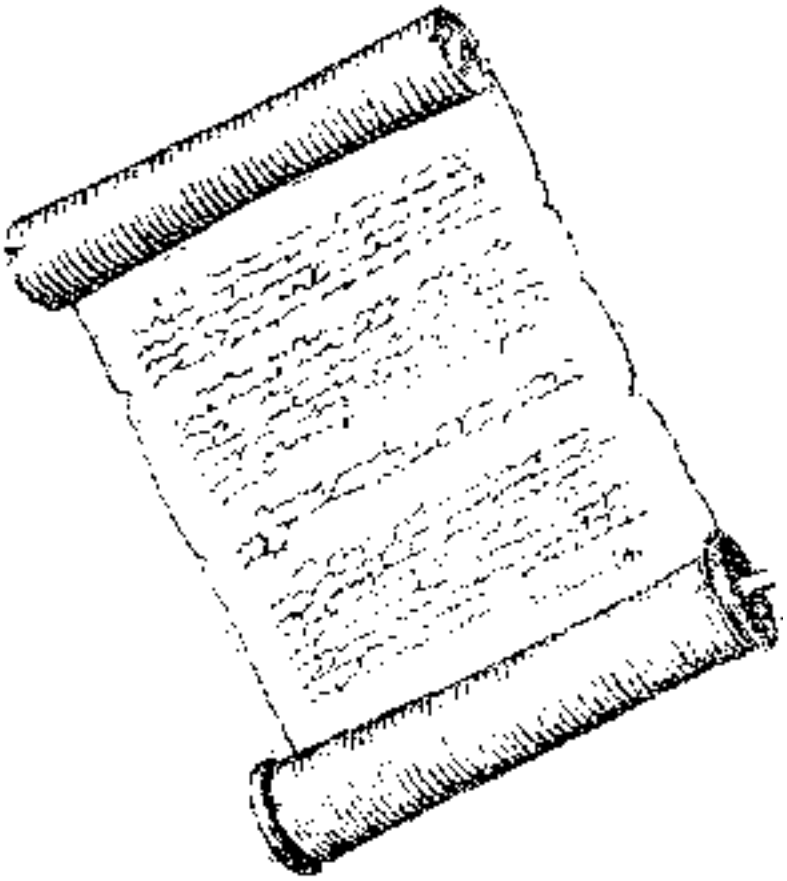
WAYNE COUNTY CARTER ISSUES . . .

# Labor Relations Management

By Ernst Benjamin



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1666 City National Bank Building
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Lansing, Michigan 48933

Report No. 268

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WAYNE COUNTY CHARTER ISSUES . . .

# LABOR RELATIONS MANAGEMENT

by
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# LABOR RELATIONS MANAGEMENT

## I. INTRODUCTION

This study surveys Wayne County labor relations management and offers a brief outline and assessment of alternative policies available through adoption of a charter. The charter cannot diminish the right of Wayne County employees to bargain collectively or contravene the state laws, regulations, and judicial decisions which delineate the bargaining relationship between the county and its employees. [See Parker for a summary of Michigan public employment law and procedures.][1] Nor can the charter substantively alter established contractual obligations such as salaries, fringe benefits, and negotiated personnel policies. The Michigan Supreme Court has held that the duty to bargain supersedes charter provisions [Parker, p. 40]. The Michigan charter county act also protects "the rights and status of persons under the civil service system" [Sec. 14(f)]. Nevertheless, the charter will determine the structure of county labor relations management and this management will in turn influence both the pattern of labor relations and the substance of future contractual agreements.

Charter adoption will affect three broad areas of county labor relations management. First, it will substantially alter the relative distribution of labor relations authority between the legislative and executive branches of county government. Second, it may alter the administrative structure specifically assigned responsibility for management bargaining and contract administration. Third, it may establish certain specific labor management policies to the extent that these are not already prescribed through state laws and regulations or contractual agreements. This study discusses each of these areas in turn and then summarizes the major alternatives.

[1] See Bibliography, page 16.

## II. LEGISLATIVE AND EXECUTIVE RESPONSIBILITIES

### The Present System

The Wayne County board of commissioners is the legally authorized employer for most Wayne County employees [Civil Service Commission v. Board of Supervisors, 384 Mich. 363 (1971)]. The board of commissioners appoints five of its members to a labor relations board which supervises contract negotiations and administration by the director of labor relations. The labor relations board also includes a designee of the courts, who votes on those matters affecting the courts, and three non-voting members: the county fiscal adviser, the county corporation counsel, and the director of labor relations who serves as secretary to the board. When the board recommends a contract or grievance settlement, its recommendation must be reviewed and approved by the board of commissioners through its general government committee, then the ways and means committee, and then a formal meeting of the full board.

In contrast, the chairman of the board of commissioners has no formal executive role in labor relations apart from nomination of the director of labor relations. This appointment is subject to review by the labor relations board and requires confirmation by the full board of commissioners which also possesses the power of removal. In practice, however, the director of labor relations regularly consults the chairman of the board of commissioners as well as the labor relations board.

### Concentration of Authority in the Executive

If a new charter is established under the terms of the Michigan charter county act, it will create a county executive or chief administrative officer with substantial authority. The act provides that this executive or administrator shall both

> "Supervise, direct and control the functions of all departments of the county except those headed by elected officials."

and

> "Except elected officials, appoint, supervise, and at pleasure remove heads of departments and all boards and commissions." [Sec. 11a, (8) (a) and (e)]

This language clearly shifts administrative responsibility for labor relations from the legislative to the executive. If the labor relations board were continued, even its members would be subject to executive rather than legislative authority. Under a charter, the legislative body could retain principal labor relations authority only if it were assigned responsibility to conduct labor relations directly through a committee of its members or, possibly, an outside consultant. Even these expedients might be questioned by the courts since the charter county act clearly intends to assign all administrative functions to the executive branch.

Executive responsibility for the conduct of labor relations is increasingly favored nationally in order to prevent union "end runs":

> "Such an "end run" involves an attempt by the union to circumvent the legislative process and make a direct appeal to the legislative body that is responsible for making the final decision. Because unions are a potent political force, elected officials tend to be receptive to such approaches.
>
> If collective bargaining is going to work in the public sector, it is necessary that the end run be eliminated. Since the terms and conditions of bargaining are supposed to result from good faith collective bargaining rather than legislative lobbying, there is no justification for allowing a union to successfully circumvent the bargaining process and make a direct appeal to the legislative body." [Shaw and Clark, p. 114]

The executive branch also has substantial administrative advantages:

> "First, management is best able to adopt an integrated position in preparing for negotiations and implementing the resulting agreements. The executive can, for example, coordinate bargaining with the preparation of the budget, which is usually its responsibility, and with its overall legislative program. Similarly, the executive will inevitably be responsible for implementing negotiated agreements, a responsibility which can best be discharged by the officials who negotiate the basic agreement. Second, the executive will usually be more capable of devising appropriate negotiating strategies. The executive is able to formulate a unified policy and confront the union with a single management position." [Burton, p. 105]

Burton observes that "the reliance on the legislature to represent the government in labor relations primarily occurs in counties which do not have chief executive officers...." He continues,

> "Usually, however, the participation of elected officials in labor negotiations is short-lived and bargaining responsibility is transferred to the executive branch. The main reason is the inability of legislators to be effective negotiators.... They do not have detailed knowledge of most items which are subject to negotiations Furthermore, partially because most local legislators are part-time officials, they do not usually have sufficient time to become experts.... "[p. 106]

In sum, both national practice and expert opinion support the shift of labor relations management from the legislative to the executive branch of government.

Legislative Role

On the other hand, excessive concentration of authority may be unrealistic. [Derber, p. 93] Moreover, a legislative check on executive authority may be appropriate in labor relations as in other areas of government. Wellington and Winter argue, for example, that

> "Concentration of authority in bargaining seems imperative if municipal and county labor relations are to be efficient. This does not mean, however, that all checks on the governmental branch with major authority should be eliminated. A check in the form of budget approval by the legislature, where the executive is the employer… may be necessary to curb the power of unions." [p. 128]

A less controversial formulation might argue simply that the legislative authority to review the executive budget and appropriate funds provided by the charter county act [Sec. 11a, (8) (d)] implies authority to review and approve at least the economic portion of collective bargaining agreements. The charter commission may, therefore, wish to assign authority to review and approve bargaining agreements to the board of commissioners. This authority could be limited to economic matters, or apply to the entire agreement as in the Detroit charter [Sec. 6-508]. It may even include specific authority to review and approve expenditures for grievance settlements. This is the case at present and may be a necessary correlative of the legislative authority for appropriations.

Legislative Committee

If the charter assigns authority for contract review and ratification to the legislature, it may be desirable to include specification of a legislative committee to replace the labor relations board. This committee could provide legislative views to the county negotiators and thus increase the likelihood that agreements receive legislative support. Alternatively, the county executive or chief administrative officer could take soundings with legislative leaders and avoid reliance on a special committee. If the charter does establish a legislative committee, then it will be possible to define its membership and delimit its functions. Currently, many commissioners resist appointment to the labor relations board due to the political costs of participation in unpopular labor management decisions. A charter-designated committee could require participation by appropriate legislators whose responsibilities relate to the bargaining process; e.g., representatives of taxation, budget or personnel committees. This approach is suggested in the National Civil Service League study of Wayne County personnel management [p. 93]. Moreover, the charter could specifically limit the committee's functions to advisory and recommendatory activities to clearly distinguish it from the current labor relations board which is an administrative body.

The new committee, if established, should, of course, be called a "committee" and not a "board" to distinguish its role and permit legislative rather than executive appointment of its members. The ultimate question of whether such a committee should exist at all

depends on the general allocation of powers between the executive and legislative. If the charter established a strong executive, comparable to the mayor in Detroit, the committee would probably be superfluous. But, if the legislature has a substantial role in budgeting, a labor relations committee may be essential to executive-legislative coordination.

## III. ADMINISTRATION OF LABOR RELATIONS MANAGEMENT

### The Present System

Wayne County has developed a labor relations department which reports through a director of labor relations to the labor relations board. This ensures a strong link between the budgetary concerns of the board of commissioners and the bargaining process. However, the commissioners do not closely review bargaining on personnel policies. Moreover, there is little coordination between the labor relations director and the director of personnel who is responsible to the independent civil service commission rather than the board of commissioners. Similarly, there is inadequate coordination between the labor relations department and various operating agencies; though certain agencies (sheriff, youth, hospital, and courts) participate in bargaining. There are no regular mechanisms or training programs to coordinate contract administration. The following assessment of administrative alternatives possible through charter revision consequently emphasize three issues: what sort of administrator should conduct collective bargaining activities for the county; the relationship between labor relations and personnel policies; and, coordination between labor relations and operating agencies.

### Department of Labor Relations

The establishment of a specific department of labor relations accords with the national trend "that full-time labor relations specialists have responsibility for negotiating and administering contracts." [Burton, p. 106] Milton Derber, in a more recent study, offers the following elaboration:

> "Centralization of management responsibility in collective bargaining was fostered by a mounting recognition that the bargaining process demands professional skills, specialized knowledge, quick access to relevant data, and quantities of time and energy.
>
> . . .
>
> Small governmental units… often hire a lawyer or industrial relations specialist on an ad hoc basis to represent management at the bargaining table.
>
> . . .
>
> Larger governmental units often appoint a full-time specialist as employee relations director in the manner of a private corporation. Sometimes the labor relations director handles all personnel matters; sometimes personnel and labor relations are treated as separate functions." [pp. 93-94-95]

While, therefore, it would be possible for the charter to abolish this labor relations department and assign its function to another administrative unit, such a decision would run counter to national experience and would probably be ill-advised.

If a department and a director of labor relations are included in a revised charter, they will, of course, be ultimately responsible to the county executive or chief administrative officer though they might report through an intermediary such as a general director of personnel. In any case, if the director of labor relations is the "head" of a department then he or she must be appointed by and, at pleasure, dismissed by the executive. This is probably essential if the executive is to assure responsible personnel management. The charter commission might, however, wish to establish qualifications for appointment to the position of director of labor relations. If so, it would be well-advised to emphasize a record of successful experience rather than formal educational attainments or examination scores. Necessary technical skills such as economic analysis, personnel assessment, and legal analysis can be supplied by appropriate professional staff in the classified service.

Coordination of Labor Relations and Personnel Management

The personnel study group of the Wayne County efficiency task force has expressed great concern regarding the lack of coordination between the directors of labor relations and personnel. [p.7] The division is historically rooted in the decision of the Michigan Supreme Court denying employer status to the civil service commission, which supervises personnel administration, and assigning employer status to the board of commissioners. [Civil Service Commission v. Board of Supervisors, 384 Mich. 363 (1971)] This decision not only divided labor relations from personnel management but established the responsibility of the administrators of these areas to two conflicting authorities. This conflict of authority will certainly be diminished in a revised charter since the executive will assume the administrative authority of each of the current authorities. [Charter County Act, Sec. 11a, (8) (a) and (e)]

General Director of Personnel. The personnel study group recommended establishment of a "general director of personnel" to coordinate four personnel areas which would be headed by four specialized directors: civil service, labor relations, personnel policy, and human resources. [Personnel Study Group, p. 9] The recommendation would require two costly additional positions: the general director and the civil service director (as distinguished from the personnel director). Moreover, it requires a general director with unusually diverse training, skills, and experience. [Ibid., p. 10] Since the county executive or chief administrative officer would provide unified authority and at least some improvement in coordination, it may no longer be necessary to resort to a "general director of personnel" to achieve coherent personnel management.

The Detroit Pattern. The Detroit charter appears to provide a middle ground. It establishes a division of labor relations within the personnel department but permits the mayor either to designate the director of personnel to direct labor relations as well or to appoint a separate director of labor relations. [6-508] Since the charter also provides that the civil service commission appoint the director of personnel (subject to the mayor's approval), it is likely that labor relations directors in the future, as heretofore, will be separate appointees exclusively responsible to the mayor. Since any chief executive

will feel a compelling concern to integrate labor relations with budget, the direct responsibility of the director of labor relations to the chief executive is likely to outweigh concern for the integration with personnel management.

Subordination of Personnel to Labor Relations. At the other extreme, the personnel management function can be subordinated to labor relations. Milton Derber, as indicated above, reports that labor relations ordinarily subsumes or exists separately from personnel management. He states further that

> "Where a strong collective bargaining office has been developed, it tends to dominate the personnel unit, although the latter often provides a valuable support role in providing information (statistical and qualitative)." [p. 101]

This may reflect the judgment that the political responsibility to the chief executive and interpersonal skills essential in a labor relations director require a non-classified employee directly responsible to the chief executive; whereas the more technical skills and independence of judgment appropriate to a personnel director, especially in conjunction with a merit system, may be found in a classified employee in an administrative position insulated from direct political interference. Alternatively, the increasing number of personnel systems which stress managerial flexibility rather than merit regulations may find that labor negotiations are a critical technique for establishing effective managerial control. Subordination of personnel management to labor relations would probably be inappropriate in Wayne County, however, both because of the orientation of the classified staff in the personnel area and because the charter county act mandates continuation of a civil service system. [Sec. 14 (f)]

The Scope of Civil Service. Collective bargaining generally diminishes the scope of civil service systems. While authorities differ concerning the compatibility of collective bargaining and civil service, they generally agree that co-existence is possible where the scope of civil service activities is narrowed. John Burton, writing in 1972, emphasized the contradiction between an independent civil service and both collective bargaining and effective personnel management; but he concluded that civil service and collective bargaining were "not totally incompatible" if civil service authority were restricted to areas such as recruitment. [p. 109] Two years later, Charles Feigenbaum agreed that bargaining narrowed the scope of civil service but listed a wider range of compatible activities:

> "The civil service system will retain its role as the watchdog of the merit system, as the developer of general personnel policies, and as the prime mover in recruitment and examining." [Feigenbaum, p. 33]

More recent articles report that collective bargaining and civil service systems do, in fact, continue to co-exist. For example, Jean Couturier concludes

> "Public employee unionism has significantly changed the traditional methods of public personnel management. On the other hand, unions have done little to change the fundamental merit principles of the public employment process." [p. 71]

This statement goes to the heart of the issue. Collective bargaining is compatible with civil service protection of a merit system, but it is not compatible with civil service direction of personnel management.

In Wayne County, the civil service commission has directed day-to-day personnel administration. This practice has been repeatedly noted and critiqued in earlier studies. [Study Group on Personnel, p. 7; National Civil Service League, p. 10] Collective bargaining has provided an opportunity to develop personnel management policies without civil service commission intervention, but equally without either executive direction or regular involvement of the professional personnel staff. The charter revision will provide executive direction and may make possible appropriate personnel management if the civil service commission can be restricted to protection of the merit system and removed from personnel management. The commission may already exceed its authority to "supervise the administration of civil service rules" through its participation in day-to-day decision-making. [County Civil Service Law, Sec. 12 (c)] In any case, the charter commission is probably empowered to modify the civil service system regardless of the county civil service law. [Kelley, Opinion 4534 of 1966; Michigan Charter County Act, Sec. 14 (f)] Such modification is essential to permit executive coordination of collective bargaining and personnel management.

Summary

Labor relations and personnel management may be coordinated in three alternative ways: subordination of labor relations to a general director of personnel, subordination of personnel management to labor relations, or the maintenance of separate departments of labor relations and personnel directly responsible to the executive. Whichever alternative the commission elects, coordination of labor relations and personnel management ultimately depends on the ability of the county executive or chief administrative officer to direct both functions in accordance with appropriate laws and regulations but without day-to-day intervention by the civil service commission or any other quasi-independent authority. Consequently, removal of the civil service commission from daily involvement in personnel administration is the key to achieving coherent and effective labor relations and personnel management.

Coordination of Labor Relations and Operating Departments

Integration of labor relations activities with the activities of operating departments and agencies presents a further difficult problem of coordination which is not unique to Wayne County. Milton Derber presents two reasons for such coordination:

> "One is the specialized knowledge possessed by the administrator. The other is the concern of the administrator with the impact of the labor agreement on the functioning of his agency. If an agreement is to be meaningfully applied, it must be understood and (for best results) accepted by the people who must live with its provisions." [p. 98]

Despite the importance of coordination, it is difficult to achieve. Derber notes several problems, each of which is substantially true of Wayne County:

> "Professional management negotiators… are usually sensitive to the internal communication problem. However, they have not always been successful in coping with it, either because of limitations of staff and time or because bargaining strategy impels them to hesitate to reveal their plans to others for fear of leaks. Moreover, in large and complex organizations… size creates serious communications barriers. [p. 99]

This sort of problem is never entirely resolved, but charter revision might contribute to a solution in two ways: establishment of an advisory coordinating committee and/or appropriate specification of the duties of the director of labor relations.

Advisory Coordinating Committee. Formal establishment of an advisory committee presents a number of difficulties. These include the various and shifting composition appropriate to negotiations with more than twenty distinct bargaining units, the difficulty of maintaining the secrecy essential in some stages of collective bargaining, and the disruptive impact on negotiations should consensus fail. Detroit has achieved a substantial degree of coordination without charter specification of a coordinating committee. As a matter of policy, the Detroit labor relations division includes a representative of the personnel department on the negotiating team and invites the heads of affected agencies to attend negotiating sessions and to inform the division of contract problems. The Detroit division also conducts training workshops for the personnel specialists in the various operating agencies and many of these specialists have previously served on the staff of the division.

Duties of the Director of Labor Relations. Appropriate training and career development may well contribute more to coherent personnel management than a coordinating committee. Rather than specifying a coordinating mechanism, therefore, the charter might encourage improved coordination through appropriate specification of the duties of the labor relations unit. For example, the charter could adapt the language of the Detroit charter to Wayne County and then add a second sentence as follows:

> The Labor Relations Department shall act for the County, under the direction of the County Executive/Chief Administrative Officer in the negotiation and administration of collective bargaining contracts. [Adapted from Detroit Charter, 6-509]

> The Department shall regularly consult the various agencies of the County regarding personnel matters and provide appropriate periodic training in contract administration for agency personnel officers and directors.

In practice, however, such a policy cannot be effective without a substantial improvement in staff support and executive direction.

## IV. LABOR RELATIONS POLICIES SUBJECT TO CHARTER REVISION

The charter is not generally the appropriate mechanism for establishing specific labor relations policies. In the main, such policies are established through negotiations or civil service rules. There are, however, a few policy matters which may be appropriately treated in the charter. These include affirmation of the right of employees to bargain collectively, the relationship of negotiated agreements to civil service rules, management rights, employee grievance and appeal procedures, and the possible inclusion of the road commission within county labor relations management.

### The Right to Bargain

The Detroit charter affirms that "employees of the City have the right to collective organization and collective bargaining." [5-607] This basically reiterates state law and seems superfluous. It may, however, be judicially construed to broaden the definition of employees beyond current Michigan practice since it does not specifically exempt those confidential and supervisory employees excluded from bargaining in the application of the state act. Since it would be difficult to specify the appropriate exemptions, it might be better to remain silent on the matter, thereby maintaining existing rights without introducing possible ambiguities.

### Contract Pre-empts Civil Service Rules

The Detroit charter similarly reiterates the state legal situation in its declaration that:

> "The terms of any collective bargaining contract, and all rules and rulings made under it, shall take precedence over any inconsistent classifications, rules, or policies of the personnel department." [6-508]

Although this statement is essentially congruent with current Michigan law, it does clarify a potentially confusing situation. More importantly, in view of the history of litigation between the civil service commission and the board of commissioners concerning the relationship between collective bargaining and personnel rules, it may be worthwhile to state specifically that collective bargaining agreements supersede civil service regulations.

### Management Rights

It may be that the charter affords an appropriate opportunity for the county to affirm in detail its reserved or management rights. The county currently negotiates rather vague management rights clauses which, coupled with broad "savings" or past practice agreements, may inadequately protect the county's managerial authority. The county might strengthen its position by supplementing its general assertion of the authority to manage, with appropriate specific reserved authority for such matters as "contracting-out," agency "mission," and work assignments. However, such a charter provision would not

prevail over established contracts or past practices; it would be effective only in the absence of both a specific contractual agreement and a finding of a uniform past practice on the matter at issue. Moreover, an effort to act unilaterally to strengthen management rights, following a long history of bargaining, might seriously impair county labor relations. Consequently, any decision to include a management rights clause should be taken only after careful consultation and review of potential benefits against potential costs.

Grievance Arbitration

The county's collective bargaining agreements typically provide binding arbitration of grievances. For non-represented classified employees, the civil service rules establish the civil service commission as the final authority for employee appeals. [Rule 14, Sec. 9] In contrast, the Detroit charter equalizes the situation of represented and non-represented employees by providing a system of arbitration for non-represented employees and permitting represented employees to elect their choice of remedy. [6-513] This provision recognizes that civil service commissions perform managerial functions and are not viewed by employees as neutral judicial bodies. It also removes a major incentive for union representation for those employees – such as supervisors and professionals – who might forego union representation if they were otherwise assured of a genuinely neutral review and guarantee of established rights and benefits. Such a provision may, however, increase litigation and associated costs.

Road Commission

The county road commission bargains separately from other county agencies. This involves some duplication of effort, including a separate labor relations staff. It also causes an awkward lack of uniformity in personnel policies despite efforts at coordination and information exchange. Representation of the road commission by the director of labor relations might, therefore, increase the efficiency and coherence of county labor relations policy. It does not appear, however, that the charter commission can mandate that the road commission act through or in concert with the director of labor relations.

The Michigan Supreme Court has ruled with unusual firmness and specificity:

> "From as far back as 1909, P.A. 283, Section 10, of the county road law has authorized each board of county road commissioners to 'employ' its necessary 'servants and laborers.' The section leaves no doubt of original and present intent that each board of county road commissioners shall be the employer of its employees, and that such employees shall be employees of that same board.
>
> Such are our reasons for previously declared agreement with the defendant road commission that it is, within the Act of 1965, the public employer of its employees and that it alone is the duty-bound employer particularly within the meaning and purpose of Section 15 of the Act of 1965." [Civil Service Commission v. Wayne County Board, 384 Mich. 363 (1971)]

Note that the court states that the road commission alone is the employer for purposes of bargaining under the public employment relations act of 1965. In adopting the Michigan charter county act, the legislature took care to reaffirm this conclusion. First, the act specifically states that the road commission shall have the "powers and duties pertaining to a county road system as provided in Sections 9 to 32 of Chapter 4 of Act No. 283 of the Public Acts of 1909...." This includes the specific section of the act cited by the Supreme Court. Second, the charter county act apparently exempts the road commission from coordination through an otherwise all-inclusive civil service system. [Sec. 14(f)] Absent further state legislation on the matter, the prospects for improved coordination depend on the actions of the county executive or chief administrative officer who may, at pleasure, remove members of the road commission.

## V. SUMMARY OF LABOR RELATIONS POLICY ALTERNATIVES

Charter revision will substantially increase the authority of the executive vis-à-vis the legislative body due to the broad executive powers mandated by the charter county act. The charter may maximize this shift in authority by assigning no formal collective bargaining functions to the legislative body; or it may moderate the shift of authority by empowering the legislative body to review and ratify agreements. If the legislative body is assigned such powers, the charter may establish a legislative committee to advise the executive and make recommendations to the board of commissioners regarding bargaining agreements.

The charter may retain a specialized department of labor relations or assign these functions to an alternative agency or outside consultant. If the charter retains a director of labor relations, it may establish qualifications for the position. The charter may subordinate the labor relations function to a general director of personnel, subordinate personnel management to labor relations, or maintain distinct departments separately responsible to the executive. The charter must continue a civil service system, but may restrict its scope and activities. The charter may provide enhanced coordination between labor relations and operating agencies through a formal committee and/or the appropriate specification of duties for the department responsible for labor relations.

The charter may not diminish the right of employees to bargain collectively, but may retain the right without specific reference or may specifically affirm it. The charter may formally state that civil service regulations are pre-empted by ratified agreements. The charter may include a detailed specification of management rights, though these not will override existing agreements and established practices. The charter may establish binding arbitration of grievances for all classified employees, or retain the existing civil service appeal procedure for non-represented employees. The charter cannot compel the road commission to bargain through the county director of labor relations.

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