

## **ANNOTATED MINUTES**

**Tuesday, July 12, 1994 - 1:30 PM  
Multnomah County Courthouse, Room 602**

### **PLANNING ITEMS**

*Chair Beverly Stein convened the meeting at 1:30 p.m., with Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Vice-Chair Tanya Collier excused.*

**AT THE SUGGESTION OF CHAIR STEIN, BOARD DISCUSSION IN RESPONSE TO FRIENDS OF HOWARD CANYON'S REQUEST FOR A REFUND OF THE \$800.00 APPEAL/TRANSCRIPT FEE. BOB HALL AND JOHN DuBAY RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, A ONE TIME WAIVER OF THE APPEAL FEES FROM \$800.00 TO \$400.00 FOR PLANNING ITEMS C 1-94a (WEST HILLS) AND C 2-94a (HOWARD CANYON) WAS UNANIMOUSLY APPROVED.**

**P-1      C 1-94a      In the Matter of Reporting to the Board the Multnomah County Planning Commission's Recommendation on the West Hills Reconciliation Report, a Quasi-Judicial Plan Amendment to the Multnomah County Comprehensive Framework Plan, Volume I Findings Documents**

**AT THE SUGGESTION OF CHAIR STEIN, COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO SET A DE NOVO HEARING IN C 1-94a FOR 1:30 PM, TUESDAY, JULY 26, 1994. MR. DuBAY RESPONSE TO BOARD QUESTIONS. ARNOLD ROCHLIN AND DONNA MATRAZZO TESTIMONY IN OPPOSITION TO PROPOSED HEARING DATE; SCOPE OF REVIEW; CONCERNS REGARDING AVAILABILITY OF PLANNING COMMISSION TRANSCRIPT; AND RESPONSE TO BOARD QUESTIONS. MR. HALL AND MR. DuBAY RESPONSE TO BOARD QUESTIONS AND DISCUSSION. BOARD COMMENTS. DE NOVO APPEAL HEARING UNANIMOUSLY SCHEDULED FOR 1:30 PM, TUESDAY, JULY 26, 1994. CHAIR STEIN ADVISED HER OFFICE WILL MONITOR PROGRESS OF THE TRANSCRIPTION AND EVERY EFFORT WILL BE MADE TO HAVE COMPLETED TRANSCRIPT AVAILABLE AT THE PLANNING OFFICE BY 4:30 PM, FRIDAY, JULY 15, 1994. AT THE SUGGESTION OF**

**CHAIR STEIN, COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE APPEAL HEARING FORMAT AS FOLLOWS: APPELLANT ONE - 30 MINUTES TO PRESENT CASE LESS ANY TIME FOR REBUTTAL; OPPONENTS TO APPELLANT ONE - 30 MINUTES; APPELLANT TWO - 30 MINUTES TO PRESENT CASE LESS ANY TIME FOR REBUTTAL; OPPONENTS TO APPELLANT TWO - 30 MINUTES; OTHERS - 2 MINUTES PER PERSON; REBUTTAL BY APPELLANT ONE AND APPELLANT TWO WITH TIME SAVED FROM RESPECTIVE 30 MINUTES. IN RESPONSE TO A QUESTION OF COMMISSIONER HANSEN, CHAIR STEIN ADVISED THE HEARING WOULD START WITH A STAFF REPORT OF NO MORE THAN 15 MINUTES. HEARING PROCEDURE UNANIMOUSLY APPROVED. IN RESPONSE TO A QUESTION OF MR. DuBAY, CHAIR STEIN REQUESTED THAT THE PARTIES ORGANIZE THEIR TIME AND COMMUNICATE SAME TO CHAIR PRIOR TO THE HEARING.**

**P-2**

**C 2-94a**

***In the Matter of Reporting to the Board the Multnomah County Planning Commission's Recommendation on the Howard Canyon Reconciliation Report, a Quasi-Judicial Plan Amendment to the Multnomah County Comprehensive Framework Plan, Volume I Findings Documents***

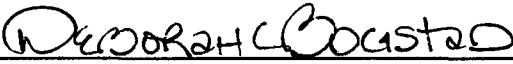
**AT THE SUGGESTION OF CHAIR STEIN, COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO SET A DE NOVO HEARING IN C 2-94a FOR 1:30 PM, TUESDAY, JULY 26, 1994. AT THE REQUEST OF COMMISSIONER HANSEN, BOARD CONSENSUS TO AMEND THE MOTION TO SET THE HEARING FOR 3:30 PM. DE NOVO APPEAL HEARING UNANIMOUSLY SCHEDULED FOR 3:30 PM, TUESDAY, JULY 26, 1994. AT THE SUGGESTION OF CHAIR STEIN, COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE APPEAL HEARING FORMAT AS FOLLOWS: APPELLANT - 30 MINUTES TO PRESENT CASE LESS ANY TIME FOR REBUTTAL; OPPONENTS - 30 MINUTES AND WOULD NEED TO SELF-ORGANIZE; OTHERS - 2 MINUTES PER PERSON; REBUTTAL BY APPELLANT WITH ANY TIME SAVED FROM 30 MINUTES. HEARING PROCEDURE UNANIMOUSLY APPROVED. CHAIR STEIN ADVISED THE HEARING WOULD START WITH A STAFF REPORT OF NO MORE**

**THAN 15 MINUTES.**

**IN RESPONSE TO A QUESTION OF COMMISSIONER HANSEN, CHAIR STEIN ADVISED THAT FOLLOWING THE JULY 26 HEARINGS, ADDITIONAL HEARINGS WILL BE SCHEDULED AUGUST 9, 1994 FOR BOARD DELIBERATIONS AND DECISIONS REGARDING C 1-94a AND C 2-94a.**

*There being no further business, the meeting was adjourned at 1:55 p.m.*

**OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON**

  
**Deborah L. Bogstad**

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*Thursday, July 14, 1994 - 9:30 AM  
Multnomah County Courthouse, Room 602*

**REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:29 a.m., with Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Vice-Chair Tanya Collier excused.*

**CONSENT CALENDAR**

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-14) WAS UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

**C-1      *In the Matter of the Appointment of Mike Peterson to a Three Year Term on the HOUSING AND COMMUNITY DEVELOPMENT COMMISSION***

**DEPARTMENT OF HEALTH**

**C-2      *Ratification of Intergovernmental Agreement Contract 200405 Between Multnomah County and Clackamas County, Providing Refugee Health Screening Assessment Services, for the Period July 1, 1994 through June 30, 1995***

**C-3      *Ratification of Amendment No. 7 to Intergovernmental Agreement Contract***

*200724 Between Multnomah County and the Oregon Health Division, Reflecting a Grant Increase for Various Programs, for the Period July 1, 1993 through June 30, 1994*

**COMMUNITY AND FAMILY SERVICES DIVISION**

- C-4**      *Ratification of Intergovernmental Agreement Contract 101575 Between Multnomah County and Portland Public Schools, Purchasing Educational Assistance Services for Children with Mental Health Problems through the Partners Project, and Growth Promotion and Prevention Services for Children and Youth, (Infant/Toddler Care for Children of Teen Parents, Health Screenings, Family Support, and Indian Education Project Services for At-Risk American Indian Students) for the Period July 1, 1994 through June 30, 1995*
- C-5**      *Ratification of Intergovernmental Agreement Contract 102785 Between Multnomah County and the City of Fairview, Renewing Cooperative Participation as an Urban County for the Community Development Block Grant Program and HOME Investment Partnership Program, for the Period July 1, 1995 through June 30, 1998*
- C-6**      *Ratification of Intergovernmental Agreement Contract 102795 Between Multnomah County and the City of Lake Oswego, Renewing Cooperative Participation as an Urban County for the Community Development Block Grant Program and HOME Investment Partnership Program, for the Period July 1, 1995 through June 30, 1998*
- C-7**      *Ratification of Intergovernmental Agreement Contract 102805 Between Multnomah County and the City of Maywood Park, Renewing Cooperative Participation as an Urban County for the Community Development Block Grant Program and HOME Investment Partnership Program, for the Period July 1, 1995 through June 30, 1998*
- C-8**      *Ratification of Intergovernmental Agreement Contract 102815 Between Multnomah County and the City of Troutdale, Renewing Cooperative Participation as an Urban County for the Community Development Block Grant Program and HOME Investment Partnership Program, for the Period July 1, 1995 through June 30, 1998*
- C-9**      *Ratification of Intergovernmental Agreement Contract 102825 Between Multnomah County and the City of Wood Village, Renewing Cooperative Participation as an Urban County for the Community Development Block Grant Program and HOME Investment Partnership Program, for the Period July 1, 1995 through June 30, 1998*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-10**      *ORDER in the Matter of the Execution of Deed D941013 Upon Complete*

*Performance of a Contract to Lisa M. Howlett*

**ORDER 94-130.**

- C-11 *ORDER in the Matter of the Execution of Deed D941019 Upon Complete Performance of a Contract to Clemmie Mayes*

**ORDER 94-131.**

- C-12 *ORDER in the Matter of the Execution of Deed D941021 Upon Complete Performance of a Contract to Virginia Olsen*

**ORDER 94-132.**

- C-13 *ORDER in the Matter of Contract 15763 for the Sale of Certain Real Property to William E. Ryan and Kathleen J. Ryan, Husband and Wife*

**ORDER 94-133.**

- C-14 *ORDER in the Matter of Contract 15766 for the Sale of Certain Real Property to Barbara J. Cole*

**ORDER 94-134.**

**REGULAR AGENDA**

**COMMUNITY AND FAMILY SERVICES DIVISION**

- R-1 *Ratification of Intergovernmental Agreement Contract 102595 Between the City of Portland and Multnomah County, Providing Program Administration of the City of Portland Water/Sewer Crisis Assistance Program, for the Period Upon Execution through June 30, 1995*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-1. BILL THOMAS EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.**

- R-2 *Request for Approval of a Notice of Intent to Apply for a \$150,000 Fair Housing Initiatives Program Grant from the U.S. Department of Housing and Urban Development, for County-Wide Fair Housing Education and Outreach Activities*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-2. CECILE PITTS EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.**

- R-3      *Request for Approval of a Notice of Intent to Apply for a \$200,000 Fair Housing Month Project Grant from the U.S. Department of Housing and Urban Development, for County-Wide Fair Housing Education and Outreach Activities*

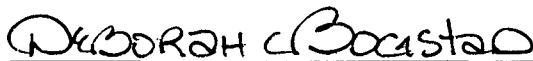
**COMMISSIONER KELLEY MOVED AND  
COMMISSIONER HANSEN SECONDED, APPROVAL OF  
R-3. CECILE PITTS EXPLANATION. NOTICE OF  
INTENT UNANIMOUSLY APPROVED.**

**PUBLIC COMMENT**

- R-4      *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

*There being no further business, the regular meeting was adjourned at 9:31 a.m.*

**OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON**

  
**Deborah L. Bogstad**

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**Thursday, July 14, 1994 - 9:45 AM  
(or Immediately Following Regular Meeting)  
Multnomah County Courthouse, Room 602**

**EXECUTIVE SESSION**

- E-1      *The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(d), for Deliberations with Labor Relations Staff Regarding Labor Negotiations. (Continued from July 7, 1994)*

**EXECUTIVE SESSION HELD.**



# MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 S.W. FIFTH AVENUE  
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR • 248-3308  
DAN SALTZMAN • DISTRICT 1 • 248-5220  
GARY HANSEN • DISTRICT 2 • 248-5219  
TANYA COLLIER • DISTRICT 3 • 248-5217  
SHARRON KELLEY • DISTRICT 4 • 248-5213  
CLERK'S OFFICE • 248-3277 • 248-5222

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

#### FOR THE WEEK OF

JULY 11, 1994 - JULY 15, 1994

*Tuesday, July 12, 1994 - 1:30 PM - Planning Items . . . . . Page 2*

*Thursday, July 14, 1994 - 9:30 AM - Regular Meeting . . . . . Page 2*

*Thursday, July 14, 1994 - 9:45 AM - Executive Session . . . . . Page 4*

*Thursday Meetings of the Multnomah County Board of Commissioners are  
taped and can be seen by Paragon Cable subscribers at the following times:*

*Thursday, 6:00 PM, Channel 30  
Friday, 10:00 PM, Channel 30  
Saturday, 12:30 PM, Channel 30  
Sunday, 1:00 PM, Channel 30*

**INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD  
CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-  
5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.**

Tuesday, July 12, 1994 - 1:30 PM

Multnomah County Courthouse, Room 602

**PLANNING ITEMS**

- P-1      C 1-94a      *In the Matter of Reporting to the Board the Multnomah County Planning Commission's Recommendation on the West Hills Reconciliation Report, a Quasi-Judicial Plan Amendment to the Multnomah County Comprehensive Framework Plan, Volume I Findings Documents*
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Thursday, July 14, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

**REGULAR MEETING**

**CONSENT CALENDAR**

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**PUBLIC COMMENT**

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*Thursday, July 14, 1994 - 9:45 AM  
(or Immediately Following Regular Meeting)  
Multnomah County Courthouse, Room 602*

**EXECUTIVE SESSION**

- E-1      *The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660 (1)(d), for Deliberations with Labor Relations Staff Regarding Labor Negotiations. (Continued from July 7, 1994)*

TANYA COLLIER  
Multnomah County Commissioner  
District 3



1120 SW Fifth St, Suite 1500  
Portland, OR 97204  
(503) 248-5217

## M E M O R A N D U M

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TO: Board Clerks  
Chair, Beverly Stein  
Commissioner Gary Hansen  
Commissioner Sharron Kelley  
Commissioner Dan Saltzman

FROM: Commissioner Tanya Collier

DATE: April 14, 1994

SUBJECT: Summer Vacation

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This memo is to inform you that I will be out of the office from July 11, 1994 through July 25, 1994. Therefore I will not be attending the July 14 and 21 Board Meetings.

TC:sf

SEAL OF  
COUNTY COMMISSIONER  
1994 APR 14 PM 1:59  
MULTNOMAH COUNTY  
OREGON

MEETING DATE: July 14, 1994

AGENDA NO: E-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Executive Session Pursuant to ORS 192.660(1)(d)

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: Thursday, July 14, 1994

Amount of Time Needed: 1 Hour

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Kenneth Upton TELEPHONE #: 248-5135, ext. 2168  
BLDG/ROOM #: 106/1400

PERSON(S) MAKING PRESENTATION: Kenneth Upton, Darrell Murray

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☒ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(d), for Deliberations with Labor Relations Staff Regarding Labor Negotiations. Continued from July 7, 1994.

MULTNOMAH COUNTY  
OREGON  
1994 JUL - 7 PM 4:11  
CLERK OF  
COUNTY COMMISSIONERS

SIGNATURES REQUIRED:

ELECTED OFFICIAL: /s/ Beverly Stein

OR

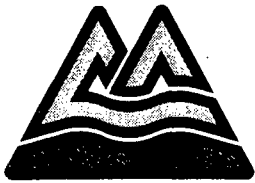
DEPARTMENT MANAGER:

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

0516C/63

6/93



# MULTNOMAH COUNTY OREGON

BEVERLY STEIN  
COUNTY CHAIR

EMPLOYEE SERVICES  
FINANCE  
LABOR RELATIONS  
PLANNING & BUDGET  
RISK MANAGEMENT

(503) 248-5015  
(503) 248-3312  
(503) 248-5135  
(503) 248-3883  
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING  
1120 S.W. FIFTH, 14TH FLOOR  
P.O. BOX 14700  
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS  
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR  
PORTLAND, OREGON 97202

## MEMORANDUM

TO: Chair Bev Stein  
Commissioner Tanya Collier  
Commissioner Gary Hansen  
Commissioner Sharron Kelley  
Commissioner Dan Saltzman

FROM: Darrell Murray, Deputy Labor Relations Manager *D*

DATE: July 7, 1994

SUBJECT: Next Executive Session/After July 14 Board meeting

This is to confirm that at today's executive session the Board deferred until a July 14 executive session the question of authority to commit the county to financial expenditures in the current ONA negotiations. At the 7/14 session I will supply the Association's reactions to the survey data, how they analyze it, and what they believe it suggests as at least a range of reasonable outcomes. The Board will then decide both a procedural and substantive question concerning authority to commit the employer to tentative agreements in these interest-based negotiations. Any change in status quo has significant implications. Here is a range of options:

Option # 1 - Agent's Discretion: In this approach, this office would be authorized to express agreement or disagreement to options at its discretion during the consensus testing process (i.e. the final step of the process on each issue). If the committee reaches consensus on an option, this would be a tentative agreement. The Board could then repudiate the agreement reached, without Board guidance, by this office and the rest of the employer and union teams.

Option # 2 - Existing Approach: For the last twenty years, in advance of making any tentative agreements this office has obtained from the Board, parameters within which we have bargained on affected matters. Board direction has included both overall amounts of economic expenditures as well any major structural components of economic packages. Typically we have obtained an initial grant of authority as we enter the dialogue

and, as is often the case, come back to the board with union demands and their justification if they exceed the initial grant of authority. The Board then weighs the information and decides whether to alter the grant of authority.

Option # 3 - Discretion Within Broad Parameters: The Board could also delegate authority to this office to commit sums up to a pre-determined ceiling, leaving the allocation questions and non-economic decisions to our discretion. If the aggregate amount were not enough for settlement, we would come back and ask for further guidance. Variations on this option are also possible but are based on the same concept of operating within broad boundaries determined prior to making commitments.

How options 1 and 3 would work in case of continued disagreement is uncertain in light of statutory procedures the employer would face as a result of disagreement. As a practical matter, the Board would likely be forced to provide guidance on whether to continue or break the deadlock.

I look forward to discussing this with you further on July 14.

For the interim, attached are several other items of potential interest.

(1) First are notes of the May 17 bargaining session in which the parties developed the wage issue using the interest-based technique.

(2) If I understood the question correctly, Commissioner Collier asked whether the interest-based model we are using actually requires testing for consensus on options at the joint committee level. Enclosed is a sheet provided by State Conciliator Nancy Brown during interest-based bargaining training this spring. It shows that the interest based bargaining procedure we have followed does require consensus testing on each issue by the joint teams. If consensus is reached, it is supposed to be a tentative agreement. That is why knowledge of the constraints, if any, within which the Board wishes us to operate is essential.

(3) Commissioner Collier also inquired whether the parties are in accord on who the parties should compare for compensation purposes. Enclosed is a segment of the 1991 factfinding recommendation in which the Fact Finder (Mr. Levak) observes that the parties agreed that the labor market for purposes of comparisons consisted of "hospital employers within the 4-county area, with possibly some portions of Yamhill and/or Marion counties." I am comfortable that this remains pretty much true today. Where the room for disagreement exists is in the weight to give to one or more of the comparables. We did not agree on that in 1991.

Please call if you wish to discuss this matter.

## A Problem Solving Process

1. Define and Frame the Issue
2. Exchange Data
  - 2.1 Available Data
  - 2.2 What Other Data Readily Obtainable is Needed And How Will It Be Collected
  - 2.3 List the Interests - The Concerns & Needs That Must Be Addressed When Solving This Problem
3. Brainstorm Options
  - 3.1 Reaffirm Each Time The Rules For Brainstorming
4. Evaluate Options Based Upon Criteria: Interests of the Parties
5. Select Solution Based Upon Mutual Gain
  - 5.1 Test For Consensus
    - 5.1.1 What Interest is Not Met?
    - 5.1.2 How Can the Solution Be Modified to Meet This Interest and the Other Interests As Well?
6. Closure
  - 6.1 "That's The Deal" - Write It Up
  - 6.2 Contingent Agreement
  - 6.3 Set Aside But Understanding of Where the Parties Disagree

- 
- 1) Eliminate "banana split" options
  - 2) Group options by class or category
  - 3) Come up with provisional agreement for each cluster
  - 4) Measure against stated interests
  - 5)

June 1. Alexander, Harrold, Sheridan and Lee said they would attend on June 9, Baker and Kaiser on May 26, and Morrow on June 1. The training sessions are held at the Mead Building.

### Process

The group agreed to spend the day on the priority issues that they had identified at the end of last meeting, rather than on other items that they had previously scheduled for that day.

### 1.01 to 1.04, Wages, General

The group decided to combine the issues listed under 1.0 General Wages Issues and go through the process for them all at once. They agreed that issues listed under Wages, Special Circumstances, would be discussed separately, although at the last meeting some of them were identified as related to the general wage issues.

The problem definition: A compensation system that meets personal and organizational interests.

The following data needs were identified (name of person responsible is shown in parentheses):

1. Cost of living increase data, and projections of future cost of living increases. (Ullrick).
2. Wage survey data. (Ullrick).
3. An analysis of the effect of the PERS initiative on the wage package. (Alexander).
4. Labor supply data. (Ullrick).
5. Geographic recruitment area data. (Ullrick from Ayers).
6. County revenue and budget data. (Murray).
7. A computer run showing number of nurses at each pay step. (Provided by Ullrick April 11).
8. The monthly FTE report. This will be used to measure the number of on-call hours used relative to hours worked by regular employees. (Kahn).
9. The proposed change to the Personnel Rules on the definition of on-call and temporary employees. (Ullrick).
10. A list of budget requests which are currently unfunded. (Murray).
11. Survey of on-call wages. (Alexander and Harrold).
12. Population growth data for the metro area. (Murray and Ullrick).
13. Economic growth data for the metro area. (Murray and Ullrick).



14. Property tax rate data for the metro area. (Murray and Ullrick).
15. Poverty data for the metro area. (Murray and Ullrick).
16. Output measures for the last three years, including client population data, etc. (Blakeslee, Sinclair, et al).

There was some discussion about how CareOregon's funding would affect wages. CareOregon's services, according to Kahn, are funded out of capitation payments. She said that there would be no direct relationship to wages now, although in the future client populations may increase, requiring more staff.

There was also some discussion about the relationship of monies allocated for on-call employees and the effect on wages for regular employees. Blosser noted that some on-call employees are used for long periods, and she wondered how that would affect money available for wages for members of the bargaining unit. Alexander added that in other contracts ONA has language regarding the amount of time a position can be filled by an on-call employee. He noted that since on-call employees typically do not get benefits, it would be cheaper to fill positions using on-call employees than regular employees in some instances. There was also discussion about how to measure the amount of on-call labor used without doing detailed surveys on each work unit. There is a monthly report which could be used to measure the ratio of FTEs used to the FTEs of regular employees. The problem with that, however, is that if senior employees who have a lot of paid leave available, are away and on-call back-up is being used at the time the measurement is made, the on-call ratio would be artificially high. Someone pointed out that the budget would provide information on budgeted monies per unit for temporary employees, although the data is not segregated by classification, and temporary replacements for Local 88 employees would also be included.

McDonald pointed out that even when positions are filled by on-call employees for long periods, it is not necessarily detrimental. He said that he has had Nurse Practitioners who work .2 FTE for years. Nurses want to work less than half time for a variety of reasons. Some are retirees, and others are students or mothers with young families. He said that he is able to use one FTE to provide several types of services by segmenting the FTE among part-timers. He said that if he were forced to replace the segments with one full-time employee he would not be able to offer the range of services that are provided currently. Alexander replied that he is not necessarily interested in replacing all on-call employees with regular employees, but he is interested in defining what the pool of available money is for the bargaining unit. He added, however, that as a bargaining unit, the Association needs to monitor the use of on-calls over a long period of time.

The Association also wanted to have data available comparing wages for different organizations using on-call employees, particularly for weekend and evening coverage. It was noted, however, that the County already has an on-call pool.

The parties identified the following interests:

1. Keeping up with inflation.
2. Perceived fairness, both internal and external.

3. Staff retention.
4. Enhanced ability to recruit quality staff.
5. Maintaining competitiveness with the market.
6. Rewarding longevity.
7. Making up for any potential loss in wages (PERS initiative).
8. Maintaining flexibility.
9. Rewarding positive RESULTS, providing incentives.
10. Maintaining wage structures which are easy to administer consistently.
11. Maintaining a consistent County-wide general wage policy. (For example, the amount of weight given to market factors, cost of living increases, etc.).
12. Monetary acknowledgement of value.
13. Arriving at a wage package which is affordable, and based on reasonably balanced priorities.
14. Retaining and recruiting quality staff.
15. Providing monetary rewards for educational advancement.
16. Rewarding effort.
17. Rewarding team efforts.
18. Maintaining ability to adapt to changing circumstances.
19. Having the entry step in the LPN range be higher than the top step in the Health Assistant range.

The group agreed to brainstorm "conceptual" options next the parties broke for lunch.

The parties identified the following options:

1. A 2.3% wage increase.
2. A 3.2% wage increase.
3. The following package for mid-level providers (Nurse Practitioners and Physician Assistants).

- A. That step 1 be 3% to 4% above step 9 of the CHN scale.
  - B. Set step 1 at \$21.64 an hour (currently \$18.30); Step 9 at \$27.43 (currently \$23.63).
  - 4. A three-step range for mid-level providers, with the following features:
    - A. As above in Option 3, but step 1 at \$21.64 (current step 6).
    - B. Step 2 at the mid point.
    - C. Step 3 at \$27.43 (to start at year 3).
  - 5. Restructure the Community Health Nurse classification as follows: create four classifications, CHN 1 to CHN 4, with movement among them according to tenure and increase education or certification.
  - 6. 3% across the board July 1, 1994; 6% across the board January 1, 1995; a wage reopener January 2, 1995.
  - 7. General increase: A 2% across the board increase July 1, 1994; a CPI increase of 2% to 3.5% on July 1, 1995 and July 1, 1996, respectively. The CPI index to be used would be the national March to March CPI-W. The July 1, 1995 increase would be based on the increase in the CPI-W from March 1, 1994 to March 1, 1995. The wage increase for July 1, 1996 would be based on the increase in the CPI-W from March 1, 1995 to March 1, 1996.
- Nurse Practitioners: drop the first two steps on the scale on July 1, 1994; add a new step to the top July 1, 1995; add another new step at the top July 1, 1996.
- Community Health Nurses: add a new top step on July 1, 1995.
- A "step" would equal the distance between the last two steps in the current scales.
- 8. 0% increase July 1, 1994 and a 4.6% increase January 1, 1995. All special increases as in Option 7 above.
  - 9. Drop the first three steps of the LPN range, and add three steps to the top. The size of these steps would be the average size of the steps in the current range.
  - 10. 3% to 4% differential among the nurse classification ranges. For example, the entry step of the CHN range would be 3% to 4% above the top step of the LPN range, and the range for mid-level providers would begin 3% to 4% above the top step of the CHN range.
  - 11. As Option 7 above except:

CHNs: All CHNs would receive two step increases instead of one during the second year of the contract. (This means step increases at six month intervals that year, rather than one annual increase.)

Mid-level providers: Two step increases in both the second and third years of the contract. (They would receive a step increase every six months for two years, rather than two annual increases.)

12. 2.3% on July 1, 1994.

Mid-level providers and Community Health Nurses to receive 7% on January 1, 1995.

Same CPI clauses as in Option 7 for the second and third years.

13. A 3.5% across the board increase July 1, 1994; a 3.5% across the board increase July 1, 1995.

CPI clauses the same as Option 7 for the second and third years.

14. The same as in Option 13 above, but drop the first two steps of the CHN range on July 1, 1994.

15. Same as Option 14 above, but with two additional steps at the top of the range.

16. A five year contract with mechanisms for wage increases.

17. A five year contract:

2.3% July 1, 1994; 3.5% July 1, 1995; 4% July 1, 1996.

An increase of 3% to 4.5% based on the CPI, July 1, 1997; an increase of 3.5% to 5% based on the CPI, July 1, 1998.

The same as Option 7 on Nurse Practitioner and CHN steps.

18. ONA will participate in CQI planning that may include an incentive program.

19. 2% on July 1, 1994; 2% on January 1, 1995;

3% on July 1, 1995; 3% on January 1, 1996;

4% on July 1, 1996; 4% on January 1, 1997.

20. 4% July 1, 1994; 4% January 1, 1995;

3% July 1, 1995; 3% January 1, 1996;

2% July 1, 1996; 2% January 1, 1997.

21. Same as in Option 19, but with a reopener January 2, 1997 for wages effective July 1, 1997 through June 30, 1999.
22. Add to any option: the steps in the ranges will be 2% apart between Steps 1 and 2 and 6.2% apart between Steps 8 and 9, with gradual increases in the distances between the intervening steps.
23. Make the top step of any step system a merit step based on performance requiring requalification each year.
24. Add to any option: instead of having nine steps in each range, have a tenth step available to Nurses after ten years of service with the County, and an eleventh step available to Nurses after 15 years of service with the County. The tenth step would be five percent above Step 9, and the eleventh step would be five percent above Step 10.
25. General increase: Option 20.

NPs: Effective July 1, 1994, drop the first four steps in the Nurse Practitioner scale, leaving five of the original steps. Have a four percent spread between the remaining steps, and add a sixth step which would be four percent above the fifth step.

LPNs: Option 9.

CHNs: Drop the first two steps of the range.

26. Establish the minimum and maximum of all ranges based on the average plus three percent of wages paid at Kaiser, other as yet unspecified local hospitals, and other comparators. Reserve the right to be "recreative" once the data comes in.

The group decided to continue discussion on this issue on July 11, when the wage survey data should be available. On that date they would post the options sheets again and review them.

#### 1.11 Consistent Criteria for Pay Step Placement at Entry

The problem statement: inconsistency in criteria for pay step placement at hire.

Correction to bargaining notes of May 12: The list of 18 employees compiled by ONA who were allegedly not given credit for a BSN when they entered County service were not all in Corrections. They work throughout the Health Department.

The list of 18 is a selection from the list given to ONA with assorted other data on April 11, 1994 in response to their request for information. This original list is entitled "History of Hire Rates for CHNs: Current Employees Who Were Hired in 1980 or Later." The criteria for selection was being hired at Step 1 but having a BSN. There was no attempt to analyze whether the entry step for other Nurses was

BEFORE THOMAS F. LEVAK, FACTFINDER

RECEIVED

DEC 04 1991

LABOR RELATIONS

In the Matter of the  
Factfinding Between:

MULTNOMAH COUNTY, OREGON

The County or the Employer

and

OREGON NURSES ASSOCIATION

The Association

FACTFINDER'S REPORT  
AND RECOMMENDATION

This matter came for hearing on September 19 & 20, 1991, at Portland, Oregon. The Association was represented by James R. Bailey and the County was represented by Darrell Murray. Post-hearing briefs were received on November 15, 1991.

APPEARANCES:

ONA:

Tanya Collier, ONA Labor Relations Representative  
Henry J. Kaplan, Attorney at Law  
Bob Chill, Corrections Counselor  
Jim McDonald, Exempt NP  
Genny Oplansky, CHN  
Cathie Blosser, NP  
Nan Foiles, RN  
Hilary Coltman, CHN

COUNTY:

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Dennis Phister, Legacy Health System Human Resources  
Director  
Jerry Jones, Mercer Company Human Resource Benefit  
Specialist  
Pat Brun, County Accounts Payable Supervisor  
Dave Warren, County Budget Director  
Merrie Ziady, County Health and Benefit Manager  
Sonny Condor, Fiscal and Economic Consultant  
Jerry Nemer, Oregon Hospital Ass'n Director of  
Health Information Systems  
Fred Neal, County Director of Inter-Government  
Relations  
Kathy Page, County Corrections Health Supervisor  
Jan Sinclair, County Health Division Director of

problem exists. In the instant case, however, the factor is entitled to great weight.

The persuasive evidence clearly demonstrated that a serious recruitment/retention problem exists, and most significantly, that the problem directly relates to the County's failure to maintain a comparable wage. Testimony and documentary evidence submitted by James McDonald, an exempt supervisor who is in charge of recruiting the County's NPs, is illustrative. As he noted, the County rarely has more than 1 applicant for any advertised position, and vacancies often go unfilled for months. He noted that Kaiser, the County's direct competitor for NPs, provides better benefits than does the County and that the County's January, 1993 proposed wage would be the same as Kaiser's January, 1991 wage. Clearly, the recruitment/retention situation is very serious and simply cannot be ignored. The turnover materials relative to Corrections Health provided to the Factfinder after the hearing also support the Association's position.

The real "problem" with which the County is faced is that nurses salaries, so long inadequate, have recently begun to accelerate at a rate outstripping almost all other jobs. The question of whether that acceleration is too fast or has gone far enough at the current pace is not one for neutrals to decide. At one time not too many decades ago most doctors earned a poor wage. In more recent times truck drivers and loggers earned more than teachers, nurses or policemen, but that has all changed. Whether one group is more entitled than another is not for a neutral to determine. The task of the neutral is simply to apply the statute to the employee group's own labor market.

The criterion of comparability also strongly supports the Association. Both sides agree that the applicable labor market consists of hospital employers within the 4-county area, with possibly some portions of Yamhill and/or Marion Counties. Under the existing wage schedule, the County is at the bottom of all comparators at the 6th step and next to the bottom at the top step. A first year freeze would drop the County even farther behind and the increases it has proposed would exacerbate the situation over the life of the Agreement. Wage increases currently being implemented by comparators are at or above current increases in the CPI.

On the other side of the comparability coin, the Factfinder cannot find that the situation has slipped so badly for all nurses that a general "catch-up" increase is in order. After all, as Arbitrator Axon has correctly pointed out so often, someone has to be last; there is no requirement or principle which demands that any employer be forever retained at its same ranking among comparators, nor is there any requirement or principle which demands that any employer be paid the average of its comparators. In the instant case, the comparability criterion will be basically



# MULTNOMAH COUNTY OREGON

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## CONFIDENTIAL MEMORANDUM

TO: Board Of Commissioners

FROM: Darrell Murray, Deputy Labor Relations Manager

DATE: July 12, 1994

SUBJECT: BATNA's and Tripwires/Background For Executive Session

In light of the Executive Session Thursday, I spent a few minutes over the weekend looking for authoritative material that could help describe the function of explicit instruction (i.e. authority) given by the Board to its negotiators in contract negotiations. Enclosed are a few excerpts from "Getting To Yes" by Fisher and Ury, the persons credited with first articulating the interest-based bargaining process. Here is a short summary of key points, express and implied:

1. The interest-based bargaining process is still a negotiations process.
2. A party cannot afford to lose sight of its own interests in the terms of settlement.
3. To negotiate effectively, a party must be prepared to pursue its BATNA (best alternative to a negotiated settlement) if the terms offered by the other party are inadequate. Adequacy of terms is judged by the party receiving the offer.
4. A "bottom line" is a position which is unalterable. "Bottom lines" should be avoided because they preclude considering new information that would support different terms.
5. Notwithstanding the need to avoid inflexible bottom line positions, a party should pick a set of potential settlement terms which it views as superior to pursuing its BATNA (i.e. that it thinks it could live with). This set of terms then serves as (what Fisher and Ury call) a "trip wire." If the terms on which



the negotiator thinks a settlement is possible go beyond the trip wire, further consultation occurs with his or her principal.

6. A negotiator who bargains without authority when the other party's negotiator has such authority may be seen as engaging in a "dirty" tactic.

What I seek from the Board is "trip wire" authority. The included terms would, in my judgment, be better than pursuing our BATNA. The authority initially granted may or may not be adequate to obtain a settlement using the interest-based method. If not, the management team would ask the Board whether it wishes to extend further authority in view of the data, interests, and principles discussed jointly by the two teams. But the initial grant of authority will remove any risk that we will be perceived as using less than even-handed tactics.

## 6 What If They Are More Powerful?

(Develop Your BATNA —  
Best Alternative to a Negotiated Agreement)

Of what use is talking about interests, options, and standards if the other side has a stronger bargaining position? What do you do if the other side is richer or better connected, or if they have a larger staff or more powerful weapons?

No method can guarantee success if all the leverage lies on the other side. No book on gardening can teach you to grow lilies in a desert or cactus in a swamp. If you enter an antique store to buy a sterling silver George IV tea set worth thousands of dollars and all you have is one hundred-dollar bill, you should not expect skillful negotiation to overcome the difference. In any negotiation there exist realities that are hard to change. In response to power, the most any method of negotiation can do is to meet two objectives: *first*, to protect you against making an agreement you should reject and *second*, to help you make the most of the assets you do have so that any agreement you reach will satisfy your interests as well as possible. Let's take each objective in turn.

### **Protecting yourself**

When you are trying to catch an airplane your goal may seem tremendously important; looking back on it, you see you could

have caught the next plane. Negotiation will often present you with a similar situation. You will worry, for instance, about failing to reach agreement on an important business deal in which you have invested a great deal of yourself. Under these conditions, a major danger is that you will be too accommodating to the views of the other side — too quick to go along. The siren song of "Let's all agree and put an end to this" becomes persuasive. You may end up with a deal you should have rejected.

**The costs of using a bottom line.** Negotiators commonly try to protect themselves against such an outcome by establishing in advance the worst acceptable outcome — their "bottom line." If you are buying, a bottom line is the highest price you would pay. If you are selling, a bottom line is the lowest amount you would accept. You and your spouse might, for example, ask \$100,000 for your house and agree between yourselves to accept no offer below \$80,000.

Having a bottom line makes it easier to resist pressure and temptations of the moment. In the house example, it might be impossible for a buyer to pay more than \$72,000; everyone involved may know that you bought the house last year for only \$50,000. In this situation, where you have the power to produce agreement and the buyer does not, the brokers and anyone else in the room may turn to you. Your predetermined bottom line may save you from making a decision you would later regret.

If there is more than one person on your side, jointly adopting a bottom line helps ensure that no one will indicate to the other side that you might settle for less. It limits the authority of a lawyer, broker, or other agent. "Get the best price you can, but you are not authorized to sell for less than \$80,000," you might say. If your side is a loose coalition of newspaper unions negotiating with an association of publishers, agreement on a bottom line reduces the risk that one union will be split off by offers from the other side.

But the protection afforded by adopting a bottom line involves high costs. It limits your ability to benefit from what you learn during negotiation. By definition, a bottom line is a position that is not to be changed. To that extent you have shut your ears, deciding in advance that nothing the other party says could cause you to raise or lower that bottom line.

A bottom line also inhibits imagination. It reduces the incentive to invent a tailor-made solution which would reconcile differing interests in a way more advantageous for both you and them. Almost every negotiation involves more than one variable. Rather than simply selling your place for \$80,000, you might serve your interests better by settling for \$67,500 with a first refusal on resale, a delayed closing, the right to use the barn for storage for two years, and an option to buy back two acres of the pasture. If you insist on a bottom line, you are not likely to explore an imaginative solution like this. A bottom line — by its very nature rigid — is almost certain to be *too* rigid.

Moreover, a bottom line is likely to be set too high. Suppose you are sitting around the breakfast table with your family trying to decide the lowest price you should accept for your house. One family member suggests \$50,000. Another replies, "We should get at least \$70,000." A third chimes in, "\$70,000 for *our* house? That would be a steal. It's worth at least \$100,000." Who sitting at the table will object, knowing they will benefit from a higher price? Once decided upon, such a bottom line may be hard to change and may prevent your selling the house when you should. Under other circumstances a bottom line may be too low; rather than selling at such a figure, you would have been better off renting.

In short, while adopting a bottom line may protect you from accepting a very bad agreement, it may keep you both from inventing and from agreeing to a solution it would be wise to accept. An arbitrarily selected figure is no measure of what you should accept.

Is there an alternative to the bottom line? Is there a measure for agreements that will protect you against both accepting an agreement you should reject and rejecting an agreement you should accept? There is.

**Know your BATNA.** When a family is deciding on the minimum price for their house, the right question for them to ask is not what they "ought" to be able to get, but what they will do if by a certain time they have not sold the house. Will they keep it on the market indefinitely? Will they rent it, tear it down, turn the land into a parking lot, let someone else live in it rent-free on condition they paint it, or what? Which of those options is most attractive, all things considered? And how does that option compare with the best offer received for the house? It may be that one of those alternatives is more attractive than selling the house for \$80,000. On the other hand, selling the house for as little as \$62,000 may be better than holding on to it indefinitely. It is most unlikely that any arbitrarily selected bottom line truly reflects the family's interests.

The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is that alternative? What is your BATNA — your Best Alternative To a Negotiated Agreement? *That* is the standard against which any proposed agreement should be measured. That is the only standard which can protect you both from accepting terms that are too unfavorable and from rejecting terms it would be in your interest to accept.

Your BATNA not only is a better measure but also has the advantage of being flexible enough to permit the exploration of imaginative solutions. Instead of ruling out any solution which does not meet your bottom line, you can compare a proposal with your BATNA to see whether it better satisfies your interests.

**The insecurity of an unknown BATNA.** If you have not thought carefully about what you will do if you fail to reach

an agreement, you are negotiating with your eyes closed. You may, for instance, be too optimistic and assume that you have many other choices: other houses for sale, other buyers for your secondhand car, other plumbers, other jobs available, other wholesalers, and so on. Even when your alternative is fixed, you may be taking too rosy a view of the consequences of not reaching agreement. You may not be appreciating the full agony of a lawsuit, a contested divorce, a strike, an arms race, or a war.

One frequent mistake is psychologically to see your alternatives in the aggregate. You may be telling yourself that if you do not reach agreement on a salary for this job, you could always go to California, or go South, or go back to school, or write, or work on a farm, or live in Paris, or do something else. In your mind you are likely to find the sum of these options more attractive than working for a specific salary in a particular job. The difficulty is that you cannot have the sum total of all those other options; if you fail to reach agreement, you will have to choose just one.

In most circumstances, however, the greater danger is that you are *too* committed to reaching agreement. Not having developed any alternative to a negotiated solution, you are unduly pessimistic about what would happen if negotiations broke off.

As valuable as knowing your BATNA may be, you may hesitate to explore alternatives. You hope this buyer or the next will make you an attractive offer for the house. You may avoid facing the question of what you will do if no agreement is reached. You may think to yourself, "Let's negotiate first and see what happens. If things don't work out, then I'll figure out what to do." But having at least a tentative answer to the question is absolutely essential if you are to conduct your negotiations wisely. Whether you should or should not agree on something in a negotiation depends entirely upon the attractiveness to you of the best available alternative. \*

\* **Formulate a trip wire.** Although your BATNA is the true measure by which you should judge any proposed agreement, you may want another test as well. In order to give you early warning that the content of a possible agreement is beginning to run the risk of being too unattractive, it is useful to identify one far from perfect agreement that is better than your BATNA. Before accepting any agreement worse than this trip-wire package, you should take a break and reexamine the situation. Like a bottom line, a trip wire can limit the authority of an agent. "Don't sell for less than \$79,000, the price I paid plus interest, until you've talked to me."

A trip wire should provide you with some margin in reserve. If after reaching the standard reflected in your trip wire you decide to call in a mediator, you have left him with something on your side to work with. You still have some room to move.

### Making the most of your assets

Protecting yourself against a bad agreement is one thing. Making the most of the assets you have in order to produce a good agreement is another. How do you do this? Again the answer lies in your BATNA.

**The better your BATNA, the greater your power.** People think of negotiating power as being determined by resources like wealth, political connections, physical strength, friends, and military might. In fact, the relative negotiating power of two parties depends primarily upon how attractive to each is the option of not reaching agreement.

Consider a wealthy tourist who wants to buy a small brass pot for a modest price from a vendor at the Bombay railroad station. The vendor may be poor, but he is likely to know the market. If he does not sell the pot to this tourist, he can sell it to another. From his experience he can estimate when and

for how much he could sell it to someone else. The tourist may be wealthy and "powerful," but in this negotiation he will be weak indeed unless he knows approximately how much it would cost and how difficult it would be to find a comparable pot elsewhere. He is almost certain either to miss his chance to buy such a pot or to pay too high a price. The tourist's wealth in no way strengthens his negotiating power. If apparent, it *weakens* his ability to buy the pot at a low price. In order to convert that wealth into negotiating power, the tourist would have to apply it to learn about the price at which he could buy an equally or more attractive brass pot somewhere else.

Think for a moment about how you would feel walking into a job interview with no other job offers — only some uncertain leads. Think how the talk about salary would go. Now contrast that with how you would feel walking in with two other job offers. How would that salary negotiation proceed? The difference is power.

What is true for negotiations between individuals is equally true for negotiations between organizations. The relative negotiating power of a large industry and a small town trying to raise taxes on a factory is determined not by the relative size of their respective budgets, or their political clout, but by each side's best alternative. In one case, a small town negotiated a company with a factory just outside the town limits from a "goodwill" payment of \$300,000 a year to one of \$2,300,000 a year. How?

The town knew exactly what it would do if no agreement was reached: It would expand the town limits to include the factory and then tax the factory the full residential rate of some \$2,500,000 a year. The corporation had committed itself to keeping the factory; it had developed no alternative to reaching agreement. At first glance the corporation seemed to have a great deal of power. It provided most of the jobs

in the town, which was suffering economically; a factory shut-down or relocation would devastate the town. And the taxes the corporation was already paying helped provide the salaries of the very town leaders who were demanding more. Yet all of this power, because it was not converted into a good BATNA, proved of little use. Having an attractive BATNA, the small town had more ability to affect the outcome of the negotiation than did one of the world's largest corporations.

**Develop your BATNA.** Vigorous exploration of what you will do if you do not reach agreement can greatly strengthen your hand. Attractive alternatives are not just sitting there waiting for you; you usually have to develop them. Generating possible BATNAs requires three distinct operations: (1) inventing a list of actions you might conceivably take if no agreement is reached; (2) improving some of the more promising ideas and converting them into practical options; and (3) selecting, tentatively, the one option that seems best.

The first operation is inventing. If, by the end of the month, Company X does not make you a satisfactory job offer, what are some things you might do? Take a job with Company Y? Look in another city? Start a business on your own? What else? For a labor union, alternatives to a negotiated agreement would presumably include calling a strike, working without a contract, giving a sixty-day notice of a strike, asking for a mediator, and calling on union members to "work to rule."

The second stage is to improve the best of your ideas and turn the most promising into real options. If you are thinking about working in Chicago, try to turn that idea into at least one job offer there. With a Chicago job offer in hand (or even having discovered that you are unable to produce one) you are much better prepared to assess the merits of a New York offer. While a labor union is still negotiating, it should convert the ideas of calling in a mediator and of striking into drafts of specific operational decisions ready for execution.

The union might, for instance, take a vote of its membership to authorize a strike if a settlement is not achieved by the time the contract expires.

The final step in developing a BATNA is selecting the best among the options. If you do not reach agreement in the negotiations, which of your realistic options do you now plan to pursue?

Having gone through this effort, you now have a BATNA. Judge every offer against it. The better your BATNA, the greater your ability to improve the terms of any negotiated agreement. Knowing what you are going to do if the negotiation does not lead to agreement will give you additional confidence in the negotiating process. It is easier to break off negotiations if you know where you're going. The greater your willingness to break off negotiations, the more forcefully you can present your interests and the basis on which you believe an agreement should be reached.

The desirability of disclosing your BATNA to the other side depends upon your assessment of the other side's thinking. If your BATNA is extremely attractive — if you have another customer waiting in the next room — it is in your interest to let the other side know. If they think you lack a good alternative when in fact you have one, then you should almost certainly let them know. However, if your best alternative to a negotiated agreement is worse for you than they think, disclosing it will weaken rather than strengthen your hand.

**Consider the other side's BATNA.** You should also think about the alternatives to a negotiated agreement available to the other side. They may be unduly optimistic about what they can do if no agreement is reached. Perhaps they have a vague notion that they have a great many options and are under the influence of their cumulative total.

The more you can learn of their options, the better prepared you are for negotiation. Knowing their alternatives, you can realistically estimate what you can expect from the negotia-

tion. If they appear to overestimate their BATNA, you will want to lower their expectations.

Their BATNA may be better for them than any fair solution you can imagine. Suppose you are a community group concerned about the potential noxious gases to be emitted by a power plant now under construction. The power company's BATNA is either to ignore your protests altogether or to keep you talking while they finish building the plant. To get them to take your concerns seriously, you may have to file suit seeking to have their construction permit revoked. In other words, if their BATNA is so good they don't see any need to negotiate on the merits, consider what you can do to change it.

If both sides have attractive BATNAs, the best outcome of the negotiation — for both parties — may well be not to reach agreement. In such cases a successful negotiation is one in which you and they amicably and efficiently discover that the best way to advance your respective interests is for each of you to look elsewhere and not to try further to reach agreement.

### **When the other side is powerful**

If the other side has big guns, you do not want to turn a negotiation into a gunfight. The stronger they appear in terms of physical or economic power, the more you benefit by negotiating on the merits. To the extent that they have muscle and you have principle, the larger a role you can establish for principle the better off you are.

Having a good BATNA can help you negotiate on the merits. You can convert such resources as you have into effective negotiating power by developing and improving your BATNA. Apply knowledge, time, money, people, connections, and wits into devising the best solution for you independent of the other side's assent. The more easily and happily you

can walk away from a negotiation, the greater your capacity to affect its outcome.

Developing your BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum. Developing your BATNA is perhaps the most effective course of action you can take in dealing with a seemingly more powerful negotiator.

**Phony facts.** The oldest form of negotiating trickery is to make some knowingly false statement: "This car was driven only 5,000 miles by a little old lady from Pasadena who never went over 35 miles per hour." The dangers of being taken in by false statements are great. What can you do?

Separate the people from the problem. Unless you have good reason to trust somebody, don't. This does not mean calling him a liar; rather it means making the negotiation proceed independent of trust. Do not let someone treat your doubts as a personal attack. No seller is likely to give you a watch or a car simply in exchange for your statement that you have money in the bank. Just as a seller will routinely check on your credit ("because there are so many other people around that can't be trusted"), you can do the same for statements of the other side. A practice of verifying factual assertions reduces the incentive for deception, and your risk of being cheated.

**Ambiguous authority.** The other side may allow you to believe that they, like you, have full authority to compromise when they don't. After they have pressed you as hard as they can and you have worked out what you believe to be a firm agreement, they announce that they must take it to someone else for approval. This technique is designed to give them a "second bite at the apple."

This is a bad situation to fall into. If only *you* have authority to make concessions, only you will make concessions.

Do not assume that the other side has full authority just because they are there negotiating with you. An insurance adjuster, a lawyer, or a salesman may allow you to think that your flexibility is being matched by flexibility on their side. You may later find that what you thought was an agreement will be treated by the other side as simply a floor for further negotiation.

Before starting on any give-and-take, find out about the authority of the other side. It is perfectly legitimate to inquire,

"Just how much authority do you have in this particular negotiation?" If the answer is ambiguous, you may wish to talk to someone with real authority or to make clear that you on your side are reserving equal freedom to reconsider any point.

If they do announce unexpectedly that they are treating what you thought was an agreement as a basis for further negotiation, insist on reciprocity. "All right. We will treat it as a joint draft to which neither side is committed. You check with your boss and I'll sleep on it and see if I come up with any changes I want to suggest tomorrow." Or you might say, "If your boss approves this draft tomorrow, I'll stick by it. Otherwise each of us should feel free to propose changes."

**Dubious intentions.** Where the issue is one of possible misrepresentation of their intention to comply with the agreement, it is often possible to build compliance features into the agreement itself.

Suppose you are a lawyer representing the wife in a divorce negotiation. Your client does not believe her husband will pay child support even though he may agree to do so. The time and energy spent in going to court every month may make her give up the effort. What can you do? Make the problem explicit and use their protestations to get a guarantee. You could say to the husband's lawyer, "Look, my client is afraid those child support payments simply aren't going to be made. Rather than monthly payments, how about giving her equity in the house?" The husband's lawyer may say, "My client is perfectly trustworthy. We'll put it in writing that he will pay child support regularly." To which you might respond, "It's not a matter of trust. Are you certain that your client will pay?"

"Of course."

"A hundred percent certain?"

"Yes, I'm a hundred percent certain."

"Then you won't mind a contingent agreement. Your client