.

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 — Management Rights (Title)

PARAGRAPH: 1 — PROPOSAL # 2

UNION'S RESPONSE

GENERAL: The Union withdraws its first proposal submitted on 2/11/75 and counter proposes the following:

UNION'S COUNTER PROPOSAL #2 — DATED: 2/12/75

Paragraph 1. - Company proposal of 2/11/75 accepted.

Paragraph 2. - Company proposal of 2/11/75 accepted.

Paragraph 3. - Company proposal of 2/11/75 accepted.

Paragraph 4. - Company proposal of 2/11/75 accepted.

In addition, the Union proposes that the following language be added as Paragraph 5:

> Employees will only be transferred to other locations when mutually agreed to by employer and employee.

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 — Management Rights (Title)

PARAGRAPH: 1, 2, 3, 4, & 5 — PROPOSAL # 2

COMPANY'S RESPONSE

GENERAL: The Company accepts the Union's proposal #2 with the addition of the last sentence in paragraph #5.

COMPANY'S COUNTER PROPOSAL #2 — DATED: 2/13/75

1. The Union agrees that the Management of the Company including the right to plan, direct and control operations, the direction of the working force, are the exclusive rights and functions of the Employer.

2. The Union agrees that the Employer has the right to make rules and regulations and to change such rules and regulations from time to time which rules and regulations will not be inconsistent with this agreement.

3. The Company shall have the right to select and train its employees, to discipline and discharge them for proper cause; to transfer employees temporarily or permanently to new duties; to relieve employees from duty because of lack of work or for other legitimate reasons; to schedule its operations or to extend, limit, curtail or reschedule its operations, when in its sole discretion, it may deem it advisable to do so; providing that any claim by the Union that these rights are being exercised in violation of specific provisions of this agreement might be brought forward as a grievance and shall be dealt with in accordance with the grievance and arbitration provisions of the agreement.

4. The parties agree that the foregoing enumeration of Management's rights shall not be deemed to exclude other recognized rights and functions of Management not specifically covered by this agreement. The Employer therefore retains all rights and functions not otherwise specifically covered in this agreement.

5. Employees will only be transferred to other locations on a permanent basis when mutually agreed to by employer and employee. For purposes of this section, permanent means a period in excess of 60 days.

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 — Management Rights (Title)

PARAGRAPH: 1 & 2 — PROPOSAL # 3

UNION'S RESPONSE

GENERAL: The Union rejects Management's proposal #2 and counter offers the following:

UNION'S COUNTER PROPOSAL #3 — DATED: 3/4/75

1. The Employer shall remain vested with full exclusive control of the management and operation of the Company and with the direction and supervision of the working forces, including its right to hire, suspend, or discharge employees for proper cause; or to transfer employees duty because of lack of work or for other legitimate reasons; or to schedule its operations; or to extend, limit, curtail or reschedule its operations, when in its sole discretion it may deem it advisable to do so, providing that any claim by the Union that these rights are exercised in a discriminatory manner shall be considered a grievance and shall be dealt with in accordance with the terms of this agreement.

2. Employees will only be transferred to other locations on a permanent basis when mutually agreed to by employer and employee. For purposes of this section, permanent means a period in excess of 60 days.

CONTRACT BARGAINING STATUS BOOK

SECTION: 1 — Management Rights (Title)

PARAGRAPH: _____ PROPOSAL # 3

COMPANY'S RESPONSE

GENERAL: The Company rejects Union proposal #3 and offers the following compromise proposal:

COMPANY'S COUNTER PROPOSAL #3 DATED: 3/5/75

1. The Employer shall have the right to exercise customary and regular functions of management, except as otherwise provided for in this agreement. However, the right of the Union to bring a grievance alleging abuse of these rights is recognized.

2. The parties agree that Management's rights shall not be deemed to exclude other recognized rights and functions of Management not specifically covered by this agreement. The Employer therefore retains all rights and functions not otherwise specifically covered in this agreement.

3. Employees will only be transferred to other locations on a permanent basis when mutually agreed to by employer and employee. For purposes of this section, permanent means a period in excess of 60 days.

Parties agreed:

Signature _____ for Union

Signature _____ for Company

Date 3/5/75

CHECKLIST FOR MEET AND CONFER

I. Prior To Submission of Association Demands:

_____ Select a negotiating team

_____ Budget expert

_____ Personnel expert

_____ Operations expert

_____ Labor relations expert (or liason with labor attorney)

_____ Pick a spokesman

_____ Pick a recorder

_____ Pick observers

_____ Select management group (for advice to negotiating team)

_____ Establish small caucus group for negotiating team to work with

_____ Establish large management group to react to proposals and communicate employee feeling to negotiators

_____ Review

_____ Review previous meet and confer history with management

_____ Review unfavorable arbitration awards

_____ Review grievances

a. provisions
b. frequency
c. where disputes occurred

_____ Management's proposals

_____ Review meet and conferral in other agencies for new ideas, e.g., performance pay

_____ What policies result in excessive grievances

_____ Vague and ambiguous policies

_____ How provisions should be changed

_____ Anticipating Association demands

_____ Same demands by same association in another agency

_____ Resolution passed at Association convention

_____ Speeches by Association officials

_____ List of grievances filed

_____ Unmet demands from previous negotiations

_____ Inservice training of managers and administrative personnel

_____ Roles of managers and administrators in the process

_____ Explanation of the applicable law, agency philosophy and policies

_____ Appraisal of the rights of management

_____ Right to maintain efficiency of agency operation

_____ Right to hire, dismiss for cause, etc.

_____ Right to take all necessary action in emergency situations

_____ Advise of any rules or regulations that affect employees

_____ Uniform application

_____ Assemble the facts

_____ Determine for each classification

a. number of employees
b. wages for past 5 years
c. turnover rate
d. absentee rate
e. vacancy factor
f. average length of service
g. average overtime
h. average straight time hourly rate
i. cost of fringe benefits

_____ Survey for each classification

a. wage rate in similar jurisdictions and private industry
b. fringe benefits in similar jurisdictions and private industry
c. general economic trends

1) wages
2) cost of living
3) other price indexes

II. Analyze Union Demands

_____ Distribution to

1. Staff departments affected

   a. budget
   b. personnel
   c. jurisdiction's attorney

2. Line departments affected

_____ Each demand should initally be analyzed as to:

_____ Affect on legal responsibility

_____ Cost to agency

_____ Tax rate increase

_____ Effect on agency governing process

_____ Probable union priority

_____ Effect on ability to manage

_____ Questions to be asked on every proposal

_____ Is there a real problem?

_____ Is it a continuing problem?

_____ Is it general in nature or specific and limited?

_____ Will the proposal change the problem?

_____ Is the proposal the same size as the problem?

_____ Is the proposal free from adverse operating effects or unanticipated costs, now or in the future, and does it infringe on management's rights?

_____ Is the cost reasonable in relation to the problem?

_____ Is the cost reasonable in relation to the total cost impact of the settlement?

_____ Will new problems be created ?

_____ Managerial personnel should always be involved with the implication of the demands and their affect on the operations of the agency. This involvement also allows for uniform application of proposals adopted

_____ Cost items - Economic and political considerations -

- _____ Internal data
- _____ Current salary and fringe benefit levels and their cost
- _____ Number of employees in each job classification
- _____ Breakdown of the number of employees by sex, marital status, number of dependents and age
- _____ Total fringe benefits including days off
- _____ Actual dollar amount per employee
- _____ What one cent increase and multiples thereof will mean in total cost
- _____ Effect on tax rate
- _____ Budget and review projections for year to be covered
- _____ Analysis of effect of agreement on employees not covered in the unit

_____ External data

- _____ Information on recent settlements by Associations in other agencies
- _____ Comparative data surveys
- _____ Cost of living and base period
- _____ Surveys of total compensation in surrounding areas
- _____ Salary surveys in both public and private sector
- _____ Other pertinent surveys

III. Analyzing the Association Negotiator

_____ Learn as much as possible about the negotiator

_____ Does the negotiator live up to his commitments?

_____ What approach does he take in the negotiating process?

_____ Will he control his committee or will they control him?

_____ Quick settlement or will he wait until there is no other alternative?

_____ Is any member of the committee emotional, unreasonable or involved in a particular crusade?

_____ Identify each member of committee as to job, militancy, capabilities or any other pertinent information

IV. Management's Goals and Objectives

_____ Must set guidelines for management's negotiator

_____ Long term goals

_____ Short term goals

_____ Salary objectives

_____ Supplemental benefit objectives

_____ Alternative objectives

_____ Negotiating plan

_____ Effective communications on status of negotiations with all administrative and supervisory personnel and the governing agency

_____ Minutes

_____ Negotiation bulletins

_____ Review meetings

_____ Constant communications with governing agency on status of negotiations

_____ Make determination as to whether you want to communicate with employees on progress of negotiations

V. Planning Negotiating Meetings

Initial Meeting

_____ Create sincere, calm climate

_____ Establish rules

Each negotiating committee - identifies

a) single spokesman
b) permanent members
c) alternate members

_____ State agency philosophy towards meet and conferral

_____ Check authority of employee committee

_____ Decide on future meeting dates

_____ Decide on length of meetings

_____ Find out if you have total employee organization package

_____ Decide method of ratification and adoption

_____ Establish who employee organization represents

_____ State that agreements are tentative on final agreement on all items

_____ Try to set cutoff date for meet and confer

_____ Establish whether base wages for employees in negotiation

a) should be granted during their normal working hours
b) should not include overtime or any bonuses

_____ Protect confidentiality of meetings until agreement or impasse reached

a) prohibit press releases to public
b) prohibit communication to general membership

_____ Obtain total agreement

a) all parties sign individual provisions when agreed upon
b) signed off provisions are tentative until total agreement reached
c) union committee recommends memorandum of understanding to membership
d) union ratifies memorandum of understanding
e) management and union recommend memorandum of understanding to legislative body
f) legislative body approves and implements

_____ Schedule negotiation meetings to allow time for

a) collecting facts
b) analyzing all factors before responding
c) performing other duties

_____ Establish agenda for next meeting

_____ Review union demands

a. ask who, what, where, when, why and how questions to determine:

1) basic thrust of each demand
2) justification of each demand

b. don't reveal any management positions

VI. Negotiating Process

_____ Clarify employee organizational proposal

_____ Ask for rationale on proposal

_____ State position of management in writing

a. correct deficiencies in earlier memorandum of understanding
b. correct troublesome past practices
c. only offer provisions which serve your purposes

_____ Explain rationale for management position

_____ Request employee organization's answer to management's proposal. (Keep employee organization on management proposal if possible).

_____ Restate all agreements as they are reached

_____ Type up all agreements as soon as possible

_____ Be prepared for trade offs

a. know your priorities
b. determine unions priorities
c. determine areas of possible agreement through compromise

VII. Negotiating Guidelines

_____ Have a high aspiration level - the shortest memorandum of understanding is the best memorandum of understanding

_____ Demonstrate "good faith"

1) justify your position with facts
2) treat the union with respect

a) be courteous
b) maintain your cool
c) don't make personal attacks on union committee members

_____ Be flexible enough to meet changing circumstances

_____ Read the opposition - e.g.

1) know the background of all union committee members
2) be alert to their facial expressions
3) satisfy the interests of employee majority and not the vocal minority

_____ Make the union feel they've won a major victory when you offer any compromise

_____ Don't push technicalities and legalisms

_____ Don't be pressured into making a proposal on the spur of the moment

_____ Don't misrepresent the facts

_____ Don't make committments you do not intend to keep

_____ Don't make a final offer unless you really mean it

VIII. Crisis Negotiation

_____ Check with your principals to make sure that you are expressing their final position

_____ Wrap up all minor issues at the same time major issues are resolved

_____ Estimate the detriment of no agreement compared to the detriment of making a concession

IX. Tentative Agreements

_____ On each provision each party should understand its:

1) purpose
2) effect
3) meaning
4) workability

_____ Draft clear, simple language to reflect the specific agreement

Management Spokesman

I. Responsibilities

A. Know your objectives
B. Know your priorities
C. Coordinate preparation of management demands
D. Coordinate preparation for anticipated union demands
E. Supervise analysis of union demands
F. Control negotiation meetings

1. present a unified management posture
2. you are the only management spokesman
3. you time the offering of counterproposal

G. Be an interested listener
H. Draft phraseology of each provision as soon as agreement is reached
I. Follow up

1. Advise top management immediately of negotiation results
2. Confine jurisdiction's attorney to form of tentative language not substance
3. Send memorandum of understanding to legislative body in timely manner
4. Advise all management levels of memorandum of understanding provisions after legislature approval

II. Authority - within established parameters you must have ability to do what you want when you want

III. Qualities

A. Knowledgeable in:

1. Current interpretation of State and local employee relations laws
2. Jurisdiction's organization
3. Jurisdiction's personnel policies
4. Jurisdiction's management philosophy

B. Command of language

C. Prestige - Jurisdiction's policy makers regard you as an equal

APPENDIX TO TAB C

APPENDIX I

THE STRIKE TEAM

An effective management team must be aware that negotiations or impasse procedures may break down and that a strike or work stoppage may occur. Prior to entering into negotiations the management team should:

develop a "strike" communications network;

elicit the service priorities from each operations chief;

provide middle management with guidelines for developing their contingency plan;

provide all levels of management with guidelines for appropriate employee relations during and after a strike.

Appendices in this Tab contain a list of the elements of a strike plan and sample forms demonstrating the vital linkages of the management team.

* * * * * * *

For a complete discussion of a management approach to handling employee strikes, the reader is referred to Lee T. Paterson and John Liebert, Management Strike Handbook, Public Employee Relations Library #4F, International Personnel Management Association, 1313 E. 60th Street, Chicago Illinois 60637.

APPENDIX II

ELEMENTS OF STRIKE CONTINGENCY AND RESOLUTION PLANS *

Despite all the positive steps management may take, the distinct possibility exists that strikes or other militant group actions may occur. Because of this possibility management must be prepared. Management should develop a strike contingency plan in order to be able to carry out the following:

- To meet such commitments as:
  - Providing uninterrupted service to the public.
  - Assuring availability of supplies and materials.
  - Continuing jobs performed by contractors.
  - Establishing ultimate limits to which the agency can go, using its own resources, to assure continual service.
- To maintain security (plant, personnel, equipment).
- To meet maintenance requirements.
- To assure that the rights of employees who work during the strike are maintained.
- To maintain effective communication throughout the organization.
- To assure that appropriate legal action can be taken.
- To maintain public protection and safety. Protection of managers, working employees and agency property.
- To establish critical needs and their priorities.

PREPARATIONS BEFORE THE STRIKE OCCURS

- Develop training programs to instruct key people in the techniques needed to man production operations, the legal rights of the employees during strikes, and other pertinent matters.
- Prepare a strike plan showing the who, what, when, where, and how of organizational activity in the period prior to the job action.
- Select the communication channels with managers and non-striking employees.
- Select the means and methods of communicating with employees prior to the job action, during the job action, and after the job action.
- Determine the extent and nature of the information needed in decision making and communication processes. This is exploratory for time changes both the type and quantity of information desired.
- Evaluate the union or community group and its leadership. This should probe financial, leadership, and organizational strengths to analyze the union's or other group's ability to resist agency demands.
- Appraise key people in managerial ranks to determine who can and will perform specific tasks during job actions.
- Explore the use of temporary employees.
- Determine the availability of assistance from nearby cities and agencies.
- Investigate the possibility of contracting out to continue services.
- Determine steps to assure delivery of essential supplies and materials.
- Establish position on continuation of work by contractors.
- Develop initial relationships with various news media to feel out their general position and to suggest ways of overcoming negative reactions.
- Consider the following methods of communication and how they might be utilized during a strike: direct letters to homes, agency meetings with taxpayers, press releases, press conferences, community telephone "hotline" or "rumor control" center.

---

* Collective Bargaining for Public Management (State and Local) Reference Materials, U.S. Civil Service Commission Bureau of Training, Labor Relations Training Center, Washington, D.C. 20415

- Develop a time table for actions during the course of a strike.
- Announce, in advance, agency policies with respect to strikes.
- Establish a climate for effective labor relations so that strikes can be avoided.

THE CONTINGENCY PLAN AND ITS IMPLEMENTATION

Carrying On Services

- Determine whether services should be carried on or not, depending on the nature of the strike.
- Determine essential jobs and work that has to be done.
- Determine deployment of non-striking employees and supervisors.
- Initiate procedures for enlisting outside employees if necessary.

THE NEGOTIATING TEAM

- Determine actions of negotiation team during the strike.
- Determine whether negotiations will continue during the strike.
- Determine use of mediators and fact finders.

COMMUNICATIONS WITH THE PUBLIC OR PUBLIC RELATIONS

- Determine how much and what information will be released.
- Decide how to present the management story in the best way.
- Establish public information officer as sole contact on agency position.
- Make sure all community leaders are aware of the issues and the agency's position on the issues.
- Make sure that taxpayers and community leaders are kept up to date on the strike.

INTERNAL COMMUNICATIONS

- Keep the "management team" informed.
- Provide mechanisms for feedback.
- Present a unified front.

EMPLOYEE COMMUNICATIONS (PERSUASION)

- Make sure **all** employees know the issues in dispute and management's side of the issues.
- Make sure **all** employees know the agency's position in regard to refusal to provide services.
- Make sure **all** employees know they risk disciplinary action if they violate the law, or agency rules or regulations.

SECURITY

- Provide police protection against possible violence on the picket lines or against employees crossing picket lines.
- Provide protective measures for workers and equipment in the field.
- Provide security for police-fire communications.

ADMISSION TO AGENCY PREMISES

- Determine who will be admitted: employees, newsmen, union officials, etc.
- Determine the means of identification to be used.

PAY POLICIES

- Determine when pay policies relating to the strike should be announced.
- Determine whether strikers will be allowed to charge strike time to vacation or sick leave.

PAY POLICIES (Cont'd)

- Provide for payment for work done before the strike began.
- Set up methods for determining who is sick and who is on strike.
- Establish a policy on non-striking employees who will not cross a picket line.
- Determine whether there will be overtime or other premium pay for non-strikers who carry on services.
- Determine what legal steps will be taken, if any.
- Explore possible use of injunction and its possible ramifications.
- Determine action relative to strikers who violate strike orders.
- Determine penalties, if any, for strikers.
- Make a file of all statements by employee organization leaders mentioning withdrawal of services, with time, dates, witnesses, and a written account of statement.
- If a temporary restraining order is granted, notify as many of the striking employees as possible, especially the employee organization's leaders, that the strike has been enjoined and that they are required to return to work. Make a file of all such employees contacted, setting forth who was contacted, by whom contact was made and at what time the contact was made.
- Make a file of all activities which are disruptive in nature.

SPECIAL PROBLEMS

Racial overtones.

Community implications.

Maintaining communications with union leadership.

Variables Impacting on The Resolution of the Job Action

Intra-Organizational Variables

- To what extent are management personnel available with the skills to operate the facilities and equipment?
- How many employees can be transferred from other departments not affected by the strike?
- Is there adequate security from threats, harassment and violence provided to working employees, volunteers, and the public?
- What is the impact of the strike on non-striking employees inside and outside the bargaining unit?

Legal Variables

- What penalties are available to impose on the union or striking employees?
- What are the procedures for instituting these legal sanctions?
- How enforceable are these penalties?
- Or, how do you enforce these penalties?

Labor Market Variables

- What is the availability of replacement labor in the local labor market?
- Is the local replacement labor willing to cross a picket line?

Community Group and Union Variables

- What is the union or community group's motivation for going to a strike or job action? For example, is it to show strength, to achieve legitimate gains, to save face, etc.?
- What is the percentage of union or community group membership or support in the total work force and what impact does this exert on worker attitudes?

Community Group and Union Variables (Cont'd)

- What are the financial resources of the local union or the community group involved in the job action?
- What can be the expected support of other unions or groups?
- What is the ability of the leaders involved in the job action?
- What is the overall ability of the organization to maintain a long-term strike?
- What is the ability of the organization to change the agency's position by community pressure?

Inter-Organizational Variables

- Can replacement labor be acquired without precipitating violence and emotion?
- Can members of the bargaining unit be induced to cross the picket line without precipitating violence and emotion?
- How effective will legal sanctions be on the union or community group?
- Will the imposition of any combination of the above three factors have a deleterious effect on bargaining and resolving the impasse?
- What will be the impact of these decisions on the post strike relationship with the union or community group?

Resolving Union Job Actions

- Secure a firm agreement from the union not to take action against or discipline those employees who refuse to participate in the strike or who returned to work voluntarily.
- Be prepared to handle such union demands as: no reprisals against strikers; return to work with full seniority and promotion rights; withdrawal of all employer legal actions; employer full pay for all welfare benefits such as insurance and pensions during the period of strike.
- Be prepared for taxpayers' suit to force management to invoke punitive features of no-strike law.
- Consider possible disciplinary action against employee organization: withdrawal of check-off privileges, suit for damages.
- Prepare a joint statement with the union announcing the end of the strike and containing brief features of the settlement.
- Inform your clients, customers, suppliers, and contractors of the end of the strike.
- Prepare a statement explaining the strike settlement, conditions of return which includes the possibility of disciplinary action against strikers.
- Consider full amnesty or limited amnesty to strikers who return by a certain date.
- Consider holding individual hearings to determine recommendations for discipline (after strike is over).
- Consider possible disciplinary actions against strikers: written warnings, pay freeze, temporary leave without pay, demotion, termination of employment.
- Deal firmly and promptly, through established legal procedures, with all forms of threats and reprisals directed against employees or agency property.
- Inform the management team that they should work to make the transition back to work as smooth as possible.
- Reduce bitterness as much as possible.
- Intensify upward and downward communications.
- Establish a policy for overtime work resulting from the loss of work during the strike.

Resolving Non-Union Job Actions

- Meet with the group to find out what it is they want.

- To the extent that demands fall under the collective bargaining agreement, direct the non-union group to union officials.

- Make union officials aware of non-union group demands that fall within the bargaining agreement or possible scope of bargaining.

- Attempt to persuade the union to take into consideration the non-union group needs that relate to it as the collective bargaining representative.

- To the extent the issues are outside the scope of bargaining of management and the union, direct the non-union group to the appropriate agent or agency.

- Refuse to bargain on those issues that fall under the bargaining rights of the exclusive representative.

- Give notice of possible disciplinary or legal action if the non-union group continues their disruptive activity.

- If necessary, take disciplinary and/or legal action to stop the job action.

APPENDIX III

_____/DEPARTMENT OF
(Agency Name)

_____ CONTINGENCY PLAN

COMMUNICATIONS AND RESPONSIBILITIES IN EVENT OF WORK STOPPAGE

I. Operations Chief

1. Ascertain the extent of the work stoppage. (See attached form for information needed)

2. Notify Department Head and Personnel Officer.

II. Personnel Officer

1. Notify Labor Relations Administrator.

2. Prepare list of names and home addresses of employees involved in work stoppage.

III. Labor Relations Administrator

Contact union to clarify situation.

IV. Department Head

1. Meet with Chief Executive Officer and Labor Relations Administrator to determine immediate steps to be taken to provide essential services.

2. Meet with operations Chief, inform regarding County plan and instruct regarding specific responsibilities.

V. Chief Executive Officer

Meet with elected officials to advise on extent of work stoppage and action taken.

_____/DEPARTMENT OF _____
(Agency Name)

REPORT ON WORK STOPPAGE

Name of Geographic Unit _____

Shift _____ Date _____

Bargaining Unit _____

Division	Scheduled	Absent	Normal Absent	Remarks
(List all appropriate Divisions, i.e., Security, Curatorial, Operations)				
TOTAL				

Note: (When all your department's divisions are listed, please send copy to Labor Relations Administrator)

_____/DEPARTMENT OF
(Agency Name)

_____ CONTINGENCY PLAN

Service/Function_____

Division_____ Section/Unit_____

List employees who have keys which open security areas.

Title	Name	Key opens (Specify location of door, desk, etc.)

List phone numbers of essential personnel.

Title	Name	Phone Number

_____/ DEPARTMENT OF
(Agency Name)

_____ CONTINGENCY PLAN

Service/Function_____

Division_____ Section/Unit_____

1. Does your Unit perform essential services to the public?

   Yes _____ No _____

2. Does your Unit perform necessary support service for essential services to the public?

   Yes _____ No _____

3. If answer is "yes" to either of the above questions, please prepare and attach plan to maintain essential services during emergency.

4. If answer is "no" to both questions:

   A. How will employees who remain on the job be assigned in the event most of the employees are involved in a work stoppage?

_____

_____

_____

_____

_____

   B. What other services could these employees be assigned to during work stoppages?

_____

_____

_____

_____

C. What additional training would be required?

_____

_____

_____

_____

_____

REVIEWED AND APPROVED:

_____
Personnel Officer

_____ _____
Department Head (Date)

_____/DEPARTMENT OF _____ CONTINGENCY PLAN

(Agency Name)

Service/Function _____

Division _____ Section/Unit _____

1. Please estimate the minimum number of employees required to maintain essential services to your Unit: _____

2. If your regular workers are on strike, please identify your anticipated source of personnel or services from your department's other operations or other Departments in the agency below:

Source	Personnel/Service Agreed to Provide	Date Discussed	Training Required (Yes/No)	Training Completed (Yes/No)

3. Please show your anticipated source of personnel, services, supplies, etc., outside the agency below:

Source	Personnel/Service Agreed to Provide	Date Discussed	Draft of Contract Needed (Yes/No)	Contract Obtained (Yes/No)

_____/DEPARTMENT OF_____
(Agency Name)

1.
List Law enforcement agencies contacted who will protect agency property.

Organization	Name and Title	Address & Phone No. of Organization	Date Contacted

2.
List licenses obtained for management personnel to operate essential equipment if employees go out on strike.

Equipment	License #	Title and Emp. Name	Expiration Date of Lic.

3.
List areas to be patrolled, i.e., building entrances through which non-striking employees and supplies must pass, control valves, pump stations, garage facilities, parking lots, etc.

_____

_____

_____

_____

_____

4.
How will the Agencys' guards be utilized?

5.
What alternatives exist if Agencys' guards are on strike?

6.
If complete shutdown is required, what mechanical controls or equipment will need attention, i.e., water, gas and steam valves; power switches, ventilation and refrigeration devices.

Shut Down Task	Employees Assigned	Date Assigned

_____ DEPARTMENT OF _____
(Agency Name)

CONTINGENCY PLAN CHECKLIST FOR PERSONNEL OFFICERS

1. List means to be used to communicate within your department, especially to outlying units.

_____

_____

_____

_____

_____

2. How will this be affected if Agency telephone operators and/or messengers are on strike?

_____

_____

_____

_____

_____

3. List the records you intend to maintain concerning the work stoppage, i.e., date and verification of direct mailings to the home of each striking employee.

_____

_____

_____

_____

_____

_____

4. List methods of strike surveillance to be employed and locations for placement of photographers for best coverage to document all "incidents."

_____/DEPARTMENT OF
(Agency Name)

_____CONTINGENCY PLAN

ADMINISTRATOR AND/OR PERSONNEL OFFICER REVIEW GUIDE

Service/Function (List)	Essential Service (Yes/No)	Problem Area (Identify)	Adequate Contingency Plan (Yes/No)	Date Last Reviewed

DEPARTMENT OF LABOR RELATIONS

CONTINGENCY PLAN CHECKLIST

1. Work with Purchasing and Stores Department and County Counsel to provide our Operations Chiefs with drafts of contracts for use with outside vendors.

2. List in priority order departmental services to be shut down by location and by function.

MANAGEMENT GUIDES FOR EMPLOYEE RELATIONS DURING A WORK STOPPAGE

A. Rules of Conduct

The following rules of conduct should be enforced by law enforcement agencies and observed by those conducting or participating in the strike situation:

1. Every effort should be made to permit individuals and vehicles to move in and out of Agency facilities in a normal manner.

   a. Pickets should not in any way block a door, passageway, driveway, crosswalk, or other entrance or exit to a struck facility.

   b. Union officials or pickets have the right to talk to people going in or out of a struck facility. Intimidating, threats, and coercion are not permitted and no one is required to listen.

2. Fighting, assault, battery, violence, threats, or intimidation is not permissible under the law.

3. Carrying firearms, knives, clubs, and other dangerous weapons is not permissible under the law.

4. Sound trucks should not be permitted to be unduly noisy--should have a permit, and should be kept moving.

5. Profanity on streets and sidewalks is a violation of the law.

B. Management's Role

Staffing requirements of law enforcement agencies will not allow the posting of officers on the scene of a picket line unless severe problems are encountered with employees involved in the work stoppage.

Therefore, management representatives should be in a position to observe and document (statement of facts by witnesses) any violation of the above rules. Such documentation is essential in upholding any disciplinary actions management chooses to take later.

MANAGEMENT GUIDES FOR POST WORK STOPPAGE
EMPLOYEE RELATIONS

OBJECTIVE: Cause employees to return to work and resume normal operations as quickly as possible.

A. Dealing With Employees

1. Greet each returning employee in such a way as to indicate you are happy he/she is back at work.

2. Do everything possible to make sure that employees are assigned to jobs and kept busy.

3. Treat all employees impartially.

4. Avoid discussions regarding the strike, any violence that took place during the strike, individual employees who did or did not work during the strike, grievances, court cases, unfair labor practice charges, union affairs, the union officers, or union meetings.

B. Eliminating Work Backlog

There is usually a backlog of work following a work stoppage. If management should find it necessary to authorize premium paid overtime, the employees who participated in the work stoppage may come out better financially as a result of the work stoppage, thus setting the stage for more of the same.

Possible alternatives:

1. Use overtime during work stoppage to reduce backlog as much as possible.

2. Establish a system of priorities to cut overtime to a minimum.

3. After conclusion of work stoppage, paid overtime should be utilized only if absolutely necessary to eliminate backlog in mandatory functions. Such limited overtime should be assigned equitably among all employees.

D

TAB D

MANAGEMENT COMPENSATION

The overall objective of a separate compensation plan for management is to draw a clear line between *manager* and *managed*, and, at the same time, blurr distinctions between low, middle, and higher levels of management. Under a separate plan, management is treated as one group with special pay arrangements, prestige items, incentives and rewards. This objective is based on two assumptions: (1) that in order to be effective in a collective bargaining relationship, all members of the management groups must identify themselves and others as "managers" and remain loyal to the management position in negotiating and administering a contract; (2) that job motivation and satisfaction is to some extent related to extrinsic rewards received.[1] In a collective bargaining environment management personnel must be dedicated to the agency mission on a day-to-day basis as well as in the event of work stoppage or other labor conflict. Moreover, management compensation must be adequate to insure that such personnel will resist the efforts of unions to incorporate them in a bargaining unit.[2]

Prior to the growth of public sector unionism, most civil service employees (including managers and agency executives) joined employee associations which advocated increased benefits for all public workers. Elected officials and

---

1. See Porter and Lawler, Chapter One, "Motivation and Commitment" on Dale Yoder and Herbert G. Heneman, Jr., eds. American Society for Personnel Administration Handbook of Personnel and Industrial Relations, Vol II, Washington, D.C. Bureau of National Affairs, 1975.

2. Roy Wesley, "Cities Reminded to Cherish Managements" Labor-Management Relations Service Newsletter, Vol. 5, No. 10, October, 1974. (See Appendix I)

top county or agency management, in a position to recommend compensation, tended to treat all employees including department and division heads in the same manner. The identification of a management group for pay and benefit differential is one response to the growth of collective bargaining in the public sector. Efforts to devise specialized compensation plans are based, in large part, on private sector examples.

The Public Sector Environment

Authority for wage-setting and other forms of compensation in the public sector is divided between agency administrators and the legislative body, board, or council governing the jurisdiction. In a prevailing wage jurisdiction, agency administrators are involved in directing or administering the gathering of wage data for comparable jobs in the private sector. Where comparable jobs do not exist, the usual practice is to look to other jurisdictions of comparable size. In a collective bargaining situation, employee spokesmen tend to reject comparison with other public jurisdictions and argue for salary movement based on such factors as the general salary movement of private sector jobs and changes in the cost-of-living.

Boards are politically constituted--that is, elected and subject to the will of the electorate. They may want to present an image to their constituency of setting an equalitarian wage structure in which all public employees get a "decent wage" but no one "gets rich" from the public payroll. Such governing boards are also subject to pressure from nonmanagerial employees in the jurisdiction, who argue that internal equity is violated when managers and executives are granted larger percentage increases than they themselves receive. The elected body has the final say: If that group stands for an

equalitarian wage structure, there is little an agency administrative staff can do. They must abide by the collective decision of the elected body even if wages granted to management do not compare favorably with prevailing wage data from the private sector or from other jurisdictions for comparable jobs.[3] The only recourse for management in this situation is to file a prevailing wage lawsuit, as other employees have done in the past. (The complex and many faceted aspects of wage setting in a prevailing wage jurisdiction will be treated in a practitioner's manual soon to be published by the Institute of Industrial Relations, UCLA.)

Moreover, public sector management is troubled by the "compaction issue" which, stated simply, is the fear that wage and benefit increases granted to subordinate or nonmanagerial employees will, in some cases, close the gap between their total compensation and that of their subordinates. To state a hypothetical example: between the first level of management and the top classification of nonmanagement employees, there has historically been a four-schedule salary difference. Concern is apparent when the nonmanagement employee through a negotiated agreement breaks the tradition by winning a two-schedule increase while the management employee moves only one schedule. If this process continues, the salary range could merge.

---

3. David Lewin, "Wage Determination in Local Government Employment" (Ph.D. dissertation, University of California, Los Angeles, 1971) p. 252.

At the other end of the spectrum, the "lid concept," or the notion that salaries of top administrative officers serve as a "lid" on the salaries of other managerial classes, may affect compensation of public management at the middle levels. For example, if the salary of the Chief Administrative Officer in a jurisdiction changes less rapidly than those of others, the rate of change for other executives or administrators may be retarded.

Finally, the present political climate of economy and efficiency with regard to expenditure of public monies, and the trend, at least in California, toward reduction of management perquisites (official cars, prestige items) affect the overall case for management differentials.

There is, nevertheless, agreement among those who view compensation planning from the management perspective that public policies should be established by the particular legislative body which permit input from public executives who use the resulting compensation programs, and some identification of performance criteria on which pay and differential awards are made.

Formulating Compensation Policy

It has been suggested that public sector compensation policy should be influenced by four categories of considerations: economic, social, ethical and others.[4] Under the economic category, compensation levels must compare favorably with the private sector and, due to the special nature of public sector services, compensation levels must not depend on market demand for employee services. Unlike the private sector, where compensation levels may

---

4. O.G. Stahl, Public Personnel Administration, New York: Harper, 1972

fall in times of excess labor supply, such levels in public organization in their role as model employers tend to be maintained. Under social and ethical considerations, the public employee is "different" from the private and must be treated fairly by the government in its role of model employer by payment of a "living wage" and provision of compensation which enables "(public) executives to associate with their counterparts in private pursuits in dignity and self-respect." "Other" considerations include conditions of employment, hours of work, vacation and other non-cash compensation factors.

To date a review of public policy within public organizations shows an emphasis on external comparisons and "staying competitive." Some lack of concern is shown for basing a reward system on evaluated individual or organizational performance.[5]

F.C. Mosher, commenting on present compensation policy, suggests that such approaches are not compatible with the need to respond to changing organizations; that is, policies responding to external factors discourage initiative, short-term special assignments and special recognition for outstanding contributions. He suggests that public compensation policies should be decentralized to line managers who use the personnel organziation within a jurisdiction to distribute compensation awards. This approach would reduce the role of legislative action in developing compensation policy.[6]

---

5. Jay R. Schuster, "Management Compensation Policy and the Public Interest" Public Personnel Management, Vol. 3, No. 6, November-December, 1974, p. 512.

6. F.C. Mosher, Democracy and the Public Service (New York: Oxford, 1968), pp. 19-20.

A Review of Compensation Policy: Public and Private Sector Differences

Researcher J. R. Schuster reviewed the compensation policy statements of ten public and ten private organizations to compare compensation policy differences regarding managerial personnel. His findings may be summarized as follows:[7]

1. Differences in Treatment - Public organizations have the same policies for all types of employees. In the private sector compensation policies for managerial and nonmanagerial personnel usually differ. The public sector manager may receive a higher base salary than the nonmanagement employee, but no other forms of compensation beyond normal employee benefits.

   A private sector manager is usually offered forms of compensation which recognize his individual needs or preferences, for example, deferred compensation or alternative benefits to cash; estate building opportunities and tax-deferral mechanisms, not available in the public sector. The forms of compensation offered in the private sector would suggest general recognition of the fact that more pay is not the only answer to compensation planning. On the other hand, recent research in the public sector suggests that more pay is increasingly valued among public managers.

2. The Role of Performance - In the private sector, organizational objectives, performance, and financial rewards are directly related. In the public sector, organizational objectives and financial rewards do not appear to be related. Public sector promotions are usually granted to managers based

---

7. Jay R. Schuster, op. cit., pp. 512-514.

on an ability-to-pass tests. The merit system does not suggest use of a method to reward performance based on management success within the organization. D.C. Norrgard proposes using performance appraisal for public sector managers,[8] but little research is available which analyzes the role of performance appraisal in granting financial rewards consistent with evaluated performance.

Private sector management performance evaluated against individual or organizational objectives is the principal factor in determining financial rewards: the success of the organization is tied to the manager's reward.

Varying Compensation

J.R. Schuster finds that a portion (up to 50 percent) of a private sector manager's compensation might vary from year to year based on qualitative or quantitative criteria-- the variation is a result of individual and organizational criteria. Public organizations grant increases in managerial base pay which then become a fixed portion of management income and a fixed cost to the organization. Schuster suggests that the variation in management pay increase in the public sector is minimal; therefore, good performance is unlikely to be perceived as being worthwhile.[9] Moreover, the success of the public sector manager is not tied to the success of the organization;

---

8. D.C. Norrgard, "The Public Pay Plan: Some New Approaches," Public Personnel Review, No. 23 (1971), pp. 91-95.

9. J.R. Schuster and Barbara Clark, "Dealing with Pay Expectation: Solving A Management Riddle," Business Perspectives, Vol. 6, No. 6 (1970), pp. 3-9.

and few policies include incentive plans that, research shows, aid in the development of personnel.[10]

To summarize, Schuster finds that private organization compensation plans are modified to respond to environmental changes. Plans can vary in terms of basis on which rewards are granted, the amount of compensation increase, inclusion of management personnel in an incentive program, and objectives of the program itself.

According to the Schuster survey, public sector management compensation programs do not vary by issues faced in the specific organization, nor do organizational needs and the public interest modify the direction of a reward system.

How to Devise a Management Compensation Plan in the Public Sector

It is obvious that private sector compensation plans cannot be transferred to the public organization unmodified. One reason for this is that the individual managers in each sector may have differing views of "what constitutes management performance" and the "rewards desired for such performance." Again, a survey of 100 managers (50 public, and 50 private) operating in a research environment conducted by Schuster is instructive.[11]

---

10. K.H. Chung,"Incentive Theory and Research," Personnel Administration, Vol. 35, January-February, (1972), pp. 31-41.

11. Respondents in the group of public managers were compensated under civil service regulations and policy. Private sector respondents were compensated under varying compensation plans. J.R. Schuster, op. cit., pp. 515-518.

Schuster finds that public managers view the following factors as components of management performance:

- Quality of work produced
- Loyalty to organization
- Job experience
- Fairness
- Punctuality
- Loyalty to supervisor
- Effort expended
- Organizational growth
- Organizational survival

In the private sector the factors below are viewed as important in a definition of management performance:

- Quality of work produced
- Number of new ideas
- Timing of work completion
- Impact of new ideas
- Effort expended
- Organizational growth

Some factors included by public sector managers in management performance are not listed by private sector managers. "Punctuality," for example, is most often considered a performance-rating criterion among clerical or hourly workers. In contrast, factors identified by private managers appear to be closely related to impact on or contribution to the organization.

Although further research on the question is needed, one might infer that public sector managers include rating criteria typically associated with subordinate employees because separate performance expectations of the management group have not typically been defined.

Identification of rewards desired by public and private sector managers shows similarities and some important differences. Promotion, challenging assignments, cash bonuses, larger pay increases, and verbal praise were valued by both public and private managers. In private organizations nonfinancial rewards valued were: "more autonomy," "more responsibility," "do my thing." In public organizations managers valued "more time off," "sabbatical leave," "more job security," "first class travel."

In the same study public and private managers were asked to say how they viewed their positions, how they impact their organizations, and the relationship of rewards to expenditure of effort. Public managers did not feel that their jobs offered an opportunity to impact the organizations, nor did they feel they had an actual impact. Public sector managers indicated that rewards offered did not cause an expenditure of additional effort. Private managers felt some opportunity for impact, perceived some actual organizational impact, and indicated that their reward system caused some expenditure of additional effort. Both categories of managers preferred rewards based on performance.

Caution should be exercised in drawing conclusions from a small sample of organizations in which a number of variables (age, type of compensation, level of management surveyed, internal criteria, characteristic of public and private organizations) were not controlled.

In general, Schuster finds (1) that public managers feel more factors usually considered representative of nonmanagerial performance are components of managerial performance; (2) that public managers want different rewards for performance, which they define in a manner not generally considered characteristic of managers; (3) that public managers view their jobs and performance as having less impact than private managers; (4) among public managers, little relationship is seen between pay and performance.

If results in this study are consistent with managerial attitudes in specific organizations, public policy should be modified to make certain that the principal reward source for managers is used to assure performance consistent with the public interest. A list of suggested modifications follows:

- A revision in the assignment of the responsibility to make compensation policy for a specific organization.
- The study, clarification, and communication of what constitutes effective management performance.
- Association of the interests of the manager with those of the organization.
- Development of management-compensation programs offering larger rewards for excellent performance than for adequate performance.
- Use of compensation forms more consistent with the expressed preferences of managers.
- A study and clarification of the opportunity a manager is given to actually contribute to the organization and be rewarded consistent with the evaluated impact of this performance.[12]

---

12. Schuster, op. cit., p. 519-520

General Recommendations for Compensation Policy Development

Compensation policies should be custom-built for each public agency. The legislative body might determine that the management compensation budget to be distributed is consistent with the policies of the particular public organization. Top management accountability can be established by allowing top managers to distribute the compensation reward budget, based on systematic criteria. Success in managing compensation dollars can then be evaluated. Separate sets of compensation policies are thus allowed to exist so that different jurisdictions may compete for a different type of managerial talent. A summary of benefits distributed in California jurisdictions is included in appendix II.

Performance Criteria

Compensation dollars should be distributed based on criteria related to individual and organizational peformance. The appendices (III & IV) attached to this section, including compensation plans for the City of Torrance and the City of Palm Springs, show attempts to identify such criteria in two California jurisdictions. In general, performance objectives are spelled out, and managers and other executive personnel can easily identify what constitutes satisfactory performance and connect the financial reward system with the meeting of such objectives. None of the plans attached

include specific criteria relating to performance in labor relations. The identification and inclusion of labor relations performance items may be advantageous as public sector unionism continues to grow.[13]

Incentives

A portion of compensation should vary yearly to reflect variation in managerial performance. The incentive portion of a salary should be distributed according to performance criteria -- some of which deal with the overall organization and some with individual performance on specific projects and assignments. Use of the "equal pay for equal performance" concept can provide a visible demonstration that first-rate performance is valued.

Different Needs

If managers' preferences for different rewards are considered, more satisfaction may be obtained per compensation dollar. Such a policy might include participation in the compensation-setting process by allowing a periodic assessment of the extent and direction of compensation as well as achieving management input in the establishment of organizational policy goals. In the City of Palm Springs, for example, forms of compensation are determined and distributed as agreed between the city manager and city executives.

---

13. Also included is a County of Los Angeles Management Performance Evaluation Plan currently under consideration by Los Angeles County management, (See Appendix VII). For a Management Benefit Package, County of Solano and a Pamphlet describing management benefits in the County of Ventura, see appendices V and VI.

APPENDIX TO TAB D

cities reminded to cherish management

This is the second in a series of excerpts from talks delivered at the annual meeting of the United States Conference of Mayors in San Diego earlier this year. Here Roy Wesley, Assistant City Manager of Spokane, Wash., discusses the increasingly lively topic of executive compensation and how it is affected by collective bargaining with rank and file municipal workers.

Those in city government who have witnessed the beginnings of public sector collective bargaining agree on one point: municipal labor organizations have learned well indeed from their brother unions in the private sector. Borrowing liberally from the techniques learned they have in effect said: "Cities, we are not second class citizens—we deserve treatment comparable to that afforded private employees" and they have been successful.

What about municipal *employers* during this same period? Have we learned from our private sector management counterparts and used those lessons well? To some extent, yes. Are there techniques used by private sector management which we should explore more fully? Again, yes. One: Management Identification is receiving increasing attention in some cities. That term means simply: taking actions which guarantee the presence of a proper sized management cadre which will be dedicated to the agency mission, with unmixed loyalties, on a day by day basis or in the event of a work stoppage, slowdown, mass illness or other labor conflict. Private employees who deal with organized labor on a wide scale work very hard to accomplish this: They do so with what I chose to refer to as the four P's strategy.

1. *Pay*. Especially tailored for management and professionals and specialized benefits greater than and different from those offered union workers.

2. *Participation*. All levels of management, but particularly first line supervisors, middle managers and professional employee are given more independent responsibility and authority. They are encouraged to contribute more significantly to decision making.

3. *Privilege*. Private firms have increased the number and kind of "executive privileges." And importantly, extended them to all levels of management.

4. *Prestige*. Realizing that humans with the drive to rise above the worker level do so because of complex reasons—(not just money alone. The need to achieve recognition, to lead rather than follow—indeed, the need to feel a bit special.) private employees have been liberal with a variety of prestige motivators. management retreats, personal calendars, the use of company credit cards and ad infinitum.

• cities hampered in helping execs

We in cities are limited in our ability to do some of these things. Pay? Especially tailored for management? Some taxpayers want to cut management pay. Special benefits? How does a city give management employees a discount on purchases? Participation in decision making? That has largely been reserved for higher echelons of management in cities, and of course policymaking *must* be reserved to the elected official. Prestige and privilege? Some, but cities have felt it advisable to be more conservative here. Taxpayers object at times to even the assignment of vehicles to be taken home. The reasons for cities to go slowly in these areas are real and valid.

Recently in Colorado Springs, the Colorado Municipal League heard a panel recommend the development of a state labor relations law—none now exists. The panel recognizes the growing strength of public collective bargaining in Colorado. The recommendation was that the League should propose a law "defining professional, confidential, administrative and supervisory employees *who must be exempt from any labor contract.*" A laudable feature. The question is, will the League have the lobbying strength necessary to pass their version—and what will Colorado cities do if their effort fails and public employee groups succeed in getting more unfavorable legislation passed?

Cities that have tried the approach of specialized management compensation, participative management practices advocated by Drucker, MacGregor, and Rensis Likert, cities which have firmed up the line between manager and managed, while deliberately blurring the lines between higher, middle and lower management, choosing to treat them more as one with modest but special pay privileges and prestige incentives and rewards—these cities have had real success.

These cities have kept managers from unionizing, and moreover, have assured day to day management dedication to the central mission which cities have—to provide maximum services to citizens at minimum cost.

The concept of the "key to the executive washroom" has been the point of many off color stories and much ridicule. But notice: only comedians and those who do not enjoy such a privilege sneer. Those who have the privilege feel otherwise.

We in cities had better build some executive washrooms and make available the keys. We otherwise will find our executives are using the washroom in the local labor temple.

Now, there is a paradox present in the behavior of public unions. While they have insisted on being treated as their private sector brothers they have not been willing to exclude management from their bargaining units as is insisted upon by some craft unions. They, Police and Fire and other groups, have encouraged union membership and full bargaining rights for management.

In fact, they have insisted these management employees belong in the union. Of course for the private employers, the National Labor Relations Act provides the separation—the protection of the basic employer right to assume the undivided loyalty of management employees. Supervisory management employees may form unions, but the act exempts employers from the obligation to bargain with them.

No such separation is provided in many state acts—where they exist at all. *What has resulted has been an aggressive encroachment by unions into the ranks of public management.* The Minnesota mediation service recently ordered the city of Minneapolis to create a bargaining unit of all professional engineers in public works disciplines. Not only does this ruling require managers and professionals—it also, by its sweeping coverage, includes the city's chief administrative officer, chief labor negotiator, and the assessor. The decree is under appeal of course.

In several major cities the Fire Chief is in the bargaining unit. In others the International Association of Fire Fighters, AFL-CIO, has sought to have the chief excused from the bargaining process as a management team member. One early union contract specified that all employees *except the City Manager* would be union represented!

Private employers, then, with a definitive federal act which offers some protection against union encroachment into management ranks, have nonetheless worked very hard in imple-

meeting a four P's program for its management. Private employers wanted extra insurance in this vital matter and were willing to pay for it. Furthermore, it has worked for them. We in cities, without such federal protection, understandably conservative in our treatment of managerial employees, are doubly vulnerable in this matter.

• public managers have needs, too

Management loyalty cannot be purchased per se. It must be earned. But experience has proven that the compensation needs of public managers differ markedly from those at the worker level. In addition, pay and benefit additives which union workers enjoy are many and varied: Holiday pay, call in pay, hold over, early reporting pay, out of class pay, clothing allowance, hazardous duty pay, educational incentive pay, overtime pay.

These are and should be denied management employees. But doesn't simple equity dictate at least partially compensating management provisions of a different quality and type?

Are we in a position where we must consider costly new pay and benefits? No. A modest beginning—using the same or slightly increased contributions to structure compensation particularly intended for managers. "A management comes first policy."

Examples:
1. deferred compensation
2. supplemental life insurance
3. selective benefits (cafeteria)
4. group auto and homeowner insurance
5. more medical insurance options
6. paycheck protection
7. short-term disability
8. increased mileage allowance

In Canada the experience has been that where bargaining with department heads was required—the federal and provincial governments paid the price anyway—along with the cost of no management minding the store at times.

A major national manufacturer has for many years had as its cornerstone employee relations policy statement: "In our dealings with employees and groups of employees—we will do what is right voluntarily."

If you will analyze that statement and the way this firm implements it, you will find revealed a whole labor relations strategy. The firm literally means: 1. "We will do right—that is to say, what we unilaterally believe to be right, not that which some third party dictates." 2. "We will do right voluntarily in order to convince our employees they do not need a third party to which they must pay tribute." Thirdly, the statement as it is demonstrated in action is intended to limit the gains and victories of those who would be the firm's adversaries in employee relations matters.

• a start is important

The best, perhaps the only chance cities have of retaining their unilateral right to deal with first line supervisors, middle managers and professionals is to begin to treat these employees in the ways which have been described. A modest, low-cost beginning, remember—but *begin*.

Reprinted with permission from The Labor Management Relations Service Newsletter, October, 1974, Volume 5, Number 10 published by The Labor-Management Relations Service of the National League of Cities, United States Conference of Mayors, National Association of Counties

APPENDIX II

California County Management Benefit Survey
California County Government Education Foundation
Sacramento California 95814
Spring, 1975

Of the 58 counties surveyed, 36 responded to the questionnaire. Following is a brief summary of their response.

(1) Counties that make a distinction between management and non-management personnel.

28 of 36 77.7%

(2) Counties that formally recognize management personnel by code, resolution, ordinance or other.

25 of 36 69.4%

Code	2
Resolution	10
Ordinance	6
Employer-Employee relations policy	6

(3) Listing of who is included in county management groups.

(4) Counties that have different levels of management such as - top, middle, 1st line, etc.

16 of 36 44.4%

(5) Counties that offer benefits for management employees which are different from those benefits offered to non-management employees.

20 of 36 55.5%

(a) Different benefits for each level of management.

10 of 36 27.7%

(California County Management Benefit Survey cont'd)

(6) The types of management benefits are specifically identified and placed into nine categories for purposes of identification and comparison. Of the 20 counties (55.5%) that offered at least one management benefit:

4 Counties offered extra time in lieu of overtime.

5 Counties offered paid medical exam.

11 Counties offered county paid life insurance policy.

3 Counties offered additional payment toward premium of Health, Dental, basic or supplemental life insurance.

4 Counties offered county car.

3 Counties offered tuition reimbursement.

4 Counties offered paid membership in management, professional or service organizations.

9 Counties offered vacation.

6 Counties offered other benefits.

APPENDIX III

ORDINANCE NO. 2678

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE REPEALING PART XI OF CHAPTER 7, DIVISION 1 OF THE TORRANCE MUNICIPAL CODE GOVERNING EMPLOYMENT COMPENSATION FOR THE CITY MANAGER, CITY CLERK, CITY TREASURER, AND OTHER EXEMPT EMPLOYEES AND ADDING A NEW PART XI DEALING WITH THE SAME SUBJECT

The City Council of the City of Torrance does hereby ordain as follows:

SECTION 1.

That Part XI of Chapter 7, Division 1 of the Torrance Municipal Code is repealed in its entirety.

SECTION 2.

That a new Part XI entitled, " City Manager, Exempt Employees, Executive Employees, and City Clerk and Treasurer" is hereby added to Chapter 7, Division 1 of the Torrance Municipal Code to read as follows:

"PART XI - CITY MANAGER EXEMPT EMPLOYEES AND CITY CLERK AND TREASURER

ARTICLE 1 - CITY MANAGER

SECTION 17.111.1 CITY MANAGER'S SALARY

The City Manager shall be paid at the following monthly salary grade:

Step 1	2	3
$3,609	$3,789	$3,978

SECTION 17.111.2 MANAGEMENT BENEFIT PACKAGE

The City Manager shall be covered by a management benefit package which shall encompass the following options:

1) Employee insurance programs
2) Insured savings
3) Deferred income

An amount equal to 13% of base salary shall be set aside for these benefits. The City Manager shall also have the option of taking any or all of this management benefit package as earned income.

The City shall cover each employee under ($100,000.00) accidental life insurance policy, a $5,000 Term life, whole life insurance policy and a long term disability insurance policy.

SECTION 17.111.3 SICK LEAVE

a) The City Manager shall earn sick leave at the rate of eight hours per month.

b) There shall be no maximum on the number of hours of unused sick leave that can be accumulated except as provided by the City Charter. Each day of sick leave earned after reaching the maximum accumulation shall be converted into cash and deposited into a deferred account at the rate of 1/2 hours pay for each hour of sick leave in lieu of being accrued.

c) Sick leave may be used for personal or family illness.

d) At time of termination after at least seven years of service, each hour of earned unused sick leave shall be converted into permanent income insurance on the basis of 1/2 hour's pay for each hour of unused sick leave; at retirement or death, such conversion shall be at the rate of 3/4 hour's pay for each hour of unused sick leave.

SECTION 17.111.4 DISABILITY INSURANCE

The City Manager shall be covered by a long-term disability insurance policy. The premiums shall be paid for by the City

and the policy shall provide for a 30-day waiting period, 25% compensation during illness after 30 days for 10 years in case of illness, or until 65 in case of disability caused by accident. The unpaid difference in premium authorized for 1973 shall be paid to the City Manager as cash.

SECTION 17.111.5 OTHER BENEFITS

All other benefits for the City Manager shall be the same as for department heads.

ARTICLE 2 - EXECUTIVE EMPLOYEES

SECTION 17.112.1 EXECUTIVE EMPLOYEES SALARY

The following monthly salary grades are hereby assigned to the titles of the specified executive classifications effective July 18, 1976:

Title	STEPS 1	2	3	4	5
City Attorney	$3142	$3299	$3464	$3637	
Asst.City Manager	2932	3079	3233	3395	
Asst.to City Manager	1732	1819	1910	2005	
Administrative Asst.	1142	1199	1259	1322	
Bldg. & Safety Director	2502	2627	2758	2896	
City Engineer	2364	2482	2606	2736	
City Librarian	2041	2143	2250	2363	
Director of Transportation	2334	2451	2574	2703	
Equipment Superintendent	1614	1695	1780	1869	
Finance Director	2318	2434	2556	2684	
Fire Chief	2714	2850	2993	3143	
Park & Rec. Director	2250	2363	2481	2605	
Personnel Manager	1704	1789	1878	1972	2071*
Planning Director	2316	2432	2554	2682	
Police Chief	2714	2850	2993	3143	
Senior Admin. Asst. **	1571	1650	1732	1819	
Street Maintenance Supt.	2059	2162	2270	2384	
Water System Manager	2072	2176	2285	2399	

* Merit step advancement, at discretion of City Manager

** Prorates to hourly pay for less than 40 hours on the basis of the monthly rate divided by 173.3.

SECTION 17.112.2 MANAGEMENT BENEFIT PACKAGE

The employees whose titles are described in Section 17.112.1 shall be covered by a management benefit package which shall encompass the following options:

1) Employee insurance programs
2) Insured savings
3) Deferred compensation

An amount equal to 13% of the base salary shall be set aside for these benefits. Said executive employees shall also have the option of taking any or all of this management benefit package as earned income.

SECTION 17.112.3 MERIT PAY

An amount of $9,000 shall be budgeted fiscal year 1976-77. Such amount shall be distributed to executive employees except for the City Manager, his immediate staff and the City Attorney on the basis of merit pursuant to procedures established by the City Manager.

SECTION 17.112.4 ORGANIZATIONAL DEVELOPMENT & TRAINING

$3,000 shall be budgeted in fiscal year 1976-77 for executive and organizational development. Programs and objectives shall be developed by the Executive Staff.

SECTION 17.112.5 CAR ALLOWANCE

An employee currently receiving a car allowance or who presently has a City vehicle and who with the approval of the City Manager has selected to turn in the City vehicle shall receive a $110 per month car allowance. Notwithstanding, the Finance Director and the Personnel Manager shall receive a $40 per month car allowance. Such allowance is not intended to cover business trips of over 25 miles one way. The employee shall be reimbursed upon proof of coverage, at the rate of $10 per month, for liability insurance pursuant to City specifications.

Effective October, 1976 the car allowance shall be revised to $120 per month (the allowance for the Finance Director and Personnel Manager shall be $45 per month) and the vehicle insurance reimbursement raised to $15 per month.

SECTION 17.112.6 CONDITIONS OF EMPLOYMENT

The probationary period for classified employees shall be the same as provided for in Part X Chapter 7, Division 1 of the Torrance Municipal Code.

SECTION 17.112.7 OTHER BENEFITS

All other benefits for said executive employees shall be the same as provided in Part X of Chapter 7, Division 1.

ARTICLE 3 - CITY CLERK AND CITY TREASURER

SECTION 17.113.1 CITY CLERK'S COMPENSATION

The City Clerk shall receive a salary of $2046 per month of which $1200 per month is compensation for the performance of the duties of his office as set forth in Article XIII of the City Charter and $846 per month is for the performance of other specific tasks which are in addition to those specified in the Charter:

Other Specified Tasks

1) Microfilming and storing of records for the City of Torrance.

2) Preparation of plaques and other official City momentos, maintenance of City brochures, etc.

3) Advertising for all materials and equipment (except where it is so required by law to do in his capacity as City Clerk), and reporting to the City Manager for presentation to the Council the bids as received; and all other legal advertising;

4) Preparing special reports as assigned by the City Manager's office;

5) Such other administrative duties as may be assigned to him from time to time, with the consent of the City Council, by the City Manager.

SECTION 17.113.2 CITY TREASURER'S COMPENSATION

The City Treasurer shall receive a salary of $2045 per month of which $1545 per month is compensation for the performance of the duties of his office as set forth in Article XIV of the City Charter. The City Treasurer shall be paid the remainder of such monthly salary and a car allowance of $110 per month and $10 per month for

car insurance (such shall be revised to $120 per month for car allowance and $15 per month on insurance effective 10/1/76) for performing, under the administrative direction of the City Manager, the duties of legislative advocate and such other administrative duties as may be assigned to him from time to time, with the consent of the City Council, by the City Manager. Vehicle liability insurance reimbursement shall be made upon proof of coverage pursuant to City specifications.

SECTION 17.113.3 SPECIAL BENEFIT PACKAGE

In addition to the compensation provided in Sections 17.113.1 and 17.113.2 for the City Clerk and City Treasurer, respectively, for the performance of additional duties under the direction of the City Manager, each such officer shall be covered by a management benefit package which shall encompass the following options:

1) Employee insurance programs
2) Insured savings
3) Deferred compensation

An amount equal to 13% of the base salary shall be set aside for these benefits. These officers shall also have the option of taking any or all of this management benefit package as earned income.

SECTION 17.113.4 OTHER BENEFITS

All other benefits for the City Clerk and City Treasurer shall be the same as provided under Part X of Chapter 7, Division 1.

SECTION 3.

Any provisions of the Torrance Municipal Code, or appendices thereto, inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be delcared invalid or unconstitutional.

SECTION 5.

This ordinance shall take effect thirty days after the date of its adoption and prior to the expiration of fifteen days from the passage thereof shall be published at least once in the South Bay Daily Breeze, a daily newspaper of general circulation, published and circulated in the City of Torrance; provided, however, that the provisions of this ordinance shall enure to and benefit employees covered by these provisions as of July 18, 1976.

Introduced and approved this 20th day of July, 1976.

Adopted and passed this 17th day of August, 1976.

/s/ Ken Miller
Mayor of the City of Torrance

ATTEST:

/s/ Vernon W. Coil
City Clerk of the City of Torrance

APPROVED AS TO FORM:

Stanley E. Remelmeyer
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF TORRANCE)

I, VERNON W. COIL, City Clerk of the City of Torrance, California, do hereby certify that the foregoing ordinance was introduced and approved at a regular meeting of the City Council held on the 20th day of July, 1976 and adopted and passed at a regular meeting of said Council held on the 17th day of August, 1976, by the following roll call vote:

AYES:	COUNCILMEMBERS:	Geissert, Rossberg, Wilson and Miller.
NOES:	COUNCILMEMBERS:	None.
ABSENT:	COUNCILMEMBERS:	Armstrong, Brewster, One Council Seat Vacant.
ABSTAIN:	COUNCILMEMBERS:	None.

/s/ Vernon W. Coil
City Clerk of the City of Torrance

City of Torrance

PROCEDURE FOR PERFORMANCE ANALYSIS AND BONUS CONSIDERATION RE DEPARTMENT HEADS

I. Department Head should be informed that the City Manager will be meeting with him to discuss his performance and the bonus he is going to be receiving. Department Head should be aware of who will be with the City Manager in the performance evaluation meeting and should receive a copy of the attached outline so that he knows what generally will be considered.

II. The City Manager may want to ask the Department Head to submit to him the Department Head's idea of his own performance, but I do not think that may be appropriate for this rating period. It may be something we want to explore in coming rating periods. I think you have to set the stage first though.

III. The City Manager should greet the Department Head with a review of why we are here, stressing the importance of a personal discussion of the City Manager's expectations of the Department Head and the need for the feed back of that Department Head to the City Manager of whether or not the City Manager's analysis of performance are correct. You want to emphasize an honest discussion, a personal discussion. The tone must be set that what is discussed in the room will go no further, that the performance evaluation is an attempt to establish performance criteria for the coming three month period. I think that we must appologize that we are starting anew again and that we don't have clear performance standards that were established last time on which we are measuring the Department Head with more general ideas that we have shared amongst ourselves but perhaps have not shared with the Department Head himself.

IV. Special consideration has to be given to those Department Heads who have failed to meet expected performance standards. We must make sure that the Department Head understands why we perceive that he has failed to meet these performance standards and we must arrive with him at a general understanding of the performance standards that are expected in the next three months. We must offer assistance to him in meeting those standards whether that assistance is in the area of training, technical assistance from Jerry, Greg and LeRoy.

V. It is most important that at the end of the session there is that feeling of knowing where both the Department Head and we (the City Manager and his staff) are going in the next three months.

VI. There must be an opportunity for the Department Head to rebut the performance - to offer his response. If he hasn't done it during the session, then the City Manager must challenge the

Department Head and ask him to come out with a rebuttal.

VII. Role of the City Manager Staff - observers - not participate in the conversation but act as observers to the discussion. The reason they are there is that they are extensions of the City Manager. The City Manager and the staff are in certain ways one person, one entity. If the Department Head has specific questions, then a member of the staff might respond, but this is really a personal discussion between the City Manager and the Department Head.

Time for sessions should be the last week of the month of January. I think you would want the checks ready to hand to the employee along with the copy of the handwritten performance evaluation in an envelope at the end of the conversation.

The Department Heads should be given a copy also of the outline and a copy of a procedure to be used in evaluating their own TMEO members who are covered under the bonus plan. In that case, the Department Head should complete the outline in a narrative form to the City Manager to be discussed at the performance evaluation of the Department Head.

MANAGEMENT PERFORMANCE EVALUATION OUTLINE

CITY OF TORRANCE

NAME _____

Evaluation from _____ to _____
(date) (date)

I. Overall the Manager's performance

A. Failed to meet expectations ☐

B. Partially met expectations ☐

C. Met expectations ☐

D. Exceeded expectations ☐

II. How was the reason for the overall rating related to the Manager's ability to:

A. Plan

B. Communicate

C. Develop Management Team

D. Deal with Council (or other Commission/s)?

E. Other

III. What were any extenuating circumstances related to performance

A. Specific personnel within Department

B. Other factors beyond Manager's control

C. Personal life

IV. What were added considerations:

A. Risks

B. Commissions or boards dealt with

C. Exposure to public

V. Has level of performance been accomplished at the expense of or in support of other members of management?

VI. Separate from the accomplishments of the Department, has there been any individual actions of this Manager which are noteworthy?

VII. Specific examples of the following:

A. Has there been a single project during the rating period which requires special consideration?

B. Has there been personal growth of the Manager during the rating period?

C. Has there been staff growth during the rating period?

D. Has there been a significant improvement in productivity?

VIII. Things I would ask the Manager to do more of, less of or the same during the coming rating period (Ask Managar to give to you those things he would like to see the City Manager or his staff do more of, less of or the same for him).

List of expectations for coming rating period:

IX. The Manager should receive a performance bonus of $_____.

APPENDIX IV

RESOLUTION NO. 11813

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE EXECUTIVE COMPENSATION PLAN.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS RESOLVES AS FOLLOWS:

Section 1. Purpose

The Executive Compensation Plan is hereby established for the following purposes:

1. To compensate management on the basis of merit and skill by variable amounts rather than fixed steps.
2. To encourage creative and decisive performance.
3. To recognize and distinguish management personnel differently than members of employee organizations.
4. To promote efficiency and economy.
5. To improve the City's ability to attract and retain outstanding executives.

Section 2. Scope

The following classifications are covered by the Executive Compensation Plan:

City Attorney
City Manager
Director of Community Development
Director of Community Services
Director of Finance & General Services
Director of Transportation & Operations
Fire Chief
Personnel & Labor Relations Director
Police Chief

Section 3. Effective Date

This Executive Compensation Plan was created June 29, 1975, and shall continue in effect until amended, modified or terminated by Resolution of the City Council.

Section 4. Executive Compensation Ranges

The Executive Compensation Plan provides new ranges indicated by minimum and maximum monthly salaries but without definite intermediate steps:

POSITION	SALARY RANGE	
	Min/Mo.	Max/Mo.
City Attorney	$2,208	$3,262
City Manager	2,494	3,686
Director of Community Development	1,954	2,887
Director of Community Services	1,954	2,887
Director of Finance & General Serv.	1,954	2,887
Director of Trans. & Operations	1,954	2,887
Fire Chief	1,954	2,887
Personnel & Labor Rel. Director	1,861	2,750
Police Chief	1,954	2,887

Section 5. Specific Compensation

The City Manager is hereby given the authority to review compensation and to order increases or decreases thereto and to make initial appointments at any salary within the established range for all executive positions except City Manager and City Attorney. The City Manager shall report annually to the City Council the compensation status of all such executives. The City Council will continue to review salaries for the City Manager and the City Attorney. The monthly rate for the City Manager shall be $ 3,339.00, and the City Attorney shall be $ 3,089.00, effective 6/27/76.

Section 6. Executive Compensation Incentive

Executive compensation shall be referred to as incentive pay. The executive may elect to receive base salary as direct salary, deferred compensation, additional contributions on his behalf to the Public Employees Retirement System, to some other benefit mutually agreeable between the executive and the City Manager.

CRITERIA FOR INCENTIVE PAY

The criteria to be used by the City Manager in the determination of whether an Executive employee shall receive incentive pay will consist of four levels of performance, namely:

a) GENERAL MANAGEMENT

(1) Employee Sick Leave Usage: Patterns and programs for reducing usage.

(2) Affirmative Action Implementation: Planning and success of hiring females and minorities.

(3) Overtime Usage: Average hours per employee and dollar cost.

(4) Vehicle Accidents: Miles driven per accident, accident ratio and accidents per vehicle.

(5) Employee Injuries: Number and type of lost time injuries and cost per employee.

(6) Budget Compliance: Percent of budget expended, budget transfer, and staying within budgeted amounts.

(7) Personnel Turnover: Rate and reason.

(8) Grievances: Number and type solved or unsolved at the Department/Division or program level.

(9) Complaints: Number and type resolved or unresolved at the program-activity level.

(10) Problems: Requiring the City Manager's attention.

(11) Assignments: Deadlines met and quality of response.

(12) Productivity: Workload measurements, expanded service without manpower, improved service by reorganization without increase in manpower.

(13) Additional Criteria: Such other and additional criteria as the City Manager may deem appropriate.

b) OBJECTIVE ACHIEVEMENT

The second level of performance will be most important in determining the amount of incentive pay for an executive employee. It shall consist of an evaluation of performance in the attainment of goals in accordance with the following:

(1) The executive employee shall prepare a list of goals and objectives and programs for the coming year(s) and submit it to the City Manager by a time designated by the City Manager.

(2) Thereafter, the City Manager will meet with each executive employee and develop a mutually acceptable set of goals for the coming year(s).

(3) An evaluation will be made by the City Manager to determine the degree of success by the executive employee in goal attainment in accordance with the following criteria:

a. Were the goals attained?

b. Method by which goals were attained.

c. Were objectives obtained on a timely basis?

d. Were objectives reached within the estimated costs?

e. Were all facets of the program prepared and analyzed thoroughly?

(4) An evaluation of the City Manager and City Attorney by the City Council in accordance with the plan shall be subject to its discretion.

c) EXTERNAL RELATIONSHIPS

(1) Community Reputation: What is the general attitude of the community to this man? Is he regarded as a man of high integrity, ability and devotion to the City of Palm Springs government?

(2) Professional Reputation: How does he stand among others in his profession? Does he deal effectively with other City and County professionals? Is he respected by other professional and staff representatives of cities and counties? Does he enthusiastically and constructively attend seminars and conferences?

(3) Intergovernmental Relations: Does the executive work closely with other Federal, State and local government representatives? Is his relationship with others friendly? Does he provide requested assistance to other cities and the county?

(4) Community Relations: Does he skillfully represent the City of Palm Springs to the press, radio and television? Does he properly avoid politics and partisanship? Does he show an honest interest in the community? Does he properly defend the City of Palm Springs and its reputation?

d) PERSONAL CHARACTERISTICS

(1) Imagination: Does he show originality in approaching problems? Does he create effective solutions? Is he able to visualize the implications of various approaches?

(2) Objectivity: Is he unemotional and unbiased? Does he take a rational, impersonal viewpoint based on facts and qualified opinions?

(3) Drive: Is he energetic, willing to spend whatever time is necessary to do a good job? Does he have good mental and physical stamina?

(4) Decisiveness: Is he able to reach timely decisions and initiate action, but not be compulsive?

(5) Attitude: Is he enthusiastic? Cooperative? Willing to adapt?

(6) Firmness: Does he have the courage of his convictions? Is he firm when convinced, but not subborn?

Section 7. Executive Incentive Salary Determination:

Annual salary review for Executives shall be determined upon the basis of job performance as measured by achievements of goals and objectives. In the determination of any adjustment consideration will be given to prevailing rates in the appropriate labor market, recent labor settlements, movement of the cost of living index, internal relationships, or any other such criteria as the City Manager finds appropriate.

Section 8. Performance Review:

The performance of Executive employees will be a continuing on-going process. Formal written reviews will occur annually and Executives will be advised of the results of the review within thirty (30) days after the end of the review period. This review will be based upon their performance and goal attainment during the preceding year.

Section 9. Executive Compensation Perquisites

a) Health Insurance
The City shall contribute toward the executive employee's health insurance cost an amount not to exceed $68.35 per month toward either of the two major medical health insurance plans. If the employee/ two-party cost is less than $68.35 for either of the two plans, the City will pay the lesser amount.

b) Life Insurance
The City shall pay the cost of a $20,000 group life insurance policy with accidental death and dismemberment (AD&D). In addition the City will provide through a carrier, at the executive employee's expense, the option

of two and three times the base of $20,000 plus dependent life coverage.

c) Long Term Disability Insurance:

The City shall pay the cost of the long term disability insurance policy during FY 76-77 for executive employees.

d) P.E.R.L. Amendment:

The City will include executive employees in the P.E.R.L. amendment to provide "public service-military credit" (Section 20930.3).

e) Annual Leave:

Annual leave accrual for executive employees shall be in accordance with the following schedule:

ANNUAL LEAVE SCHEDULE

During the Years of Continuous Service	Number of Days Earned Vacation Per Year	Number of Days Sick Leave Per Year	Total No. of Days Annual Leave Per Year
1-5	12	6	18
6-10	15	6	21
11	19	6	25
12	20	6	26
13	21	6	27
14	22	6	28
15	23	6	29
16	24	6	30
17	25	6	31

(1) In computing annual leave, use the vacation accrual schedule found in Section 3 (c) of Rule XII of the Personnel Rules.

(2) In addition, add six (6) days per year of sick leave at the accrual rate of four (4) hours per month.

(3) In July and December of each year the executive employee shall have the option of collecting an amount in cash up to a maximum of five (5) days pay per calendar year. The option may be any combination that totals five (5) days pay per calendar year payable in the specified months.

f) Sick Leave:

(1) The remaining six (6) days of sick leave with an accrual rate of four (4) hours per month shall accumulate as sick leave with no maximum accrual and no cash value upon termination. For any vested interest accrued during FY 75-76 with respect to unused sick leave payout in December, it is intended that any such rights are transferred to and absorbed in the entitlement given in sub-section e)(3) above.

(2) The "old" sick leave bank (created on December 1, 1973) shall be disbursed in the following manner: a) convert 25% of the sick leave balance to annual leave; b) leave the remaining 75% of the sick leave balance as sick leave with no cash value upon termination.

(3) Sick leave balance for 1974-76 add to 2 b) above, on a one-time basis, for new sick leave balance with no cash value upon termination.

(4) Delete executive employees from annual compensation for unused sick leave policy.

Section 10. Resolution numbers 11494 and 11598 are hereby rescinded.

ADOPTED this 16th day of June, 1976.

AYES: Councilmembers Beadling, Beirich, Doyle, Field and Mayor Foster
NOES: None
ABSNET: None

ATTEST:

By _____
Deputy City Clerk

CITY OF PALM SPRINGS, CALIFORNIA

_____
City Manager

REVIEWED & APPROVED _____

RESOLUTION NO. 11814

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE MANAGEMENT, PROFESSIONAL AND SUPERVISORY COMPENSATION PLAN

The City Council of the City of Palm Springs Resolves as follows:

Section 1. Purpose

The Management, Professional and Supervisory Compensation Plan is established for the following purposes.

1. To compensate management, professional and supervisory employees on the basis of merit and skill by variable amounts rather than fixed steps.

2. To promote efficiency and economy.

3. To enable managers and supervisory employees to be responsible.

Section 2. Scope of Coverage

All unclassified employees except those designated in the Executive Compensation Plan shall be included within the Management, Professional and Supervisory Compensation Plan.

Section 3. Effective Date

The Management, Professional and Supervisory Compensation Plan was created June 29, 1975 and shall continue in effect until amended, modified or terminated by Resolution of the City Council.

Section 4. Management, Professional and Supervisory Ranges

The Management, Professional and Supervisory Compensation Plan provides ranges indicated by minimum and maximum salaries but without definite intermediate steps.

Management, Professional, Supervisory Classifications	SALARY RANGE Min/Mo.	Max/Mo.
Redevelopment Director	$1816	$2556
Parks & Golf Course Superintendent	1569	2208
City Planner	1569	2208
Police Captain	1494	2103
City Librarian	1458	2052
Community Relations Coordinator	1458	2052
Leisure Services Superintendent	1458	2052
Finance & Accounting Officer	1458	2052
Division Chief	1423	2002
Airport Manager	1423	2002
Police Planning & Research Coordinator	1423	2002
Assistant to Director of Community Devel.	1389	1954
Data Processing Supervisor	1389	1954
Engineering Office Supervisor	1389	1954
Street Maintenance Superintendent	1389	1954
Auditor-Analyst	1389	1954
Chief Building Inspector	1389	1954
Water Quality Control Superintendent	1389	1954

Classification	SALARY RANGE Min/Mo.	Max/Mo.
Assistant City Attorney	$1355	$1907
Traffic Engineer	1355	1907
Purchasing Officer	1355	1907
Police Lieutenant	1355	1907
Assistant to City Manager	1291	1816
Engineering Field Supervisor	1260	1773
Right-of-Way Agent	1260	1773
Fire Captain	1229	1730
Leisure Services Assistant Supt.	1200	1688
City Planning Associate	1200	1688
Disaster Preparedness Coordinator	1171	1647
Librarian III	1143	1608
Information Permit Supervisor	1143	1608
Civil Engineering Assistant	1143	1608
Senior Accountant	1115	1569
Building Maintenance Supv.	1115	1569
Equipment Maintenance Supv.	1115	1569
Code Enforcement Officer	1088	1531
License Collector	1088	1531
Auditor	1011	1423
Administrative Assistant	1011	1423
Youth Services Coordinator	963	1355
Administrative Aide	874	1229

Section 5. Specific Compensation

The City Manager is hereby given the authority to review compensation and to order increases or decreases thereto (and to make initial appointments) at any salary within the range for all management, professional and supervisory positions.

Management, professional and supervisory compensation shall be referred to as incentive pay. The employee may elect to receive his basic salary as direct salary, deferred compensation, additional contributions on his behalf to the Public Employees Retirement System, or added to some other benefit mutually agreeable between the employee and the City Manager

Criteria For Incentive Pay

The criteria to be used by the department head and City Manager in the determination of whether a Management, Professional and Supervisory employee should or shall receive incentive pay will consist of four levels of performance, namely:

a) GENERAL MANAGEMENT

(1) Employee Sick Leave Usage: Patterns and programs for reducing usage.

(2) Affirmative Action Implementation: Planning and success of hiring females and minorities.

(3) Overtime Usage: Average hours per employee and dollar cost.

(4) Vehicle Accidents: Miles driven per accident, accident ratio and accidents per vehicle.

(5) Employee Injuries: Number and type of lost time injuries and cost per employee.

(6) Budget Compliance: Percent of budget expended, budget transfer, and staying within budgeted amounts.

(7) Personnel Turnover: Rate and reason.

(8) Grievances: Number and type solved or unsolved at the Department/Division or program level.

(9) Complaints: Number and type resolved or unresolved at the program-activity level.

(10) Problems: Requiring the department head and/or City Manager's attention.

(11) Assignments: Deadlines met and quality of response

(12) Productivity: Workload measurements, expanded service without manpower, improved service by reorganization without increase in manpower.

(13) Additional Criteria: Such other and additional criteria as the department head and City Manager may deem appropriate.

b) OBJECTIVES ACHIEVEMENT

The second level of performance will be the most important in determining the amount of incentive pay for a management, professional and supervisory employee. It shall consist of an evaluation of performance in the attainment of goals in accordance with the following:

(1) The management employee shall prepare a list of goals and objectives and programs for the coming year(s) and submit it to the department head by a time designated by the City Manager.

(2) Thereafter, the department head will meet with each management employee and develop a mutually acceptable set of goals for the coming year(s).

(3) An evaluation will be made by the department head to determine the degree of success by the management employee in goal attainment in accordance with the following criteria:

a. Were the goals attained?

b. Method by which goals were attained.

c. Were objectives obtained on a timely basis?

d. Were objectives reached within the estimated costs?

e. Were all facets of the program prepared and analyzed thoroughly?

c) EXTERNAL RELATIONSHIPS

(1) Community Reputation: What is the general attitude of the community to this man? Is he regarded as a man of high integrity, ability and devotion to the City of Palm Springs government?

(2) Professional Reputation: How does he stand among others in his profession? Does he deal effectively with other City and County professionals? Is he respected by other professional and staff representatives of cities and counties? Does he enthusiastically and constructively attend seminars and conferences?

(3) Intergovernmental Relations: Does the executive work closely with other Federal, State and local government representatives? Is his relationship with others friendly? Does he provide requested assistance to other cities and the county?

(4) Community Relations: Does he skillfully represent the City of Palm Springs to the press, radio and television? Does he properly avoid politics and partisanship? Does he show an honest interest in the community? Does he properly defend the City of Palm Springs and its reputation?

d) PERSONAL CHARACTERISTICS

(1) Imagination: Does he show originality in approaching problems? Does he create effective solutions? Is he able to visualize the implications of various approaches?

(2) Objectivity: Is he unemotional and unbiased? Does he take a rational, impersonal viewpoint based on facts and qualified opinions?

(3) Drive: Is he energetic, willing to spend whatever time is necessary to do a good job? Does he have good mental and physical stamina?

(4) Decisiveness: Is he able to reach timely decisions and initiate action, but not be compulsive?

(5) Attitude: Is he enthusiastic? Cooperative? Willing to adapt?

(6) Firmness: Does he have the courage of his convictions? Is he firm when convinced, but not stubborn?

Section 6. Management Incentive Salary Determination

Annual salary review for management shall be determined upon the basis of job performance as measured by achievements of goals and objectives. In the determination of any adjustment consideration will be given to prevailing rates in the appropriate labor market, recent labor settlements, movement of the cost of living index, internal relationships, or any other such criteria as the department head and City Manager find appropriate.

Section 7. Performance Review

The performance evaluation of management employees will be a continuing, ongoing process. Formal written reviews will occur annually and they will be advised of the results of the review within thirty (30) days after the end of the review period. This review will be based upon their performance and goal attainment during the preceding year.

Section 8. Management Compensation Perquisites

a) Health Insurance

The City shall contribute toward the management employee's health insurance cost an amount not to exceed $68.35 per month toward either of the two major medical health insurance plans. If the employee/two-party cost is less than $68.35 for either of the two plans, the City will pay the lesser amount.

b) Life Insurance

The City shall pay the cost of a $20,000 group life insurance policy with accidental death and dismemberment (AD&D). In addition the City will provide through a carrier, at the management employee's expense, the option of two and three times the base of $20,000 plus dependent life coverage.

c) Long Term Disability Insurance:

The City shall pay the cost of the long term disability insurance policy during FY 76-77 for management employees.

d) P.E.R.L. Amendment:

The City will include management employees in the P.E.R.L. amendment to provide "public service-military credit" (Section 20930.3).

e) Annual Leave:

Annual leave accrual for management employees shall be in accordance with the following schedule:

ANNUAL LEAVE SCHEDULE

During the Years of Continuous Service	No. of Days Earned Vacation Per Year	No. of Days Sick Leave Per Year	Total No. of Days Annual Leave Per Year
1-5	12	6	18
6-10	15	6	21
11	19	6	25
12	20	6	26
13	21	6	27
14	22	6	28
15	23	6	29
16	24	6	30
17	25	6	31

(1) In computing annual leave, use the vacation accrual schedule found in Section 3 (c) of Rule XII of the Personnel Rules.

(2) In addition, add six (6) days per year of sick leave at the accrual rate of four (4) hours per month.

(3) In July and December of each year the management employee shall have the option of collecting an amount in cash up to a maximum of five (5) days pay per calendar year. The option may be any combination that totals five (5) days pay per calendar year payable in the specified months.

f) Sick Leave:

(1) The remaining six (6) days of sick leave with an accrual rate of four (4) hours per month shall accumulate as sick leave with no maximum accrual and no cash value upon termination. For any vested interest accrued during FY 75-76 with respect to unused sick leave payout in December, it is intended that any such rights are transferred to and absorbed in the entitlement given in sub-section e) (3) above.

(2) The "old" sick leave bank (created on December 1, 1973) shall be disbursed in the following manner: a) convert 25% of the sick leave balance to annual leave; b) leave the remaining 75% of the sick leave balance as sick leave with no cash value upon termination.

(3) Sick leave balance for 1974-76 add to 2 b) above, on a one-time basis, for new sick leave balance with no cash value upon termination.

(4) Delete management employees from annual compensation for unused sick leave policy.

Section 9. Resolution numbers 11495 and 11594 are hereby rescinded.

ADOPTED this 16th day of June, 1976.

AYES: Councilmembers Beadling, Beirich, Doyle, Field and Mayor Foster
NOES: None
ABSENT: None

ATTEST:

By _____
Deputy City Clerk

CITY OF PALM SPRINGS, CALIFORNIA

_____
City Manager

REVIEWED & APPROVED GM ASD

APPENDIX V

STATE OF CALIFORNIA
SOLANO COUNTY
PERSONNEL AND SALARY RESOLUTION

Division XI: Special Benefits

Section 1. ELIGIBILITY

Only permanent and limited-term non-probationary employees incumbent in classes not represented by a recognized employee organization shall be eligible for the benefits of this Division. Eligibility for these benefits shall automatically cease for any previously eligible employee effective with the date that employee becomes included in a representation unit which is represented by a recognized employee organization.

Section 2. ADMINISTRATIVE LEAVE

County Department Heads, Assistant Department Heads, Chief Deputies, Management employees and other employees designated by the Director of Personnel, who are

A. Not represented by a recognized employee organization;

B. Permanent or limited-term non-probationary (those who have successfully completed their initial thirteen (13) pay period County probationary period);

C. Not otherwise entitled to payment or compensatory time off for work performed in excess of forty (40) hours per week or, if entitled, have formally waived such overtime pay and compensatory time off entitlement, shall be eligible to receive a paid Administrative Leave benefit as follows:

1. Administrative Leave Amount:

   a. Five (5) days Administrative Leave effective July 1, 1976, and annually on July 1st of each succeeding fiscal year.

   b. Any employee incumbent in an eligible position for less than a full fiscal year shall be eligible for a pro-rata number of Administrative Leave days equal to one (1) day for each five (5) continuous full non-probationary pay periods in the eligible class.

2. Option:

   At the onset of this program and annually during the month of June of each year thereafter, each employee eligible for both this benefit and compensatory time off as payment for overtime shall be given the option of either enrolling in the Administrative Leave program or compensatory time off/overtime payment benefits for the subsequent fiscal year. Each employee so eligible shall complete and sign an appropriate form provided by the County Personnel Department for this purpose in order to establish eligibility for one benefit or the other.

Effective June 27, 1976, Solano County adopted for the first time a separate benefits program for Management and other non-represented officials and employees in addition to Department Heads and Assistant Department Heads. Reprinted with permission of Solano County Personnel Department, James W. Thomas, Senior Personnel Analyst.

Once an Administrative Leave option form has been executed, it shall remain in force thereafter unless another form is completed and filed with the Director of Personnel during the month of June of any subsequent year.

3. Subject to advance approval by the Department Head, Administrative Leave may be taken at any time during the fiscal year, but must be taken within the fiscal year in which it is given. Administrative Leave is to be taken eight (8) hours at a time and is not to be utilized on a partial basis. Administrative Leave may be used as sick leave, but only after all accrued sick leave has been exhausted. No person shall be permitted to work for compensation for the County in any capacity while on paid Administrative Leave.

4. No eligible employee shall carry over Administrative Leave from one fiscal year to another. Any eligible employee who separates from County employment shall not receive any compensation for any Administrative Leave that the employee may have accumulated.

5. Credit toward vacation, sick leave, and other benefits based upon service shall continue to accrue during periods of any approved Administrative Leave, except where Administrative Leave is taken within thirty (30) days of termination of service with the County.

6. If, in the judgment of the Department Head, work beyond the official forty (40) hour workweek is required, he may order such overtime work. Administrative Leave will constitute full compensation for such overtime work.

7. Elected officials are not eligible to receive Administrative Leave benefits.

Section 3. BUSINESS EXPENSE ALLOWANCE

A. Effective October 1, 1976, reimbursement for in-County business expenses (i.e., business lunches) shall be made in accordance with the following:

1. Appointed and Elected Department Heads shall be reimbursed for actual cost of business lunches up to a maximum of $25.00 per month.

2. Employees incumbent in classes designated by the Director of Personnel as Management and employees incumbent in classes not represented by a recognized employee organization shall be reimbursed for actual cost of business lunches up to a maximum of $10.00 per month.

B. For the purposes of this Section, business lunches are defined as those for which the primary purpose of the lunch was the conduct of County business. Such

expense may include the cost of lunches for others when costs are incurred in the conduct of County business.

C. All business expense allowance must be approved in advance by the Department Head.

D. Requests for reimbursement shall be made monthly in writing on forms prescribed by the Auditor-Controller and shall include the lunch receipt, date of lunch, purpose and name(s) of the person(s) for which reimbursement is being made.

Section 4. LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE

Effective October 1, 1976, all elected officials, appointed Department Heads, Assistant Department Heads, Chief Deputies, Management and Confidential personnel, members of the County Planning and Civil Service Commissions, Judges, and other non-represented County employees designated by the Director of Personnel shall be provided with a County paid life insurance program as follows:

A. $10,000 term life insurance on the life of the employee.

B. $10,000 Accidental Death and Dismemberment (A.D. & D.) Insurance covering the employee.

APPENDIX VI

MANAGEMENT BENEFITS

COUNTY OF VENTURA
MANAGEMENT BENEFITS

As a member of Ventura County's management team, and in recognition thereof, certain benefits are made available to you that would not be otherwise. Your "Management Benefits Package" is described below.

DEFERRED COMPENSATION

This supplemental retirement/savings program allows the employee to defer a portion of her/his current income, to invest and shelter such funds from state and Federal taxation, and to withdraw the monies, usually during the retirement years, at which time it will be taxed at a lower rate.

Currently, the investment vehicles available to participants of the plan are:

1. Two variable annuity plans;
2. One fixed annuity plan; and
3. One savings account plan.

For further information, contact either the Personnel Department or Mr. Woody Allen, of Ashby & Allen, 644-7444.

MAINTENANCE PHYSICAL EXAMINATIONS

Management employees are provided the opportunity to have a complete physical examination based on the following frequency and County-paid fee schedules:

Under Age 40 ----------$120 ----Every 3 years
Age 40 to 45 ----------$145 ----Every 2 years
Over Age 45 ----------$200 ----Annually

Any cost differential between the actual charges for the examination and the amount paid by the County is assumed by the employee.

Notification that the physical examination is due will be sent near the first of the month in which the employee's birthdate occurs. This notification letter will include a release form for the physician and instructions for billing the County.

DISABILITY INCOME PROTECTION PLAN

The DIPP Program was designed and implemented to provide the greatest amount of financial protection to management employees should crises befall them and they are unable to continue working for long periods of time. The County's sick leave program, for management employees, has been modified and integrated with the DIPP plan, which is entirely County paid. For management employees hired after January 25, 1976, participation is mandatory.

In the event of long-term disability due to illness or accident, the benefit pays 60% of salary for a period of two years (in the case of accidents), or five years (in the case of illness). Payments do not begin until the forty-sixth calendar day of disability; however, the County's sick leave program allows accrual of up to forty-five work days (63 calendar days), which covers the elimination period. The carrier of the plan is Standard of Oregon. For more details, contact the Personnel Department.

SICK LEAVE

All employees accrue sick leave equivalent to one day per month. However, because of implementation of the DIPP program (see above), recent changes have been made to this program as it affects management employees.

Effective the date of coverage, all employees having sick leave balances in excess of 360 hours (45 days) have said balances frozen as the employee's individual maximum accrual limit. All employees having balances of less than 360 hours or who are hired after that date, are assigned a maximum accrual limit of 360 hours. There is no pay-off for hours accrued beyond the maximum accrual limit.

Employees who have balances in excess of 360 hours, and who exercise the option not to participate in the DIPP program, are entitled to a 25% cash pay-off of sick leave balance annually, and upon retirement or termination, after ten years service.

VACATION

Agency/department heads and their assistants earn 15 working days of vacation per year during the first ten years of service and 20 working days per year thereafter. All other management employees earn vacation days in the following schedule:

Years of Service	Working Days Accrued Per Year
0-5	10 days
6-10	15 days
11 years	16 days
12 years	17 days
13 years	18 days
14 years	19 days
15 or more years	20 days

All management employees may accumulate up to 400 hours (50 days) of vacation time, regardless of length of service.

HOLIDAYS

Regular: New Year's Day, Washington's birthday, Memorial Day, Labor Day, Fourth of July, Thanksgiving Day, Christmas.

Floating: Lincoln's birthday, Admission's Day, Veteran's Day, day after Thanksgiving.

BEREAVEMENT LEAVE

The County allows all regular employees up to three consecutive working days bereavement leave because of a death in the immediate family. If travel to distant locations necessitates that the employee be gone for longer than three days, the employee may be allowed to use accrued vacation, administrative leave, or up to two days accrued sick leave to supplement the three days.

MATERNITY LEAVE

The County provides that a leave of absence without pay may be granted to an employee for maternity purposes. The leave may be extended to a maximum of one year. For the first sixy (60) calendar days after an employee begins a medical or maternity leave without pay, the County will continue to pay its contribution towards the health insurance premiums.

ADMINISTRATIVE LEAVE

The payment of overtime provisions do not apply to management employees, who are instead eligible for administrative leave. County policy states that the leave is not earned, and not accumulated but may be granted for not more than three consecutive days, except under special circumstances.

HEALTH INSURANCE

The County makes available to all employees, at their option, a comprehensive health insurance program. It includes a basic hospitalization plan (carried by Blue Cross), a major medical plan (carried by Phoenix Mutual), and a $1,000 life insurance policy (with an additional $1,000 Accidental Death & Dismemberment Policy). Claims are filed with and processed locally by the Ventura County Foundation for Medical Care, Loma Vista Road, Ventura, 647-7724.

To help offset the cost of the health plan, the County contributes up to $52 per month per employee toward employee and dependent coverage.

LIFE INSURANCE

The County makes available to all employees two types of optional life insurance programs: (1) a group term life insurance, and (2) a permanent portable life insurance, both paid for through payroll deductions by the employee.

Additionally, all Agency/Department heads are profided a fully County paid term life insurance policy equal to two times the employee's annual salary, plus an Accidental Death & Dismemberment rider equal to the face value of the policy. All other management employees receive a County paid policy in the amount of one year's salary.

The employer-paid policies described above are in effect only so long as County employment continues. The carrier is Phoenix Mutual Life Insurance Company.

TEXTBOOK AND TUITION

A textbook and tuition reimbursement program for job-related courses is in effect for all employees of the County of Ventura. Management employees are entitled to 100% reimbursement of job-related courses taken, to a maximum limit of $1,000 per fiscal year, subject only to departmental budgetary limitations. In addition, advance reimbursement can be made.

MILEAGE REIMBURSEMENT

Management employees who use their private vehicles for business purposes are entitled to reimbursement at the rate of $.16 per mile.

TRANSPORTATION

Each Agency/Department head is provided with either (1) a County car for business use, or (2) $100 per month allowance for using private automobiles for business purposes. Supervisors' Administrative Assistants receive $75 per month as provided above.

PROFESSIONAL MEMBERSHIPS

Agency/department heads are entitled to be reimbursed for any dues paid arising out of participation in professional organizations relating to their position and vocation.

Attorneys in the County Counsel's Office are entitled to County payment of their California State Bar Association dues.

FLEXIBLE PAY PLAN

One of the newest additions to the benefits package, this item is the epitome of an executive pay program. It takes salary increases out of the realm of "automatic" and into the realm of "money paid for performance achieved." It's the County's attempt to put the "merit" back into merit increases, to evaluate and reward an employee for her/his productivity.

Salary ranges within classifications have been expanded at both ends to allow more opportunity for movement. Employees will be evaluated at least annually and given a zero to ten percent increase/decrease based on the past year's performance, job responsibility, and with some consideration to economic conditions. The top ten percent of the range will be reserved for employees exhibiting exceptional performance.

RETIREMENT

Together with all other County employees, management employees are covered under the 1937 Retirement Act. Contributions to the Retirement Association are made by both the members and the County. The County's Retirement Plan is fully integrated with OASDI (Social Security). Additionally, the Retirement Association provides a three percent (3%) cost of living adjustment for retirees.

APPENDIX VII

This draft of a Management Performance Evaluation Plan for the County of Los Angeles was developed by the County's Department of Personnel. It has not yet been submitted for approval.

We are including this proposal because it contains many of the elements pertaining to a performance-oriented evaluation plan.

TABLE OF CONTENTS

COUNTY OF LOS ANGELES

MANAGEMENT PERFORMANCE EVALUATION PLAN

I. RATER'S GUIDE

This Management Performance Evaluation Plan has been developed for the use of County managers.

The basic purpose of this MPE Plan is to maximize organizational effectiveness of the County as a whole, for each department, and for each departmental sub-group.

The basis of this MPE Plan is the rating of a County manager at least once each year in terms of the manager's total results achieved in meeting organizational objectives.

This Management Performance Evaluation Plan includes a definition of the County manager position, a Management Performance Evaluation Report Format, rating standards, basic management functions, the evaluation process, the appeal right, two different sample Management Performance Evaluation forms, the Appendix, and this Rater's Guide.

This MPE Plan includes two optional management performance evaluation report formats. Both forms stress the evaluation of performance in terms of total and specific results attained and both use the same rating standards. Management Performance Evaluation Form I expresses results in terms of basic management functions. Management Performance Evaluation Form II (see Appendix) expresses results in terms of goals.

Hopefully, through the use of this MPE Plan, County managers will focus resources and efforts on the prioritized objectives and goals of the organization.

II. Definition of County Manager Position

A position having significant levels of authority and responsibility in a County department. Positions must have discretion to formulate prioritized goals and objectives statements within an assigned area and to determine organizational strategy and resources to achieve them. The responsibilities of the position must be of easily recognizable significance to the department as a whole and must represent a significant commitment of total department resources. These positions must perform the common functions of a manager including planning, organizing, directing, coordinating, staffing and controlling; and must direct these activities through at least one subordinate level of supervision. Those positions which recommend regularly and with considerable influence on matters of policy and programs which effect department-wide commitment programs are also defined as manager.

III. Management Performance Evaluation Report Format - Form I

Management Performance Evaluation Form I - The attached form consists of the following sections:

-- Manager Identification - This section includes the manager's name, employee number, status, date, position, department/division, and reporting period.

-- Individual Evaluations - The individual evaluations are expressed in terms of these rating standards: "Unsatisfactory," "Improvement Needed," "Competent," "Very Good," and "Outstanding." The individually evaluated items are the eight basic management functions. The evaluation shall be based upon the specific results attained.

-- Overall Evaluation - This evaluation is based upon the total results attained and expressed in terms of the Rating Standards.

-- Rating Standards - There are definitions for five rating standard categories.

-- Signatures of Report Officers - This section provides space for the name and date signed by the rater, reviewer (optional), and department head/Board Supervisor. In addition, space for noting how and when the employee was made aware of the report is provided. Space for the employee's signature and date signed acknowledging that the report was discussed with the employee also is provided.

-- Narrative Summary - A brief definition of the manager's position and responsibilities and a summary statement of the overall evaluation is required. This is followed by a well documented narrative summary evaluation of each basic management function in relation to assigned work, attained results, and approved standards.

-- Basic Management Functions - There are eight general management operations with explanatory notes for each. The phrase "Basic Management Functions" is defined in Section V of this Plan and on the evaluation form.

-- Appeals - The appeal rights are stated on the evaluation form.

-- Probationary Managers - Rating of probationary managers is provided, including: check-off boxes for "Competent" or "Unsatisfactory" overall performance, check-off boxes for determination of final appointment, and signatures of reporting officers.

IV. Rating Standards

In these definitions, a part of work performance may be a duty, responsibility, task or function. There shall be five overall rating standard categories for permanent managers:

OUTSTANDING - All significant parts and almost all other parts of work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and the few remaining parts of the performance are at least "Competent."

VERY GOOD - Most of the significant parts of the work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and all other parts of the performance are at least "Competent."

COMPETENT - Most significant parts of the work performance as they relate to assigned goals and/or basic management functions meet the standards of performance required for the position and in a few instances exceed the standards of performance required for the position. Work performance for all other parts consistently meets the standards of performance required for the position, but occasionally exceeds and occasionally falls short of assigned goals.

IMPROVEMENT NEEDED - This rating indicates that (1) a significant part of the work performance as it relates to assigned goals and/or basic management functions is below the standards of performance required for the position, and (2) it is reasonable to expect that the rated manager will bring work performance as it relates to assigned goals and/or basic management functions up to acceptable standards. A "Plan for Improvement" must be included specifying steps to be taken by both the rater and the rated manager to improve performance during a specified period of time.

When this rating is given, a new evaluation must be made within a period not to exceed six months from the day on which the manager is served with the "Improvement Needed" evaluation and "Plan for Improvement," such evaluation to bear an overall rating of either "Competent" or "Unsatisfactory." If no follow-up rating is submitted at the end of six months, the manager will revert to the former "Competent" status. If a manager is absent from duty for

a prolonged period while on approved leave prior to the completion of such six month period, the appointing power may, with the approval of the Director of Personnel, calculate the six month period on the basis of actual service, exclusive of the time away on leave. If adequate justification is provided, and with the approval of the Director of Personnel, the requirement of a new evaluation bearing a rating of "Competent" or "Unsatisfactory" within six months may be waived for up to an additional six months.

UNSATISFACTORY - A substantial and/or significant part of the work performance as it relates to assigned goals and/or basic management functions is inadequate and definitely inferior to the standards of performance required for the position. When this rating is given, it must be accompanied by a discharge or reduction in those cases in which the employee is still in service.

Permanent managers must be given prior written notice of planned disciplinary actions involving discharge, reduction, and suspensions in excess of ten days. This letter of notice must contain: (1) the specific grounds and reasons for the proposed discipline; (2) notification that the materials upon which the proposed discipline is based are available to the employee and copies will be provided upon request; (3) notification of the right to respond, orally, in writing, or both, to a manager who can alter or, if appropriate, rescind the anticipated disciplinary action. These procedural rights must precede the existing appeal rights under Civil Service Commission Rule 5 (Hearings).

Probationary Manager Rating Standards

There shall be two overall rating standard categories for probationary managers: "Competent" and "Unsatisfactory." The definitions for each overall rating category are detailed in Rule 21.54. The overall rating assigned shall be reasonably substantiated by factual evidence in writing of the total results achieved by the manager in meeting organizational objectives.

When performance is "Competent," this report is to be completed before the end of the probationary period. It should be discussed with the manager and he must be given a copy.

When performance is "Unsatisfactory," this report can be completed at any time during the probationary period. The manager must be either reduced or discharged. The report must be discussed with the manager and he must be given a copy at least five business days before the Commission considers the requested discharge or reduction.

V. Basic Management Functions

The Basic Management Functions are the broad fundamental responsibilities which are characteristic of all managerial positions. These Basic Management Functions provide basic categories for the evaluation of specific results in each managerial performance function.

The eight basic management functions are: managing human resources, managing affirmative action, managing financial and material resources, managing work (systems and operations), managing information, managing as a member of the team, managing change, and personal management. Each suggested basic management function has a list of questions which focus attention on specific results in that managerial function. The questions provide some instruction and guidance in the analysis of results. These basic management functions and the relevant questions are:

1. Managing Human Resources:

   How well does the manager identify and recruit good employees? Is development of subordinates provided? Are effective employer/employee relations maintained? Are supervision, direction and discipline handled well? Have training needs been determined? Is absenteeism monitored and held to a minimum? Is turnover monitored and held to a minimum? Are exit interviews utilized? Does the manager positively motivate the employees?

2. Managing Affirmative Action:

   Does the manager have a plan for achieving a balanced work force? Has the plan been implemented? What measurable progress has been observed?

3. Managing Financial and Material Resources:

   Is the manager's budget well planned and executed? Are budget savings realized? Are material resources planned and utilized well? Are material savings realized? Are there productivity indices? Was productivity increased? Are revenue sources maximized? Are charges for services realistically priced?

4. Managing Work (Systems and Operations):

Does the manager control work of the unit? Are effective and realistic short and long term plans maintained? Are goals and objectives developed and established? Are goals met in a timely manner? Are systems and operations developed and improved? Is work accurate? Is the manager responsive? Are policies developed and implemented?

5. Managing Information:

Does the manager report thoroughly and promptly? Is communication with superiors, peers, subordinates, and the public effective? Is effective use made of the information sources?

6. Managing as a Member of the Team:

Does the manager have a positive public relations image? Are relations with the Board offices effective? How effective are relationships with other managers in the department to which the manager is assigned and with other departments and other agencies with which work is coordinated? Does the manager create a team effort? Is the manager's leadership style conducive to a favorable and healthy organizational climate?

7. Managing Change:

How does the manager handle emergencies? How does the manager react to internal and external influences? Is the ability to be innovative and adaptable demonstrated? Does the manager take moderate and well-considered risks to increase the effectiveness of his organization? Does the manager plan ahead, anticipate the future, and act accordingly?

8. Personal Management:

Does the manager accept responsibility? Is the manager independent, consistent and reliable? Is criticism accepted and used to advantage? Is an ethical approach displayed in work activities? Have personal development goals been established?

VI. Evaluation Process

The procedural steps to be completed when Management Performance Evaluation Form I is used to rate a manager are as follows:

Procedure

Definition of individual County manager position in terms of major duties, subordinate levels, authority, responsibility and/or high level advisory function.

Definition of overall evaluation.

Evaluation of specific results attained in relation to basic management functions and approved rating standards.

Summary narration of individual manager's performance.

Management Performance Evaluation Form I should be used when the reporting and documentation of the duties and responsibilities of the manager are best reflected through use of the eight basic management functions. MPE Form I should be used when it can provide meaningful data for the individual manager's growth and development.

Since this MPE Plan is a reflection of management plans, activities, actions, and results, any significant change in management behavior or systems will result in a similar change in this MPE Plan.

Realistically, some changes in objectives, goals, priorities, responsibilities, and programs will probably occur during the rating period. In recognition of these occurrences, the MPE Plan will need to be periodically reviewed and updated.

The actual dynamics of the evaluation process requires the involvement, participation, and commitment of both the superior and subordinate managers. Each step of the MPE Plan requires some actions and communications on the part of both managers.

The evaluation process for Management Performance Evaluation Form I requires collaboration on the part of both the superior and subordinate manager in relation to basic management functions and work standards. Both verbal and written communication should be used as necessary in this process. There should be a timely reporting of any significant development in relation to basic management functions on the part of the subordinate manager. The superior manager should provide appropriate feedback in the form of evaluation of specific functions, coaching and changing work function priorities.

VII. Appeals

In order to ensure that all managers in the classified service receive fair and impartial treatment at all times, the appeal rights have been specified in Commission Rule 21.65 and the "Skelly Rights" in Rule 21.64.

21.64 Procedure on Appeals

Only managers with overall ratings of "Improvement Needed" and "Unsatisfactory" may request a hearing. Such a request shall be in accordance with Rule 5. For any other rating and for a probationary rating, a manager may file an answer or statement with the Commission. Such a statement shall be made a part of the manager's Civil Service record.

If, subsequent to resignation a manager who held permanent status receives a performance evaluation with an overall rating of "Improvement Needed" or "Unsatisfactory," the manager may, within ten business days after delivery or mailing to him of a copy of the evaluation, request reconsideration of the rating by the Commission. This request must be in writing, setting forth in detail all the specific reasons and grounds upon which the request is made. Upon receipt of the request, the Commission may deny the request, uphold the rating as prepared, or conduct a hearing from written materials. In no event shall the decision of the Commission affect the manager's resignation.

21.65 Records

In all departments, the records, reports and other data relating to a manager's performance shall be open at all times to the inspection of the Commission, the Director of Personnel, and the manager concerned and/or the manager's authorized representative. Such authorization must be in writing.

Nothing herein contained is to be construed to require disclosure of information which would otherwise be privileged or confidential as provided by the laws of this state.

COUNTY OF LOS ANGELES DEPARTMENT OF PERSONNEL
REPORT OF PERFORMANCE EVALUATION
MANAGEMENT PERSONNEL

Kurt O. Widmer	018341	3459	P	May 31, 1976
MANAGER'S NAME	EMPLOYEE NO.	ITEM NUMBER	STATUS	DATE

Superintendent of Building	County Engineer Department Building & Safety Division	FROM: 6-1-75	TO: 5-31-76
POSITION	DEPARTMENT & DIVISION	PERIOD	

Using the basic management functions listed below as a guide or outline, prepare a narrative summary of the manager's performance for each basic management function in relation to assigned responsibilities for this position during this rating period.

RATING STANDARDS FOR EACH FUNCTION

OUTSTANDING
VERY GOOD
COMPETENT
IMPROVEMENT NEEDED
UNSATISFACTORY

BASIC MANAGEMENT FUNCTIONS
(See reverse side for definitions and explanatory notes)

	OUTSTANDING	VERY GOOD	COMPETENT	IMPROVEMENT NEEDED	UNSATISFACTORY
Managing Human Resources:				X	
Managing Affirmative Action:			X		
Managing Financial and Material Resources:				X	
Managing Work (Systems and Operations):					X
Managing Information:				X	
Managing As A Member Of The Team:				X	
Managing Change:				X	
Personal Management:				X	
OVERALL EVALUATION:				X	

RATING STANDARDS--The definitions for these rating standards are:

OUTSTANDING - Almost all significant parts and almost all other parts of work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and the few remaining parts of the performance are at least "Competent."

VERY GOOD - Almost all significant parts of the work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and all other parts of the performance are at least "Competent."

COMPETENT - Most significant parts of the work performance as they relate to assigned goals and/or basic management functions meet the standards of performance required for the position and in a few instances exceed the standards of performance required for the position. Work performance for all other parts consistently meets the standards of performance required for the position, but occasionally exceeds and occasionally falls short of assigned goals.

IMPROVEMENT NEEDED - This rating indicates that a significant part of the work performance as it relates to assigned goals and/or basic management functions is below the standards of performance required for the position.

UNSATISFACTORY - A substantial and/or significant part of the work performance as it relates to assigned goals and/or basic management functions is inadequate and definitely inferior to the standards of performance required for the position.

Usually for each basic management function which is met, the specific results should be rated as "Competent."

The appropriate evaluation category for each basic management function shall be based upon the specific results attained in relation to the rating standards. In other words the specific results should be consistent with the rating standard.

The overall evaluation shall be based upon the total results attained in relation to the rating standards. In other words the total results should be consistent with the rating standard.

SIGNATURES OF REPORT OFFICERS

This report is based on my observation and/or knowledge. It represents my best judgment of my employee's performance.
Rater Albert J. Cooper Date June 1, 1976

Review of Appraisal by Superior Manager
I concur in and approve this report.
Reviewer Albert C. Lee Date June 1, 1976

I concur in and approve this report.
Dept. HD/BD Supvr.or Authorized Representative
Date June 1, 1976

Copy of report given to employee.
By Albert J. Cooper Date June 2, 1976

Copy of report mailed to employee.
Address _____ Date _____

Report discussed with employee.
By _____ Date _____

This report has been discussed with me.
EMPLOYEE'S SIGNATURE Kurt O. Widmer Date June 2 1976
(Employee's signature does not imply agreement with the report but only that he or she has read it.)

The basic purpose of this MPE Plan is to maximize organizational effectiveness for the County as a whole, for each department, and for each departmental sub-group.

The basis of this MPE Plan is the rating of a County manager at least once each year in terms of the manager's total results achieved in meeting organizational objectives.

KURT WIDMER
PERFORMANCE EVALUATION
NARRATIVE SUMMARY

Definition of Superintendent of Building Position

Kurt Widmer, Superintendent of Building, directs the activities of the Building and Safety Division, which is comprised of 274 budgeted positions. Kurt has discretion to formulate prioritized goals and objectives within the Division and to determine organizational strategy and resources to achieve them. He plans, organizes, directs, coordinates, staffs and controls divisional operations. He reports to the Assistant Chief Deputy, Chief Deputy, and County Engineer. Kurt makes recommendations which greatly influence departmental policy and programs.

Summary Statement of Overall Evaluation

Kurt's performance for this period based on total results attained is rated "Very Good." Specifically, Kurt was rated: "Outstanding" for Managing Work (Systems and Operations); "Very Good" for six basic management functions: Managing Human Resources, Managing Financial and Material Resources, Managing Information, Managing as a Member of the Team, Managing Change, and Personal Management; "Competent" for Managing Affirmative Action.

1. Managing Human Resources

Kurt has recruited top engineering personnel from universities and private industry. He has provided the opportunity for six outstanding minority employees including females to participate in career development programs in engineering and public administration. He has increased departmental productivity by inaugurating a highly effective absenteeism program. This has resulted in a net gain of 720 man working hours over the last 9 months. He has identified training needs throughout the Division and has provided an annual training plan request to the Department. Management by specific results is utilized and goals are mutually understood by all managers of the Division. This has resulted in increased motivation and improved productivity for the Division.

2. Managing Affirmative Action

Kurt has initiated an affirmative action plan for achieving a more balanced work force. This plan is being implemented and Kurt is currently analyzing ways to improve the plan. To date, Kurt has increased the number of minority employees in professional positions by 20% and at non-professional and clerical levels by 17%. However, this is still below established goals for this point in time of a 25% increase of minorities in professional positions and 20% for non-professional and clerical levels. Nevertheless, these results are considerable since the established goals were relatively high.

3. Managing Financial and Material Resources

Kurt has analyzed and submitted yearly Division budget requests in a thorough and timely manner. He has managed his budget wisely and has worked closely with the Department's Budget Section to properly utilize and adjust the approved budget to changing needs. He has realized a small salary savings during the past year by not filling several non-essential engineering and clerical positions. Kurt has utilized the assistance of the CAO and Personnel in developing productivity indices. No measurable results from this effort are available at this time. He has been most successful in projecting service costs. For example, contractor permit fees were realistically adjusted upward by 12.5%, reflecting current survey cost increases. This prevented the Division from operating at a loss to the County taxpayer.

4. Managing Work (System and Operations)

Kurt has ably represented the best interests of the County and the Department at various levels of government. He has had a positive impact on updating, amending and initiating new building laws at the State and local levels in a timely manner. For example, he proposed and assisted in having approved legislation which provides for energy conservation. He has developed and

maintained good liaison with the public, the building industry, and other groups in interpreting various building codes. He has been a positive influence on State and local building regulations as evidenced by the adoption of County Ordinance 10981--shingle roof construction requirements.

Kurt has effectively enforced State and local building codes. He has reorganized the 7 district offices under his supervision to be more responsive in reviewing plans, issuing permits, and conducting inspections. He has maintained the private construction plan check backlog at 14.5 days. He has maintained the average office time of inspection staff at 25% which has maximized field inspection. He has increased County valuation at a 3% growth rate during the rating period, which exceeds the standard of 1.75%.

Kurt has attained outstanding results with the Property Rehabilitation and Health Safety Program. He has maintained a highly favorable caseload of 2,500 abatement and substandard building, and property cases, which exceeds the standard of 2,300. He has maintained an average cost of $220 per case which is $30 below the standard. This has generated over $2.6 million in Federal revenue to the County in the past twelve months.

He has met all goals in a timely manner, and has managed his time to attain each goal as necessary. He pays close attention to the detail of all major Division operations. His work is always accurate and usually well thought-out. He is responsive to all Board and Departmental executive requests and inquiries.

5. Managing Information

Kurt has completed all departmental assignments and distributed appropriate information within acceptable time limits. He conducts staff meetings effectively. He effectively relays information to other divisions when appropriate. For example, Kurt contacted three division chiefs providing current code interpretations to them. This was accomplished without direct supervision or suggestion from his supervisors, and proved most beneficial to each chief's division operations.

6. Managing as a Member of the Team

Kurt has a positive public relations image. He has provided leadership in all team projects within the Division. He has accomplished team goals within acceptable time limits. He has attained results in an open and cooperative manner. For example, he has effectively managed the four highly technical and varied sections of the Building and Property Rehabilitation Program. Kurt has maintained good working relationships with other departments and agencies in which he comes in contact with. Kurt's relations with the Board staff are good.

7. Managing Change

Kurt has completed all assignments within an environment of continuous change. He has managed all resources, including staff, supplies, equipment and time in an effective manner. For example, SB 91 required that overtime be paid to all permanent engineering personnel. The Division's budget lacked sufficient funds to meet this new requirement. Kurt reorganized and adjusted Division procedures and priorities enabling all engineering personnel to complete their assignments without the need for paid overtime. He has responded to the rapid upturn in new building starts in the Pomona Valley by reassigning Inspectors to the Pomona Regional office from other Regional offices.

8. Personnel Management

Kurt has accepted increasingly complex assignments with a high degree of responsibility and resourcefulness. He has worked independent of day-to-day direction, and has willingly carried out departmental policy, even after strongly voicing opposing viewpoints prior to formulation of policy. He has used constructive criticism of his operations to his advantage. For example, he has implemented several CAO Audit recommendations for improving expenditure controls.

APPENDIX

MANAGEMENT PERFORMANCE EVALUATION PLAN

A. Management Performance Evaluation Report Format - Form II

This form should be used for those units having formal and complete goals and objectives, and when the reporting and documentation of the duties and responsibilities of the manager are best related through identifying goals and results.

Management Performance Evaluation Form II - The attached form consists of the following sections:

-- Manager Identification - This section includes the manager's name, employee number, status, date, position, department/division, and reporting period.

-- Individual Evaluations - The individual evaluations are expressed in terms of these rating standards: "Unsatisfactory," "Improvement Needed," "Competent," "Very Good," and "Outstanding." The individually evaluated items are the prepared prioritized goals for significant parts of work performance and for other parts of work performance. The evaluation shall be based upon the specific results attained.

-- Overall Evaluation - This evaluation is based upon the total results attained and expressed in terms of the Rating Standards.

-- Rating Standards - There are definitions for five rating standard categories.

-- Signatures of Report Officers - This section provides space for the name and date signed by the rater, reviewer (optional), and department head/Board Supervisor. In addition, space for noting how and when the employee was made aware of the report also is provided. Space for the employee's signature and date signed acknowledging that the report was discussed with the employee also is provided.

-- Narrative Summary - A brief definition of the manager's position and responsibilities, a summary statement of the overall evaluation, and brief appraisals of specific results attained are required. This is followed by a well documented narrative summary evaluation of specific results in relation to assigned goals and approved standards.

-- Basic Management Functions - There are eight general management operations with explanatory notes for each. The phrase "Basic Management Functions" is defined in Section V of this Plan and on the evaluation form.

-- Appeals - The appeal rights are stated on the evaluation form.

-- Probationary Managers - Rating of probationary managers is provided, including: check-off boxes for "Competent" or "Unsatisfactory" overall performance, check-off boxes for determination of final appointment, and signatures of reporting officers.

B. Evaluation Process

The procedural steps to be completed when Management Performance Evaluation Form II is used to rate a manager are as follows:

Procedure

Definition of individual County manager position in terms of major duties, subordinate levels, authority, responsibility and/or high level advisory function.

Definition of overall evaluation.

Establishment of manager's major prioritized organizational objectives and goals.

Evaluation of specific results attained in relation to assigned goals and approved rating standards.

Summary narration of individual manager's performance.

Since this MPE Plan is a reflection of management plans, activities, actions, and results, any significant change in management behavior or systems will result in a similar change in this MPE Plan.

Realistically, some changes in objectives, goals, priorities, responsibilities, and programs will probably occur during the rating period. In recognition of these occurrences, the MPE Plan will need to be periodically reviewed and updated.

The actual dynamics of the evaluation process requires the involvement, participation, and commitment of both the superior and subordinate managers. Each step of the MPE Plan requires some actions and communications on the part of both managers.

In the use of Management Performance Evaluation Form II, the subordinate manager proposes the objectives, goals, priorities, programs and use of resources to the superior manager who, in term, reviews the proposal, discusses the proposals with the subordinate, negotiates with the subordinate, and tries to reach joint agreement on the final decision. Each step requires collaboration on the part of both managers and as much verbal and written communication as necessary. There should be a timely reporting of results, problems and changes on the part of the subordinate manager and appropriate feedback in the form of evaluation of specific results, coaching, changing priorities in objectives, goals and programs on the part of the superior manager.

REPORT OF PERFORMANCE EVALUATION
MANAGEMENT PERSONNEL

Kurt O. Widmer	018341	3459	P	May 31, 1976
MANAGER'S NAME	EMPLOYEE NO.	ITEM NUMBER	STATUS	DATE

Superintendent of Building	County Engineer Department Building & Safety Division	FROM: 6-1-75 TO: 5-31-76
POSITION	DEPARTMENT & DIVISION	PERIOD

Prepare and attach prioritized written goals and specific results attained to this report as appropriate.

Individual Evaluation of Specific Results for Each Goal Expressed in Terms of Rating Standards.

SIGNIFICANT PARTS OF WORK PERFORMANCE--GOALS	Unsatisfactory	Improvement Needed	Competent	Very Good	Outstanding
Goal 1				x	
Goal 2				x	
Goal 3				x	
Goal 4					x
Goal 5				x	
OTHER PARTS OF WORK PERFORMANCE--GOALS					
Goal 1			x		
Goal 2			x		
Goal 3			x		
Goal 4			x		
OVERALL EVALUATION				X	

RATING STANDARDS--The definitions for these rating standards are:

OUTSTANDING - Almost all significant parts and almost all other parts of work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and the few remaining parts of the performance are at least "Competent."

VERY GOOD - Almost all significant parts of the work performance as they relate to assigned goals and/or basic management functions consistently exceed the standards of performance required for the position and all other parts of the performance are at least "Competent."

COMPETENT - Most significant parts of the work performance as they relate to assigned goals and/or basic management functions meet the standards of performance required for the position and in a few instances exceed the standards of performance required for the position. Work performance for all other parts consistently meets the standards of performance required for the position, but occasionally exceeds and occasionally falls short of assigned goals.

IMPROVEMENT NEEDED - This rating indicates that a significant part of the work performance as it relates to assigned goals and/or basic management functions is below the standards of performance required for the position.

UNSATISFACTORY - A substantial and/or significant part of the work performance as it relates to assigned goals and/or basic management functions is inadequate and definitely inferior to the standards of performance required for the position.

Usually for any given goal which is met, the specific results should be rated as "Competent."

The appropriate evaluation category for each goal shall be based upon the specific results attained in relation to the rating standards. In other words the specific results should be consistent with the rating standard.

The overall evaluation shall be based upon the total results attained in relation to the rating standards. In other words the total results should be consistent with the rating standard.

SIGNATURES OF REPORT OFFICERS

This report is based on my observation and/or knowledge. It represents my best judgment of my employee's performance.
Rater Arthur T. Cooper Date June 1, 1976

Review of Appraisal by Superior Manager
I concur in and approve this report.
Reviewer Robert O. Lee Date June 1, 1976

I concur in and approve this report.
Dept.HD/BD Supvr.or Authorized Representative
Date June 1, 1976

Copy of report given to employee.
By Arthur T. Cooper Date June 2, 1976

Copy of report mailed to employee.
Address _____ Date _____

Report discussed with employee.
By _____ Date _____

This report has been discussed with me.
EMPLOYEE'S SIGNATURE Kurt O. Widmer Date June 2, 1976
(Employee's signature does not imply agreement with the report but only that he or she has read it.)

The basic purpose of the MPE Plan is to maximize organizational effectiveness for the County as a whole, for each department, and for each departmental sub-group.

The basis of this MPE Plan is the rating of a County manager at least once a year in terms of the manager's total results achieved in meeting organizational objectives.

KURT WIDMER
PERFORMANCE EVALUATION
NARRATIVE SUMMARY

Definition of Superintendent of Building Position

Kurt Widmer, Superintendent of Building, directs the activities of the Building and Safety Division, which is comprised of 274 budgeted positions. Kurt has discretion to formulate prioritized goals and objectives within the Division and to determine organizational strategy and resources to achieve them. He plans, organizes, directs, coordinates, staffs and controls divisional operations. He reports to the Assistant Chief Deputy, Chief Deputy, and County Engineer. Kurt makes recommendations which greatly influence departmental policy and programs.

Summary Statement of Overall Evaluation

Kurt's performance for this period based on total results attained is rated "Very Good." Kurt exceeded the standards for all five of the five significant parts of work performance: building code enforcement, representation of the County at hearings and meetings, management of the Division budget, administration of the Property and Rehabilitation Program, and responsiveness to the public. He consistently met the standards for all other parts of work performance, including: improvement of productivity, adjustment of permit cost fees, control of private construction plan check backlog, and completion of assignments.

SIGNIFICANT PARTS OF WORK PERFORMANCE

Goal 1 To direct the consistent enforcement of codes to ensure 5% of existing buildings and 100% of all new construction is inspected.

Result Directed inspection of 6% of existing and 100% of all new constructions.

Goal 2 To represent the County at 90% of major public hearings and an estimated 25% of State and Board of Supervisors' meetings which are related to his divisional responsibilities.

Result Represented the County at 95% of major public hearings and 25% of State and County departmental related meetings.

Goal 3 To administer and not exceed Division budget of $5.1 million.

Result Administered Division budget with net savings of $125,000.

Goal 4 To direct the consistent administration of the Building and Property Rehabilitation Program by maintaining an active caseload of 2,300 abatement and substandard building and property cases.

Result Maintained a caseload of 2,500 abatement and substandard building and property cases. Maintained an average cost of $220 per case. Generated over $2.6 million in Federal revenue to the County in the past twelve months which exceeded by $300,000 the total for the previous twelve month period.

Goal 5 To respond promptly and consistently by providing effective services to all citizen, contractor and public agency requests relating to building and safety and to receive a minimal number of operationally controllable (12 per year) citizen or agency complaints to the Board of Supervisors.

Result Responded consistently and promptly to nearly all citizen, contractor and public agency requests relating to building and safety codes resulting in only 3 formal complaints being brought to the Board of Supervisor's attention.

OTHER PARTS OF WORK PERFORMANCE

Goal 1 To increase Division productivity by decreasing absenteeism by 850 man working hours per year.

Result Inaugurated a successful absenteeism program which resulted in a decrease in absenteeism and a savings of 720 man working hours over the last nine months.

Goal 2 To project permit costs and adjust fees accordingly.

Result Anticipated and increased contractor permit fees by 12.5% to reflect current surveying cost increases.

Goal 3 To maintain the private construction plan check backlog at 15 or less working days.

Result Consistently maintained the private construction plan check backlog at 14.5 days.

Goal 4 To complete 90% of assignments by assigned due date.

Result Consistently completed 92% of assignments on time.

Narrative Summary Evaluation

Significant Parts of Work Performance

Goal 1: Kurt has effectively enforced State and local building codes. He has reorganized the 7 district offices under his supervision to be more responsive in reviewing plans, issuing permits, and conducting inspections.

Under his direction, 6% of existing construction and 100% of all new construction has been inspected during this rating period.

Goal 2: Kurt has represented the County at 95% of major public hearings and 25% of State and County departmental related meetings. He has ably represented the best interests of the County and the Department at various levels of government. He has had a positive impact on updating, amending and initiating new building laws at the State and local levels in a timely manner. For example, he proposed and assisted in having approved legislation which provides for energy conservation. He has developed and maintained good liaison with the public, the building industry, and other groups in interpreting various building codes. He has been a positive influence on State and local building regulations as evidenced by the adoption of County Ordinance 10981--shingle roof construction requirements.

Goal 3: Kurt has analyzed and submitted yearly Division budget requests in a thorough and timely manner. He has managed his budget wisely and has worked closely with the Department's Budget Section to properly utilize and adjust the approved budget to changing needs. He has realized a small salary savings during the past year by not filling several non-essential engineering and clerical positions. Kurt has utilized the assistance of the CAO and Personnel in developing productivity indices. No measurable results from this effort are available at this time.

He has managed all resources, including staff, supplies, equipment and time in an effective manner. For example, SB 91 required that over-time be paid to all permanent engineering personnel. The Division's budget lacked sufficient funds to meet this new requirement. Kurt reorganized and adjusted Division procedures and priorities enabling all engineering personnel to complete their assignments without the need for paid overtime.

He has administered the Division budget for a net savings of $125,000 during this rating period.

Goal 4 Kurt has attained outstanding results with the Property Rehabilitation and Health Safety Program. He has maintained a highly favorable caseload of 2,500 abatement and substandard building, and property cases, which exceeds the standard of 2,300. He has maintained an average cost of $220 per case which is $30 below the standard. This has generated over $2.6 million in Federal revenue to the County in the past twelve months.

He has attained these results in an open and cooperative manner. For example, he has effectively managed the four highly technical and varied sections of the Building and Property Rehabilitation Program.

Goal 5 Kurt has been responsive to all Board and departmental executive requests and inquiries. His work always has been accurate and usually well thought-out. He has paid close attention to the detail of all major Division operations.

Kurt has accepted increasingly complex assignments with a high degree of responsibility and resourcefulness. He has worked independent of day-to-day direction, and has willingly carried out departmental policy, even after strongly voicing opposing viewpoints prior to formulation of policy. He has used constructive criticism of his operations to his advantage. For example, he has implemented several CAO Audit recommendations for improving expenditure controls.

He has responded to the rapid upturn in new building starts in the Pomona Valley by reassigning Inspectors to the Pomona Regional office from other Regional offices.

Kurt has maintained good working relationships with other departments and agencies in which he comes in contact with. Kurt's relations with the Board staff are good. Only three formal complaints have been brought to the Board of Supervisor's attention during this rating period.

Kurt has demonstrated a positive public relations image.

Other Parts of Work Performance

Goal 1: Kurt has increased departmental productivity by inaugurating a highly effective absenteeism program. This has resulted in a net gain of 720 man working hours over the last 9 months. He has identified training needs throughout the Division and has provided an annual training plan request to the Department. Management by specific results has been utilized by Kurt, and goals are mutually understood and agreed upon by Kurt and all managers reporting to him. This has resulted in increased motivation and improved productivity for the Division.

Goal 2: Kurt has been most successful in projecting service costs. For example, contractor permit fees were realistically adjusted upward by 12.5%, reflecting current survey cost increases. This has prevented the Division from operating at a loss to the County taxpayer.

Goal 3: Kurt has maintained the private construction plan check backlog at 14.5 days. He has maintained the average office time of inspection staff at 25% which has maximized field inspection. He has increased County valuation at a 3% growth rate during the rating period, which exceeds the standard of 1.75%.

Goal 4: Kurt has met all goals in a timely manner, and has managed his time to attain each goal as necessary.

He has completed 92% of assignments within an environment of continuous change.

He has distributed appropriate information within acceptable time limits. He effectively relays information to other divisions when appropriate. For example, Kurt contacted three division chiefs providing current code interpretations to them. This was accomplished without direct supervision or suggestion from his supervisors, and proved most beneficial to each chief's division operations.

He has provided leadership in all team projects within the Division. He has accomplished team goals within acceptable time limits.

E

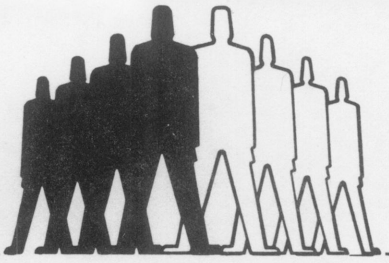
TAB E

SUPPLEMENTARY MATERIALS AND GLOSSARY

▪LEAGUE▪CSAC▪

LABOR RELATIONS SERVICE

11th & L BUILDING SUITE 523 916-446-0273 SACRAMENTO, CALIFORNIA 95814



SUGGESTED EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

PREPARED FOR

THE LEAGUE OF CALIFORNIA CITIES*

CONTENTS

* A similar resolution was prepared for county use.

FOREWORD

Since its effective date in 1969, the Meyers-Milias-Brown Act has been implemented in different ways and in varying degrees of formality by cities throughout California. In 1969 the League of California Cities developed a suggested employer-employee relations resolution. Years of experience under the Meyers-Milias-Brown Act, amendments to the Act, as well as many interpretive court decisions suggested the need to provide this updated model to reflect current thinking in the field.

The League and the County Supervisors Association of California have worked together through Gene Bell and the League/CSAC Labor Relations Service to develop this resolution. John Liebert, with the law firm of Paterson and Taggart, provided professional consulting services.

Attached is a short commentary addressing the rationale and implications of certain sections of the resolution, followed by the suggested resolution, and then by the Meyers-Milias-Brown Act as effective in 1976. Questions concerning the commentary or resolution should be directed to the Labor Relations Service (916) 446-0273.

COMMENTARY ON

SUGGESTED EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

This resolution should provide a sound basis for the labor relations process for several years to come. It is, however, merely a sample or guide. Peculiar local circumstances, needs or concerns may require adaptation or deviation from the policies suggested herein.

The document is presented in the form of a resolution for a general law city. With minor reconstruction, the policies could be presented in the form of an ordinance. Each city should decide whether its basic policy regarding employee relations should be adopted as a resolution or an ordinance. A resolution may be somewhat easier to enact or amend inasmuch as it does not carry the requirement of two readings as does an ordinance. There may also be some minor cost savings since there is no publishing requirement. On the other hand, if the city is adopting the very best employee relations policy that can be developed, it may choose to use an ordinance to achieve as much permanence as possible. In either case, a majority vote of the council is required to adopt or amend.

Art. I, Sec. 1 (2 references)* Also other locations

For use by a charter city, appropriate reference to the city charter should be added where indicated.

Under the Meyers-Milias-Brown Act, a city is required to "consult" with its employee organizations before adopting rules to implement the Act. This requirement does not necessitate the agreement of the employee organizations; but a good faith attempt should be made to address the concerns of all parties. In the consideration of any concessions requested by the employee organizations, it is very important to evaluate long-term implications as well as short-term advantages that might be gained by agreeing to deviate from this model.

The League's 1969 model was accompanied by a set of supplemental rules and regulations intended for use in implementing the suggested resolution. The resolution now being suggested is completely self-contained and requires no additional set of rules. Additional rules such as use of bulletin boards, dues

---

*This note refers to the location in the suggested resolution where the issue being addressed in the commentary may be found.

deduction and availability of data are all negotiable and should be included in memoranda of understanding.

Management Rights

Art. I, Sec. 1

The model resolution recommends inclusion of language protecting management rights in the "statement of purpose". This is a means of protecting the basic management rights without the "red flag" of a "management rights clause". Some cities may choose to incorporate this language as a specific management rights section.

In developing a management rights clause, it is important to secure the strongest statement legally possible, such as the one reflected in the second paragraph of Article I, Section 1. To include a weak statement of management rights may prove damaging because it could be assumed that rights not specifically stated as belonging to management are subject to the meet and confer process. Instead of enumerating specific management rights, some cities may choose to rely on the "reserved rights theory". This would require a statement to the effect that all rights not specifically shared with employee organizations remain with the city.

A delineation of management rights in an agreement with a recognized employee organization is also advisable. In case an action of the state legislature were to preempt or invalidate the city's resolution outlining employee relations procedures, the memorandum of understanding would still be in effect. The memorandum of understanding should include the management rights included in this resolution plus any others that are felt to be necessary. Again, however, the admonition against a weak statement applies.

Definitions

Art. 1, Sec. 2

Art. I, Sec. 2 (k)

The definitions section of the suggested resolution departs from the earlier version by not repeating portions of the Meyers-Milias-Brown Act. The definitions offered for management, confidential and supervisory employees are consistent with those used in the private sector. It is not necessary for a "supervisory employee" to perform all of the functions outlined in the definition. Consistent with private sector practice, however, it is recommended that a supervisor be required to perform and be held accountable for some, if not most, of the functions.

Recognition of Employee Organizations

The recognition process calls for a single recognized employee

organization per unit. The model developed in 1969 provided for both formal and informal recognition. Informal recognition carried with it only the charge to consult in good faith as opposed to the responsibility to meet and confer. The resolution currently being suggested provides for formal recognition only. Stability of the labor relations process can be enhanced if the city deals with only one employee organization per unit.

Art. I, Sec. 2 (j)

If a city desires to expressly grant "exclusive recognition", it may do so by modifying the definition of "recognized employee organization" to mean an employee organization which has been formally acknowledged by the city as the exclusive organization that represents employees in an appropriate representation unit.

The Petitioning Process and Appropriate Units

Art. II, Sec. 3

Art. II, Sec. 3 (j)

To gain recognition, an employee organization must file a recognition petition with the city's employee relations officer. Among other things, the petition must state that a majority of the employees in the proposed unit have designated the organization to represent them in their employment relations. Written proof of this support must be submitted to the employee relations officer or to a disinterested third party for confirmation. For these purposes, a disinterested third party may include representatives of the California State Conciliation Service, the American Aribtration Association or any third party upon which the city and the employee organization can agree. The requirement that a majority of the employees designate the employee organization as their representative is the same requirement recently imposed by state law on school district labor relations (the Rodda Act, Gov.C. 3540 et seq.) and agricultural labor relations (Agricultural Labor Relations Act, Labor Code 1140 et seq.).

Art. II, Sec. 4

Upon receiving a petition for recognition, the employee relations officer determines whether the petition is in compliance with requirements for filing petitions. In addition, the employee relations officer determines whether the proposed unit is an appropriate unit in accordance with the criteria for unit determination outlined in Article II, Section 8.

Art. II, Sec. 8

Importantly, the unit requested by the employee organization is not necessarily appropriate just because it has been so requested. The criteria for defining an appropriate unit are designed to prevent the excessive proliferation of units. Representation units should consist of the broadest feasible grouping of positions that share an identifiable community of interest.

While there has been no appellate court decision that addressed itself specifically to the exclusion of management, confidential and supervisory positions from bargaining units, the California Supreme Court opinion in Firefighters Union, Local 1186, IAFF, AFL-CIO v. The City of Vallejo (1974), 12 C. 3rd 608, analogizes M-M-B to the private sector exclusion of these positions from units. On this basis, and because it is so basic to a balanced labor relations system, management and

Art. II, Sec. 8

confidential positions are excluded from representation units by this sample resolution.

Since supervisory employees, contrary to management employees, have so commonly been included in units and participated in the meet and confer process in many cities, the

Art. II, Sec. 8

resolution provides that they may be included in units for meet and confer representation. However, they must be part of one or more separate supervisory units and may not be represented by the employee organization that represents the non-supervisory units in the city.

This approach of excluding management and confidential positions from units, and requiring separate units represented by separate organizations for supervisory positions, is the same as that used in the Rodda Act.

Section 3508 of the Government Code includes special provisions pertaining to the appropriate representation units for Peace Officers. The right of Peace Officers to join and participate in (be represented by) employee organizations can be restricted to organizations "composed solely of such peace officers . . . and which are not subordinate to any other organization." While the suggested resolution does not include a provision to this effect, each city may wish to consider the matter and decide whether such a provision would be appropriate in its own resolution. Section 3508 requires a public hearing prior to adoption of such provision.

If a negative determination is made on a recognition petition, the employee relations officer must offer to consult with the petitioning organization. If the determination remains unchanged, the employee organization may initiate the appeals procedure detailed in Article II, Section 10.

Art. II, Sec. 5

If the petition is in order and the proposed unit is deemed to be appropriate, other employee organizations are given thirty days to file competing requests for recognition. The challenging organizations must have the support of at least 30% of the employees in the unit they propose. The challenging petition may designate a proposed unit which is identical to or overlaps the unit proposed in the original recognition petition. The

requirement of 30% support for a challenging organization is consistent with the Rodda Act and the Agricultural Labor Relations Act.

Elections

Art. II, Sec. 6

Elections are required as the basis for recognition and decertification of employee organizations. Elections may be conducted by the City Clerk, the California State Conciliation Service, or another mutually agreed upon third party. In addition to including the qualifying employee organizations on the ballot, the choice of "no organization" is also required to be on the ballot.

Decertifications and Unit Modifications

Art. II, Sec. 7

Decertifications and unit modifications may not be requested during the first year following recognition. Thereafter, changes may be requested only during a thirty-day period six months prior to the end of the fiscal year or in a thirty-day period six months prior to the termination of the memorandum of understanding. Because of this feature, it is important to consider carefully the termination date of a memorandum of understanding A November 30 expiration date for example would provide the potential for a decertification campaign and elections during the busy month of June. One election is all that would be necessary to decertify one employee organization and certify another, unless a runoff is necessitated as a result of no choice receiving a majority of the votes.

Either the employee relations officer or the employee organization may propose unit modifications.

Dues Deduction and the Use of City Resources

Art. II, Sec. 12

Dues deduction is a negotiable item and not an automatic right of recognized employee organizations. If, through the negotiation process, payroll deductions are granted, the provisions of Article II, Section 12 come into effect.

Art. III, Sec. 13

Use of city resources such as city paid time, facilities, equipment, access to work locations and others are all negotiable items.

Procedure for Impasse Resolution

Art. IV

In the event the parties are unable to settle disputes arising from the negotiations process, a four stage impasse resolution procedure is suggested.

Art. IV, Sec. 15

First, at the initiation of either party an impasse meeting is scheduled wherein the parties attempt to narrow the issues in dispute and reduce them to writing.

Art. IV, Sec. 16 (a)

Second, if the dispute is not resolved in the impasse meeting, both parties may agree to explore new avenues to settlement through mediation.

In order for there to be mediation, the parties must agree on a mediator or a method for selecting the mediator. It may be a private individual, an employee of the California State Conciliation Service or an individual appointed from a list tendered by the American Arbitration Association or the State Conciliation Service. Inasmuch as a mediator's job is simply to attempt, in private, to persuade the respective negotiating representatives to voluntarily reach agreement, voluntary mediation is suggested because without the willing participation of both sides it will tend to be an exercise in futility.

Art. IV, Sec. 16 (b)

Third, if mediation fails or is bypassed, the parties may engage in a factfinding proceeding in the hope that recommendations will emerge to assist them in negotiating a settlement. Factfinding is also voluntary. Some cities may feel that their employer-employee organization relations have not become so structured that factfinding should be included in their impasse procedure. Such cities may choose to limit "outside" involvement to mediation, but as a trade-off could consider making that process mandatory at the request of either party.

Under the factfinding process, if the parties fail to agree on a factfinder or factfinding panel, a panel of three factfinders is appointed. One member of the panel is named by the employee relations officer, one by the recognized employee organization and the third, who acts as chairman, is named by the first two. The recommended resolution provides that, should the two be unable to decide on the third member of the panel, they should obtain one or more lists of names from the American Arbitration Association. There are other groups, such as the California State Conciliation Service, which provide a similar service, but it is felt that there are two advantages to AAA: a factfinder must abide by the rules of the Association and, importantly, if no name is selected from the first list offered, the Association will provide multiple lists.

Art. IV, Sec. 16 (c) (2)

It is recommended that cities adopt criteria which factfinders must apply in arriving at their findings and recommendations. The suggested resolution states that "subject to the stipulations of the parties" the factfinder shall apply the criteria, and recommended criteria are offered. The parties may agree to disregard or modify the criteria, but this is only advisable if

it is found that the criteria do not apply, as in some non-monetary disputes. In such cases, other criteria should be developed. Cities should be cautious as they embark on fact-finding proceedings. Any city would be in peril if it agreed to submit an issue to factfinding without first having specified the criteria to be used in guiding the factfinder's determination.

Art. IV, Sec. 16 (d) Finally, should the dispute remain unresolved after factfinding, or if factfinding is bypassed, the elected city council examines the issues and makes a final and binding determination.

LEAGUE OF CALIFORNIA CITIES

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

TABLE OF CONTENTS

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE _____:

ARTICLE I -- GENERAL PROVISIONS

Sec. 1. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State law, City (Charter,) ordinances, resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law (or the City Charter). However, nothing herein shall be construed to

restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

Sec. 2. Definitions.

As used in this Resolution, the following terms shall have the meanings indicated:

a. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

b. "City" means the City of _____, and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.

c. "Confidential Employee" means an employee, who, in the course of his or her duties, has access to information relating to the City's administration of employer-employee relations.

d. "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of in-

tended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement, nor is it subject to Article IV hereof.

e. "Day" means calendar day unless expressly stated otherwise.

f. "Employee Relations Officer" means the City Manager or his duly authorized representative.

g. "Impasse" means that the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

h. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies or programs.

i. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be con-

sidered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

j. "Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the employee organization that represents the employees in an appropriate representation unit pursuant to Article II hereof.

k. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

ARTICLE II -- REPRESENTATION PROCEEDINGS

Sec. 3. Filing of Recognition Petition By Employee Organization.

An employee organization that seeks to be formally acknowledged as the Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following

information and documentation:

a. Name and address of the employee organization.

b. Names and titles of its officers.

c. Names of employee organization representatives who are authorized to speak on behalf of the organization.

d. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.

e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.

f. Certified copies of the employee organization's constitution and by-laws.

g. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.

h. A statement that the employee organization has no restriction on membership based on race, color, creed, sex or national origin.

i. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the

employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

Sec. 4. City Response to Recognition Petition.

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

a. There has been compliance with the requirements of the Recognition Petition, and

b. The proposed representation unit is an appropriate unit in accordance with Sec. 8 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee

organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Sec. 10 of this Resolution.

Sec. 5. Open Period for Filing Challenging Petition.

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Sec. 3 of this Article II. If such challenging petition seeks establishment of an over-lapping unit, the Employee Relations Officer shall call for a hearing on such over-lapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Sec. 8 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Sec. 10 of this Article II.

Sec. 6. Election Procedure.

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this Resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformence with this Article II shall be included on the ballot. The choice of "no organization" shall also be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be con-

ducted by the American Arbitration Association.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

Sec. 7. Procedure for Decertification of Recognized Employee Organization.

A Decertification Petition alleging that the incumbent Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of January of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred eighty (180) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

b. The name of the established appropriate unit and of the incumbent Recognized Employee Organization sought to be decertified as the representative of that unit.

c. An allegation that the incumbent Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any

other relevant and material facts relating thereto.

d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent and otherwise conforms to the requirements of Section 3 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his determination is in the negative, he shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization, and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Sec. 10 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if his negative determination is reversed on appeal, he shall give written notice of such Decertification or Recognition Petition to the incumbent Recognized Employee Organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification, and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Sec. 6 of this Article II.

Sec. 8. Policy and Standards for Determination of Appropriate Units.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

b. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

c. Consistency with the organizational patterns of the City.

d. Number of employees and classifications, and the effect on the administration of employer-em-

ployee relations created by the fragmentation of classifications and proliferation of units.

e. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this Section, management and confidential employees shall not be included in any unit; supervisory employees shall only be included in a unit consisting solely of supervisory employees, and such supervisory unit shall not be represented by a Recognized Employee Organization that represents non-supervisory employees of the City; and professional employees shall not be denied the right to be represented in a separate unit from non-professional employees.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section.

Sec. 9. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 7 of this Article II. Such requests shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Sec. 3 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards

set forth in Sec. 8 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his own motion propose during the period specified in Sec. 7 of this Article, that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Sec. 8 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Recognized Employee Organization for such new appropriate unit or units pursuant to Sec. 3 hereof.

Sec. 10. Appeals.

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within ten (10) days of notice thereof, request the intervention of the California State Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Sections 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 3); Challenging Petition (Sec. 5) or Decertification or Recognition Petition (Sec. 7) -- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 7) -- has not been filed in compliance with the applicable provisions of this Article, may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

ARTICLE III -- ADMINISTRATION

Sec. 11. Submission of Current Information by Recognized Employee Organizations.

All changes in the information filed with the City by a Recognized Employee Organization under items a. through h. of its Recognition Petition under Sec. 3 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Sec. 12. Payroll Deductions on Behalf of Employee Organizations.

Upon formal acknowledgement by the City of a Recognized Employee Organization under this Resolution, only such Recog-

nized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization of employees in the unit represented by Recognized Employee Organization on forms provided therefor by the City. The providing of such service to the Recognized Employee Organization by the City shall be contingent upon and in accordance with the provisions of Memoranda of Understanding and/or applicable administrative procedures.

Sec. 13. Employee Organization Activities -- Use of City Resources.

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to activities pertaining directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

Sec. 14. Administrative Rules and Procedures.

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

ARTICLE IV -- IMPASSE PROCEDURES

Sec. 15. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such impasse meeting shall be:

a. To identify and specify in writing the issue or issues that remain in dispute.

b. To review the position of the parties in a final effort to resolve such disputed issue or issues; and

c. If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Sec. 16. Impasse Procedures.

Impasse procedures are as follows:

a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

b. If the parties failed to agree to submit the dispute to mediation or failed to agree on the selection of a mediator, or failed to resolve the dispute through mediation within fifteen (15) days

after the mediator commenced meeting with the parties, the parties may agree to submit the impasse to fact-finding.

c. If the parties agree on fact-finding, they may agree on the appointment of one or more fact-finders. If they fail to so agree on one or more fact-finders, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer, one member shall be appointed by the Recognized Employee Organization, and those two shall name a third, who shall be the chairman. If they are unable to agree upon a third, they shall select by agreement the third member from one or more lists of names to be provided by the American Arbitration Association.

The following constitute the jurisdictional and procedural requirements for fact-finding:

(1) The fact-finders shall consider and be guided by applicable Federal and State laws (and Charter provisions).

(2) Subject to the stipulations of the parties, the fact-finders shall determine and apply the following measures and criteria in arriving at their findings and recommendations:

(a) As relevant to the issues in dispute, the fact-finders shall compare the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees performing similar services in public and private employment in the same

and comparable communities. "Total compensation" shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; medical and hospitalization benefits; and insurance, pension and welfare benefits.

(b) The fact-finders shall then adjust the results of the above comparisons based on the following factors:

(i) Equitable employment benefit relationships between job classifications and positions within the City.

(ii) The pattern of change that has occurred in the total compensation of the employees in the unit at impasse as compared to the pattern of change in the average consumer price index for goods and services, commonly known as the cost of living index.

(iii) The benefits of job stability and continuity of employment.

(iv) The difficulty, or lack thereof, of recruiting and retaining qualified personnel.

(c) The fact-finder(s) shall then determine recommendations based on the comparisons as adjusted above subject to the financial resources of the City to implement them, taking into account:

(i) Other legislatively determined and projected demands on agency resources, and

(ii) Assurance of sufficient and sound budgetary reserves, and

(iii) Statutory (and charter) limitations on tax and other revenues and expenditures.

(3) The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairman of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the Recognized Employee Organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact-finder or the chairman of the fact-finding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the Council's legislative consideration of the issues at impasse.

d. If the parties agreed to submit the impasse directly to the City Council, or if the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, or having so agreed, the impasse has not been resolved through such mediation and/or fact-finding, the City Council shall take such action regarding the impasse as it in its discretion deems appropriate as in the public in-

terest. Any legislative action by the City Council on the impasse shall be final and binding.

Sec. 17. Costs of Impasse Procedures.

The costs for the services of a mediator and fact-finder or chairman of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and the Recognized Employee Organization. The cost for a fact-finding panel member selected by each party, and other separately incurred costs shall be borne by such party.

ARTICLE V -- MISCELLANEOUS PROVISIONS

Sec. 18. Construction.

This Resolution shall be administered and construed as follows:

a. Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law (or City Charter provisions).

b. This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

c. Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or in-

directly, any strike, sickout or other total or partial stoppage or slowdown of work. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination and may be deemed to have abandoned their employment; and employee organizations may thereby forfeit all rights accorded them under this Resolution and other City law for a period up to one (1) year from commencement of such activity.

Sec. 19. Severability.

If any provision of this Resolution, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

MEYERS-MILIAS-BROWN ACT
(Government Code)

§3500. Purpose and Intent. It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

§3501. Definitions. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency.

(b) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

(c) Except as otherwise provided in this subdivision, "public agency" means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 3 (commencing with Section 13580) of Division 10 of the Education Code or the State of California.

(d) "Public employee" means any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

(e) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

§3502. Right to Join or Abstain; Individual Representation. Except as otherwise provided by the Legislature, public employees shall have the right to form,

join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

§3503. Representation of Members; Membership Admission and Dismissal Regulations; Right of Personal Appearance. Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency.

§3504. Scope of Representation. The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

§3504.5. Notice of Proposed Act Relating to Matters Within Scope of Representation; Meeting; Emergencies. Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by such governing body, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or such boards and commissions and shall give such recognized employee organization the opportunity to meet with the governing body or such boards and commissions.

In cases of emergency when the governing body or such boards and commissions determine that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or such boards and commissions shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

§3505. Conferences; "Meet and Confer in Good Faith" Defined. The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation or ordinance, or when such procedures are utilized by mutual consent.

§3505.1. Memorandum of Agreement. If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination.

§3505.2. Mediation; Appointment of Mediator; Costs. If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations.

§3505.3. Time off Allowances to Employee Representatives. Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the public agency on matters within the scope of representation.

§3506. Discrimination Prohibited. Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502..

§3507. Rules and Regulations. A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter (commencing with Section 3500).

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) recognition of employee organizations (d) exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself as provided in Section 3502 (e) additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment (f) access of employee organization officers and representatives to work locations (g) use of official bulletin boards and other means of communication by employee organizations (h) furnishing nonconfidential information pertaining to employment relations to employee organizations (i) such other matters as are necessary to carry out the purpose of this chapter.

Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

No public agency shall unreasonably withhold recognition of employee organizations.

§3507.1. Mediation of Disputes; Recommendations for Resolving Disputes. In the absence of local procedures for resolving disputes on the appropriateness of a unit of representation upon the request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

§3507.3. Professional Employees; Representations; Submissions of Dispute to Division of Conciliation. Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

"Professional employees," for the purpose of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

§3507.5. Designation of Management and Confidential Employees of Public Agency. In addition to those rules and regulations a public agency may adopt pursuant to and in the same manner as in Section 3507, any such agency may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.

§3508. Law Enforcement Positions; Exclusion From Employee Organizations; Public Interest. The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so; however, the governing body may not prohibit the right of its employees who are full-time "peace officers" as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

§3509. Construction. The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

§3510. Citation. This chapter shall be known and may be cited as the "Meyers-Milias-Brown Act."

Introduction To "Acceptable Bill" for Statewide Labor Relations, by the National Public Employer Labor Relations Association

The National Public Employer Labor Relations Association, an organization consisting of more than 200 state, city and county chief negotiators and related labor relations professionals, has drafted the State Public Employee Collective Bargaining Bill. This "Acceptable Bill" is the result of extended efforts by NPELRA members to devise a legislative framework which, in their cumulative experience with public sector collective bargaining, work stoppages, and contract administration, will constitute a fair, practical and workable alternative to the perplexing problems associated with this new and emerging area of state and local concern.

The bill is not intended to be a Model Bill. NPELRA is firmly of the belief that a Model Bill in the traditional sense is impossible to presently devise; on the contrary, experience indicates that there is presently no legislatively created 'one right way' to resolve labor management matters in the public sector.

Many NPELRA members are currently involved in important experiments with new legislative arrangements and impasse systems in all parts of the country. Some of these collective bargaining systems are proving helpful while others are obvious failures. This experimentation, in the opinion of NPELRA, should continue and not be replaced by any one legislatively imposed uniform law.

Many states, however, are continuing to consider and adopt new public sector bargaining laws or to revise old ones. In order to provide guidelines to such state legislatures NPELRA has drafted this bill, which, according to the cumulative experience of its members, is an acceptable manner of resolving labor management relationships in the public sector. This bill contains those aspects which NPELRA believes must be included in any bill to ensure that the public interest is adequately preserved in the difficult area of public sector labor management relationships.

Not all members of NPELRA individually support all provisions of the bill. However, the NPELRA membership is of the firm opinion that adoption of the bill will constitute a positive improvement over any presently existing state legislative framework for public sector labor relations and will, for its part, provide an 'acceptable' legislative framework for state public sector labor management relations.

Our thanks to the Southwest Public Labor Relations Council Editorial Staff for supplying the introduction and following materials.

James Baird, Esq.
NPELRA General Counsel
Pope,Ballard,Shepard & Fowle
69 West Washington Street
Chicago, Illinois 60602

DRAFT NPELRA "ACCEPTABLE BILL" ON PUBLIC EMPLOYEE BARGAINING

(Section by Section Analysis)

Sec. 1 Provides that the article is to be known and cited as the "Public Employee Labor Relations Act of 1975."

Sec. 2 Declares that it is the policy of the state to promote harmonious, peaceful and cooperative relationships between governments and their employees and to protect the public at all times by assuring responsive, orderly and uninterrupted operation of government through the provision of means for preventing disputes and for resolving them when they occur. Makes clear that collective bargaining may be elected in place of, but not in addition to, certain existing political means possessed by employee organizations to influence decisions concerning wages, hours and working conditions.

Sec. 3 Provides definitions for eighteen terms commonly used in the article.

Sec. 4 Extends the article to all public employees within the state.

Sec. 5 Creates the "Division of Public Employment Relations." Creates within the Division a three-member "Public Employment Relations Board" appointed by the Governor for a six-year term of office. Provides for an annual salary of $38,500 for members, the "Chairman" to receive $42,000. Requires the Board to be independent of other state agencies with no more than one member associated by past practice or employment with labor or one with management. The Board is given power to make rules and regulations necessary to carry out its functions; to hear unfair labor practice charges; to resolve unit determination and certification questions and to conduct elections. Additionally, the Board is given power to publish studies and make analysis of public employer-employee relations, to provide data to the parties, to hold hearings and issue subpoenas, and to provide fact-finders and mediators. The Board is admonished to intervene in public employer-employee relations to the minimum extent posible.

Sec. 6 A "Bureau of Mediation" is created and organized as a separate department of the Division of Public Employment Relations. Mediators are to be professionally qualified, career civil service employees not subject to control of the Board or the Governor.

Sec. 7 Grants public employees the right to join and support or refrain from joining or supporting an employee organization and to be represented by an employee organization as the exclusive bargaining agent for purposes of collective bargaining and/or grievance adjustment.

Public employers are required to extend to certified employee representatives the right to collective bargaining and grievance adjustment.

Exclusive employee representatives have a duty to represent all employees fairly and without discrimination.

Dues check-off, agency shop and maintenance of membership relationships may be negotiated but no agreement may include a "closed" or "union shop" provision. Individual employees retain the right to present grievances without intervention of the employee organization though such adjustment may not be inconsistent with the terms of an existing bargaining agreement.

Provides that supervisory employees may form an organization which is not directly or indirectly affiliated with an employee organization seeking or obtaining certification under the article, but public employers are prohibited from extending exclusive or formal recognition to a supervisory union or bargaining with it.

Sec. 8 Lists managements rights and ensures that any negotiated agreement will not impair these rights.

Sec. 9 Sets out both employer and union "prohibited practices".

Sec. 10 Grants the Board power to remedy prohibited practice violations.

Sec. 11 Outlines persons who may file charges of prohibited practices. Provides that a charging party must present evidence in support of its charges.

Sec. 12 Allows the Board to remedy prohibited practice charges by issuance of cease and desist orders as well as by providing for affirmative Board orders such as withdrawal of union certification or check-off rights or loss of employee tenure rights. Also provides that where a public employer has repeatedly disregarded its bargaining obligations the Board may order the parties to submit their contractual differences to binding last best offer fact-finding.

Sec. 13 A four-month statute of limitations for filing prohibited practice charges is provided.

Sec. 14 Requires the Board to give priority to prohibited practice charges alleged to occur during the collective bargaining process.

Sec. 15 Grants the Board power to seek enforcement of its orders in circuit court. Findings of fact of the Board are to be upheld if supported by substantial evidence on the record considered as a whole. Provision is made for the discovery of new evidence.

Sec. 16 Guarantees court review for any party aggrieved by a final order of the Board. Additionally, provides for court review of any Board order certifying or refusing to certify a collective bargaining representative.

Sec. 17 Grants the Board authority to subpoena witnesses, papers, books and documents for proper purposes.

Sec. 18 Allows the taking of testimony from an out-of-state witness.

Sec. 19 Provides for the revocation of subpoenas upon a proper showing.

Sec. 20 Allows the Board to petition circuit court for enforcement of subpoenas. Provides for contempt of court for refusal to abide by a Board subpoena.

Sec. 21 Establishes the proper manner of serving complaints, orders and other papers.

Sec. 22 Specifically allows public employers to engage in coordinated bargaining upon the mutual consent of both the employers and involved employee organizations. Permits separation from such coordinated bargaining by either party only if a Mediator certifies such withdrawal is in the interest of labor relations stability and achieving voluntary dispute settlement.

Sec. 23 Requires that solicitation of union memberships, the conduct of union affairs or the participation in collective bargaining or grievance sessions shall be during an employee's non-duty hours.

Sec. 24 Provides the mechanism for employee organizations to petition for certification status. Requires a thirty percent showing of interest to support a petition. Allows the parties to agree among themselves as to what constitutes "the most appropriate bargaining unit," subject to Board review. Allows for a petition redefining a bargaining unit within time limits upon a showing of substantial change in circumstances since the unit was originally defined by the Board.

Sec. 25 Contains standards for the Board to determine " the most appropriate bargaining unit." Ensures that police officers, guards or security employees whose job it is to protect property or the safety of persons in the jurisdiction may not be in bargaining units with other public employees.

Sec. 26 Outlines procedures for determining the exclusive bargaining agent and provides for petitions filed by an employee organization, an employee or an employer. Provides that the Board will conduct secret ballot elections. Requires an employee organization to obtain a majority of the valid ballots cast to obtain certification. Prohibits runoff elections. Provides for the filing of objections within seven days of an election. Prohibits an election within twelve months of a preceding valid election or during the period of an effective collective bargaining agreement not to exceed three years. Prohibits voluntary recognition. Requires employee organizations seeking certification to file financial information annually with the Board, to guarantee equal rights and democratic processes within the organization, to provide annual financial information to all employees and to provide a written waiver of rights to engage in certain political activities."

Sec. 27 Requires an employer to bargain with a certified employee organization over wages, hours and working conditions. Provides that good faith bargaining shall not compel either party to agree to a proposal or make a concession nor discuss matters involving management rights.

Sec. 28 Describes the impasse procedures of the article. Provides for mediation if the parties cannot agree. Provides that after a contract has expired and an impasse is deemed to exist a three person tripartite Factfinder's Board be convened under auspices of a referee appointed by the Board. The Factfinder's Board will take evidence and then select the most reasonable final offer of the parties as its own recommended contractual resolution of the dispute. The selection of the Factfinder's Board will become public five days after its presentation to the parties. Prevents any strike or lockout until ten days after report is made public.

Sec. 29 Prohibits all unlawful strikes and lockouts. Provides that an employer may not compensate an employee during the period of an unlawful strike and specifically allows neighboring jurisdictions to provide aid and assistance to a struck employer. Provides that striking employees may be replaced or discharged and replacements hired.

Sec. 30 Prohibits all strikes and lockouts (1) during the term of a bargaining agreement; (2) where proper 15-day strike or lockout notice has not been fiven; or (3) where the strike or lockout creates or threatens to create a clear and present danger to public health or safety. Provides for injunctive relief if a prohibited strike or lockout occurs. Describes lawful strikes and lockouts e.g., those which do not endanger public health or safety and where a 15-day notice describing in detail the action to be taken and employees involved have been given subsequent to a Factfinder's Board report having been made public and where no valid contract is currently in force. Provides similar requirements concerning lockouts. Provides stringnet discretionary penalties, including loss of pay and discharge where a court order enjoining a strike is disregarded or contempt penalties where a public employer continues to engage in an unlawful lockout.

Sec. 31 Provides for discretionary discipline of strikes.

Sec. 32 Provides that an employee organization may sue or be sued as an entity and on behalf of the employees it represents by an employer or an aggrieved citizen.

Sec. 33 Makes clear that collective bargaining sessions, mediation sessions, factfinding hearings and strategy discussions of the public employer are not subject to the state's open meetings law. Provides that all collective bargaining agreements which are agreed upon will become "public records."

Sec. 34 Provides appropriations for the Division of Public Employment Relations.

Sec. 35 Provides that if one section of the article is invalid the rest is still lawful.

Sec. 36 Makes clear that the article does not repeal any statute not inconsistent therewith.

Sec. 37 Instructs that those portions of the article creating the Public Employment Relations Division shall take effect immediately whereas all other portions of the article will take effect six months thereafter.

A BILL FOR AN ACT

CONCERNING LABOR, AND PROVIDING FOR A SYSTEM OF PEACEFUL PUBLIC EMPLOYER-EMPLOYEE RELATIONS.

ARTICLE

PUBLIC EMPLOYER-EMPLOYEE RELATIONS

Section 1. Short title. This Article shall be known and may be cited as the "Public Employee Labor Relations Act of 197_."

Section 2. Declaration of Policy. The legislative body declares that it is the public policy of this state and the purpose of this article to promote harmonious, peaceful and cooperative relationships between governments and their employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of government. Since unresolved disputes in the public service are injurious to the public, and to governmental agencies and public employees as well, adequate means should be provided for preventing such unresolved disputes between governmental agencies and public employees and for resolving them when they occur. It is also recognized, however, that public employee labor organizations possess substantial political means by which they may influence governmental decisions regarding the wages, hours and working conditions of employees they represent or seek to represent. This constitutes a major difference in the rights possessed by labor organizations representing public as opposed to private employees. Consequently, in order to preserve the delicate balance between labor and management in the public sector, the legislature hereby declares that collective bargaining may be voluntarily selected in place of, but not in addition to, existpolitical means of influencing decisions concerning wages, hours and working conditions now possessed by public employee labor organizations. The legislative body further declares that, except as otherwise specifically provided by state law, the establishment of terms and conditions of employment within individual political subdivisions is a matter of local concern and shall be the responsibility of the public employer and public employees as provided in this Article, and declares its intent that such terms and conditions shall not normally hereafter be designated or mandated by statute or regulations. It is the intent of the legislature that the Division of Public Employment Relations and the Public Employment Relations Board created by this Act shall intervene in public employer-employee relations only to the minimum extent necessary to carry out the objectives of this statute, it being the legislative policy that voluntarism

in achieving labor relations stability is to be encouraged.

Section 3. Definitions. As used in this Article, unless the context otherwise indicates:

(1) "Agency shop" means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

(2) To "bargain collectively" means to meet at reasonable times and places and to negotiate in good faith with respect to wages, hours and conditions of employment, including provisions for the hearing and resolution of grievances, but excluding those management-public rights set out in Section 8 of this Article. There is no obligation on the part of either party to agree to a proposal of the other or to make a concession.

(3) "Board" means the Public Employment Relations Board.

(4) "Closed shop" means a provision in a collective bargaining agreement requiring as a condition of hire that a prospective employee be or become, prior to employment, a member of an employee organization.

(5) "Employee organization" means any organization which admits to membership employees of a public employer and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

(6) "Exclusive agent" means an employee organization which has been certified in accordance with Section 26 as the exclusive representative, of the employees in the most appropriate bargaining unit.

(7) "Fact-finding" means investigation of an unresolved dispute arising out of collective bargaining, submitting a report defining the unresolved issues, reporting and analyzing the facts relating thereto, and making recommendations for the purpose of resolving the dispute.

(8) "Governing body" means the legislative body or chief policy making body of any public employer; except that, to the extent required by _____ of the State Constitution, the "governing body" of the State shall mean _____.

(9) "Lockout" means action taken by a public employer to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of

either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their exclusive agent to certain collective bargaining contract terms.

(10) "Maintenance of membership" means a provision in a collective bargaining agreement requiring an employee within a bargaining unit who is or becomes a member of the employee organization at or after the effective date of the most recent contract to continue such membership as a condition of continued employment through the expiration date of the contract.

(11) "Mediation" means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between representatives of the public employer and the exclusive bargaining agent.

(12) "Membership dues deduction" means a provision in a collective bargaining agreement requiring the employer, upon receipt of written authorization from an employee, to deduct agency shop service fees or monthly employee membership dues regularly and uniformly required of members of the employee organization from the employee's pay and to remit same to the employee organization.

(13) "Public employee" means any person in the employ of a public employer except:

(a) Any elected official or person appointed to fill a vacancy in an elected position, or any board or commission member or judicial officer;

(b) Any supervisor;

(c) Any employee employed on an irregular, casual or seasonal basis;

(d) Any person who has access to confidential labor relations information or who serves the employer in an otherwise confidential capacity or who serves the employer in a managerial capacity, or whose functional responsibilities or knowledge of the public employer's affairs makes membership or participation in the affairs of an employee organization incompatible or inconsistent with his official duties of employment;

(e) Any patient, inmate or ward of the state or of its political subdivisions;

(f) Any person employed because the public employer is required to be, in effect, the person's employer of last resort;

(g) Any employee of the Division of Public Employment

Relations created under Section 5 of this Article, and

(h) Any person whose inclusion as an employee under this Article will place the person in a real or apparent conflict of interest situation between the normal requirements of the job and the exercise of rights as an employee under this Article.

(14) "Public employer" means the State of _____, any school district, special district, service authority, statutory or home rule town, city, or city and county, county, or any other political subdivision of the state, any quasi-minicipal or public corporation organized pursuant to law, and the governing boards of the public institutions of higher education.

(15) "Strike" means the failure to report for duty, or the absence from one's position, or the stoppage of work, or the slowdown of work, or the abstinence in whole or in part from the full, faithful, or proper performance of the duties of employment with a public employer, or unauthorized deviation from normal or proper work duties or activities, or picketing, where any of the preceding are done for the purpose of inducing, influencing, or coercing a public employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of public employment or of the status, recognition or authority of a public employee or an employee organization.

(16) "Supervisor" means an individual having authority in the interest of the employer to hire, fire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or evaluate other employees, or to adjust grievances, or effectively to recommend any of the foregoing, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but rather requires the use of independent judgement. Whether the employee does or does not also perform (in whatever proportion of his work time) work duties of a nature similar to that of other bargaining unit employees shall not be considered relevant in determining whether or not he is a supervisor as defined herein.

(17) "Union shop" means a provision in a collective bargaining agreement requiring present and/or future employees in the bargaining unit, as a condition of employment, to become members of an employee organization, either forthwith or within a contractually stipulated period.

(18) Any reference in this Article to any section or chapter shall refer to such section or chapter as it is heretofore or hereafter amended, modified, supplemented or superseded. The

reference to any person, organization or entity in any gender shall refer to the masculine, feminine or neuter as required by the context.

Section 4. Application to public employers. This Article shall apply to all public employers in the State of _____, to the extent that the application of this Article is constitutionally permissible.

Section 5. Public Employment Relations Board and Division Created.

(1) (a) There is hereby created the Division of Public Employment Relations. Said division shall be under the general jurisdiction and policy direction of the Public Employment Relations Board, but the administrative management of the division shall be vested in the Chairman of the Public Employment Relations Board, who may delegate such administrative management duties in such manner as he may choose, so as to provide for effective day-to-day management of the affairs of the division. (Local provisions needed here to create division, staffing, etc.)

(2) (a) There is hereby created within the Division of Public Employment Relations a board of three members which shall be known as the "Public Employment Relations Board." The governor, with the consent of the senate, shall appoint one member whose term of office shall expire December 31 of the year following the year in which this Article becomes effective, one member whose term of office shall expire on a date two years after the first member's term expires, and one member whose term of office shall expire on a date four years after the first member's term expires. Upon the expiration of each appointment, the governor, with the consent of the senate, shall appoint a successor member of the board for a term of six years. Members of the board are eligible for reappointment. Vacancies shall be filled in the same manner for unexpired terms. One of the members of the Board shall be designated by the Governor as Chairman. Not more than two board members shall be members of the same political party. Not more than one of the appointees to the board shall be a person who, on account of his previous vocation, employment, or affiliation, can be classed as a representative of an employer's or employers' interests, and not more than one of said appointees shall be a person who, on account

of his previous vocation, employment, or affiliation, can be classed as a representative of an employee organization or employee organizations' interests. Members of the board shall receive a yearly compensation of $38,500 except that the Chairman's yearly compensation shall be $42,000. Board members shall be reimbursed for necessary expenses incurred in the performance of their duties. The board may adopt, amend, or rescind rules for governing its meetings, and two board members shall constitute a quorum.

(b) The Public Employment Relations Board shall exercise the powers and perform the duties and functions specified in this Article (insert enabling language here).

(3) In addition to any other powers granted in this Article, the board shall have the following powers which may not be delegated:

(a) To adopt, amend, and rescind, from time to time, such rules, regulations, and procedures as are consistent with this Article to carry out the purposes and provisions of this Article; and

(b) To resolve unit determination and certification questions appealed to it pursuant to the provisions of this Article.

(4) In addition to any other powers granted in this Article, the board shall have the following powers, any or all of which may be delegated to a member of the board or to such departments, officers, or employees of the Division of Public Employment Relations as may be designated by the Chairman:

(a) To request from any public employer or any employee organization, and such public employer or organization may at its discretion provide, such relevant assistance, service, and data as will enable the board to properly carry out its functions;

(b) To make and publish studies and analyses of public employer-public employee relations throughout the state;

(c) To make available to public employers, employee organizations, mediators, and fact finders any relevant statistical data relating to salaries, wages, benefits, and employment practices;

(d) To hold hearings and make inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by the issuance of subpoenas the attendance of witnesses and the production of relevant documents, provided that such

subpoenas shall be issued and enforced pursuant to (applicable state provisions).

(e) To hold and conduct elections for unit certification, decertification, or deauthorization pursuant to the provisions of this Article;

(f) To investigate and attempt to resolve or settle, as provided in this Article, impasses, charges of engagement in prohibited practices, and charges of unlawful or prohibited strikes or lockouts. However, if a public employer and an exclusive agent have negotiated a valid grievance procedure the board must defer to that procedure for the resolution of disputes properly submissible to that procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this Article; and

(g) To provide factfinders, referees and mediators pursuant to the provisions of this Article.

Section 6. Bureau of Mediation. A Bureau of Mediation shall be created by this Article organized as a separate department of the Division of Public Employment Relations, to perform the functions provided in this Article. The mediators shall be professionally qualified career employees, selected through the merit system, and holding the title of Mediator. They shall not be subject to policy control by the Public Employment Relations Board, although the administrative management of the Bureau shall be subject to direction and control by the chairman of the Public Employment Relations Board.

Section 7. Employee Rights.

(1) Public Employees shall have the right:

(a) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(b) To be fairly represented by their exclusive agent, if any.

(2) A public employer shall have the duty to extend to an exclusive agent the exclusive right to represent the employees of the most appropriate unit for purposes of collective bargaining including the orderly processing and settlement of grievances, which may include provision for binding third party arbitration thereof if so agreed by the parties.

(3) An exclusive agent shall serve as the bargaining agent for all employees in the most appropriate bargaining unit and shall have the duty to represent fairly and without discrimina-

tion all unit employees without regard to whether the unit employees are or are not members of the employees organization or are paying dues or other contributions to it or participating in its affairs, provided, however, that it shall not be deemed a violation of this duty for an exclusive agent to seek enforcement of an agency shop or maintenance of membership provision in a valid collective bargaining agreement.

(4) The right of the employee organization to receive membership dues deduction, agency shop or maintenance of membership benefits may be determined through negotiations, unless the authority to negotiate such provisions has been suspended or withdrawn by action of the Board in an unfair labor practice proceeding or, in the case of agency shop or maintenance of membership, authority has been rescinded under Section 26, subparagraph (9), by employee vote. No collective bargaining agreement may include a closed shop or a union shop provision.

(5) The certification of an exclusive agent shall not infringe upon the right of an individual employee to discuss any matter, including the presentation of a grievance, with the public employer and to have such grievance adjusted without intervention by the employee organization, provided that any such adjustment shall not be inconsistent with the terms of the collective bargaining agreement then in effect between the employer and the exclusive agent and that the exclusive agent be notified promptly of any such adjustment.

(6) A public employer may not extend exclusive or formal recognition to any organization purporting to represent supervisors for the purpose of collective bargaining or other mutual aid or protection, but shall not be prohibited from voluntarily consulting or otherwise communicating with any formal or informal organization of which its supervisors are members if in the sole discretion of the public employer such consultation or communication is deemed to be in the best interest of the public employer.

Section 8. Management - Public Rights.

(1) This Article and any agreement pursuant hereto shall not impair the right and responsibility of each public employer (subject to any constitutional or statutory limitation thereon):

(a) To determine the overall mission of the employer as a unit of government;

(b) To maintain and improve the efficiency and effectiveness of governmental operations;

(c) To determine the services to be rendered, the operations to be performed, the technology to be utilized or the matters to be budgeted;

(d) To determine the overall methods, processes, means, job classifications or personnel by which governmental operations are to be conducted;

(e) To direct, supervise or hire employees;

(f) To promote, suspend, discipline, discharge, transfer assign, schedule, retain or layoff employees;

(g) To relieve employees from duties because of lack of work or funds, or under conditions where the employer determines continued work would be inefficient or non-productive;

(h) To take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement; or

(i) To take actions to carry out the mission of employer as the governmental unit in situations of emergency.

(2) Nothing contained in this Article shall be construed to limit the discretion of the public employer voluntarily to confer with any or all of its public employees in the process of developing policies to effectuate or implement any of the above enumerated rights.

Section 9. Prohibited practices.

(1) Public employers or their agents or representatives are prohibited from:

(a) Interfering with, restraining, or coercing public employees in the exercise of any rights granted to them under the provisions of this Article, provided that the discussion of any matter, argument, or opinion, or the dissemination thereof, whether orally, in writing or otherwise shall not constitute or be evidence of a prohibited practice under any of the provisions of this Article nor be grounds for invalidating any election conducted under this Article, if such discussion or dissemination contains no threat of reprisal or promise of benefit;

(b) Dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to it, or allowing for bargaining or grievance processing sessions on working time or with pay, pursuant to contract or otherwise; provided that the employer and an exclusive agent may agree to and apply a membership dues deduction provision;

(c) Encouraging or discouraging membership in any

employee organization by discrimination in regard to hiring, tenure, or other wages, hours or conditions of employment, provided that the employer and an exclusive agent may mutually agree to and apply a maintenance of membership and/or an agency shop provision; provided further that an exclusive agent, in seeking the discharge of any employee pursuant to a maintenance of membership provision shall certify to the public employer the facts as to why the employee has failed to maintain his membership or in what respect he has failed to meet the conditions of membership; if it appears that membership has been terminated for any reason repugnant to the policies of this Article, the discharge shall not be made, and if made shall be violative of the provisions of this Article;

(d) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this Article;

(e) Refusing to bargain collectively with an exclusive agent;

(f) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(g) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(h) Engaging in an unlawful or prohibited lockout.

(2) Employee organizations, their agents or representatives, and public employees are prohibited from:

(a) Interfering with, restraining, or coercing public employers or public employees in the exercise of any rights granted under this Article;

(b) Dominating or interfering with the formation or administration of any public employer, or contributing financial or other political support to a public employer its agents or representatives;

(c) Restraining, coercing, or interfering with a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(d) Refusing to bargain collectively with a public employer if such employee organization is the exclusive agent for the public employees in the most appropriate

bargaining unit;.

(e) Causing, instigating, encouraging, condoning or engaging, either directly or indirectly, in an unlawful of prohibited strike or obstructing, impeding, or resisting, either directly or indirectly, any lawful attempt to terminate an unlawful or prohibited strike;

(f) Hindering or preventing, by threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment by any employee, public or private, or obstructing or interfering with the entrance to or egress from any place of employment, or obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance by any employee, public or private;

(g) Hindering or preventing by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment or services by a public employer;

(h) Engaging in a secondary boycott or a sympathy strike;

(i) Taking or retaining unauthorized possession of property of an employer, public or private, or engaging in any effort (other than a lawful primary strike as specifically permitted by paragraph (4) of Section 30 of this Article) to interfere with production, functions, or services of an employer, public or private, or refusing to work on projects or use certain goods or materials as lawfully required by a public employer;

(j) Communicating during the period of negotiations with elected or appointed officials of the public employer, other than those designated to represent the public employer, regarding wages, hours or conditions of employment or regarding matters which are or may become the subject of collective bargaining discussions;

(k) Forcing or requiring any public employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the Board determining the exclusive bargaining representative for employees performing such work;

(l) Causing or attempting to cause a public employer

to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed, to be performed or which are not productive or not desired to be performed by the public employer.

Section 10. Powers of the Board. The Board is empowered to remedy any prohibited practice. This power shall not be affected by any other means of adjustment provided in this Article, except to the extent that the Board is authorized to defer to the grievance or arbitration provisions of a collective bargaining agreement.

Section 11. Filing of Charges. A charge of prohibited practice may be filed by any employer, employee organization or any individual. All charges shall be supported by the charging party. The Board (or duly designated employee of the Board to whom such authority has been delegated) may request withdrawal of, and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing; however, the Board shall have authority to maintain such independent investigations as it deems necessary and to develop rules and regulations therefore. If the Board (or its designee) finds that a charge is sufficiently supported to raise an issue of fact or law it shall hold a hearing on such charge upon notice to the parties. Any member of the Board or a designated hearing officer may hold such a hearing, and shall prepare a report to the Board which includes findings of fact and a recommended order. In any hearing, the charging party shall present evidence in support of the charges and the person charged shall have the right to file an answer to the charges, to appear in person or otherwise, and to present evidence in defense against the charges.

Section 12. Board Remedies. If the Board determines that the person charged has committed a prohibited practice, it shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this Article. Remedies of the Board may include, but shall not be limited to, orders withdrawing union certification, withdrawing or suspending the union's authority to negotiate or enforce membership dues deduction, agency shop, or maintenance of membership provisions, withdrawing, suspending, or reinstating with or without back pay, the employment or tenure of individual employees. Where the Board finds that a party has refused to bargain in good faith or has failed to follow bargaining or impasse procedures as provided in the Article, and where the Board further finds that such prohibited

conduct reflects a repeated, extreme disregard of the bargaining obligations imposed by the Article, the Board may, only upon request of the charging party, order the parties to submit their contractual differences to binding last best offer fact finding under such conditions and applying such standards as are contained in Section 28 of this Article. The Board shall formulate and publish rules and procedures for the implementation of this last best offer fact finding remedy. If the Board finds that the person or persons charged have not committed any prohibited practice, it shall make findings of fact and conclusions of law and issue an order dismissing the charges.

Section 13. Limitation Period. No remedial order shall issue based upon a prohibited practice occurring more than four months prior to the filing with the Board of a charge alleging the prohibited practice.

Section 14. Priority of Charges. The Board shall give priority to charges filed alleging the commission of a prohibited practice during or arising out of the collective bargaining procedures provided in Sections 28, 29, or 30 of this Article. Upon the filing of such charges, the Board shall determine if there is reasonable cause to believe that the charge is true and if irreparable injury may result in the absence of injunctive relief. If the Board so determines, it may petition the circuit court in the county where the prohibited practice occurred for appropriate relief. Where the public employer is the State, the action shall be brought in the circuit court of either _____ or _____ County. The Court shall have jurisdiction to grant appropriate relief upon the filing with it by the Board of proof of service of the petition upon the Respondent, subject only to the usual equity rules regarding the availability of temporary and/or permanent injunctive relief, and notwithstanding any state statute prohibiting or limiting the propriety of the issuance of injunctions in labor disputes generally.

Section 15. Enforcement of Board Orders. The Board shall have power to petition the circuit court of the county in which any prohibited practice has occurred or where the person charged with the prohibited practice resides or transacts business, for the enforcement of an order issued under Section 12 and for appropriate temporary relief or restraining order. Where the public employer is the State, the action shall be brought in the circuit court of either _____ or _____ County. The Board shall certify and file in the court the record in the proceedings before the Board. The court may grant such temporary relief or restraining order as it deems just and proper, and make

and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Board, the court may order the additional evidence to be taken before the Board, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence. The Board shall file with the court its modified or new findings, and its recommendations, if any, for the modification or setting, aside of its original order. The Board's modified or new findings of fact shall be conclusive if supported by substantial evidence on the record considered as a whole.

Section 16. Court Review of Board Orders. Any person or organization aggrieved by a final order of the Board granting or denying, in whole or in part, the relief sought in prohibited practice proceedings, or by an order certifying or refusing to certify a collective bargaining agent of employees in any representation case, may obtain review of such order in the circuit court in the county in which the Board maintains its principal office or offices by filing in such court, within 30 days after the final order has been issued, a written petition praying that the order of the Board be modified or set aside.

A copy of the petition shall be served upon the Board, and the Board shall certify and file the record of the proceedings before the Board in the court within 30 days after the receipt of the petition. The court shall then have jurisdiction to proceed in the same manner as in the case of a petition by the Board under Section 15 and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

The commencement of proceedings under Section 15 and this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

Section 17. Subpoenas. For the purposes of any hearing or investigation conducted by the Board, or any fact-finding proceedings conducted under this Act, any member of the Board may issue

subpoenas for the Board, for any neutral member of a fact-finding Board, or for any party to Board proceedings or fact-finding proceedings, to compel the attendance and testimony of witnesses or to compel the production for examination of any papers, books, accounts and documents in any proceeding under this Article. A person conducting any proceeding under this Article may administer oaths and affirmations and certify to all official acts.

Section 18. Out of State Witnesses. If a witness resides outside of the State or through illness or other cause is unable to testify before the Board at the hearing or investigation, his testimony or deposition may be taken, in or outside of the State in the same manner as is provided for in (the applicable state statutes).

Section 19. Revocation of Subpoenas. Within five days after service of a subpoena on a person requiring the production of evidence in his possession or under his control, the person may petition the Board to revoke the subpoena. The Board shall revoke the subpoena if in its opinion the evidence required to be produced does not relate to a matter under investigation or a matter in question in the proceedings, or if in its opinion the subpoena does not describe with sufficient particularity the evidence which is required to be produced or for any other good and sufficient reason. If the petition is filed, the person shall not be required to respond to the subpoena of the Board until the Board acts on the petition.

Section 20. Refusal to Obey Subpeonas. If there is a failure or refusal to obey a subpoena issued to any person, the circuit court of the county in which the person resides or has his principal place of business, upon petition by the Board and after a hearing on the petition, may issue an order requiring the person to appear before the Board or hearing officer to produce evidence or to give testimony on the matter under investigation or in question. Before petitioning the court for the order, the Board shall serve notice upon the person, not less than five days prior thereto, stating the time and place where the petition is to be presented. Failure to obey any order issued by the court may be punished by the court as contempt.

Section 21. Service of Process. Complaints, orders and other process and proper papers may be served personally or by registered or certified mail except as otherwise specifically provided in this Article. The verified return of the person making service in accordance with this Section and setting forth the manner of the service constitutes proof of service. Witnesses summoned before the Board or a Board member shall be paid the same fees

and mileage paid witnesses in the circuit courts of this State and witnesses whose depositions are taken and the person taking them shall be entitled to the same fees paid for like services in the circuit courts of this State.

Section 22. Coordinated Bargaining. Public employers may jointly negotiate and jointly enter into collective bargaining agreements together with other public employers and bargain collectively and enter into joint collective bargaining agreements with one or more exclusive agents upon the mutual consent of the public employers and the exclusive agents involved. When such mutual consent is given, no public employer and no exclusive agent may withdraw from such coordinated or joint bargaining or enter into any separate agreement unless and until a mediator assigned to assist in the negotiations shall certify to the Public Employment Relations Board that such withdrawal is in the best interest of achieving both stability of labor relations and a voluntary resolution of the matter in dispute in the negotiations.

Section 23. Use of Official Time. Solicitation of membership or dues payments, or other internal business of an employee organization, shall be conducted during the non-duty hours of the employees involved. Employees who represent or act on behalf of a certified employee organization shall not be on paid working time when bargaining collectively with the public employer or when adjusting grievances.

Section 24. Petitions for Certification.

(1) An employee organization desiring to be certified as the exclusive agent shall file a petition with the Board accompanied by the uncoerced signatures of at least thirty percent of the public employees in the most appropriate bargaining unit indicating a desire to be represented for the purpose of bargaining collectively with the public employer.

(2) The petition shall contain:

(a) The name and address of petitioner;

(b) The name and address of the public employer;

(c) A general description of the nature of the employer's function, and the approximate number of its total unit employees; and

(d) The classes or positions of employees in the unit or units claimed to be most appropriate and the total approximate number of positions and employees in the proposed most appropriate bargaining unit.

(3) The Board or its duly authorized designee shall investigate the petition and, if it determines there is reasonable justification to proceed toward defining the most appropriate

bargaining unit, shall set a date for a hearing on the matter. (If no reasonable justification is found by the Board or its designee, the petition shall be dismissed).

(a) If the parties agree on the definition of the most appropriate unit prior to the hearing date established by the Board, said definition shall be final unless the Board determines that the parties have clearly and substantially departed from the considerations contained in Section 25;

(b) If the parties fail to reach agreement by the hearing date established by the Board, or if the Board preliminarily determines that the definition agreed to by the parties clearly and substantially departs from the considerations contained in Section 25, the Board shall, after reasonable notice and hearing, define the most appropriate bargaining unit according to the standards contained in Section 25. If the unit determined to be most appropriate differs from the unit described in the petition, the Board may either dismiss the petition or direct an election in the unit it defines as most appropriate, provided that it shall not direct such an election upon a petition unless the signatures supporting the petition include those of at least 30% of the employees in the unit defined as most appropriate. Any member of the Board or any hearing officer designated by the Board may hold such hearings, and shall thereafter submit a written report to the Board containing findings of fact and a recommended unit definition. The Board may, by rule, delegate one or more of its members or certain of its employees authority to review such recommendations and to enter a unit definition order on behalf of the Board, which may be subject to only such discretionary review by the Board as the Board may in such rule provide.

(4) Petitions for redefining a unit shall be subject as nearly as possible to the procedure set forth in this section for defining the initial unit. No petition for redefining a unit may be considered by the public employer or by the Board within twelve months from the date that the existing unit was defined or during the effective period of an agreement covering said unit, unless filed not more than 120 nor less than 60 days prior to the expriation date of said agreement. In no event shall a petition to redefine a unit be considered unless a showing is made of substantial change in circumstances since the unit was previously defined.

Section 25. Definition of the Most Appropriate Bargaining Unit.

(1) In reviewing or defining the most appropriate bargaining unit, the Board shall base its consideration upon:

(a) The efficiency of operations of the public employer;

(b) The effect of over fragmentation of bargaining units on the efficient administration of government;

(c) The community of interest of the public employees;

(d) The administrative structure of the public employer; and

(e) The geographical location of the public employees to be represented, and the political boundaries of the public employer.

(2) No person excluded from the definition of "public employee" in Section 3, subsection (12) may be included in a bargaining unit. The Board shall review all bargaining unit requests to insure that they meet the requirements of this section.

(3) Neither the parties nor the Board may decide that a unit is the most appropriate bargaining unit if it includes, together with other employees, any individual employed as a police officer, guard, or security employee to enforce against public employees or other persons or to protect the safety of persons in the public employer's jurisdiction. Further, no employee organization shall be certified as the exclusive agent of employees in a bargaining unit of police officers, guards, or security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership persons other than police officers, guards or security personnel.

Section 26. Determination and Certification of the Exclusive Agent.

(1) Procedures for determining the exclusive agent in the most appropriate bargaining unit may be initiated in accordance with this subsection as follows:

(a) Any employee organization seeking certification as exclusive agent in a requested unit may file a petition (as described in paragraph (2) of Section 24) with the Board, and shall transmit forthwith a copy of such, not including the names of the interested public employees, to the public employer.

(b) Where an employee organization has been certified as the exclusive agent, a public employee within the most appropriate unit may file a petition with the Board, and shall transmit forthwith a copy of such to the public employer and the certified employee organization, not

including the names of the interested public employees, for decertification of the exclusive bargaining agent. The petition must contain the uncoerced signatures of at least thirty percent of the employees within the most appropriate bargaining unit, allege that the labor or employee organization presently certified is no longer the choice of the majority of the employees in the most appropriate unit, and contain the same information as specified in paragraph (2) of Section 24.

(c) A public employer may file a petition with the Board seeking an election for certification of an exclusive agent or, where a labor or employee organization is so certified, to cause a decertification of the bargaining agent where the public employer has reason to believe that the exclusive bargaining agent is not or is no longer the choice of a majority of the employees of the most appropriate bargaining unit, and shall transmit a copy of such to the employer organization seeking to obtain or retain certification and said petition shall contain the same information as that specified in paragraph (2) of Section 24.

(d) If a lawful collective bargaining agreement of no more than three years duration is in effect, no petition shall be entertained unless filed not more than 120 nor less than 60 days prior to the expiration date of such agreement.

(e) Following the filing of any petition, the proceedings described in Section 24(3) shall take place in order to reach agreement on or determination of the appropriate unit.

(2) If the Board, determines that a petition is properly supported, timely filed, and covers the most appropriate unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination (by either agreement or determination) has been made, to determine if and by whom the employees wish to be represented, as follows:

(a) All elections shall be conducted under the supervision of the Board and shall be conducted by secret ballot at such time and place as the Board may direct.

(b) The election ballot shall contain, as choices to be made by the voter, the name of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least twenty days before the election of at least ten

percent representation of the public employees within the most appropriate unit, and a choice that the public employee does not desire to be represented by any of the named employee organization(s).

(c) The public employer and each other party to the election may be represented by observers selected in accordance with such limitations and conditions as the Board may prescribe.

(d) An observer may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenges or a Board decision thereon, unless the number of challenges is not determinative, in which latter event the ballots will be destroyed.

(e) After the polls have been closed, the valid ballots cast shall be counted by the Board in the presence of the observers.

(f) The Board shall prepare and serve upon the public employer and each other party within seven days after the election a report certifying the results of the election; if and only if an employee organization has received the votes of a majority of the public employees who voted in the most appropriate unit, the Board shall certify the employer organization so elected as the exclusive agent. No run-off elections shall be conducted.

(3) The aforesaid certification of results or of an exclusive agent shall be final unless, within seven days after service of the report and certification, the public employer or any other party serves on all parties and files with the Board objections to the election. The objections shall be verified and shall contain a concise statement of the facts constituting the grounds thereof. The Board or its designee shall investigate the objections and, if a substantial factual issue exists, the Board or a designated member or hearing officer shall hold a hearing thereon. Otherwise, the Board (or its designee, subject to such procedures for Board review as the Board may by rule prescribe) may determine the matter without a hearing. If a hearing is held the hearing officer shall prepare a report containing findings of fact and recommendations, which report shall be adopted, rejected, or modified by the Board in accordance with such review procedures as it shall by rule determine. The Board may invite either by rule or ad hoc invitation, written or oral argument to assist

in its determination of the merits of the objections.

(4) If the Board finds that the election was conducted in substantial conformity with this Article, the Board shall make final that certification initially issued. If the Board finds that the election was not held in substantial conformity with this Article, it shall cause another election to be held pursuant to the provisions of this section.

(5) No election may be held pursuant to this section:

(a) Within twelve months from the date of a preceding valid election; or

(b) During the effective period of an agreement covering said unit which does not exceed three years in duration, unless the petition is filed not more than 120 days nor less than 60 days prior to the expiration date of said agreement.

(6) The cost of conducting elections shall be paid for by the Division of Public Employment Relations.

(7) Voluntary recognition is prohibited under this Article, and no certification may issue without an election except where the unfair labor practices of a party have, in an unfair labor practice proceeding, been found by the Board to be so flagrant as not to be remediable by any other remedy of the Board and where the said unfair labor practices are found, upon the record of the proceeding, to have the continuing effect of precluding the holding of a fair secret ballot representation election at the time of the issuance of the Board's decision, in which case the Board may, in its discretion, issue a certification and bargaining order in the unit found most appropriate as a remedy for said flagrant unfair labor practices.

(8) Upon the filing with the Board of a petition supported by thirty percent or more of the employees in a bargaining unit covered by an agreement containing an agency shop or maintenance of membership provision, alleging they desire that such authority be rescinded, the Board shall conduct an election in which all unit employees shall be eligible to vote by secret ballot as to whether they desire such authority to be rescinded. Challenged ballot and objections procedures applicable to other elections under this Article shall apply. The applicable certification shall be either that the authority has been rescinded by a majority of those voting, or that it has not.

(9) To be certified and receive the benefits and protections of this Article, an employee organization must:

(a) File two copies of the constitution and bylaws governing the employee organization with the Division of

Public Employment Relations which shall make them public, and promptly report to the Board all changes or amendments thereto.

(b) File employee organization financial reports annually with the Division of Public Employment Relations which shall be made public and shall include: (i) the names and addresses of the employee organization, its officers, agents and representatives; (ii) the names and addresses of any parent organization or organizations with which it is affiliated; (iii) the name and address of its local agent for service of process; (iv) a general description of the public employees which it currently represents and which it seeks to represent; and (v) a report of all income and receipts received and all salaries, payments, loans and disbursements made for the preceding year.

(c) Provide for all of its members: (i) generally accepted fiscal and financial information annually, in such detail and form as the Board may by rule prescribe; (ii) equal rights and democratic processes within the organization; and (iii) reasonable access to all financial records of the employee organization.

(d) File a written statement with the Board in which the employee organization, in order to gain the privileges of certification and collective bargaining provided by this Article, voluntarily waives certain rights and privileges possessed by the organization to engage in enumerated activities of a political nature; specifically, such statements must provide that, in consideration of the rights provided in this Article, each employee organization, its officers, agents and representatives voluntarily will not, either directly or indirectly, on behalf of the organization: (i) violate the prohibitions of this Article relating to political contributions, contacts with public officials during collective bargaining negotiations, improper support of the public employer or other improper conduct as specifically prohibited by this Article; and (ii) engage in or cause any person to engage in any conduct relating to improper striking or picketing as prohibited by this Article; and in furtherance thereof, such written statements shall be signed by an agent of such employee organization expressly authorized to execute the document prescribed by this Section; and provided further, that the execution

of such document shall constitute a waiver of any and all legal rights otherwise possessed by such employee organization to engage, directly or indirectly, in any of the activities of a political nature described in the written statement for the period described therein. The Board may adopt such rules and regulations as are necessary to effectuate the purposes of this Section 26(9)."

(10) Any employee organization certified as the exclusive agent in the most appropriate bargaining unit shall:

(a) Equally, exclusively, and fairly represent all of the public employees within the unit, whether or not any such employee is a member of or contributes to the employee organization; and

(b) Have exclusive representation status as provided in this Article.

Section 27. Collective Bargaining Agreements - Validity and Void Provisions

(1) Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the employees in the bargaining unit. An exclusive agent may provide its own rules for ratification procedures, but such rules shall be consistent with the exclusive agent's duty of fair representation. Any terms of a collective agreement which purport to restrict the rights of management and of the public as contained in Section 8 of the Article shall be null and void and wholly unenforceable.

(2) Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. Unless renewed or extended as provided above, no agreement shall be valid if it extends for less than one year nor for more than three years.

(3) The terms of any collective bargaining agreement whose implementation would be inconsistent with any statutory limitation on the public employer's funds, spending, or budget, or would substantially impair or limit the performance of any statutory duty by the public employer shall be null and void and wholly unenforceable. A collective bargaining agreement may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction or elimination of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

Section 28. Impasses--Mediation--Fact-finding.

(1) (a) During the course of collective bargaining either party may declare an impasse and may request mediation by

petition to the Board. Upon petition of a party the Board shall, if it deems appropriate, designate, or request the Bureau of Mediation to designate a mediator who shall seek to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the Board shall have any power of compulsion in mediation proceedings. The Division of Public Employment Relations shall assume all necessary costs and expenses of the mediator.

(b) If either party objects to the designated mediator, the Board shall designate, appoint or request the Bureau of Mediation to designate a substitute mediator, which designation shall be final. The mediator shall not make any public report or comment relating to any aspect of the negotiations between the public employer and the employee organization except upon approval of all parties.

(2) (a) If, after a reasonable period of meeting and bargaining collectively, including mediation, no agreement has been reached or the parties are at a bona fide impasse, then the Board or its duly authorized designee, after consultation with the mediator, and upon request of a party may: (i) declare that an impasse exists; (ii) define the area or areas of dispute; (iii) order that fact-finding begin as hereinafter provided; and (iv) designate a fact-finding referee.

(b) Each party shall submit a final offer to the referee within five days of his appointment and may at the same time submit one alternative offer to the other party. These offers shall be officially received by the referee and preserved for the Board of fact-finders. Such offers shall constitute a complete draft of a proposed collective bargaining agreement or both parties may mutually agree to submit for fact-finding a package proposal on specific impasse items. If only package proposals on specific impasse items are submitted, all items previously agreed upon shall be filed with the referee. Subsequent to this filing the parties shall continue to negotiate until agreement is reached or a fact-finding Board is empaneled.

(c) The Board of Fact-finders shall consist of three members; one appointed by the public employer, one appointed by the exclusive agent and a third appointed as

herein described. The appointments by the public employer and the employee organization shall be made within four (4) days of the appointment of the referee. The two members shall thereafter attempt to mutually agree on a third member under auspices of the referee. The third member appointed shall be the chairman of the Fact-finders Board. The chairman shall be a professional arbitrator and whenever possible shall have experience in public employee labor-management relations. Nothing in this section prohibits citizens of the public employer from appointment to the Board.

(d) A list of five members of the National Academy of Arbitrators shall be requested from the Public Employee Relations Board by the referee from lists maintained by the Public Employment Relations Board. If the Board does not maintain such lists, it may in turn forward such request to the Federal Mediation and Conciliation Service or to the American Arbitration Association or to such other like entity as the Public Employee Relations Board may select. If, four days from the time the employer and labor organization members of the Board of Fact-finders have been designated the third member has not been mutually agreed upon, then each party shall alternatively strike two names from the list. The order of striking shall be determined by lot under auspices of the referee. The remaining member shall become the Chairman of the Fact-finders Board.

(e) If a vacancy should occur on the Fact-finders Board due to death or resignation, the selection for replacement of such member shall be in the same manner as the resigned or deceased member was chosen. Such a vacancy shall not impair the right of the remaining members to exercise all of the powers of the Fact-finders Board, except that no final selection under subsection (h) of this section shall be made by the Fact-finders Board until the vacancy has been filled.

(f) From the time of appointment until such time as the Fact-finders Board makes its selection, there shall be no communication by the members of the Fact-finders Board with other parties other than the employer's bargaining representative or his designee and the labor organization's bargaining representative or his designee concerning recommendations for settlement of the dispute except as herein provided. This shall not preclude the

Fact-finders Board from, on its own initiative, obtaining whatever information from whatever sources it deems appropriate to assist in its selection.

(g) The chairman of the Fact-finders Board shall, immediately upon his selection, set a time, date, and place for an initial hearing which shall be, where feasible, in a locality convenient to the public employer or employers and the exclusive bargaining agent. Hearings shall be conducted in accordance with rules established by the Public Employment Relations Board. Upon request of the chairman of the Fact-finders Board, or upon request of the public employer or employers, or of the exclusive bargaining agent for good reason shown, the Fact-finders Board shall have the power to issue subpoenas to compel the attendance of witnesses and the production of relevant documents for any hearings conducted by the Fact-finders Board. The Fact-finders Board shall have, in addition to these powers, the power to determine relevant facts and to make recommendations for resolution of the dispute, subject to the provisions of subsection (h) of this section. The costs of fact-finding shall be borne equally by the parties.

(h) The Fact-finders Board shall select the most reasonable, in its judgement, of final offers submitted by the parties. The Fact-finders Board may take into account only the following factors: (i) past collective bargaining contracts between the parties including the past bargaining history that lead to such contracts; (ii) comparison of wages, hours and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the market area and the employee classifications involved; (iii) comparison of wages, hours and conditions of employment as reflected by public employers in general, and as paid by the same or similar public employers reasonably proximate to the public employer; (iv) the interests and welfare of the public; and (v) the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of public services provided by the public employer.

(i) The Fact-finders Board shall not compromise or alter the final offer that it selects. Selection of an offer shall be based on the content of that offer and no consideration shall be given to, nor shall any evidence be

received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the Board unless there is mutual agreement to submit package proposals on specific impasse items. In such an instance, the Fact-finders Board must consider all previously agreed upon items received by the referee, integrated with the specific impasse items to determine the single most reasonable offer.

(j) The offer selected by the Fact-finders Board, integrated with previously agreed upon items received by the referee, shall be deemed to represent the findings and recommendations of the Fact-finders Board. These findings shall be tendered to the parties. The parties shall notify the referee of the status of negotiations five days after receiving notice that one or both of the parties do not accept the findings. The referee may publicize the final offer selected by the Fact-finders Board within five (5) days of their receipt by the parties.

(k) Should either or both parties allege that the fact-finding report issued under this Section was issued in disregard of Section 28(2), (h) of this Article or otherwise be in violation of this Article, then either or both parties may move the dispute of the alleged violation be reviewed as provided in the following subsections. In such a hearing, the referee shall conduct the proceedings.

(l) Any party alleging that the fact-finding is in violation of the terms and conditions of this Article shall notify the referee of its intention to contest the Fact-finders Board's report no later than (5) days after the issuance of the report. Such notification shall include reference to the specific provision of this Article deemed violated and shall be served on the other party(s) in interest. The referee shall convene a hearing within five (5) days after such notification, and may issue subpoenas, administer oaths, and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the issue at hand. The referee shall, within three days after the completion of such hearing, or as soon thereafter as practical, issue a decision regarding the allegation of violation of this Article.

(m) Should the referee find that the fact-finding selection was made in violation of this Article, he shall immediately remand the dispute back to the parties for de novo fact-finding with a newly appointed panel, subject to all criteria and review provided in this article. Should the referee find no violation of this ordinance, he shall so inform the parties within three (3) days.

(n) There shall be no strike by any employee or employee organization nor lockout by any employer until ten days after the Fact-finders Board's report with findings and recommendations has been made public, as provided herein.

Section 29. Strikes and Lockouts.

(1) No public employee or employee organization shall, either directly or indirectly, cause, instigate, encourage, condone, or engage unlawfully in any strike, nor a public employer in any unlawful lockout. No public employee or employee organization shall obstruct, impede, or resist, either directly or indirectly, any lawful attempt to terminate an unlawful or prohibited strike nor a public employer an unlawful or prohibited lockout.

(2) No public employer shall pay, reimburse, make whole or otherwise compensate any employee for, or during the period when said employee is directly or indirectly engaged in a strike nor shall a public employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(3) Upon request a public employer, any political subdivision or public agency or the governor on behalf of the state is authorized to provide necessary personnel and other assistance during the period of a strike. Further, any laws of this state pertaining to the hiring of personnel shall not be applicable during the period of a strike and any persons hired during such time shall be considered to have met all requirements of the state peratining to the hiring of personnel for so long as such personnel perform their duties in a satisfactory manner.

(4) A public employer may lawfully discharge or temporarily or permanently replace any employee engaged in a strike.

(5) A public employer may, under this Article, bring suit to recover from a labor organization all incidental costs and expenses incurred by the public employer in responding to or operating during a strike called by, caused by, supported by, or instigated by the labor organization. Any money saved by the public employer resulting from wages not paid during a strike shall not be set off against expenses incurred by the public employer for purposes

of determining liability under this section.

Section 30. Unlawful and Prohibited Strikes and Lockouts.

(1) All strikes by public employees or employee organizations, and all lockouts by public employers, are absolutely unlawful and prohibited:

(a) During the period in which a lawful collective bargaining agreement is in effect; or

(b) During the pendency of the collective bargaining or impasse procedures set forth in this article; or

(c) Where proper notice has not been given pursuant to subsection (3) of this section or where the action taken does not reasonably conform to the notice given; or

(d) Where the strike or lockout creates, or threatens to create, a clear and present danger to the public health or safety; or

(e) Where striking employees remain on the job but, by their actions and conduct, fail to fully perform their job duties with the purpose or intent of aiding or supporting a strike.

(2) In the event of a prohibited or unlawful strike or lockout the public employer or employee organization involved may initiate in the circuit court in the county in which the strike or lockout occurs, or is anticipated to occur, an action for appropriate equitable relief including, but not limited to, injunction. Where the public employer is the State, the action shall be brought in the circuit court of either _____ or _____ County. Where a court finds that a prohibited or unlawful strike or lockout has occurred or is threatened to occur the public employer if a strike or the employee organization if a lockout shall be entitled to immediate injunctive relief as well as such other relief as the court may deem appropriate, subject only to the usual equity rules regarding the availability of temporary and/or permanent injunctive relief and notwithstanding any state statute prohibiting or limiting the issuance of injunctions in labor disputes generally.

(3) After the collective bargaining processes and impasse procedures set forth in this Article, including those of Section 28, have been completely utilized and exhausted without an agreement having been reached, and ten days having elapsed since the Fact-finders Board's report was made public, an employee or employee organization desiring to engage in strike activity permitted under this Article, or an employer desiring to engage in a lockout permitted under this Article must deliver to a designated representative of the other party(s) a written fifteen

(15) day notice of intent to strike or lockout. Such notice must specify in detail the nature of the activity to be taken, including but not limited to the specific acts to be taken, the time and place of all intended acts and the specific employees and persons to be involved.

(4) If the provisions of this Article, including those of subsection (3) above, have been fully met, a strike by a public employee or employee representative or a lockout by a public employer, if it occurs fifteen (15) days after delivery of a proper notice of intent to strike or lockout, shall not be prohibited, considered unlawful, or enjoined by law so long as such strike or lockout:

(a) Reasonably conforms to the activity stated in the written 15 day notice; and

(b) Does not create, or threaten to create, a clear and present danger or threat to the health or safety of the public.

(5) Where a strike or lockout creates, or threatens to create, a clear and present danger to the public health or safety the public employer, if a strike, or employee organization if a lockout shall initiate, in the circuit court of the county where such strike or lockout occurs, an action for equitable relief including but not limited to appropriate injunctive relief and shall be entitled to such relief if the court finds that the strike or lockout creates a clear and present danger or threat to the health or safety of the public. If the strike or lockout involves state employees, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the circuit court of either _____ or _____ County.

(6) The issuance of an injunction shall not prohibit an employee organization, if a strike, or a public employer if a lockout from proposing lesser strike activity which, if it meets the requirements of subsections (3) and (4) above, will receive the protections of this Article. Such lesser strike or lockout activity is subject, however, to a new fifteen day notice requirement as provided in subsections (3) and (4) above.

(7) The commission of prohibited practices by a public employer, public employee or employee organization shall not be a defense to an unlawful strike or lockout. Prohibited practices by an employer, employee or employee organization during the pendency of the collective bargaining processes under this Article shall receive priority by the Board as set forth in Section 14.

(8) If a public employee refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this section, the public employer shall initiate an action for contempt and if the public employee is adjudged guilty of such contempt he shall be subject to suspension, demotion or discharge at the discretion of the public employer, provided that the public employer has not exercised that discretion in violation of this Article.

(9) In the event any public employee refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this section, the punishment for such contempt shall be fine of not less than twice the employee's normal daily earnings for each day that such contempt persists. Imprisonment in the prison of the county where the court is sitting may also be ordered at the discretion of the court.

(10) Where an employee organization or other person willfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this section, the punishment for each day that such contempt persists may be a fine fixed in the discretion of the court, but not less than the daily regular compensation of all employees engaged in such strike, or $5,000, whichever is greater, for each day the contempt persists.

(11) In fixing the amount of the fine above the minimum levels stated herein, or the length of imprisonment for contempt, the court shall consider all the facts and circumstances directly related to the contempt including but not limited to:

(a) Any prohibited practices committed by the public employer during the collective bargaining processes;

(b) The extent of the willful defiance or resistance to the court's order;

(c) The impact of the strike on the health or safety of the public; and

(d) The ability of the employee organization, the person or the public employee to pay the fine imposed.

(12) Public employees, other than those engaged in a non-prohibited strike, who refuse to cross picket lines shall be deemed to be engaged in a prohibited and unlawful strike and shall be subject to the terms and conditions of this Article pertaining to prohibited and unlawful strikes. Any public employee who refuses to cross a picket line shall be deemed to have engaged in a strike.

(13) If a public employer refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this section, the employee organization or an employee may initiate an action for contempt. If the public

employer is adjudged willfully guilty of such contempt, the court may issue such relief as it deems just and proper and which is consistent with such relief generally granted in this state where public employers or public officials are found to be in contempt of a lawful court order.

Section 31. Discipline for Illegal Strike Activity. Nothing in this Article or the statutes of this State shall prohibit a public employer from discharging or disciplining in any way a public employee who participates in a strike. If under applicable law or agreement, an employee is entitled to any review procedure for discipline imposed by the employer because of participation in a strike such review shall be limited to whether or not such employee has engaged in a strike and the extent of the penalty shall not be subject to review.

Section 32. Suits by and Against Employee Organizations.

(1) For purposes of this Article an employee organization may act in its own name and sue or be sued as an entity and on behalf of the employees it represents. Any money judgement against an employee organization shall be enforceable only against the organization as an entity and on behalf of the employees it represents. Any money judgement against an employee organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets. No money judgment shall be enforceable against any assets of an employee organization which are held solely for the purpose of providing pension or insurance benefits.

(2) Any persons, including taxpayers, aggrieved by the prohibited or unlawful acts of an employee organization may file suit in state court for damages and costs under this Section.

Section 33.. Public Meetings and Records.

(1) Notwithstanding any other requirement of law, collective bargaining sessions between the exclusive bargaining agent and the public employer or members, mediation sessions, fact-finding hearings and sessions, and meetings of the public employer limited to the subject of collective bargaining shall not be open to the public, except as specifically provided in this Article. Any interim correspondence, memoranda, documents, reports, transcripts, and agreements produced during or for such sessions, hearings, or meetings shall not be deemed "public records" subject to the provisions of (the State "open records" law).

(2) Any collective bargaining agreement executed by all parties, the fact-finding report of the Fact-finders Board after ten days if agreement has not been reached, and documents embodying completed studies and analyses of the Public Employment

Relations Board made pursuant to authority granted in this Article shall be deemed "public records" within the meaning of the State "open records" law).

Section 34. Reports and Contributions. An exclusive agent shall not make any direct or indirect contribution out of the funds of any organization to any political party or organization or in support of any candidate for elective public office.

Any exclusive agent which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall, upon conviction, be subject to a fine of not more than two thousand dollars.

Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall, upon conviction, be subject to a fine of not more than one thousand dollars or imprisoned for not more than thirty days or shall be subject to both such fine and imprisonment. Each individual required to sign affidavits or reports under any section of this Act shall be personally responsible for filing such report or affidavit and for any statement contained therein which he knows to be false.

Nothing in this section shall be construed to prohibit voluntary contributions by individuals to political parties or candidates.

Nothing in this section shall be construed to limit or deny any civil remedy which may exist as a result of action which may violate this section.

Section 35. Appropriation. In addition to any appropriation heretofore made, there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to the division of public employment relations, the sum of _____ dollars ($), or so much thereof as may be necessary for the implementation of this Article.

Section 36. Severability. If any provision of this Article or application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid application or provision, and to this end the provisions of this Article are declared to be severable.

Section 37. Effect of Prior Enactments. Nothing contained in this Article shall be construed to repeal any statute, local ordinances, executive orders, legislation, rules or regulations adopted by the State, county and any department or agency thereof not inconsistent with the provisions of this Article.

Section 38. Effective Date. Section 5 of this Article shall take effect (immediately), and the remainder shall become effective six months after the initial effective date.

GLOSSARY

ADVERSE ACTION	In general, actions by employers adversely affecting a worker's status: such as removal, suspensions, reduction in grade, rank, or compensation. Under most collective bargaining agreements adverse action appeals procedures are separate from grievance procedures.
AFL-CIO	Name of the federation created by merger in 1955 of the American Federation of Labor and the Congress of Industrial Organizations.
AFSCME	American Federation of State, County and Municipal Employees (AFL-CIO).
AGENCY SHOP	A union security arrangement to eliminate "free riders" without requiring all employees in a bargaining unit to become members of the union as a condition of employment. Employees in the unit must either join the union or pay a service charge (usually equivalent to union dues) to the collective bargaining agent. Modified agency shop--A variant (rare) devised to meet objections of employees on a public (or private) payroll to being forced to pay fees to a union. Rather than a service fee to the bargaining agent the employee pays the sum to a designated charitable organization. Another modification: existing employees do not have to pay the "service fee" but newly hired employees must either join or pay the service fee. See "free riders".
AMERICAN ARBITRATION ASSOCIATION (AAA)	Private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration and factfinding with and without recommendations as a means of settling commerical and labor disputes. Provides lists of arbitrators for a fee upon request.

ARBITRATOR (IMPARTIAL CHAIRMAN)	An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.
ARBITRATION, ADVISORY	An attempt in the public sector to employ the arbitration process to resolve disputes while still recognizing the sovereignty of the government. The arbitrator's award need not be accepted where the employer decides the award is contrary to overriding public interest.
ARBITRATION, GRIEVANCE (RIGHTS)	A voluntary means of settling grievances which arise from the interpretation or application of an existing agreement. The arbitrator clarifies the meaning of agreement provisions and renders a decision when disagreements cannot be settled at the lower levels of the grievance procedure. Sometimes referred to as arbitration over the rights of the parties under the negotiated agreement.
ARBITRATION, INTEREST	The determination by an arbitrator of new agreement provisions; the arbitration of the terms of the new collective bargaining agreement as distinuished from arbitration involving the interpretation and application of the current agreement (or grievance arbitration.) Sometimes referred to as disputes involving interest in new terms and conditions of an agreement rather than rights under the terms of the existing agreement.
ARBITRATION VOLUNTARY	Third party settlement where labor and management jointly request that an issue be submitted to arbitration. This may be done on an ad hoc basis or may be pursuant to a collective bargaining agreement making arbitration the terminal point of the negotiated grievance procedure.

ASSOCIATION	An independent organization of employees generally not under the direct jurisdiction of a national union. Major examples include the California State Employees Association and the National Education Association.
AUTHORIZATION CARD	Statement signed by employee designating a union as authorized to act as his agent in collective bargaining. An employee's signature on an authorization card does not necessarily mean that he is a member of or has applied for membership in the union.
BARGAINING AGENT (BARGAINING REPRESENTATIVE)	Union designated by an appropriate government agency, such as the Educational Employment Relations Board, or recognized voluntarily by the employer as the exclusive representative of all employees in the bargaining unit for purposes of collective bargaining.
BARGAINING UNIT	Shortened form of "Unit Appropriate for Collective Bargaining." Group of employees in a craft, department, plant, form, occupation or industry recognized by the employer or group of employers, or designated by an authorization agency such as the Educational Employment Relations Board as appropriate for representation by a union for purposes of collective bargaining.
BOYCOTT	Effort by an employee organization, usually in collaboration with other organizations, to discourage the purchase, handling, or use of products of an employer with whom the organization is in dispute. When such action is extended to another employer doing business with employer involved in the dispute, it is termed a secondary boycott.
BULWARISM	A strategy employed in the early days of bargaining where management's first offer was their best and final offer. It was designed to show the workers that a union was not required.
BUMPING (ROLLING)	Practice that allows a senior employee (in seniority ranking or length of service) to displace a junior employee in another job or department during a layoff or reduction in force. See "seniority."
BUSINESS AGENT (UNION REPRESENTATIVE)	Generally a full-time paid employee or official of a local union whose duties include day-to-day dealing with employers and workers, adjustment of grievances, enforcement of agreements and similar activities.

CAPTIVE AUDIENCE	Employees required to attend a meeting at which the employer makes a speech, usually shortly before a representation election. The National Labor Relations Board requires an employer to give the union an opportunity to answer such a speech if the employer has prohibited solititation on company property during non-working hours.
CARD-CHECK	Comparison of union authorization cards signed by employees against employers payroll to determine extent of union support by employees.
CERTIFICATION	Formal designation by a government agency, of the employee organization selected by the majority of employees to act as exclusive bargaining agent for all employees in the unit.
CERTIFIED EMPLOYEE ORGANIZATION	Means an employee organization, or its duly authorized representative, that has been certified as representing the majority of the employees in an appropriate employee representation unit.
CHALLENGED BALLOT	A vote questioned by one of the parties to a representation election. Common practice is to resolve the challenges and open and count the challenged ballots only if the number of challenged ballots is sufficient to affect the outcome of the election.
CHECK-OFF	Arrangement whereby an employer deducts from the pay of union members in a bargaining unit membership dues and assessments and turns these monies over to the union. In some jurisdictions the public employer union is required to pay a fee for this service.
CLOSED SHOP	A provision in a collective bargaining agreement under which the employer may hire only union members and retain only union members in good standing. The closed shop is illegal under federal law for industries and business engaged in interstate commerce. (See Union Shop).
COLLECTIVE BARGAINING (COLLECTIVE NEGOTIATIONS)	A method of bilateral decision making in which representatives of the employees and employer determine the conditions of employment of all workers in a bargaining unit through direct negotiation. The bargaining normally results in a written contract which is mutually binding and set forth wages, grievance procedures, and other conditions of employment to be observed for a stipulated period. Collective bargaining is to be distinguished from individual bargaining which applies to negotiations between an individual employee and the employer.

COLLECTIVE BARGAINING AGREEMENT	Written contract between an employer (or employers) and an employee organization, usually for a definite term, defining the conditions of employment (wages, hours, vacation, holidays, overtime payments, etc.), the rights of the employees and the employee organization, and the procedures to be followed in settling disputes or handling issues that arise during the life of the contract.
COLLECTIVE BARGAINING IN GOOD FAITH (TAFT-HARTLEY ACT)	To meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
COMMUNITY OF INTEREST	A concept used to determine if employees should be grouped together in an appropriate bargaining unit. Employees in the same bargaining unit should share a "community of interest." Though MMB does not set criteria some typical guidelines are similar working conditions, responsibilities, compensation, supervision, and work site.
COMPANY UNION	Historically, a term used to describe a labor organization which is organized, financed, or dominated by the employer, usually with the purpose of preventing the formation of a legitimate organization controlled by and representing the employees.
CONCILIATION	Efforts by a neutral party directed to the accommodation of opposing viewpoints in a labor dispute in order to bring about a voluntary settlement. In current usage the terms conciliation and mediation are used interchangeably, although technically a "conciliator" plays a less active role than a "mediator" plays in a labor dispute. See "mediation."

CONFIDENTIAL EMPLOYEE	One whose responsibilities or knowledge in connection with the labor-management issues involved in collective bargaining, grievance handling, or the content of union-management discussions would make his membership in the union incompatible with his official duties. Such individuals usually are staff employees reporting to and accountable to those in management responsible for the conduct of union-management discussions, especially those relating to wages, hours, and/or working conditions of union-represented employees.
CONSENT ELECTION	A procedure for holding elections to determine by majority vote of employees in a bargaining unit which, if any, employee organization will serve as their bargaining representative. This procedure is undertaken by mutual agreement of the parties.
CONSULTATION	An obligation on the part of employers to consult the employee organization on particular issues before taking action on them. In general, the process of consultation lies between notification to the employee organization, which may amount simply to providing information, and negotiations, which implies agreement on the part of the organization before the action can be taken.
CONTRACT-BAR RULES	Policies followed in determining when an existing agreement between an employer and a union will bar a representation election sought by a union attempting to unseat an incumbent employee representative.
COOLING-OFF PERIOD	A period of time which must elapse before a strike or lockout can begin or be resumed agreement or by law. Their term derives from the hope that the tensions of unsuccessful negotiation will subside in time so that a work stoppage can be averted.
COPE	Council of Political Education (AFL-CIO)

CRAFT EMPLOYEE	Any employee who is engaged with his helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line or succession in that craft.
CRAFT UNION	A labor organization which limits membership to workers having a particular craft or skill of working at closely related trades. In practice, many so-called craft unions also enroll members outside the craft field, and some come to resemble industrial unions in all major respects. The traditional distinction between craft and industrial unions has been substantially blurred.
CRAFT UNIT	A bargaining unit composed solely of workers having a recognized skill, for example, electricians, machinists, or plumbers.
DECERTIFICATION	Withdrawal by a government agency of an organiztion's official recognition as exclusive negotiating representative.
EMPLOYEE	See "Public Employee".
EMPLOYEE ORGANIZATION	Any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency. (MMB)
EMPLOYEE RIGHTS	Except as otherwise provided by the Legislature, public (state) employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public (state) employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency. (MMB)

EMPLOYER	See "Public Agency".
ESCALATOR CLAUSE	Provisions in an agreement stipulating that wages are to be automatically increased or reduced periodically according to a schedule related to changes in the cost of living, as measured by a designated index, or, occasionally, to another standard, e.g., an average earnings figure. Term may also apply to any tie between an employee benefit and the cost of living, as in a pension plan.
EXCLUSIVE BARGAINING RIGHTS	The right and obligation of an employee organization designated as majority representative to negotiate collectively for all employees, including nonmembers, in the negotiating unit.
EXCLUSIVE RECOGNITION	When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. In California, under MMB, organization is formally recognized pursuant to a vote of the employees. May be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.
EXECUTIVE ORDER 11491	Presidential order governing labor-management relations in the federal public service. Closely parallels the Taft-Hartley Act for private sector employees except that federal unions only bargain over working conditions. Federal salaries and fringe benefits are set by Congress.
FACT-FINDING	A process whereby an indeptendent third party or panel is asked to conduct hearings, either public or private, make investigations and issue a report. If the report makes a determination of data and economic information, the process is called fact-finding without recommendations. If the panel suggests settlement terms for the parties, the process is called advisory arbitration, board of review or fact-finding with recommendations. If the report is binding on both parties the process is called arbitration.

FAVORED NATIONS CLAUSE	An agreement provision indicating that one party to the agreement (employer or union) shall have the opportunity to share in more favorable terms negotiated by the other party with another employer or union.
FEDERAL MEDIATION & CONCILIATION SERVICE (FMCS)	An independent federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation." Mediation services are also provided by several state agencies.
FREE RIDERS	A derogatory term applied by unions to non-members within a recognized bargaining unit; the implication is that they obtain without personal cost the benefits of representation supported by dues paying union members.
FRINGE BENEFITS	Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacations, pensions, health and insurance plans, etc.) that usually add to something more than a "fringe" and is sometimes applied to a practice that may constitute a dubious "benefit" to workers. No agreement prevails as to the list of practices that should be called "fringe benefits." Other terms often substituted for "fringe benefits" include "wage extras," "hidden payroll," "nonwage labor costs," and "supplementary wage practices." The Bureau of Labor Statistics uses the phrase "selected supplementary compensation or renumeration practices," which is then defined for survey purposes.
GLOBE DOCTRINE	National Labor Relations Board policy that allows employees' choice to govern its designation of the bargaining unit where more than one form of unit is appropriate.
GRIEVANCE	A dispute over the wages, hours and/or working conditions of an employee or employees which requests modification of a decision to conform to a higher rule, law, policy or requirement. Also the complaint filed by an employee under a grievance procedure.

GRIEVANCE PROCEDURE	Typically a formal plan, specified in a collective agreement, which provides for the adjustment of grievances through discussions at progressively higher levels of authority in management and the employee organization, usually culminating in arbitration if necessary. Formal plans may also be found in companies and public agencies in which there is no organization to represent employees.
HEARING	A meeting during which an officer at the public agency regulating public employee relations hears argument and takes testimony for the purpose of developing a factual record relevant to the issue(s) in representation. This terms does not apply to proceedings involving mediation, fact-finding and arbitration under commission rules and regulations and statement of procedure.
HEARING OFFICER	An officer appointed to conduct a hearing under the Public Employee Relations commission's rules and regulations.
IMPASSE	When the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.
INDUSTRIAL UNION	A union admitting to membership all persons in a "plant" or industry, unskilled, semi-skilled and skilled, regardless of work performed. Industrial unions sometimes are referred to as vertical unions.
INJUNCTION	A court order restraining individuals or groups from committing acts which the court determines may do irreparable harm. There are two types of injunctions: temporary restraining orders, issued for a limited time and prior to a complete hearing; permanent injunctions, issued after a full hearing, in force until such time as the conditions which gave rise to their issuance have been changed.

INTERNAL DISPUTES PLAN	AFL-CIO's in-family procedure for resolving disputes between and among affiliated unions. Plan, set forth in Article XX (formerly XXI) of federation's constitution, provides for submission of disputes to impartial umpires with right of appeal to AFL-CIO executive council. Its purpose is to protect established relationships--not paper jurisdiction--of affiliates.
INTERNATIONAL UNION	The self-identification used by most unions in the United States which have affiliated locals in other countries, usually Canada.
JURISDICTION, UNION	Authority claimed by union in constitution to be sole representative workers engaged in a specific type or class of work.
JURISDICTION DISPUTE	Conflict between two or more employee organizations over the organization of a particular establishment or whether a certain type of work should be performed by members of one organization or another. A jurisdictional strike is a work stoppage resulting from a jurisdictional dispute.
LABOR MANAGEMENT RELATIONS ACT 1947 (TAFT-HARTLEY ACT)	Federal law amending the National Labor Relations Act (Wagner Act), 1935, which among other changes defined and made illegal a number of unfair labor practices by unions. It preserved the guarantee of the right of workers to organize and bargain collectively with their employers, or to refrain from such activities, and retained the definition of unfair labor practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: employees subject to Railway Labor Act, agricultural workers, government employees, nonprofit hospitals, domestic servants and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959.

LABOR ORGANIZATION (TAFT-HARTLEY)	Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
LEAGUE	May refer to either the "League of California Cities" or the "National League of Cities".
LOCAL	Group of organized workers in a specific geographic area which holds a charter from a national or international union.
LOCKOUT	A temporary suspension of work or denial of employment by an employer during a labor dispute. The distinction between a strike and a lockout depends on which party initiates the work stoppage.
LODGE	Term used in some labor organizations as the equivalent of local. See "local."
MAINTENANCE OF MEMBERSHIP	A form of union security whereby employees who are union members on a specified date and those who elect to become union members after that date are required to remain members in good standing as a condition of employment during the term of the union's contract.
MANAGEMENT EMPLOYEE	Any employee in a position having significant responsibilities for formulating the public agencies policies or administering programs.
MANAGEMENT PREROGATIVES OR MANAGEMENT RIGHTS	Rights reserved to management, which may be expressly noted as such in a collective agreement. Management prerogatives usually include the right to schedule work, to maintain order and efficiency, to hire, etc.
MEDIATION	Effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the public agency and the recognized employee organization through interpretation, suggestion and advice.(MMB)

MEET AND CONFER IN GOOD FAITH	The mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. (MMB) The mutual obligation personally to meet and confer within a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. (MMB, pre-1972 amendments.)
MEMORANDUM OF UNDERSTANDING	A written binding agreement between the representative of a public agency and a public employee organization setting forth terms and conditions of employment. Formally non-binding, the California Supreme Court decided, in Glendale City Employees Association, Inc. vs. City of Glendale (Superior Ct No. 988 944) that agreements are binding under Meyers-Milias-Brown.
MMB. MEYERS-MILIAS-BROWN ACT	The basic State legislation dealing with employee-employer relationships in local government in California. (other than school employees) (See section 3500-3510 of the California Government Code.)
NATIONAL LABOR RELATIONS ACT, 1935 (WAGNER ACT)	Basic federal act guaranteeing private sector workers the right to organize and bargain collectively through representatives of their own choosing.
NATIONAL LABOR RELATIONS BOARD (NLRB)	Five man board created by the National Labor Relations Act whose functions are to define appropriate bargaining units, to hold elections to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the act.

NEGOTIATING UNIT	See "Bargaining Unit".
NEGOTIATION	To communicate or confer with another so as to reach a settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise.
PAST PRACTICE CLAUSE	Existing practices in the jurisdiction sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.
PICKETING	Patrolling near the employer's premises to publicize the existence of a dispute, to discourage others from entering, to persuade the employer to recognize the employee organization, or to persuade employees to join the organization.
PREFERENTIAL HIRING	A provision in a collective bargaining agreement whereby the employer agrees to give preference in hiring to members of an employee organization, or, less frequently, to applicants with previous training and experience in the industry, regardless of organization membership.
PROFESSIONAL NEGOTIATIONS	Terms used originally by National Education Association to describe alternative to collective bargaining, and to prevent split in profession's ranks between teachers and school administrators. The distinction between "professional negotiations" and "collective bargaining" has faded over the years.
PROFESSIONAL EMPLOYEES	Employees engaged in work requiring special knowledge and skills attained through completion of a recognized course of instruction, including but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientist.(MMB)
PUBLIC AGENCY	Every government subdivision every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, and municipal corporation whether incorporated or not and whether chartered or not. (MMB)

PUBLIC EMPLOYEE	Any person employed by any public agency including employees at the fire departments, and fire services of counties, cities and districts and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor. (MMB)
RECOGNITION	Formal acknowledgment by an employer that a particular organization has the right to represent employees. Exclusive recognition is accorded an organization supported by majority of employees in an appropriate bargaining unit and carries with it the sole right to represent all unit employees, members and nonmembers, in dealings with management.
RECOGNIZED EMPLOYEE ORGANIZATION	An employee organization which has been formally acknowledged by the public agency organization that represents employees of the public agency.(MMB)
REPRESENTATION PROCEEDING	A procedure for the purpose of determining the majority representation of employees, if any, in an appropriate collective negotiating unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations.
THE RODDA ACT	Act governing California Public Schools Employee Relations.
RIGHT-TO-WORK LAWS	State laws which designate as unlawful agreements that require membership or non-membership in an employee organization as a condition of obtaining or retaining employment.
RUN-OFF ELECTION	Second election conducted when no party wins a majority of the valid votes cast in the first election. The run-off is between the two contenders receiving the most votes in the first election.

SCOPE OF PRESENTATION	Includes all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity of organization of any service or activity provided by law or executive order. (MMB).
SENIORITY	An employee's standing in the plant, acquired through length of continuous employment. Employees with the greatest seniority generally are last to be laid-off and often are given preference with promotions.
SHOWING OF INTEREST	Support that union must demonstrate, usually by signed authorization cards, by employees in proposed bargaining unit before an election will be held. Most common requirement is showing of interest among 30 percent of unit employees.
STRIKE	Any concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.
SUPERVISOR (TAFT HARTLEY)	An individual having authority, in the interest of the employer to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances/ or effectively recommend such action, if in connection with the foregoing the exercise of such authority, is not of a merely routine or clerical nature, but requires the use of independent judgment.
SUPERVISORY EMPLOYEE (RODDA ACT)	Any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

UNFAIR LABOR PRACTICE	Action by either an employer or union which violates the provisions of National or State labor relations acts. Usually applied to specific practices forbidden by the National Labor Relations Act, as amended.
UNION SECURITY	Protection of union status by provision in a collective bargaining agreement, establishing closed shop, union shop, agency shop, or preferential hiring and maintenance of membership.
UNION SHOP	Provision in a collective bargaining agreement that requires all employees to become members of the union within a specified time after hiring or after the provision is negotiated, and to remain members of the union as a condition of employment. The union shop is permitted by federal law and is prohibited in states with "right-to-work laws."
UNIT	Shortened form of "unit appropriate for collective bargaining." An appropriate unit includes all employees sharing a communtiy of interests which can be served through collective bargaining. See "bargaining unit", "community of interest."
VIOLATION OF THE ACT (UNFAIR LABOR PRACTICES)	A practice on the part of either an employee organization or public employer which violates the National Labor Relations Act or any state act defining and outlawing unfair labor practices.
WILDCAT STRIKE	A work stoppage, usually spontaneous, by a group of organized employees without the authorization or approval of the employee organization.
YELLOW DOG CONTRACT	Where an individual is hired only if he is not a union member and he must remain a non-member as a condition of his employment.