MEET AND CONFER NEGOTIATIONS

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CHAPTER 9

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Ms. Provencio's practice reflects eight years of multi-state litigation including a concentrated caseload in Texas State and Federal Courts since 1999. Currently, Ms. Provencio's litigation involves labor and employment issues including First Amendment claims, due process claims, FMLA, Title VII, ADEA, ADA and FLSA issues; and also involves tort issues for municipalities and other governmental entities. Her prior litigation experience involved complex insurance coverage, probate, contract, investment products, and fiduciary duty issues. She continues to litigate a variety of insurance defense issues.

Ms. Provencio also represents municipalities in collective bargaining negotiations with police and fire unions. She serves as one of the Lead Negotiators for the City of Waco in its current cycle of collective bargaining with the firefighters' association and assisted in prior negotiations for the City of Waco and City of Galveston.

Ms. Provencio actively participates in the community. She is a member of the Texas City Attorneys Association where she has presented at its annual conference, the Mexican American Bar Association, and the Bexar County Women's Bar Association. She serves both on the Advisory Board for the Enterprise Foundation, which supports affordable housing and community development, and for the Jefferson/Woodlawn Lake Community Development Corporation, which promotes economic development. She also serves on the Board of Directors for Hispanas Unidas, an organization providing programs for underserved girls ages 8 to 12. Ms. Provencio's pro bono work includes asylum work on behalf of political refugees.

Ms. Provencio was born in Silver City, New Mexico, and was admitted to practice law by the Maryland Bar in 1997, the District of Columbia Bar in 1999, and the Texas Bar in 2000. She received her Bachelor of Science in Business Administration from the University of California at Berkley in 1993 and J.D. from the University of Michigan School of Law in 1997. She is married to Texas State Representative Trey Martinez Fischer.

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TABLE OF CONTENTS

I. INTRODUCTION 1
II. WHAT IS MEET AND CONFER? 1
A. The Concept. 1
B. History. 1
C. Comparison to Collective Bargaining. 2
III. CHAPTER 174 MODEL 2
A. NLRA Comparison. 2
B. Mandatory Subjects of Bargaining. 2
C. Chapter 617. 2
IV. THE SALES PITCH 2
V. BACK TO REALITY 3
VI. PROS AND CONS 3
A. Advantages. 3
B. Disadvantages. 4
VII. PROVISIONS OF THE STATUTE 5
A. Separate Provisions for Police and Fire. 5
B. Schedule for Action. 5
C. Options. 5
VIII. OPEN PROCESS 7
IX. PROCESS AND STYLE 7
A. Ground Rules. 7
B. Interest Based Bargaining. 8
C. Negotiation Sessions. 8
D. Recording. 8
E. Who Is On The Team? 8
F. Duration Of An Agreement. 9
G. Market Approach to Pay. 9
H. Litigation and Grievance Leverage. 9
X. TYPICAL SUBJECTS AND ARTICLES 10
XI. THE PUBLIC SECTOR TRIANGLE 11
A. Private Sector Bargaining Positions Management and Labor. 11
B. City Council Direction and Expectations. 11
XII. PARTING COMMENTS AND THOUGHTS 12

MEET AND CONFER NEGOTIATIONS

I.
INTRODUCTION

This paper covers the philosophy, history, legislation and actual practicalities of Meet and Confer in Texas. For many Texas cities this is a relatively new process and a new model for labor relationships. There are many fears and anxieties in connection with it. Some of those are legitimate, some are urban legends, and other aspects of the process can frankly go either way depending on how they are approached by both sides. There are cities that are pleased with their results, cities that are not, and cities that have experienced both types of results and are continuing to learn from the process. There are cities that have managers or elected officials who find merit in the process, and those who actively disagree with it and oppose it on most every point.

This paper is intended to equip public sector lawyers and public officials with an understanding of the law, the process, and approaches that other cities have taken. We recommended a careful approach, an open mind, and a commitment to tailor the most responsible approach to this development for your community. Ultimately, how a city deals with this labor relationship approach is a matter for policy direction from the elected officials, with careful, accurate, and competent advice from city management.

II.
WHAT IS MEET AND CONFER?

A. The Concept.

Meet and Confer was developed as a concept to avoid the legislative opposition to collective bargaining. Under the Meet and Confer model cities are not required to enter into labor negotiations, or to make a contract on any of the potential subjects for negotiations. As contrasted with collective bargaining, where cities are required to negotiate the terms and conditions of employment, Meet and Confer theoretically does not interfere with the discretion of elected officials to establish the working environment and terms of employment.

B. History.

The original Meet and Confer legislation was adopted in 1993 and was applicable to the City of Houston Fire Department. Additional provisions were adopted for the City of Austin Police and Fire Departments in 1995, and for the Houston Police Department in 1997. Both Houston and Austin have a history of Meet and Confer negotiations with their Police and Firefighters. In both Houston and Austin the Firefighters eventually became dissatisfied with the Meet and Confer model and sought voter approval for Collective Bargaining. Firefighters were successful in both cities in adopting a collective bargaining model. Whether or not the structure of bargaining makes a difference, or creates an advantage, remains a matter of opinion.

C. Comparison to Collective Bargaining.

Under the Texas Collective Bargaining Statute, Chapter 174 of the Texas Local Government Code, cities are required to negotiate in good faith on wages and other terms and conditions of employment. The statute provides for a bargaining schedule, involving advance notice, and a 60 day period of negotiations prior to impasse. The parties may, and usually do, modify this schedule. The statute further provides for impasse resolution procedures, including a voluntary option for binding arbitration. In the absence of agreement on binding arbitration, the statute prescribes a judicial impasse review process.

III.
CHAPTER 174 MODEL

A. NLRA Comparison.

Chapter 174 was modeled after the Nation Labor Relations Act. However, the Texas Legislature only took parts of the model. There are a number of missing links, including the absence of an oversight board to interpret and apply the statute. The Texas Statute leaves many issues open to interpretation. Some of those issues have made their way to the courts, but many have not. Practical solutions under this statute continue to predominate.

B. Mandatory Subjects of Bargaining.

Texas courts have drawn a distinction between mandatory subjects and subjects which are not mandatory. This distinction is essentially the basis of the Meet and Confer model.

C. Chapter 617.

Generally, Texas Labor Law does not allow public sector employers to recognize an employee association, to negotiate for the terms and conditions of employment, or to enter into a collective bargaining agreement. See Chapter 617 of the Labor Code. Passed in 1973 and codified in 1993, Chapter 174 was the initial authorized exception to the general collective bargaining prohibition. The Meet and Confer statutes are the next generation of statutes to authorize exceptions to Chapter 617.

IV
THE SALES PITCH

Meet and Confer is Voluntary. If it does not interfere with local control. Cities do not have to bargain over any issues, and may bargain over some and not others. Cities may bargain over some issues, but do not have to make a deal on any issue. Cities are not required to enter into a written agreement.

V.
BACK TO REALITY

Once a Meet and Confer Petition is filed, a political issue has been framed for the elected officials. Depending upon the particular community and the issues of the day, there may be little support—or a great deal of support—for a bargaining relationship with uniformed employees. Uniformed employees typically have more political power and influence over local elections. In some communities the elected officials will be willing to take a stand against the inevitable advantages and superior treatment for firefighters and police officers under this model. In other communities elected officials will already have established relationships with the police and fire associations on a number of different political levels. If so, the practical realities are much different. The city's lawyers may or may not get a full and honest disclosure of this reality in Executive Session. Once the Meet and Confer model is on the table, elected officials must make a decision about the best interests and expectations of their own constituents. If the city council chooses to proceed with a Meet and Confer process, the council retains control and prerogatives in the future. If the city council submits the issue to the voters, the voters then retain control over the future use of this bargaining model. Even though there is no statutory obligation to bargain at all, or to reach a deal, in many communities the practical reality will be different. Once issues are raised at the table, with legitimate competing outcomes, resolution of those issues will often become a political need, no matter what the statute says. How the process is conducted, and how the competing interests of the bargaining unit employees and the community are balanced, will determine the measure of success or failure.

VI.
PROS AND CONS

A. Advantages.

Are there advantages to a Meet and Confer process? There can be. Where those advantages ultimately balance out or predominate against the disadvantages may or may not depend upon the way the process is conducted. The one absolute statistical reality is that Meet and Confer or Collective Bargaining produces income growth disparity between public safety employees covered by the process, and the remaining public workforce. However, in most cities there has been some historical disparity in pay and benefits for public safety employees.

One potential advantage is enhanced communication and improvement of the relationship with employees. Whether or not there are relationship problems is obviously a question with a distinctly local character. Long ago a city manager told me that uniformed employees would find no need to invest the time, attention, and union dues to organize an association if their needs were being met, and they felt they were being heard. That same advice can help to control expectations, and the intensity of demands at the bargaining table. On the other hand, it may not. It depends on the people, personalities, agendas, and character of those across the table. Some of the most honorable public servants I have known have sat across the table. Also, some of the most unreasonable, irrational, and greedy public servants have sat across the table. Sometimes, they are on the same bargaining team.

Another possible advantage of bargaining is to trade pay or benefit enhancements that the city would have made anyway for other advantages in an agreement. The give and take model inherently supports this if the city and the association have a similar compensation philosophy. Cities who have to pay a premium for qualified applicants might as well improve their culture or structure in the Fire and Police departments. To the extent that there is already political support - or even political pressure for enhancement of compensation for public safety—finding wins for management is essentially free. Another potential advantage is the actual engagement of management with the association and their interests. Effective managers do this anyway, but formalizing a process can ensure that that interaction takes place. It has been said that Fire Department management is an oxymoron, and that Police Department management is an accident. We have seen many situations where better coordination between the City Manager, the Chiefs, the Finance Department, and Human Resources resulted from being at the table than if no negotiations ever took place. If the process is structured to avoid an adversarial relationship from the outset, a positive, collaborative, solution-based environment can result.

The primary advantage usually noted is the ability to make civil service law changes by contract. The Meet and Confer Statute has broad language authorizing the parties by contract to change statutory provisions applicable to the employment relationship. The advantage of changing provisions in Chapter 143 and Chapter 142 concerning pay and benefits (including overtime pay) can be substantial. Since employees must generally be paid the same if they are the same rank, with the statutory exceptions of longevity, education pay, certification pay, and assignment pay, more flexibility for pay variation related to job or performance is possible here, and that may well be in the city's interest. One last possible advantage of a Meet and Confer process is to establish a multiyear period for long term fiscal planning. The obvious downside to that aspect is the loss of flexibility in future budgetary cycles.

B. Disadvantages.

We have come to believe that the number one disadvantage of any bargaining process is the expectation of "More, More, More." Controlling and dealing with that expectation is the challenge for the city team. Under a Collective Bargaining or Meet and Confer model, pay increases for public safety employees typically trend upward from other employees. A related disadvantage is the continuation of enhanced pay increases even during cycles of economic downturn. This disadvantage can be dealt with by the use of safety valve provisions or formula clauses. Obviously cities that don't have Civil Service can't take advantage of those changes. However, most cities will want to make changes to Chapter 142 obligations. You may also find that there are advantages under the FLSA in a written labor agreement.

The next disadvantage is the concept known as Rent v. Buy. The practical reality of pay increases for public employees is that once made, they last forever. The practical reality of changes to Civil Service law, other statutory provisions, or structural changes in the management of the department, is that they are temporary in nature and subject to renegotiation each time the bargaining cycle rolls around again. Another disadvantage is the loss of flexibility in terms of establishing pay and benefits. Once concessions have been made, not just in the pay aspect, they usually become a part of the contractual relationship, and it is very unusual for them to find their

way out of the contract in the future. Using sunset provisions, or evergreen provisions, are tools that can manage this risk.

VII.
PROVISIONS OF THE STATUTE

A. Separate Provisions for Police and Fire.

Unlike Chapter 174, Chapter 142 contains two separate subchapters that separately provide for Meet and Confer in the Police and Fire Departments—subchapter B for Police and subchapter C for Fire. Both statutes apply to cities with a population 50,000 or more, or that are covered by Chapter 143. In this paper, where the two subchapters deal with the same provision, the two sections will be mentioned together, separated by a slash.

An argument had been present about the application of the statute to officers not in the police department. Revisions to Section 142.052 in the last legislature appear to resolve this issue in favor of any law enforcement agencies of the city. Note how the definition of police officer in that section differs from the definition in Section 174.003(3).

B. Schedule for Action.

The city council must take action not later than the 30th day after the date it receives a petition for recognition submitted under the Meet and Confer statutes. The petition must request recognition of a sole and exclusive bargaining agent, and must be signed by the majority of all firefighter or police officers who are not exempt. Exempt employees include only the fire/police chief and employees appointed by those chiefs in accordance with the Civil Service appointment mechanism under Chapter 143. Typically, this means the rank immediately below that of chief. The bargaining unit and the city may agree additional categories of exempt employees, although the statute is silent as to how this agreement may be reached.

C. Options.

Upon receipt of a petition for recognition, the city council has two options: immediate, unilateral adoption of Meet and Confer, or deferring the decision to the city's voters. Under the immediate option, the city council accepts the petitioning agency as the sole bargaining agent for the city's firefighters/police officers and declares the city to be operating under the Meet and Confer statute. Even if the city immediately adopts Meet and Confer, that decision does not impose any requirement to begin at a particular time, to bargain on any particular issues, or to reach a resolution on any particular issue. When the council chooses to impart the decision unto the voters, it defers recognition of a bargaining agent and orders a city election on the question.

The statute defines a third "sub-option" under which the city may order a certification election in order to determine representation. Ideally, this procedure is used if the city is given reason to doubt the assertion of majority status by the petitioning agency. This situation may arise when the city receives two petitions from different agencies both claiming to represent the majority of employees, sometimes with the same signatures on both petitions. A certification election

process is set forth in the statute, and provides a specific process for determining which of one or more associations shall be the sole and exclusive agent for the bargaining unit. This option can be very valuable if there are competing associations, but may not accomplish anything significant in the absence of different competing groups. Some cities appear to have used that tool just as a delay tactic, and I am not sure what that accomplishes. If a city expects to be at the negotiation table sooner than later, those decisions should take into account the intended relationship at the table once you get there. The costs of a certification election are borne by the competing associations. Once the issue of the majority bargaining agent is resolved by the certification election, the city is once again present with the original two options—immediate adoption or citizen vote.

If the council chooses to call a citizens' election, it must be scheduled for the next regular general election for city officials that allows enough time for compliance with election law timelines, such as the 60-day period between the order for the election and the election itself. The proposition placed on the ballot must pass by a majority vote. If it is approved by the electorate, there is a two year period before it can be repealed.

The statute provides for a change in the designated exclusive representative. To trigger such a change, a new petition must be submitted by the majority of firefighters/police officers requesting recognition of the new agent. In that event, the city has the option of recognizing the new agent or ordering a certification election to resolve competition for majority status as described above.

The rights granted by the statute are forfeited in the event of any strike or organized work stoppage.

Sections 142.059 and 142.109 of the statute contain the operative duty language in the event that city chooses to meet and confer. In practical terms this provision seems to mean that, much like operation under the collective bargaining provisions of Chapter 174, the city and the bargaining agent are free to negotiate and agree upon wages, salaries, rates of pay, hours of work, or other terms and conditions of employment. But unlike collective bargaining, the city cannot be compelled to agree upon, or even to bargain over, any particular term or condition of employment.

Sections 142.059 and 142.109 of the statute allows contractual modification of "all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the law enforcement agency or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission." It is recommended that any ordinances and provisions under the city's control be changed by council action, rather than changed by contract, since they will be reinstate by the expiration of the contract itself.

As a seeming incentive for a governing body to immediately adopt Meet and Confer without a citizens' election, the city may unilaterally withdraw recognition of a bargaining agent with 90 days notice. Absent this, the statute provides citizens with a right to repeal an agreement which has been ratified. This requires a citizen petition signed by at least 10% of the number of votes cast in the last general election.

Sections 142.060 and 142.110 provide for a selection of a team and allows the chief executive officer or his designee to select the individuals who can be on the team. Sections 142.061 and 142.111 recites protection for the disciplinary appeal rights of firefighters and police officers.

Both statutes allow for, but do not require, an arbitration process for disputes under a Meet and Confer agreement. Whether or not to provide for arbitration depends on the perspective of the City Attorney, and the local experience at the courthouse with local elected District Judges supported by Fire and Police PAC funds. Arbitration may have some advantages, or not.

The statute provides in Sections 142.068 and 142.118 that there is to be no change to existing benefits by virtue of the adoption of the legislation. This provision also contains a ratchet clause maintaining any existing statutory rights or benefits in addition to those provided in the contract. This ratchet clause would not preserve any benefit which has been overridden by express agreement under Sections 142.067 and 142.117.

VIII.
OPEN PROCESS

Any record or document used in the bargaining process is an open record once the contract is ready to be ratified by the governing body.

Deliberations must be open to the public and comply with state law. The statute offers no guidance as to what "comply with state law" means. It does not seem to mean that any deliberation is a Texas Open Meeting, with all the attending notice requirements. Instead, it probably means that in the event a deliberation would trigger application of the Texas Open Meetings Act—such as if the city's bargaining team consisted of a quorum of the city's governing body—then the strictures of the Act would apply.

IX.
PROCESS AND STYLE

A. Ground Rules.

In most cities the first order of business once Meet and Confer begins is the determination of Ground Rules. Ground Rules structure the process and help establish the bargaining culture and relationship. Whether they are formalized or not, at a minimum, discussion and understanding of how the process will be conducted, how meetings will be scheduled and carried out, who does the notices, and how the agreements and contract language are developed and approved, are important features of the process. Another important feature of the process is the effort to channel the bargaining process to the negotiation table, and away from the political arena. This is often addressed with a "No by-pass clause," but that only works as well as your City Council's commitment to it.

B. Interest Based Bargaining.

Free training by the Federal Mediation Conciliation Services ("FMCS") is very much recommended. It will not only equip both sides with good communication and evaluation skills, but the process re-orders the expectations and the changes the adversarial dynamic from the outset. How successful that will be certainly depends on the players and the circumstances, but we have found that this process is always good for both sides. How good is the subject to debate, but it is always an advantage.

C. Negotiation Sessions.

Decisions need to be about the logistics for negotiation sessions. Sometimes there will be union pressure to have long bargaining sessions or successive days in negotiations. Those approaches may or may not be productive. If the decision making loop or number crunching takes longer than that, long negotiation sessions or excessive days are counter productive. Showing up ready to make progress, with authority to do so, is what makes things work. Staring at each other when you really don't have the answers or the authority to make progress is a bad idea.

D. Recording.

There are pros and cons to recording bargaining sessions. Recorded sessions can equip the city's team to resolve disputes or issues about what happened if language is not being simultaneously adopted. On the other hand recording the session will probably impair openness and candor in the discussions. Having a record of the bargaining can be helpful in future grievances or dispute resolutions. It can also be helpful in resolving political contests over the appropriateness or legitimacy of the bargaining approach, or accusations made in the public or political arena. We recommend that careful, practical discussion take place in making this choice. We think minutes are a bad idea, and will be glad to discuss that with you.

E. Who Is On The Team?

Each city is going to be different, and once again this is a local choice. We are generally opposed to having the city manager or the chief of the department present at the bargaining table. Those individuals have prerogatives that need to be preserved, and exercised independently of the momentary give and take in the bargaining process. Maintaining some separation between the team's ability to finally accept proposals and provisions at the table is a good strategic option. Sometimes the association conducts this same strategy through their board or executive committee. This is a subject that may be dealt with in the ground rules as well. On the other hand we have had some experiences where the chief was an essential participant in the process, either by virtue of personality or the credibility that it gave to the city's team. Even where we do not have the chief at the table routinely, we have had a number of occasions where we have brought the chief to the table for a particular discussion. In one city the city manger felt strongly that he should be a member of the team and his judgment on that issue proved to be spot on, facilitating a very constructive discussion and an excellent first round of collective bargaining, followed by a later meet and confer agreement with the other uniformed employees.

F. Duration Of An Agreement.

Cities have meet and confer agreements ranging from one fiscal cycle to as many as 5 years. We generally recommend an initial meet and confer agreement should be for one year or two years. There are advantages to avoiding the administrative and attorney's fee costs in longer term agreements. The obvious disadvantages are the loss of flexibility, the inability to react to changes in economic conditions, and the unlikelihood of addressing developments that occur in the community during longer contract terms. As a general principle, stability is an objective of most cities who enter the bargaining arena. Three year agreements are probably a good balance.

G. Market Approach to Pay.

Every city should have a pay and compensation philosophy. Hopefully it will be formalized before the bargaining process begins. Most cities have had pay studies conducted at some point in their history, if not recently. The compensation methodology should be an issue that elected officials have reviewed and approved. It is essential that decisions by elected officials be used to give credibility to the pay and compensation approach that management brings to the table. In an effective bargaining cycle, the association's representatives are challenged to demonstrate a market basis for their expectations or demands. Both sides learn in the process, but usually the Union folks learn more, because the City has more data, and an empirical approach. Effective use of pay studies and comparisons will usually enlighten members of the association team about realities of pay and benefits that they have not previously accepted or understood. It is human nature for individuals to expect the advantages that they already enjoy, and seek the advantages that they hear about in other departments. This is the old cliché, "What's mine is mine and what's yours is negotiable." If properly conducted, market analysis approach can begin to chip away at negative attitudes about the way employees have been treated in the past in terms of pay and benefits. However, make sure your study is accurate or you will lose credibility and be accused of trying to put one over on the heroes. Big Mistake. Be sure and point out any historical advantages that uniformed employees have had over other public employees, and the usual market disparity for public safety as compared to everyone else. Public safety folks may be 5% behind the market, but the rest of the city work force is 11% behind, so current resources need to be focused accordingly. I'm not suggesting that they will surrender when you show this, but they need to hear it, and they need to tell their members about it. The market analysis approach needs to include all components of pay and benefits, and the association team needs to have the Show and Tell presentation on the overall cost of employing each member of the police and fire department, as opposed to merely base pay. Effective use of these approaches will actually have some persuasive effect, whether or not it is apparent, and will contribute to making the final deal when things come together.

H. Litigation and Grievance Leverage.

In many communities pending lawsuits or pending grievances are a part of the build up toward the bargaining cycle. Sometimes those are legitimate claims with merit, and sometimes they are bogus. Whether or not they are dealt with in that bargaining process is a part of the poker game. However, counsel should evaluate the legitimacy of those claims, and be circumspect or even cynical about testing the information provided concerning the likelihood of success on the

merits. When preparing for the first negotiation sessions, all of the prior grievances, arbitrations, cases, and complaints need to be evaluated as a part of the city's bargaining agenda.

X.
TYPICAL SUBJECTS AND ARTICLES

The following provisions are examples of typical articles in a Meet and Confer Agreement. The fact that many agreements have these provisions does not mean that your City needs to consider or agree on these subjects. On the other hand, one good general principle of bargaining is to agree to things that you would do anyway. We have had Chiefs choose to limit their authority by contracting for provisions that were a good management approach, even though technically it "interfered with management discretion." They made this choice in order to create contractual value and build trust in the process, and to replace a history of misunderstanding and mistrust at the use of authority in the past. When we tell the Association what we intend to do in the future, contracting for it, and then abiding by it, becomes the proof of management *bona fides*, and can heal old wounds. Some of these provisions would end up being in place as city policies, even in the absence of an agreement. That type of concession, especially when coupled with a sunset provision, is worth taking a look at.

An alternate approach to contractual provisions which are binding is to discuss an issue and not resolve it by contract, but by unilateral policy revision, with the understanding that future changes in the policy will likely result in the issue coming up in another round of discussions. Making changes unilaterally during the bargaining process is also an option which may be considered, whether or not contractual provisions will eventually result.

Recognition clause. "The City of X hereby recognizes Y as the sole and exclusive bargaining agent for the covered employees in accordance with Chapter 142, Texas Local Government Code." Housekeeping provisions are worthwhile in any contract, and a quick recital regarding recognition of the bargaining agent is important. Keep in mind that under the statute, recognition of the bargaining agent can be the official act that adopts Meet and Confer, so such a recital demonstrates the authority to enter in the contract.

Management Rights. Such provisions are an important recognition that there are certain subjects that by their nature cannot be decided by the bargaining process. The management rights clause seeks to make clear that subjects such as identification of the mission of the department, direction of the workforce, scheduling, and the right to hire and discipline, to name a few, remain within the discretion of the Department Head.

Labor/Management Relations. A companion to management rights, and in furtherance of the theme of trust-building, establishment of a labor relations committee to iron out issues of mutual concern may be of great value to both sides. Even the most carefully drafted agreement cannot address every conceivable situation, and the committee can find solutions to unforeseen or newly arisen problems in a relatively informal setting. The article should be clear that the committee is not intended to act in derogation of bargained terms or management rights.

Employee Bill of Rights. Provisions relating to investigation of and discipline arising out of complaints against police officers and firefighters. Such provisions allow the city to opt out of the requirement of Texas Government Code, subchapter B, and define for itself the handling of these situations.

Dispute Resolution Process. A carefully defined resolution procedure can work to mutual benefit in the inevitable dispute over interpretation of the contract. For the bargaining agent, the article provides a grievance process that otherwise would only exist as a judicial remedy. For the city, it channels such grievances through the bargaining agent, allowing the city to deal with one gate-keeping grievant.

Pay and benefit provisions. These form the heart of the agreement. While it is easy for management to view these provisions as the things the city is giving up, the city's bargaining team should not ignore the potential to use these provisions to address the bargaining goals of the city. There is no law requiring that a city give a singular X% raise to all its police officers. Pay and benefits can be tailored to meet city needs such as recruitment or retention, by allocating the same dollars or benefits within a given budget to problem areas.

XI.
THE PUBLIC SECTOR TRIANGLE

The fundamental difference between public sector bargaining and private sector bargaining is that it is a triangular relationship, and not bilateral.

A. Private Sector Bargaining Positions Management and Labor.

Private sector bargaining is either is adversarial, or at least competing, even if the competition is in the context of interest based bargaining. The public sector model is entirely different. Management power is reposed in the city manager and the chief of the department. Operational issues involve the chief and administration within the fire or police department. Fiscal issues typically involve the city manager or his/her representative in the bargaining process. The interests of management on the other hand are then counter balanced by the interests of the elected officials who must approve the funding and approve the final agreement. In the private sector, this relationship does not exist. The UAW has nothing to do with electing the Board of Directors of General Motors. (I know that workers own stock, vote for the Board, etc., but in most organizations which are not employee owned, there is little or no actual control over the Board and no real constituency). The elected officials have competing interests of satisfying the citizenry at large about taxes and the cost of public safety services, and the interests of their constituents who are employees in the police and fire departments. That power sharing is completely different from the private sector environment, and requires a different approach.

B. City Council Direction and Expectations.

It is essential for the bargaining process to be built on a firm foundation of city council support. The principles and concepts that are brought to the bargaining table for resolution need the committed support of the elected officials to be successful. The association representatives will

be testing, in one way or the other, the ability of the city's bargaining team to hold the line on positions they have taken at the table. If those tests reveal a strong resolve to achieve mutual objectives at the bargaining table, then bargaining will take place at the table. If those tests reveal softness or vulnerability, or the potential to pull the rug out from under the bargaining team, the bargaining will take someplace somewhere other than the bargaining table. This typically will result in higher contract costs, and loss of management prerogatives or control in a number of operational areas. If elected officials fully understand the process and the advantages to them as elected officials, they will support it. If they believe in the team's ability to accomplish their political and fiscal objectives at the table, resulting in a good deal for both sides, a positive joint press release, and photo ops all around, some of those vulnerabilities can be controlled or eliminated.

XII.
PARTING COMMENTS AND THOUGHTS

Many in this field would agree that collective bargaining, and now Meet and Confer, have been reactions to workplace injustice and inequity, perceived or real, experienced by that most recognizable of government employees—the uniformed public servant. This is not a group politicians can ignore, and in fact they have not been ignored at the state level, hence the topic of this paper. The attitude of local politicians can run from lock-step support for union demands to staunch resistance to any better treatment for uniformed employees over civilian employees. This range of attitudes may even exist in a single city council, or even a single councilperson, depending on who's listening.

But as managers and counselors, our task is not to satisfy a constituency, but rather to provide competent management and legal advice responsive to the needs of the employing city. In this sense, the approach to Meet and Confer should be the same as to any other management or legal issue—careful, considered, and armed with the appropriate tools. This paper provides a few of those tools using our experience with those cities who have engaged in the process.