Innovation as the Key to a Redesigned and Cost Effective Local Government

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INNOVATION AS THE KEY TO A REDESIGNED AND COST EFFECTIVE LOCAL GOVERNMENT

As long-time participants in the evolution of public sector labor law, we have closely followed and utilized the extensive works published by Charles C. Mulcahy during the past four decades. He has been at the forefront of change in Wisconsin’s public sector labor law as well as a faithful chronicler of its development.

We represent management, labor, and neutral positions. Our experience strongly supports the conclusions reached by Mr. Mulcahy in this insightful article. Labor, management, and neutrals are aware of the public demand for significant changes in the way government services are performed.

The innovation proposals modeled by Mr. Mulcahy and adopted by the Wisconsin Council on Municipal Collective Bargaining are a harbinger of such change. Employers and employees have an unparalleled opportunity to work together to fashion greater efficiency and effectiveness in local government.

The Wisconsin Local Government Innovation Center - also developed through the efforts of Mr. Mulcahy - will serve as a future resource for labor and management interested in innovative and cooperative efforts.

We endorse the concepts set forth in this article, laud the considerable achievements of Mr. Mulcahy to date, and recommend the direction he has pointed Wisconsin at the start of the 21st century.

Respectfully submitted,

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INNOVATION AS THE KEY TO A REDESIGNED AND COST EFFECTIVE LOCAL GOVERNMENT

CHARLES C. MULCAHY
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"At no time in recent American history has there been a more searching concern about the performance of our political institutions than at the present."1

* This is the fifth article published by Charles C. Mulcahy in the Marquette Law Review concerning public sector labor matters. The previous articles include: Municipalities Rights and Responsibilities Under the Wisconsin Municipal Labor Law, 49 Marq. L. Rev. 512 (1966); Crisis of the 70's—Who Will Manage Municipal Government, 54 Marq. L. Rev. 315 (1971); Municipal Personnel Problems and Solutions, 56 Marq. L. Rev. 529 (1973); Wisconsin's Municipal Labor Law: A Need for Change, 64 Marq. L. Rev. 103 (1980). Mr. Mulcahy served as an adjunct Professor of Law at Marquette University Law School teaching Public Sector Labor Law from 1975-1990. Mr. Mulcahy also served for twelve years as an elected member of the Milwaukee County Board of Supervisors. He chaired the first Labor-Management Steering Committee of the National Association of Counties (NACO) in Washington, D.C. and has served as Special Labor Counsel to NACO. Mr. Mulcahy currently serves as a management representative on the State of Wisconsin Council on Municipal Collective Bargaining. He is legal counsel to the Wisconsin Local Government Innovation Center at Marquette University and is a partner in the law firm of Whyte Hirschboeck Dudek, S.C.

Marion E. Mulcahy is a member of the Marquette Law Review and will receive her Doctor of Jurisprudence from Marquette University Law School in May, 1995.

The authors acknowledge and express appreciation to the following attorneys who reviewed the manuscript of this article and provided helpful suggestions and insights:

1. James A. Buchen, Wisconsin Manufacturers & Commerce, Madison, Wisconsin;
2. John T. Coughlin, Mediator and Arbitrator, Madison, Wisconsin;
4. David C. Hertel, Whyte Hirschboeck Dudek, S.C., Milwaukee, Wisconsin;
5. Professor Robert A. Moberly, University of Florida Law School;
6. William J. Roden, Corporate Counsel, Milwaukee Area Technical College, Milwaukee, Wisconsin; and

The authors also wish to express appreciation to Dr. Teresa A. Noeske and Karyn Johnson of Whyte Hirschboeck Dudek, S.C., for their assistance on this project. The content and conclusions of the article are solely the work product of the authors.

1. WILLIAM F. WINTER, HARD TRUTHS/TOUGH CHOICES, AN AGENDA FOR STATE AND LOCAL REFORM vii (1993). The Winter Commission was appointed in 1993. Members of the Commission include: William F. Winter, Chairman, Watkins Ludland & Stennis; Meg Armstrong, Leadership Group, Inc.; Reubin Askew, Florida Atlantic University, Broward; Mary Jo Bane, United States Department of Health and Human Services; Barbara B. Blum, Foundation for Child Development; Walter D. Broadnax, United States Department of Health and Human Services; Yvonne Brathwaite Burke, Los Angeles County Board of Supervisors;
Demand For Change

Over the past few years, the public has made unprecedented demands for change in the operating efficiency and cost of local, state, and federal government. This dissatisfaction comes primarily from members of the public who receive and support government services. They are dissatisfied with the value of services received based upon the cost. In essence, certain members of the public are truly unhappy with the performance of their government. They view government as pursuing internal goals instead of solving the problem of the customer. Thus, some perceive the quality of government service to be below what they deserve.

The cry for reform in government is becoming loud and clear with the passage of each day, month, and year. The critical question is no longer whether government should improve, but rather when, where, and how it will improve. There is widespread recognition of the need for fundamental change in government. Numerous institutions and organizations have discussed the problem and many have suggested alternative approaches. The demand for change in local government has resulted in a movement that stresses flexibility, adaptability, and utilization of competition, citizen choice, and other mechanisms to achieve desired results more creatively and effectively in local government.

Karen S. Burstein, New York State Family Court Judge; Henry G. Cisneros, United States Department of Housing and Urban Development; John J. DiIulio, Jr., Princeton University; R. Scott Fosler, National Academy of Public Administration; Robert Fulton, Public Policy Analyst; John Herbers, GOVERNING Magazine; Elizabeth L. Hollander, Illinois Commission on the Future of Public Service; Robert A. Kipp, Hallmark Cards, Inc.; L. Bruce Laingen, American Academy of Diplomacy; Ray Marshall, University of Texas at Austin; Ruth W. Massinga, The Casey Family Program; William G. Milliken, Chrysler Corporation Board of Directors; Richard P. Nathan, State University of New York; Neal R. Pierce, Writer; Nelson W. Polsby, University of California, Berkeley; Michael B. Preston, University of Southern California; Charles T. Royer, Institute of Politics, Harvard University; Lisbeth B. Schorr, Harvard University; Max Sherman, University of Texas at Austin; and Eddie N. Williams, Joint Center for Political and Economic Studies.


3. KETTL, supra note 2, at 34.
4. Id.
5. WINTER, supra note 1, at 1-8.
6. OSBORNE & GAEBLER, supra note 2, at 1-2; KETTL, supra note 2; WINTER, supra note 2, at 1; Donald F. Kettl, Toward New Governance: Making Process A Priority, LA FOLLETTE POL'Y REP. (Robert M. LaFollette Institute of Public Affairs), Spring/Summer 1993, at 1.
7. OSBORNE & GAEBLER, supra note 2, at 2.
Underlying the movement is the sense that too often government seems to be in business for itself. Government simply is not very good at explaining what it is doing, or at listening to citizens' views about what needs to be done. The entire movement seeks to end the preoccupation of government and its bureaucracy with itself, and to shift its focus to citizens and their needs. Regardless of where one stands on the reinventing government debate, it is impossible to contest the movement's foundations.  

Local Government Is Important

Local government is not a necessary evil. Rather, it is a mechanism to provide the actual delivery of the most basic and essential services required by citizens. Local government provides the services that are closest to people, including police and fire protection, highways, parks, airports, public welfare, courts, and water and sewage treatment systems. The direct contact point for most of the problems facing American society today, including drug use, crime, poverty, homelessness, illiteracy, toxic waste, and even the exploding cost of medical care is local government. Local government is needed and must function more effectively to provide services and opportunities for all Americans on an equitable basis.

Making democracy work is what the state and local public service must be about. It is here that the actual delivery of the most basic and essential services takes place. Since people have the most direct contact with their public officials in county seats, city halls, and state capitols, it is here that most citizens form their opinions of how well government is performing.

"Governance is the process by which we collectively solve our problems and meet our society's needs. Government is the instrument we use. The instrument is outdated, and the process of re-invention has begun. We do not need another New Deal, nor another Reagan Revolution. We need an American perestroika."

Innovation at the Federal Level

The book Reinventing Government was one of the motivating factors for the Clinton administration and Congress to consider change in gov-

8. KETTL, supra note 2, at 1.
9. OSBORNE & GAEBLER, supra note 2, at xviii-ix.
10. WINTER, supra note 1, at vii.
11. OSBORNE & GAEBLER, supra note 2, at 24.
ernment at a national level. Following his election in November 1992, President-elect Clinton invited David Osborne to meet with him in Little Rock, Arkansas to discuss the Reinventing Government concept. Shortly after his inauguration, President Clinton, through Vice President Al Gore, announced a sweeping re-invention of government at the federal level. The Gore initiative, called the National Performance Review (hereinafter “NPR”), focused on budget savings with concentration on reducing the federal work force by twelve percent. The NPR strategy for public support was based on shrinking the federal government. Media coverage of the Brookings Institution study released in August 1994, reported that the Gore initiative produced “impressive results” in its first year.

The study further highlighted the need to communicate better and more effectively with Congress as well as with government employees. The Gore initiative, along with the Brookings Institution study, clearly demonstrate a commitment to making basic changes in how services are provided at the national level.

Innovation at the State Level

Innovation and change have also been emphasized at the state level. In Wisconsin, the Study of Administrative Value and Efficiency (“SAVE”) Commission is “reinventing government” for the State of Wisconsin. The fifteen member Commission was appointed to provide the first comprehensive review of state government since the Kellett Commission in the late 1960s. The Commission initially sought to provide one billion dollars in property tax relief. The Commission’s long term goals include the following: developing an action plan to streamline government operations and spending, recommending administrative savings and efficiencies, increasing accountability, and improving the cost effectiveness of governmental services. The SAVE Commission has demonstrated a basic commitment to make necessary changes at the state level.

12. Osborne & Gaebler, supra note 2.
Scope of This Article: Innovation in Local Government

Federal and state innovation initiatives are crucially important to reinventing government. Steps are being taken at both the federal and state levels to streamline government operations in spending. This article, however, focuses on innovation in local government. Innovation, as used in this article, means changes or improvements to increase the operating efficiency and performance of local government.

This Article discusses the problems and barriers in attempting to initiate meaningful improvement and change in local government under the Wisconsin Municipal Interest Arbitration Law. It discusses citizens’ growing unrest and dissatisfaction with the local government’s inability to implement innovation to reduce spending and taxes. This Article discusses the steps taken by the State of Wisconsin to reduce local government spending, including spending limits and the establishment of "qualified economic offers" in school district bargaining to limit the financial impact of interest arbitration\(^{16}\) on property taxes. It describes the expansion of the authority and responsibilities of the Wisconsin Council on Municipal Collective Bargaining (hereinafter “CMCB”).\(^{17}\) Further, this Article introduces the creation of the new Wisconsin Local Government Innovation Center (hereinafter “WLGIC”).\(^{18}\) The Article also addresses the importance of labor management cooperation in planning and developing the innovation process. Finally, it concludes with the recommendations concerning changes in Wisconsin’s interest arbitration law to promote and allow innovation in local government.

Local Government is Part of the Growing Competition in a Worldwide Economy

The current situation in Wisconsin’s local government is similar to the past experiences of private businesses faced with global competition. This global competition mandated the restructuring of necessary changes in order to make products and services more competitive based upon both quality and price. To better understand the problems that local

\(^{16}\) S. Res. 44, 1993rd Leg., 1993 Wis. Laws 16 (enacted). The 1993 Senate Bill 44 was enacted on August 10, 1993 as 1993 Wisconsin Act 16, and published on August 11, 1993. This legislation established qualified economic offers for use in collective bargaining with school districts in Wisconsin. Qualified economic offers will be discussed later in this Article.

\(^{17}\) S. Res. 44, supra note 16. This legislation restructured and expanded the authority and responsibilities of CMCB.

\(^{18}\) Articles of Incorporation for the Wisconsin Local Government Innovation Center were filed with the Wisconsin Secretary of State’s Office on Sept. 1, 1994.
governments face, it is helpful to provide insight into what has taken place in the private sector.

During the past fifteen years, it has become increasingly clear that the United States is involved in a competitive situation with a growing number of countries throughout the world. These countries have developed industrial capabilities which make them highly competitive. Although the U.S. continues to be an economic powerhouse, it no longer has the proportionate and relative strength to dominate the world economy. Other countries throughout the world, with their capable and dynamic manufacturing engines, have become formidable economic adversaries. Several of those countries, particularly Germany and Japan, have enjoyed economic prosperity as a direct result of a motivated, well-trained, and well-educated work force. As a result of their defeat in World War II, Germany and Japan were forced to reexamine how they did everything from manufacturing to education. Japan, despite few natural resources other than its people, presently generates approximately ten percent of the world's economic value.

Further, the European Union continues to foster ambitious plans and programs to enhance, strengthen, and develop the economies of its member nations. The countries in the European Union are becoming increasingly competitive in the world market as they eliminate trade barriers among the members. Despite this increasing competition, certain U.S. industries believe that American manufacturing can be restored to world leadership. This process requires American industry to develop a "strategic vision for manufacturing in the twenty-first century."

Industries are not in a position to remain stagnant as major changes are necessary in terms of efficiencies, economies, strategic planning, and re-identifying priorities and objectives. Frequently, individual companies fail in this process and consolidation becomes inevitable. U.S. businesses continuously reevaluate their needs, goals, and plans to survive in an increasingly competitive global market place.

20. The European Union is a political entity comprised of the following countries in Western Europe: United Kingdom, Luxembourg, Ireland, Germany, Belgium, Holland, Denmark, Spain, France, Portugal, Italy, Greece, Sweden, Denmark, and Norway.
The private sector experience, which mandated reorganization, innovation, and implementation of massive changes, is comparable to changes necessary in local government. Because the cost of local governmental services has dramatically increased over the years, the public is now demanding that services continue at lower or contained costs. Although change and innovation in local government require a different mix of options, challenges, and opportunities, the avenues of change in the private sector are similar to the public sector. In fact, local government frequently profits from the experience of business. Despite the fact that leadership roles in the public and private sector are not exactly identical, the responsibility of both sectors is to carry out the efficient delivery of goods or services to its customers.23

Former New Jersey Governor James Florio, as the Co-Chair of the U.S. Department of Labor’s Task Force on Excellence in State and Local Government through Labor-Management Cooperation, made the public and private connection in a recent symposium:

[T]he ability of our Nation to successfully compete internationally in the months and years ahead will depend on our being more [sic] smarter and more creative in delivering essential government services. That, of course, will require that public sector workers and managers at all levels interact better as colleagues, as individuals with something unique and valuable to contribute to the process, and not as adversaries or as supervisors and subordinates.24

Local Government Is Difficult to Change

Local government has intrinsic problems in terms of developing and implementing efficiencies and economies. Long range planning is difficult because the average term in office for an elected city or village official in Wisconsin is only five years.25 Additionally, the limited experience of local officials hampers the implementation of plans and


24. James Florio, Address before the Wisconsin State and Local Government Labor-Management Committee (November 10, 1994). The symposium referred to in this sentence was the Symposium on Excellence in Government Through Labor-Management Cooperation, which was held November 10-11, 1994 at the Grand Geneva Resort and Spa, Lake Geneva, Wisconsin. Questions concerning the Conference can be directed to the Conference Coordinator, Susan Hedges, c/o the University of Wisconsin-Oshkosh, Center for Career Development, Oshkosh, Wisconsin (Telephone: 414-424-3034 or Fax: 414-424-0429).

objectives that are routinely developed and implemented in the private sector.\textsuperscript{26}

There is also a practice in local government to reward an average performance with job security and regular compensation adjustments. The proverbial "don't rock the boat" style of management and performance continues in certain areas of government. Local government administrators and managers are frequently not supported by elected officials in their efforts to improve performance through constructive discipline, inspirational motivation, and financial rewards. Most local government officials are ever mindful of the next election.\textsuperscript{27}

Some individuals who occupy positions of influence in local government openly proclaim that local government was created simply to serve people. The Wisconsin Constitution never mentioned that this service should be cost effective. These individuals accept the status quo rather than focus on becoming competitive, cost effective, and customer oriented. They seem to believe establishing goals and objectives promotes friction.\textsuperscript{28}

\textit{Local Government Change Is Inevitable}

A growing consensus of local government officials, public unions, and private businesses believe that developing and monitoring local government service goals and objectives is an imperative and pragmatic approach to correcting the outdated comfort zone of the status quo. Local governments that decide to "stand pat" will be forced to either improve, reinvent, subcontract, or face replacement by elected officials who will do more to reflect the wishes of the people.\textsuperscript{29}

Local government in Wisconsin is at a crossroads in terms of dealing with necessary innovation. A taxpayer revolt has been recognized and numerous signs indicate that changes are being made and that more changes are on the horizon.\textsuperscript{30} Significant interest has developed in making schools, villages, cities, and counties more cost effective, service oriented, and competitive. Some of the alternatives considered to

\textsuperscript{26} Walters, \textit{supra} note 23.
\textsuperscript{27} \textit{Id.}
\textsuperscript{28} \textit{Id.}
\textsuperscript{29} \textit{Id.}
accomplish this objective include closing down public schools and substituting choice, either charter or private schools that are selected by parents. Another approach involves contracting out either major or minor portions of local government functions to private entities who would be more cost effective and service-minded. Some local government units faced with reduced state funding and limited local revenues have arbitrarily reduced funding for programs with resulting layoffs. Other local government units have taken strategic steps to increase the efficiency and effectiveness of their work force to avoid or at least minimize the more painful alternatives. In some instances, where local governments have not responded in a timely and satisfactory manner, consideration has been given to initiate change through the process of initiative or referendum. Local government units in Southeast Wisconsin have participated in referendum issues in the areas of gun control and term limits for elected officials. This type of referendum may be expanded in the future in order to force the changes contemplated in this article. For example, arbitrary limitations on spending, required by referendum, would compel major changes in local government.

While certain alternatives may appeal to some consumers, the broad and comprehensive services necessary for local government cannot be totally provided through choices, subcontracting, privatizing, or layoffs. Local government must take the initiative to improve, reinvent, or modify itself to function efficiently and effectively or some other source of service will develop. Local government must change its fundamental approach in providing services. Identifying the problem is relatively easy as recent developments have clarified the interest and concern of the local government customer.

31. An initiative in the case of municipal legislation is the initiation of municipal legislation and the enactment or rejection thereof by the municipal electorate in the event the proposed measure is not enacted by their elected representative.

32. These issues were on the ballot in the November 8, 1994 election in several communities in Wisconsin.

33. Hayes, supra note 31. The current state budget contains spending limits which are similar in nature to this type of initiative. The problem with this approach, however, is that specific changes, improvements, or modifications are not identified. The difficult cost reduction decisions are given to local government to resolve without a blueprint for success.
Local government units must make critical choices when faced with the alternatives of how to provide services. One of the fundamental questions, however, is whether the alternatives will include the continuation of local government in its present form. Survival of local government in its current form will require greater efficiencies and economies. The survival plan must include when and how innovation must occur. The process of innovation is tedious and difficult, but local government has the capacity to move forward with positive and constructive plans.

A financial crisis, while it induces significant change, impacts differently in the private and public sectors. When the private sector is depressed, immediate steps are normally taken to cut expenses to maintain or restore financial stability or both. When local government is impacted on a negative basis due to decreased revenues or increased demands for services such as police protection and increased welfare payments caused by an economic downturn, the process of cutting local government expenses is more difficult, politically sensitive, and frequently opposed by the customer. The taxpayers need more government protection and assistance during an economic downturn. Consequently, the individual taxpayer concurs with cuts, provided those cuts do not remove essential services to him or her.34 Primarily due to the political process, local government is not able to respond as quickly as private business.

An appropriate and well planned change is accepted more easily in the public sector when crisis (or recession) periods recede and the recovery emerges. The upward cycle in the economy creates a window of opportunity to build partnerships with people who are or should be looking for stronger performance from local government. This process requires the participation of everyone, including public employers, employee organizations, employees, business and community leaders, and the public. Everyone has to contribute and recognize the need for change.35

Change alone is obviously not the complete answer. The process of reinventing government involves far more than merely doing things differently. Reinventing government is a complex process which involves conflicting objectives. It is difficult to identify what the customer really wants. It is unacceptable for a customer to prioritize changes and cost reductions which eliminate essential services.

The reinventing government movement, however, too quickly brushes away the internal inconsistencies within its own theory.

34. Walters, supra note 23, at 32.
35. Id.
Three threads of the reinventing fabric - downsizing, reengineering, and continuous improvement - compete to define it. There is, moreover, little consensus on what "customers" really means or how to serve them. The movement also too easily dances across critical but unsolved issues. Reinventing government depends on resolving difficult political and technical problems in performance management. And, even if these are resolved, customer service, competition, and performance measurement combined can never really substitute for top-down accountability. That leaves the reinventors with the difficult puzzle of adapting the valuable pieces of their own movement with the driving forces of constitutional bureaucracy. 36

Cost Containment Initiatives

The public in Wisconsin has for several years conveyed messages of concern and dissatisfaction relative to the effectiveness and cost of local government services. 37 When sufficient reductions in local spending did not occur, Governor Tommy Thompson and the Wisconsin legislature developed a plan to provide cost containment in local government. These initiatives were placed in the 1993-95 State of Wisconsin budget bill. 38 The plan was prepared to reduce the spiralling costs of local government. 39 Responding to these trends, the governor and state legislature limited annual growth in school revenues to an inflation adjusted $190 per pupil, or the increase in the consumer price index, whichever was greater. The state capped revenue growth at the inflation rate through the 1997-98 budget. 40

36. KETTL, supra note 2, at 55.
37. "During the past decade, total property taxes increased 85.0% to $5.438 billion in 1993-94. . . . School property levies rose 91% from $1.566 billion in 1984-85 to $2.988 billion in 1993-94 for an average increase of 7.5%. Total school costs also climbed 91% while total teacher compensation was up 86%." Todd A. Berry, The Coming Change in School Taxes, Wis. Taxpayer, Oct. 1994, at 1.
38. S. Res. 44, supra note 16.
39. The increases in local government spending were primarily due to increases in salaries and fringe benefits. While certain parties disagreed, state elected officials concluded the increases, in excess of the private sector, were the result of municipal interest arbitration primarily in the area of school districts.
40. S. Res. 44, supra note 16; Berry, supra note 18, at 1. Wisconsin Taxpayers Alliance, School Financing Brief This Changes Everything, Address before Wisconsin Manufacturers & Commerce (June 16, 1994). Current law limits the increase in the total amount of revenue that a school district may receive from general school aids and property taxes in the 1993-94 to 1997-98 school years. In the 1993-94 school year, the maximum allowable increase per pupil was $190 or the rate of inflation, whichever was greater. Beginning in the 1994-95 school year, the $190 per pupil amount is adjusted each year by the rate of inflation. The limit is based on the difference between the average of the number of pupils enrolled in the 3 previous school
As a part of this local spending control approach, the legislature enacted the "qualified economic offer." If school districts make a qualified economic offer to school district employees of at least a 3.8% increase to the district's previous year's expense for their wages and fringe benefits, binding arbitration on economic issues is unavailable to the employee organization. School administrators were also limited in the adjustment to their compensation. While the combination of capped school district revenue growth and qualified economic offers has resulted in settlements for all local government units in the general range of a 4% increase in wages and fringe benefits. These control mechanisms have severely limited the amount of discretionary money for projects, programs, and employees.41

The legislative plan was in response to consumers objecting to compensation increases in excess of the private sector settlements as well as the consumer price index.42 Capped school district revenue growth and qualified economic offers were not received with enthusiasm by school district unions. Some job actions, including slow downs and sick-ins, occurred in individual school districts, but the limitations on spending imposed by the legislation held firm. Time will determine whether limits on spending alone will provide the answer on costs containment in local government. These state initiatives certainly gained the attention of local government officials, public employees and unions, and consumers of public services.

Inability to pay employees is a valid and powerful argument advanced by a local government to justify the legitimate motive of proper fiscal restraint.43 However, this argument has not been widely embraced by arbitrators who find "comparables" more persuasive, even when matching them will require program cuts or a tax levy increase by the

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41. S. Res. 44, supra note 16. The qualified economic offer consists of 2.1% wages and 1.7% of fringe benefits for a total of 3.8%. Although qualified economic offers applied only to school districts, the impact of the legislature carried over and had a significant limiting impact on settlements involving cities, villages, and counties.


43. CHARLES C. MULCAHY & MARION C. SMITH, PROBLEMS & SOLUTIONS RESULTING FROM INABILITY TO PAY IN THE PUBLIC SECTOR 45 (1978).
local government. Yet fiscal restraint and long range financial planning are an essential part of any local government plan to avoid financial crisis. Inability to pay can be harmonized with local government innovation designed to provide services more efficiently and effectively, while at the same time providing appropriate compensation and job security for employees. Local government with this approach can advance to the 21st century with renewed confidence and credibility.

The authors suggest that placing an arbitrary lid on local government spending (no matter how reasonably determined) will not provide the solution. Rather, the long term solution will require a more difficult, time consuming, and all-encompassing effort. The solution involves a combination of labor management cooperation and state laws which encourage local government improvement through innovation and performance management, and which stress accountability to the customer. Significant limitations on local government spending, with a corresponding reduction in the availability of services, would be a cruel hoax to play on the customer. This approach does nothing to improve the value provided to the customer based upon the dollars spent.

**Labor Management Cooperation**

Organized labor has expressed an interest and a commitment to being a direct participant in the process of reinventing government. The International President of the American Federation of State, County, and Municipal Employees ("AFSCME"), Gerald W. McEntee, at a symposium on November 11, 1994, stated the position of his union:

Now, where does AFSCME stand on the issue of redesign? We agree that government is long overdue for an overhaul. We believe the movement towards cooperation is essential if we hope to improve the quality and delivery of public services. We will go as far as to say that the viability of government depends at least in part on how successful we are in moving from confrontation to cooperation in labor-management relations.

At the same symposium, Wisconsin State AFL-CIO President David Newby opened his official remarks with this statement: "[a]ll of us here share [a] common goal for government: to provide high quality government services efficiently and in a cost-effective manner—while at the

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44. Forest County v. Forest County Courthouse Employees Assoc., Decision No. 27811-A (April 29, 1994) (Petrie, Arb.).
same time, providing high level of job satisfaction to public sector workers."  

Organized labor clearly understands that local government needs vast change and significant revisions. In past times, public sector unions were reluctant or unable to participate in this process which was considered a management prerogative. In fact, many state laws, including those of Wisconsin, provide that certain basic management rights are reserved to local government and are not a subject of mandatory bargaining.  

A significant number of public sector labor agreements negotiated in the past quarter century contain strong management rights clauses that reserve the right, power, and responsibilities with the public employer. The result has been that a labor and management cooperative effort for problem solving has not been prevalent in the public sector.

AFSCME International President McEntee stated:

Every state collective bargaining law on the books today has management rights provisions and/or prohibited subjects (one another's throats most of the time) of bargaining written into the laws themselves. This is unheard of in the National Labor Relations Act. On top of that, management has typically insisted on additional proscriptions and prohibitions and management rights written into the collective bargaining agreement.

... Can anyone really believe that restrictions on this scope will help us redesign government, improve services, and achieve a mode of collaboration and cooperation?

... Perhaps we could also take a collaborative approach to problem solving, not as part of contract negotiations, but as a part of a

47. Wis. Stat. § 111.70(l)(a) (1993) provides: 

[The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employees by the constitutions of this state and of the United States and by this subchapter.]
continuous process of bargaining and problem solving, sometimes away from the table, but never away from the process itself.

Maybe the resultant agreement is eventually put into writing as some sort of supplemental understanding or guidelines. Maybe it becomes part of a building block toward a new tradition of trust.

In other words, management will talk to workers and consult with workers on subjects that heretofore were unilaterally determined by management. What a revolution! Solve a problem rather than take a position.48

Although cost cutting in local government has received significant critical attention during the past several years, a lesser reported movement involving results oriented public sector labor management cooperation has surfaced and is gaining momentum. A distinguished and talented group of public officials and labor union representatives met in Lake Geneva, Wisconsin, on November 10-11, 1994, for a symposium on "Excellence in Government Through Labor Management Cooperation." The symposium, which was attended by approximately 160 people, featured presentations by well-known and respected government officials and labor union representatives. The symposium also featured breakout sessions in which different topical discussions took place between government and union participants relative to identifying and developing solutions to the current barriers to good government.49 The results of the sessions revealed a remarkable consensus between government officials and union representatives as to the actual problems facing local government, and how change can and should occur in local government.50

The type of changes in the relationship between public officials and labor representatives discussed at the symposium are a significant departure from the past. When the public sector labor movement was in its early stages, local government employees throughout the United States


49. The topics in the breakout sessions involving government officials and labor union representatives covered salaries and benefits, measurement and change, collective bargaining and impasse resolution, centralization and efficiency, accountability, trust, proper approach to performance, empowerment, training and equipment, evaluation and input, elective and administrative interaction, and innovative funding.

50. Summaries of the joint labor and management findings of the breakout sessions at the symposium can be obtained by contacting the Wisconsin Local Government Innovation Center, Attention: Professor Timothy Keaveny, Executive Director, College of Business Administration, Marquette University, David Straz Hall, 517 North 13th Street, Room IOIF, Milwaukee, Wisconsin 53233, telephone (414) 288-7145, fax (414) 288-1660.
(U.S.) had limited rights to organize and bargain with their public employers. Collective bargaining was considered collective begging. Several decades were spent successfully advocating and urging state legislators to pass public sector collective bargaining laws with more rights given to organized employees. AFSCME started as a small fledgling public sector union in 1936, but fifty-nine years later is the largest union in the U.S. Following their successful organizational efforts, public sector unions focused on getting public officials to not only recognize public employee organizations, but to negotiate collective bargaining agreements that adequately protected the interests of those employees relative to wages, hours, and conditions of employment.

During this process, some public employer representatives placed significant emphasis on labor management cooperation to improve the operation of local government. Roger Dahl, Executive Director of the National Public Employer Labor Relations Association (NPELRA), addressed this subject from a management perspective. Mr. Dahl proposed "flattening the organization" of local government. He said that effectiveness in this area will not be the result of authority and responsibility from the top of government down. Mr. Dahl indicated that these public managers should not serve as bosses, but rather serve as coaches, facilitators, and coordinators. Top down management in local government does not get the job done. Participation by public employees is essential.51

Local government units which plan, encourage, and support labor and management cooperation realize many benefits:

1. The process is more effective: When management representatives and employee organizations work together in identifying challenges, problems and areas requiring change, the results are more positive and productive. Cooperation requires the parties to focus their energies on solving problems, rather than fighting with one another. The result benefits everyone including the customers.

2. Cooperation is more realistic: Improving local government involves changes that require union participation in situations where employees are organized. Public sector unions have assumed a major role in the labor movement in the U.S. These unions have indicated an inter-

est and willingness to participate in the process of improving local government.

3. Labor and management cooperation benefits everyone: Cooperation provides the parties with an opportunity to more effectively fulfill their responsibilities, with the direct result that the ultimate beneficiary will be the customer. Effective cooperation results in not only better service but also on a more cost-effective and uninterrupted basis. Change occurs in a more positive atmosphere when the rights of individual employees are taken into consideration and the compelling need for change is identified and carried out in a constructive manner.

The road to cooperation in local government has been delayed and difficult. Public managers and employee organizations went through a maturing phase when both recognized each others basic needs and concerns that needed to be resolved. The customer continues to demand change.

Based upon these considerations, there has been increasing activity in establishing labor and management cooperation programs. These programs are encouraged and established to achieve the above listed benefits. Thus, an increasing number of public employers recognize public employees can make a significant contribution.

The report of the Brookings Institution’s Center for Public Management provides the following conclusion:

The most valuable contribution of the reinventors is their frank recognition that the top-down bureaucratic authority approach guiding American bureaucracy since the Progressive era no longer effectively steers public management. The traditional approach is not obsolete; it can never be so long as the United States is a government of laws. But it must be adapted to a new reality of shared responsibility for common purposes. Boundary spanning coupled with customer service offer fresh insights to attacking new and inescapable administrative realities. Traditional bureaucratic theorists face the challenge of fitting old notions of neat hierarchical control to an increasingly messy administrative state where bureaucratic boundaries are the beginning, not the end, of the management process.


53. KETTL, supra note 2, at 54.
Previously, the vast majority of local government units and their public sector unions have spent most of their time negotiating who would run local government and how much public employers would pay their employees. The process was visibly slowed in the 1990s when government officials and public unions failed to develop an effective and meaningful approach to resolving their problems on how local government services might be more efficiently and effectively provided.

The national elections of November 8, 1994, had a central theme of bashing government, which resulted in a change in the control of both Houses of Congress for the first time in 40 years. This election sent an immediate and undeniable message to government officials: change must occur. Although the private sector had experienced the phenomena of mandatory operational changes (and some local governments units had heard and responded to the message many years earlier), the nation acknowledged the problem and demanded action in the November election.

Whether the answers and changes in local government satisfy the public hinges, to a large extent, upon the cooperation public management and public labor can generate in working together to develop the best methods and techniques to provide efficient and cost effective ways of serving the public. This evolution of thinking and reordering of priorities was understandably gradual. Now, after years of militant confrontation and negotiation, the parties seem to have matured and appear ready to discuss the difficult issues of innovation.

The process used to build the partnerships between labor and management is essential. The most challenging and significant relationship in every local government unit is between labor and management. Common sense tells us that any meaningful improvement effort in local government involving innovation to achieve greater efficiencies and economies requires participation by employee organizations if it is to be successful.

As AFSCME International President McEntee stated: "The redesign movement is a once-in-a-lifetime opportunity, not just for the Union and its members, but also for management and the public at large. We don’t want to let this opportunity slip by. We intend to be a part of it."54

Local government has become a complicated provider of services. New ideas and innovations can come from a variety of sources, including not only elected officials and management personnel, but also employee

organizations and employees. Failure to recognize these sources of ideas and information results in missed opportunities. The involvement of employee organizations in discussions concerning innovation will uncover new ideas and encourage a positive and receptive attitude with employees.55 Certain government units have developed labor and management advisory councils to provide an effective vehicle to identify and resolve problems before those situations become serious issues.56

The role of public employees in pursuing an alternative future cannot be overstated. They need to be both encouraged and challenged. Those public employees who no longer care about challenging work or accomplishing something worthwhile should leave; those who still want to make a difference must develop and broaden their skills. Far too many of our front-line employees have spent their careers learning narrow specialties that no longer serve the public well. Far too many of their managers are still stuck in the micromanagement mindset that substitutes for the mentoring, coaching, and team-building that our front-line employees need. Given a chance to participate, those front-line employees have to be ready to take risks and share their ideas. In turn, their managers need to listen to them—to trust them to accomplish their agreed-upon goals in the way they think best, and to lead them by coaching and championing, not by dictating and disciplining.57

Public employers and public employee organizations need to build a shared vision of organizational goals. This process involves “consensus building.” In addition, vision and problem solving communication must transcend “endless discussion” in favor of making timely and realistic decisions. The need for change must be communicated to people at all levels of local government, including elected officials, department heads,

55. Walters, supra note 23, at 34.
56. The State of Wisconsin, Department of Industry, Labor & Human Relations (DILHR), established a Labor Management Advisory Council (“LNMC”) in May 1992, based upon a recommendation of a group of DILHR employees charged by the DILHR Secretary to enhance labor and management relations at DILHR. The purpose of this advisory council is to proactively recommend policies in the labor management area that foster harmony, trust, and cooperation in the department through (i) the recognition by all management and employees that our success and satisfaction as a team and as individuals depends on our ability to work together productively and harmoniously; (ii) the encouragement of widespread participation by all employees in meaningful activities designed to promote excellence in public service; (iii) the development of a consensus building approach to labor and management relationships in the department. Early reports from management and employer representatives on LMAC indicate significant progress has been made to achieve the purpose of this Council.
57. WINTER, supra note 1, at 11-12.
managers, employee organizations, and employees. This communication is essential when the opportunity for change is at hand.  

Change in local government must be tailored to fit local and internal politics, negotiations, economics, and civic structure. Both government and business must continue to service their customers during this transitional phase. Frequently, those changes are painful, as the impacted employees and customers bear the brunt and pain of needed improvements. As the process of change continues, public and private entities emerge financially stronger, better managed, and more capable of providing greater job security for remaining employees.

The process of change, premised on labor management cooperation, involves risks to public employers, employees, unions, and the public, thus the program needs to be a carefully planned effort. As Wisconsin AFL-CIO President Newby stated: "If you want a successful [labor management cooperation] program, if you want to transform your agency into a high-performance workplace - you've got to get it right the first time."

If the program is not coordinated and planned with local union leadership, it runs the unnecessary risk of intense resistance from public unions and employees. Fortunately, successful private and public sector models are available.

Council on Municipal Collective Bargaining

The current interest arbitration law will expire on July 1, 1996, unless a substitute is approved by the legislature and governor. Certain Wisconsin state and local government officials have indicated the binding arbitration law has failed because it presents no risk to the union, as the worse scenario results in the implementation of the employer's last offer. These officials also maintain that the law permits the selection of arbitrators who, in many cases, do not have a sensitivity to the issues facing residents of the area being affected. Other public employer organizations protest that interest arbitration limits the ability of municipalities to control wages.

58. Walters, supra note 23, at 32.
59. Walters, supra note 23, at 40.
60. Newby, supra note 46, at 4.
61. Id.
62. S. Res. 44, supra note 16.
A major initiative of the 1993-95 state budget legislation involved the reorganization of the Council on Municipal Collective Bargaining ("CMCB"). The reconstituted ten person CMCB was appointed in November, 1993. The appointees were selected based on diverse public sector labor experience and accomplishments. Their mission was to develop a dispute resolution procedure which would satisfy the basic needs of all parties including the public. During 1994, the CMCB conducted public hearings in Waukesha, Rhinelander, La Crosse, Milwaukee, and Madison. During 1995, additional public hearings were conducted in Milwaukee, Green Bay, Eau Claire and Madison. The vast majority of the speakers made presentations in support of the continued use of binding interest arbitration. Although most of the speakers represented employee organizations, several local government units had representatives who appeared to support interest arbitration.

Any substitute impasse resolution procedure recommended by CMCB requires the affirmative approval of seven of the ten members and therefore requires labor and management cooperation. The CMCB focused on the problems contained in the current interest arbitration law. The CMCB members recognized the importance of labor management cooperation and many participated in the symposium on "Excellence in Governments Through Labor Cooperation."

64. S. Res. 44, supra note 16.
65. The initial appointees of the reconstituted CMCB included labor representatives Mary Anne Braithwaite (Wisconsin Federation of Teachers), Christel Jorgensen (Teamsters), Robert Lyons (American Federation of State, County, and Municipal Employees), Robert Weber (Hason, Gasiorkiewicz & Weber Law Firm), and Robert West (Wisconsin Education Association Council); and management representatives Kenneth Cole (Wisconsin Association of School Boards), Chuck Grapentine (City of Kenosha), Charles C. Mulcahy (Whyte Hirschboeck Dudek Law Firm), Rodney Pasch (Moraine Park Technical College), and Mark Rogacki (Wisconsin Association of Counties). The five non-voting advisors were Mary Theisen (Oak Creek Education Association), Donald Ernest (Milwaukee Teacher Education Association), Michael Julka (Lathrop & Clark Law Firm), Keith Krinke (Wisconsin Technical Colleges System) and James Stern (Arbitrator). All were appointed by WERC Chairperson, A. Henry Hempe who served as the non-voting Chair of the CMCB.
66. Wis. Stat. § 111.71(3)(c) (1993); Wis. Stat. § 111.71(3)(c) provides:

[t]he council on municipal collective bargaining shall continuously review the operation of the dispute settlement procedures under Wis. Stat. § 111.70(4)(cm) and 7(m). The council shall submit its recommendations with respect to any amendment to Wis. Stat. § 111.70(4)(cm) or 7(m) to the chief clerk of each house of the legislature under s. 13172(2) at the commencement of each legislative session.
67. Wis. Stat. § 111.71(3)(b). This section provides that "[t]he vote of 7 of the voting members of the council on municipal collective bargaining is required for the council to act on any matter before it."
The CMCB considered a number of modifications and improvements to the interest arbitration process. The group focused on the importance of improving the efficiency and effectiveness of local government. The enactment of new legislation, based upon the recommendations from CMCB, hinges upon a cooperative and problem solving attitude on the part of labor and management. However, the governor and legislature will make the final decision. To achieve such lofty expectations, local government units and employer organizations need to become involved in the decision making process of CMCB. Ideas which represent a careful analysis and practical recommendations to solve problems have the greatest likelihood of receiving serious consideration. New and innovative ideas in local government are likely to prevail with labor management consensus, as well as strong individual, private business, and community support.

An important part of this process includes involvement of the general public and the media. Both the public and the media share a common interest in monitoring the evolution of the impasse resolution provisions of the law. Media coverage and participation of the general public will require CMBC members, the legislature, and the Governor to give serious consideration to new and innovative procedures.

Public employee organizations and employees continue to be frustrated by changes implemented by public employers without meaningful discussion and input to create a more positive reception, implementation, and limitation of the adverse impact upon employees. The need for mentoring, coaching, team building, and the exchanging of ideas,

68. Wis. Stat. § 111.71(3)(c).

69. WINTER, supra note 1, at 11-12. The Winter Commission was evaluated by the International President of the American Federation of State, County, and Municipal Employees ("AFSCME"), Gerald McEntee, in a presentation at the Wisconsin symposium on Excellence in Government Through Labor-Management Cooperation in Lake Geneva, Wisconsin on November 11, 1994. Mr. McEntee did not criticize the recommendations in the report but rather expressed concern about the failure to have union representation on the Commission. McEntee, supra note 45. In his Address, McEntee stated:

[The Winter Commission Report] ... is generally positive and worthwhile. It reviews the barriers to change. It advocates the importance of human capital and the need to invest in it... [B]ut it could have been so much more. While it correctly points to the need for front-line worker involvement, it ignores the participation of their Unions in the process. We requested to be part of the Winter Commission ... but we were categorically denied that opportunity ... the Winter Commission's shortsightedness displayed a befuddling lack of understanding of the process of change in which stakeholders must be brought to the table ... Involvement means from the beginning of the process, not simply an opportunity to testify at a public forum.

McEntee, supra note 45, at 8-9.
with front line public employees is of paramount importance. The success of such undertakings ultimately is the result of new and innovative ideas coming from a variety of sources including public employees. These sources will result in meaningful discussion, and the building of mutual respect and trust necessary to accomplish goals that ultimately satisfy the customer.

Where public employers have the authority and resolve to institute change, meaningful discussion with employee organizations should take place with opportunity for input before implementation. Most types of innovation and change, however, cannot be effectively implemented without union participation and agreement as a part of the collective bargaining or interest arbitration process. If interest arbitration is going to continue in Wisconsin, it must encourage greater efficiencies and effectiveness in local government.

Despite the well intentioned identification of innovative priorities in local government by a small group of people, the impact has not been profound. The public continues to be upset over the lack of changes being made and the failure to contain the costs of local government. An improvement of local government requires the removal of barriers to more effective collective bargaining. Washington (and Madison) will not provide a financial bailout, thus change must come from the local government. 70

Public employers and employees interested in proposing and implementing new and innovative changes to improve the efficiencies and the economies of local government are severely limited under the current interest arbitration law. Any innovations or changes that involve wages, hours, and conditions of employment are mandatory subjects of bargaining. 71 These mandatory subjects, if pursued through final offer interest arbitration, are decided by the arbitrator. Arbitrators consider ten factors in making any decision. 72 Due to the numerous factors which fre-

70 WINTER, supra note 1, at 9.
71 Wis. Stat. § 111.70(l)(a) provides that:
"Collective Bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment.
72 Under Wis. Stat. § 111.70(4)(cm), the arbitrator is required to select the final offer of one party or the other, but is not allowed to compromise between the two. This decision is to be made by evaluating the offers in the light of statutory standards and selecting that offer which is closest to appropriate. The standards which arbitrators are to use in evaluating final offers are as follows:
sequently conflict, arbitrators generally make their decisions based upon comparables while placing limited reliance upon such factors as the cost of living, the interest and welfare of the public, ability to pay, and local economic conditions.\textsuperscript{73} There is no provision in the current factors (or law) to encourage innovation, change, and improvement.

Consequently, innovation requires consent of both the union and public employer in collective bargaining. Frequently, the consent is withheld because there is no inducement to accomplish this objective. Under the current interest arbitration law, it is nearly impossible to require change since there are no factors encouraging innovation in the law that are considered by arbitrators. Rather, the factors favor awards based upon comparables. Furthermore, employers are reluctant to risk

\begin{itemize}
  \item[(a)] The lawful authority of the municipal employer.
  \item[(b)] Stipulations of the parties.
  \item[(c)] The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
  \item[(d)] Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
  \item[(e)] Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
  \item[(f)] Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
  \item[(g)] The average consumer prices for goods and services, commonly known as the cost of living.
  \item[(h)] The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  \item[(i)] Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  \item[(j)] Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties in the public service or in private employment.
\end{itemize}

their “total package final offers” with proposals not supported by comparables. Innovation and change, by their very nature, do not have comparables as they involve new concepts, techniques, and plans. As new and innovative ideas surface to improve local government, they are held hostage by the mechanics involving mandatory subjects of collective bargaining.

Arbitrators are extremely reluctant to alter established relationships between the parties. The status quo is considered preferable to awarding changes in the method of operation, since the status quo involves fewer objections and complaints. Obviously, the reality of negotiations, supported by the current interest arbitration law, discourages innovation and experimentation relative to how local government services might be provided more efficiently and effectively.

The interest arbitration law contains many different factors that arbitrators are free to “pick and choose” from in making their decisions. There are so many factors, that, in practical terms, there are no benchmarks nor controlling factors for arbitrators. Because three of the ten factors to be considered involve comparables, and comparables are measurable and consequently justifiable, arbitrators most often use these three factors as the basis for their decisions.

Consequently, in areas of innovation, an arbitrator should be required to make the award based upon a reasonableness test rather than comparables. Comparables for innovative ideas are nearly impossible to obtain. If there were numerous comparables the issue would probably not be an innovation.

One of the consistent concerns expressed by employee organizations [concerning proposed changes and improvements for greater efficiency and economy in local government] is that when public officials finally agree among themselves to make meaningful changes, there is little or no communication or discussion with employee organizations before implementation. Because of the significant impact changes have on the bargaining unit personnel, these concerns of employee organizations are legitimate. Open communication between management and employee organizations will lead to effective implementation of new techniques.

Public labor also needs to consider the areas of change in an open and objective manner which recognizes the reality of the 1990s. An efficient, financially secure local government unit will be a more effective employer. Conversely, inefficient and poorly managed local government unit potentially places the job security at risk. Communication and cooperation between public employers and public employee organizations is a critical part of the solution.
The current bargaining and interest arbitration process in Wisconsin has created an atmosphere where many of the parties are more concerned about "winning" the interest arbitration than solving the mutual problems of the parties. These individuals have lost sight of the value, purpose, and past accomplishments of collective bargaining in local government in Wisconsin. The decisions of municipal interest arbitrators have focused primarily on economic issues. Rather, arbitrators should be dealing with the fundamental changes needed to face the reality of limited revenues coupled with demands for more services. Innovation has not been a primary objective in this process.

Consumers (voters) have encouraged new and innovative methods to provide local government services in a more cost effective manner. Consumers want quality local government services provided in a timely fashion. Consumers also want spending containment to alleviate the tax burden. These consumers have made it clear that change must occur in state and local government spending levels (with corresponding reduction in taxes), or more changes will occur in the membership of the Legislature.

Governor Thompson, in his 1993 budget message, presented alternatives to the Legislature to modify the interest arbitration law. These suggestions, under state law, were referred to CMCB for review and analysis with a mandatory report of its findings due to the state Legislature on January 1, 1995. After thirteen months of public hearings, research, and discussion, in January 1995 CMCB presented its Analysis and Assessment of each of the changes proposed by the Governor to Wisconsin Statutes Section 111.70(4)(cm) in the 1993 Senate Bill 44.

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74. Wisconsin, the first state to pass a public sector collective bargaining law in 1959, is considered by some to be the birthplace of local government collective bargaining in the United States. The American Federation of State, County, and Municipal Employees was founded in Madison, Wisconsin.

75. Wisconsin voters on November 8, 1994, elected a majority of Republicans in the State Assembly. In the previous election, voters elected a majority of Republicans in the State Senate. It was the first time in twenty-five years that the Republicans controlled the assembly, senate, and governor's office. Although Republican Governor Thompson was first elected in 1986, these elections mark the first time he has had a majority of republicans in both the assembly and senate.

76. The CMCB Report, written by A. Henry Hempe, Chairman of both the CMCB and the Wisconsin Employment Relations Committee ("WERC") was presented to the chief clerk of both the Wisconsin State Senate and Assembly on January 3, 1995. The report was adopted on a ten to zero vote of CMCB at its meeting of Dec. 13, 1994. This report contains a listing and analysis of all proposals of Governor Thompson concerning the interest arbitration law.
CMCB Considers Revised Interest Arbitration Law

The CMCB has also deliberated on the content of a new interest arbitration law that would be considered a significant improvement over the current law. The CMCB has also considered recommending no new law and thereby allowing, in the absence of action by the Governor and Legislature, the interest arbitration law to expire. In the opinion of these authors, the CMCB should choose to recommend a modified continuation of the interest arbitration law because:

1. The current interest arbitration law accomplished the following:
   a. Public employee strikes have been nearly eliminated with public services continuing on an uninterrupted basis.
   b. Although interest arbitration has a limiting effect on true collective bargaining, the process has provided an effective vehicle to resolve economic issues between the parties. Settlements in the school area, however, were significantly higher than in other areas of local government.

2. The imposition of the qualified economic offer ("QEO"), to deny the use of interest arbitration where the public employer has made a wage and fringe benefit offer to its union at or in excess of 3.8%, resulted in school district settlements in 1994 being approximately 4%, which was significantly less than in the previous few years. These QEO settlements and awards brought school districts in line with other local government units and most private sector settlements.

Certain members of CMCB, as well as people testifying at the public hearings, also recognized that interest arbitration, even with QEO's, had its limitations:

1. The process was time consuming and arbitrary;
2. The parties were dissatisfied with the performance of arbitrators and the rational and content of arbitration awards;
3. The factors used by arbitrators were unduly weighted toward comparables with other government units and not with revenue and spending limits of state and local economic conditions;
4. The process, with controlling emphasis on comparables, discouraged new and innovative ways to improve the operating efficiency and performance of local government services; and
5. The interest of the public was subjected to the interests of the parties. The parties resolved their differences, but the public was dissatisfied with the cost of the services.
Any new law recommended by CMCB consequently needs to address these areas of dissatisfaction and include new approaches, within the interest arbitration framework, to improve the results of the process.

CMCB conducted public hearings, and conferred with recognized experts to obtain insights and recommendations concerning the content of a possible new law. Its process involved realistic assessment of issues and compromise. Although the CMCB’s actions on a new interest arbitration law were not unanimous, both labor and management representatives listened to the public, and to one another and actually seemed to hear what the others were saying. The CMCB, after considering many alternatives, voted to recommend the continuation of interest arbitration.\footnote{77. The final discussion draft of the report recommending a new interest arbitration law and a summary of the specific improvements in this recommended law are contained in Appendix A.}

The proposed new interest arbitration law (the “Proposed Law”) attempts to provide a vehicle to limit and in some areas eliminate the problems of the past. The Proposed Law contains provisions to improve the quality of arbitrators and their decisions. Also, the Proposed Law reduces to three the number of factors considered by the arbitrators and arranges them in weighted descending order as follow:

1. GREATEST WEIGHT: State legislation and administrative directives which place limits on local spending or revenue.
2. GREATER WEIGHT: Local or state economic conditions or both.
3. WEIGHT:
   a. A comparison of the wages, hours, and conditions of employment of municipal employees involved in the arbitration proceedings against the employees of an employer, and against public and private sector employees performing similar services in the same community and comparable communities.
   b. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through collective bargaining in the public service or in private employment.

If either of the parties wishes to reduce the time taken to obtain an interest arbitration award, the law provides procedures to expedite the process. The Proposed Law does, however, encourage the parties to spend the necessary time to arrive at a voluntary settlement, even if this
approach takes more time in consensus bargaining. The Proposed Law places a significant emphasis on innovation, as the primary purpose is to increase the efficiency and effectiveness of local government. Under the Proposed Law, both employers and employees have the right and responsibility to engage in mandatory discussion of such innovation proposals. Also under the Proposed Law, public employers would be required to discuss changes with employee organizations. However, they would continue to have the management rights set forth in their labor agreements, as well as the inherent management rights provided by state law.

If parties voluntarily agree on the proposed innovation and the change is made, the public will be better served. When the parties cannot agree, the proposal (providing it is a mandatory subject of bargaining) goes to interest arbitration. Innovation bargaining arbitration awards under the Proposed Law are based upon "reasonableness" and not "factors." The Proposed Law allows any number of innovations to go to interest arbitration providing the primary purpose of the innovation is to increase the efficiency and effectiveness of local government and is a mandatory subject of bargaining. Each innovation issue involving a mandatory subject of bargaining is considered as a separate item for arbitration and decided based upon the reasonableness standard. The total package final offer arbitration on the non-innovative remaining issues is handled separately.

Additional public hearings were held after the completion of the Pre-Final Report. Thereafter, the Governor and Legislature will ultimately determine what, if any, interest arbitration process is continued. Hopefully whatever action is taken will include a strong component encouraging innovation and increase the efficiency and effectiveness of local government. Merely having the Proposed Law encourage, and in some instances require, local government innovation is not enough. Although many new and innovative ideas to improve local government will come directly from the parties, there is still a need for an impartial organization to assist in this process.

Wisconsin Local Government Innovation Center, Inc.

Demands by the consumer for change, coupled with severe local government spending restrictions and implementation of qualified economic offers, place local government officials, union representatives and the

78. The current law provides ten factors that are heavily weighted to comparables (See Wis. Stat. § 111.70(4)(cm)).
consumer in a difficult situation. Many of these people recognize a need for change and innovation but they have limited resources and no consensus with one another as to how these changes should occur. Based on this concern, public officials, union representatives, and business leaders initiated a new approach to develop specific plans to reinvent and improve local government as a cooperative effort. These individuals sought the assistance of community leaders. They decided to form a new entity committed exclusively to innovation in local government.

On September 1, 1994, the Wisconsin Local Government Innovation Center, Inc. ("WLGIC") was formed as a Wisconsin nonprofit research-based innovation center. It provides support services to help all interested parties to communicate and cooperate with one another in order to improve local government services.\(^7\)\(^9\) WLGIC provides research and analysis of successful methods used throughout the U.S. as well as Wisconsin. WLGIC recognizes the practical, political implications of the process, including the need to develop meaningful labor/management cooperation.

The WLGIC Board of Directors is comprised of twenty-one directors with seven directors representing Labor, Business, and Local government. The chair of WLGIC serves for one year and rotates between the three above groups. WLGIC is located in the College of Business at Marquette University. Marquette University is a private institution, involved in developing research and evaluating concepts presented by interested parties. WLGIC has an Executive Director, Associate Executive Director, research interns, advisors and a legal counsel.

Ideas developed by WLGIC have the potential to have a profound impact on local government innovation. Ideas communicate expectations to local government officers, public unions, public employees, the media, and customers with a sense of the possible. Ideas also define the values by which action by the stakeholders will be judged. Finally, ideas provide the basis for the customer to better understand what is realistic and judge the performance of their representatives.

WLGIC is a resource for interested parties to identify and promote innovations in local government. The objective of these innovations is to increase both efficiency and effectiveness of government services. Since approximately seventy to eighty percent of local government units' oper-

\(^7\)\(^9\) This is the mission statement of the WLGIC. The statement, along with the articles and bylaws of WLGIC are available for public review at reasonable times at the WLGIC offices located in the College of Business Administration at Marquette University, Milwaukee, Wisconsin.
ating expenses are linked to employees, it is anticipated that many proposed innovations will revolve around employee relations and organization of employee work. The relationships between public employee unions, employers, and local governments are central to projects that suggest a positive effect on the delivery of government services.

WLGIC develops programs, which it presents to interested parties, to initiate and assist in the implementation of necessary changes. In addition, the WLGIC Board provides direction for implementation of methods and develops funding sources to provide the resources necessary to accomplish the objectives of the organization.

WLGIC recognizes that the current atmosphere in Wisconsin [including anticipated spending limits and cost controls, as well as increasingly frustrated public employees and customers] requires ongoing change and improvement. Rather than solely relying on alternatives of subcontracting, "choice schools," and layoffs, WLGIC provides a constructive alternative to improve local government services.80

WLGIC has the opportunity to discover and advocate appropriate innovation. It has successfully attracted all the stakeholders to participate in the process. Consequently, WLGIC has the potential to energize local government employees at all levels and to implement the reinvention process. WLGIC is a resource for reform-minded people to identify and advocate innovative change. Over a period of time, WLGIC can provide a solid foundation for long term innovation success in local government.

Performance Management

Building a long term program to successfully reinvent local government requires a carefully planned management system to accurately and completely assess what is accomplished with taxpayers funds. The Government Performance and Results Act ("GPRA") was designed to hold the federal movement together and promote the right incentives. The GPRA was passed in 1993, and seeks to link budget inputs with performance outcomes. Under the GPRA, each federal agency, by the end of a ten year phase in period, will prepare:81

1. [A] five year strategic plan that is updated every three years;

80. Charles Breeden and Timothy Keaveny, Proposal to Establish the Wisconsin Local Government Innovation Center at the College of Business Administration, Marquette University, September 23, 1994.
81. KETTL, supra note 2, at 42.
2. [A] comprehensive mission statement that links the agency's current operations with its long term goals;

3. [A] description of the most important external factors that could affect the agency's success in achieving the goals; and

4. [A]nnual program evaluations to help agency officials assess their successes, explain why goals might not have been met, and revise the goals if necessary.

Local governments need to create a performance management system, similar in nature to the GPRA, to help accurately assess what is accomplished with taxpayers' money.

Performance management is fundamentally about communication. This communication occurs within a broader political process, in which the players have a wide array of different incentives.

There are several integral components of an effective performance management system:82

1. Performance measurement is different at different levels of the bureaucracy. Measures that work at one level will not necessarily work well at another level. Thus, there must be flexibility and innovation in judging the quality of programs.

2. Aggregating performance measures from lower levels is likely to produce meaningless noise. There is a temptation in performance measurement to layer performance measures from lower levels on top of each other and pass the information along to higher-level officials. However, this information is not easily digestible by top officials. Rather, a more proactive solution is to have officials at each level define the kind of information they find most useful.

3. Performance measurement will have to speak in a language that those listening can understand. If performance measurement is to be a successful language for political communication, it will have to be in a language that those listening, especially busy elected officials and top political appointees, will understand and find useful.

4. Performance measurement must speak in a language that those listening will want to hear. Performance measures must find a way to interest members of local government in the results it produces. Otherwise, this system will have little staying power otherwise.

Thus, a successful performance management system requires planning and development in each local government situation. The parties

82. KETTL, supra note 2, at 45-46.
need to develop an effective and respected process to evaluate innovation in local government.

**CONCLUSION**

This Article has focused on certain legal, practical, and political requirements and impediments to accomplish new and innovative methods of providing greater efficiency and cost effectiveness in local government services. The controlling factor in determining appropriate changes will hinge on leadership. A community as a whole must recognize the need and provide leadership for change and innovation. In addition, there is a need for input from organizations such as WLGIC and performance management systems to carefully evaluate alternatives for meaningful innovation and thereafter transmit its findings to the appropriate parties. The involvement of the community in this process will result in practical, cost effective recommendations. New approaches for innovation, which are initiated and developed through the process of participation, will have a profound and positive impact on the future operation of local government.

Effective change revolves around leadership. Elected officials unwilling to assume risk, an entrenched bureaucracy (which will try to "wait you out"), an uninformed media, hostile union, or a disinterested electorate all fail to recognize that they have as much or more to gain or lose as the public employer. Leadership should come from all parties involved ("stakeholders") in the process. Although how change occurs will become an increasingly individual process in the future, what drives the change is leadership. Leadership can come from any of the elements listed above and it does not necessarily involve demanding position or authority. New approaches and ideas that are initiated and developed through the politics of participation will be successful. As Professor Kettl stated:

The challenge lies in developing more mature views of the new governance without sacrificing its vitality. How can government create stronger incentives for pursuing results when goals are unclear and when the political process tends to punish risk takers? How can government serve the customer better when customers are many, varied, and have conflicting views, which are sometimes hard to discover? The answer is to continue experimenting with new approaches while constantly reflecting on what matters and why. In short, the process of the new governance matters just as much as its outcomes. Indeed, the harder the outcomes are to measure, the more important it is to let innova-
tion, experimentation, and self-reflection about the process be the compass to guide the effort.\textsuperscript{83}

Achieving higher performance in local government will not be easy. Comprehensive reform is never an easy process. While the current movement is attractive and many individuals and institutions are excited about the possibilities of change, the temptation will always be toward tinkering in small scale adjustment as turf protection and politics continue as usual. Another danger is that this movement, in time, will evaporate as just another fad.\textsuperscript{84} Hopefully, the key stakeholders along with WLGIC should provide the necessary resources and staying power to make sure this movement maintains its course.

The challenge of the 1990s will revolve around whether local government units have the capacity to continue to work toward more efficient, effective, and appropriate services within the competitive demands of the world economy. Just as private businesses have either accepted this challenge or ceased to exist, there is a parallel situation in the public sector based upon competitive alternatives resulting from dissatisfied users of public services. The public sector's need for change must be addressed in a timely and effective manner.

Wisconsin has a long and distinguished tradition of coping with employment and public law challenges and opportunities in a positive manner. New and innovative ideas intended to improve the operations of local government must be developed with the advice and participation of all interested parties. The positive Wisconsin experience can be extended to new and innovative methods for providing local government services. The challenge will be whether these changes will occur in a timely fashion in an atmosphere of cooperation. Above all, the consumer must be satisfied that local government is changing, and is responding to the needs of the community.

\textsuperscript{83} Kettl, \textit{supra} note 6, at 19.
\textsuperscript{84} \textit{Id.}