An Elected Official’s Guide to Negotiating and Costing Labor Contracts

By Sam Ashbaugh

Government Finance Officers Association
CONTENTS

vii  Foreword
1  Introduction
5  Section 1  FUNDAMENTALS: KEY ACTORS AND BARGAINING STRATEGIES
    What is the objective of the labor relations function?
    What is the relationship between the budget process and labor negotiations?
    What is the relationship between financial planning and labor negotiations?
    What contextual factors impact labor negotiations?
    Which government staff should be included on the negotiation team?
    What are the roles of the various actors of the government’s bargaining team?
    Who are the key representatives of the union bargaining team and what do they do?
    How do other stakeholders influence the labor negotiation process?
    Should government rely on the same strategy for negotiating with different unions?
    What administrative costs are involved in the bargaining process?
    How long do negotiations usually last?
    What is the ideal length for a labor contract?
21  Section 2  THE LEGAL AND POLICY CONTEXT OF PUBLIC-SECTOR LABOR NEGOTIATIONS
    What differentiates public-sector contract negotiations from those in the private sector?
    Who regulates public-sector labor relations/collective bargaining?
What is arbitration?
What is the difference between conventional and final-offer arbitration?
What are the arguments against using arbitration in the public sector?
Does an arbitrator have to consider a jurisdiction's financial condition when rendering a decision?
Which side benefits from strike prohibitions?
What are the main phases of the contract negotiation process?
What transpires during preliminary negotiations?
How are specific contractual issues handled during negotiations?
What causes an impasse?
What methods are available to resolve an impasse?

39 Section 3
TRADITIONAL AND INNOVATIVE BARGAINING MODELS

What are the main models of bargaining with public employees?
What skills are beneficial for negotiating labor contracts?
What is the traditional model for negotiating labor contracts?
Why is there interest in new approaches to bargaining?
What is interest-based bargaining?
How does interest-based bargaining work?
What elements of interest-based bargaining differ from those of the traditional model?
What are the key steps to successful interest-based bargaining?
Why is the traditional model still predominantly used today?
Does the availability of interest arbitration impact the success of interest-based bargaining?
What challenges face continued labor/management cooperation?

53 Section 4
BENCHMARKING ANALYSIS TOOLS FOR NEGOTIATIONS

What is benchmarking?
What criteria/methodology should be used for benchmarking other jurisdictions?
How is benchmarking data utilized?
What types of services/functions are candidates for benchmarking during negotiations?
What are the benefits of benchmarking various types of wage, fringe benefit, jurisdiction, and operational data?
What are the potential disadvantages of benchmarking?

63 Section 5
DEVELOPING, COSTING, AND JUSTIFYING CONTRACT PROPOSALS

What process should management use to develop proposals?
What should management look for in specific contract proposals?
Why are management rights clauses an important part of the contract?
Should the government develop only one set of proposals?
What are the major considerations for presenting management’s proposals to the union?
Why is proposal costing a critical element of the negotiation process?
What data sources exist for calculating proposal costs?
How should compensation be analyzed when reviewing labor contract proposals?
What are some considerations for negotiating and costing compensation-related provisions?
What additional fringe benefits impact costs?
How should the finance staff use assumptions when estimating costs?
Which contract costs are often overlooked?
Why is the employer’s financial situation a factor in the negotiating process?
How is parity used as a compensation decision rule?
What are “me too” clauses?
Can governments benefit from front-loading or back-loading salary increases?
What are some guidelines for costing labor contract proposals?
How should the cost analysis data be presented?

87 Section 6
ADMINISTERING LABOR CONTRACTS

What is the relationship between contract administration and contract negotiations?
What are the main components of effective contract administration?
What is a grievance?
What are the components of a typical grievance procedure?
What is the role of grievance arbitration?
What are some management strategies for dealing with increased costs resulting from contract proposals?

95 Section 7
CONCLUSION: TIPS AND TRAPS FOR NEGOTIATING AND COSTING LABOR CONTRACTS

99 APPENDICES
Appendix A: Glossary
Appendix B: Contract Negotiation Preparation Steps
Labor costs are usually the single largest expenditure for state and local governments. For this reason, the stakes in labor negotiations are high for all parties involved. In the public sector, collective bargaining is often a highly visible process and extensively followed by citizens, unions, the media, and other stakeholders. The outcomes of the bargaining process impact a government’s ability to efficiently provide services, its overall financial condition, and its ability to retain, attract, and motivate public employees.

The labor negotiations process also defines the rights and responsibilities of workers, their representatives, and the employer (government). Significant changes to these rights and responsibilities can have a tremendous impact on the jurisdiction’s finances. Developing skills in labor relations and negotiation strategies can go a long way toward helping public finance professionals meet their government’s fiscal goals. This *Guide* presents the fundamentals of negotiating and costing public-sector labor contracts. It is intended to help elected officials and public managers to understand the process so that they can participate more effectively in it.

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Jeffrey L. Esser
Executive Director
Government Finance Officers Association
Bargaining and negotiation are critical to success in business and government. Regardless of a manager’s knowledge in his or her specific area of expertise, the ability to negotiate effectively is a skill set worth developing. This Guide provides basic information and practical techniques that government officials can use to improve their negotiating skills. It presents an introduction to bargaining models and describes the success these models have had in labor negotiations.

According to the U.S. Department of Labor’s Bureau of Labor Statistics, the percentage of the total wage and salary workers who were union members in 2001 was 13.5 percent, which represents a decrease from 20.1 percent in 1983, the first year for which such comparable data is available. As shown in Exhibit 1, the unionization rate for government employees in 2001 was 37.4 percent, compared to only 9.0 percent of the private sector. While overall union membership may be declining in other sectors, local government employees have a high unionization rate that appears to be remaining relatively stable.

This Guide is written primarily for elected officials and public managers. Although it is uncommon for elected officials to act as official members of the bargaining team, they certainly play a role in the process. Typically their main direct role is to ratify/adopt labor agreements. The jurisdiction’s negotiating strategy is heavily influenced by the values, beliefs, and philosophy of elected officials and citizens.

Some in the public-sector labor relations field suggest that neither the chief executive nor any other elected official should have a formal role at the bargaining table. Involve-
ment by elected officials provides unions with the temptation to end-run management and this can adversely impact the overall negotiating process. Involving elected officials in the minutiae of labor contracts can also hamper the ability of management to comprehensively approach the negotiation process and can confound the financial implications of the various choices facing the jurisdiction. It is for these reasons that this *Guide* takes the position that elected officials should set policy guidelines that administrators can use to negotiate, rather than actively participate in the day-to-day bargaining process.

If public managers stopped and thought about some of the issues that they confront daily, the list might include:

- Negotiating with multiple stakeholders (department heads, the legislative and executive branch, and others) over the budget;
- Serving on (and sometimes leading) management’s bargaining team for negotiating with employee groups/ unions;
- Debating the implications of new policies and management initiatives;
- Negotiating with vendors for the procurement of goods and services;

### Exhibit 1
*Changes in Union Membership, 1983–2001*

<table>
<thead>
<tr>
<th>Sector</th>
<th>1983</th>
<th>1994</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Total</td>
<td>20.1%</td>
<td>15.5%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>16.5%</td>
<td>10.8%</td>
<td>9.0%</td>
</tr>
<tr>
<td>Public Sector</td>
<td>36.7%</td>
<td>38.7%</td>
<td>37.4%</td>
</tr>
</tbody>
</table>
• Securing approval to fund new initiatives, fill vacant positions, or hire additional staff; and

• Administering personnel matters, such as performance reviews and requests for salary increases.

All of these tasks and many others involve elements of bargaining and negotiation. While many finance officers and public managers receive formal training in public administration, budgeting, and accounting, bargaining and negotiation training are not standard offerings in graduate curricula. It is for this reason that labor negotiation is a process that can be fascinating, challenging, and frustrating all at once.

Bargaining and negotiation have evolved from a multi-disciplinary perspective (e.g., economics, political science, and law). Collective bargaining has been defined as “bilateral negotiations between labor and management teams over wages, terms, and conditions of employment. It results in an agreement specifying each side’s respective rights and conditions.” ¹ Bargaining involves communication between parties who identify their terms and conditions for the continuance of the relationship, and negotiation refers to the array of tools and techniques utilized by each party to advance their cause.

Effective labor negotiations often depend on “people skills” and mastery of small group processes, not just financial analysis. There is a tremendous advantage to entering the negotiation process with a clear idea of what the jurisdiction wants to achieve (as well as a way to evaluate its success). While cost alone may not be the primary criterion for decision making, it does provide a common measure for assessing the impact of various issues. In addition, cost analysis helps to gauge the importance of other criteria (e.g., management rights) that can be used during the process. Labor contract negotiations inevitably take place in a context shaped by budgetary concerns and processes. While a definite rela-

A relationship exists between the contract negotiation and budgetary processes, timing presents one of the greatest challenges confronting elected officials and finance officers (i.e., contract negotiation and budget preparation do not occur concurrently). This means that government officials must often revise the budget and financial plans as a result of a new contract settlement.

The Guide is organized as follows: Section 1 outlines the fundamentals and basic issues. It describes the scope of the labor relations function, including the key actors involved in the process, and provides an introduction to bargaining models. Section 2 provides an overview of the legal and policy context of public-sector labor negotiations. Section 3 describes traditional and more innovative bargaining models. Section 4 presents benchmarking analysis tools for conducting contract negotiations. Section 5 describes the process for developing, costing, and justifying contract proposals. Section 6 discusses the importance of administering labor agreements, since the process does not typically end once a contract is finalized. A list of key points for negotiating and costing labor contracts appears in Section 7.

Appendix A contains a glossary of key terms. Appendix B provides a step-by-step approach for how governments can prepare for contract negotiations.
Section 1
FUNDAMENTALS: KEY ACTORS AND BARGAINING STRATEGIES

What is the objective of the labor relations function?

The primary objective of labor relations is to maintain a positive labor-management relationship and successfully negotiate labor agreements. To meet this objective, the individuals representing government must be seen as knowledgeable, fair, and credible to all parties involved. The labor relations function encompasses a broad range of activities of which negotiations is only one aspect. The labor relations function must cope with many issues in day-to-day government operations, including the following:

- Union recognition and rights;
- Management rights;
- Union security arrangements;
- Grievance procedures;
- Discharge and disciplinary procedures;
- Compensation rates;
- Hours of work and overtime;
- Benefits, such as vacations, holidays, leaves, and insurance;
- Health and safety provisions;
- Job security/seniority provisions;
- No-strike provisions; and
- Contract term and effective dates.
What is the relationship between the budget process and labor negotiations?

As defined by the National Advisory Council on State and Local Budgeting (NACSLB), the budget process consists of activities that encompass the development, implementation, and evaluation of a plan for the provision of services and capital assets. The NACSLB identifies several essential features that characterize a good budget process and each of these has implications for the labor negotiations, as described below.

**Exhibit 2**

**NACSLB Recommended Practices**

<table>
<thead>
<tr>
<th>NACSLB Feature</th>
<th>Implication for Labor Negotiations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporates a long-term perspective</td>
<td>Given that most labor agreements are in effect for two to three years, a government’s labor relations strategy must be aligned with its financial and strategic planning process.</td>
</tr>
<tr>
<td>Establishes linkages to broad organizational goals</td>
<td>The widespread impact of labor negotiations requires that bargaining be conducted within the context of an organization’s overall goals.</td>
</tr>
<tr>
<td>Focuses budget decisions on results and outcomes</td>
<td>Labor relations and negotiations impact the performance of many programs or services.</td>
</tr>
<tr>
<td>Involves and promotes effective communication with stakeholders</td>
<td>Due to the cyclical nature of the negotiation process, communication with and the involvement of stakeholders is an important ingredient of an effective labor-management process.</td>
</tr>
<tr>
<td>Provides incentives to government management and employees</td>
<td>While traditional budget processes and negotiation strategies are often adversarial in nature, budget and negotiation processes can also rely on a more collaborative approach.</td>
</tr>
</tbody>
</table>
What is the relationship between financial planning and labor negotiations?

In the simplest terms, financial planning is an activity that is meant to minimize surprises in the budgeting process. Financial planning is conducted within the context of a government’s priority setting and strategic planning process. A sound financial plan must identify future budgetary gaps and propose actions that address them. Since labor costs typically represent the largest expenditure in state and local government, it is difficult to plan over the long term without projections about the growth of labor costs. As part of the planning process, finance officers estimate the impacts of the current contract as well as proposals for the next contract in order to assess the jurisdiction’s future financial condition and evaluate its ability to maintain services and expand or initiate new programs. The greater the uncertainty in the labor climate, the lower the degree of confidence that public managers and elected officials will have in financial projections.
What contextual factors impact labor negotiations?

Like other areas of government, labor relations and negotiations are influenced by the administrative, political, economic, and policy context in which they are conducted.

**Administrative factors** influencing labor negotiations include the organization of the labor relations function itself and its interaction with the other key functions of government. The organization and design of the labor relations function can be centralized — one where most of the actors involved in negotiations are in a single government department — or decentralized — where the actors are dispersed throughout the organization. The greater the degree of centralization, the easier it is to coordinate and manage the process. The downside may be fewer opportunities for stakeholder input. Regardless of administrative structure, the complexity of the negotiation process necessitates that elected officials allow administrators charged with responsibility for negotiations to carry out their duties with minimal interference.

**Political factors** are an important element of bargaining and negotiations. Public-sector labor unions are understandably politically active in their efforts to represent their membership in the most complete manner possible. Activities such as organizing workers, lobbying elected officials, contributing money and other resources to political campaigns, and influencing public opinion through public relations strategies all have a large impact on public policy. An important distinction between unions in the private and public sectors is that public employees can influence the negotiation process in many more ways — as an employee of the government,
as a member of a union, and as a voter. Though the actual electoral strength of public-sector unions may vary by location, the mere fact that they might have the ability to influence elections is reason enough to consider unions a major political actor.

Several studies have concluded that groups such as state/local government employees and union members are more likely to register and vote in elections than nongovernmental employees/nonunion members. Some unions have been able to strategically position themselves to take advantage of the timing of the electoral cycle in state and local governments. The theory of the “electoral business cycle” posits that elected officials will use the timing of an election and contract negotiations to maximize votes. Unions therefore align their contract term with that of the key elected official(s).

**Economic factors** include activities such as tourism, home building, business expansion, and the overall state of the economy (nationally, regionally, and locally) that affect revenue collections and growth. Revenue impacts the ability of governments to pay employees, provide essential services, and balance the budget. In assessing the role of economics in bargaining and negotiation, there are multiple variables to consider. First, the field of labor economics is devoted to the study of issues such as the supply and demand of labor, the cost of living, and the composition of the actual labor force. In addition, the fiscal position of the jurisdiction must be analyzed. While a government may not have a *willingness to pay* for the demands of the union, the extent of its *ability to pay* is an important issue that will arise. For example, a growing economy may increase the government’s ability to pay workers, while also strengthening the union’s bargaining power, since governments often experience difficulty in attracting and retaining employees in certain occupations (e.g., information technology) when the economy is strong.

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Policy decisions also shape the negotiation process. For example, elected officials may decide that citizens would be better served if firefighters were cross-trained as emergency medical technicians. Or, perhaps the city manager wants private-sector firms to deliver refuse collection services. Since the performance of such services by unionized employees is likely to be within the scope of the existing labor agreement, a cutback management initiative to outsource work performed by existing employees may require collective bargaining.
Which government staff should be included on the negotiation team?

An organization’s objectives and the specific employee group (e.g., clerical workers, firefighters) that is the subject of the upcoming negotiations will generally determine the composition of the government’s bargaining team. The team members should represent a cross-section of the government—from top management to particular service areas (e.g., the fire chief or other designee) to staff with specific expertise (e.g., employee benefits specialist or financial analyst). A typical government’s bargaining team might include a representative from the executive branch, the budget/finance director, internal/external legal counsel, the human resources/personnel director, the department director(s) managing the employee groups, and select middle-management staff that can contribute to resolving issues.

It is important to focus on the team aspect of the negotiation group. To promote success, governments must realize that each actor brings a distinct experience base and expertise to the team, and that input is needed from all team members. It is also important to distinguish between those individuals who have a seat at the table and actually conduct negotiations (typically the labor attorneys) and the individuals behind the scenes who set bargaining objectives. Team members should generally have the following attributes:

- Listening and communications skills;
- Knowledge and institutional history of the bargaining relationship;
- Expertise in key subject areas; and
- Time and commitment to participate.
What are the roles of the various actors of the government’s bargaining team?

**Chief Negotiator:** The most important member of the government’s team is the chief negotiator. This individual serves as the primary spokesperson throughout the process. While the chief negotiator may be an employee of the government, especially in areas in which there is not a single individual responsible for labor relations, there are advantages to having an outside consultant/counsel occupy this role. Tapping outside expertise may also provide the team with a different perspective, since employees of the government will be participating on both sides.

**Executive Branch:** The role of the executive branch is to establish the policy guidelines for negotiations. While the elected official usually is not an official member of the bargaining team, in larger governments it is beneficial to have the policy positions of the executive branch be represented at the table by someone such as the city/county manager, finance director, or internal legal counsel.

**Budget/Finance Director:** Due to the complexity of labor relations issues and their potential fiscal impact, the level of involvement of the budget/finance director is important. Finance officers play a prominent role on the management team in formulating the government’s proposals, its response to the union’s proposals, and the final agreement. In addition, the budget/financial analysts should play an active role in the process by providing feedback to the management team regarding the likely fiscal impact of the various proposals.
Legal Counsel: Because a labor agreement is a legal document, the government’s internal legal staff is usually the lead agency for managing the labor relations process for management. The reliance on outside legal counsel depends on several variables, such as the size of the jurisdiction, the availability of in-house staff, the complexity of the issues to be discussed, and the number of labor contracts being negotiated at one time.

Human Resources/Personnel Director: Even if the labor relations function is housed outside of the human resources department, the HR department must play a role in negotiations, since it is usually required to administer the contracts through compensation and benefit plans. In addition, the HR department is likely to have a role in the disciplinary process through the jurisdiction’s civil service commission. In smaller jurisdictions, the finance officer or another official assumes this responsibility.

Department Directors: Whether negotiations involve police, fire, public works, or other public services, it is critical for department directors to be involved in formulating and responding to contract proposals that affect the work of their employees. For example, the police chief is often a member of the bargaining committee for the negotiations with the police union due to the impact the contract will have not only on the departmental budget, but also on employee morale and workforce operations in the delivery of public services.

Department Staff: The bargaining team may obtain input from the department middle management staff that is responsible for supervising the work of the members of the bargaining unit for which a contract is being negotiated. This is important in assessing both the operational and fiscal impact of all proposals.
Who are the key representatives of the union bargaining team and what do they do?

**Union Representatives:** The leading figure on the union team is usually the president of the local bargaining unit. This person plays a significant role, both substantively and symbolically. What the union leader “delivers” to the membership can affect his or her leadership tenure. Thus, at every stage of the process, management must be aware that the union representatives will feel the need to demonstrate their leadership capabilities to the rank and file.

**Union Negotiator:** Just as management will usually employ the services of an outside negotiator, the union may often have its own experts as well. This person manages the negotiation process from the union’s perspective, serves as the chief legal adviser, and provides other services as necessary.

**Rank and File Union Members:** This constituency has diverse demands and interests that must be considered by both the union leadership and the government negotiating team. While the union representatives need to be concerned about adequately representing the rank and file, the government negotiating team can use its understanding of the union’s interests and its leadership constraints when developing its bargaining strategy.
How do other stakeholders influence the labor negotiation process?

Elected Officials: Although it is uncommon for elected officials to have a formal role on the negotiating team, some jurisdictions have found it beneficial to have elected officials participate at some level (e.g., opining why taxes cannot be raised). Moreover, the level of support shown by elected officials for the government’s policies influences negotiations.

Independent Experts: Both labor and management commonly use independent experts—such as mediators, economists, or actuaries—to provide assistance in developing and responding to various proposals. In addition, an independent expert might be called to serve as an expert witness during an arbitration proceeding, if necessary. For example, an economist hired by the union might attempt to show that a jurisdiction is better off financially (and thus able to meet the union’s demands) than the finance staff has acknowledged.

Other Unions/Employee Groups: Other unions and employee groups can influence the contract negotiation process through their support of the union group that is currently negotiating with the government.

Media: The media can play a significant role in the bargaining process. Despite promises by both the employer and the union to refrain from “bargaining in the media,” the dynamics of the process tend to spill over into the public. Both management and labor usually attempt to advance their position by leaking selected information. For example, management may attempt to show that the union’s demands are excessive by pointing to the high costs of certain provisions. Likewise, the union might provide the media with data indicating that
government proposals would diminish the level or quality of public services (e.g., department heads receive 10 percent raises, we are asking for 5 percent).

**Community Groups:** Neighborhood or community groups can be important stakeholders in any bargaining/negotiation process. This is especially true for high-profile public services, such as public safety. Unions and employee groups are quite skilled at community organizing, and are often able to obtain community support for their cause.
Should government rely on the same strategy for negotiating with different unions?

While the fundamental objective of the labor relations function is the same regardless of the union/employee group involved, contract negotiation is a dynamic process influenced by many factors. A “one size fits all” approach to negotiations is unlikely to be successful. Public managers will be more successful in the negotiating process if they are aware of each employee group’s unique issues. Firefighters, for example, will care about different issues than office workers.
What administrative costs are involved in the bargaining process?

Bargaining and negotiating involve both internal and external costs. The government will incur internal costs for activities such as staff time for conducting research and attending strategy/negotiation sessions, as well as for contract administration costs (e.g., staff time for attending meetings and arbitrator fees related to disputes over the interpretation of contract language). The government will also face external costs such as fees for the retention of expert witnesses, consultants, and outside legal counsel fees.
How long do negotiations usually last?

The time frame for contract negotiations depends on a variety of factors, such as state/local statutes, past history, the size of the union, personalities, the complexity of the issues under discussion, and political considerations (especially an upcoming election).
What is the ideal length for a labor contract?

While contract length varies, the current trend in the public sector favors two- to three-year contracts. This time frame provides both labor and management with some relief from continuous negotiations. The downside of a longer contract, say one in excess of four years, is that both parties would have to work within the provisions of the agreement for an extended time when the future is always uncertain.
Section 2
THE LEGAL AND POLICY CONTEXT OF PUBLIC-SECTOR LABOR NEGOTIATIONS

What differentiates public-sector labor negotiations from those in the private sector?

Contract negotiations in the public sector occur within a legal framework that dictates which employee groups may participate in bargaining, the scope of bargaining itself, and the means by which disputes are settled. Thus, public policy impacts the process by defining how the parties are to behave and what issues they can negotiate over. Unlike the private and nonprofit sectors, which have the National Labor Relations Act as their source for uniformly shaping labor relations, public-sector labor relations policies and practices vary from state to state.

Public-sector labor relations are different from those in the private sector in several ways. First, the scope of bargaining is much broader in the private sector, primarily due to National Labor Relations Act provisions that establish the rules for most private-sector employees. In the public sector, fifty separate state laws govern the scope of bargaining for public employees, and significant variations exist among them. In the public sector, the bargaining process between labor and management occurs within a distinctly political environment; unions may attempt to pressure elected officials who need their votes and campaign support. Also, bargaining in the public sector is best viewed as a multilateral process, one that involves participants in addition to management and the union. Parties who may never appear at the bargaining table—such as taxpayers, community groups, and the media—may have a significant impact during the bargaining process, and ultimately on the final contract.
Public-sector employees face significantly more restrictions on their right to strike than do private-sector employees. While some states have granted the right to strike to certain employee groups, a number of states have enacted no-strike laws. Typically, the right to strike is not granted to emergency-response employees, such as police officers and firefighters, when work stoppage would pose a threat to public safety, health, or welfare.

Another unique challenge for the public sector is the fact that in some jurisdictions, managers and supervisors may be members of the same bargaining unit as rank and file employees. For example, the Fraternal Order of Police may include members with the rank of police officer as well as sergeants and lieutenants. A final (and significant) difference involving grievances is the likely role in the public sector of a civil service commission or similar authority with jurisdiction over policies such as hiring, promotions, transfers, and layoffs.
Who regulates public-sector labor relations/collective bargaining?

In the absence of a uniform law like the National Labor Relations Act to establish policy for public-sector labor relations, governments rely on a wide variety of labor relations policies and practices established through state legislation. Some states, such as the State of Illinois, have enacted comprehensive legislation covering all major groups of employees; several states have no collective bargaining laws; and a few states prohibit at least some occupations from bargaining. Most states prohibit strikes by public safety personnel.³

Even for those states that provide comprehensive statutes, there exists variation as to the format of the statutes and the level of detail enunciated for key areas. In the absence of a uniform oversight mechanism for state labor relations issues, the various state statutes have been referred to as "public employee relations acts," or PERAs.⁴ For example, a state statute may provide for employees to be represented for collective bargaining purposes, yet the statute may remain silent on the issue of how such representation is determined. This can lead to greater authority for administrative agencies in each state, which is the case in the State of Missouri, which must interpret the provisions of the statutes.

⁴ Ibid.
What is arbitration?

Arbitration refers to a method of resolving labor disputes by employing a neutral third party, an arbitrator, to review the facts and make a decision that is binding on both parties. In a typical arbitration proceeding, an arbitrator will hold a hearing(s) and, based on the evidence presented by both sides, decide the terms of the final agreement. While more than half of all states authorize some form of arbitration for state and local employees, the specific type usually varies by state and/or type of employee. While the provisions governing arbitration vary by state, arbitration is usually seen as a method to resolve an impasse without a strike. There are two types of arbitration. In interest arbitration, the arbitrator intervenes in the process to resolve an impasse in negotiations; grievance arbitration occurs during the life of the contract and results from an employee filing a grievance alleging that his or her rights, as specified in the contract, have been violated. As an example, the following exhibit contains an excerpt from the Illinois Public Labor Relations Act.

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Exhibit 3
Excerpt From the Illinois Public Labor Relations Act

It is the purpose of this Act to prescribe the legitimate rights of both public employees and public employers, to protect the public health and safety of the citizens of Illinois, and to provide peaceful and orderly procedures for protection of the rights of all. To prevent labor strife and to protect the public health and safety of the citizens of Illinois, all collective bargaining disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees shall be submitted to impartial arbitrators, who shall be authorized to issue awards in order to resolve such disputes. It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.

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24 AN ELECTED OFFICIAL’S GUIDE
What is the difference between conventional and final-offer arbitration?

Conventional arbitration is a type of interest-based arbitration in which the arbitrator may (a) select the position taken by either labor or management or (b) develop a compromise agreement. Under final-offer arbitration, there are two approaches: final offer by package, or final offer by issue. While final offer by issue arbitration provides the arbitrator with the ability to seek out the more reasonable positions of the parties on each issue, they are more constrained under the final offer by package approach, in which they must choose either the government’s or union’s final offer on the issues that remain in dispute.
What are the arguments against using arbitration in the public sector?

The use of arbitration to resolve a labor dispute in the public sector is controversial. Some may argue that arbitration is a positive presence in the negotiation arena since both parties will understand that an outside party will establish the terms and conditions of the agreement if management and labor cannot reach an agreement. However, critics fault the arbitration concept for a variety of reasons. First and foremost, arbitration is seen as intruding upon the sovereignty of local governments because a third party, which has not been elected by the voters, has the power to determine the provisions of the relationship between the government and its employees. Second, they argue that the process of having contract provisions imposed upon parties by an outsider runs contrary to the goals of interest-based bargaining. In addition, critics feel that the arbitration process delegates important policymaking power to individuals who may not have to consider the financial and public policy implications of their decisions.

Regardless of one’s opinion on the use of arbitration to resolve disputes, the possibility of final offer binding arbitration forces both sides to conduct extensive planning and preparation during the process, since each side is essentially “putting all of its eggs in one basket,” and therefore must be prepared to accept the outcome. One tool that bargaining expert Richard Shell recommends is to “develop a specific alternative as a fallback if the negotiation fails.”

Does an arbitrator have to consider a jurisdiction's financial condition when rendering a decision?

Due to the complexity of interest arbitration laws (both conventional and final-offer), an arbitrator’s decision can have an enormous financial and operational impact on a jurisdiction. As a means of diluting the arbitrator’s power and injecting fairness into the process, some states have placed restrictions on the arbitrator by specifying factors—such as the jurisdiction’s ability to pay and the effect of the ruling on the public welfare—that must be considered before a final award is made. For example, during the 1990s, the City of Philadelphia was subject to control of the Commonwealth of Pennsylvania as a result of the Pennsylvania Intergovernmental Cooperation Act (PICA), which was enacted by the legislature as a result of the city’s fiscal crisis. As a result of this special legislation, which only pertained to Philadelphia, arbitrators were required to consider the fiscal condition of the jurisdiction, which subsequently provided municipal leaders with the flexibility they were seeking to improve the city’s finances.

Exhibit 4 provides an excerpt from the Illinois Public Labor Relations Act describing how one state has addressed this issue.
Exhibit 4
Excerpt from the Illinois Public Labor Relations Act

When there is no agreement between the parties, or when there is an agreement but
the parties have begun negotiations or discussions looking to a new agreement or
amendment of the existing agreement, and wage rates or other conditions of employ-
ment under the proposed new or amended agreement are in dispute, the arbitration
panel shall base its findings, opinions and order upon the following factors, as applica-
able:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of govern-
ment to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of other employees
performing similar services and with other employees generally:

(a) In public employment in comparable communities.

(b) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost
of living.

(6) The overall compensation presently received by the employees, including direct
wage compensation, vacations, holidays and other excused time, insurance and
pensions, medical and hospitalization benefits, the continuity and stability of em-
ployment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitra-
tion proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally
taken into consideration in the determination of wages, hours and conditions of em-
ployment through voluntary collective bargaining, mediation, fact-finding, arbitration
or otherwise between the parties, in the public service or in private employment.
Which side benefits from strike prohibitions?

Just as there does not exist a uniform law for public-sector labor relations, there is no standard policy concerning which groups of public employees have the right to strike. Although policies vary from jurisdiction to jurisdiction, certain groups of workers are prohibited from striking for public safety, health, or welfare reasons. It is difficult to determine whether management or labor benefits from strike prohibitions. Much depends on whether public employees without the right to strike have alternatives for addressing their grievances, such as binding arbitration. While the duration of a strike will impact both labor and management, the degree of impact that a strike will have on the government will depend on a number of factors, including the nature of the service, its impact on service delivery and finances, and the availability of replacement personnel. Assessing the impact of a strike on the union must take into consideration issues such as the length of time that membership must forego wages (even if the union has established a strike fund) and/or wage increases (which will be deferred until the contract is resolved) and the degree to which the overall membership supports the strike.
What are the main phases of the contract negotiation process?

There are four main phases in the negotiation process: preparation, negotiation, resolution (or impasse), and contract administration. Each is discussed below.

**Preparation:** Preparation is the most critical aspect of any contract negotiation process. It must occur throughout the life of the contract, and not be viewed as a step taken just before the existing contract expires. This is especially important because most major public-sector unions have become quite sophisticated players in the bargaining process, and are often able to devote full-time resources to serving their employees’ interests. Proper preparation can increase a bargaining team’s ability to resolve important issues in a positive manner. Appendix B provides a comprehensive list of key tasks for effectively preparing for contract negotiations.

**Negotiation:** The negotiation phase receives the most attention, even though a significant amount of work should be put into the preparation phase. The actual negotiating phase can be further divided into preliminary, or introductory, negotiations, and the later, more detailed and substantive negotiations. Each sub-phase has various participants, issues, and dynamics of its own.

**Resolution or Impasse:** At the end of negotiations, the parties will either reach a resolution to their differences and agree on all contract terms or they will have arrived at an impasse. Since a significant number of public-sector employees are prohibited from striking, an impasse may result in the following outcomes:
The work continues under the terms and conditions of the current contract;

The parties submit to mediation or fact-finding;

Employees engage in legal or illegal strike practices, such as “sick outs;” or

The two sides engage in interest arbitration, if this tool is available.

**Contract Administration:** The labor-management relationship is best viewed as an on-going activity. Although bargaining and negotiating are critical aspects of the process, they represent only part of the whole. Implementing and adminis-
tering the contract terms are also essential components of the labor-management relations continuum. The provisions of the contract—especially new provisions—must be thoroughly explained, both to those employees affected by the provisions and also to the parties responsible for implementing them (e.g., payroll clerks, public works department foremen, administrative staff involved in handling grievances).
What transpires during preliminary negotiations?

While the exact process depends on local tradition and history, the union generally notifies management that it wants to begin the negotiation process. During the early stages, little of substance is usually accomplished. Each side attempts to establish legitimacy and credibility with the other. Given the multilateral nature of public-sector bargaining, the support of other stakeholders—such as the taxpayers and the media—might also be courted. During this time, both parties attempt to communicate their issues and priorities, while also attempting to understand those of the other side. Typically, the union presents management with its original set of proposals at the first or second meeting. The list, usually long and often containing extravagant or unrealistic demands, serves to demonstrate to union membership that its leadership is in touch with rank and file concerns. It also makes a statement underscoring the magnitude of the issues to be addressed.

Unless management is required by law to respond to the union’s demands before a certain date, it should take its time to carefully review the union’s proposals. Particular care should be given to determining the financial and operational impact of each proposal. Depending on the negotiating team’s strategy, management may:

- Respond to all the union’s proposals;
- Respond only to the economic or non-economic proposals;
- or
• Present its own proposal if it views the union’s as unacceptable.

Serious negotiations over the substantive issues will begin only after the initial meetings conclude and there have been several exchanges of proposals.
How are specific contractual issues handled during negotiations?

At some point after the resolution of procedural issues and the initial exchange of proposals, the parties will typically begin serious discussions that form the substance of negotiations. The most critical issues are discussed, and sometimes resolved, during this time and each party plays a significant role. Both sides will usually attempt to identify any areas of agreement first, such as non-wage issues. If this is accomplished, the parties can focus on the remaining areas of disagreement. Not surprisingly, these usually revolve around issues such as salaries, pensions, and health care. In order to facilitate the process, the two sides often divide their negotiating teams into smaller working groups that can concentrate on reaching agreement on a sub-set of issues, which are then referred to the entire team for consideration. Depending on the amount of disagreement between the parties, sometimes they must revisit the unresolved issues more than once. If the parties cannot reach agreement, they should reassess their original positions to determine if there is room for flexibility.
What causes an impasse?

Despite the best efforts of each side, bargaining and negotiation do not always produce an agreement in a direct and expeditious manner. On occasion, both sides realize that they simply cannot resolve some of their key differences, and such a stalemate is referred to as an impasse. An impasse occurs when one party demands more than the other side is willing to give, thereby making an agreement impossible.

While many factors can lead to an impasse, some of the most common include the:

- Bargaining history between labor and management;
- Characteristics and general attitude of each side’s negotiators (are they adversarial or cooperative?);
- Political context (are elections coming up?); and
- Economic context (does the jurisdiction have a structural budget defect?).
What methods are available to resolve an impasse?

Once an impasse has been reached, several scenarios may be pursued. Though employee strikes are generally not as prevalent in the public sector as in the private sector, strikes are one mechanism labor may use for dealing with an impasse. Aside from the right to strike, binding arbitration is another method for resolving impasses, though some sort of third-party intervention strategy—such as mediation or fact-finding—typically is selected. The main tools/procedures available for resolving an impasse follow.

**Mediation:** In this method of resolving disputes in labor negotiations, a neutral third party—the mediator—is employed to help the parties reach an agreement by keeping talks alive and encouraging progress toward common ground.

**Fact-Finding:** Another method of resolving an impasse in labor negotiations involves employing a neutral third party—in this case a fact-finder—to help both parties reach an agreement. The fact-finder holds a hearing, investigates the disputed issues, and submits a set of non-binding recommendations for settlement.

**Conventional Arbitration:** This is a type of interest arbitration in which the arbitrator may select the position taken by either labor or management or develop some sort of compromise agreement.

**Final Offer Arbitration:** Also a type of interest arbitration, in final offer arbitration the arbitrator must choose one party’s offer. Variations of final offer arbitration may require
an arbitrator to select the entire package or to select one or the other party’s offers on each specific issue.

If the two parties can reach agreement on all contract provisions, the next task is to conclude the agreement and prepare for the contract administration phase. Some states, however, provide certain groups of employees with the right to binding arbitration to resolve an impasse in negotiations. Such cases require extensive preparation and research by both management and the union.
Section 3
TRADITIONAL AND INNOVATIVE BARGAINING MODELS

What are the main models of bargaining with public employees?

Collective bargaining in the public sector transpires in a complex and politically volatile environment. This is not an easy situation in which to bargain, nor are there quick fixes to complex problems. Given that the process includes formal and informal procedures, a variety of stakeholders (with both formal and informal participants), and politics, it is important to recognize that there are multiple models/strategies for engaging in the process. Academics such as Howard Raiffa have referred to the “art and science” of negotiation. Referring to bargaining and negotiating as a science implies the use of a systematic process to resolve a problem, whereas describing the terms from the perspective of an art implies that these activities are rooted in certain interpersonal skills, such as style and persuasion. The following paragraphs provide an overview of the general bargaining models—including different approaches to each model—and their relevance for the public sector.

Traditional Approaches to Bargaining: Traditional collective bargaining is based on the assumption that labor and management have fundamentally different, and conflicting, interests, which leads to a largely adversarial process. This approach is often focused on winning all you can and seeking to lose as little as possible. Such an approach typically leads

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to a compromise between the extreme positions of both parties, and the solutions may not be the best possible.

Collaborative Approaches to Bargaining: Based on the notion that labor and management have complementary, rather than just competing, interests, several of the collaborative approaches to bargaining seek to make the bargaining process more effective while also establishing a more positive environment for labor-management relations. Two examples of collaborative approaches are “win/win” and “interest-based bargaining.” While each of these models is grounded in the collaborative spirit, the win/win approach emphasizes the anticipated results of collective bargaining, whereas the interest-based approach places greater emphasis on the method rather than the results.
What skills are beneficial for negotiating labor contracts?

Collective bargaining is often an adversarial process. Unions and management represent and are accountable to different constituencies. Both sides may agree on some issues, while on other issues their interests may be the same, yet their proposed solution to the problem may be in conflict. At its simplest, bargaining is the process of attempting to influence the perceptions of individuals who sit across the table. In other words, each party tries to convince the other to accept something that once was, or still is, seen as undesirable. The successful negotiator, therefore, must be able to change the opposition’s perception/understanding of the issues, or at least get them to understand his or her own position. Some of the characteristics of a successful negotiator include the following: a familiarity with the topic of negotiations; an ability to listen, think clearly, and respond on demand; an ability to express thoughts and positions verbally and with persuasion; general problem solving and analysis skills; and an ability to earn the respect and confidence of other participants.

Various bargaining models require different skill sets in order to be effective. For example, the traditional distributive model of collective bargaining requires a strong orientation towards content, a generally aggressive and hard-lined negotiating posture, and a political focus. The more recently developed integrative or interest-based model of collective bargaining is characterized by a process orientation that relies on problem-solving skills to defuse confrontation, and only when necessary utilizes the traditional model’s more aggressive methods. Successful negotiators must be able to employ the skills required by both models, and know the appropriate time and circumstances in which to do so.
What is the traditional model for negotiating labor contracts?

The traditional model of collective bargaining is rooted in conflict, and is based on the assumption that negotiations result in winners and losers (i.e., a zero-sum game where my gain is your loss and vice versa). Under this model, each side must position itself to ensure victory over the opposition. Threats, bluffs, and other coercive tactics are considered a normal part of the process. In its most basic form, the premise of the traditional method of bargaining holds that opposing sides of a labor dispute sit down together at the bargaining table, address the issues under contention, and end the process by distributing resources. This is also known as the distributive method of bargaining.

The process begins with each side determining its positions on the issues and then developing arguments and/or evidence in their support. Typically, a significant amount of time is spent developing strategies to exert power and influence over the other side. For example, the union might try to pit the city council against the mayor over a particular issue. Or, the mayor might attempt to sway public opinion against the union. After a lengthy and sometimes acrimonious bargaining process, a contract settlement results. The perception that there are “winners” and “losers” is almost guaranteed.
Why is there interest in new approaches to bargaining?

Throughout the public sector, there are opportunities for a change in the way that labor and management interact. While the legal and policy framework of public-sector labor relations is partly responsible for the adversarial nature of negotiations, improvements in wages and working conditions—in addition to advances in employee rights over the years—have led many observers to believe that both labor and management can achieve their desired outcomes through increased cooperation and collaboration. Some of the specific reasons for the widespread appeal of new bargaining models include:

- Increasing challenges posed by the way that technology changes the way people live, work, and communicate;
- A growing awareness of and demand for quality services;
- Financial pressures requiring more cost effective and efficient methods of delivering services;
- A highly educated public workforce with a stronger interest in participating in workplace decisions; and
- Political pressures to improve performance, driven in part by the fiscal challenges facing the public sector, are causing labor and management to reexamine relationships that have traditionally been rooted in conflict.
What is interest-based bargaining?

The preeminent advocates of interest-based or mutual gains bargaining are Roger Fisher and William Ury, authors of the best-selling book *Getting to Yes: Negotiating Agreements Without Giving In.* This philosophy represents a fundamental shift from the traditional model. It comes in many forms with different names, such as win-win bargaining, mutual gains, principles, and interest-based negotiation. While each of these methods varies slightly, the basic goal is to reach an agreement that recognizes and satisfies the needs of both labor and management. Interest-based bargaining is characterized by a process that:

**Separates the people from the problem.** The people with whom you are negotiating should not be the opposition. The problems you are seeking to resolve should be the focus of attention. People are dealt with as human beings and the problems addressed on their merits.

**Focuses on interests, not positions.** Shift focus to the underlying concerns, needs, fears, worries, and interests, not the stated positions of each party. A position is one party’s chosen solution to a particular problem or goal; an interest, on the other hand, is a basic need or concern that is addressed by the proposal. Once these are identified, the parties should focus on mutual interests.

**Creates options for mutual gain.** Options are solutions that can satisfy an interest. Both sides should generate a variety of solutions/possibilities before deciding what to do. The

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selected options should satisfy the needs of both parties. Each side must be willing to consider options rather than arguments. By openly discussing the options, both bargaining teams will have the opportunity to see the other’s interests.

**Insists on using objective criteria.** Insist that the result (final agreement) be based on objective standards or fair procedures, and gain consensus and commitment to such criteria from both parties. Each side must agree to a set of objective standards to be used to evaluate the options.
How does interest-based bargaining work?

Under this model, both sides begin the process by identifying interests, rather than positions. This distinction in focus is a crucial one, and is intended to lead to the development of joint proposals. After the parties develop alternative proposals, they can use the previously established objective criteria to select the appropriate method of resolution. The basic assumptions under the “win-win” model are as follows:

- Bargaining enhances the relationship between the parties;
- Both parties can win; that is, they can both advance their interests;
- Both parties should help each other win; and
- Open discussion leads to the discovery of mutual interests and options.

Some interest-based bargaining techniques are familiar to experienced negotiators. Traditionally, after proposals are presented, union and management negotiators request the other party to justify its position. Good negotiators who carefully listen to this justification can respond to the stated interest of the other party in a manner that also achieves his/her own interest. Often, this is the method by which most issues are resolved.
What elements of interest-based bargaining differ from those of the traditional model?

Traditional and interest-based bargaining can be contrasted based on the goals and tactics of each model, as illustrated in Exhibit 6.

Traditional bargaining usually results in a compromise between the two parties, which often does not represent the best solution or an optimal outcome for both sides. The adversarial nature can also lead to lower levels of trust between the parties, result in each side becoming entrenched in extreme positions, and entail excessive costs in terms of time and other resources.

Usually, parties undertaking interest-based bargaining use a facilitator to assist them throughout the process, and bargaining is often preceded by substantial joint training in areas such as group problem-solving, consensus decision making, and communication skills. In addition to the joint training, another way in which interest-based bargaining differs from the traditional approach lies in the structure of the process. Under an interest-based approach, the parties routinely exchange information and maintain frequent communications, and joint labor-management committees are often established to gather data and develop tentative agreements. Internal differences are not concealed because the process requires a consensus decision to which all parties can agree.
Exhibit 6
Comparison of Traditional and Interest-Based Bargaining

<table>
<thead>
<tr>
<th></th>
<th>Traditional/Distributive Bargaining Strategy</th>
<th>Interest-Based Bargaining Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal</strong></td>
<td>• To achieve the best outcome for your party.</td>
<td>• To find a solution that meets the goals and objectives of both parties.</td>
</tr>
<tr>
<td><strong>Approach and Common Tactics</strong></td>
<td>• Establish initial positions to ascertain the settlement range or common ground.</td>
<td>• Define the problem to be solved in a manner that is acceptable to both parties.</td>
</tr>
<tr>
<td></td>
<td>• Provide the other side with the least amount of information possible.</td>
<td>• Attempt to work through a series of questions rather than moving from position to position.</td>
</tr>
<tr>
<td></td>
<td>• Develop arguments to support your position.</td>
<td>• Identify available options.</td>
</tr>
<tr>
<td></td>
<td>• Make extreme offers and small concessions after initial proposals.</td>
<td>• Establish open and honest communication as the norm.</td>
</tr>
<tr>
<td></td>
<td>• Develop strategies to exert power and influence over the other side (e.g., playing games of chicken in an attempt to get the other side to blink).</td>
<td>• The parties jointly establish criteria for evaluating successful outcomes.</td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
<td>• Settlement</td>
<td>• Agreement</td>
</tr>
</tbody>
</table>
What are the key steps to successful interest-based bargaining?

A few basic guidelines must be followed for interest-based bargaining to be effective:\footnote{Interview with Michael Herman, Former Executive Director of the Three Rivers Area Labor Management Committee (Pennsylvania).}

- Relevant information must be shared;
- Focus on issues, not personalities;
- Focus on the present and future, not the past;
- Focus on the interests underlying the issues, not only on positions;
- Focus on mutual interests, and help satisfy the other party’s interests as well as your own;
- Brainstorming can generate options to satisfy mutual and separate interests; and
- Evaluate options based on objective and agreed-upon criteria, rather than on power or leverage.

In order to be successful, each side must understand that interest-based bargaining is not merely a process, but rather a fundamental change in philosophy that cannot occur without careful preparation and total commitment.
Why is the traditional model still predominantly used today?

Traditional bargaining is what most seasoned negotiators are experienced in and is the method they are most comfortable with. Experienced negotiators realize that there are some issues on which they can cooperate, while there are other issues on which they will have to fight. While the theory of interest-based bargaining offers a lot of promise for the future of public-sector labor relations, not surprisingly, both labor and management have found it difficult to embrace some of the changes associated with this model. This is especially true in jurisdictions that are also struggling with fiscal stress. Both management and labor realize that they cannot return from the bargaining table with a perfect deal each time. One problem with the win/win strategy is the likelihood that neither side is in a position to “give” anything, especially in jurisdictions with severe fiscal problems. In such an environment, the opportunities for interest-based bargaining simply may not be available.
Does the availability of interest arbitration impact the success of interest-based bargaining?

There has been significant debate on the merits of using interest arbitration as a means of settling contract disputes. One view holds that both sides can become dependent on the availability of arbitration: it can be used as an excuse to withdraw from serious negotiations, transfer responsibility for the ultimate decision to a third party, and deflect blame for the final outcome. Further, both sides may be unwilling to compromise if conventional arbitration is to be used, since the arbitrator is not bound to accept either party's final offer.
What challenges face continued labor/management cooperation?

While transforming the workplace is difficult in any setting, it is especially challenging in the public sector due to the unique nature of the bargaining relationship. Since public-sector collective bargaining is the result of a patchwork of state laws and local ordinances, there is little institutional support for fundamental change. Thus, each jurisdiction is left to adopt its own approach, and a shift to interest-based bargaining is more likely to occur incrementally, and perhaps during times of fiscal stress. In addition, the transition from an adversarial to a cooperative approach requires a change in entrenched ways of thinking on the part of elected officials, managers, and union officials.
Section 4
BENCHMARKING ANALYSIS
TOOLS FOR NEGOTIATIONS

What is benchmarking?

Benchmarking refers to the process of critically evaluating a program’s or service’s activities, functions, operations, and processes to achieve a desired level of performance. A benchmark “sets the bar” and is forward-looking rather than backward-looking with respect to performance. Benchmarks are established in one of four ways:

- Comparisons to past performance;
- Comparisons to similar organizations;
- Comparisons to accepted industry standards; and/or
- Setting a performance target to be achieved.

Benchmarking is also an integral element of the negotiating process since performance benchmarks aid in assessing how well a particular function, program, and/or activity is provided, and how well it meets the needs of the jurisdiction and relevant stakeholders.
What criteria/methodology should be used for benchmarking other jurisdictions?

Whether a benchmarking exercise is undertaken as part of a comprehensive effort or for a narrower purpose such as to support labor negotiations, there are several key steps to an effective benchmarking process:

- Define the scope—the services/functions/programs that are to be included;
- Select the key performance measurements;
- Collect internal data;
- Identify and select benchmarking partners;
- Gather data from the selected partners;
- Measure internal data, compare to partner data, and perform a gap analysis;
- Chart a course of action for closing the gap(s); and
- Implement and continuously monitor/update the findings so the data can be used on an on-going basis.

A government should select comparable jurisdictions for benchmarking based on factors such as population, general fund revenues/expenditures, and geographic region. Once the peer group is determined, consensus should be reached on defining the measures to be used (e.g., definition of response time or Part I crimes). In addition, rather than accepting the data outright, the information should be cleansed for any in-
consistencies. Caution should always be used in interpreting the results: performance/outcomes can be influenced by factors both internal and external to an organization, and cost comparisons are often complicated by fluctuations/differences in revenues and expenditures.
How is benchmarking data utilized?

Benchmarking provides the option to measure performance internally, externally, or based on “best practices” established by professional organizations and other entities. The three main types of benchmarks that can be used to support contract negotiations follow.

**Strategic benchmarks:** These benchmarks are predefined performance levels showing where a government and its departments intend to be in the future. The purpose of strategic benchmarks is to motivate a government to improve its program and service delivery by establishing measurable goals.

**Performance benchmarks:** Governments use performance benchmarks as a way of setting achievable goals and providing a standard against which their own performance will be compared. Program and service delivery is compared against the benchmarks in terms of outcomes, effectiveness, efficiency, and quality.

**Process benchmarks:** These benchmarks are measures that assess how well a program’s core business functions or work processes contribute to program effectiveness, efficiency, and quality. They are designed to provide a basis for improving or reengineering a program or service to enhance performance.
What types of services/functions are candidates for benchmarking during negotiations?

Depending on the nature of the program/service that is the subject of negotiations, if there is sufficient time and other resources available, it is in the government’s interest to benchmark factors such as general demographic information (e.g., population); wages and benefits; and operations-specific information (e.g., police officers per capita). The following four exhibits represent examples of actual benchmarking analysis conducted by governments.
### Exhibit 7
**Fire Engine/Truck Company Ratios for Cities of 750,000 or More Population**

<table>
<thead>
<tr>
<th>City</th>
<th>Engines</th>
<th>Trucks</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>209</td>
<td>142</td>
<td>1.5 to 1</td>
</tr>
<tr>
<td>Chicago</td>
<td>98</td>
<td>58</td>
<td>1.7 to 1</td>
</tr>
<tr>
<td>Detroit</td>
<td>41</td>
<td>24</td>
<td>1.7 to 1</td>
</tr>
<tr>
<td>Baltimore</td>
<td>40</td>
<td>22</td>
<td>1.8 to 1</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>98</td>
<td>48</td>
<td>2.0 to 1</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>59</td>
<td>30</td>
<td>2.0 to 1</td>
</tr>
<tr>
<td>Houston</td>
<td>81</td>
<td>34</td>
<td>2.4 to 1</td>
</tr>
<tr>
<td>Dallas</td>
<td>54</td>
<td>21</td>
<td>2.6 to 1</td>
</tr>
<tr>
<td>San Antonio</td>
<td>44</td>
<td>16</td>
<td>2.8 to 1</td>
</tr>
<tr>
<td>San Francisco</td>
<td>41</td>
<td>18</td>
<td>2.8 to 1</td>
</tr>
<tr>
<td>San Jose</td>
<td>30</td>
<td>8</td>
<td>3.8 to 1</td>
</tr>
<tr>
<td>Phoenix</td>
<td>50</td>
<td>12</td>
<td>4.2 to 1</td>
</tr>
</tbody>
</table>


### Exhibit 8
**Recreation Program Costs per Capita**

<table>
<thead>
<tr>
<th>Township A</th>
<th>Township B</th>
<th>Township C</th>
<th>Township D</th>
<th>Township E</th>
<th>Township F</th>
</tr>
</thead>
<tbody>
<tr>
<td>$43.32</td>
<td>$30.11</td>
<td>$18.99</td>
<td>$18.79</td>
<td>$38.27</td>
<td>$34.25</td>
</tr>
</tbody>
</table>

58 AN ELECTED OFFICIAL’S GUIDE
### Exhibit 9
**Sworn and Non-Sworn Police Department Employees per 1,000 Capita**

<table>
<thead>
<tr>
<th></th>
<th>City A</th>
<th>City B</th>
<th>City C</th>
<th>City D</th>
<th>City E</th>
<th>City F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sworn</td>
<td>1.70</td>
<td>1.49</td>
<td>1.32</td>
<td>1.67</td>
<td>1.45</td>
<td>1.87</td>
</tr>
<tr>
<td>Non-Sworn</td>
<td>0.85</td>
<td>0.68</td>
<td>0.51</td>
<td>1.12</td>
<td>0.85</td>
<td>0.93</td>
</tr>
</tbody>
</table>

### Exhibit 10
**Maximum Number of Vacation Days—Clerical Employee with 20 Years of Continuous Service**

<table>
<thead>
<tr>
<th>County</th>
<th>Number of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>County A</td>
<td>25</td>
</tr>
<tr>
<td>County B</td>
<td>20</td>
</tr>
<tr>
<td>County C</td>
<td>20</td>
</tr>
<tr>
<td>County D</td>
<td>25</td>
</tr>
<tr>
<td>County E</td>
<td>20 (plus 1 day for each year after 20, with 25 max)</td>
</tr>
<tr>
<td>County F</td>
<td>15</td>
</tr>
<tr>
<td>County G</td>
<td>15</td>
</tr>
<tr>
<td>County H</td>
<td>25</td>
</tr>
<tr>
<td>County I</td>
<td>20</td>
</tr>
</tbody>
</table>
What are the benefits of benchmarking various types of wage, fringe benefit, jurisdiction, and operational data?

Just as management routinely uses benchmarking to improve government services, it is also a useful tool during negotiations for determining the jurisdiction's competitiveness in providing certain services. By comparing information from other governments about labor contract provisions, for example, management might be better positioned to determine whether a particular demand is fair and reasonable, or completely inconsistent with the findings of the peer group. Such comparative data can provide a useful starting point for discussions. Both sides will collect information and seek to utilize “expert” witness to support their position, but the data and findings from the benchmarking exercise is an important element of the government’s business case or justification for its response to the union’s proposals, as well as its own counteroffers.
What are the potential disadvantages of benchmarking?

While benchmarking comparisons are often helpful, caution must be exercised in using this information. While helpful for analytical and comparison purposes, it is important to recognize data limitations. Using the example cited in Exhibit 7, cities such as New York City, the District of Columbia, and San Francisco vary considerably in density, building height limitations, street width, and other areas, including staffing levels and requirements.

Also, management staff might be tempted to manipulate data to cast a better light on their own position. Measuring outcomes is also problematic, and care must be taken when linking cause and effect (e.g., the assumption that hiring additional police officers will lead to lower crime rates). It is also important to independently document data taken from published information, even if the source is legitimate (for example, a public budget document). The source should be called, the information confirmed, and back-up documents should be requested.

When checking the benchmarking data, the following steps should also be taken:

- Investigate the definitions of terms used;
- Examine work schedules for any differences;
- Account for variations in service delivery mechanisms; and
- Factor in the impact that differences in geographic location or topography might have on the comparison.
For example, Exhibit 11 provides an overview of billing collection rates for emergency medical services (EMS). While it may appear that some of these cities do an excellent (or poor) job of collecting revenues, it is important to ensure that the analysis compares “apples to apples” and that there are not valid reasons for a higher (or lower) than average collection rate. Especially in cases where the data are not in line with the comparison group, extra care should be taken to confirm authenticity. Such precautionary steps reduce the risk of relying on false information due to a misprint in the original source document.

### Exhibit 11
### Comparative EMS Billing Collection Rates

<table>
<thead>
<tr>
<th>City</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, Arizona</td>
<td>70%</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>63%</td>
</tr>
<tr>
<td>Los Angeles, California</td>
<td>60%</td>
</tr>
<tr>
<td>Nashville, Tennessee</td>
<td>60%</td>
</tr>
<tr>
<td>San Diego, California</td>
<td>56%</td>
</tr>
<tr>
<td>San Jose, California</td>
<td>55%</td>
</tr>
<tr>
<td>Indianapolis, Indiana</td>
<td>55%</td>
</tr>
<tr>
<td>Chicago, Illinois</td>
<td>50%</td>
</tr>
<tr>
<td>Philadelphia, Pennsylvania</td>
<td>48%</td>
</tr>
<tr>
<td>El Paso, Texas</td>
<td>47%</td>
</tr>
<tr>
<td>New Orleans, Louisiana</td>
<td>42%</td>
</tr>
<tr>
<td>Memphis, Tennessee</td>
<td>39%</td>
</tr>
<tr>
<td>Detroit, Michigan</td>
<td>23%</td>
</tr>
<tr>
<td>Baltimore, Maryland</td>
<td>20%</td>
</tr>
</tbody>
</table>

The budgetary/financial analysis of labor contracts involves three separate, but related processes by which the government develops its own set of proposals and presents them to the union, determines the costs and benefits of contract proposals, and responds to the union’s proposals.

The following excerpt taken from an Associated Press article appearing in the April 26, 2003, *Pittsburgh Post-Gazette* provides one example of how contract negotiations are integral to the budgetary process.

Gov. Ed Rendell is asking the largest state-employee union to accept a four-year wage freeze, employee contributions toward health benefits and a reduction in paid holidays as negotiations for a new contract covering 46,000 people get under way.

The administration’s chief of collective bargaining said Rendell’s proposal—like the initial proposal from Council 13 of the American Federation of State, County and Municipal Employees—is only "a wish list" that is a starting point for negotiations that started in early April. But the governor made clear in a recent letter to the union that he considers drastic action necessary to rein in labor costs amid the state’s ongoing budget problems.

“These problems form an important and challenging backdrop for our negotiations. While neither of us created this problem, it nevertheless is the context in which those negotiations will occur,” Rendell said in the letter to David R. Fillman, executive director of the AFSCME council.
What process should management use to develop proposals?

Prior to developing actual proposals, a government should develop an overall negotiation plan and strategy. The plan should identify the short- and long-term goals for the labor relations strategy, which should be consistent with the jurisdiction's overall goals and objectives, while also identifying specific strategies for achieving those goals. The development of contract proposals must be consistent with overall strategy.

To identify and develop potential contract proposals, in addition to reviewing the current contract, the negotiating team should determine its overall goals and objectives, obtain input from the particular service-delivery departments (e.g., public works, police), and develop a rationale/justification for each proposal. After reviewing all of the information obtained in the preparation phase, the team must determine how the information may influence the proposals that management makes at the bargaining table. One of the most important elements of the proposal development phase is to develop a rationale for each proposal. In addition, the various proposals should make sense and be internally consistent when they are combined into a complete package.
What should management look for in specific contract proposals?

Since contract proposals have legal, economic, operational, and administrative impacts, the negotiating team should consider the following key points when developing proposals:

- What is the purpose of each proposal?
- What is the practical effect of each proposal?
- What is required to implement each proposal?
- What will the proposal mean to various stakeholders?
- Is the proposal consistent with the government’s strategic plan and/or policies?
- What is the total cost of the proposal?
- How does this particular proposal impact other proposals? Is there a conflict, or are they compatible?
- What is the likelihood that the union will accept the proposal or a modification thereof?
Why are management rights clauses an important part of the contract?

A management rights clause specifies certain areas in which management reserves the right to make and implement decisions (such as staffing decisions or service level determinations). While these clauses vary by contract and the type of service being provided, the language is intended to define and reserve the rights that are important to management; specify that management retains all other rights that it perceives are important; and place limits on arbitrators who might later be called on to interpret the clause.

Most experienced negotiators advise against trading management rights for economic concessions. Management rights are not only crucial for supervising the workforce and delivering services, they are difficult if not impossible to recapture once given away. The latter point is particularly crucial.
Should the government develop only one set of proposals?

The negotiating team must determine its optimal and minimal positions or interests, and should be prepared to justify them. The optimal level represents what the team wants to achieve while the minimal position is the “worst case” situation that allows the team to achieve its interest. Consistency throughout the process is crucial to ensure that the various proposals not only make sense, but also hold together as a total package. Otherwise, the negotiating team will have little credibility at the bargaining table. The following provides an example of a minimal and an optimal clause that a government may plan for and be prepared to accept during the exchange of proposals.

**Minimal:** The city shall pay 50 percent of the cost of the credit hours per semester for each member of the bargaining unit who pursues a law enforcement degree, up to a maximum of 15 credit hours per calendar year.

**Optimal:** The city shall pay 50 percent of the cost of the credit hours per semester for each member of the bargaining unit who pursues a law enforcement degree, up to a maximum of 12 credit hours per calendar year. The member must receive a grade of “C” or higher for each course in order to maintain eligibility for reimbursement.
What are the major considerations for presenting management’s proposals to the union?

Management often elects to receive the union’s proposals before providing the jurisdiction’s proposals to the union. By waiting to receive the union’s proposals first, management may be better positioned to understand the union’s priorities. Upon receiving the union’s proposals and before taking any action, the management negotiating team should listen to the union representatives for clarification regarding the specific nature of the proposals. It is entirely appropriate for the negotiating team to request justification from the union about certain proposals, if necessary. The negotiating team that is drafting the government’s proposals to the union should ensure that each proposal and counter-proposal:

- Is clearly articulated;
- Sets the tone and/or sends a strong message to the union; and
- Is accompanied by a thorough explanation and justification.

This approach will reinforce the idea that the government has carefully considered the implications of each proposal, and that they are a significant priority for the negotiating team.
Why is proposal costing a critical element of the negotiation process?

In order to make informed policy decisions regarding labor negotiations, elected officials and finance officers need an accurate assessment of the financial and operational impact of all proposals. Without knowing the economic value of salary, fringe benefit, and other provisions of the agreement, it is difficult for management to make rational choices among possible demands and to develop a counteroffer with an acceptable package that minimizes overall costs. Obtaining an understanding of proposal costs will benefit management during its internal strategy sessions, in deliberations with the union, and during dialogue with third parties such as a mediator or arbitration panel. In addition to serving as a strategic planning tool, cost analysis provides the following benefits:

- Provides a baseline for all future data analysis;
- Can shed light on services that need to be evaluated;
- Helps to consolidate labor information from different sources and facilitates decision making;
- Can point to management practices that need to be addressed; and
- Allows management to predict the financial and operational impact of labor union proposals.
What data sources exist for calculating proposal costs?

Collecting and analyzing data for labor contract proposals may be relatively easy or quite challenging, depending on the sophistication of the jurisdiction’s financial and human resource information systems. An excellent reference point is the existing labor contract, which contains the terms to which the union and jurisdiction have agreed in the past. The information in the contract should be the starting point for calculating marginal costs, since most unions will be requesting extensions of current benefits and wages rather than new concessions.

In addition to the contract, the government’s financial and human resource information systems can provide reports containing important data such as seniority, wages, and benefit eligibility. It is also helpful to coordinate the data gathering with the department in which the union’s members work. Not only does this assist in determining the operational impact of various proposals, but it also helps confirm the proposals’ potential financial impact.
How should compensation be analyzed when reviewing labor contract proposals?

In the public sector, employee compensation consists of salaries and wages, as well as any associated fringe benefits. During the contract negotiation process, costs can be reflected in multiple ways: the total annual cost refers to the total cost to the jurisdiction for a given contract year; the annual average cost per employee represents the total annual cost divided by the number of employees in the particular bargaining unit; and the average cost per hour worked represents the annual average cost per employee, divided by the average number of hours worked per year per employee.

For purposes of calculating compensation costs during a contract negotiation process, the most relevant number is usually the average compensation for the particular union/employee group. Since this figure is essentially an expression of the employer’s average cost for each group member, this is the figure that will be most closely scrutinized throughout the negotiation process. Given that employee compensation costs comprise the largest block of expenditures for state and local governments, the value of existing salaries and fringe benefits must be known to provide management with information regarding the value of various bargaining offers/settlements.

To accurately calculate compensation costs when negotiating a labor contract, the following information is needed:

- The actual salary scales and benefit levels;
- The distribution of personnel according to rank, pay step, grade, and/or shift; and
• Any additional variables that will impact costs (such as the number of employees with family coverage for health insurance compared to the number with individual coverage, if the rates vary).

The following example provides an illustration of the average days annually worked and the cost per actual day worked:

**Work Days**
- Average work days per year: 261
- Average overtime days worked: 32
- Total days worked: 293

**Leave Days**
- Average vacation/personal days: 20
- Average sick days: 9
- Average holiday passes: 14
- Average leave: 1
- Total leave: 44

*Total average days worked: 249*

**Average Costs**
- Average W-2 wages: $51,914
- Average fringe benefits: $15,454
- Total average cost: $67,368

*Cost per day actually worked: $ 270*
What are some considerations for negotiating and costing compensation-related provisions?

While requests for wage or salary increases lie at the heart of most labor negotiations, there are also likely to be proposals for increases in compensation-related benefits (longevity or holiday pay, for example). Since these categories are dependent upon salaries—which are most likely being negotiated at the same time—such proposals must be carefully evaluated, and can be difficult to cost without making assumptions.

**Base Compensation Costs:** Prior to calculating the impact of the union’s proposals, it is important to determine the base compensation costs for the particular bargaining unit(s), as all proposals and potential counter-offers must be analyzed in relation to the current cost of each contract element and benefit. The base compensation figures are essential to the determination of the percentage value of any proposed increase in compensation. Since the union will likely propose increases to multiple forms of compensation, management should identify the base compensation costs at not only a macro level, but also for specific contract provisions such as: the average salary; the average overtime earnings; the average payment for longevity; the average cost of the differential for each shift; and the average annual cost for paid holidays.

**Wages and Salaries:** Calculating the fiscal impact of the union’s proposal to increase salaries 3 percent each year over the next three years may seem like a pretty straightforward exercise for a financial analyst, but the cumulative impact of the proposed salary increase should be highlighted. In addition, the “ripple effect” of wage and salary increases must be
carefully analyzed, since increases in salaries will likely result in an automatic increase in the cost of other benefits such as overtime, longevity, shift differentials, holiday pay, vacations, and sick days. Finally, regardless of whether the jurisdiction’s unions have contract clauses that tie their compensation to that of another union, it is important to understand that what a government offers to or negotiates with a particular group will certainly have an impact on its discussions with other employee groups, including unionized and exempt employees.

**Holiday Pay:** While unions generally ask for more holidays, management must understand that there is a difference between costing holiday pay and costing an additional holiday. Also, when regular employees are not working, it may be necessary to recruit replacement workers, at a substantial cost. For public safety and other services that must be provided around the clock, additional costs will be incurred due to the need to have staff working on the designated holiday, which most likely will be compensated at a significantly higher rate than regular wages. However, providing additional holidays to employees, even for those services without a minimum staffing requirement, will impose a cost on the jurisdiction since the decrease in hours worked will in turn increase the average hourly cost per hour worked.

**Longevity Payments:** Some bargaining units receive additional payments in recognition of the years of service contributed by each member. For example, longevity payments based on a fixed amount may provide for an annual payment of $1,000 for each member of the bargaining unit with 15 years of continuous service. A longevity payment program based on a percentage of salary, however, may require that the employee with 15 years of continuous service receive an annual payment that is equal to 7.5 percent of his or her base salary. Proposed changes to longevity benefits should be analyzed to determine (a) the potential increases in base salary, if longevity is based on this figure; and (b) the impact any change may have for another bargaining unit, since some labor agreements have clauses built in to provide members with automatic increases for certain benefits, such as longevity, if another bargaining unit receives an increase.
**Vacations:** Vacation pay/leave is paid, non-productive time. To determine the full costs of this proposal item, it is necessary to know whether vacationing employees will be temporarily replaced. Issues to consider when reviewing all vacation-related proposals include mandatory staffing levels, overtime costs to cover for employees on vacation, and the impact on service delivery. In addition, all proposals to expand leave time must take into consideration the provisions of the Fair Labor Standards Act (FLSA), which govern the calculation of overtime rates, and therefore can impact costs.

**Pensions:** Due to the complexity of employee pension plans, it is critically important to obtain the advice and analysis of outside pension/actuarial experts when attempting to determine the financial impact of pension-related proposals. Governments must understand the ramifications of enhancing pension benefits: any change to a defined benefit pension could have a significant financial impact, not only during the life of the labor agreement, but into perpetuity. In addition to the impact on the budget, management must assess whether changes to pension benefits (such as with an early retirement provision) may lead to the exodus of a significant number of key employees. In contrast to defined benefit plans, defined contribution plans are easier to cost, and may not require actuarial analysis.

**Life Insurance:** Options to consider in this area usually include offering increased benefits or adding dependent coverage. Just as with pension proposals, management should consult outside experts to gauge the impact of related contract provisions.

**Health Insurance:** Issues for consideration in determining the cost of health insurance include the extent of dependent coverage, whether an employee co-pay option exists, prescription drug plans, dental coverage, health/wellness initiatives, and the provision of retiree health benefits. Due to the recent growth in health care costs, employers should devote significant effort to analyzing their existing health care plans, as well as identifying potential cost containment or reduction strategies. Important data elements include plan enrollments, the current and projected rates for
each plan, employee contributions, and savings to date (if any) as a result of prior cost containment efforts.

**Sick Leave:** A clear understanding of the existing sick leave policy is necessary before determining costs related to an annual sick leave buyback for current employees and/or a benefit that compensates employees for unused sick days upon retirement. Typically, historical use may be the best predictor of future demand, but other factors—such as the policy regarding accumulation of days, buy-backs of unused days, and replacement costs—must also be considered.

**Statutory Benefits:** State and federal laws generally require three insurance programs: Social Security, worker’s compensation, and unemployment insurance. For every increase in wages and other eligible benefits, the jurisdiction must make increased payments for such benefit programs, unless they are exempt from payment.

**Shift Differentials:** To accurately reflect the cost of an increase in shift differentials, it is necessary to obtain the total number of hours worked for each shift in the past year(s). Assuming that future trends will be based on past performance, the analysis would simply require the computation of the total number of hours per shift multiplied by the proposed hourly increase.

**Uniform/Clothing Allowances:** Many collective bargaining agreements provide its members with annual cash payments to be used as a clothing/uniform allowance. Proposals to increase such benefits can easily be computed by identifying the number of employees eligible for such allowances, and multiplying that number by the proposed increase.

**Changes to Work Schedules:** Assessing the impact of proposed changes to work schedules (e.g., a change from five 8-hour days to four 10-hour days) should be thoroughly scrutinized for not only the potential fiscal impact, but for service-delivery implications as well. Any change to the fundamental work schedule also requires a comprehensive review of the contract, as such a shift could lead to significant changes for benefits such as vacation and sick leave.
What additional fringe benefits impact costs?

In addition to general compensation and compensation-related benefits, governments may have to negotiate proposals regarding other fringe benefits. While such provisions (other than employee uniforms) are unlikely to result in a significant expense, it is important to remember that all benefits have a price tag attached. Also, some of the so-called “non-economic” benefits can create operational concerns for managers, so the rationale for extending additional benefits and/or expanding existing benefits to employees must be carefully evaluated. Some of these additional benefits can include:

- Paid lunch/rest periods/wash-up time;
- Jury duty policy;
- Bereavement pay;
- Union/management meetings;
- Union business;
- Working conditions;
- Travel reimbursement;
- Employee uniforms; and
- Employee equipment allowances.
How should the finance staff use assumptions when estimating costs?

Due to the complexity and uncertainty that surround analyzing and costing contract proposals, the finance staff must use assumptions in estimating the costs of both union and management proposals. To prevent disputes concerning the validity of the assumptions, the staff should adhere to a set of guidelines to which the union and others would be amenable:

**Identify variables that will influence the final calculation.** For example, when calculating the cost of additional vacation time for police officers, an analyst must have information such as: the number of vacation days owed to the officers, the actual number of days used, the amount of overtime (if any) required to cover the shifts of officers on vacation, and the rate of pay.

**Distinguish between variables that are certain, and those on which assumptions are made.** Some variables, such as the rate of pay, are a known quantity. Others might require an analyst to make assumptions, such as the exact number of shifts that must be staffed using overtime workers.

**Using ranges (low to high) when using assumptions that may vary.** By assigning different values to the dependent variables (e.g., assuming the number of employees accepting the early retirement offer will range from fifty to one hundred), it is possible to establish upper and lower limits for the cost analysis. This will enable the jurisdiction to determine if it has negotiated a good deal based on the eventual outcomes.
Which contract costs are often overlooked?

The cost implications of certain contract terms are not straightforward and must be closely examined to accurately capture the real cost of the provision. For example, pension and vacation provisions usually require the availability of additional data and the use of a number of assumptions, such as the costs for replacement workers. Due to the complexity of costing contract proposals, it is important to coordinate the review between the finance staff, legal department, and the operating department.

Financial analysts must remember to factor in the effect of both the union’s and management’s wage proposals for the length of the contract, keeping in mind that any wage increases will impact all contract provisions that are tied to wages (such as vacation and holiday pay, overtime, and the government’s statutory benefit contribution for Social Security and Medicare).
Why is the employer’s financial situation a factor in the negotiating process?

As labor unions have become more professional, they have also begun to closely scrutinize the fiscal position of local governments, especially when an employer asserts an “inability to pay” argument in responding to the union’s proposals. In addition, because public services are paid through tax dollars, there is a heightened interest on the part of many other stakeholders (such as elected officials, finance officers, the media, and taxpayers) to assess the government’s ability to continue providing the same (or higher) levels of service.

Elected officials and finance officers should understand that many unions employ sophisticated techniques to identify the common criteria generally acceptable as indicators of fiscal health. Thus, unions are likely to examine the following:

- Budgeted and actual revenues and expenditures;
- Fund transfers;
- Fund balance;
- Expenditures for large capital projects;
- Use of public funds to construct sports facilities; and
- Fiscal trends (i.e., revenue growth).

For example, large discretionary expenditures on public infrastructure projects may signal a government’s ability to pay for other items. Rather than argue for their own proposals on their merits, unions and other employee groups may
point to the jurisdiction’s generous economic development financing program or related policies as an example of how the government has an ability to pay for the union’s demands.

Another union strategy might involve highlighting supposed government inefficiencies in an attempt to show that any existing financial problems are the sole responsibility of the elected officials and managers. In other words, if the government operated in a more efficient and effective manner, the cost of the union’s proposals would become affordable.
How is parity used as a compensation decision rule?

Parity is often used by local government management and labor to determine wages for police officers and firefighters in major cities. While parity is often set at 100 percent (which means that two different occupational groups will receive the same amount of pay and benefits), parity can also be established at a lower level (i.e., firefighters are guaranteed to earn 95 percent of the police officers’ salary).

To illustrate this concept, Exhibit 12 shows the contractually mandated salary provisions for a hypothetical city’s police and fire unions.

Exhibit 12
Parity Between Two Occupational Groups

<table>
<thead>
<tr>
<th>Year</th>
<th>1st Year Police Officer</th>
<th>1st Year Firefighter</th>
<th>Fire as Percentage of Police</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>$35,000</td>
<td>$33,250</td>
<td>95%</td>
</tr>
<tr>
<td>2001</td>
<td>$40,000</td>
<td>$38,800</td>
<td>97%</td>
</tr>
<tr>
<td>2002</td>
<td>$45,000</td>
<td>$45,000</td>
<td>100%</td>
</tr>
</tbody>
</table>
What are “me too” clauses?

While somewhat related to the use of parity for wage determination, “me too” clauses can refer to provisions other than wages. The jurisdiction’s labor relations staff (and the entire bargaining team) must be aware of contract clauses in any collective bargaining agreement that can impact or be impacted by a change in another agreement. For example, one bargaining unit may have negotiated an agreement providing its membership with an increase in a particular benefit (e.g., uniform allowance or longevity payments) if another union successfully negotiates such a benefit for its members.

In addition, the financial analysis must consider any of the government’s traditions or standard practices, such as giving non-union employees the same percentage of salary increase as that provided to a specific union/group of unions. To avoid unintended consequences, it is critical that the government’s bargaining team have a comprehensive understanding of all contract proposals. In general, such “me too” clauses should be avoided.
Can governments benefit from front-loading or back-loading salary increases?

Whether a jurisdiction benefits from front-loading or back-loading salary increases depends on its objective. To illustrate, the following table provides the financial impact of two scenarios for providing hourly salary increases.

Each option in Exhibit 13 has its advantages and disadvantages. While a total increase of $3.20 over the three years of the contract may seem like the better alternative than the $3.50 figure for the same period, postponing increases to provide for a larger total increase during the term of the agreement raises the base wage rates that will form the foundation for subsequent negotiations.

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
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<tr>
<td><strong>Government</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option 1</td>
<td>$1.00</td>
<td>$1.00</td>
<td>$1.50</td>
<td>$3.50</td>
</tr>
<tr>
<td><strong>Union</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option 2</td>
<td>$1.80</td>
<td>$0.80</td>
<td>$0.60</td>
<td>$3.20</td>
</tr>
</tbody>
</table>
What are some guidelines for costing labor contract proposals?

Finance officers and their staffs have an important role in the costing of labor contract proposals. Prior to attempting to calculate costs, analysts must do their homework, and understand that there is significant value in presenting the cost analysis in a clear and concise manner. In addition, the following points provide additional guidelines for approaching the cost analysis task.

Understand the history of negotiations with the union: Both the government and union will include seasoned negotiators with knowledge of the details from previous bargaining sessions. Both sides will use prior sessions as a starting point.

Information is key: It is important to uncover information about previous wage/benefit gains, what issues have been kept off the table by management, the obstacles to settlement in the past, and whether either side has been accused of bargaining in bad faith.

Keep things in perspective: While costs are certainly relevant, it is important to understand the context of the increase in an existing benefit or the request for a new benefit. Also, the non-financial implications of certain proposals, such as closing fire stations or privatizing a service, must be investigated.
How should the cost analysis data be presented?

Since most negotiation sessions are led by lawyers without experience in the disciplines of accounting and public finance, the presentation of the cost analysis information should be straightforward. The following are some general guidelines:

- Include a one-paragraph summary of assumptions made;
- Include all assumptions influencing the final number;
- List all variables impacting the proposal;
- Report unintended consequences not represented by numbers;
- List all information sources;
- Identify both incremental and cumulative costs;
- Explain uncommon terms; and
- Use spreadsheets as supporting documents.

The audience for the cost analysis should use caution in evaluating cost savings proposals that—while not affecting current employees—could lead to financial or operational challenges for the jurisdiction in the future (e.g., low entry salaries for new teachers that may make it difficult to hire high-quality new teachers in the future).

Section 7 contains several “tips and traps” for negotiating and costing labor contracts.
What is the relationship between contract administration and contract negotiations?

Labor-management relations are best viewed as a continuous cycle—the process does not conclude with the ratification of a labor agreement. Both parties are obligated to faithfully act in accordance with the terms and conditions of the document. No matter how judiciously the parties strive to administer the contract, however, it is inevitable that disputes will arise before the contract expires. Thus, the parties’ success (or lack thereof) in contract administration will ultimately have a tremendous impact on their negotiation strategy and tactics for the next contract.

The negotiated contract provides the parameters for the relationship between the employer and its employees. However, contracts are typically written in broad terms since it is almost impossible to anticipate all of the future issues that may result from changing circumstances and forces beyond the control of either party. It is likely for issues to arise that are only slightly foreseen or completely overlooked in the time frame in which the agreement was being drafted. Due to these and other factors, a structure is needed to address the various questions that are likely to arise over the application and interpretation of the contract terms in order to maintain stability and continuity in the labor-management relationship.
What are the main components of effective contract administration?

Once negotiations have concluded and an agreement is in place, both parties must continue to work together on an on-going basis to implement the provisions of the contract. This includes the willingness of both sides to work together and solve problems that may arise. To effectively administer a labor contract, government officials must:

- Print and distribute the contract to the union and government staff;
- Educate the affected constituencies regarding the provisions and changes in the contract and review issues associated with administering contract provisions;
- Work with staff and the union to ensure uniform interpretation of the terms and conditions of the contract;
- Attempt to settle grievances informally before resorting to the formal grievance procedure, which can entail significant time and expense;
- Seek professional assistance (e.g., third-party mediator) when the need arises; and
- Maintain awareness of labor-management issues in other jurisdictions.

Stakeholder participation is an integral part of the contract administration process, which should provide ample opportunities for the jurisdiction to obtain the input of relevant stakeholders. A stakeholder refers to anyone who is affected
by or has a stake in the outcome of the process. For the admin-
istration of a labor contract, obtaining stakeholder (e.g.,
union leadership, rank and file members) input early and
throughout the process can provide several benefits: informa-
tion is disseminated; management has an opportunity to un-
derstand the needs of its employees; and engaging the union
early and often can identify potential problems early in the
process. While stakeholders can be engaged through both in-
formal and formal methods and at various frequencies, an ef-
ective stakeholder participation process for labor relations
must include the dissemination of good information to stake-
holders; early involvement/inclusion in the process; and a
jurisdiction that displays a positive attitude towards labor-
management relations and is receptive to including stake-
holders in the process.
What is a grievance?

The labor-management relationship does not end with the ratification of a new labor agreement. Even though each party may strive to faithfully administer the agreement, disputes will inevitably arise regarding the interpretation of specific provisions of the agreement and/or as a result of a claim by an employee(s) that their rights under the agreement have been violated. A grievance refers to any type of complaint by an employee or the union against the employer, alleging that a provision(s) of the labor agreement has been violated.

Grievances involve those matters that are within the scope of the collective bargaining agreement. Examples of issues that form the basis of a grievance include, but are not limited to, the following: union rights; discipline; promotions; layoffs/reductions in force; working conditions; the assignment or payment of overtime; and past practice.
What are the components of a typical grievance procedure?

The collective bargaining agreement should clearly define what a grievance is, those matters that are outside the scope of the grievance process, the actual steps of the grievance procedure (including associated time frames), and the nature of the final stage (e.g., grievance arbitration). Although the specific elements will vary with each agreement, there are several common features of the typical grievance procedure:

- An elevation process that escalates from informal to formal;
- The grievance is invoked by an individual employee, but the remaining steps of the process are usually pursued by the union, acting as an agent of the employee;
- If the grievant is dissatisfied with the initial action, he or she can appeal to subsequent (and higher) levels of authority; and
- Depending on the number of escalation points in the process, the concluding phase may involve the dispute being resolved by an arbitrator.
What is the role of grievance arbitration?

In the event that a dispute cannot be amicably resolved between the grievant and the employer, the language of the collective bargaining agreement governing the grievance procedure typically leads to grievance arbitration as the final decision point. Under grievance arbitration, a neutral third party is requested to resolve the disagreement between the employee and employer. The grievance arbitration process includes a hearing at which time both sides present evidence and make their case to the arbitrator.

Due to the cost and time associated with the grievance arbitration process, it is to the advantage of both labor and management to design a comprehensive and fair grievance procedure. While disputes are likely to arise under even the best circumstances, one of the most effective ways to minimize unnecessary grievances is by educating all stakeholders on the terms and conditions of the labor agreement. It is especially important to communicate and educate all stakeholders regarding new/revised provisions of the agreement (e.g., revised method for calculation of longevity pay, new disciplinary procedures) to ensure that such provisions are implemented in a manner consistent with the agreement.
What are some management strategies for dealing with increased costs resulting from contract proposals?

**Decrease expenditures/services.** As with any budgetary problem, one strategy for policymakers is to reduce expenditures through either across-the-board or selective cuts. Expenditure reductions can include actions such as eliminating travel and continuing education, while reductions in services can be realized in various ways, such as through a reduction in hours (e.g., hours of operation for the public library) and/or a reduction in the frequency of certain services (e.g., refuse collection limited to once per week instead of twice per week). In addition, the government may divert/delay capital expenditures in order to address the increase in operating costs.

**Raise taxes.** The ability to increase taxes depends on a number of factors. Some of these include: whether the jurisdiction must obtain citizen approval via referendum; whether there are any legal restriction/caps on tax rates; the extent of any fiscal dilemma facing the jurisdiction; and whether elected officials want to expend political capital to address the issue.

**Institute a hiring freeze.** Managers typically use hiring freezes as a tool to exercise financial control. When used as a reaction to offset the costs of a labor contract, however, it is important to understand the implications of restrictions on handling vacancies for certain unionized positions. For example, if the fire department has minimum staffing requirements for each shift, failure to fill vacancies may result in necessary overtime costs.
*Increase user fees.* While it is often difficult to raise taxes, it may be possible for the government to increase revenue by increasing select fees, which may or may not require taxpayer or governing body approval.

*Layoffs.* Depending on the financial ramifications, if none of the strategies mentioned above were available or feasible, layoffs may be instituted across the board or in select departments. As with a hiring freeze, it is important to understand the implications of, or any restrictions on, handling vacancies for certain unionized positions.

*Reengineer or Privatize Services.* While both reengineering and privatization can provide substantial benefits, these initiatives tend to require a longer time frame after implementation for savings to materialize.
This Guide provided an overview of the various issues involved in negotiating and costing labor contracts in state and local government. It is intended to help elected officials and public managers better understand the fundamentals and challenges of negotiating and costing labor contracts, and recognize the many legal, financial, and public policy implications of the labor relations process. Labor contract negotiations take place in a context shaped by budgetary concerns and processes. While there is a definite relationship between the contract negotiation and budgetary processes, one of the greatest challenges that confronts public officials is that the two do not occur concurrently. As a result, the jurisdiction’s budget and/or financial plans must be revised as a result of a new contract settlement.

The following points represent some of the key issues for consideration in negotiating and costing labor contracts.

Tip Governments should develop a long-term plan for labor-management relations. Management must have a long-term objective for its labor-relations strategy—it must understand that the terms and conditions of each contract/agreement have been developed over many years, and that they will not be drastically changed overnight.
Trap  *Forgetting about the interests of the other side.* Management must consider the interests of its unions/employee groups, and cannot draw a line in the sand on negotiations. In addition, neither side can afford to get locked into a certain position; this can lead to forgetting what the objective actually is—to successfully negotiate an agreement.

Tip  *Include experienced managers/staff on the bargaining team.* The government’s bargaining team must include experienced representatives who have a sense of the history of the jurisdiction, its current and prior negotiation strategies, and the dynamics of certain unions/employee groups.

Trap  *Having decision makers at the bargaining table.* If possible, the chief decision maker should be kept away from the bargaining table. This ensures that the management team isn’t forced to make decisions without first conducting a careful review and analysis of their implications in terms of cost and/or service delivery.

Tip  *Utilize a team approach.* The team approach to bargaining and negotiating works well for the management team, as no one actor or stakeholder has all of the answers or relevant experience/perspective. Including departmental/operations staff, legal counsel, human resources/personnel staff, and finance/budget staff will provide for a comprehensive analysis of the issues.

Trap  *Underestimating the importance of listening and note taking.* Bargaining and negotiating include a significant amount of interpersonal dynamics, and information is at the heart of a negotiation. Adequate attention to listening and taking notes throughout the process can significantly enhance the likelihood of successfully reaching an agreement.

Tip  *Understand the multiplier effect.* When analyzing the financial impact of contract proposals, the staff conducting the analysis—as well as those reviewing it—must understand the multiplier effect of salary and benefit proposals. For example, increases to the hourly rate will not only result in an increase for the salary categories, but can also increase costs for several other compensation categories that are tied to the hourly rate, such as overtime premiums, shift premiums, holiday and vacation pay, fringe benefits, and statutory benefits.
Tran 

Underrating the history of the bargaining process. What either party can propose today is sometimes constrained by a previous sequence of negotiations. An issue that was resolved after heated discussion in the last round should not be the first issue to debate in the current bargaining session.

Tip

Stress the long-term consequences. Especially when utilizing assumptions, it is important for the negotiating team to stress the long-term implications of the union’s proposals—particularly for the time period in which the actual costs will be incurred. For example, new or revised retirement programs may not require an expenditure during the term of the next agreement, but if the costs are significant and will be incurred in future years, it is important to present this information as part of the long-term financial analysis.

Trap

Underestimating the importance of drafting contract language. Contract language should not be vague; rather, it should be clear, concise, and not allow for any wiggle room for misinterpretation. New or revised contract language should be reviewed and approved by multiple stakeholders (e.g., legal, financial, political, operational) to avoid unanticipated consequences.

Tip

If possible, avoid additional vacation time for service areas requiring mandated staffing levels. For areas such as public safety that often require a specific number of personnel on-duty for each shift, the negotiating team should try to avoid providing additional vacation benefits, which often result in significant additional costs—not only for the employee receiving the added benefits, but also for other employees who may be paid overtime wages to maintain staffing/services levels. An alternative could be to examine the feasibility of developing creative proposals, such as providing a cash bonus in lieu of taking the additional vacation time.
APPENDICES

Appendix A: Glossary

**Arbitration:** A method of resolving labor disputes by employing a neutral third party, in this case an arbitrator, to review the facts and make a decision that is binding on both parties. There are two types of arbitration. In interest arbitration, the arbitrator intervenes in the process to resolve an impasse in negotiations; grievance arbitration occurs during the life of the contract and results from an employee filing a grievance alleging that his or her rights, as specified in the contract, have been violated.

**Bad Faith Bargaining:** A situation in which either the union or management refuses to bargain or discuss mandatory issues.

**Bargaining Unit:** A group of employees recognized as appropriate for representation by a labor organization for the purpose of collective bargaining.

**Collective Bargaining:** Bilateral negotiations between labor and management teams over wages, terms, and conditions of employment. The result of collective bargaining is a document specifying each side’s respective rights and obligations.

**Contract Administration:** Effective administration of a contract requires the participation of both labor and management. Management is responsible for training supervisors in contract provisions, printing and distributing the agreement, and implementing the new provisions, such as pay scales. In addition, the union must educate its officers regarding contract provisions and grievance procedures.
**Conventional Arbitration:** A type of interest arbitration in which the arbitrator may select the position taken by either labor or management or develop some sort of compromise agreement.

**Fact-Finding:** A method of resolving an impasse in labor negotiations by employing a neutral third party, in this case a fact-finder, to assist both parties in reaching an agreement. The fact-finder holds a hearing, investigates the disputed issues, and submits a set of non-binding recommendations for settlement.

**Final Offer Arbitration:** A type of interest arbitration in which the arbitrator must choose one of the party’s offers. Variations of final offer arbitration may require an arbitrator to select the entire package or to select one or the other party’s offers on each specific issue.

**Good Faith Bargaining:** The opposite of “bargaining in bad faith,” this represents the agreement by labor and management to discuss mandatory bargaining issues.

**Grievance:** Occurring during contract administration, this refers to a dispute over an interpretation or application of a provision of a labor agreement.

**Impasse:** An inability to reach agreement, which is caused by both parties’ unwillingness to further negotiate/make concessions on key items.

**Interest Arbitration:** Arbitration over the contents of the contract, referring to the interests of the parties, distinct from their rights, under an existing agreement.

**Labor-Management Committee:** An attempt at fostering positive labor-management relations in which the parties meet to discuss issues such as job redesign, training, workplace safety, and quality control. One of the goals of such efforts is to encourage increased employee participation in decision making.
**Management Rights Clause:** While these clauses vary in length, they define and reserve the rights assigned to management, while also specifying that management retains all other rights that are not explicitly stated elsewhere in the document.

**Mediation:** A method of resolving disputes in labor negotiations by employing a neutral third party, a mediator, to assist the parties in reaching an agreement by maintaining communication and encouraging them to move toward common ground.

**Meet and Confer Discussions:** An alternative to collective bargaining in which labor and management representatives meet periodically to seek agreement on matters of mutual concern, frequently resulting in a non-binding memorandum of understanding. To protect their sovereignty, some states only authorize negotiations of this kind.

**Multilateral Bargaining:** Whereas negotiations in the private sector are usually limited to the involvement of labor and management, the public-sector model involves the participation of other stakeholders—such as elected officials, community groups, and the media—who sometimes have an influential role in the process.

**Mutual Gains Bargaining:** A recent trend in labor relations, mutual gains or “win-win” bargaining is based on the premise that the traditional adversarial approach to bargaining is unproductive. In mutual gains bargaining, both sides focus on their interests, rather than their positions.

**Unfair Labor Practice:** Activities of a labor union or an employer that are judged to be contrary to the intent of laws regulating collective bargaining. Failure to bargain in good faith, for example, is an unfair labor practice, and a public employee relations board usually determines whether it has occurred.
Appendix B: Contract Negotiation Preparation
Steps

- **Review the current contract.** The review should be conducted by both the jurisdiction’s legal staff and affected departments/agencies. It should include a review of language that contributes to costs or difficulties in delivering services, areas which include a number of grievances, the results of arbitration over unresolved grievances, current practices/issues not covered in the contract, and other issues that impact service delivery/costs.

- **Thoroughly review all personnel policies/procedures.** One often-overlooked aspect of preparation is a thorough review of all policies, regulations, directives, and communications concerning personnel policies, as well as any memorandums of understanding or agreement that the union and government may have negotiated during the term of the existing contract. One benefit of such a review is that the information contained in these documents may suggest an area that needs to be addressed at the bargaining table to resolve problems, better protect the jurisdiction’s interest, and/or establish a consistent practice for the new agreement.

- **Review notes of previous negotiation meetings.** Knowing what was discussed in previous negotiations is an important element of preparation, as many issues tend to find a place on the agenda over various bargaining cycles. Thus, it is important to know the history of negotiations with each particular union, such as uncovering information about past wage increases, knowing what issues have been left off the agenda in the past, and know-
ing the obstacles to settlement that may have plagued previous sessions.

- **Seek input from the affected departments/agencies.** Department/agency line managers possess the greatest amount of information regarding the effect of contract provisions on costs and/or service delivery, so they should be consulted early in the process to ascertain their interest and need in seeing certain issues pursued at the bargaining table.

- **Calculate base compensation costs.** Before the value of any cost impact of increases in compensation can be determined, it is necessary to first develop the base, or existing compensation figures for the particular group. Calculating the base figure will allow the jurisdiction to later determine the value (in terms of percentage) for any compensation increases. Before initial meetings are held and before management can prepare its own proposals, the negotiating team must have a firm understanding of the base costs under the existing agreement of such categories as salaries, overtime, pensions, and health care.

- **Assemble and analyze compensation and benefit data.** This exercise would include examining the current pay levels for the same occupations in other jurisdictions, gaining access to settlements in other jurisdictions, and examining economic data such as the local cost of living index that may be a factor in negotiations. This task should be conducted formally, including the use of standard surveys, which will enable the information to be utilized throughout the negotiation process.

- **Analyze employee/bargaining unit demographics.** Several major benefits—such as pensions, vacations, and longevity pay—are related to seniority. For this reason, it is important for the employer to clearly understand the demographic composition of the workforce.

- **Compile and analyze local and regional economic data.** Since the employer’s financial condition often becomes an issue during the negotiation process, it is impor-
tant to understand the local and regional economy in which the jurisdiction is located.

- **Contemplate legal requirements/issues.** If changes have been recently made to federal or state laws (e.g., Social Security tax rates, unemployment insurance provisions), the government may incur an increase in costs for employer-required contributions.

- **Gather knowledge of the union’s negotiator(s) and decision-making procedures.** If management’s legal advisors are not accustomed to dealing with the union’s negotiator, they should attempt to obtain information regarding the individual’s style/past success. In addition, management should understand the union’s rules for ratifying the contract.

- **Assess the jurisdiction’s current level of services.** Are any future changes anticipated? If management expects to implement a significant change in the delivery of services, it should determine what changes, if any, would be required under the current agreement.

- **Obtain studies/analysis from consultants.** If the government is considering proposals related to service delivery, the preparation phase is an ideal time to complete such studies. This provides the management team with an opportunity to review and analyze the results in the context of developing proposals for the negotiation process.

- **Identify the union’s likely demands.** Aside from typical financial demands of the union, management can obtain a better understanding of the union’s proposals from frontline supervisors, who have daily interaction with the workers and have been more involved with the grievances under the current contract. Understanding the union’s likely interests and demands early on will allow management to develop its own plan and prepare to respond to the union. In assessing the demands of a particular bargaining unit, it is helpful to know what they have historically sought during the bargaining process.
• **Determine negotiation interests/objectives and develop proposals.** These should be both realistic and ambitious—attainable, but with some difficulty. Management’s goals and objectives should reflect a mix of cost and revenue realities, developments elsewhere, legal requirements, and what is important to the actual negotiators and those who define their roles, such as elected officials. One of the most important elements of preparation is to address any potential conflicts within the management team itself (e.g., resolve the sometimes conflicting goals/priorities between the finance/budget staff and operations staff).

• **Review the jurisdiction’s perspective for a two- to three-year time frame.** Since a new labor agreement will impact the budget and delivery of services, as part of the planning process, the team should develop a multi-year forecast of key financial and non-financial data to assess potential problems or opportunities. This should also include a determination of the major policy goals/priorities for elected officials and senior executives in order to align the bargaining process with the strategic/financial plan.

• **Develop the team’s bargaining book.** Due to the complex nature of the process, this document should be viewed as the team’s “bible” throughout the negotiation process. Ideally, it would be organized to allow the team to understand which contract clause(s) would be affected by a particular demand. A more sophisticated bargaining book would contain the history of specific clauses, legal issues pertaining to the clause, and any data and/or cost figures associated with the clause.

• **Develop preliminary strike preparation plans (if applicable).** While public-sector employees face greater restrictions on their right to strike than their private-sector counterparts, if the particular bargaining unit for which the jurisdiction is negotiating has the right to strike, management must have a strategy for continuing the provision of services in the event of a strike.

• **Determine strategies to achieve interests and objectives.** Once the team determines its interests and objec-
tives, it must develop a strategy to achieve them. The goal should be to align negotiation objectives with organizational objectives.