NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS

PREPARING TO NEGOTIATE AND MANAGING THE NEGOTIATION

2 WHAT THIS ISN'T…

- Legal advice, you need a (labor) lawyer for that…get one (see the very last slide)!
- A list of everything that a CBA should include (see above)
- A discussion of the multiplicity of laws that apply to collective bargaining, CBAs and labor relations with unions (there are week long seminars on those topics that still can't cover everything)
- A "do it yourself" guide to negotiating a CBA
- IN OTHER WORDS, DO NOT RELY ON THIS IN LIEU OF LEGAL ADVICE!!

WHAT THIS IS…

- A highlight of some of the key components of CBAs as they apply to counties as a public sector employer including some essential issues to consider when negotiating a CBA
- Limited discussion of legal issues involved in negotiating
- Suggestions for the negotiating process

4 KEY COMPONENTS AND ESSENTIAL ISSUES

- Job description(s)
- Management rights
- Grievance procedure
- Relationship between CBA and other County personnel policies and rules
- "Step and Grade" -- Position classification and pay ranges
- Overtime calculations
- Discipline and investigations: due process, just cause and disciplinary measures, removal of records
- Inconsistencies within CBA

5 JOB DESCRIPTIONS

- Each position authorized by the County is identified by a written job description,and is approved by the Commission. The description includes job title, minimum qualifications, to whom the position reports, who the position supervises and examples of duties and responsibilities required by the job. The definition or description of the job is based on the needs of the County, not on individual skills, qualifications or performance level of an individual. Current written job descriptions of all bargaining unit classifications will be maintained in the County Administrative Office. Changes to the fundamental and inherent qualities of the job description for bargaining unit positions shall not be made without negotiating such changes with the Union.

6 JOB DESCRIPTIONS

- Changes to the *fundamental and inherent qualities* of the job description for bargaining unit positions shall not be made without negotiating such changes with the Union.
- This does not mean that every possible job activity or function needs to be listed.
- In fact, it is not advisable to list specific job functions.
- "Care and custody of inmates, including but not limited to meals, medical care, programming and security" (good) **vs**. "feeding meals, receiving and transmitting requests for medical care, providing access to recreation, proper classification and housing assignments to ensure inmate safety" (bad).
- Job descriptions should leave ample room for assignment of tasks—example is commissary

7 MANAGEMENT RIGHTS

- The Union agrees that the Sheriff in cooperation with the County Administrator and the Commission, has and will continue to retain the sole and exclusive right to manage the operation of the Sheriff's Office and retains all management rights, whether exercised or not, unless specifically abridged, modified or delegated by the provisions of this Agreement. Such rights include, but are not limited to, the right to determine the mission, location and size of the Sheriff's Office; the right to direct the work force; the right to establish specifications and qualifications for each position or class of positions; the right to discipline and terminate employees for just cause; the right to determine the duties and assignments of employees; the right to reduce the size of the work force; the right to contract out for goods and services for bona fide operational or economic reasons; the right to install new, improved or changed methods of operations; the right to make temporary layoffs, the right to examine, test, recruit, select, hire, train, promote or transfer employees; and the right to take whatever actions are necessary to carry out the mission of the Sheriff's Office in the event of an emergency.

DEFINITIONS AND REQUIREMENTS WHICH APPLY AT ALL STAGES OF THE GRIEVANCE PROCESS

- A grievance is hereby jointly defined as any dispute between the parties as to the meaning or application of the specific terms of this Agreement. Any grievance arising between the County and an employee covered by this Agreement shall be handled as provided in this Article.
- For purposes of the grievance procedure, the phrase "working days" means all days which are not Saturdays, Sundays or holidays recognized by the State of Maine. For purposes of the grievance procedure, the day of the act or event from which the designated period of time begins to run shall not be included.
- The parties agree that the time periods specified in the grievance procedures shall be strictly enforced, and that if any party fails to act as required within the time periods established herein, that party's rights under the grievance procedure are waived unless such time limits are specifically extended by mutual written agreement of the parties.

9 GRIEVANCE PROCEDURES

- Should contain an informal procedure to quickly resolve minor issues or simple errors without resort to a formal process:

INFORMAL

The aggrieved employee, alone, with or through a union representative, shall present the grievance to his or her immediate supervisor within fifteen (15) working days after the occurrence of the event or matter giving rise to the grievance. Any resolution or grievance at the informal stage must be consistent with the terms of this Agreement. Additionally, any resolution at the informal stage where the employee chose to proceed with the grievance without the assistance or intervention of a union representative precludes the employee from making a claim against the Union alleging a breach of the Union's duty of fair representation.

GRIEVANCE BY EMPLOYEE OR UNION? FORMAL GRIEVANCES

- Step 2 (informal is Step 1)
- An aggrieved employee shall have the right to implement the grievance procedure provided herein. In the event the employee chooses not to exercise rights under the grievance procedures, **no other person or entity shall have the right to do so either on behalf of the aggrieved employee or on its own behalf.** An aggrieved employee shall have the right to union representation at all steps of the grievance procedure.
- This language limits the right to file a grievance to the employee.
- Some CBAs allow the union to "police" the contract by filing a grievance that is not desired by an affected employee.

CLASS ACTION GRIEVANCES

- The parties mutually agree that class action grievances which are filed to maintain the integrity of the Collective Bargaining Agreement are not subject to the aforementioned provision. A class action grievance is defined as *a matter which does not directly affect one or more employees*, but nevertheless constitutes a dispute between the County and the Union as to the meaning or application of the specific terms of this Agreement.

- This is different than the Union bringing a grievance arising out of a matter which directly impacts an employee (i.e. a disputed overtime computation)

STEP 2—SHERIFF (COULD BE OTHER DEPARTMENT HEAD)

- Within fourteen (14) working days after the grievance is presented to the Sheriff and/or his/her designee, the Sheriff and/or his/her designee, shall schedule and hold a meeting which will afford the aggrieved employee and that employee's union representative an opportunity to present any information relevant to the grievance. Within fourteen (14) working days after such meeting, the Sheriff and/or his/her designee shall respond in writing. If the Sheriff and/or his/her designee fails to respond in writing within fourteen (14) working days as required herein, the aggrieved employee or union representative may proceed to Step Three of the grievance procedure.
- Whether required by the CBA or not, the employee should be given written notice of the charges and all of the evidence in advance of the meeting (*Loudermill v. Cleveland Bd. Of Educ.*)

STEP 3—COUNTY ADMINISTRATOR

- Within ten (10) working days after receiving the written grievance, the County Administrator shall schedule and hold a meeting with the aggrieved employee and that employee's union representative. The County Administrator, the Sheriff and/or his/her designee, the aggrieved employee or that employee's union representative may invite the County's Human Resource Representative to attend and participate in the meeting as long as both sides are in agreement. At this meeting, the aggrieved employee and that employee's union representative may present any information, including the testimony of witnesses and evidence of a documentary nature, that the County Administrator should be aware of in order to inform the County Administrator's decision on the grievance. At this meeting, the Sheriff and/or his/her designee shall also be permitted to present any information, including testimony of witnesses and evidence of a documentary nature that the County Administrator should be aware of to inform the County Administrator's decision on the grievance.

STEP 3—COUNTY ADMINISTRATOR

- During such meeting, the County Administrator may consider any evidence which the Administrator deems relevant to the grievance. Formal rules of evidence shall not apply. In addition, the County Administrator shall cause such meeting to be recorded. The recording shall be available to the Sheriff and/or his/her designee and the aggrieved employee and that employee's union representative at no cost. The County shall not have any independent duty to transcribe the recording, but merely to make it and preserve it until the expiration of all deadlines contained in this Article.
- The County Administrator shall, within ten (10) working days after the conclusion of such meeting with the aggrieved employee and that employee's union representative, render a written decision on the grievance.

STEP 4--COMMISSION

- The Commission must hold a hearing on the grievance within thirty (30) working days after the date on which the decision of the County Administrator is rendered pursuant to Step Three.
- The Commission may in its discretion, but need not, allow the introduction of additional evidence beyond that contained in the record developed at the hearing held by the County Administrator. In the event that the Commission does permit one party to present additional evidence, it shall do so at a hearing attended by all parties, and shall permit any other party to present further evidence for the purpose of rebutting or contradicting the additional evidence offered by the first party.
- Regardless of whether the Commission allows the introduction of additional evidence as part of the appeal, it shall permit each party the opportunity to make an oral presentation in support of its position. Thereafter, the Commission may deliberate the matter and must submit a written decision on the appeal within fourteen (14) working days after the appeal hearing.

STEP 5--ARBITRATION

- In the event that the decision of the Commission as rendered pursuant to Step Four is unsatisfactory to the aggrieved employee or the Sheriff and/or his/her designee and/or that employee's union representative, the decision may be appealed to arbitration. The union representative or the Sheriff and/or his/her designee shall submit a written request for arbitration to the County Administrator within fourteen (14) working days after the date of the Commission's written decision as set forth in Step Four.

ARBITRATION—SELECTION OF ARBITRATOR(S)

- The County and Union shall, within ten (10) working days after the date on which a written request for arbitration was filed, confer and attempt to mutually agree on the selection of an arbitrator. If the parties are able to mutually agree on an arbitrator, they shall acknowledge the selection of the arbitrator in writing. In the event that the parties are unable to agree on the selection of an arbitrator, each party shall select one arbitrator. Said selection shall be made in writing within fifteen (15) working days after the date on which the request for arbitration was filed. The two selected arbitrators shall meet and select a third mutual arbitrator within ten (10) additional working days and shall notify the parties of their selection in writing.

18 WAGES

- Steps and Grades
- How grades are determined
- How overtime is computed

HOW ARE GRADES DETERMINED?

- Position Classification System
- Each position is assigned to a "grade" in the current County Position Classification System. It will be the responsibility of the department head to work in cooperation with the County Administrator to periodically review current job descriptions and to make recommendations to the Position Classification Committee if changes in job content or responsibilities warrant a potential change in grade assignment. Grade assignments for existing positions will not be changed without negotiating such changes with the Union and upon approval of the Commission.

SAMPLE STEP AND GRADE SCALE

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14	Step 15	Step 16	Step 17	Step 18
5	$13.97	$14.25	$14.54	$14.83	$15.12	$15.43	$15.73	$16.05	$16.37	$16.70	$17.03	$17.37	$17.72	$18.07	$18.44	$18.80	$19.18	$19.56
6	$14.53	$14.82	$15.12	$15.42	$15.73	$16.04	$16.36	$16.69	$17.02	$17.36	$17.71	$18.07	$18.43	$18.80	$19.17	$19.55	$19.95	$20.34
7	$15.11	$15.41	$15.72	$16.03	$16.35	$16.68	$17.01	$17.35	$17.70	$18.05	$18.42	$18.78	$19.16	$19.54	$19.93	$20.33	$20.74	$21.15
8	$15.71	$16.02	$16.34	$16.67	$17.00	$17.34	$17.69	$18.04	$18.40	$18.77	$19.14	$19.53	$19.92	$20.32	$20.72	$21.14	$21.56	$21.99
9	$16.34	$16.67	$17.00	$17.34	$17.69	$18.05	$18.41	$18.77	$19.15	$19.53	$19.92	$20.32	$20.73	$21.14	$21.57	$22.00	$22.44	$22.89
10	$16.99	$17.33	$17.68	$18.03	$18.39	$18.76	$19.14	$19.52	$19.91	$20.31	$20.71	$21.13	$21.55	$21.98	$22.42	$22.87	$23.33	$23.79
11	$17.67	$18.03	$18.39	$18.75	$19.13	$19.51	$19.90	$20.30	$20.71	$21.12	$21.54	$21.97	$22.41	$22.86	$23.32	$23.78	$24.26	$24.75
12	$19.08	$19.46	$19.85	$20.25	$20.65	$21.07	$21.49	$21.92	$22.36	$22.80	$23.26	$23.73	$24.20	$24.68	$25.18	$25.68	$26.19	$26.72
13	$20.61	$21.02	$21.45	$21.87	$22.31	$22.76	$23.21	$23.68	$24.15	$24.63	$25.13	$25.63	$26.14	$26.66	$27.20	$27.74	$28.30	$28.86
14	$22.26	$22.70	$23.15	$23.62	$24.09	$24.57	$25.06	$25.56	$26.08	$26.60	$27.13	$27.67	$28.22	$28.79	$29.37	$29.95	$30.55	$31.16
15	$24.04	$24.52	$25.01	$25.51	$26.02	$26.54	$27.07	$27.61	$28.17	$28.73	$29.30	$29.89	$30.49	$31.10	$31.72	$32.35	$33.00	$33.66
16	$25.97	$26.49	$27.02	$27.56	$28.11	$28.67	$29.24	$29.83	$30.42	$31.03	$31.65	$32.29	$32.93	$33.59	$34.26	$34.95	$35.65	$36.36
17	$28.04	$28.61	$29.18	$29.76	$30.36	$30.96	$31.58	$32.21	$32.86	$33.52	$34.19	$34.87	$35.57	$36.28	$37.00	$37.74	$38.50	$39.27
18	$30.29	$30.89	$31.51	$32.14	$32.78	$33.44	$34.11	$34.79	$35.48	$36.19	$36.92	$37.66	$38.41	$39.18	$39.96	$40.76	$41.58	$42.41
19	$32.71	$33.36	$34.03	$34.71	$35.40	$36.11	$36.83	$37.57	$38.32	$39.09	$39.87	$40.67	$41.48	$42.31	$43.16	$44.02	$44.90	$45.80
20	$35.32	$36.03	$36.75	$37.49	$38.24	$39.00	$39.78	$40.58	$41.39	$42.22	$43.06	$43.92	$44.80	$45.70	$46.61	$47.54	$48.49	$49.46

4% between grades 5-11, 8% between grades 11-20

2% between each Step

COMPUTATION OF OVERTIME

- Computation of Overtime
- Except in circumstances indicated below, employees will be paid time and one half (1 ½) the employee's regular rate of pay for all hours **actually worked** in excess of fourty (40) hours in a 7 day work period. Such work period shall coincide with the current pay period. Mandated hours, call ins and extended shifts will be paid at an overtime rate if documented on the employee's timesheet. Unpaid leave, compensatory time used, paid vacation leave, paid sick leave and bereavement leave will not count as hours actually worked for purposes of calculating overtime wages due.
- Very important to have clear delineation of what does and does not count towards hours worked

DISCIPLINE, DUE PROCESS AND JUST CAUSE

- Employees are required to abide by the terms of this Agreement and to comply with such rules and regulations as the County may adopt which are not inconsistent with the Agreement. Should there be any doubt as to the employee's obligations, he/she shall comply with the rules and then grieve if he/she feels he/she has been wronged. All discipline shall be for just cause. Just cause may be established through an investigation as provided in this Agreement.
- What are grounds for discipline?

23 WORK RULES

- The County may adopt or amend reasonable work rules that are not in direct conflict with this Agreement. Such rules may be found in County Policies, Procedures, Rules, Regulations, Sheriff's Office Policies, Procedures, Rules, Regulations, or in the Personnel Policy. The County will notify the Union, by notification to the steward, in writing of any new or revised rules prior to placing them in effect. Whenever possible, all rules or amendments thereto shall be posted on the departmental bulletin board for fourteen (14) calendar days before becoming effective. It shall be the responsibility of the unit employees to read the bulletin board daily. Employees are required to abide by the terms of this Agreement and to comply with such rules and regulations as the County may adopt which are not inconsistent with the Agreement. Should there be any doubt as to the employee's obligations, he/she shall comply with the rules and pursue a grievance.

24 GROUNDS FOR DISCIPLINE

- The reasons listed below are illustrative of behavior or conduct, which may be grounds for discipline. **The list is not intended to be exhaustive:**
-
    - A. Drinking or using illegal drugs on the job or arriving to work while under the influence, degree not needed, of intoxicating beverages or drugs.
    - B. Failure to follow orders of superiors.
    - C. Repeated tardiness.
    - D. Failing to perform the duties of the position.
    - E. Negligent or willful damage to County property.
    - F. Conviction of a crime.
    - G. Dishonesty, including falsification of official reports or records.
    - H. Use of abusive language to the public.
    - I. Negligently endangering the safety of other employees or the public.
    - J. Sleeping on duty.
    - K. Insubordination.

MORE GROUNDS…

- L. Conviction of any traffic related offense that results in the loss of or suspension of the employee's right to operate a motor vehicle in the State of Maine. This will include any conviction in other states that have reciprocal Agreements with the State of Maine.
- M. Acceptance of money or a gift by any employee when given under circumstances indicating the hope or expectation of receiving better treatment than that accorded to the public in general is prohibited and may result in immediate dismissal. All employees shall be responsible for providing county services to the public in a courteous and polite manner.
- N. **Failure to follow department policy or work rules as defined herein**

ESTABLISHING GROUNDS FOR DISCIPLINE—DUE PROCESS

- Employee must be notified of investigation.
- Employee must be allowed to know the charges, the evidence, and allowed a meaningful opportunity to respond.
- Employee should be allowed union representation at all stages of the investigation.
- Discipline, if warranted, should be in writing.
- CBA should contain a structure for the investigative process

27 WHAT DISCIPLINE IS AVAILABLE?

- Punishment must fit the crime
- Disciplinary Measures
- Disciplinary action or measures may include, **but are not limited to the following**:
- Oral Reprimand
- Written Reprimand
- Suspension
- Termination of Employment
- The measures need not be applied in sequence depending on the seriousness of the infraction.
- Are any forms of discipline prohibited?

NEGOTIATING A CONTRACT

- Negotiation is mandatory
- Topics/areas which are subject to mandatory negotiation
- The negotiation itself

NEGOTIATION IS REQUIRED

- Under 26 M.R.S. § 965(1), employers and unions have a mutual obligation to bargain collectively, and are required meet within 10 days after they receive written notice from the other party requesting a meeting for collective bargaining purposes. § 965(1)(B). However, the parties can waive this requirement in a written contract, so it is worth reviewing the prior collective bargaining agreement to see if it contains such a waiver. *Id.* Section 965(1) also contains a general good faith provision that applies to all mediation, fact-finding, and arbitration procedures set forth in the statute. § 965(1)(E).

TOPICS ON WHICH NEGOTIATION IS REQUIRED

- Must negotiate **wages, hours, working conditions** and **contract grievance arbitration**
- Cannot unilaterally implement changes as a general rule
  - However, a party may unilaterally implement its last best offer when negotiations have reached a *bona fide* impasse . . . Once the parties have in good faith exhausted the prospects of reaching an agreement, unilateral change that is reasonably comprehended within the pre-impasse proposals no longer violates the Act. After impasse, however, the duty to bargain is not extinguished. Rather it is temporarily suspended until changed circumstances indicate that the parties are no longer inalterably deadlocked.
  - "A bona fide impasse" results when 'the parties have *in good faith* exhausted the prospects of reaching an agreement

BASIC RULES ON NEGOTIATING CBAs

- Process for resolving disputes in collective bargaining (mediation, fact finding, arbitration, and authority of arbitrators)
  - See 26 M.R.S. § 965(2)-(4).
  - Mediation
  - Fact finding
  - Arbitration

NEGOTIATING THE AGREEMENT

- Ground rules
- Working from your document
- Triage needs, wants and throwaways
- Trust relationship
- Understanding what is driving the other side's positions

GROUND RULES

- These do not need to be complicated and are not onerous, they are to guide the process from the beginning
- Date for each party to submit proposals
- Last date for new issues to be raised
- Identification of spokespersons for all parties
- Frequency and means of meeting
- In writing, signed by all parties

WORK FROM YOUR OWN DOCUMENT

- This is particularly true when negotiating a new contract (true of *all* contracts, not just CBA's)
- Take the time and invest the resources to draft the contract the way you want it, make the other side bargain from your document.
- You'll still need to make concessions, but much of what you drafted won't be challenged

MEET AND TRIAGE

- Carefully assess what you need and want prior to coming to the table
- This requires a commitment of time internally
- Identify needs, wants and throwaways
- Know in advance what you must have and are willing to "die on the hill" for
- Have a principled basis for your positions, both for and against
- Be able to articulate justifiable reasons for the positions that you take, well thought out positions are hard to challenge

UNDERSTAND THE OTHER PARTY'S POSITION—THIS WILL HELP YOU CRAFT ALTERNATIVE SOLUTIONS

- Just as you need to be able to articulate well thought out reasons for your positions, you can ask the other party to explain why they are taking a position that is in opposition to what you may want.
- This may expose a lack of basis for a position and may cause the other party to abandon it, or it may allow you to understand a real need and offer an alternative to meet the need in a way that is acceptable to you

DEVELOP A TRUST RELATIONSHIP

- This is priceless
- Be collegial no matter what, even if challenged or attacked.
- Be an "honest broker," never go back on your word or engage in any underhanded tactic.
- The real deals happen behind the scenes; if you have a trust relationship with your negotiating partner you'll be able to have candid conversations which is where the progress takes place.
- This will carry over into the implementation of the contract

USE KNOWLEDGEABLE LEGAL COUNSEL

- There are myriad legal requirements and obstacles in labor law, this presentation touches only briefly on some and not at all on others.
- Experienced counsel can guide you.
- Counsel should be part of the negotiating process, that is where the agreements are made.
- An after the fact review may either be too late, or may result in a sense of unfairness.
- Pay some now, or more later…

QUESTIONS?

- Peter Marchesi, Esq.
- peter@wheelerlegal.com
- 207.660.9201