NINTH EDITION

LABOR RELATIONS AND COLLECTIVE BARGAINING

Cases, Practice, and Law

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Chapter 7

Wage and Salary Issues

Union Wage Concerns
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Costing Wage Proposals
Public Employee Wage and Salary Issues

Starbucks paid $18 million to settle an overtime dispute with its employees.

Labor News

WAGE WARS BEING WON BY WORKERS

Mark R. Thierman, a Reno, Nevada, attorney and Harvard Law School graduate was a "union buster" management labor attorney for 20 years. Not anymore! Today, he is called the "trailblazer" of what has become a hotbed of U.S. employment cases: the overtime provision of the Fair Labor Standards Act (FLSA). From 2001 to 2007, the number of cases filed in federal courts more than doubled. The U.S. Chamber of Commerce describes it as the "FLSA litigation explosion," which has led to over $1 billion annually in settlements in recent years. The cases are usually filed against employers on behalf of a large group of employees and have included the following:

- *Starbucks:* $18 million settlement to store managers in California
- *UPS:* $87 million settlement to 23,000 drivers.
- *Wal-Mart:* $172 million jury award to California workers and $78.5 million jury award to Pennsylvania workers.
- *Sony:* $8.5 million settlement to video-game employees.
- *Citigroup/Saloman Smith Barney:* $98 million settlement to 20,000 stockbrokers
- *IBB:* $65 million settlement to 32,000 technical and support workers.
- *Unite Here:* The labor union has been charged with failing to pay organizers overtime.

The core issue of the cases is employers' failure to pay workers time-and-a-half pay for hours worked over 40 per week as required by the federal law—overtime. About 86 percent of the U.S. workforce is entitled to overtime according to the U.S. epartment of Labor, or 115 million workers. Only certain workers are exempt from the law: mostly supervisors, professionals, and executives.

Why the recent deluge of cases? When the law was passed in 1938, most employees worked in manufacturing firms and the major goals of the law were to create a "40 hour workweek"—by requiring overtime pay and thus reward employees who worked long hours, as well as expand employment by encouraging employers to hire more employees rather than pay the overtime rate. Labor unions in the United States had long sought the 40-hour workweek and considered the law a major victory for workers. For many years employers were usually careful to avoid scheduling workers for more than 40 hours per week, and it was not difficult. Today, however, technology, work rules, and the shift from manufacturing jobs to service jobs has made it more difficult to determine which jobs are exempt from the law and to determine exactly when the workday starts. For example, when employees are required to start their workday by downloading their route schedule at home and calling clients, when exactly does their workday begin? Are computer programmers exercising "independent judgment" and thus exempt from the overtime provisions as professionals if they are simply implementing standard routine programs? Are employees who are required to attend evening training programs in addition to their workdays eligible for overtime? Another potential reason for the growth in claims is that given the cost of health care, pensions, and new employee training, more employers prefer working full-time employees more hours rather than hiring more workers. Also, many employees are hesitant to file overtime claims or don't realize they should be receiving overtime pay.

SOURCE: Adapted from: Michael Orey, "Wage Wars: Workers from Truck Drivers to Stockbrokers Are Winning Huge Overtime Lawsuits," *Business Week* (October 1, 2007), pp. 52–60.

Wages and other economic benefits for employees are undoubtedly the meat and potatoes of collective bargaining in labor relations. To the employee, they represent not only their current income and standard of living but also potential for economic growth and the ability to live comfortably during retirement. Wages are often considered the most important and difficult collective bargaining issue. When negotiated settlements are reported to the public, the first item specified is the percentage wage increase received by employees. In fact, in many cases that may be the only item employees consider critical or an absolute must as they vote to ratify a tentative agreement. They focus on "the number"— the percentage wage increase in the contract.

According to industrial research, historically pay level has been positively related to employee satisfaction.[1] Employees consider their pay to be a primary indicator of the organization's goodwill. Many individuals in our society consider the salary or income one receives a measure of one's worth. Employees can get an exact measure of their salary, which can easily be compared with the salaries of fellow employees and those in other organizations and occupations. Therefore, most of us consciously or subconsciously compare our income levels not only with inflation and our cost of living but also with incomes of other individuals.

Wages and benefits are also a prime collective bargaining issue to the employer. They represent the largest single cost factor on their income statement. Although many management negotiators would like to pay high wages to employees, the reality of competition and the knowledge that competitors may be able to secure less expensive labor make it difficult to survive. Unlike many costs, such as capital and land, wages constantly rise, and they are not as easy to predict. Wages are the single most important source of tax revenue to federal, state, and local governments and in general are a strong indicator of the economic vitality of a community.

The total economic package of wages and benefits may be negotiated as a complete item rather than treated individually, enabling both sides to estimate accurately the total cost of the contract to the organization in terms of increases over current salary and benefits. In this chapter we discuss wage issues; employee benefits are covered in Chapter 8. Wages and benefits are separated to draw a distinction between the two; however, negotiators consider both a part of the total economic package.

Labor and management negotiators normally define pay by either time worked or units of output. **Pay for time worked**, or an **hourly wage** or **annual salary**, has become the predominant means of employee compensation in the United States. Most labor contracts contain specific job titles and associated wage scales agreed on by labor and management. Figure 7-1 shows an example.

Pay for time worked: *Employee wage rate based on the time actually worked (hours, days, shifts, etc.).*

Pay for units produced, usually referred to as **piecework**, is still used in many industries as not only a means of wage determination but also a motivational technique. Many piecework systems today provide a guaranteed salary with an additional rate established for units of output above a certain production level.

Piecework: *Employee wage rate based on the number of units produced.*

As the nature of jobs changes, more agreements provide annual salaries expressed in pay grades. In Figure 7-2, for example, all the clerical, engineering, and technical jobs at DaimlerChrysler Corporation were negotiated to the pay grade that best reflects their value and maintains internal equity. All new employees started at the minimum salary for the grade for their job and each year received an automatic step increase until they reached the top progression rate. The top step or maximum, therefore, is the highest amount the employer will pay for work in that grade.

	Group	Department
I	Die Repair	Maintenance
II	Maintenance	Maintenance
III	Cage Attendant	Material Handling
	Head Loader	Shipping
	Guillotine Operator	Window and Prime
	Brake Operator	Millroom and Prime
	Crane Operator	Material Handling
	Automatic Bander	Door and Prime
	Automatic Saw-Punch Machine	Millroom and Prime
IV	Material Handler	Material Handling
	Utility	Door and Window
	Thermal Break Operator	Prime
	Large Glass Cutter	Specialty
	Large Punch Press Operator	Door and Millroom
	Loading	Shipping
	Plant Truck Driver	Shipping
V	Salvage	Material Handling
	Material Handler	Material Handling
	Loader-Unloader	Paint Line and Prime
	Schlegeler	Door, Millroom, Prime, and Specialty
VI	(None)	
VII	Glass Cutter	Window, Specialty, Prime, and Insulated Glass
	Sample Builder	Sample
	Glass Washer and Assembler	Insulated Glass
	Spacer Assembly	Insulated Glass
	Sealant Applicator	Insulated Glass
	Parts Puller (Sash, Screen, Frame)	Window
	Belt Line	Door
	Door Prehanger	Door
VII	Screen Pre-Assembler	Door, Window, Specialty, and Prime
	Screener	Door, Window, Specialty, and Prime
	Sash Builder	Door, Window, Specialty, and Prime
	Frame Builder	Window, Specialty, and Prime
VIII	Small Punch Press Operator	Door, Millroom, Specialty, and Prime
	Processor	Door, Millroom, Specialty, and Prime
	Window Wrapper	Shipping
IX	Packaging	Material Handling
XXIII	Equipment Operator	Paint Line
XXIV	Assistant Equipment Operator	Paint Line

Group	Hire Rate Effective June 1, 2008
I	$19.80
II	$19.62

(continued)

FIGURE 7-1 Job Classifications and Wage Rates

III	$19.30
IV	$18.60
V	$18.30
VI	$17.50
VII	$17.10
VIII	$16.50
IX	$16.20
XXIII	$12.60
XXIV	$10.00

FIGURE 7-1 (Continued)

Effective September 2007 thru September 2010

Grade	Minimum	Top Progression Rate	Maximum
1	$ 837.79	*	$1,165.94
2	$ 840.01	*	$1,182.57
3	$ 843.29	*	$1,197.41
4	$ 898.28	*	$1,229.98
5	$ 914.94	*	$1,280.31
6	$ 924.05	*	$1,315.43
7	$ 930.03	*	$1,340.25
8	$ 937.70	*	$1,369.25
9	$ 958.47	*	$1,393.78
10	$ 966.65	$1,268.58	$1,432.97
11	$ 986.72	$1,288.01	$1,457.92
12	$ 994.96	$1,303.58	$1,487.36
13	$1,013.21	$1,337.37	$1,515.53
14	$1,030.34	$1,360.58	$1,559.54
15	$1,036.99	$1,374.16	$1,584.45
16	$1,065.74	$1,406.15	$1,624.63
17	$1,083.37	$1,422.94	$1,663.14
18	$1,131.96	$1,496.95	$1,702.35

FIGURE 7-2 Chrysler Corporation Clerical—Engineering—Technical 18-Grade Structure

*Automatic progression to the maximum rate in Grades 1, 2, 3, 4, 5, 6, 7, 8, and 9

SOURCE: Adapted from *UAW-Chrysler Newsgram*, October 2007. Available at www.uaw.org. Accessed February 23, 2007. Used by permission.

UNION WAGE CONCERNS

"A fair day's pay for a fair day's work" is a commonly used phrase summing up the expectations of many employees. Employees expect and even demand to be treated fairly and honestly by the organization. Although most are reasonable in their pay expectations, a few feel they are being underpaid. If employees perceive that they are unfairly treated by the organization, particularly in pay matters, they typically react by leaving the workplace either temporarily through absenteeism and tardiness or permanently through seeking employment at another organization, by reducing the quantity or quality of their production, or by filing a grievance or enacting a work

stoppage through the union. Eventually their pay dissatisfaction will be brought to the bargaining table, leading ultimately to either higher wages or an economic strike. Or they may change their perceptions by simply accepting the inequity, although this response may become a permanent morale factor.[2]

Obtaining **pay equity** in the workplace is difficult. The slogan "equal pay for equal work" is a guide that union and management leaders follow and that employees expect to be maintained. Obviously not all jobs involve work of equal value to an organization. The first-year bookkeeper does not expect the same pay as a tax accountant; the same is true for a punch press operator and a maintenance attendant. Employees understand that the value of the work leads to different pay grades and classifications for different jobs. As shown in Figure 7-2, labor agreements commonly provide for different job classifications being assigned different pay grades according to level of skill and work demanded. As long as pay grades are fairly structured and evenly applied, employees have no trouble accepting differential pay based on job classification and internal wage levels, unless, as seen in Case 7-1, pay differentials are not based purely on job classifications.

CASE 7-1

Wages: Extra Compensation

The company operated a centralized facility to provide public transportation. The bargaining unit consisted of the vehicle operators, excluding supervisors, substitutes, guards, and office personnel. The collective bargaining agreement (CBA) was in effect from October 1, 1996, to June 30, 1999.

The operation was decentralized in April 1997 when the company opened seven suburban service center locations. Because the company had acted before hiring the management supervisory personnel at each site, it decided to assign certain unit drivers to temporary positions titled "coordinator." These persons had limited supervisory authority but functioned as leaders in each service center. These positions were opened to the company's unit member drivers, who applied and filled the positions. The company paid a $1 an hour stipend in addition to the regular contract rates for drivers for the additional leader duties. The additional duties specified for such coordinators were listed as opening and closing the facility, coordinating the work and assignments of drivers, and overseeing that proper service was provided. Additionally, these persons dispatched drivers and handled answering the telephone. This move and the temporary assignments were negotiated with the union, but no agreement was reached, nor was any objection raised to the procedure.

By July 1998, the service centers had been staffed with managers, and the company acted to eliminate the leader duties previously done by coordinators. However, certain duties, such as dispatch and telephone answering, were still assigned to the classification now known as "service provider," which was a change from the former "driver" title. This realignment of duties was not negotiated with the union. When the company made this realignment of duties, those who had previously served as coordinators were continued at the $1-per-hour stipend out of recognition of the commitment those people had made to help the company. It viewed this as a grandfathering of the wage for those individuals. However, the company did not apply the $1 stipend to other individuals who served thereafter as service providers.

Ultimately, the union grieved extra duties assigned to the former driver classification and that certain employees who were classified as service providers were entitled to the $1 stipend because of the duties that they were performing, particularly the dispatching. The union complained that the company violated the contract and the law by unilaterally establishing terms and conditions of a new classification. The effectuation of such terms and conditions, including the assignment of duties and the payment of additional wages, is clearly contrary to the contract. Employees who are assigned such duties as telephone and dispatch should be paid at the same rate as others who formerly performed as coordinators.

(continued)

CASE 7-1

Wages: Extra Compensation—continued

The company insisted that it has the management right to assign duties to the drivers that are not inconsistent with the classification and the general purpose of the operation. In establishing coordinators on a temporary basis, it did exactly that and, in addition, compensated them for certain leader/supervisory obligations. When the need for the performance of such duties ended, the company properly removed such assignments. The fact that such employees and others later performed the function of dispatch and telephone should not be considered leader/coordinator duties for which an additional $1 stipend was paid but rather normal assignments permitted the company under the contract. All employees are paid equally for the same work within the classification, including dispatching and telephone. The only distinction is that those employees who formerly served as coordinators had been granted a special continuing rate of pay in light of their willingness to make the previous commitment to assist. In no respect did the company ever commit to pay an additional $1 for all drivers performing such non-leader/supervisory duties.There is no disparity in pay.

Discussion

A key to this dispute is the question of whether the company would have, in the past, prior to the new service centers, violated the contract by assigning to members of the unit such duties as dispatching and telephone as are now done by certain service providers.

Under the management rights clause, there is certain flexibility and discretion allowing the company to assign related duties. The contract does not have any clear limitation on the assignment of such additional work. As long as such tasks are not supervisory and are reasonably related to the purpose—providing customer transportation—they may be included. In setting up the service centers, the company acted in somewhat of a hurry, so it did not have the managers and, hence, had to make use of drivers by assigning them temporarily to additional duties of a leadership nature. There was no objection to the process of application and interview and placement, nor was there any objection to the fact that the company paid an extra $1-per-hour stipend. The company never indicated that this move was intended to be permanent. The company saw certain leadership duties as beyond the scope of the classification and was willing to pay, but that did not create an obligation to continue it indefinitely.

When the company put managers in place, it no longer required the coordinators to perform supervisory tasks. However, there still was a need for nonmanagerial duties, such as dispatch and telephone answering, to be done. The question is whether after the managers were in place it was improper for the company to assign such duties to unit members without the additional compensation.

The fact that some former coordinators continued to do such tasks and received the $1 stipend is not determinative of the company's commitment because, as the company explained, it felt committed to those people who had helped in the transition. Payment to such former coordinators does not, under the circumstances, establish any right of others who are assigned such duties. The issue is whether the company was obligated to "pay equally" everyone within the classification who performs the same duties.

Decision

The court found that the company did not violate the contract by adding nonsupervisory duties to the service provider classification under its management rights clause because those duties are reasonably connected to the operation of transporting customers and therefore within the scope of the prior driver classification. Furthermore, when the company filled the management positions, the company rightfully discontinued the leader/supervisory duties of the employees designated as coordinators. However, the duties attributable to their status as service providers—dispatch, telephone, and so on—were not leader/supervisory duties and properly were retained within the scope of the service provider classification. Continuing assignment of such work to former coordinators with the $1 stipend and to others without such extra compensation did not create a new compensation level or disparate treatment of persons within the classification because the company had the right to continue to pay those individuals $1 more an hour in appreciation of their service.

SOURCE: Adapted from *The Mass Transportation Authority v. AFSCME Local 1223*, 115 LA 521.

In recent years a new pay equity issue has emerged—the worker/CEO pay gap. The gap is growing, according to a study by the National Bureau of Economic Research. In 1970, the average full-time worker earned $32,522, whereas the average CEO or top corporate executive earned $1.25 million (adjusted to 1998 dollars). By 2007, the average worker's pay increased by 24.2 percent to $40,409 while the average Standard & Poor's 500 Company CEO pay increased by more than 3,720 percent to 15.06 million.[3] The difference in CEO pay and worker pay can irritate all workers, but poor timing of pay decisions can further strain management–union relations. For example, in 2003, as American Airlines asked three unions to accept deep pay and benefit cuts of about $10,000 per year per worker, or almost 20 percent of their total compensation, American Airlines disclosed special payments to 45 top executives of about $100 million of the $1.8 billion in concessions gained from the workers. Six top executives received a bonus equal to twice their base salaries. One union member, Joseph Szubryt, who supported the pay cuts to save union jobs exclaimed, "This feels like a stab in the back. . . . On the day we voted for all this stuff (pay and benefit cuts) . . . they disclose this? How the heck could these guys do that?"[4]

Some wage systems provide for higher wages to employees with more longevity. Thus, seniority helps employees not only in bidding for open jobs but also in receiving higher pay. Even though less senior employees perform the same work, everyone realizes that longevity pay serves as an incentive to stay with the organization. But pay inequities can develop for any number of reasons, as seen in the discussion of mergers in Profile 7-1.

Union Wage Objectives

How have unions, as organizations, affected the wages of their workers through the collective bargaining process? What primary objectives have unions held when negotiating wages? An extensive review of the related research by Bruce Kaufman, Department of Economics and the W. T. Beebe Institute of Personnel and Employment Relations at Georgia State University, produced eight dimensions of the effects union wage negotiations have caused in the past 56 years:

1. ***Union goals in wage bargaining.*** Lynn Williams, former president of the United Steelworkers Union, summarized union wage goals as (1) "achieving the maximum level of wages and benefits for its members" and (2) "maintain[ing] all the jobs it could within as viable an industry as possible."
2. ***The union–nonunion wage differential.*** In the United States the size of the union versus nonunion wage differential, on average, is currently 24 percent.
3. ***Union wage differentials over time.*** From the end of World War II to the early 1980s, the union–nonunion wage differential in the United States continued to increase, but since the early 1980s, it has had a modest decline.
4. ***Union wage rigidity and wage concessions.*** Unions have historically held to the principle of no "givebacks" or "backward steps" in wages, even to the point of letting a company go out of business rather than accept a cut in wages.
5. ***Wage structure.*** Unions have also affected the structure of wage scales among workers within one employer or industry, negotiating for differences in working conditions, skills, seniority, age, and job classification. They have typically "flattened" or "compressed" the wage structure among workers in a plant or company and between skilled and unskilled workers.
6. ***The form of compensation.*** Unions in most cases have bargained for wages based on time or hours worked. They have opposed pay systems based on output, such as a merit or piece-rate systems or merit evaluations by

PROFILE 7-1

Pay Equity in Company Mergers

Mergers and acquisitions are common in today's malleable business climate and have a significant impact on a wide range of employee issues. One major area of concern, of course, is how merging two organizations' compensation plans affects employees' pay. Experts advise that companies need to see the issue as more than just coordinating two payroll systems. "You have to make sure that you're doing it in a holistic way, not just nailing one company to the other," said Ken Ransby, a principal in the San Francisco office of Towers Perrin. Ransby went on to advise that although it might be ideal to use the best aspects of each organization's pay systems, such an approach might be too costly.

Before deciding how to approach compensation issues, the merged company should examine the underlying business reasons for the merger. If full integration of the two or more organizations was the goal, then the compensation systems must be aligned. Aligning pay systems requires a detailed analysis of the pay systems, consideration of how the organizations define pay, and recognition of geographic factors that cause pay disparities.

When Pfizer Animal Health Group acquired SmithKline Beecham Animal Health Business, the two compensation systems offered comparable pay, but Pfizer relied more on base pay whereas SmithKline offered incentive pay. The merged company wanted a single pay system, so it needed to integrate the SmithKline system into Pfizer's without having the SmithKline workers feel they were losing out. The solution was to fold into those former SmithKline workers' base pay an average annual incentive payout based on the three years prior to the merger.

Another common pay problem created in mergers and acquisitions is when similar jobs within the merging organizations have higher or lower rates. Usually, cutting salaries is not an option, and leaving salary discrepancies in place can lead to legal problems. Some companies approach this problem by leaving the higher salaries in place but freezing them for some period of time while at the same time evaluating the lower-salaried positions on a frequent basis. This would enable the positions to reach the same pay in an acceptable time frame without causing the company major cost problems.

Labor law experts warn companies that taking this approach can be hazardous. CoreStates Financial Corp. of Philadelphia found itself liable for $1.5 million in back pay and wage adjustments to 142 workers after 11 acquisitions in seven years left the bank with disparate salary structures in place, many of which resulted in lower wages to women and minorities.

Garry Locke, a principal in Towers Perrin's Minneapolis office, thinks that communication may be the single most important aspect of a postmerger strategy. Communication with employees can minimize employees' discontent about changing pay systems and relieve fears of layoffs or other adverse job actions.

SOURCE: Adapted from "Company Mergers and Acquisitions Present New Pay Equity Considerations for Employers," *Labor Relations Reporter,* 158 LRR 393 (July 27, 1998).

supervisors. They have also bargained for additional forms of compensation that are awarded across the board, such as bonuses based on seniority, overtime, and pensions.

7. ***Employment effects.*** Unions have in general negotiated for practices and work rules that create or maintain more jobs. Examples include restrictive

work rules limiting what duties one person can perform in their job description and "make-work" or "featherbedding" jobs.

8. ***Pattern bargaining.*** Unions have generally strived to pattern bargain or obtain similar wage gains from separate employers within the same industry or sometimes within similar industries or a community. The extent of pattern bargaining has declined somewhat since the 1980s.[5]

Industrial Differentials

Industrial wage differentials also provide a logical basis for differences in pay among employers in the same labor market. Employees recognize that the relationship between labor and total production costs affects their wage levels. Organizations in highly labor-intensive industries are usually less able to provide wage increases than organizations that are in more capital-intensive industries. For example, if a specialized chemical processing plant that has few competitors increased its wage rates by 10 percent, it would need to raise prices by only 0.6 percent to absorb the wage increase because only 6 percent of its total production costs would be attributable to labor. However, if a southern textile firm raised its wages by 10 percent, it would need to raise prices by 7 percent because its labor costs would equal 70 percent of total production costs. A 7 percent price increase could be disastrous to the highly competitive textile organization. Employees accept and understand that not all employers, because of their profitability or current competitive position within the marketplace, can be the highest paying organization in the industry. If profits decrease so much that the organization suffers losses, wage demands usually reflect the reality of the economic times.

MANAGEMENT WAGE CONCERNS

Wage and benefit changes have an impact on the cost of the production of goods and services. Management must consider how a change in wages will affect its pricing policy and ability to compete in the marketplace. It is often mistakenly inferred that management wants to minimize its labor costs for no particular reason or because employees are not appreciated. The reality is that management needs to maintain competitive labor costs to produce and price their products successfully within their industry. Thus, maintaining a competitive position is a primary aim of management in negotiations.

Accurate assessment of competitors' wages and total payroll costs is critical for management in anticipating the future of pricing changes within the industry. Labor-intensive industries find comparable wages to be even more necessary for long-run success. Thus, when national unions seek to negotiate equal pay increases among employers in the same industry, it is beneficial to management from the standpoint of maintaining a current competitive position. Union leaders, of course, find it beneficial to offer all members the same wage increases. More competitive and less organized industries, however, cannot provide this type of consistency.

Pattern bargaining: *A collective bargaining practice in which a national union strives to establish equal wages and benefits from several employers in the same industry. The union uses the negotiated contract of one company to serve as a model contract for the entire industry.*

This practice, known as **pattern bargaining**, can be highly successful for both management and labor.

The steel and auto industries, paper, and petroleum, as well as the meatpacking and textile industries, have used pattern bargaining. Typically, the union leaders choose what they perceive as the weakest company—the one most susceptible

to granting wage increases—and begin negotiations. Once negotiations are completed, the union insists that other firms in the industry agree to equal wage and benefit increases. However, another pattern strategy is to start with the largest employer in an industry, negotiate an agreement, and expect the other, smaller employers to follow suit. In 2001, for example, the United Mine Workers (UMW) ratified a new agreement with the Peabody Coal Company, the nation's largest coal producer, a year before the old contract expired. The early ratification provided a $600 "early signing" lump-sum bonus to workers before the old agreement expired as well as wage, health-care, and pension increases, signaling to all other, smaller coal companies the strength of the UMW. This enabled the union to negotiate similar contracts with smaller companies, calling them *"me-too" agreements.*[6]

In some situations a single union can use joint bargaining to the same wage package with all major employers simultaneously and thus not advantage or disadvantage any one employer. In 2003, for example, the Teamsters union in Chicago, Illinois, was able to stage a successful strike against the 17 private garbage haulers and then reach a settlement with each that provided a 30 percent increase in wages, up to $25.70 per hour, or an average of $42,000 per year. Instead of negotiating with the 17 employer members of the Chicago Refuse Haulers Association individually, the Teamsters jointly negotiated the same wage package with all the haulers—who were then able to pass the identical increased costs on to their customers and not suffer any competitive disadvantage. The ability to use joint bargaining, like pattern bargaining, gives a union enormous bargaining power, but it is not often a realistic possibility.[7]

Pattern bargaining, however, does not prevent firms from negotiating differences according to local labor conditions and the profitability of a particular employer. Instead, when negotiated wage and benefit increases are equal for several employers, they maintain their same relative competitive position with regard to labor costs.

The uncertain economy that followed the terrorist attacks of September 11, 2001, caused a renewed interest in pattern bargaining by some employers. In 2002, about 30 percent of labor professionals negotiating new contracts said they closely watched the patterns set by competitors' settlements. This was significantly more than 10 years earlier in the wake of the Caterpillar strike.[8] For example, in 2003, the United Steelworkers of America signed a five-year agreement with the U.S. Steel Corporation covering 13,000 workers. The agreement was patterned after similar contracts with LTU Steel Corporation and was identical to one with National Steel.[9]

Management is also concerned about the **value added**, that is, labor's theory that wages should equal the contribution of labor to the final product. Out-of-hand labor costs may hamper management's ability to replace and maintain equipment and machinery. It may be tempting in the short run to absorb labor increases by reducing these kinds of expenditures. However, lack of competitive technological improvements and modern machinery can erode productivity. Thus, management wants the value added kept in proportion with the wages paid. The value added by labor to the total product and the value added by capital and equipment cannot be totally separated because of their interrelationship. One is not useful without the other, and each affects the other's increase or decrease in productivity. Determining labor's share of the value added to the product is a difficult and often debated point in labor negotiations. Sometimes subcontracting bids for specific work can be used to estimate the true value that labor has added.

Wage Laws

A number of federal laws outside the National Labor Relations Act affect wage rates. The major compensation legislation regulating employers is the Fair Labor Standards Act (FLSA) of 1938, as amended. It governs the items discussed in the following sections. Although these laws provided critical help, as seen in Profile 7-2, gaps still exist between many workers and a living wage.

MINIMUM WAGES Under the FLSA, employers must pay an employee at least a minimum wage per hour, as shown in Table 7-1. The minimum wage per hour in 1938 was $0.25 and has been increased several times to $7.25 in 2009. Exempted from the act are small businesses whose gross sales do not exceed $500,000. Also

PROFILE 7-2

Modern-Day Sweatshops?

Thousands of immigrants work seven days a week sewing clothes for pennies per garment. They are often treated as machines, not as humans, and they are given 15-minute meal breaks that must be taken at the sewing machine. These immigrant workers may also be subjected to tirades from a boss who will fine someone for asking questions. Minimum wage, overtime, and workers' compensation are unknown concepts in these sweatshops. Is this a scene from the 1930s? No, it is the garment industry in California—today's sweatshops. A study of 69 randomly selected garment factories in California found that 50 percent did not pay minimum wage, 68 percent did not pay overtime, and 90 percent had health and safety violations. They exist from San Francisco to San Diego. Some employees, it was discovered, are paid only $2.97 an hour for 40 of the 60 hours they work per week. The international labor picture presents an equally troubling scenario,an almost unlimited potential for sweatshop activities. Some notable examples that have made the news follow:

- Nike, the largest apparel company in the United States, does not own a single piece of equipment for making shoes—not one. Instead, Nike contracts for its products with the owners of over 400 factories in 43 countries. These are often poor developing countries where the factory jobs are the best paying jobs available but far below U.S. pay and safety standards.
- Saipan, a U.S. island territory, uses Chinese "guest" workers who cannot leave because they cannot pay the $7,000 "recruiting fee" that brought them to Saipan. A U.S. congressional delegation found the Chinese workers making clothing with "Made in the U.S.A." labels for 23 companies, including the Gap, The Limited, Gear, and Champions.
- A Honduras garment factory pays workers $20 per 60-hour workweek. The factory has no air conditioning and only two 15-minute breaks per 11-hour day.

SOURCE: Adapted from "Sweatshops Thrive in California," *Omaha World-Herald* (July 31, 1994); p. A1; "The Shame of Sweatshops," *Consumer Reports 64*, no. 8 (August 1999), pp. 18–20; and Dominic Bencivenga, "1959 Sweatshop Law," *New York Law Journal* (August 13, 1998), pp. 1–4.

TABLE 7-1 U.S. Minimum Wage Changes Under Fair Labor Standards Act

1938	1945	1950	1956	1962	1967	1974	1978	
$0.25	$0.40	$0.75	$1.00	$1.15	$1.40	$2.00	$2.65	
1979	**1980**	**1985**	**1990**	**1991**	**1996**	**1997**	**2008**	**2009**
$2.90	$3.10	$3.35	$3.80	$4.25	$4.75	$5.15	$6.55	$7.25

exempted are organizations that operate within one state. However, many states have enacted minimum wage laws that are higher than the federal minimum. As of January 1, 2007, the minimum-wage rates of 29 states were higher, including California ($7.50 in 2007, $8.00 in 2008), Colorado ($6.83), Connecticut ($7.65), Florida ($6.67), Massachusetts ($7.50 in 2007, $8.00 in 2008), and New York ($7.15).[10] The amendments to FLSA also provided for a training wage for employees less than 20 years of age set at 85 percent of the minimum wage. Three studies conducted after the increase in the minimum-wage rate and the creation of a training wage for teenagers showed that increases in the minimum wage caused no increase in unemployment.[11] The training wage section of the FLSA amendment expired in April 1993 but was reenacted as a "youth minimum wage" in August 1996. Employees who have not reached their 20th birthday can be paid $4.25 per hour for the first 90 calendar days of their employment.[12]

OVERTIME COMPENSATION The FLSA stipulates that certain employees must receive overtime pay of one and a half times the normal rate when they work over 40 hours per week. Certain kinds of employees are **exempt** from the overtime provision of the act. In and of itself, a job title is not a sufficient basis for exemption. Rather, the actual work performed and the primary duties of the employee are what count. A person with an executive title who does not primarily manage a department or a function may not meet all conditions for exemption. In 2004, the U.S. Department of Labor issued new regulations to determine if an employee is classified as exempt. To be exempt an employee must be paid a minimum salary of $455 per week ($23,660 per year). An employee who is paid by the hour or who makes a salary of less than $455 per week is **nonexempt** regardless of the type of work performed. An employee paid $455 per week must also meet the "duties test" to be exempt from overtime provisions:

- Primary duty is the management of the organization.
- Regularly direct two or more full-time employees or equivalent.
- Authority to hire/fire or recommend the hiring or firing, promotion of others.

Or meet the administrative exemption provision:

- Primary duty of office work directly related to the management of the organization or customers.
- Exercise independent judgment on matters of significance.

Or meet the professional exemption provision:

- Primary duty of performing work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized, intellectual instruction; or performing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Employees earning over $100,000 per year do not receive overtime if their duties are executive, administrative, or professional.

The new 2004 rules were the first major changes in the 1938 act since 1949 and were hotly debated in Washington, D.C., with labor unions contending they will reduce the number of people receiving overtime by several million, and President Bush and supporters claiming that the new rules will be easier for employers to implement.

Pyramiding: *The payment of overtime on overtime that occurs if the same hours of work qualify for both daily and weekly overtime payment. Most contracts prohibit this type of payment.*

About 98 percent of all agreements contain some premium pay for overtime above the FLSA requirement. Daily overtime premiums are provided in 93 percent of agreements. Sixth-day premiums—the sixth consecutive day of work is eligible for a premium payment—and seventh-day premiums are found in about 26 percent of contracts. The **pyramiding** (being paid for more than one premium pay on the same hours) of overtime pay is prohibited in 69 percent of contracts because of management's concerns that the same hours might either become eligible for both daily and weekly overtime or become eligible for more than one type of premium.

An example of the latter might be holiday pay plus double time on a seventh day worked. Most agreements also specify how overtime should be distributed among workers: "Equal distribution as far as practical" or on a strict seniority basis are common provisions.[13]

The American 40-hour workweek, with time and a half for hours over 40, may end. President George W. Bush has questioned this workweek standard, which has been in the FLSA since it was passed in 1938. Congress proposed in 1997 a new workweek law that would allow flexible work schedules by employees and would not be limited by the 40-hour standard. Employees, for example, might work four 12-hour days with a three-day weekend and be paid the standard hourly rate for all 48 hours, sacrificing eight hours of overtime pay. Union leaders strongly opposed the change; they feared that employees would be coerced into working longer hours and giving up overtime pay. Under another proposal, employees could choose time-and-a-half **compensatory time** (hours taken off at a later date) or overtime pay. How do most workers feel about the issue? A Roper poll found that women would prefer the flexible hours (44 versus 32 percent), but men would not (38 versus 42 percent), and about a third reported that they already have flextime.[14]

In some industries today, the aspect of overtime that unions view as a key issue is the use of *mandatory overtime*. They believe that the excessive use of mandatory overtime keeps many of their members from having enough time with their families and can cause shortages of full-time positions as management tries to minimize the total number of employees in certain jobs. For example, in 2002, the Registered Nurses Association of University Hospital in Cincinnati, Ohio, was ready to strike because they believed mandatory overtime had become routine. Nurses were often ordered to work a second shift at the end of their first shift and were commonly called in on their off days. In addition, the union stressed that mandatory overtime may not be good for patient care. The strike was averted when hospital management agreed to end mandatory overtime by 2004.[15]

In 2003, the Communication Workers of America (CWA) walked off the job over forced overtime. The 37,000 CWA members' strike against Verizon was the largest concerted labor action against a telecommunications employer in U.S. history, and it was not over pay or health care—but mandatory overtime. The union eventually won a limited overtime provision. Why do unions today view excessive hours as a critical issue? AFL-CIO industrial hygienist Bill Kojola says the way

work is organized in the United States is changing and requires longer hours. Research, according to Kojola, indicates that longer hours:

- Have an adverse impact on the cardiovascular systems of workers.
- Increase the blood pressure of workers.
- Increase the risk of accidents exponentially to the point it is double for a 12-hour shift compared with an 8-hour shift.
- Increased risk of accident is highest on a night shift, higher on an afternoon shift, and lowest on a morning shift.[16]

In 2005, the U.S. Department of Labor (DOL) approved the use of **prepayment plans** that pay employees overtime in advance of their actual accumulation. To give nonexempt employees a more stable wage, the DOL approved a plan that would pay workers for future overtime hours (at time-and-one-half rate) during weeks when they worked fewer than 40 hours. Then during weeks when employees work more than 40 hours, any prepayments they have received will be deducted from their pay. Employees agree to the prepayment plan as a condition of employment. The employer cannot, however, owe an employee any overtime pay. Prepayment plans benefit both employees and employers—with a steady cash flow.[17]

Exactly what counts as "work time" under the FLSA should be carefully determined. The FLSA required employers to "record, and compensate employees for all of the time which the employer requires or permits the employee to work," time spent in principal activities—those that employees were hired to perform regardless of when they are performed! However, some activities may qualify as de minimus—although work, they require so little time that they do not require compensation. The small duties required of an employee before and after their shift can be considered as either de minimus or as a principal activity. For example, in 2005, the Department of Labor, in response to a complaint, investigated Cingular Wireless and found that customer service representatives in 25 call centers in 14 states would begin work prior to their shift but were "off the clock" and thus not paid overtime. Cingular cooperated with the DOL and agreed to pay 25,351 representatives $5.1 million in back pay and overtime for their preparation time.[18]

THE DAVIS-BACON ACT The Davis-Bacon Act of 1931 regulates employers who hold federal government contracts of $2,000 or more for federal construction projects. It provides that employees working on these projects must be paid the **prevailing wage** (PW) rate. In most urban areas, the union wage is the PW for that particular geographic area. Some state and local governments have similar laws. For example, in 2007, in Ohio the PW for electricians was $25.56 per hour; the average of all merit shop (nonunion) electricians was $19.17, a difference of about 25%. Similar differences for carpenters were $21.01 (merit), $23.27 (PW); bricklayers, $15.19 (merit), $22.20 (PW), whereas the PW for plumbers, $27.96, was less than that for merit: $30.04. Supporters of PW believe that in the long run the (PW) project saves costs by hiring more qualified workers. Opponents believe the higher costs, often between 8 and 15 percent of total costs, are unnecessary.[19] The U.S. Department of Labor calculates the prevailing wage for each region. Another reasoning behind the Davis-Bacon Act is that often governments award contracts to the firm submitting the lowest bid for certain construction specifications. By requiring all employers in construction projects to pay the prevailing wage, the Davis-Bacon Act puts bidders on an equal basis and ensures that craft workers will not be underpaid.[20]

Opponents of the Davis-Bacon Act have consistently claimed that it is difficult to administer and substantially increases the cost of public construction projects. Supporters contend, however, that contractors trying to win construction bids will underbid by cutting wages and then hiring less skilled nonunion labor. Many congressional bills have been introduced that would repeal or amend the Davis-Bacon Act. None have passed.

WALSH-HEALEY ACT The Walsh-Healey Act of 1936 covers employees with federal contracts of over $10,000. It requires employers to pay overtime for any hours worked over eight per day at a rate of one and a half times the normal hourly rate. If an employee works days of more than eight hours within a 40-hour week, he or she will receive greater compensation for the same total hours worked.

NEGOTIATED WAGE ADJUSTMENTS

Standard Rate, Pay Range Systems

Standard rate: *The flat or hourly rate of pay established for each job classification or occupation within a plant or employer, effective for the duration of the collective bargaining agreement.*

How wage rates are to be defined in the agreement is a critical issue. Many agreements contain a **standard rate**, or flat rate, of pay for each job classification effective during the life of the agreement, as in Figure 7-1. Some agreements provide a pay range for each job: The person may be paid one of several steps within the range. Usually management will seek flexibility in wage administration by using a range of pay for each grade or category. A common practice in the nonunion sector, this allows management to reward individual differences in employees according to seniority, merit, or quality and quantity of production.

Management usually wishes to hire new inexperienced employees at the minimum pay rate and allow them to advance during their tenure with the company through merit and seniority increases. Management may argue that it makes little sense to pay exactly the same wage rate for a job regardless of the performance level of the employee. Union leaders may argue that merit increases, which are the primary reason to have pay ranges instead of standard rates, are useful management tools in theory but actually run into severe problems. Union leaders feel that because these systems normally are based on a supervisor's performance appraisal, they are subject to supervisor bias. The subjectivity and imperfections of performance appraisal systems, which cannot be denied by management, lead most union leaders to argue against a merit pay increase system.

Piece-Rate Systems

Piece-rate system: *A wage system in which employees receive a standard rate of pay per unit of output. The rate of pay is usually based on the average level of production, with bonus rates given on output units exceeding the average level.*

An alternative pay system is a **piece-rate system**. Straight piecework is the most common and easily understood individual incentive plan. If an employee is paid $0.025 per unit produced and completes 100 units in an hour, then the hour's gross earnings will be $2.50. Variations of straight piecework include falling piece rate and rising piece rate. Table 7-2 compares the various piece-rate plans. If designed effectively, a piece-rate system can reduce labor costs per unit, reward employees based on their productivity instead of the number of hours worked, and help attract and retain dedicated employees. An effective piece-rate system thus can benefit both the employer and the worker. A field experiment published in 2004, for example, found that when workers were paid piece rates instead of hourly wages, their productivity increased by 20 percent in comparison with workers performing the same job but given a daily production standard, and they received higher compensation.[21]

TABLE 7-2 A Comparison of Piece-Rate Plans ($100 per worker overhead cost per hour)

Standard Piece-Rate Plan

			Per Piece	
Number of Pieces	Piece Rate	Worker's Earnings	Overhead Cost	Total Cost
100	$0.025	$2.50	$1.000	$1.025
120	0.025	3.00	0.833	0.858
140	0.025	3.50	0.714	0.739
160	0.025	4.00	0.625	0.650
180	0.025	4.50	0.556	0.581
200	0.025	5.00	0.500	0.525

Falling Piece-Rate Plan

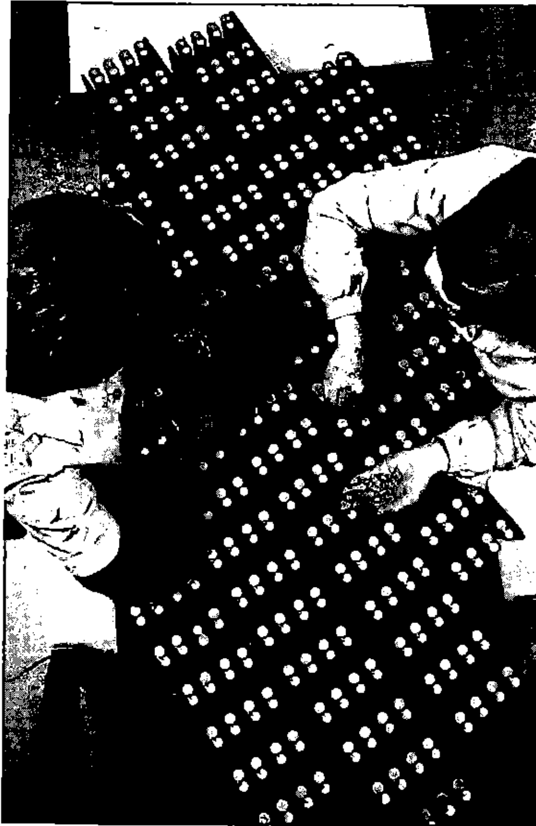
			Per Piece	
Number of Pieces	Piece Rate	Worker's Earnings	Overhead Cost	Total Cost
100	$0.025	$2.50	$1.000	$1.025
120	0.024	2.88	0.833	0.857
140	0.023	3.22	0.714	0.737
160	0.022	3.52	0.625	0.647
180	0.021	3.78	0.556	0.577
200	0.020	4.00	0.500	0.520

Rising Piece-Rate Plan

			Per Piece	
Number of Pieces	Piece Rate	Worker's Earnings	Overhead Cost	Total Cost
100	$0.025	$2.50	$1.000	$1.025
120	0.030	3.60	0.833	0.863
140	0.035	4.90	0.714	0.749
160	0.040	6.40	0.625	0.665
180	0.045	8.10	0.556	0.601
200	0.050	10.00	0.500	0.550

SOURCE: Leonard R. Burgess, *Wage and Salary Administration* (Columbus, OH: Merrill, 1984), pp. 241–42.

Plans that use a **falling piece rate** involve a standard time and rate of production. If the employee produces more than the standard, the gain is shared between the employer and the employee. The employee's hourly earnings increase with output above a standard of 100, but the rate per piece falls at various predetermined levels. Thus, an employee who has produced 140 units (40 percent above standard) receives



In piece-rate incentive plans, workers like these are paid a rate per unit produced rather than an hourly wage.

only $3.22 (29 percent more) and not $3.50, which would be the case if the $0.025 rate were maintained. The employer receives the remainder of the gain, effectively lowering the overhead cost per piece.

Plans that use a **rising piece rate** also involve a standard time and rate of production. But as Table 7-2 illustrates, the worker who increases output by 40 percent has a greater-than-proportional increase in hourly earnings. After earning $2.50 for the first 100 pieces, the worker earns $2.40 ($4.90 – $2.50) for the next 40 pieces, or 96 percent of the base hourly pay. The increase occurs because the worker earned $0.025 per piece for the first 100 pieces and $0.035 per piece for the next 40. Management benefits nevertheless: The total cost per piece still declines as more pieces are produced because the fixed overhead cost is spread out over more pieces.[22] Why would management agree to a rising piece-rate system? If the higher hourly earnings are sufficiently motivational, the total cost per piece could be cheaper than under a falling piece-rate plan. For example, if under the falling piece-rate plan of Table 7-2 the employee is only slightly motivated and averages 120 units per hour, then management has an average total piece cost of $0.857. But if the rising piece-rate plan is slightly more motivational and the employee averages 140 units per hour, management averages $0.749 total per unit cost, whereas the employee averages $4.90 per hour instead of $2.88 (falling rate of 120 pieces).

Piece-rate systems have the advantages of being easily understood, simple to calculate, and motivational. But many jobs do not easily lend themselves to such a pay system because the output of the employee cannot be directly and objectively measured. Also, most employees' output is affected by the output of others,

so their productivity is not directly proportional to their input. Finally, union and management negotiators may have a difficult time agreeing on what is a fair production standard. Changes in standards by management can easily lead to union grievances.

Standard hour plans are similar in concept to piece-rate plans except a "standard time" is set to complete a particular job, instead of paying the employee a price per piece. For example, an auto mechanic might be given a standard time of two hours to tune up an eight-cylinder car. If the worker's hourly rate is $8 per hour and three eight-cylinder tune-ups are finished in six hours, then the employee earns $48. If a so-called Halsey 50/50 incentive plan is used, the worker and employer share equally in time saved by the employee. Thus, after completing the three tune-ups in five hours, the employee would be paid $52.00 ($48.00 – $4.00 [a half hour saved at $8 per hour]), and the employer has an additional hour's work time.

Deferred Wage Increases

Many multiyear collective bargaining agreements provide increases in wage rates that are deferred to later years rather than taking effect immediately. Together with the preferred use of cost-of-living adjustments (see next section), such **deferred wage rate increases** often make multiyear contracts desirable for both sides. Management can predict labor costs further into the future with a greater degree of accuracy, and union members feel that their buying power is protected for a longer period of time and do not have to worry annually about possible strikes. An example of a four-year deferred wage increase provision appears in Figure 7-3.

Deferred wage rate increases: *Wage rate increases that become effective at later dates as specified in the collective bargaining agreement.*

WAGE AGREEMENT

This Wage Agreement is entered into this 18th day of June 2007 between the General Electric Company, for its Plant located in Evendale, Ohio (hereinafter referred to as "Company") and the International Association of Machinists and Aerospace Workers, AFL-CIO, for itself and in behalf of its Lodge No. 912 (hereinafter referred to as the "Union").

The Company and the Union hereby agree as follows:

This Wage Agreement shall be in full settlement of all wage issues between the Company and the Union up to and including June 19, 2011.

The Company will provide general wage increases as follows:

1. **General Increase**

Effective Date	Increase
June 18, 2007	Three percent (3.0%) applied to rates in effect on June 17, 2007.
June 23, 2008	Two and one half percent (2.5%) applied to rates in effect on June 22, 2008.
June 22, 2009	Two and one half percent (2.5%) applied to rates in effect on June 21, 2009.
June 21, 2010	Three percent (3.0%) applied to rates in effect on June 20, 2010.

FIGURE 7-3 Deferred Wage Agreement

SOURCE: Agreement between General Electric Aviation and Lodge No. 912, International Association of Machinists and Aerospace Workers, AFL-CIO, 2007–2011. Used by permission.

Deferred wage provisions specify increases in the base pay to take effect on future dates during a multiyear contract. Negotiating multiyear increases often hinges on whether they are evenly distributed over the life of the contract or whether they are front-end loaded.

Front-end loading refers to a deferred wage increase with a larger proportion of the total percentage increase in the first year of the agreement. Thus, a three-year total wage increase package might be evenly distributed, with an equal percentage provided at the beginning of each year: 5 percent-5 percent-5 percent; or it could be front-end loaded: 10-3-2. Many contracts provide front-end loading, including providing the total increase in the first year: 15-0-0.

Management generally prefers to spread the increases over the life of the agreement for cash flow purposes and because the total cost of the agreement is substantially less because higher wages paid only in later years are avoided in early years. For example, the two alternatives for the three-year 15 percent increase when applied to a $20,000 current wage produce the following wages paid:

Year	Equal Increases, 5%-5%-5%	Front-End Loaded, 10%-3%-2%	Difference Each Year
0	$20,000	$20,000	—
1	$21,000	$22,000	+ $1,000
2	$22,050	$22,660	+ $ 610
3	$23,153	$23,113	– $ 40
			+ $1,570

Union negotiators often prefer front-end-loaded wage rate increases so that their members receive the additional wages ($1,570) and realize a large increase in pay the very first year. However, negotiators acknowledge from past experience that front-end loading may produce long-term problems. Members who were quite happy with a 10 percent increase during the first year of an agreement can easily become dissatisfied with the two subsequent years of small increases, especially during periods of high inflation. Thus, "What have you done for me lately?" becomes a real problem for union and management leaders alike. Also, the annual wage rates at the end of the agreement can easily be lower under a front-end-loaded provision than under an evenly distributed provision, as in the previously cited examples. The union may demand a **wage reopener** provision providing for the reopening of contract talks to discuss only wage rates. Such a discussion during the later years of the agreement may become necessary because of unpredictable inflation or company financial success. Management is not obligated to agree to higher wage rates under such a reopener but realizes that this agreement may be necessary to obtain a long-term contract.

Wage reopener: *A collective bargaining provision, effective for the term of the contract, that allows contract talks to be reopened only for the renegotiation of wage rates.*

Also, management negotiators realize they will likely be faced with the demands, particularly when they are valid, during the next negotiating session anyway.

Before the 1980s, virtually all collective bargaining agreements with multiyear settlements included front-end-loaded wage increases. However, foreign and domestic nonunion competition in the 1980s forced management negotiators to seek a variety of cost-curbing measures including back-loaded contracts. A **back-loaded contract** provides a lower wage adjustment in the first year with higher increases in later years of a multiyear contract. For example, a 10 percent three-year wage adjustment could be 2-4-4. In many back-loaded contracts, workers receive no wage

increase in the first year. For example, a 1997–1999 UAW–Chrysler collective bargaining agreement provided for a 0-3-3 distribution with a $2,000 bonus.[23]

Cost-of-Living Adjustments

Union negotiators have for years emphasized the need for **cost-of-living adjustments (COLAs)** during the life of an agreement. They contend that the real wage—the purchasing power negotiated in an agreement as a wage rate—is eroded by inflation during the life of the agreement. For example, in 2006, inflation in the United States, as measured by the Historical Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), was 3.2 percent and 19.1 percent in the seven years from 2000.[24] Thus, an employee would need to have received a 19.1 percent pay increase over the period to break even or "keep up with inflation." Therefore, it is necessary to provide the COLA in an escalator clause so that wage rates will keep pace with inflation. General Motors first proposed a COLA clause during negotiations with the UAW in 1948.

Unions and employers were leery of COLAs until the 1950s. Both feared that COLAs would include pay cuts, which might have occurred because declines in the consumer price index (CPI) were at the time quite possible. Union leaders also disliked COLAs because they represented a "substitute for bargaining," meaning they would receive less credit for increases with a COLA. Unions preferred wage reopeners that put them back at the bargaining table. However, by the mid-1950s, both sides worried less about deflation and more about their ability to estimate correctly rising inflation. In addition, in 1950, General Motors and the United Auto Workers signed a historic wage formula that combined deferred wage adjustments with a COLA—a practice previously avoided by GM but soon followed by many negotiators.[25] The percentage of agreements that contained COLAs steadily increased and peaked in 1979 at 48 percent, but low CPI increases from the 1990s until today have caused the percentage slip to only 18 percent of agreements.[26] There are other reasons for this decline in the use of COLA provisions: (1) the administrative expense for employers to make frequent adjustments in wage rates as specified in most COLA provisions is substantial and (2) annual base-wage adjustments are provided in most multiyear contracts, providing an effective substitute to COLA adjustments as a means of compensating for inflation.[27] Management, to save administrative costs, prefers to make few wage rate adjustments, and unions realize that in periods of low inflation, annual wage rate adjustments are adequate to maintain real income. Thus, the combination of two factors—low inflation rates and the increasing use of multiyear contracts—has decreased the need for quarterly or monthly COLA adjustments to be made if annual base-wage rate adjustments have been negotiated in the contract.

Both labor and management negotiators are careful to specify exact COLA provisions during the agreement. Several critical issues must be carefully spelled out.

1. ***Inflation index.*** Most provisions use the consumer price index determined by the Bureau of Labor Statistics (BLS) as a standard for measuring change in inflation. In 1978, the BLS broke the CPI into two entities: the urban family index (CPI-U) for urban families and the urban wage earner index (CPI-W) for urban wage earners and clerical workers. Starting in January 1999, the BLS changed the CPI-W base from 1967–100 to 1993–1995-100.

Increases in the CPI are linked to increases in wages by an adjustment formula. The two most commonly used formulas are a cents-per-hour increase for each point increase in the CPI or a percentage increase in wage rates equal to some percentage

increase in the CPI. The most commonly used formula provides for a 1-cent increase in wages for each 0.26-of-a-point increase in the CPI. An example of this provision is found in Figure 6–3 from the agreement between the UAW and Ford Motor Company.

2. ***When the increases are to be provided.*** The majority of agreements provide for inflation adjustment *four times* a year subsequent to the reported increase in the CPI. This quarterly increase provision is also included in the UAW–Ford agreement. Other labor agreements provide for adjustments to be made twice a year (semiannually) or once a year (annually).

3. ***Change in base pay.*** If COLAs are treated as additions to the base pay, then other wage adjustments, such as shift differential and overtime, will increase after a COLA because they are usually a fixed percentage of a base pay. Thus, the company will find its personnel cost increased by an amount greater than the percentage COLA. The alternative is to treat the COLAs given during the life of the agreement as a benefit and not as an addition to the base pay (see Figure 7-4 for an example).

4. ***COLA maximums.*** Some labor agreements provide for a maximum COLA increase made by the company during the life of the agreement. This maximum is usually referred to as a cap put on the cost-of-living provision. The cap assures management that wage increases because of CPI increases will not go beyond a certain total.

A significant problem with COLA adjustments that concerns both union leaders and management is that, once given, the increases are taken for granted by employees. Members may believe that the wage increases they receive on the basis of COLA provisions are *not negotiated* increases, and therefore they want further wage increases. Union and management negotiators may believe that they are not

a. Cost-of-Living Adjustments effective on the dates shown below in the amount of one cent ($.01) per hour for each full **eight** hundredths of one percent (**.08%**) by which the National Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W; Base 1982–84 = 100), as published by the United States Bureau of Labor Statistics, increases in the applicable measurement period.

Effective Date	Measurement Period
December 17, 2007	June 2007–October 2007
June 23, 2008	October 2007–April 2008
December 15, 2008	October 2007–October 2008
June 22, 2009	October 2008–April 2009
December 21, 2009	October 2008–October 2009
June 21, 2010	October 2009–April 2010
December 20, 2010	October 2009–October 2010
April 18, 2011	October 2010–February 2011

b. No adjustment, retroactive or otherwise, shall be made in pay or benefits as a result of any revision which later may be made in the published figures for Index for any month on the basis of which the cost-of-living calculation shall have been determined.

FIGURE 7-4 Cost-of-Living Adjustments

SOURCE: Agreement between General Electric Aviation and Lodge No. 912, International Association of Machinists and Aerospace Workers, AFL-CIO, 2007–2011. Used by permission.

given credit for these negotiated increases. Because members come to expect automatic adjustments for inflation, they tend to ask labor negotiators and management, "What have you done for me lately?" Finally, management complains that COLA provisions prevent them from forecasting future labor costs. Management contends that it cannot predict the total product cost adequately and that COLA costs hamper the ability to bid successfully on projects or priced items.

Profit Sharing

Compensation systems whereby management agrees to make a lump-sum payment to employees in addition to their regular wages are termed **profit-sharing** or bonus plans. The payments may be based on the profits of the company using an agreed-on formula (profit sharing) or an amount specified in the contract based on production or sales levels (see Figure 7-5 for the UAW–Ford formula based on sales). Both are preferred by management over base-wage changes because negotiated increases do not automatically carry over to future years and do not increase the cost of associated benefits such as overtime rates and pension payments, which are typically based on base-wage earnings. Profit-sharing plans appear in about 10 percent of agreements.[28]

Profit sharing: *A pay incentive system in which employees receive a share of the employer's profits in addition to their regular wages. A precise formula specifying how profits will be distributed to employees is the heart of a profit-sharing plan.*

Ford Motor Company Profit Sharing Plan for Hourly Employees in the United States

The purpose of this plan is to make provision for profit sharing distributions by the Company to eligible hourly employees, thus affording them a means of participating in the growth and success of the Company resulting from improved productivity and operating competitiveness as well as providing new sources of income for such employees.

(a) "Eligible Hourly Employee" or "Participant" shall mean, with respect to any Plan Year, any person who met all of the following requirements at any time during such Plan year:

(i) such person was employed **full-time** at an hourly rate in U.S. Operations on the active employment rolls maintained by the Company in the United States (except that any such person who was so employed on a temporary part-time basis shall be excluded from the definition of "Eligible Hourly Employee" and "Participant"); **and**

(ii) such person, if represented by a Union, was covered by an agreement making this Plan applicable to such person or, if such person was not represented by a Union, such person was employed in a unit to which the Company had made this Plan applicable;

including any person who met such requirements at any time during such Plan Year and (1) was on layoff or approved leave, including expired medical leave, at the end of such Plan Year, or (2) retired during such Plan Year, (3) died during such Plan Year, or (4) was terminated by the Company during such Plan Year as a result of the sale by the Company of the operation, or a controlling interest in the operation, in which such person was employed; provided, however, that any person who terminated during such Plan Year (without being reinstated at the end of such Plan Year), for any reason other than death, retirement, sale of an operation, or a controlling interest in an operation, or any voluntary termination of employment program developed under the Job Security Program—GEN (Appendix MM of the Agreement) shall be excluded from the definition of "Eligible Hourly Employee" and "Participant".

(continued)

FIGURE 7-5 Profit-Sharing Plan (selected parts), Ford Motor Co.–UAW Agreement

SOURCE: Agreement between UAW and the Ford Motor Company, 1997–1999, pp. 111–21.

II. Determination of Total Profit Share

For any Plan Year in which there are Profits, the Total Profit Share for such Plan Year shall be determined as hereinafter provided. Such Total Profit Share shall be the sum of the following:

(a) 6.0% of the portion of the Profits for such Plan Year which does not exceed 1.8% of such Sales;

(b) 8% of the portion of the Profits for such Plan Year which exceeds 1.8% of Sales for such Plan Year but does not exceed 2.3% of such Sales;

(c) 10% of the portion of the Profits for such Plan Year which exceeds 2.3% of Sales for such Plan Year but does not exceed 4.6% of such Sales;

(d) 14% of the portion of the Profits for such Plan Year which exceeds 4.6% of Sales for such Plan Year but does not exceed 6.9% of such Sales; and

(e) 17% of the portion of the Profits for such Plan Year which exceeds 6.9% of Sales for such Plan Year;

provided; however, that the Total Profit Share for any Plan Year in which there are Profits shall in no event be less than the amount determined by multiplying (3) $50 by (y) the sum of (i) the number of Eligible Hourly Employees for such Plan Year, (ii) the number of persons who would have been Eligible Hourly Employees for such Plan Year except for the fact that they were employed in a unit which was represented by a Union that had not agreed with Ford or a Subsidiary that this Plan shall apply to such unit, and (iii) the number of Salaried Employees for such Plan Year.

III. Determination of Allocated Profit Share

1. A portion of the Total Profit Share, if any, for each Plan Year shall be allocated to this Plan as hereinafter provided. The portion to be so allocated shall be determined by multiplying such Total Profit Share by a fraction, the numerator of which is the sum of (3) the number of Eligible Hourly Employees for such Plan Year, and (y) the number of persons who would have been Eligible Hourly Employees for such Plan Year except for the fact that they were employed in a unit to which the Company had not made this Plan applicable or employed in a unit which was represented by a Union that had not agreed with Ford or a Subsidiary that this Plan shall apply to such unit, and the denominator of which is the sum of (a) the numerator, *and (b) the* number of Salaried Employees for such Plan Year. The amount determined pursuant to this Paragraph for any Plan Year is hereinafter called the "Allocated Profit Share" for such Plan year.
2. If any person shall come within the definition both of "Eligible Hourly Employee" and "Salaried Employee" for any Plan Year, such person shall be treated, for all purposes of this Plan, as both an Eligible Hourly Employee and a Salaried Employee.

FIGURE 7-5 (Continued)

Management favors profit sharing to COLAs as a wage supplement for several reasons: (1) payments are made only if the company makes a profit and thus is usually financially strong; (2) unlike COLAs, payments are not tied to inflation, which is not related to the company's financial status and may require increases during difficult times; (3) workers' pay is linked to their productivity and not just to the number of hours they work, giving them a direct incentive to see the company become more profitable; and (4) workers may feel more a part of the company and develop increased interest in reducing waste and increasing efficiency in all areas as well as their own jobs.

In 2001, for example, the Ford Motor Company distributed millions in annual profit-sharing checks to U.S. employees. The average worker received $6,700. Peter Pestillo, Ford's personnel chief and chief labor negotiator, noted, "We think it's

money well spent. They get more, and they get more done. We think we get a payback in the cooperation and enthusiasm of the people." In only a few years, however, Ford was losing billions of dollars, and thus there were no profits to be shared. The 1984 UAW–Ford master agreement was the first to contain a profit-sharing provision pushed by management as a means of avoiding the UAW-proposed 3 percent annual raises.[29] The concept of profit sharing within the auto industry is not new, however. Douglas Frasier, former president of the UAW, noted that the union first asked for a profit-sharing plan more than 40 years prior to the 1984 agreement and during several other negotiations, but none of the U.S. auto giants were interested until they were losing money in the 1980s.[30]

Scanlon Group Incentive Plans

Joseph Scanlon developed a group incentive plan designed to achieve greater production through increased efficiency with accrued savings divided among the workers and the company. Scanlon at the time was the research director of the United Steelworkers and later joined the faculty at the Massachusetts Institute of Technology.[31] The **Scanlon plan** became the popular standard in U.S. group incentive plans. It has since become a basis for labor–management cooperation above and beyond its use as a group incentive plan. The plan contains two primary features: (1) departmental committees of union and management representatives meet together at least monthly to consider any cost-savings suggestions, and (2) any documented cost savings resulting from implemented committee suggestions are divided 75 percent to employees and 25 percent to the company.[32]

Most other group incentive plans involve programs that set expected levels of productivity, product costs, or sales levels for individual groups and then provide employee bonuses if the targeted goals are exceeded. One widely recognized example is the Nucor Corporation. In one year the company reported a staggering growth of 600 percent in sales and 1,500 percent in profits over 10 years due to a production incentive program. The company actually developed four separate incentive programs: one each for production employees, department heads, professional employees, and senior officers. Their theory was that "money is the best motivation."[33]

Two-Tier Wage Systems

A wage system that pays newly hired workers less than current employees performing the same or similar jobs is termed "two tier." The **two-tier wage system** was established in 1977 at General Motors Packard Electric Division in Warren, Ohio.[34] The basic concept is to provide continued higher wage levels for current employees if the union will accept reduced levels for future employees. Union leaders believe that they must accept the two-tier system or face greater layoffs in the future. Management usually claims that the system is needed to compete with nonunion and foreign competition. Two-tier systems declined in usage in the 1990s. They appeared in about 41 percent of manufacturing contracts in 1995 but fell to only 33 percent by 2002 and in 2005 appeared in only 27 percent of all contracts. In 2007, the United Auto Workers and GM, Ford, and Chrysler agreed to a dramatic two-tier wage package that paid new workers only $14 to $16 per hour, down from $26 per hour in prior contracts. The UAW agreed to the substantial pay reduction for new hires in exchange for job guarantees and decisions not to close plants that had been scheduled for closure. William C. Ford, executive chairman of the Ford Motor Company, confirmed, "If we didn't have that (the two-tier wage package) in this contract, the number of autoworkers would have dwindled."[35]

Two-tier wage system: *A wage system that pays newly hired workers less than current employees performing the same or similar jobs.*

Industries in which the systems are most common include food retail, airlines, manufacturing, chemical, rubber, plastic, and transportation. They are rare in governmental and educational institutions contracts.[36] However, in highly competitive industries such as food retailing, where nonunion employers such as Wal-Mart compete directly with unionized employers, two-tier agreements are gaining ground. In 2005, for example, members of the United Food and Commercial Workers union in Colorado voted (60 percent to 40 percent) to accept a two-tier agreement with King Soopers and City Market Stores to avoid a strike. The union's negotiating committee had recommended rejecting the contract and going on a strike. Management maintained the two-tier pay system could have provided cost savings to remain competitive. Top-pay-scale union workers were required to pay higher health insurance premiums as their concession.[37]

Although a two-tier system is contrary to the historical union doctrine of "equal pay for equal work," or pay equity, when a system is first negotiated, the union representatives can claim that they have avoided disaster and saved the jobs or wage levels of current members (who must vote on the contract). It is relatively easy to sell such a concept because no workers at that point are accepting the "lower tier." However, five or ten years later, when many workers are paid lower wages for the same work as their affiliated union members, it can become a source of conflict and resentment. In some cases the lower-paid workers express their feelings with lower product quality and productivity records than their higher-paid counterparts.[38] In these bargaining units, the conflict could present even greater problems to both union and management leaders as the number of lower-tier workers approaches 51 percent of the bargaining unit and they demand equity.

Do employees hired into a lower-tier pay position perceive their treatment as equitable? A study of about 2,000 employees found that low-tier employees perceived the employer as significantly lower in pay equity and perceived the union as of little use in obtaining fair pay for its members. In addition, compared with the high-tier employees, the low-tier employees felt a lower level of commitment to their employer, which might affect their productivity and tenure with the organization. These perception problems can be controlled, the research results suggest, if low-tier employees are assigned to new work locations where there are few high-tier employees and if they are hired for part-time instead of full-time work. Employees hired under these conditions do not report equity perception problems.[39] Another method of minimizing the morale problems of low-tier employees is to provide eventual merging of the two tiers.

Studies also indicate that the high-tier employee may be dissatisfied with the two-tier system. In a survey of over 1,000 employees in a 14-store food outlet company, researchers found that employees at the high end of a two-tier pay scale feared replacement by the lower-tiered employees. In addition, they believed the two-tier system had a detrimental effect on any wage increases they might feel entitled to receive.[40]

Temporary two-tier wage systems allow newly hired employees to reach the higher tier within 90 to 180 days or more. Some two-tier systems are permanent because the contract does not provide for any means by which employees hired at the lower-tier wage can progress to the higher tier. The presence of permanent systems in a contract puts a great deal of pressure on union negotiators to achieve a merger of the two tiers, which is found in about 60 percent of all two-tier contract clauses.[41] Table 7-3 outlines the pros and cons of the two-tier wage system.

TABLE 7-3 Pros and Cons of the Two-Tier Wage System

Pros	Cons
Significantly reduced labor costs	Resentment, low quality, and low productivity from low-tier employees
Maintenance of higher employment levels	Higher absenteeism and turnover of low-tier employees
Relief from wage compression between senior and junior employees on the same job	Intensification of the preceding problems as low-tier employees increase in number

Lump-Sum Payments

As illustrated in Table 7-4, **lump-sum payments** and two-tier systems are methods to provide general wage increases and are increasing in their use, whereas COLAs and wage reopeners have declined in use.

Lump-sum payments: *A method of providing a general wage increase as a onetime payment rather than adding the increase to the hourly or annual salary of the employee.*

In fact, the 2005 collective bargaining agreement between Caterpillar, Inc. and the United Auto Workers was heralded as a landmark "return" of two-tier pay systems combined with lump-sum increases as a major change in direction for negotiated wage increases. In highly competitive industries such as retail grocery, airlines, and manufacturing, employers seek a means of lowering or "resetting" wage rates to meet low-wage global competition. By negotiating lump-sum increases for current employees together with a two-tier system for new employees, an employer can effectively lower base-wage rates and total labor costs.[42] Management often prefers lump-sum payments to COLAs, profit-sharing plans, or higher wages because their total cost during the contract is easier to predict, and they do not increase hourly wage rates. Unions may prefer they be paid early in the weeks of a new contract to provide quick benefit to members. Lump-sum payments do not preclude the negotiation of a wage rate increase, but usually management will offer a larger total compensation package in the first year if a lump sum is included instead of a larger base-wage increase. Common lump-sum awards include "signing" or "ratification" bonuses designed to give workers an immediate onetime payment between when the agreement is ratified and the first paycheck is

TABLE 7-4 Wage Trends in Contracts (frequency expressed as percentage of contracts)

	1954	1961	1971	1979	1986	1992	1995	2004
Deferred increases	20	58	87	95	80	89	88	77
Cost-of-living adjustments	25	24	22	48	42	34	34	18
Wage reopeners	60	28	12	8	10	5	8	7
Lump sums	—	—	—	—	—	23	22	17
Two-tier pay	—	—	—	—	17	27	41	27

SOURCES: Bureau of National Affairs, *Basic Patterns in Union Contracts*, 14th ed. (Washington, DC: BNA Books, 1995), p. 111; and Bureau of National Affairs, *2005 Source Book on Collective Bargaining* (Washington, DC: BNA Books, 2005). Used by permission.

issued under the new contract. In 2004, lump-sum payments were most common in manufacturing contracts (28 percent) versus nonmanufacturing (13 percent).[43]

WAGE NEGOTIATION ISSUES

During the negotiation process one or both sides may use different wage-level theories to stress their economic proposals. One or both sides will bring to light one or more wage theories and issues having an impact on the negotiation of rates. Which issues might be stressed during negotiations and whether they are even presented depend on the history of the company's labor relations and the personalities of the negotiators. In general, *either side* would utilize an issue it felt was valid or simply useful in providing a significant point for its list of arguments.

Productivity Theory

One of the oldest and broadest negotiation issues concerning wages involves the **productivity theory** that employees should share in increased profits caused by greater productivity. At the heart of the issue is the commonly accepted proposition that the organization's production is a combination of three factors: machinery and equipment, employee labor, and managerial ability. Union and management leaders agree that all three share in the creation of profits because they contribute to the organization's productivity.

Two-tier wage systems can save substantial payroll costs and jobs during poor economic times. But they can also cause tension between employees performing the same jobs, working side by side, and being paid different wage rates.

Whenever figures show that productivity or profits have risen, then the question becomes, "What percentage is attributable to employees' labor as opposed to machinery and equipment or managerial ability?" Labor leaders commonly request that their members get their fair share of the increased profits. Management may request that the value-added concept be applied.

Determining labor's fair share then becomes the problem. Management may contend that all it asks is for employees to perform assigned work at stated times and at accepted levels of performance. The union usually counters that employees seek to improve the quality and quantity of output, reduce cost, and minimize the waste of resources. If specific production standards are established through negotiation, it is much easier to negotiate accepted wage increases. Yet separating out and measuring profit resulting from individual and group productivity as compared with management and capital equipment is almost impossible.

Ability to Pay

The issue of **ability to pay** is commonly expressed during wage negotiations. In principle, this issue is similar to the productivity theory. Union leaders emphasize that labor is one of the primary inputs into a company's productivity and therefore profitability. Labor negotiators conclude that if the company is experiencing high profits, it can better pay its employees who have contributed to the good financial conditions. For example, 1996 was the most profitable year in the history of the airline industry. Thus, when it came time to renegotiate labor contracts, "a spirit of militancy" swept through the ranks of airline workers. "American Airlines is making record profits, and it's time our wages reflect that," said Rob Held, a pilot. American Airlines pilots, in fact, overwhelmingly rejected a contract offer that their own union leaders had called generous. United Airlines mechanics rejected an offer of a 10 percent wage increase. However, only a few years earlier these same unions had accepted layoffs, wage cuts, and longer hours during hard financial times in the airline industry.[44]

The ability to pay concept, however, has severe limitations according to management negotiators. First, unions will not press this issue during hard times when profits have decreased or when the company is suffering temporary losses. Unions seldom want to apply the ability-to-pay doctrine consistently in both good and hard times; instead, they expect wage levels to be maintained during hard times and increased during good times. Second, management will argue that higher profits must be applied back into the company in capital investments. Finally, although profit levels fluctuate greatly, negotiated wage rates do not vary accordingly. If higher wage rates were negotiated on the basis of a six-month crest of high profits, the company might find it extremely difficult to maintain the higher wages during a period of sluggish profitability. Unfortunately, wage rates are negotiated for the future, and profit information is available only for the past. Thus, estimating the company's future ability to pay during the life of the new contract is quite difficult.

One very important number in contract negotiations is the estimated total profits available during the term of the new contract. Table 7-5 provides a sample calculation of total profits available for a metals firm. During their preparations, both management and labor will project sales, production costs, overhead, changes in productivity, and so on, that will occur during the life of the new contract. They can then project the total profits available to pay increased wages and benefits that might be negotiated. Determining labor's fair share of the total profits available is a difficult task; a starting point is usually the current labor cost as a percentage of total revenue (30.4 percent in Table 7-5). The union will try to negotiate a higher

percentage using the productivity theory based on management's ability to pay (35 percent in Table 7-5).

Management may cite higher production costs, the cost of new equipment, or additional management costs as reasons to keep the percentage the same or even to lower it under the new contract. *Both sides, therefore, enter negotiations with this dollar figure playing an important role in their negotiation strategy.* Management uses it as an absolute maximum cost of the new contract that they cannot exceed without endangering the future profitability of the organization. The union uses the figure as a goal that they hope to achieve to realize for their workers a fair share of future profits. During negotiations, both sides carefully

TABLE 7-5 Estimated Profits Available under a New Contract*

Potential Profits Available from Current Operations

	Current	Projected
1. Sales revenue	$46,324,064	$52,056,000
2. Production costs	−23,100,000	−26,565,000
3. Labor costs (wages and benefits)	−14,390,064	−15,890,000
4. Labor costs as a percent of sales	30.4%	30.52%
5. Administrative and selling costs	−2,800,000	−3,080,000
6. Overhead	−1,550,000	−1,705,000
7. Net profits before taxes	5,484,000	4,816,000
8. Income tax	−2,020,000	−1,774,000
9. After-tax profit	3,464,000	3,042,000
10. Dividends paid	−400,000	−400,000
11. Profits with current operations	3,064,000	2,642,000

Potential Increased Cost Savings Due to New Equipment

	Current	Projected
12. Increased output: 10% (reduced product costs: $23,100,000 × 0.10)	2,310,000	2,656,500
13. Costs of new equipment = $6,400,000 × 0.10 (current interest rate)	−640,000	−640,000
14. Related new equipment costs	−640,000	−660,000
15. Total cost of new equipment	−1,280,000	−1,300,000
16. Savings due to new equipment (savings available to all organizational needs)	1,030,000	1,356,500

Potential Profits Available from Future Operations and Savings Due to New Equipment

	Projected
17. Potential profits available for all corporate needs (11 + 16)	$3,998,500
18. Percent of profits available for labor	35%
19. Profits available for increased labor costs under new contract	1,399,475

*"This example might be used by either management or labor to calculate the dollar amount each believes will be available for labor under the new contract. Of course, each side might make different assumptions about the firm's future sales, profits, and productivity.

keep a running total cost of all economic items negotiated and compare that figure with an estimated amount available developed before negotiations. If management produced these estimates, it would set $1.4 million as a maximum cost for the entire economic package, essentially wages and benefits, for the first year of a new contract. Thus, management might accept a total economic proposal that was far less than $1.4 million. If the union produced these estimates, it would set $1.4 million as a realistic target for negotiations, hoping to achieve at least that amount in new economic items.

Job Evaluation

Job evaluation is the process of systematically analyzing jobs to determine their relative worth within the organization. The process is generally part of job analysis—the personnel function of systematically reviewing the tasks, duties, and responsibilities of jobs, usually to write job descriptions and minimum qualifications as well as to provide information for job evaluation. In general, the result of a job evaluation effort is a pay system with a rate for each job commensurate with its status within the hierarchy of jobs in the organization.[45]

Job evaluation procedures do not include analyzing employee performance; that is referred to as performance evaluation or performance appraisal. Nor is job evaluation an attempt to review the employees within a position. Rather, the position is reviewed for several carefully selected criteria to determine the relative worth of the job to the organization in comparison with other jobs in the labor market. Union leaders as well as members of management can use job evaluation techniques as guides to negotiate wage agreements and explain paid differentials to employees. An example of how an agreement can provide for the use of job evaluation procedures during the life of a labor contract is shown in the following labor agreement between the Duke Energy Company and the International Brotherhood of Electrical Workers:

> **ARTICLE V**
>
> (k) The Company's Evaluation Committee will be responsible for evaluating all new and revised job classifications. The Union will appoint two (2) members to the Company's Evaluation Committee. The evaluation that is established by this Committee is used to determine the maximum wage rate for each new or revised job classification. Results of the evaluation will be communicated to the Union two weeks before the new or revised job classification becomes effective.
>
> (l) The Union shall maintain a Job Evaluation Advisory Committee consisting of not more than five members who may review the evaluation and wage rate of any job classification which undergoes a substantial change in qualifications or duties. The Union's Committee may, by request, meet with the Company's Committee, at a mutually convenient time within thirty (30) days after the effective date of the new or revised job classification, to present any information relevant to the evaluation of the job classification which has been included in the previous written comments of the Union representative. The Union will be notified after the Company's Committee has reviewed the additional information presented by the Union. All wage rates so established shall be final and binding and not subject to the grievance and arbitration procedure. However, if any revised wage rates are reduced as a result of the evaluation(s), they will not

be placed into effect until the Company and the Union have had an opportunity to negotiate them during full contract negotiations, even though the revised job classification will be in effect.

SOURCE: Agreement between Duke Energy Ohio, Inc. and Local Union 1347 International Brotherhood of Electrical Workers, AFL-CIO, 2006–2009. Used by Permission.

Job classification is common in labor agreements, and when an agreement contains a rigid classification, the employer may not unilaterally change it. When no explicit provision exists, it is generally recognized that management has the right to make classification changes or to add new jobs. However, even if the agreement contains a job classification, arbiters have recognized management's need—and right—to make changes as long as established pay rates are used, the union is allowed to file complaints through the grievance procedure, and management follows any procedures agreed to in the contract.[46] Case 7-2 illustrates a typical dispute over job classification.

CASE 7-2

Reclassification of Jobs

The company manufactures refrigerators and dehumidifiers. The grievance concerns assembly-line workers who installed foil wrap around the wired socket on certain food liner tops. The company instituted an operational modification that substituted fiberglass insulation for foil in the assembly operation. The grievants were classified as Class III Assemblers. Their grievance was a request to be reclassified to the high classification of Hand Pack Insulation workers. The Hand Pack Insulation classification was specifically created in the early 1960s to cover personnel who must work with fiberglass insulation.

It was the union's position that the grievants regularly worked with fiberglass insulation and therefore should be classified to the higher classification. The workers do not have to spend more than 50 percent of their time handling fiberglass insulation before they can be classified as Hand Pack Insulators because there are Hand Pack Insulators who cut up fiberglass insulation on only two days per week. By creating the new classification, the parties had recognized that employees generally do not like to work with fiberglass insulation because it causes the workers to itch.

Using the management rights clause as its basis, the company contended that it had the right to change the materials being used in particular operations and to assign different tasks to appropriate classifications. The company pointed out that many assembly-line workers had occasionally come into contact with fiberglass materials during the 20 years preceding this grievance and that no prior claims or grievances had been made regarding reclassification. It contended that the jobs performed by the two grievants were not meaningfully changed by the substitution of fiberglass for foil. In fact, the job description for the Class III Assemblers mentions that the personnel must deal with insulation, indicating that they may be expected to handle some fiberglass.

Decision

The arbitrator found that, although it is apparent that the Hand Pack Insulation classification was created to cover personnel who spend a significant amount of their time handling fiberglass insulation, the history of the plant indicates that numerous assembly-line workers in other classifications continued to handle some fiberglass insulation without job reclassification. The arbitrator cited the basic rule that when jobs are classified by titles and the parties have not negotiated a detailed description of job content, management are permitted wide authority to assign work that is reasonably related or incidental to the regular duties of the job. The arbitrator also put heavy emphasis on the fact that other personnel had not previously sought reclassification of their jobs to Hand Pack Insulator, even though they did handle some fiberglass insulation.

SOURCE: Adapted from *Magic Chef, Inc.*, 84 LA 15.

WAGE SURVEYS

Both labor and management conduct their own **wage surveys** to provide information on external labor market conditions. The job evaluation process is used to maintain internal equity for wage rates, but it is also important to maintain external equity. That is, both sides want to offer wages competitive with the labor market and industry so that the firm can attract and retain qualified, productive employees.

Union leaders want to provide evidence during negotiations to management and their own members that the wage rates they are negotiating are fair and justified by market conditions.

Negotiators seek wage survey information from three general sources. The first source is published labor market information from federal agencies, primarily the U.S. Department of Labor, which provides wage and salary information to all organizations by metropolitan statistical area. In general, the government's employment information is considered complete and accurate. Negotiators in specialized industries may wish to use the second source, industry wage surveys, published by various interested parties within the industry. Or negotiators may choose a third source, their own survey, which is a costly and time-consuming process. One side of the table is less likely to accept the figures produced by the other side unless they have a very strong working relationship or have participated in the survey process.

Using wage surveys in negotiations may involve two types of problems. First, because survey information is available from many sources, including industry data, the BLS employer associations, and union groups, it is often difficult to agree which source contains jobs and data applicable to a particular firm. This problem may be compounded if negotiators use survey information from different cities and therefore must agree on an acceptable cost-of-living difference between the areas as well. One solution is to combine relevant data of two published surveys to determine averages.[47] But even if negotiators agree on wage survey information, a second problem involves the question of how the negotiating company should compare itself with other firms. Survey information usually provides an average as well as a range of wages paid for different jobs. Negotiating parties must then agree on whether they want to pay higher, average, or lower wages than the competition.

Thus, wage survey information will not resolve the issue of appropriate wage rates but will at least provide ballpark information to negotiators. Management may argue that what it lacks in wages it makes up in liberal benefits, working conditions, or advancement opportunities. Labor leaders may counter that these advantages are available in higher-paying organizations and do not make up for the lack in take-home pay.

COSTING WAGE PROPOSALS

Many of the changes in contract language may result in indirect or direct long-range cost to the company. However, most changes in wages, benefits, and COLAs are direct and usually substantial cost increases. Other types of changes, such as layoff provisions, seniority determination, and subcontracting, may result in indirect cost increases to the company. The process of determining the financial impact of a contract provision change is referred to as **costing**.

Costing: *The methods of determining the financial impact of a contract change, such as total annual cost, cost per employee per year, percentage of payroll, and cents per hour.*

The costing of labor contracts is obviously a critical aspect in collective bargaining negotiations. Both sides need to estimate accurately the cost of the contract provision so that it can be intelligently discussed and bargained for by either side. If it is an item that ultimately is given up by one side so that another provision can be gained, then its relative weight is best estimated by knowing its costs.

All economic provisions can be reduced to dollar estimates, whereas noneconomic items cannot be as easily valued by either side. The costing process enables both sides to compare the value of different contract provisions and, it is hoped, helps them arrive at a contract agreement. In most cases, accurate costing processes will be accepted by both sides with little disagreement over the methods employed.

The largest single cost incurred by most corporations is labor cost. Even in capital-intensive organizations such as commercial airlines, labor costs account for about 42 percent of total cost; but in labor-intensive organizations, such as local police departments, labor may account for more than 80 percent of total cost. Figure 7-6 shows how a typical company might cost the wage provisions of a contract.

Accountant Michael Granof outlines the four most commonly used methods of costing union wage provisions:

1. ***Annual cost.*** This is the total sum expended by the company over a year on a given benefit; usually the sum excludes administrative costs. Most companies

Data

90 employees at $16.00/hr
60 employees at $13.00/hr
20 employees at $11.50/hr

Proposed wage increase = 6% across the board = 1,900 average number of production hours per year

Annual Cost

Current: 90 × $16.00 = $1440
60 × 13.00 = 780
20 × 11.50 = 230
$2,450/hr

Current annual cost is $2,450 × 1,900 hr = $4,655,000

Proposed: 90 × $16.96 = $1526.40
60 × 13.78 = 826.80
20 × 12.19 = 243.80
$2,597/hr

Proposed annual cost is $2.597 × 1,900 = $4,934,300
Total cost of proposed increase is $4,934,300 − $4,655,000 = $279,300

Cents per Hour

$16.96 – 16.00 = $0.96/hr for 90 employees
$13.78 – 13.00 = $0.78/hr for 60 employees
$12.19 – 11.50 = $0.69/hr for 20 employees

Roll-up (Average ÷ Employee)

Cost of benefits per person = $4.00/hr
$2,450 current cost ÷ 170 employees = $14.41 cost of wages/hr
$4.00 benefit cost ÷ $16.40 wages = 27.77% roll-up

Total Cost of Proposed Wage Rates ÷ Roll-up

$279,300.00 + 77,583.33 (27.77% × 279,300.00) = $356,883.33 wages + roll-up

FIGURE 7-6 Costing a Wage Proposal

make computations similar to those illustrated in Figure 7-6 to arrive at the annual cost of a wage agreement or benefit.

2. ***Cost per employee per year.*** This is determined by dividing the total costs of the benefit by either the average number of employees for the year or the number of employees covered by a particular program.
3. ***Percentage of payroll.*** This is the total cost of the benefit divided by the total payroll. Companies may include all payments to all employees in the total payroll, but some exclude overtime, shift differential, or premium pay.
4. ***Cents per hour.*** This is derived by dividing the total cost of the benefit or wage provision by the total productive hours worked by all employees during the year.[48]

The two most commonly discussed economic figures are the annual cost figure and the cents-per-hour figure. When the contract is being negotiated, the total value of all additional wages and other economic items is included so that the annual cost of the entire package can be estimated accurately. All sides want to know the exact figure of the negotiated wages and benefits. The management negotiator may even offer a lump-sum amount, giving the union negotiators the choice of how to divide it among the various proposed economic enhancements. The cents-per-hour figure is perhaps the single most important item to employees in the new contract. Because employees can quickly estimate their additional take-home pay by using the cents-per-hour figure, it becomes vital when they vote on contract ratification. Granof found that most management negotiators agree that the primary goal in bargaining is to minimize the cents-per-hour direct wage increase.[49]

Employers are usually aware that any negotiated economic increases may be duplicated for nonunion and management personnel. This spillover effect can be quite costly. However, most costing models do not include the spillover costs because unions do not consider them part of the negotiated wage increase.

Base

The first step in determining compensation costs is to develop the **base compensation** figure. During negotiation, this figure is essential in determining the percentage value of a requested increase in wages. For example, a $500 annual wage increase means a 2.5 percent wage increase on a $20,000 base and a 5 percent increase for an employee with a $10,000 base. The base may be thought of as the employee's annual salary; however, it seldom represents the total payroll costs incurred by the company for that employee. For example, the average salary cost, or base salary, for a nurse in a city hospital was $28,200. Under the terms of the contract, a nurse may have also received an average of the following: longevity pay of $1000, overtime of $2400, shift differential of $2,100, vacation cost of $1,272, holiday pay of $1,120, hospitalization insurance of $2,100, a clothing allowance of $300, and pension benefit of $1,970. The total additional paid benefits were $9,837 for each nurse, equal to about 34 percent of base pay. These additional costs, when added to the base of $28,200, produced what many think of as the nurse's true gross salary of $38,037.[50]

Base compensation: *An employee's general rate of pay per unit or hour, disregarding payments for items such as overtime, pension benefits, and bonuses.*

Figure 7-7 illustrates the Chrysler Corporation–UAW agreement on base rates for three jobs. At the end of the old agreement the base rates were $22.98, $23.57, and $27.70 for the janitor, assembler, and tool-and-die job classifications, respectively. At the start of the new negotiation it was agreed to "fold in," or add to the old base rates, the COLAs that had been given, thereby creating new base rates that would stay in effect during the new three-year agreement. If the CPI increased each year, the new COLA adjustment and negotiated deferred wage

TABLE A
Examples of Total Hourly Wage Increases

	Janitor	Assembler	Tool & Die
Base Rate-Contract End	**$22.98**	**$23.57**	**$27.70**
Skilled trades tool allowance			.30
COLA Fold-In	2.00	2.00	2.00
New Agreement Base	**$24.98**	**$25.57**	**$30.00**
Beginning COLA float	.05	.05	.05
1st-year COLA	.32	.32	.32
End 1st-year Base Rate plus COLA	**$25.35**	**$25.94**	**$30.37**
2nd-year COLA	.40	.40	.40
End 2nd-year Base Rate plus COLA	**$25.75**	**$26.34**	**$30.77**
3rd-year 2% base rate Increase	.50	.51	.60
3rd-year COLA	.44	.44	.44
End 3rd-year Base Rate plus COLA	**$26.69**	**$27.29**	**$31.81**
4th-year 3% base rate Increase	.76	.78	.92
4th-year COLA	.36	.36	.36
End 4th-year Base Rate plus COLA	**$27.81**	**$28.43**	**$33.09**

(Projected COLA assumes annual nonmedical Inflation averaging 2.2%)

FIGURE 7-7 Chrysler–UAW Examples: Base Rate, COLA Adjustments, and Wage Adjustments

SOURCE: UAW-DaimlerChrysler Newsgram, September 2003. Available at www.uaw.org.

increases of 3 percent in the second and third years would cause the hourly wage rates to increase, as reflected in Figure 7-7, to $27.81, $28.43, and $33.09 or about 21 percent each!

The one absolutely essential figure that every negotiator should have in mind at all times is how much a **wage increase of 1 percent** will cost the employer in thousands of dollars per year. Although the overall dollar cost of a contract settlement is important for budget purposes, most negotiators do not consider such costs to be especially pertinent. They find the total cents-per-hour cost of the negotiated wage increase more relevant, and they bargain in those terms. Settlements are also evaluated by their superiors in terms of cents per hour, but they need to be able to convert cents per hour to total dollars for accurate costing.[51]

Roll-Up

Roll-up: *The direct increase in the cost of benefits that results from a negotiated increase in wage rates, such as Social Security, overtime pay, and pensions.*

As hourly wages increase, many benefits also directly increase because they are directly tied to the wage rate or base pay of employees. This direct increase in benefits caused by a negotiated wage increase is referred to as the **roll-up**. Roll-up may also be called *add-on* or *creep*. All three terms refer to other costs incurred, which automatically increase as wage rates are increased. These costs must be "rolled up into" the total cost of the negotiated wage package to reflect accurately the total costs that will be incurred.

Examples of some of these benefits are the following:

1. ***Social Security and unemployment insurance contributions.*** The employer's contribution is computed as a percentage of each employee's wage up to a maximum annual figure. Any negotiated wage increase up to this maximum will cause a direct increase in the employer's contribution.
2. ***Life insurance.*** Often the amount of life insurance coverage paid by the employer is based on the employee's annual earnings. Therefore, as annual earnings are increased, the cost of the insurance automatically increases.
3. ***Overtime pay and shift premium.*** Overtime compensation and shift premium are often computed as a percentage of base wage. Thus, these also increase with the base wage.
4. ***Pension benefits.*** The pension benefit formula normally includes employees' average annual wages. An increase in wages increases the employer's funding liability for the pension.[52]

Negotiators often determine an agreed-on percentage attributable to roll-up. The roll-up percentage is computed by dividing the cost of the directly increased benefit by the cost of the wage rate increase. For example, if a $2-per-hour increase in the base wage directly causes a $0.40-per-hour increase in benefits, then the roll-up percentage is $0.40 divided by $2, or 20 percent. Therefore, if negotiators agreed to increase employees' base wage by $2 per hour, from $20 per hour to $22 per hour, the 10 percent negotiated wage increase would cause a direct cost increase of 12 percent when the roll-up costs were added: $20 + $2 + .40 = $22.40/hour.

Total Negotiated Costs

At all times during negotiations, both labor and management maintain their estimated cost of wage and benefit items on which they have reached agreement. Therefore, as additional economic items are proposed, both sides know exactly the total cost of the new contract; they can then decide whether the cost of the new items would increase the total cost of the agreement beyond an affordable level. In Table 7-6, the total cost of all new wage and benefit enhancements for the metals firm example in Table 7-4 is $1,318,049 at some time in the negotiations. Management had previously determined that the profits available for increased labor costs under a new contract were $1,399,475 (also shown in Table 7-4). Therefore,management would likely agree to the total package of items presented in Table 7-6 or might even be willing to agree to additional economic enhancements if their total cost is less than $81,426.

The union might, for example, propose increasing the clothing allowance by another $150 per year to reach a final agreement. Although the total cost of this proposal would be only $100,500, or about half of 1 percent of the total wages and benefits that management estimates would be paid under the new contract, it would increase the total costs of all negotiated items to $1,418,549. Thus, the new total would exceed the maximum management believes it can afford under a new contract. In such a situation, management might (1) reject this proposal and therefore signal to the union that the total cost is close to the maximum; (2) respond with a counteroffer of an additional $50 clothing allowance, which would be less than the $81,426 that management believes it has left to bargain; or (3) accept the final proposal by the union if it would secure a contract and hope that the $19,074 by which management exceeded its estimate will not critically affect future operations. If management believed that the union would press other economic issues after the

TABLE 7-6 Estimated Costs of Negotiated Wage and Benefit Increases

Item	First Year New Contract	Estimated Additional Cost
Wages (wage rate + roll-up)	3%	$361,000
Paid holidays	1 new day	40,505
Funeral leave	New provision: 3 days/death	121,515
Health insurance	Increase in employer share: ($120/year)	128,100
Clothing allowance	Additional year: ($50/employee)	33,500
Profit sharing	New provision: 10% of net	399,850
Pension benefits	Additional $50/month	100,000
Paid vacation	Two additional days/year for employees with less than two years service	24,712
Shift differential	Increased from 10% to 12%	108,867
Total cost of negotiated wage and benefit increases		$1,318,049

clothing allowance increase was accepted, management would most likely reject the proposal. Otherwise, the union could keep proposing small additional increases and possibly exceed the maximum cost estimate by a large amount.

PUBLIC EMPLOYEE WAGE AND SALARY ISSUES

In most cases the negotiation of wages and fringe benefits is a union's principal function. Public employee unions, however, often find this subject out of their reach. Under Title VII, the federal statute governing employee rights, the right to bargain collectively

Tips from the Experts

UNION

What are three wage issues union negotiation team members should look for at the negotiating table?

1. Fairness at both ends of wage/salary scale
2. Rewards for performance as well as for service
3. Equal pay for equal work

MANAGEMENT

What are some practical forms of wage concessions to use at negotiations that will not break an employer?

1. Swap indirect benefits and apply to direct labor (e.g., switch a holiday for a specific wage increase).
2. Lengthen the term of the collective bargaining agreement (perhaps in combination with item 3).
3. Stagger wage increases with minimum or no increase at the front end but load up near the end of contract (perhaps in combination with item 2).
4. Give concessions in an area that will be used infrequently but is a big morale booster, such as extended family leave (unpaid, event).

is limited to issues concerning conditions of employment and excludes wages and fringe benefits. However, employees of the federal government in Case 7-3 were able to address a reduction of pay as a result of reduced hours when the reduction had not been negotiated with the union.

For most state and municipal employees, union contract negotiations take place during or after the respective legislative body has determined a budget. Unions may be limited to a negotiation on how the available dollars are to be divided among classes of employees or distributed as base wages, fringe benefits, bonuses, and incentive pay.

Public-sector unions can, in some cases, effectively utilize their positive public image and general public support to put additional pressure on management negotiations.

However, not all wage and salary issues in the public sector are resolved in the union's favor. In one decision, the Supreme Court rejected a police union's request to pay sergeants and lieutenants significant back overtime pay under

CASE 7-3

Hours of Work: Changed Schedule

This case pertains to an allegation that management violated the agreement when, after having changed the employees' work schedules on August 1, 1999, from 32 to 40 hours a week, in March 2000 they changed their work schedules from 40 back to 32 hours a week.

Over a period of years, certain employees regularly worked beyond the 32-hour limit of their part-time work schedules. At the time the employees were converted to full-time work schedules, August 1, 1999, the change was documented on their SF50 without a not-to-exceed (NTE) date. In late March 2000, the employees were notified that their full-time work schedules were being reduced back to part-time work schedules. The union objected, claiming that management had changed the positions to full time and could not now change them back without negotiating over the changes.

The relevant subsection of the *Federal Personnel Manual* reads as follows:

Work Schedule Tour of Duty

c. New or changed tour of duty. Agencies may establish a new tour of duty for a part-time employee or temporarily change a current tour to meet the needs of the office or the employee. A change must be made in advance of the administrative workweek in which the change is to occur and must be approved by an authorizing official. (See FPM supplement 296–33, sub-Chapter 24, for information on when an SF 50 is required.) An increase in the tour of duty above 32 hours per week is not permitted for more than two consecutive pay periods in keeping with congressional intent to limit regular part-time work schedules to no more than 32 hours per week.

d. Change to full-time work schedule. It is contrary to merit principles to appoint an individual to work part time with the intent to convert the employees to full time after a brief interval. Unexpected increases in workload may, however, require an agency to change the work schedule of a part-time employee to full time on either a short term (i.e., not to exceed a certain date) or permanent basis. If the change would be a hardship to the employee, for example, by affecting the employee's health or disrupting school or child care arrangements, the agency should first determine if there are other ways to accomplish the added work within available resources. If the change is temporary, the not-to-exceed date *should* be specified in the SF-50 remarks.

(continued)

CASE 7-3

Hours of Work: Changed Schedule—continued

Management's position is that the employees were properly notified when their hours were *changed on a temporary basis from 32 to 40 hours per* week in August 1999. The employees were notified again that their hours were going to revert back to 32 hours per week in March 2000. This change in schedule was not intended to become a permanent shift; it was done because of allowable budget expenditures. Employees knew the change in their scheduled work hours was temporary and there was never any intent to change their status from part-time to permanent full-time employees. If the employees were reclassified as permanent full time, such action would be contrary to merit principles and be in violation of the law. It was management's position that they complied with all applicable regulations and that the omission of the NTE date on the employees' SF-50s was an administrative omission and cannot be translated into a fait accompli for the union.

Paragraph c provides in part that "agencies may establish a new tour of duty for a part-time employee or temporarily change a current tour to meet the need of the office or the employee." Paragraph d provides that it is contrary to merit principles to appoint an individual to work part time with the intent to convert the employee to full time after a brief interval. Unexpected increase in workload may, however, require an agency to change the work schedule of a part-time employee to full time on either a short-term (i.e., not to exceed a certain date) or a permanent basis. If the change is temporary, the NTE date *should* be specified in the SF-50 remarks. *Should* is not mandatory but permissive, and its omission cannot be translated into a fait accompli without following the proper procedure of promoting someone to permanent full time from permanent part time. Paragraph d permits the agency to change the work schedule of a part-time employee to work full time, and by doing so the employee does not become a permanent full-time employee, as it would be contrary to the merit system principles to do so.

It was the union's position that management failed to comply with the sunset provisions of the manual and in so doing violated Article 4 of the agreement. Federal employment rules do not authorize part-time employees to work beyond 32 hours per week for more than two consecutive pay periods. An NTE date was *required if the change was intended to be temporary.*

The past practice of adhering to this congressional intent by following the clear and unambiguous guidance contained in the manual requires the agency to change part-time employees who work more than 32 hours per week for two consecutive pay periods to full time because no other category is authorized and to do otherwise subjects employees to denied pay and benefits.

Decision

Given the length of time, August 1999 to April 2000, that the employees worked full time, the change cannot be construed as a short-term increase in workload requiring a short-term increase in work hours. Rather, it appears that there was a long-term increase in workload that required a long-term increase in work hours. There was no intent to circumvent the merit system's principles. This case is not about filling newly created or open positions. This case is about ensuring that management does not abuse their right to increase the scheduled work hours of part-time employees beyond 32 hours a week for short periods of time to meet changing workload requirements to avoid having more full-time employees on the payroll. What is set forth in paragraph c is clear and unambiguous. An increase in the tour of duty above 32 hours per week is not permitted for more than two consecutive pay periods. The record establishes that with respect to the four aggrieved individuals, this requirement was not followed. Given what is contained in paragraph c, if the two-consecutive-pay-periods threshold is breached, it is appropriate to conclude that the change is intended to be permanent. This conclusion is further strengthened if an NTE date does not appear on the *SF-50. Its absence leads* to the conclusion that the change is not intended to be temporary.

Clearly, the supervisor was knowledgeable about what information had to be provided on an SF-50. If the absence of the NTE date on the SF-50s

(continued)

CASE 7-3

Hours of Work: Changed Schedule—continued

in question was an administrative oversight, management should have discovered it soon after the SF-50s were created and taken appropriate action to correct the omission. Considering that the agency's personnel office was involved in the creation of the SF-50s for the four aggrieved employees, the court is not inclined to believe that the failure to comply with the manual's plainly stated requirements was an administrative oversight. Based on what is contained in the record in its entirety, the court believes that the omission was intentional. In conclusion, for all the previously mentioned reasons, it is the court's opinion that management violated the agreement when they changed the employees' work schedules back to 32 hours a week.

SOURCE: Adapted from In re: *Defense Commissary Agency and AFGE LOCAL 1138*, 116 LA 1141.

the FLSA. The argument the union made was that even though these employees were salaried and therefore exempt from overtime pay, they could be disciplined by being docked a day's pay under the *Police Department Manual*, although as a practical matter they seldom were. The secretary of labor determined that a theoretical ability to dock such employees' pay did not automatically put these employees in the nonexempt classification; rather, employers could preserve the exempt status of the employees by reimbursing any who were indeed docked.[53]

Also, in *Central State University v. American Association of University Professors*,[54] the Supreme Court upheld an Ohio statute that required state universities to develop standards for faculty members' instructional workloads and exempted such standards from collective bargaining. The Court held that the legislation, which was passed to address the decline in the amount of time that faculty members devoted to teaching as opposed to research, served a legitimate government purpose, and therefore these public employees could be treated differently than other public employees.

Summary

Wages and benefits represent the heart of the collective bargaining process. Guarantee of a certain standard of living and a reasonable return for their productive efforts is the major concern for most union members. At the same time, management realizes what large percentages of its total costs are wages and benefits. Through job evaluation, wage surveys, and other methods, both sides negotiate either a standard rate or a pay range for each job covered in the agreement. Also, future deferred wage increases are negotiated. Both labor and management begin negotiations by estimating sales, production costs, overhead costs, and other significant economic variables that can then produce the predicted total revenue available for negotiated wage and benefit enhancements. This figure can be used as a target figure during negotiations and can therefore be constantly compared against estimated total cost of negotiated increases. Management can thus ensure that the organization will be able to afford negotiated future labor costs, and the union can obtain a fair share of future profits for its members.

The accurate costing of all negotiated wage changes is critical to successful bargaining and to management's cost-containment efforts as well as to predictions of future labor cost. Roll-up costs must be included in any estimate when wage increases have been agreed on. The computer has given both management and labor a negotiating tool to add speed and accuracy to the costing of proposals.

Although public sector unions do not always negotiate wages and salaries, the positive influence of unionization in the public sector can be seen in higher wages and better benefits.

CASE STUDIES

Case Study 7-1 Premium Pay Rates

For at least 21 years, the company has paid double the straight-time pay rate for work after 50 hours in any given workweek to all plant employees, whether they worked a 5-day, 8-hour schedule ("5/8 employees") or a 4-day, 10-hour schedule ("4/10 employees"). The collective bargaining agreement (CBA) provided for such payment after 50 hours to the 4/10 employees but not the 5/8 employees. The employer, in December 2000, put the union and all hourly personnel on notice that effective January 1, 2001, overtime would be paid in accordance with the CBA; that is, the practice of paying double time after 50 hours to 5/8 employees would cease. The union objected and brought this grievance.

The union argued that the practice of paying 5/8 employees double time for hours worked over 50 hours in one workweek has been in effect for over 20 years. The current CBA has a provision that protects employees from any deduction in pay. It says, "No employee shall suffer a deduction in wage rates or working conditions as a result of this agreement." Allowing the company to change its overtime pay policies while this CBA is in effect violates that term. Furthermore, there have been some five CBAs negotiated since that practice has been in effect, and the company has never sought to negotiate or clarify the practice of how it pays overtime or the CBA provision regarding no reduction. Finally, the union pointed out that the length of time the practice was in place would certainly qualify it as a "past practice" that the company could not change unilaterally.

The company contended that the payment of overtime at double the straight-time rate for 5/8 employees is in direct conflict with the language of the CBA. An employer may abandon past practice that is in direct conflict with the clear language of the CBA. Also, the general CBA provision regarding "no reduction in pay" cannot be interpreted as controlling the specific overtime provision of the CBA.

Discussion

In nondisciplinary matters, the party complaining of a violation of a CBA has the burden to prove that the other party is violating a specific requirement of that agreement. In this case the parties do not dispute that the CBA does not include 5/8 employees in the overtime provision. The union contends, however, that both past practice and the provision of the CBA "maintenance of benefits" clause entitle these employees to the overtime.

The court recognizes the following as primary elements necessary for an activity to qualify as a past practice:

1. A pattern of conduct that is clear and consistent
2. Longevity and recognition of the activity
3. Acceptability and mutual acknowledgment of the pattern of conduct by the parties

Applying those standards to this case, paying double time to 5/8 employees would certainly qualify as a past practice.

The company argues, however, and points to case law to support it, that if it can be proven that a past practice directly conflicts with a provision of a CBA, the company can abandon it unilaterally. Because the CBA's provision specifically excludes the 5/8 employees and because the union has never sought to have them covered under that provision, the union cannot claim that the CBA provides for the overtime pay.

The issue for the court to determine is which side is correct as to which provision of the CBA applies. Both sides presented cases that had been decided that supported its position. The union argued that the court should avoid an interpretation of the CBA that renders the bargained-for benefits meaningless. A longstanding practice of paying double overtime wages would certainly be the type of "wages" the union sought to protect in its "no reduction" clause. The company argued, however, that the court should look to the unambiguous language of the CBA that governs overtime for the 5/8 employees as "*trumping*" the more general language of the "no reduction" clause. The fact that the company unilaterally paid more than it was required to under the CBA should not bind the company to continue to do so in the future. Those kinds of benefits should be negotiated at the bargaining table, which this was not.

SOURCE: Adapted from *Rod's Food Products v. Teamsters, Local 630,* 116 LA 1734.

QUESTIONS

1. What do you think would be the "fair" way to resolve this case? Should the company be required to pay 5/8 employees double time even though that benefit has never been negotiated, and so, arguably, the company has never received any exchange for this benefit? Or should those employees who have in good faith accepted overtime work believing they would be paid double time, even though their contract did not say they would, have to give up this benefit and get nothing in return?
2. Should the company have waited to bring up this issue when the CBA was being renegotiated? Does it change your answer to know that the CBA was not to be renegotiated for three years?
3. The parties did not know why the company began paying double time to the 5/8 employees. If the practice began as an error on the part of a payroll clerk, would that fact change your opinion as to how to decide this case?

Case Study 7-2 Incentive Pay

The company had an incentive pay rate in place that could increase the employees' pay by 30 percent over their base pay. Citing changed circumstances, the employer eliminated the incentive pay for one department. The union appealed. The collective bargaining agreement (CBA) in place at the time of the grievance reserved all management rights to the company unless restricted by the language of the agreement.

Article V of the agreement established wages to be paid and specifically continued during the term of the agreement "all incentive rates" in existence at the time of the agreement; excepting only the company's right to "establish new incentive rates or to adjust existing incentive rates" under certain conditions listed in the agreement. Those conditions included changes, modifications, or improvements made in equipment involved in an incentive pay area; new or changed standards of manufacturing; and changes in job duties of those affected by incentive pay.

Procedures on how the company was to proceed to establish new or changed incentive rates were also included in Article V of the agreement, unless changes *to the incentive* rates were a result of the changed circumstances previously cited. If this was the case, employees affected by the changes were given the right to grieve the application of the changed incentive rate. When the incentive pay was totally eliminated for one department, the union grieved on behalf of those affected employees.

It was the company's position that significant changes of equipment and operations in the affected department authorized the unilateral elimination of the incentive pay under the agreement. A new mechanical device had eliminated the need for fracture tests of a furnace. The employees in the department had been reduced from 6 Head Operators, 22 Attendant Carburizing, and 4 Recorder Optical Pyrometers to 3 Head Operators and 4 Attendants. The classification of Recorder Optical Pyrometer was completely eliminated because the duties were no longer needed. The company's interpretation of the contract language was that these changed circumstances allowed the company to eliminate unilaterally the incentive pay for the remaining employees.

The union's position was that the CBA contemplated the incentive pay being kept in place as part of the employees' wages, and the company could not unilaterally eliminate the incentive pay. New or changed rates could be negotiated as circumstances dictated, but eliminating the pay completely was not allowed.

The following are the relevant contract provisions:

Article V—Wages

> A. Wage Rates
>
> [S]uch hourly wage rates, together with all incentive rates now in existence, which altogether constitute the wage structure applicable to existing occupations in effect on August 28, 1983, shall remain in effect during the term of this agreement, except as any of such rates may be changed, adjusted, or supplemented in the manner prescribed in this Article . . .
>
> B. New and Changed Rates
>
> It is recognized that the company, at its discretion, may also find it necessary or desirable from time to time to establish new incentive

rates or to adjust existing incentive rates because of any of the following circumstances:

1. Changes, modifications, or improvements made in equipment, material, or product. If there is any such change, modification, or improvement in existing equipment or material or on an existing product, the company may change the elements of the rate or rates affected by such change, modification, or improvement but will not change the elements not affected by such change, modification, or improvement.
2. New or changed standards of manufacture in (a) processes; (b) methods; and (c) quality.
3. Changes in the duties of an occupation covered by incentive rates that affect the existing incentive standards.

Whenever it is claimed by any employee that any of the changes or events have occurred that are outlined in Paragraphs 1, 2, and 3 of the preceding Section B of this Article V, any employee who is affected thereby, either (1) by the production of product or (2) by being employed on an occupation affected by such claimed changes or events outlined in said paragraphs, may request the establishment of a new rate by discussing such request with his supervisor. In the event that no agreement is reached in respect to the employee's request, grievance may be filed by such employee within 10 calendar days after such changes or events have occurred.

If, as the result of a grievance being processed under this Section B, it is determined that the company did not have the right to establish a new or adjusted rate, the rate structure in effect prior to the new or adjusted rate shall be reinstated as of the effective date of the new or adjusted rate. The company will calculate retroactive payment to the extent possible under the applicable rate structure.

SOURCE: Adapted from *Timken Co.*, 85 LA 377.

QUESTIONS

1. Did the changes made in the department satisfy the circumstances cited in the agreement that would allow the company to eliminate the incentive pay?
2. Did the affected employees have a legitimate grievance under the CBA's language?
3. If you were the arbitrator, would you allow the company to eliminate the incentive pay? Explain your answer.

Key Terms and Concepts

ability to pay *335*
back-loaded contract *326*
base compensation *341*
costing wage proposals *339*
cost-of-living adjustment (COLA) *327*
deferred wage increases 325
front-end loading *326*
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Review Questions

1. What are the general wage concerns that management and employee representatives bring to the negotiating table?
2. Why have profit-sharing plans replaced COLAs in some recently negotiated agreements?
3. Why does management often prefer profit-sharing increases or bonuses to deferred wage increases?
4. How can wage surveys be effectively used in collective bargaining?

5. Why are labor and management negotiators likely to respond to consideration of the company's ability to pay higher wages?
6. What are some problems with negotiated COLAs?
7. Why must labor and management be able to determine accurately the cost of wage proposals?
8. How should negotiators treat the roll-up costs when negotiating wage changes?
9. Why might union negotiators favor front-end loaded deferred wage increases? Are there potential drawbacks?
10. Why do you think profit-sharing and lump-sum provisions have increased in usage in recent years, whereas COLAs and wage reopeners have decreased in use?

YOU BE THE ARBITRATOR

Scheduling Saturday as Part of the Workweek

ARTICLE V
WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

Section 5.1—Workday and Workweek—(B) Production Workweek (in pertinent part): The basic workweek for all bakery employees shall consist of five (5) eight (8) hour workdays for a total of forty (40) hours. . . . The basic workweek shall be from 12:01 AM Sunday and end at midnight (12:00 AM) Saturday.

Section 5.3—Weekly and Daily Guarantees—(B): A minimum of eight (8) hours of work shall be guaranteed to all full-time employees under this Agreement who report for work in any one day, except that the minimum guarantee shall be only four (4) hours with respect to work requested on the sixth and seventh day of the workweek.

Section 5.4—Work Schedules (in pertinent part): The Employer reserves the right to determine working schedules and the number and starting times of working shifts . . .

Section 5.5—Overtime and Other Premium Pay—(A) Overtime (in pertinent part): . . . Overtime at the rate of time and one-half (1–1/2) the employee's regular straight time hourly rate . . . shall be paid for work performed. . . . (4) On the sixth consecutive day of work. Overtime at the rate of double (2x) the employee's regular straight time hourly rate . . . shall be paid for all work performed on the seventh consecutive day of work. No overtime shall be payable for Saturday or Sunday work as such.

(B) Sunday Work: Any employee who is assigned to a work schedule that does not provide for two (2) consecutive days off shall be credited with one (1) earned work credit share for each Sunday worked under any non-consecutive day work schedule.

(D) Extra Day Work (9): Saturday and Sunday work which is regularly scheduled as part of the basic workweek shall not be considered extra day work for purposes of seniority claiming. Letter of Understanding Calculation of Double Time Pay to Bakery Workers Who Work Seven Consecutive Days (page 50 of the Agreement) (in pertinent part): Section 5.5 of the Collective Bargaining Agreement provides for the payment of double the employee's regular straight time rate of pay for all work performed on the seventh consecutive day of work. It has been the past practice to combine two workweeks in order to allow employees to have seven consecutive days of work. Normally the employee's pay period, as set by Payroll, runs from Sunday through Saturday and then a new week starts . . .

Facts

The employer is a wholesale baker and sells bakery products to others. The employer purchased the wholesale bakery assets of the former employer and is a successor employer that assumed the existing agreement. The employer employs 125 production employees, whose basic workweek for at least 14 years has been Sunday, Monday, Wednesday, Thursday, and Friday, with Tuesday and Saturday as days off. To meet increased customer demand, the employer opened a second bun line so that fresh buns would be baked on Saturday for pickup by 5 A.M. Sunday.

The employer posted bids for the new line, which showed the basic workweek for the new production employees to be Sunday, Tuesday, Wednesday, Thursday,

and Saturday, and the days off would be Monday and Friday. Seventeen or 18 production employees work the second bun line and were affected by the new workweek. Two employees filed a grievance on behalf of the bakery employees affected by the new workweek schedule. The grievance charges that the employer violated the Article 5, Section 5.1 B, of the agreement by starting the workweek on Saturday at 4 P.M.

Issue

Did the employer violate the collective bargaining agreement by scheduling Saturday as a part of the basic workweek?

Position of the Parties

The employer contended that it is permitted to make Saturday part of the basic workweek by the clear language of the agreement. The employer argued that pursuant to Article V, Section 5.1(B), the basic workweek is clearly intended to be a seven-day period, beginning at 12:01 A.M. Sunday and ending at midnight Saturday. Furthermore, the letter of understanding confirms this by stating the workweek runs from "Sunday through Saturday." Therefore, the employer may, under the management rights provision, change the basic workweek to include Saturday. The employer argued that a week is seven consecutive days usually beginning on Sunday and ending onSaturday and uses the *Random House Dictionary* to support that definition. Thus, the workweek necessarily runs through midnight Saturday, just before the 12:01 A.M. Sunday starting time. According to common usage, midnight is part of the day that is ending, not part of the day that is beginning. Therefore, it argued "midnight Saturday" means the midnight between Saturday and Sunday and not the midnight between Friday and Saturday. "Midnight" Saturday comes at the end of the day and is followed by Sunday. The reference to "12:00 A.M." is a misunderstanding of how to designate midnight because noon and midnight are technically neither "A.M." nor "P.M." Noon is generally considered to be 12:00 P.M. and midnight to be 12:00 A.M. Under a prior arbitration proceeding, the arbitrator found that the collective bargaining agreement prohibited the use of a past practice to change the meaning of the agreement and that because the employer was a successor-employer who adopted the agreement and did not negotiate it, it was even more necessary to interpret and apply the parties' written agreement according to the plain and ordinary meaning of its language.

The union argued that Article V, Section 5.1(B), which provides that "the basic workweek shall be from 12:01 A.M. Sunday and end at midnight (12:00 A.M.) Saturday" does not permit the employer to make Saturday part of the basic workweek since Saturday is specifically excluded from the definition of the basic workweek as provided by this clear and unambiguous language. Under this language the production workweek ends 12:00 A.M. Friday night and begins again at 12:01 A.M. Sunday morning. If the negotiators had intended to have Saturday as part of the basic workweek, the language would read that the workweek would start at 12:01 Saturday morning. "A.M." is morning before noon, and 12:00 A.M. is the morning of Saturday and not the morning of Sunday. In support of this position, the union cites *Webster's Dictionary*, which defines "A.M." as "ante meridian, before noon: used to designate the time from midnight to noon," and "P.M." as "post meridian, after noon: used to designate the time from noon to midnight." The union further argues that there has been a longstanding past practice of at least 14 years that establishes that Saturday cannot be a part of the basic workweek because it is a scheduled day off for the production employees. The production employees have always had Saturday as a scheduled day off and have always been paid premium time when they have been required to work on Saturdays. The prior arbitration award did not preclude the examination of past practice in this instance because it is used to support and define the clear meaning of the agreement. Furthermore, the letter of understanding refers to a payroll issue, does not define the basic workweek, and does not override the specific provisions of the agreement that define the basic workweek.

SOURCE: Adapted from *North Baking Co.*, 116 LA 1788 (2002).

QUESTIONS

1. As arbitrator, what would be your award and opinion in this arbitration?
2. Explain why the relevant provisions of the collective bargaining agreement as applied to the facts of this case dictate the award.
3. What actions might the employer and/or the union have taken to avoid this conflict?

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