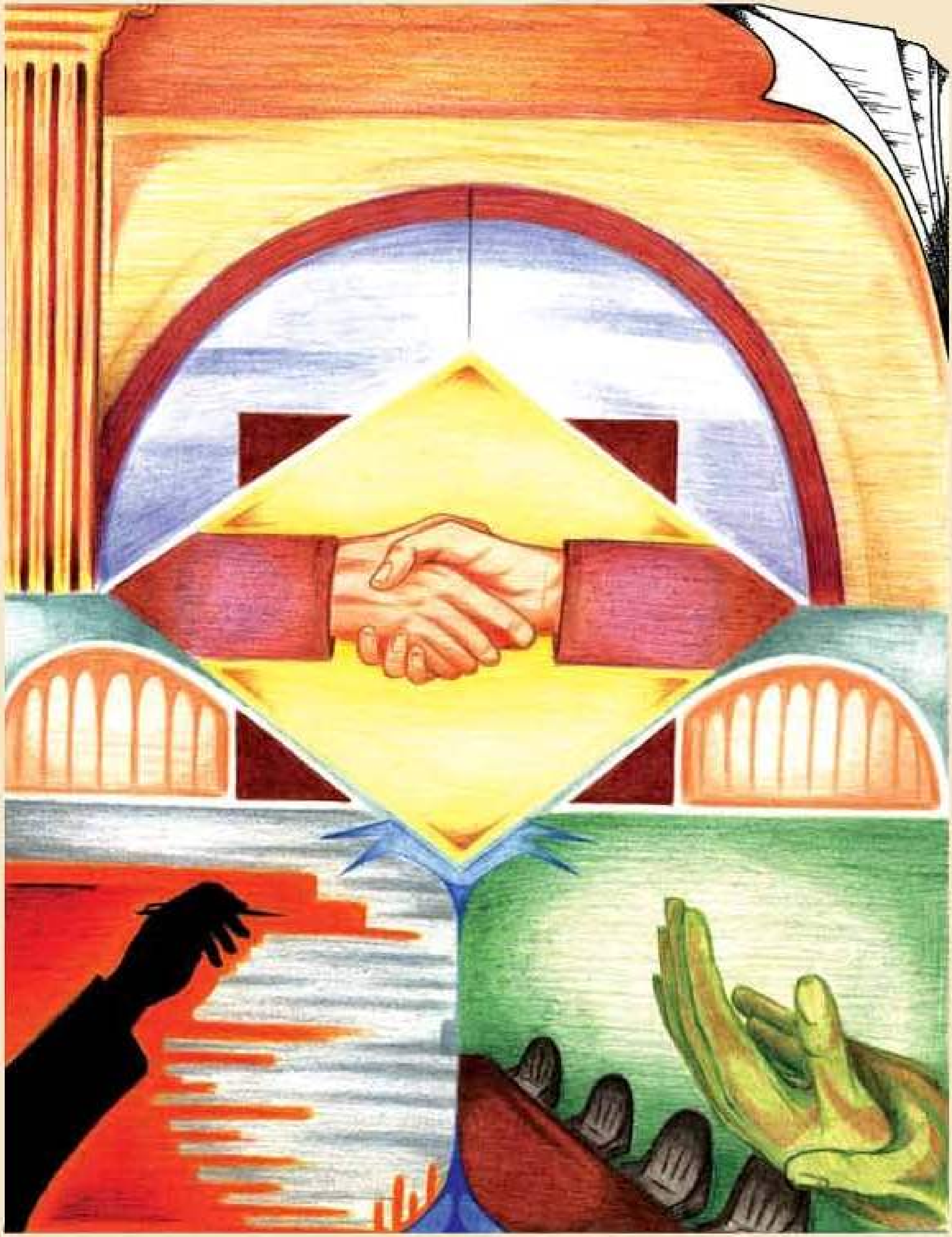
Negotiating in Partnership:
A Case Study of the 2005 National Negotiations at Kaiser Permanente



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Negotiating in Partnership: A Case Study of the 2005 National Negotiations at Kaiser Permanente*

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Executive Summary

From February to August of 2005, Kaiser Permanente (KP) and the Coalition of Kaiser Permanente Unions (CKPU) negotiated a new national contract using a collective bargaining model of Interest-Based Negotiations. The resulting five-year contract, which covers 86,000 union members nationwide, is a significant feat for the Labor Management Partnership that began at Kaiser Permanente in 1997 and a testament to the commitment and skill of the more than 500 people involved in all stages of the pre-bargaining and bargaining process.

This report summarizes our analysis of these negotiations, drawing on our direct observations and participation in the process, interviews with participants in negotiations and leaders of KP and the CKPU, a survey of participants in the Bargaining Task Groups (BTGs), and a post negotiation survey of participants in national and local/regional negotiations.

The Setting for Negotiations

No negotiations occur in a vacuum. The following are among the background factors that influenced the 2005 negotiations:

- **The Labor Management Partnership**. The trust that has been established by working through difficult problems encountered in the first seven years of the Partnership carried over and paid dividends in negotiations. The parties also hoped to use the negotiations to address number of current or recurrent issues of concern in the Partnership. Chief among these were the need to increase management and labor accountability for the partnership and for improving operational performance and to provide more backfill so employees, supervisors, and union representatives could carry out their Partnership activities and still perform the everyday work.

- **2000 Negotiations**. Negotiation planners built on the 2000 negotiations by once again using BTGs and a main bargaining forum called the Common Issues Committee (CIC). They sought to improve on the 2000 experience by beginning preparations earlier, doing more joint planning and an enormous amount of joint data collection and sharing, and better integrating the leaders and work of the BTG and CIC processes.

- **Economic Setting**. KP had experienced steadily improving financial results during the term of the 2000-05 contract but projected significant competitive and revenue pressures in future years. As is common in labor negotiations, union leaders and members tended to focus on the expectation that past financial successes should be shared and management leaders tended to focus

on the financial pressures expected in coming years. This difference in time horizon and expectation had a major affect on the negotiations process over economic issues.

- **Labor Movement Tensions**. Negotiations were occurring in the midst of a split in the AFL-CIO. There was considerable uncertainty over how this national-level debate and other internal tensions and differences in priorities within the Union Coalition would affect the coalition and the bargaining process.

Bargaining Priorities and Expectations

Labor and management representatives carried both shared and conflicting goals and priorities into negotiations. As noted above, increasing accountability of management and union leaders for the Partnership and for improving performance was a top priority for both union and management representatives. Increasing trust and respect for each other, addressing *both* KP and workforce concerns, and strengthening the LMP were other highly shared priorities. Union leaders gave high priority to reducing regional wage differentials and sharing KP's financial successes. Management leaders' priorities included improving organizational performance and achieving a settlement that reflected regional differences and projected revenue and competitive conditions.

Important differences existed within both union and management organizations as well. Among KP managers and physician leaders there were differences in regional priorities and competitive conditions and within the Coalition there were important differences in priorities across occupational groups and unions. These internal differences would have a major affect on the dynamics of negotiations over economic issues.

Preparation for Bargaining

Extensive joint preparation, data gathering, and infrastructure planning occurred in the four months prior to start of negotiations. Separate discussions occurred within management with the Kaiser Permanente Partnership Group (KPPG) over the decision to negotiate a national agreement and over bargaining objectives and within the Union Coalition over both substantive issues and concerns regarding the pending AFL-CIO debate and the role that the largest union in the coalition, United Health Care-West (UHW) would play vis a vis its coalition partners. Prior to the beginning of negotiations a large union delegates' conference was held at which union and key KP executives shared data on past and future financial and market trends and rank and file survey results. This was one of the most open union pre-bargaining meetings participants and observers had ever experienced.

BTG Processes

Eight BTGs were created in 2005 negotiations to address the following issues: (1) Attendance, (2) Benefits, (3) Performance Pay, (4) Performance Improvement, (5) Service Quality, (6) Scope of Practice, (7) Work-life Balance, and (8) Workforce Development. The BTGs met for a total of 15 days sequenced into two to four day blocks between March and June, 2005. They were trained in and followed a well-developed interest-based problem solving process and were facilitated by staff from Restructuring Associates Incorporated and the Federal Mediation and Conciliation Service.

The BTGs reached consensus on a large number of recommendations covering more than 250 pages that were then passed on to the CIC for final determination. The BTG members' survey found that more than three-fourths of BTG members were satisfied with the results achieved by their BTG. Eighty-two percent were satisfied or very satisfied that their recommendations addressed the most critical problems facing KP on their BTG topic; 77% were satisfied that their recommendations met the key interests of KP management; 85% were satisfied that they met the key interests of the union coalition, and; 79% were satisfied that they addressed the most critical problems of the workforce.

Looking across the different BTGs the survey data and our observations indicated:

- Those BTGs that dealt with issues over which the parties shared more integrative issues (i.e., issues where the parties had more shared, common interests) such as Service Quality and Work-life Balance, reported higher satisfaction with their use of IBN processes than those such as Benefits that were dealing with more distributive issues (i.e. issues where interests were in greater conflict).

- It was also possible to achieve a positive result even when a subject area was highly distributive (such as attendance) if the facilitator and the BTG participants were able to focus on their respective interests and objectives and the parties were able to reframe their issues in terms of shared principles.

- In most cases, the bulk of the recommendations of the BTGs were incorporated into the 2005 agreement. This was true for the Service Quality and Work-life Balance BTGs. On the other hand, few of the recommendations of the Benefits BTG (with the important exception of the recommendation to create a new Defined Contribution plan) made it into the final agreement.

- Several BTG's benefited from the high priority CIC members assigned to their issues. Specifically, despite their worries to the contrary, the key features of the recommendations of the Attendance, Performance Improvement, and Workforce

Development BTGs, were largely accepted because of the high priority placed on these subjects and the commitment by the members of the CIC to put them in place.

Overall, the BTGs processes were viewed by participants as highly successful. Over 90 percent of the participants would recommend using BTGs in future negotiations.

CIC Processes

The CIC met for three weeks following the completion of the BTG processes. The first two weeks in Manhattan Beach were largely taken up by discussion of the recommendations of the BTGs and the final week in Atlanta focused on wage and benefit issues. Most participants interviewed after the negotiations were completed felt that not enough time had been allowed for bargaining over basic economic issues. Some felt that at least one additional week should have been allocated to the CIC's calendar. Several factors were at work. For one, an unexpected amount of time was required to resolve Attendance issues when the CIC met in Manhattan Beach in mid-July. Part of the problem may also have been underestimating the size of the gap between labor and management expectations and time horizons; as noted above, labor was looking at past financial performance and management was looking at future market trends and financial projections.

CIC deliberations took on a mix of interest-based and more traditional negotiations. This should be expected, given the reality of both shared and separate interests and given the divisions of interests and attitudes and relationships within both the management and union teams.

The parties followed a disciplined interest-based process for reviewing and developing final agreement on most of the BTG recommendations. The most difficult and time-consuming set of non-economic issues revolved around the issue of Attendance. Leaders from the Southern California region made new proposals on Attendance that were different from those recommended by the Attendance BTG. It required several days of intense negotiations and problem solving to resolve this set of issues. The final agreement largely reflected the BTG recommendations with some modifications.

CIC deliberations in Atlanta focused on the economic package. Bargaining over these issues took on more traditional features characterized by opening positions that were far apart, strong emotional reactions to the "extreme" positions by management and labor representatives, and the surfacing of internal disagreements within both management and union organizations that persisted up to the final days of bargaining. Throughout these intense negotiations, the trust that management and labor negotiators had built up with each other through partnership and other interactions prior to and during negotiations remained intact and enabled them to continue to communicate and work toward an agreement. An agreement was reached at 3:30 a.m. on August 6 just several hours before union delegates were scheduled to arrive to review the tentative agreement.

Agreement Results

The agreement's provisions call for a first year across the board increase of 5 percent for Northern and Southern California, Colorado, and the Northwest and 4 percent in the first year for the other regions. The second and third years of the agreement call for 4 percent across-the-board increases in Northern and Southern California, Colorado, and the Northwest and 3 percent in other regions. A wage re-opener is scheduled to take place in year three to set the across-the-board increases for years four and five of the five year contract. A target of 3 percent per year is established for performance sharing improvements, continuing the approach and levels negotiated in the 2000 contract. The agreement also calls for a workforce development fund, equity adjustment monies, and monies set aside for designated hard-to-fill positions.

From the Coalition's standpoint, the economic dimensions of the settlement achieved some important objectives:

- Creation of a workforce development fund
- Across-the-board increases that reflected the financial success KP achieved in recent years,
- Reduced differentials across regions for people doing the same work,
- Resolution of a number of key equity issues across and within regions,
- No reductions in health or pension benefits, and
- Continuation of performance sharing.

KP's management was successful in achieving several key principles and objectives:

- Continuing to tie wages to regional/local market conditions and achieving a settlement within the approved KPPG guidelines,
- Avoiding putting more money into the defined benefit pension program,

- Allocating money to hard-to-fill positions,
- Keeping the pay-for-performance target at the same level as in the prior contract and tying it to the "line of sight" design criterion,
- Introduction of a flexible benefit plan, and
- Creation of a defined contribution plan tied to performance.

Labor and management respondents to the post negotiations survey reported high levels of satisfaction with:

- The effects of the national negotiations on the Labor Management Partnership (71 percent of union respondents and 62 percent of management respondents),
- Use of problem solving and interest-based principles in negotiations (about 67 percent for both union and management respondents), and
- The increased respect and trust gained between labor and management (about 60 percent for both labor and management respondents).

Union representatives reported higher satisfaction levels with most aspects of the process and the results of national negotiations than management representatives. Specifically, compared to management representatives, union members expressed more satisfaction with the reduction in wage differentials across regions. Compared to their union counterparts, management representatives reported lower satisfaction with the extent to which the results reflected the different market conditions across regions, increased labor accountability for organizational performance, and KP's projected revenue and competitive pressures.

The same pattern is repeated on the bottom line question of satisfaction with whether the results of the agreement addressed *each* of the parties' key interests and priorities. Sixty five percent of labor respondents were satisfied national negotiations addressed their key interests and priorities compared to 42 percent of management respondents. Labor and management differences of a similar magnitude were reported on satisfaction with local and regional agreements.

Those participating in local and regional negotiations reported considerable frustration with the decision to not allow local negotiators to deal with any monetary issues. Twelve of the 41 qualitative comments offered by about local negotiations raised this concern.

The Bottom Line: Importance of Implementation and Follow-Through

Will the 2005 negotiations be viewed as historic an achievement as were the 2000 negotiations? The answer could well be yes. The following are impressive features of the 2005 negotiations:

- The parties held together and managed extremely diverse interests within both the labor and management organizations and resolved their internal differences sufficiently to reach an agreement. These negotiations could have easily ended in an impasse or a breakdown of national bargaining, given the diversity of interests and priorities within both parties, the external developments in the labor movement that were outside the Coalition members' control, and the different perspectives and challenges perceived as critical across regional executives and medical leaders.

- The parties once again designed and implemented an innovative structure and process for engaging large numbers of management and labor representatives in problem-solving processes on the critical issues facing Kaiser Permanente and the workforce. The problem-solving that took place within the BTGs and the CIC sets a benchmark for others that use the tools of interest-based bargaining. Moreover, the scope of issues addressed went way beyond the legal requirements of our nation's labor laws and therefore demonstrate to others both the irrelevance of these legal doctrines today, and the value that can be generated when labor and management are not constrained by outdated concepts of "mandatory and non-mandatory" subjects of bargaining.

- The parties generated an enormous amount of social capital and a shared vision for moving their Labor Management Partnership on to its next stage and level of development. Absent the national bargaining forum, some alternative venue would have had to be created to craft and shape this vision and shared commitment. National negotiations provided the natural setting and created a sense of urgency needed for the parties to address issues central to the future of the Partnership.

- The parties mixed interest-based and more traditional negotiations processes in ways that allowed them to both achieve important shared interests and bridge what was clearly a significant gap in expectations over conflicting interests on wages and benefits without either the threat of a strike or a pause in Partnership activities (unlike many other partnerships which experience a slowdown in partnership activities as tensions rise around contract negotiations).

- Traditional bargaining has historically relied on a firm deadline to motivate movement to an agreement. This case was no exception. Having a deadline—

the union delegates were coming to town—did focus efforts and create pressures that were needed to resolve final differences on economic issues.

- The parties achieved significant substantive breakthroughs by agreeing to a new joint workforce development fund and process and a defined contribution pension program and a flexible benefits' option. Moreover, they avoided cutting benefits, as is so common in negotiations today, or adding costs to those parts of the benefit package that could pose significant liabilities in the future.

- The negotiators addressed a tough problem—absenteeism—and came out of negotiations with a shared commitment to translate the new language into concrete improvement on this critical issue.

- Throughout the negotiations, both union and management showed a determined commitment to the objective of improving KP performance. This was a driving factor in the negotiations.

- Throughout the negotiations we observed numerous examples of the payoffs to the deep trust, open and honest communications, and mutual respect that representatives carried over from their prior working relationships and bargaining. This is one of the most important dividends of the parties' decade long Labor Management Partnership. The trust and mutual respect we observed in these negotiations set a very high benchmark for others to meet.

However, as the post negotiation survey and interview data suggest, there are significant numbers within management that are less satisfied with the agreement and less confident than their union counterparts that the key provisions of the agreement will be implemented effectively. Because of these concerns, and the importance of the qualitative terms of the agreement, we believe whether or not the negotiations are recorded as historic will all depend on the quality, speed, and breadth of follow-through and implementation of the new provisions in the contract.

The language of the 2005 agreement provides the platform for the Partnership to transform the delivery of health care across the Kaiser Permanente system and to transform the Labor Management Partnership from one focused on improving labor management relations to one that is centered on improving the delivery of health care. If the parties follow through and translate these words into actions on a broad scale, the 2005 negotiations will not only be viewed as another historic achievement in labor negotiations, they will be viewed as a pivotal turning point in the delivery of health care at Kaiser Permanente, and perhaps as a model for addressing the health care crisis in America.

If, on the other hand, the absenteeism initiative fails to work, the performance improvement and unit-based teams are slow to spread or produce only sporadic results, the KP HealthConnect technologies are either slow to be implemented or are implemented in ways that fall short of their potential, the internal tensions within the Coalition lead it to implode, the divided management structure and different levels of support among managers and physicians continue to slow or block the Partnership from reaching its full potential, then the 2005 negotiations and the achievements listed above will only be a footnote in the history of labor relations and labor management partnerships.

So the question of how these negotiations will be ultimately judged now is in the hands of the teams that will implement the agreement.

Introduction

From February to August of 2005, Kaiser Permanente and the Coalition of Kaiser Permanente Unions negotiated a new national contract using a collective bargaining model of Interest-Based Negotiations. The resulting five-year contract, which covers 86,000 union members nationwide, is a significant feat for the Labor Management Partnership that began at Kaiser Permanente in 1997. Indeed, the negotiation and ratification of the agreement is a testament to the commitment and skill of the more than 500 people involved in all stages of the pre-bargaining and bargaining process.

Yet, as excerpts from participants and from our research point out, the process of bargaining a new contract was not without its stumbling blocks, tensions, and traditional bargaining elements. Moreover, one cannot hope to understand the life and dynamics of the Labor Management Partnership at Kaiser Permanente without understanding some of what happened during the bargaining that took place in the spring and summer of 2005. At times it looked as if negotiations were going smoothly: labor and management were engaged in the process, clear about their joint interests and fundamental differences, while generating novel solutions to problems and moving toward agreement. At other times, a total disintegration of negotiations—and hence the Partnership—seemed a real possibility. That both kinds of moments occurred during the course of bargaining illustrates the close connections between these negotiations and the overall Labor Management Partnership.

This report is our effort to make sense of the 2005 bargaining process and to put negotiations in the larger context of Kaiser Permanente's Labor Management Partnership and collective bargaining theory and practice. Our research team was invited to observe and track the 2005 negotiations as part of our larger study of the Labor Management Partnership at Kaiser Permanente. While we had already studied and reported on contract negotiations in 2000, we did not directly observe those negotiations; instead, our research findings were based on retrospective accounts. This time we observed and tracked the negotiations in their entirety, supplementing our observations with post-bargaining interviews and surveys.

We have organized our report into six sections. Section I describes the methods used to carry out this research. Section II places the negotiations in context by briefly reviewing the history of the Partnership as well as the economic and health care contexts in which the 2005 negotiations were situated. Section III discusses the detailed preparations that occurred even before the negotiations began. Section IV provides an in-depth narrative organized around what we see as the critical events that shaped the process and results of negotiations. Section V outlines the lessons we draw for future negotiations and for the Kaiser Permanente Labor Management Partnership. Finally, in section VI we offer preliminary judgments on the way these negotiations will be viewed in the course of the history of labor management relations and the delivery of health care in America.

I. Research Methods

We describe our research methods in some detail because they are rather unique, both as a way of conducting social science research and as a method for studying collective bargaining. We believe we have been given more access to these negotiations and have followed them more closely and completely than any other major collective bargaining negotiations ever studied and made public in an analysis by an independent research team. At the same time, it must be said that we were not completely outside the process. As will be noted throughout the report, early in the process our team made several presentations to the negotiating teams. From time to time we shared with key negotiators and facilitators our thoughts about what we were observing as the negotiations unfolded. So our methods are a mix of traditional participant observation and what is sometimes referred to as "action research."

No written account of a negotiation process as complex, ambitious, and large as this one can do justice to the drama, emotional investment, and human elements that we observed over the course of these negotiations. We have made a special effort to include many of these human elements in this report because they played such an important role in the process and in the lessons we believe can be learned from this case. We often present our analysis in the first person, present tense, in order to put the reader into the setting in which the events reported here were occurring. We also take the unusual step (unusual for a research report) of personalizing the comments wherever possible.

A Research Opportunity We Could Not Refuse

Leaders of the Labor Management Partnership (LMP) invited our research team to do an independent study of their partnership in November 2000, after completion of the first national contract negotiations. This meant that our analysis of those negotiations had to be based on retrospective interviews and review of materials. In 2003, LMP leaders suggested that in 2005 we observe negotiations directly. We agreed to do so with the condition that we would be allowed to sit in and observe the joint union and management sessions and separate union and management caucuses. We agreed that if someone objected to our presence in a meeting, we would honor this concern. In fact, this happened only once, when a CIC subgroup asked all non-CIC members (facilitators, staff, and researchers) to step out of a session.

Building the Research Team

The original research team assembled in 2000 to study the LMP consisted of Robert McKersie and Thomas Kochan from MIT and Susan Eaton from Harvard. We were soon joined by Adrienne Eaton (no relationship to Susan) from Rutgers University.

Adrienne had been working as a research consultant to the CKPU and continued in this role throughout this project. Sadly, Susan Eaton died in December 2003. Aside from the tremendous personal loss, this left a void that needed to be filled if we were to continue to track the evolution of the LMP in its second phase and monitor the negotiations.[1] It was especially important to add new people to our research team to adequately cover the multiple West coast meetings involved in these negotiations. We were fortunate to recruit three colleagues from the University of California-Berkeley: George Strauss, Marty Morgenstern, and Teresa Sharpe. George and Marty bring many years of research and direct experience in collective bargaining and in California labor-management relations. Teresa is a Ph.D. student studying union revitalization. Thus, we had a six-person team of researchers (Eaton, Kochan, McKersie, Morgenstern, Sharpe, and Strauss) observing these negotiations.

Data Collection

Our goal was to have a least one, and wherever possible, two or more members of our research team present at each scheduled negotiation session. We were successful in doing so with the exception of the last two days of bargaining in Atlanta when previous commitments by research team members prevented us from participating directly. For these sessions our data came from telephone calls updating team members of developments as they were occurring and supplemented by interviews with participants after negotiations were completed. At least one and often two or more members of the research team were present for all other phases of the negotiations. Each of us took notes during the meetings, summarized them following the meetings, and circulated them to each other.

In addition to describing the meetings and interactions we observed, we encouraged team members to record their interpretations and analyses of the interactions as, or shortly after, they observed them, drawing on their own experiences in traditional and interest-based negotiations. A number of these observations and comments are interspersed throughout this report to provide a picture of the range of issues that needed to be resolved or addressed as the process unfolded. We also interacted informally with participants in negotiations over meals, breaks, drinks, and downtime. These informal interactions often produced valuable data and interpretive comments on events of the day.

We conducted two web-based surveys to capture participants' views of the negotiations process and results. Bargaining Task Group (BTG) and Common Interest Committee (CIC) participants were surveyed about the BTG process during the three-

[1] Paul Adler, Phyllis Segal, and Paul Gerhart joined the research team to help track the second phase of the LMP. See our report: *The Kaiser Permanente Labor Management Partnership: 2002-2004.* http://mitsloan.mit.edu/iwer.

week period (June 24-July 7) after the BTGs completed their work. Surveys were designed by our research team with consultation and support from Kaiser Permanente's Organizational Development staff. Questions were reviewed for comment and clarification by the Bargaining Coordinating Committee. Surveys were sent from MIT and returned to our research team via a Web-based survey facility. Individual responses to this survey and the post-negotiation survey described below were held confidential. Responses were obtained from 194 of the 262 participants surveyed—a response rate of 74 percent.

A post-negotiation survey to a wider group of participants was also conducted, following the same development and administration process described above. This survey targeted all labor and management representatives involved in national and/or local negotiations, as well as delegates to the Coalition's bargaining council, members of the Regional President's Group, the Executive Medical Directors, and the KPPG. The Medical Directors declined to have physician leaders included in the survey due to time commitments to patient care. Responses were obtained from 207 of the 437 surveyed for a response rate of 45 percent.

These observational and survey data were supplemented with post-negotiation interviews of CIC and other participants in the negotiations and with members of the KPPG.

II. The Setting

Collective bargaining negotiations never occur in a vacuum. The 2005 KP negotiations were heavily influenced by the evolution of the Labor Management Partnership that has been in place since 1997 and by the experiences of the parties when negotiating their first national agreement in 2000. The state of the nation's health care system, and Kaiser Permanente's role and future as an integrated health-care insurer and provider, also weighed heavily on the minds of the parties as they prepared for bargaining. And in the background loomed a potential development in the labor movement—the threat and then actual split in the AFL-CIO, which involved a number of unions in the Kaiser Permanente Coalition. This possibility was even more ominous because the deciding date for whether one or more of the Coalition unions would leave the Federation was July 2005—right when KP and the Coalition would be in their final months of contract negotiations.

The Partnership Context

The Labor Management Partnership between Kaiser Permanente and the Coalition of Kaiser Permanente Unions can be traced back to discussions that began between various labor and management leaders in early 1996. It emerged out of a shared concern that relationships were on a downward adversarial course which, if not redirected, would lead to more intense labor management conflict that would impose major costs on KP, its members, and its employees. Over the course of its first decade, the LMP had navigated through a number of predictable crises and challenges that partnerships typically experience, including transitions in top KP management, financial ups and downs in different regions, the negotiation of the first national collective bargaining agreement, and ongoing difficulties in diffusing partnership principles and processes through a large, complex, and decentralized set of regions and organizational units. The experiences of working through these various challenges, and the accumulated successes and frustrations in the minds of management, union leaders, and representatives, serve as a key backdrop for the 2005 negotiations. All the parties approached negotiations with their own opinions about the state of the LMP and a determination to use the negotiation process to strengthen the LMP and move it to the next stage of development.

While each participant in the negotiations had his/her views of what aspects of the LMP needed the most attention, the points we raised in our 2002-04 report captured what many had on their minds. These included:

- Accountability of management, physicians, and union leaders for using Partnership principles and processes to carry out the basic work of delivering health care: Indeed, accountability came up as *the* top priority for negotiations among respondents to our post-negotiation survey. Fully 98 percent of management respondents rated increasing labor's accountability as a top priority and 97 percent of union respondents rated increasing management's accountability as a top priority.

- Backfill: This term, used by union leaders, refers to the need to provide resources that give employees, supervisors, and union representatives time to carry out their LMP activities and still perform their everyday work.

- Capacity: the need to have an adequate number of people with the skills required to deliver health care and improve the quality of work-life by using Partnership principles and participating in Partnership processes.

- Diffusion of workplace practices: the need to move the Partnership from upper levels down to the workplace, and to make it a continuous rather than episodic activity.

- Operational-performance focus: the need to shift from a labor-relations-focused partnership to one focused directly on the operational tasks of delivering high-quality health care.

- Measurement: the need to put in place clear, tangible, simple, and widely accepted metrics for measuring the performance of the Partnership on critical organizational and workforce outcomes.

2000 Negotiations

The experience of negotiating the first national agreement in 2000 was another important contextual factor that shaped the 2005 negotiations. In an earlier report we described the 2000 national negotiations as a historic achievement involving the most ambitious and innovative use of interest-based negotiations tools and processes in U.S. labor relations to date.[2] The parties developed and utilized a complex structure, including use of Bargaining Task Groups (BTGs) that were assigned specific topics, trained in the use of interest-based, problem-solving tools, and charged with generating recommendations for the main bargaining table, a group labeled the Common Interest Committee (CIC). The CIC was co-chaired by the chief negotiators for KP and the Coalition, Leslie Margolin and Peter diCicco, respectively. The entire process was facilitated by teams from Restructuring Associates Inc. (RAI) and the Federal Mediation and Conciliation Service (FMCS).

The parties modeled their basic structure and process in 2005 after the 2000 negotiations, once again using the BTG and CIC structure. But they also learned some lessons from 2000, which they were determined to modify in 2005. Among these were:

- Get started with planning and data collection for bargaining earlier than occurred in 2000.

- Work *together* to collect and share as much data as needed to support negotiations

- Better integrate the BTG and CIC processes. In 2000 there was concern that CIC members were not active enough in leading the BTGs and therefore too much of the BTG-level discussions lacked guidance from CIC leaders.

- Involve more people than the chief negotiators in the intense negotiations that normally are required to shape the final agreement in the final stages of negotiations.

[2] Susan Eaton, Thomas Kochan and Robert McKersie, *The Kaiser Permanente Labor-Management Partnership: The First Five Years*. MIT Institute for Work and Employment Research. http://mitsloan.mit.edu/iwer.

The Economic Setting

Two very different features dominated the economic environment that shaped labor and management expectations and views of bargaining in 2005. On the one hand, KP was coming out of two years of very good financial performance. In 2004 KP recorded a $1.6 billion margin of revenues over costs. This fact weighed heavily in the minds of union members and representatives, leading many to believe that money would not be a problem in 2005. In their view, because the Partnership helped achieve these profits, employees should share in them. At the same time, KP management stressed that future revenue and market projections suggested some difficult years ahead. These different perspectives between labor and management are reflected in the priorities they assigned to these two issues, as reported in the post-negotiations survey. Eighty-five percent of union representatives indicated that going into negotiations they placed a high priority on "sharing KP's recent financial successes" compared to 46 percent of management representatives. In contrast, 85 percent of management representatives placed a high priority on achieving an agreement that reflected future market and financial conditions compared to 73 percent of union representatives.

These different views are apparent in two typical comments taken from the post-negotiations survey. The first is from a union respondent, the second from a management respondent.

> *Since the LMP signing of the first contract, each year has produced increased margins as LMP developed. A lot of hard work from labor, with many volunteer hours, justifies one of the principles in sharing success.*

> *Kaiser Permanente's success is dependent of labor's success and vice-versa. We must do everything necessary to work together to keep Kaiser Permanente the health plan of choice and the employer of choice!*

This difference in time horizons and divergence in expectations is not unusual. Labor economist Albert Rees noted that as far back as the 1950s employees tend to look at current or past financial results and comparable wage settlements, while managers tend to more heavily weigh future market conditions.[3] As we will see later, this divergence in management and union expectations and time horizons will have a profound effect on the bargaining process.

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[3]Albert Rees, "Industrial Conflict and Business Fluctuations," *Journal of Political Economy*, vol. 60 (October, 1952) 381.

Labor Movement Tensions

The 2005 negotiations were perfectly timed (by coincidence, not design) to coincide with the climax to a debate over the future of the AFL-CIO. By the time bargaining began, three prominent unions in the Kaiser Permanente Coalition of Kaiser Permanente Unions—the Service Employees International Union (SEIU), the United Food and Commercial Workers (UFCW), and the Teamsters' Union (IBT), along with one other union not in the Coalition—were moving down a path that would culminate in decisions to leave the AFL-CIO. The final decision to stay or leave was expected to come in July 2005 at the national AFL-CIO convention. This would leave the Coalition with some unions that left the AFL-CIO to form a new federation, and some that remained in the AFL-CIO, including the United Steel Workers; the American Federation of Teachers; the American Federation of State, County, and Municipal Employees; the Office, Professional Employees International Union; and the International Federation of Professional and Technical Employees. One union, the Kaiser Permanente Nurse Anesthetists Association, was part of neither national group. Some unions in the Coalition, as well as management, worried that tensions from debates occurring at the national level of the labor movement would spill over and rupture the internal cohesion of the Kaiser Permanente Coalition and thus threaten national bargaining.

Also of concern were tensions within the Coalition. SEIU, representing approximately 60 percent of the Coalition's membership, was clearly the dominant force inside the Coalition. In 2004, SEIU consolidated its Southern California and Northern California health care locals into a single new union organization named the United Healthcare Workers-West (UHC-W). Sal Rosselli, president of UHC-W, viewed this step as consistent with SEIU's vision of creating one union per industry. SEIU clearly aspired to be the dominant union in health care and believed that members of unions with small health care memberships were better off affiliating with SEIU. Obviously, this created unease among leaders of the other Coalition unions.

The California Nurses Association (CNA) is the largest union of Kaiser Permanente employees that has opted to remain outside of, and opposed to, the LMP. It bargained its own contract in 2004, and its leaders remain vocal critics of the LMP and the unions that participate in it. In 2003, CNA and the United Nurses Association of California (UNAC), the Coalition union representing nurses in Southern California, were embroiled in an inter-union jurisdictional battle in Southern California that was resolved only through intense negotiation and mediation. The threat of further efforts by CNA to raid existing nursing units represented by a Coalition union, or to publicly criticize the Coalition, was also part of the context in which these negotiations occurred.

Bargaining Priorities and Expectations

The post-bargaining survey asked participants about their priorities for the 2005 negotiations. Figure 1 summarizes the results by comparing union and management responses. As noted earlier, labor and management negotiators assigned a high priority to increased accountability to the LMP and to improving KP's delivery of high-quality health care. Both also brought an integrative or interest-based perspective to the negotiations. Fully 94 percent of union representatives and 91 percent of management representatives assigned a high priority to addressing the interests and needs of *both* KP and the workforce. Nearly 90 percent of labor and management representatives also shared the goal of increasing trust and respect for each other in negotiations. Both labor and management (92 percent and 85 percent, respectively) gave a high priority to using the negotiations process to strengthen the LMP.

Figure 1
Union and Management Bargaining Priorities

We are interested in how important a priority you attached to each of the following issues in national negotiations. How important to you was it that these negotiations…

Number and Percent Top or High Priority

	Union		Management	
	N	*%*	*N*	*%*
Strengthened and advanced the LMP	133	92	46	85
Reflected different market conditions in different regions	65	45	42	78
Increased respect and trust between labor and management	130	90	48	89
Increased labor's accountability for organizational performance	101	70	52	95
Reduced wage differentials in different regions	122	86	6	11
Reflected KP's projected revenue and intensified competition	103	73	47	85
Shared KP's financial successes in recent years	123	85	25	46
Used LMP problem solving and interest-based principles	129	89	39	72
Addressed both KP and workforce interests	136	94	48	91
Increased management's accountability for LMP	139	97	38	70

Source: Post Negotiation Survey

Each party also held important goals that were not shared. For management, future market and financial conditions and differences in market conditions across regions were significantly higher priorities. For union leaders, reducing differentials across regions and sharing in the financial successes of Kaiser Permanente were higher priorities. Taken together these priority ratings indicate that the parties carried a mix of common and conflicting interests into the negotiations. To use two well known terms from bargaining theory,[4] the process involved some issues that were "integrative" (the parties had shared or common interests) and some that were "distributive" in nature (the parties had divergent or conflicting interests).

III. Preparation for Bargaining

We now turn to key events in the negotiations process and our analysis of how these events affected bargaining. To do this, we draw heavily on our observations of the negotiations process, then add commentary on what we observed. By using this approach we hope to capture some of the texture of the process while putting what we observed into the larger context of our own experiences with collective bargaining in other settings.

Who Would Lead the Negotiations?

The first key event in 2005 national bargaining revolved around who would lead the negotiations for KP and for the Coalition. Although not planned, it turned out that both Margolin and diCicco, the respective KP and Coalition leaders in the 2000 bargaining, would again play these roles.

diCicco expected to retire before the 2005 negotiations began, and he indicated his desire to have a replacement in position in time for the new person to lead the negotiations. But this did not happen. Leaders from the Coalition and management urged diCicco to postpone his retirement until after the negotiations were completed. He agreed to do so, recognizing it would be unfair to have his successor face national bargaining as his or her first major task.

Margolin also did not plan to lead the 2005 negotiations since she was Senior Vice President of Operations for KP. In September 2003, however, several high-level Kaiser Foundation Health Plan and Permanente Federation leaders began talking with her about their concern that there was no one within KP management who had the experience needed to direct negotiations, and that it would be unwise to bring in an outsider to lead the negotiations. They asked Margolin to take on this role again in 2005. She agreed to do so.

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[4] Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations*. New York: McGraw Hill, 1965.

Another National Contract?

The first order of business was to decide whether to negotiate another national agreement. This decision, as well as others needed to guide and instruct the management negotiators, fell to the Kaiser Permanente Partnership Group (KPPG). (See Figure 2 for an illustration of KPPG's role in the management structure). This was a difficult and contentious issue within management circles in 2000, and there was no reason to expect it would be different in 2005. It turned out to be difficult again, requiring discussions at four monthly KPPG meetings and many conversations with members of the Regional Presidents' Group (RPG) and other members of KP's National Leadership Team (NLT) before a decision was made to go forward with national bargaining.

Figure 2
The Kaiser Permanente Partnership Group (KPPG)

Kaiser Permanente is structured in two parallel units, reflecting the partnership between the Kaiser Foundation Health Plan and Hospitals (KFHP/H) and the Permanente Medical Groups (PMGs) who together form the Permanente Federation. The KPPG is the highest level coordinating body linking the KFHP/H and PMG. It is co-chaired by the CEO of the Health Plan and Hospitals, George Halvorson, and the Executive Director of the Permanente Federation, Dr. Jay Crosson. Its membership consists of several regional medical directors in the Permanente Federation, several regional presidents of the Permanente Federation, and several senior executives from KFHP/H. The Executive Director of the Union Coalition often participates in KPPG meetings as an observer (but does not attend or participate in KPPG preparations or strategy discussions related to bargaining). The KPPG meets monthly (or more frequently as needed) to discuss and establish strategy policies for Kaiser Permanente.

In March 2004, Margolin and Lon O'Neil (Vice President of Human Resources) made a presentation to KPPG noting that they were one year away from the expected start of bargaining, and that preparations needed to begin. They convened an informal working group of KFHP and Permanente Federation executives and staff to review lessons learned from 2000 negotiations and implications for 2005. Margolin and O'Neil summarized these lessons in their presentation to KPPG and emphasized the need for a process and infrastructure that would ensure the best possible outcome. They also reviewed what they saw as key lessons from the 2000 negotiations, and outlined a proposed structure and staffing needs for the 2005 negotiations. Figure 3 contains an excerpt from one of their slides in which they pointed out the need to begin preparations for bargaining earlier than in 2000:

Figure 3
Preparing for Negotiations

To be able to meet ambitious deadlines and manage a complex set of tasks, it is essential that there be a capable and responsive infrastructure in place. In 2000, we had little time between late February KPPG approval and early April bargaining launch to design the process, agree on timelines, identify participants and build adequate infrastructure. Full time dedicated support, particularly in the area of data collection and analysis, will be critical to our success in 2005.

Source: Margolin and O'Neil presentation to KPPG, March, 2004

Some KPPG leaders representing regions were hesitant to approve another national process. They stressed the differences in their economic and market situations. There also was some uncertainty and disagreement over what the LMP had achieved since 2000. KPPG put off a decision pending further discussion of these issues at a future meeting.

In April, Margolin discussed plans for bargaining with KPPG a second time. Again she emphasized the need to make a decision about national bargaining and for getting started on the planning. Further discussions with KPPG occurred at its May and June meetings, with dialogue focused on whether KP would do better or worse in national, separate regional or separate union negotiations.

A full discussion took place at the July KPPG meeting. Margolin noted that the goal for this session was to *"bring closure to the issues raised in our earlier discussions"* and to *"reaffirm management's desire to bargain at the national level in 2005."* She made a detailed presentation outlining the major achievements of the Partnership since 2000, drawing on reports of the results of 140 specific projects tracked by the Office of Labor Management Partnership (OLMP). She reviewed improvements in KP revenue, membership, workplace safety, employee satisfaction, and patient satisfaction, which had occurred during the life of the LMP. She outlined the gains obtained as a result of the 2000 contract, not least of which was a sustained period of labor peace.

KPPG approved the decision to proceed with national bargaining at this meeting.

Management Planning for Negotiations

A central part of planning for negotiations involves discussion of bargaining parameters. Margolin made a strategic decision to not have KPPG set specific wage and benefit parameters this early in the process. She felt that at this point in time there were too many differences among KPPG members over what the bottom line number(s) should be. She noted:

> *There were some on the management team who thought we should have cutbacks in benefits; on wages some were at zero and others were at CPI 2-3 percent and most thought that any increases ought to be in equity adjustments. So there were a number of different positions and I thought it would be unrealistic to push for a parameter. It was totally unrealistic in a year we made 1.6 billion to believe a zero settlement was possible. And it wasn't what we did for all others—our executive team had a 3 percent salary pool and we all got bonuses up at our maximums because of our performance.*
>
> *George [Halvorson, CEO of the Health and Hospitals' Corporation] really helped. There was a group-think dynamic developing…When people were saying 0-2 percent George said "if we do this to them we have to do it for ourselves…" Very quickly people began to change their tune to say well maybe we could go for performance-based bonuses or increases….*

The KPPG did set a bottom line parameter on wage and benefit cost increases later in the process, after more data on market comparisons, comparable wage settlements, and other data were collected.

KPPG also expressed a clear interest in *not* putting more money into the fringe benefit package, especially into the defined benefit pension plan, since the evidence suggested that KP was having no problem retaining senior people, and this benefit was already high compared to the market. KPPG members were more interested in benefits that would help recruit and retain new employees, especially in hard to fill positions.

Infrastructure Planning and Administration

Planning and managing negotiations as large and complex as these is in itself a complex task. While preliminary reviews of lessons learned from 2000 bargaining began over a year prior to the start of 2005 bargaining, work on designing the infrastructure for negotiations accelerated after the KPPG approved negotiating a national agreement. Ellen Canter, Vice President of Strategic Initiatives in Human Resources, led the planning process. Margolin had asked Canter to take on this assignment. As a KP executive, she reported to Margolin, but for the purposes of negotiations planning and as a facilitator of what was to become the Bargaining Coordinating Committee (BCC), she reported directly to both Margolin and to diCicco. The Coalition assigned Ben Hudnall to work as Canter's BCC partner. The BCC would eventually consist of Leslie Margolin, Ellen Canter, Judith Saunders, Beth Roemer, and Tony Wagner representing KP management, Peter diCicco, Margaret Peisert, and Ben Hudnall representing the Coalition and John Stepp, chief facilitator from RAI. Once bargaining began, this group would meet at the end of each day to discuss how things went, resolve problems, and review plans for the days ahead.

Joint meetings of the BCC were held in September and December 2004. Based on the lessons drawn from 2000, the following infrastructure teams, each with KP and Coalition co-leads, were created:

- Data Team: It was agreed that much more data would be shared and provided to support the work of the BTGs and the CIC than was the case in 2000. The management and union co-leads of this team, Adam Nemer and Charles Rader, were charged with anticipating the information that would be helpful to each BTG.

- Communications: A common complaint in 2000 was that neither management nor union leaders and members were kept well informed on developments in negotiations. A joint Communications' team led by Michael Dowling and Maureen Anderson was established that both created a video record of negotiations as they unfolded and produced three different web-based publications to keep KP and Coalition leaders and members informed about bargaining developments,

- Drafting Team: In 2000 negotiations two people were charged with developing contract language, often without the benefit of being directly involved in the discussions that led to the tentative agreements. An effort was made to improve this process for 2005 by designating a larger team whose members were present in bargaining to draft contract language.

- Logistics: Choosing meeting locations and arranging and overseeing the enormous amount of travel, meals, rooms of various sizes and all other logistics would be an incredibly complex task. Cathy Collins led the Logistics Team.

Working together, the BCC also determined the topics to be addressed in the subcommittees called Bargaining Task Groups (BTG), chose co-leads and members for each BTG, and wrote the BTG charters. Thus, an enormous amount of planning and coordinating occurred largely behind the scenes, both prior to and throughout the bargaining process. All this work paid off. Both labor and management respondents to the post-negotiations' survey gave very high marks to the logistics and organization of the negotiations process.

Agreement on the Timetable for Negotiations

In approaching the key task of designing the schedule for the 2005 negotiations, the BCC decided to replicate the approach that had worked successfully in 2000. The bargaining calendar they developed anticipated the following phases:

Preparation: September 2004-January 2005

CIC Kickoff: February 2005

BTG Meetings: April – June 2005

CIC Negotiations: July – August 2005

Local Negotiations: August – September 2005

Ratification: October 2005

The pace of activities for preparation, and the other phases to follow, were carefully thought out. Members of the infrastructure teams would be engaged full-time from the time planning started in Fall 2004 through the end of the process one year later. Members of the CIC and the various BTGs would be engaged for the intensive three-day sessions of the BTGs, but would be able to return to their regular positions during the two-week recess between sessions.

However, CIC members would be engaged in main table negotiations for two weeks in July and one week in August to deal with the reports and recommendations forwarded by the BTGs and to deal with economic and other issues reserved for attention by the CIC. The CIC was charged with responsibility for formulating the overall national agreement.

The Union Coalition Prepares for Bargaining

Discussion within the Union Coalition over whether to pursue another national agreement took place largely off-line. There was a shared sense that returning to the national table was the right thing to do, however, as will be noted below, this issue did come up for discussion early on in bargaining around the question of whether or not all local contracts should have a common expiration date.

The first formal discussion of Union Coalition bargaining goals among the Union Steering Committee took place October 12, 2004. At this meeting, diCicco and Ben Hudnall, the Coalition's National Coordinator, presented a review of the 2000 bargaining process and Steering Committee feedback on that process. Charles Rader, an economist hired by the Coalition on a temporary basis to support bargaining, presented an overview of the healthcare industry and Kaiser Permanente's business strategy. These presentations were followed by a discussion of the implications for the Coalition as it prepared for bargaining, local union strategy and "goals, standards and interests for bargaining". Attendance was singled out as an area of particular concern and the group recommended that regions or the national Attendance committee try to accomplish pre-work on the issue. Plans to conduct surveys in preparation for bargaining were also discussed. In the end, while the group surfaced several issues for bargaining, they also recommended further discussion at the next Steering Committee meeting scheduled for December.

The discussion of bargaining goals was taken up again by a smaller number of union Strategy Group members at their meeting November 30, 2004. The discussions from the October and November meetings were then summarized in a document that provided focus for further Steering Committee discussion during its December 7 meeting. Thirteen areas or potential bargaining goals were listed, some with additional detail:

- a uniform employment experience for all Coalition members
- a single, master agreement with a common expiration date for all locals
- a 3 year agreement
- improved benefits (a uniform minimum for retiree medical, long term disability, integrated disability, free family health care coverage, uniform premium share and co-pays, reduce pension early retirement reduction factors, cost of living adjustments for the defined benefit pension plan, bring ROC benefits into line with California, retirement planning services)
- no takeaways (clarify maintenance of benefits provision for flex plans, clarify employment security agreement, and decide how to respond to employer's interest in flex benefits and attendance)
- push KP to be an industry leader on economic and non-economic terms for Coalition unions
- build union capacity (backfill mechanism; contract administrators; strengthen KP obligation with vendors, hospital contracts to promote union, employee standards and neutrality in organizing)
- seniority reciprocity agreements
- improve workforce development (multi-employer training fund, multi-union training fund)
- bargain for equity money
- examine the form, scope and expectations of our partnership; any funding should use a consistent method for all unions and increase KP share of funds
- a post-ratification implementation plan
- work with KP on regulatory issues, refine staffing provisions, work with KP to bring down health care costs, decide what to do with political activity, find an alternative to life balance days, and implement a "no fault" system

The discussion that ensued was largely focused around the importance of standardizing benefit packages across the regions and in general pushing for more uniformity, even a master agreement covering everyone if possible. There was also a lot of concern about continued management use of mandatory overtime despite existing agreement to limit it. In terms of the LMP, the discussion focused on the need to build union capacity, to budget for backfill, to focus on workforce planning, and to plan for post-bargaining implementation. This discussion was preceded by diCicco's update on KP's financial situation and business strategy in which he reported that Kaiser Permanente was making lots of money, membership losses have stopped, but that the impact of the "new products" (lower cost, reduced coverage health plans) was still unclear.

The Committee discussed other issues related to bargaining aside from their goals in the process. SEIU's big California local, UHW, made clear that they planned to bargain a master California contract for the first time. Further, they wanted to get more SEIU locals to participate in their already existing, multi-employer training fund.

The calendar for bargaining was presented and various concerns were expressed about the tight time frames. There was concern that there would need to be a great deal of coordination among local bargaining tables given the short time the schedule would allow for local bargaining. diCicco and others worried publicly that the management team (a preliminary list of team was shared) KP was planning to send to negotiations did not have enough experience, with the exception of Margolin. In particular, there were reports of management representatives talking very negatively but in an uninformed and misinformed way about the 2000 negotiations. It was important to make clear that the 2000 agreement had been good for KP and was not a "sell-out" to the unions, as some managers were saying.

The meeting closed with a frank but tense discussion of the (then-named) Unite to Win proposal for changing the AFL-CIO. Rosselli presented the "Unite to Win" 10-point program, carefully explaining the motivation behind some of the more controversial proposals. Members of the non-SEIU unions, including unions who were later to join SEIU in leaving the AFL-CIO, raised many concerns about the proposals. The leaders of the nurses unions in particular expressed concerns about the loss of union identity and history that would come if they were eventually merged with SEIU. One leader of a small union challenged SEIU's model directly, arguing that in his experience, SEIU did not represent their members very well. Others pointed out that the Kaiser Union Coalition was itself an attempt to deal with the fragmentation of representation and was an alternative to simply merging into one large union. At the same time, everyone in the room acknowledged that the labor movement was in crisis and that something needed to change. diCicco played a strong neutral role, pointing out that historically, unions had different but often successful approaches to the question of structure, referring to the history of the industrial and craft structures in the health care industry. Finally, diCicco summed up the implications of the "Unite to Win" proposals for the Coalition:

> *The Coalition can withstand SEIU leaving the AFL, but not the raiding of other Coalition unions.*

This statement would prove prophetic. In the early months of negotiations, such an event would in fact threaten the cohesion of the Coalition.

At this same time, O'Neil Associates, a polling firm hired by the Coalition (assisted by Adrienne Eaton) had been administering two surveys of union members. The first was a phone survey conducted in February 2005 in which 1,536 union members –a sample of the broader Coalition membership—were asked their opinions about Kaiser Permanente as a health care deliverer, their level of job satisfaction, how effective they judged their union to be, and what they thought about the Partnership. A similar survey had been done in 1998. The results of the surveys were discussed at a subsequent Coalition staff meeting and at the Union Delegates conference prior to the start of negotiations.

Compared to 1998, results of the phone survey showed strong support for the Partnership. Seventy-seven percent of members surveyed "agreed" or "strongly agreed" that forging the Partnership was a good idea, compared to 64 percent in 1998; 78 percent believed it had a positive effect on the quality of care Kaiser Permanente administered, compared to 68 percent in 1998; and 70 percent believed it had positively affected their working conditions, compared to 61 percent in 1998. Members also believed their union to be more effective in 2005 than in 1998. In 1998, 63 percent of members surveyed were either "satisfied" or "very satisfied" with their union; this number rose to 75 percent in 2005. This could indicate that members believe their union works better in Coalition and in Partnership.

The phone survey showed a high level of satisfaction with wages and benefits and working conditions. Seventy-nine percent of respondents were "satisfied" or "highly satisfied" with wages, 91 percent with benefits, 93 percent with job security, 83 percent with training and 75 percent with workload. The next survey, however, would show that many of these same issues were of utmost importance to union members in upcoming contract negotiations, indicating that they expected what they liked about their job to stay the same or improve.

The second survey focused on priorities for bargaining and was given to all union members in February and March of 2005. Overall, 46 percent or 39,396 people returned the survey. The survey asked respondents to rate a set of thirteen bargaining priorities that the Coalition had earlier determined to be key issues in the 2005 negotiations.

"Job security" and "pay" were ranked as top priorities, with pay being particularly important in Northern and Southern California and among workers who have less seniority within the organization. Next in importance was "improved retirement and pension benefits," "retiree medical and dental benefits," and "medical/dental for current employees," all of which ranked high for everyone except respondents in Washington DC, Maryland, and Virginia.

Priorities in the middle range were "annual wage increases across regions," "staffing and workload," and "improved time-off provisions." Consistent wage increases were more important to service and maintenance workers than to nurses, nursing assistants, or those in professional and technical units.

Lower priorities are "consistency of benefits and working conditions," the issue of subcontracting, an educational fund for career development, and a provision for mandatory overtime. Not surprisingly, younger employees were more concerned about career development than their older co-workers.

The results of the pre-bargaining survey were presented at the delegates' Pre-bargaining Meeting as well as at the kick-off session of the BTG-CIC negotiations.

IV. "Let the Games Begin": Bargaining Starts

The CIC Kickoff Session

On February 22, the Common Issues Committee (CIC), a group of approximately 40 senior management and labor leaders met for dinner to begin their work. diCicco and Margolin opened the meeting with short motivational speeches thanking each of the participants for agreeing to serve on the CIC. They noted that the 2005 negotiations would take a great deal of time and energy but that the work was very important to Kaiser Permanente, to the workforce, to the LMP, and perhaps even to the future of health care in America. They both expressed the hope that everyone would focus on labor and management's common interests in making the transition from a Labor Management Partnership to a health care partnership. They then turned to the MIT research team for a presentation of research work on the Partnership to date, and a request to "put the 2005 negotiations in the context of the national Labor Management setting."

We titled our presentation *"Your Chance to Make History—Again"* building off the analysis of the 2000 negotiations. We suggested the challenge was to make history by laying *"the foundation for transforming the LMP into America's benchmark model for delivering high quality, efficient health care."* While the Partnership had done very well in recent years in addressing specific issues and problems as they arose, the diffusion of Partnership practices and processes across the KP system remained uneven.

Several labor and management CIC members indicated the data were consistent with their view that the Partnership had taken hold in some locations and with some management and labor leaders but not with others. Margolin and diCicco stressed that addressing this inconsistency should be a key objective in bargaining. There seemed to be considerable enthusiasm for making the transition from a labor relations focused partnership to one that more directly focused on improving the health care delivery process. No one was ready at this point to suggest how this could be done but it was clear it was a priority for most of the leaders at that initial meeting.

The next day's meeting of the CIC was devoted to training in interest-based negotiations. RAI facilitators began with an overview of basic IBN principles and processes and then put the CIC members through a negotiations exercise.

A Common Expiration Date?

One of the first contentious issues to emerge during the preparation phase for negotiations revolved around whether there would be a single common expiration date for local contracts. Rosselli of UHW-SEIU, had indicated that agreeing to a single expiration date for all contracts was a threshold issue for moving forward with national bargaining. This was a sensitive issue to top KP management. In 2000 management worried that agreeing to national bargaining would set KP up for the possibility of an organization-wide strike if negotiations broke down.

Various side conversations took place during the course of the CIC meeting over how to handle this issue. A first step toward a resolution of the issue came when the parties agreed that the issue should be narrowed to include only SEIU locals and contracts. Among these, there was already a near de facto common expiration date. As mentioned above, SEIU had recently completed merging its Northern and Southern California locals into one union of health care workers, United HealthCare West. After considerable discussion, the issue was resolved with an informal understanding that the parties would bargain all their local contracts at the same time, namely immediately after national negotiations were completed. Some, but not all expiration dates were altered as part of the agreement.

Another issue loomed heavily on the minds of the negotiators. What effect would the pending debate in the AFL-CIO have on bargaining? Management leaders were particularly concerned that the internal tensions and fallout from debates that would take place in July when the AFL-CIO was to hold its convention would derail bargaining just as negotiations would be entering their most intensive stage. A number of ideas were discussed for minimizing the risks to bargaining, including postponing negotiations for a year or speeding things up so that negotiations would be completed before the convention. In the end, the parties chose neither of these options. Instead, leaders of the Union Coalition made a commitment, privately and publicly, that they would hold the Coalition together through bargaining regardless of what transpired at the national level.

March 12-13 2005: Union Delegates Bargaining Conference

On March 12 a two-day Union Delegates' Bargaining Conference was convened in Los Angeles. Approximately 375 delegates from 29 local unions came together to prepare for national negotiations. Our research team's first impression upon seeing the group assembled in the ballroom of the Manhattan Beach Marriott was that is was a remarkably diverse and representative cross-section of the KP workforce, local union membership, and America. Over half the delegates were women, about a quarter were black or Latino, and the representatives cut across the full spectrum of the workforce from nurses, technicians, to service employees.

diCicco opened the meeting by saying:

> *Our task here is for you to discuss your concerns and interests and to build a sense of ownership over what we do in bargaining, so that when we come back to you in August you will hopefully endorse what we have accomplished.*

After having delegates from each of the local unions represented at the conference stand up to the applause of the others, diCicco introduced Anthony Wagner, his new management partner at the OLMP and invited him to speak to the delegates.

Wagner titled his speech: *"From Operation to Cooperation."* The metaphor was designed to connote that in an operation the surgeon takes something from you; in cooperation both parties gain. He observed:

> *1. Partnership has done great things, but it is underutilized; the partnership is uneven-- in places it is viewed more as an appendage than as something critical to and central to the operation. Need to work on this.*
>
> *2. Partnership is the best hope for the future—for KP and for health care in America.*

diCicco followed this talk by mentioning his former management partner, Tony Gately, who was battling cancer and could not be here. A card was passed around for everyone to sign. Tony had wanted to be here and set as his goal in his battle with cancer to be able to participate in national negotiations. The symbolism here was striking, showing the obvious personal affection and respect that diCicco and all who know Gately felt for him. Sadly, Tony Gately died several weeks after this meeting.

Kathy Sackman, president of the United Nurses Association of California (UNAC), then gave an overview of the achievements of the Partnership in the past several years, focusing on contributions to cost reductions in Southern California and Ohio, safety improvements in specific workplaces, and improvements in staffing ratios both through legislation and in practice. The bottom line of her talk was that great things have been accomplished through Partnership.

diCicco then introduced Margolin. He noted she was the only KP executive still at KP who had been there since 2000. Margolin began her talk by saying these negotiations have the potential to show the country that KP's health care model can help address the nation's health care crisis. This, she suggested, should be *"our common focus/goal in negotiations"* She challenged the negotiators to think strategically, not to revert to power bargaining, and to think about the future of KP and the unions and the Partnership. She asked, "*What does this mean for bargaining?"* Her answers:

- *Continue to ensure KP is a quality leader*
- *Focus on providing better service*
- *Make sure the work environment promotes quality service—attend to workforce needs*
- *Cost structures need to be competitive without layoffs*
- *Make sure our communications systems work*
- *Continue to focus on practice improvements on the front line*
- *Make sure that KP is a provider of choice for all*
- *Make KP the provider of choice for* ***all unions*** *in America*

She also focused on several other issues:

- *Attendance and absenteeism—especially an issue in Southern California. Find out why and fix it. If it is linked to the work environment, fix this. And then if some people abuse policies, deal with them.*

- *Compliance with scope of practice—we need to be careful to comply with regulations but also recognize that new jobs are being created. Let's figure this out.*

- *Workforce planning—need to address this seriously given the changes we are making.*

Margolin's speech received a standing ovation from the audience!

Then she took questions. For the next ten minutes she was peppered with tough questions, all about management, physician, and HR staff accountability. *"When is KP going to deal with this?"* She responded to the effect that she knew there was variation in support, she had made this a personal priority; KP took it seriously and had replaced and moved out some managers who didn't get it. She continued to be peppered with questions on this issue, despite diCicco saying to the crowd: *"OK, I think she's gotten this message, are there questions on other issues?* But more came on accountability.

Our notes on this part of the conference commented:

> *This was a very interesting sight—a top management negotiator giving a substantive speech to the union bargaining conference, taking and answering questions—unscripted; getting tough questions and then staying through Sal Rosselli's talk to follow and through the early afternoon session at Pete's invitation so she and Tony Wagner could see the results of the union's pre-bargaining membership survey.*

Rosselli followed Margolin. He also outlined the challenges he felt needed to be addressed in bargaining. He stressed the need to move toward equalization of wages and benefits across the different KP regions. He noted that there are currently four different wage regions in California and that the differentials do not reflect differences in living costs (Fresno wages are higher than some parts of Southern California, for example) as much as they reflect historic differences in union density. But recent union organizing has changed this: *"As a result of organizing, union density in Southern California has gone from 8 percent in 2000 to 55 percent today."* He also noted that major gains have been made in other recently negotiated health care contracts. In his words, negotiators should *"take the others as the floor and establish the KP ceiling."*

Rosselli highlighted four points in summarizing what he saw as the four key objectives for the Coalition:

- *Equity—same benefits for all*
- *Security—workforce planning and development to allow career development and training*
- *Unity—one Coalition; each of us have to first hold ourselves accountable and demonstrate this and then we can insist on accountability from KP.*
- *Quality Care for All—commitment to universal coverage. KP should be the model for reform.*

The afternoon session began with a report by Michael O'Neil, the pollster who conducted the union pre-bargaining survey. He summarized the survey results. Then the delegates took an hour to discuss the results at their tables. They were asked to discuss what they took away from the survey findings and how those results gelled with their own sense of the interests and bargaining priorities of the membership. Each of the 43 tables then reported on their deliberations. The most frequently mentioned issues were:

- *<u>Retirement, health care and other benefits</u>—emphasis on addressing early retirement bridge benefits [reflects some take-aways from last bargaining?] And "no givebacks/takeaways." This was a spirited refrain in the report-outs.*

- *<u>Job security</u>—reflecting a workforce planning need. In the surveys, job security came out as a key issue.*

- *<u>Accountability</u> was a thread throughout; all felt compelled to mention it.*

- *<u>Staffing and backfill</u> were also mentioned by many tables.*

- *<u>Attendance-related issues</u> were frequently raised but in most cases the attendance issue came up as the need to address the problems that give rise to attendance problems—staffing, sick leave conflicts, and work-life balance.*

The second day of the conference began with a short talk by Greg Hamblet, Vice President of UFCW. His ostensible task was to summarize Saturday's discussion. The real purpose was to give a leader from the UFCW a visible spot at the podium. Hamblet pointed out how seriously UFCW viewed these negotiations and the union's deep involvement. He introduced all UFCW delegates and asked them to stand. (All were decked out for the day in newly distributed UFCW yellow tee shirts! They were clearly making a statement.)

His comments underscored the undercurrent of tension that was present in the meeting over the SEIU's dominant role in the Coalition and its stated aspirations to be *the* health care union. More on this would come as negotiations unfolded.

diCicco then introduced our research team and we gave another version of the presentation we made at the CIC kickoff event. Our notes observed:

> *Questioners picked up on our comments on the need for focus on improving performance, management accountability, and the quality of working life. They wanted more ideas on how to make this work. We also got questions on how to deal with the fact that managers say employees can't take time off to train because of the pressures of getting the work done….clearly a big issue.*

Next came overviews of the financial picture at KP by Kathy Lancaster, the acting Vice President of Finance and then by Rader, the Coalition's financial data consultant.

Lancaster gave an overview of KP's financial performance and competitive position. She acknowledged the importance of the Partnership and its contributions to

KP’s recent successes. KP had a great year in terms of margins (5.3 percent) and it had a little (21,000) membership growth, reversing the decline of recent years. But she pointed out the need for massive capital investment in the future. She also predicted that the margins of recent years are not likely to be sustainable. KP's most profitable customers are the big employers and their numbers are declining. The audience appeared to see her report as highly credible.

Rader also reviewed KP finances, reinforcing the points Lancaster made about the strong financial performance of KP in recent years. His presentation made it clear to all that he had full access to KP’s financial data and that he was working closely with his management partner in developing a common database to support the negotiation process.

Our notes contained the following summary comments on the meeting:

All in all, we found this to be quite a remarkable event. Never in our experience had we seen a union pre-bargaining conference with as much open participation and information sharing by both union and management leaders. Moreover, while there was plenty of activity designed to boost cohesion and unity among Coalition members and unions, there were no disparaging comments about KP or its management.

BTGs and CIC Joint Sessions: April-June 2005

I was really struck at how this seemed like a chapter in the novel of the Partnership. There were references – often at crucial times and from important people – in the Benefits BTG and in the presentations to the fact of being partners, specifically, the idea that this relationship created different expectations, as in "Because we’re partners, we’re going to do this differently than we otherwise would." Beyond these statements, many of the members of the BTGs came to this task after having worked closely together in their regions as part of the LMP. The RAI facilitators are the folks who facilitate various LMP forums. There was just, for me, a really strong sense of continuity between this process and the LMP more generally.

Summer 2005
Reflections on the BTGs

On April 12, 280 members of the CIC and BTGs met to begin the work of the BTGs. They would meet in three more sessions totally 15 days over the next three months, culminating in a grand finale presentation of their recommendations to CIC members on June 22.

Each of the eight BTGs was given a specific charge or charter developed by CIC leaders. Based on the experiences from 2000, an effort was made this time to narrow the charters more than in the prior round of bargaining. In addition, at least two CIC members participated as members of each BTG in order to provide more direction and communication between the CIC and the BTG. The concern from 2000 was that CIC members were reluctant to play an active or leadership role in BTG discussions. The goal was to change this in 2005.

We will provide a detailed analysis of the BTGs below. First we need to describe and comment on a number of pivotal events that occurred along the way.

Opening Session

The April session began with speeches from George Halvorson, CEO of the Health and Hospitals' Corporation, Dr. Jay Crosson, Executive Director of the Permanente Federation, Rosselli, Margolin, and diCicco. Each speaker encouraged those present to use the negotiations to address the challenges facing KP and the workforce and to strengthen the Partnership.

Most of the questions that followed the speeches came from union representatives. Their main concern was the perceived lack of support of physicians for the Partnership. Several made a point of thanking Dr. Crosson for his unambiguously supportive statements for the Partnership while acknowledging that there remained some skeptics within middle management, physician, and union leadership ranks. He indicated his intent to continue to work on this issue.

Information Sharing in the Afternoon

In the early afternoon our research team again presented our summary of the current state of the Partnership. We positioned these negotiations in the context of national Labor Management relations. This was essentially the same presentation made at the CIC kickoff session in February. Figure 4 is a slide from this presentation that we used to challenge the negotiators to make history in these negotiations by focusing on how KP and the Partnership could become models for addressing the nation's health care crisis.

Figure 4
A Final Question

- Do you want to demonstrate that KP's model for delivering health care is good for:
  - Patients/members?
  - Employees (physicians, managers, supervisors, professional/non-professional staff)?
  - America?

- If so, what do you need to do in these negotiations to set the platform for achieving this goal in the next phase of the Partnership?

The rest of the afternoon of the first day was taken up by presentations of KP finances by Lancaster and by a presentation of the Union Coalition membership polls by O'Neil. Lancaster gave a very thorough and detailed review of KP's past and current market position relative to its key competitors and outlined KP's strategy for the future. She started with the good news, noting that KP had just come off an "outstanding year" with an overall margin of $1.6 billion. Then she reviewed KP's historic paradigm, emphasizing one high-quality integrated product and health care system, and one community-rated price. In past years, this allowed Kaiser Permanente to be a high-quality, low-cost provider to its members. The marketplace has changed significantly, she noted, with multiple competitors offering lower-priced products that new and smaller employers were finding increasingly attractive. The net effect has been that Kaiser Permanente's risk pool has been deteriorating—it has not been attracting enough new lower-cost members to offset the higher costs of serving current (older members). Her key point in presenting these data was, *"If we continue to offer only our one HMO product we will get a disproportionate share of sick people."* To maintain a balanced risk pool she indicated Kaiser Permanente needed to:

- grow the membership
- maintain a premium rate that would be affordable and attractive to lower utilizers
- offer products that appeal to wide cross section of population at affordable prices
- provide outstanding services and access to members

As we sat through these presentations, we marveled at the openness with which both management and union were sharing internal data with their complete bargaining teams. As John Stepp, the leader of the RAI facilitator team, commented on the opening session and the presentation of Kaiser Permanente's recent financial performance: *"This was the first time I heard an employer pleading wealth!"*

Union Coalition Pre-Dinner Meeting

That evening all the union negotiators on the CIC and BTG met for a pre-dinner meeting. diCicco presided and emphasized three substantive priorities/interests/issues that he wanted all the BTG members to keep in focus as they did their work.

1. <u>Measures and accountabilities</u>: The need to hold management accountable for implementing the Partnership and for achieving results through the Partnership—using these negotiations to ensure this happens.

2. <u>Backfill</u>: *"Let's solve this problem once and for all."* This requires adequate staffing for backfill, or as someone from the floor said, *"Backfill is the wrong idea—this has to become part of our everyday job and staffing should take this into account."* diCicco agreed.

3. <u>Workforce planning and career development</u>: diCicco recounted how he kept track of the issues that came up during the table reports at the union delegate conference on priorities and by his count workforce development came up as a top priority. *"We have to address this. We need to look at where the new jobs and career opportunities will be and make sure our members are prepared for them and can get them."*

diCicco made some process points as well.

1. *"Don't be intimidated by management experts. In these negotiations (unlike in 2000) management has chosen to put on the negotiating team "content experts"—people who are specialists and know a lot about specific issues. This is good and we should respect their knowledge and use it but not be intimidated by it or be afraid to ask questions or challenge it. We (you) see the broad picture; they will see only their narrow specialization. So don't be afraid to raise questions and don't let them control the discussion around their narrow interpretation."*

2. Caucuses: He said it is natural for there to be differences in views or interests among union representatives and that they should not hesitate to express them openly in their BTG discussions. If they start getting bogged down with conflicting views, then they should call a caucus and work it out or, if necessary, ask for him or other CIC members to help resolve these internal differences. *"Caucuses are perfectly acceptable part of the interest-based process. Don't overuse them or the process will break down. The ground rule is that if one side calls a caucus it should tell the other side after reconvening what they talked about (the subject, but not necessarily what was said or decided)."*

The purpose, tone, and dynamics of this session were summarized in our notes.

diCicco was in his "union-leader" mode. He wanted to fire up the troops and give them confidence and convey some clear messages about priorities they needed to accomplish in bargaining. At the same time, he was very careful not to disparage KP management in any way. This was a masterful presentation that illustrated his unique mixture of conventional and partnership skills – his ability to lead a Coalition that could very easily (and might) come apart and would clearly do so if he did not provide strong leadership.

Management Members of CIC Meet Over Lunch

The following day, management CIC members met separately for a working lunch. Approximately 12 management CIC members were present. Margolin started the lunch saying she wanted to discuss what she and the CIC colleagues would say that evening when the management CIC and BTG members met for dinner.

Basically, Margolin said she was planning to give a "high level" overview of management's interests but did not want to lay out their detailed interests for fear of moving too quickly to "outcomes" that management would be seeking for the BTGs - these should emerge from the interest-based process within the BTGs.

This provoked a discussion of this dilemma inherent in the interest-based process. Several members asked if management had a clear set of interests and statement of what they needed to get out of the process. Essentially they were asking for whether management had the traditional negotiation's equivalent of a clear bottom line position.

Margolin gave an impassioned statement on the need to stay committed to the interest-based process. This was a key principle for her and for KP and for this process, and to move too quickly to set a firm bottom line would be a mistake.

Some discussion then ensued about whether to give management members on the BTGs copies of a memo that outlined the key issues the KPPG wanted to see addressed in negotiations. One worry was that if handed out, it might get leaked to someone on the union team. The consensus (after considerable discussion) was that Margolin should give the "high-level" overview of the key issues and interests but not hand out this memo—it would be premature; let the specific issues and outcomes emerge from the BTG process.

Some in the room commented that they were less concerned about whether or not Margolin laid out specific issues and more concerned that she convey to the BTG management representatives that top management had developed its key concerns and issues in as full a way as the unions.

The discussion then turned to the question of why management did not do a survey equivalent to the union's pre-bargaining survey that was presented the previous day.

Margolin described why she decided not to do a management survey. (The Communications staff had come to her proposing to do a survey since they knew the union was doing one). She said no to this idea because she found it difficult enough to generate a consensus among the top management and physician leaders over priorities for negotiations. This consensus building process was already well underway. If a survey of middle management had been instituted, it might have produced results that would have been impossible to reconcile with the priorities already established by top management.

This led to a discussion of Rosselli's "positional" speech at the opening of the CIC/BTG session the day before. One of the CIC members was deeply concerned about what was perceived to be an "imbalance" in labor and management perspectives.

Essentially, he was asking if Rosselli was going to take this approach, should there not be a counterpart management response? It was clear there was lots of discomfort in the room about this. His comment put the concern about imbalance on the table. Why was there no management response? Some in the room said they thought Margolin was very good in giving a response that laid out management's interests and priorities but, unlike the presentations by union leaders, she did so in a style more consistent with the interest-based approach to negotiations.

The Rosselli lines that got the most attention from the management people were when he had said a top priority was wage uniformity across regions for people doing the same jobs. *"A nurse is a nurse….from sea to shining sea"* was the phrase they all remembered. They also heard him say emphatically: *"no rollbacks on benefits."* Margolin said she thought those points were made not as bottom line demands the unions would insist on in these negotiations but for internal political purposes. She would be surprised if Rosselli believed he would get this. In Margolin's view, *"Wage equalization is probably a long run SEIU goal but I'd be surprised if Sal insisted on achieving it in these negotiations. If he did, it would likely be a deal breaker."*

KP's strategy for being competitive in different markets and regions would not be possible if they were to move everyone up to the top rates paid in the highest wage locales. KP needed to be committed to market based rates.

Judith Saunders, KP's Director of National Labor Relations, intervened in the discussion at this point saying that everybody should realize the inherent differences in management and union decision-making and organizational arrangements.

The union leaders like Rosselli have to get elected—they have to show their members they are listening to them and have an aggressive approach. That should be kept in mind when listening to Rosselli and when thinking about why the unions do surveys and management doesn't. Management has a hierarchical structure and unions do not.

The meeting ended with a general consensus on how to proceed—along the lines Margolin suggested. The research team member who attended this lunch observed:

I think there may be a potential misconception by some in the room over the nature of the process that will unfold. Some, I think, might expect or hope this to be a purely interest-based process—or just not know what to expect. I'd worry at this point that they will not be ready or happy when or if at some key point the process takes on more of a traditional positional tone, either in the public sessions or in private back room discussions.

This session surfaced the classic dilemma of how specific should management be in developing issues, interests, outcome expectations or target-resistance points in an interest-based process? Are unions more likely to be more detailed in setting their expectations, targets, and outcomes than management? If so, how should this "imbalance" be managed?

The meeting also illustrated the challenge management has in coping with union leaders' needs to balance cooperative-like partnership behaviors with aggressive articulation and representation of their members' needs/interests. Clearly, managers need to have "thick skins" and stay committed to partnership in the face of some political-like behaviors on the part of union leaders.

An SEIU-UFCW Squabble

In the background of the meeting was a serious internal union conflict over a potential decertification of a UFCW local in Bakersfield. SEIU was thought to be encouraging the employees to decertify from UFCW and join SEIU.

diCicco described this as a development that could potentially signal the end of the Coalition and Partnership. The UFCW delegates had held a meeting to discuss whether to pull out of bargaining. They decided not to do so at that point but the fact that they met to discuss this was a signal of the seriousness of the conflict. Eventually this issue escalated up to the national leadership levels of SEIU and UFCW. Several weeks later the issue was put to rest in an exchange of letters indicating both unions would stop any local level efforts to challenge the other's representation. This exchange was clearly part of a broader discussion going on at the time over whether the UFCW would join SEIU in the proposed new Coalition to Win group of unions that would pull out of the AFL-CIO. In July, the UFCW did in fact join the new Coalition and leave the AFL-CIO.

The BTGs at Work

Deploying subcommittees organized around major themes had worked well during the 2000 negotiations and the architects of the 2005 round decided to have them play a key role in the 2005 negotiations. The co-chairs of the BTGs (28 in number) were all members of CIC, enabling close connection and a hand-off of the reports of the BTGs to the CIC as it moved into deliberations after the work of the BTGs had been completed. The concern from 2000 was that CIC members were reluctant to play an active or leadership role in BTG discussions. The goal was to change this in 2005.

Each BTG had two facilitators assigned: one from RAI and a second from FMCS.

Before going to work in the separate BTGs, their labor and management members were trained in the concepts and tools of interest-based negotiations (IBN). For many, the lecture material and skill practice embedded in the simulations represented a refresher since these concepts and tools had been used in the 2000 negotiations and, more recently, were in use on a day-to-day basis as part of the emphasis on interest-based problem-solving and consensus decision making.

The training was conducted by consultants from RAI with assistance from mediators from FMCS.

The design for the 2005 negotiations called for eight BTGs: Attendance, Benefits, Performance Pay, Performance Improvements, Service Quality, Scope of Practice, Work-life Balance, and Workforce Development. Compared to 2000 negotiations, two of the 2005 BTGs addressed new subjects: Attendance and Scope of Practice. Two topics, wages and safety and health that were addressed in BTGs from 2000 negotiations were not taken up in BTGs in 2005. Wages were to be reserved for the CIC and safety and health had been dealt with in a separate Labor Management committee during the term of the agreement and therefore not addressed specifically in these negotiations.

Figure 5 provides information on the size of each BTG. Interestingly, large union contingents were assigned to Benefits and Workforce Development. Both of these subject areas were high-priority for the unions. Each of the eight BTGs was given a specific charge or charter developed by CIC leaders. Based on the experiences from 2000 an effort was made this time to narrow the charters.

In addition to specific mandates, the BTGs received the following guidelines for formulating their recommendations:

- How do the recommendations foster consistent application of partnership, policy and practice?
- What are the enablers and barriers to achieving results?

- How to achieve job satisfaction and cost improvement?
- Does the plan promote engagement at the workplace level?
- How to realize practicality and implementability of the recommendations (specifying a well developed plan with step by step guidelines)?

Attendance

Attendance represented a new subject (compared to 2000) and stemmed from the need to deal with the major problem of absenteeism in some regions, especially Southern California. The importance of reaching solutions in this area was attested to by the participation of diCicco as a regular member of this BTG.

Kaiser Permanente and its consultants had identified Southern California in particular as a problem area for excessive use of sick leave. From 1995-2001 employees in Southern California were under an Earned Time Off (ETO) system where sick leave and vacation time was combined in such a way that taking sick leave reduced the number of available vacation days. According to the numbers from the data team, the number of sick leave days per FTE dropped during the time ETO was in place. In 2000, labor pushed to eliminate the ETO system; after national negotiations Kaiser Permanente went back to a traditional sick leave program in most regions. Subsequently, according to the data management had gathered (and labor doesn't trust), the use of sick leave had increased.

Management wanted to see short-term change through a revitalized corrective action system, and labor wanted to think about innovative projects that would improve long-term attendance through increased job satisfaction. Early on in the process, during the May 17-19 sessions, the group agreed that there was indeed an attendance problem, and that both management and labor needed to take leadership around the issue. In the same session, they agreed to treat sick leave as "insurance" rather than as an "entitlement." During a brainstorming on options, a UFCW staffer suggested banking sick leave and then converting it to something else at the end of the year. This became a central part of the attendance group's recommendations to the CIC.

Benefits

Benefits had been a BTG in 2000, and a number of important agenda items were before the parties: an improved dental plan and the possibility of inaugurating a defined contribution plan among other possibilities. More than any other BTG, the process in this BTG swung between traditional and IBN. Substantial time was spent in caucus and management frequently took issues from this group to the CIC for guidance.

Performance Pay

Performance-based pay was also a BTG in 2000, and as a result of those negotiations a program had been instituted for sharing gains using reductions in workplace injuries and workers' compensation costs as a basis for annual payouts ranging from one percent to three percent, depending on the year. This BTG produced the longest report (67 pages). The emphasis was on improving the current system and balancing consistency with regional flexibility. All units were expected to develop local plans to improve "line-of-sight" with the payout being the larger of the national or local plan.

Performance Improvement

In 2000, Performance Improvement had been combined with Workforce Development. In 2005 it merited a separate BTG given the commitment of the parties to make more progress going forward in engagement and having the Partnership produce more concrete results than had been the case in the preceding five years.

Service Quality

Service Quality also had been a BTG in 2000, and represented a joint commitment to have the Partnership play an important role in delivering superior medical services.

A big issue that came up in this group and that continued in the CIC deliberations was whether hiring should have a service component. Management wanted labor support for service quality and service innovations and especially "personal ownership" and "accountability" for good service.

For internal promotions and transfers, labor was strongly opposed to basing job assignments or promotions on service qualifications; they argued that seniority should govern internal hiring. Management should discipline employees as needed – if an employee is good enough to stay in the organization, they should be promoted according to seniority.

Scope of Practice

Scope of Practice represented a new BTG given a development in Hawaii when the state oversight agency fined Kaiser Permanente for allowing personnel to work out of scope.

A critical moment occurred in the work of this BTG when in response to union comments about the need to have more flexibility and to be able to perform more operations, one of the Permanente Medical Group administrators said, *"It doesn't matter what we say in this room, there is a contract between Permanente and Kaiser*

Permanente and that will govern." This comment made the union representatives very unhappy, although they did not express their consternation in the room but asked for a caucus. It was necessary for diCicco and Margolin to meet with the union folks and other leaders of this BTG.

Work-life Balance

The Work-life Balance BTG had developed a number of new concepts in 2000 and the parties saw 2005 negotiations as an opportunity to make further progress. This BTG worked in two sub groups: infrastructure – sponsorship, accountability, backfill and timelines: and health and wellness – services, programs and policies.

Workforce Development

In 2000, Workforce Development had been combined with Performance Improvement and, given the desire of the parties—especially the unions—to increase the amount of training and workforce planning, led to rostering this subject as a separate BTG.

In this BTG, it was clear where and when the two sides disagreed. On several occasions in caucus, one of the management co-leads would observe: *"We want X and they want Y; we aren't going to agree so let's move on."* This "agree to disagree" came through in the report-outs. Where other groups emphasized their mutual interests, this BTG made it clear that while there was agreement on many issues, there were also some fundamental differences.

June 20-22: CIC/BTG Meetings

At the final BTG meetings, each group presented an abbreviated version of the recommendations they were presenting to the CIC. The presentations were made in a large ballroom decorated to underscore the completion of an important phase of the negotiations After each presentation (followed by sustained applause) CIC members were given a chance to ask clarifying questions. The reports from all the BTG task groups totaled over 250 pages. There were high expectations that the CIC would take the recommendations and incorporate them into the final agreement. However, at the same time, there clearly was considerable worry that many of the BTG recommendations would be hard to implement.

BTG Dynamics

Figure 5 also summarizes process attributes for each of the eight BTGs. Several items in the chart report results from the survey that was sent to all participants in the

BTG process at the completion of this phase of negotiations (but before the agreement had been reached at the CIC level). These are the items that measure the use of interest-based negotiations throughout the BTG meetings, attention to important issues, and satisfaction with the process and assessment expectations regarding the final agreement. The highlights include:

- Limited use of interest-based negotiations for Benefits, with the other seven BTGs employing interest-based concepts throughout the deliberations, including the final stage, with the exception of Workforce Development, where the process became more traditional in the final stages.

- Related to this is the estimate from the respondents as to the extent to which key items of interest were included in their final recommendations. As would be expected, those BTGs that exhibited extensive use of interest-based concepts, specifically, Service Quality, Scope of Practice, and Work-life Balance were the most satisfied that their key issues were reflected in their BTG's recommendations. Those with the most pessimistic outlook included Benefits, Attendance, and Workforce Development.

The figure also summarizes several other dimensions:

- the size of the reports presented to the CIC (with Performance Pay being the outlier in terms of the most number of pages),

- the number of pages in the national agreement devoted to the subject area of the particular BTG (with most of them falling in the range of several pages),

- a characterization of the subject area as representing a priority for management, union, or both,

- a classification of the domain as including inherently distributive, integrative, or mixed issues and agenda items.

Figure 6 presents a schematic for understanding the process dynamics, starting with training and the skill of the facilitator connected to the use of interest-based concepts, in turn linked to the extent to which attention was given to issues of importance leading to overall satisfaction with the process, followed by the prediction of the work of the BTG being incorporated into the final agreement, culminating in the content that actually did appear in the agreement. We will use this model to discuss the work of each of the BTGs.

Attendance

This BTG tackled a very difficult distributive issue of high priority for management. Thanks to the consummate skill of the facilitator and the presence of diCicco, the process followed interest-based negotiations and became a model for how the IBN process can generate innovative solutions. The participants worked well together and were very satisfied with the process. However, members of the Attendance BTG felt that important issues were not included in the recommendations to the CIC and they did not have high expectations for getting their proposal into the final agreement. They apparently anticipated the intense debate their recommendations would generate at the CIC level, given the complexity and importance of these issues and the strong views of Dr. Jeffrey Weisz, the Medical Director in Southern California. During the report out the recommendations from this group generated the most negative "buzz" in the plenary session of the BTGs. Some feared their recommendations implied a return to an "Earned Time Off" program that had been negotiated out of the agreement in 2000.

Benefits

As can be seen in the chart, the story line for Benefits falls on the negative side across all dimensions. Would it have made much of a difference if a process of interest-based negotiations had been followed? The answer has to be "unlikely," given the highly distributive nature of the subject. In retrospect, many BTG and CIC members interviewed after negotiations were completed felt that just as wages – which had been a BTG in 2000 and was moved in 2005 to the main table (CIC) – the same should have been done in 2005 for Benefits, rather than having the subject become a source of frustration for this BTG.

Performance Pay

Participants expected a good carry-through into the final Agreement. However, this did not happen as anticipated. Instead, the CIC accepted the BTG's recommendation that a "line of sight" criteria be used to support localized performance improvement efforts but left it to a follow-up team to work out how this would actually be done. One explanation for this disconnect is that the parties at the CIC level did not have time to digest the ideas, and given the success of the performance pay program between 2000 and 2005, they decided to continue the program in much the same fashion as it had been operating under the prior Agreement.

Performance Improvement

This is a subject with many facets that strike right at the heart of how the LMP functions at the workplace level and how it links to the delivery of health care. The breakthroughs in the work of this BTG stemmed from the extremely high priority that both management and labor gave to this subject and the need to demonstrate that the

Partnership can make a difference, i.e., that they can engage at the local level and meet the need for improving productivity, reducing costs, and increasing effectiveness in the delivery of medical care.

Service Quality

The work of this BTG was a success story starting with extensive use of interest-based ideas, agreeing on proposals that included important issues, leading to high satisfaction with the process, and actually incorporating into the Agreement many of the concepts developed in this BTG.

Scope of Practice

One might have expected this BTG to follow the same pattern as Service Quality. However, satisfaction was not as high with the process, which reflects the mixed-motive nature of the subject and the "bump in the road" mentioned earlier ("physicians will decide scope"). As a result, neither the recommendations nor the final settlement developed any guidelines or substance but focused on procedures by which the interested parties at the local level could get together and work out scope issues.

Work-life Balance

Similar to Service Quality, this BTG experienced a reinforcing sequence of positive process and results.

Workforce Development

Participants in this BTG were not as satisfied as several other BTGs; they felt that important issues were not in their final recommendation; and that the final agreement reached at the CIC level would not contain many of their recommendations. However, the agreement does contain important concepts: instituting unit-based teams and a system-wide procedure for identifying and emulating successful practice, and most importantly, a trust fund and joint education and career development program.

The fact that the process turned traditional toward the end of the deliberations of this BTG requires some explanation given that workforce development can be seen as highly integrative in nature. The explanation goes to the bargaining objective that the union felt was extremely important: establishing a new workforce development fund not administered by the HR organization. At one point, the union members of this BTG were ready to walk out given the reluctance of management within this BTG to endorse this concept.

However, the ultimate outcome was very different. The BTG and then the CIC did agree to establish the training fund, thus achieving an important union priority.

Management representatives also were satisfied with this outcome because they recognized the need to commit more resources to workforce development. Thus in the end, the results of the work of this BTG were seen as important mutual gains.

Summarizing the BTG Processes

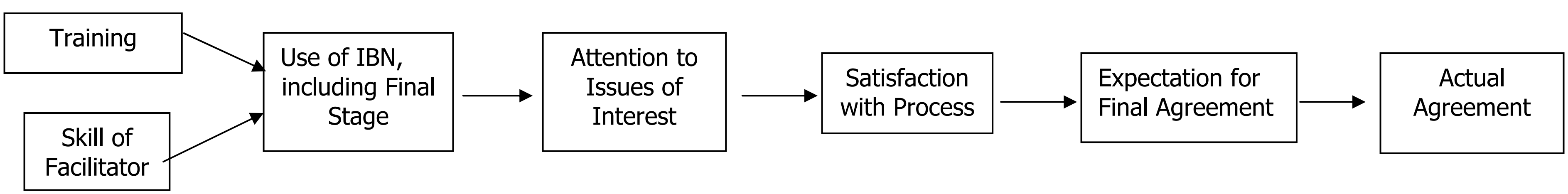
- High satisfaction was associated with the use of interest-based negotiation ideas and a subject domain that was highly integrative in nature, e.g., Service Quality and Work-life Balance.
- It was also possible to achieve a positive result even when a subject area was highly distributive (such as attendance) if the facilitator was able to focus the parties on their respective interests and objectives and the parties were able to reframe their issues in terms of shared principles.
- In several cases, the bulk of the recommendations of the BTGs were incorporated into the 2005 agreement. This was true for the Service Quality and Work-life Balance BTGs. On the other hand, few of the recommendations of the Benefits BTG (with the important exception of the recommendation to create a new Defined Contribution plan) made it into the final agreement.
- Several BTG's benefited from the high priority CIC members assigned to their issues. Specifically, despite their worries to the contrary, the key features of the recommendations of the Attendance, Performance Improvement, and Workforce Development BTGs, were largely accepted because of the high priority placed on these subjects and the commitment by the members of the CIC to put them in place.

Figure 5 Profiles of BTGs

	Attendance	*Benefits*	*Performance Pay*	*Performance Improvement*	*Service Quality*	*Scope of Practice*	*Work-life Balance*	*Workforce Development*
Size and Makeup of the Participants **-- Management** **-- Union**	M-13 U-13	M-17 U-26	M-11 U-18	M-15 U-19	M-11 U-19	M-13 U-17	M-11 U-20	M-15 U-24
Size of Report Presented to CIC (pages)	39	20	67	32	23	22	32	18
Pages in National Agreement	4	Many pages – not related to BTG	2	3	2	1	2	6
Highlights in Final Agreement	New program "We knocked it out of the park. Our goal was to come up with an alternative. We did this."	Did not achieve improvements in dental or movement to the 1.5 multiplier for the pension program. Achieved new contributory plan	Established "Line of Sight" principle and team to implement recommend-ations	Adopted a system for identifying and sharing successful practices and plan for a joint marketing initiative.	Language similar to the 2000 Agreement stating the principles of commitment to service. Included this principle as "all job descriptions, performance evaluations and job competencies will include a jointly devel-oped service component."	Agreement on procedures to resolve scope issues	Creation of a Work-life Balance Div. within HR. Recognition of MLK Day	Creation of Taft-Hartley Trust for career development and training programs
Number of issues of interest not included in final recommendations	Substantial	Substantial	Substantial	Substantial	Small	Small	Small	Substantial
Percentage of people who think that more than half of their recommendations would be included in the final agreement	50%	38%	78%	53%	69%	76%	70%	43%
Percentage saying extensive use of interest-based negotiations	95%	35%	89%	90%	96%	84%	100%	86%

	Attendance	*Benefits*	*Performance Pay*	*Performance Improvement*	*Service Quality*	*Scope of Practice*	*Work-life Balance*	*Workforce Development*
Emergence of traditional bargaining in final stages (much more + somewhat)	10% 10%	58%	17%	11%	9%	8%	5%	43%
Overall satisfaction with the process	90%	58%	65%	80%	100%	96%	100%	81%
High priority of subject for management, union, or both	Management	Union	Union	Management	Management	Both	Union	Union
Inherent nature of the domain (primarily integrative or distributive in nature)	Distributive	Distributive	Mixed	Integrative	Integrative	Mixed	Integrative	Integrative
Satisfaction with Facilitation	100%	79%	94%	89%	100%	100%	1000%	85%
Effectiveness of Training	95%	48%	77%	80%	91%	84%	90%	62%

Figure 6
A Model for the BTG Process



The Sticker Saga

A potentially explosive crisis erupted in the midst of the BTG deliberations involving the Union Coalition's plan to have their members post "stickers" at their workplace urging support for their bargaining objectives. The original wording of the stickers was:

THRIVE in 2005. A new union contract

When some managers heard about this plan they became concerned that these stickers sent a message that was too militant and too pro-union, inconsistent with the spirit of partnership in which negotiations were being carried out. Some were also concerned that the stickers would be displayed in places where patients might possibly see them, thus conveying a negative message about morale at Kaiser Permanente. Others were concerned that allowing stickers to be displayed would set a legal precedent that would make it difficult to prevent similar workplace displays by unions in the future.

What started as a management concern escalated into a full-fledged conflict. Part of the reason for the escalation reflected a simple communications malfunction. Coalition leaders promised to get management leaders a copy of the stickers before they were to be printed but for one reason or another this did not happen in time for management to provide feedback on the words used. Thus, when managers voiced their concerns over the initial language, they were told it was too late. Moreover, some within the Union Coalition held the view that what and how unions communicated with their members was none of management's business! One union staff member said:

> *Did they forget we are a union? If this were a "normal" negotiation I'd have our members walking around with picket signs calling for a fair contract. They seem to forget that we have a responsibility to actually represent our members.*

For two days of the BTG process, what came to be called "the great sticker saga" required many off-line meetings, given the fact that the stickers had been printed and some were already being shipped to local union offices. Eventually a compromise was reached in which the language of the stickers would not be changed but the sticker would bear both the LMP and the Coalition logos.

The process the parties used to work through this saga is as instructive about the relationships and skills of the various participants as is the substantive dispute. Figure 7 summarizes, using two scenes, how the saga played out and the drama and emotions it surfaced.

Figure 7
Resolving the Sticker Saga

Scene 1: Management Caucus

It is 5:45 of the second day of Sticker Saga. Margolin briefs her management CIC colleagues' members on efforts to resolve the issues that have been going on over the course of the day. She indicates diCicco will join this meeting in a few minutes to provide a first hand account on why the stickers are important to the unions.

diCicco joins the group and describes the way unions would normally communicate with their members in contract negotiations—rallies, leaflets, buttons, various meetings to rally the troops. He explains clearly why this is necessary as part of the process of negotiations and to demonstrate the union is working hard on its members' behalf. That is why it has to say "union" not LMP.

Mary Ann Thode intervenes and says very clearly, politely but directly to diCicco that she understands what he was saying but that she just cannot sell this to her Northern California colleagues. They will oppose the stickers. If the stickers could read "LMP union contract" then her people would be okay. Or maybe the sticker could have the LMP logo on it.

Thode's frank comments clearly get diCicco's attention. He does not just say *"No, we are not going to do this,"* but he didn't agree either. He said, *"I'll talk with my union leadership and see what they say but I know they won't like this. But I'll take this to them."*

Then another management leader raises a concern about the word "new". diCicco responds that "new" is used because that's what they are doing—negotiating a new contract does not mean the old one is bad; it is just the way union-management negotiations work, so the term is normal. At this point Tony Wagner, Management VP for Labor Management Partnership and diCicco's partner in the OLMP, says in a convincing tone that *"I understand the concern about the word "new" but we should not load Pete up with several issues. Let's focus just on the bigger concern expressed by Mary Ann and see what he can do with it."* Wagner's intervention diplomatically and effectively put this second issue to rest.

Scene 2: diCicco Meets with Union Leaders

The meeting ends and diCicco goes to gather his union steering committee, which is in the room where the union delegates are all having dinner. diCicco is very agitated about all this but takes the issue to the group that gathers around him in the back of the hall. After explaining the situation he essentially asks his union colleagues to *"give him this one"* and they reluctantly agree after voicing their shared frustration and anger over the whole thing.

While the sticker saga served as another in the series of pivotal events in these negotiations, we believe it offers a window into the negotiating skills of the parties involved, and the high levels of trust they have for each other.

CIC Deliberations

After the BTGs had completed their work, the CIC began work on their recommendations at meetings held in Los Angeles during the two weeks of July 11-23. The goal was to complete negotiations of the contract during these two weeks, leaving the meetings scheduled for August 1-4 in Atlanta for drafting language and tying up loose ends before the union delegates met on August 6 to review the agreement. However, this was not to be.

CIC Bargaining, Session 1: July 11-23

A large room was reserved at the Manhattan Beach Marriott Hotel, and the members of the CIC (18 union and 15 management) sat around the outside of a U-shaped table. Union and management participants did not sit in blocks, but were dispersed around the table. At the opening of the U, to form a full square, sat the two lead negotiators, diCicco and Margolin, plus several key union and management staff members. At a second tier of tables, situated outside the square, sat approximately 15-20 more staff, including scribes, content experts, and researchers.

Also present were three consultants from Restructuring Associates, and two FMCS mediators. On the management side, the following functions and roles were represented:

- Human Resources (2)
- Physicians (3)
- Corporate (2)
- Hospital Management (5)
- Partnership Office (3)

For the union, the representation consisted of:

- SEIU (5)
- UFCW (3)
- OPEIU (3)
- Nursing unions (4)
- Other unions (3)

Each day's deliberations started at 8:00 a.m. with breakfast, which was available in the main conference room at 7:00 a.m. A guiding principle of interest-based negotiations is to avoid late-night sessions and the fatigue often associated with traditional bargaining. In designing the schedule for the two-week session, attention was given to the need for participants to relax (negotiations were adjourned early Saturday afternoon and not reconvened until late Sunday morning) and to release tension (massages were regularly available).

During the first week, evening sessions were not scheduled. However, during the second week, as the tempo increased, a number of sub-groups, especially those dealing with attendance, found it necessary to meet after dinner. And of course, each evening Margolin, diCicco, and key staff people (BCC) met for several hours to review progress of that day and to formulate plans for the next day.

The major task confronting the CIC was to review, amplify, and codify the hundreds of recommendations that had been brought forward by the BTGs. Prior to the first meeting of the CIC on July 11 the consultants, in conjunction with the staff, had sorted and sifted the work of the eight BTGs into four thematic areas referred to as "color-coded buckets." At the initial session (after the co-chairs had reviewed the 2000 Agreement and explained the schedule), John Stepp from RAI described the topics to be addressed in each bucket as follows:

- ***Red Bucket:*** included integration/infrastructure; joint project management; sponsorship/accountability/performance management and evaluation; redesign of work and business processes/employment engagement and decision-making. Most, but not all of these issues related to the topic of performance improvement.

- ***Green Bucket:*** included the role of the manager or supervisor/ role of union rep or steward; workforce planning; recruitment and hiring; career development. informing/educating/training. Green's agenda primarily involved workforce development.

- ***Blue Bucket:*** consisted of themes such as: discover and share best practices; staffing/backfill capability; flexible scheduling/release time; budget and staff expertise/tools and templates. Service quality was a major theme.

- ***Yellow Bucket:*** included goals and benchmarks/measures, metrics, data collection, performance feedback; recognition/incentives/total rewards.

Initially, some skepticism was voiced about whether the new cross-cut of the thematic approach would dilute the essence of the BTG recommendations, but after some discussion the participants agreed to move into the color-coded groups. The advantage of "shuffling the deck" was that it organized the work of the BTGs into broad categories. For example, the question of backfill or accountability had emerged in a number of BTGs. Also, since everyone on the CIC had been a member of a BTG, by assigning the CIC members in a planned way, with some staying with a color-coded group that captured the work of the BTG in which they had participated, they would then be in a position to be an "expert" in the color-coded group for the work of their BTG. And some CIC members were assigned to a "color coded group" – different from the BTG work that they had engaged in – in order to bring fresh eyes to the recommendations coming from a particular BTG.

Our field notes record the tenor of the first week of the CIC negotiations.

The CIC meetings in LA got off to a shaky start. With the help of the RAI facilitators, Leslie, Pete and their senior staff had worked together and created a structure to review the BTG recommendations. Rather than dealing with the BTG issues by BTG group, they divided the recommendations into 4 thematic groups with the intention of reviewing the recommendations in this form. Pete and Leslie thought everyone would be pleased with the work they had done, but they were wrong. The main problem was that no one seemed to understand the logic behind the proposed structure, and so they didn't understand the work they were supposed to do in their groups. And there was anxiety over whether chopping up the work of the BTGs into different areas would mean the essence of the recommendations would get lost, particularly with those BTGs (like attendance) that saw their recommendations as a total package. The groups didn't know if they were supposed to look at the small pieces they had in their thematic handouts, or whether they were supposed to evaluate the recommendations as a whole. As a result of this confusion, the CIC was not very productive for the first several days. It wasn't until they divided into another set of groups that the work picked up…<u>Everything</u> took longer than anticipated.

Most of the deliberations during the first week of the two-week period at Manhattan Beach took place in the color-coded groups. The problem-solving, deliberative manner of the BTGs carried over to the work processes in the color-coded groups. When one of the groups needed more information, someone with the necessary background would be called in. diCicco and Margolin circulated regularly, helping clarify issues and mandates. The two did not wait for requests, but moved around, helping to facilitate groups that needed to move beyond a particularly difficult issue.

Toward the end of the first week, and frequently during the second week, the CIC met in plenary sessions. Margolin chaired these sessions, with diCicco sitting adjacent. They were clearly operating from "the same page" (meaning that there had been substantial off-line coordination between them). When it became clear that they were not in agreement on procedure, they would call for a recess so they and key staff could sort things out.

The procedure for a particular topic was to have someone present the recommendation, followed by a thorough discussion, followed by an up-or-down vote. Consensus was the objective, although some items were moved forward with one or two dissensions or abstentions. Usually, Margolin summarized the major points of the discussion and formulated the proposal under consideration, before putting the subject to a vote.

The tenor of the discussions was decidedly less positional than traditional negotiations. In fact, it was often hard for an observer to tell, without looking to the identity of the participant, whether a union or management person was speaking. For example, union representatives were voicing concerns similar to management around the issue of ensuring effective implementation of provisions of the agreement. For example:

***Hospital Manager**:*	*We should be talking about structure, how to move the Partnership forward, how to reward people. On the Permanente side, what will be the commitment to department-based teams?*
Union Rep (1):	*We need a timeline; if not, nothing will happen.*
Union Rep (2):	*Department-based teams should be uniform in terms of principles, with local tailoring.*

Problem solving and a thorough discussion of tough issues characterized many sessions. An example of this occurred around the subject of back-filling. An agreement had been reached that more resources would be committed to staffing so that representatives could be relieved to attend Partnership meetings. The principle was in place; the problem was making it happen:

Staff person:	*For the start, we need to do what I would call 'gap analysis' so we can include the requirements for backfilling in the budget.*
Hospital Mgr:	*This will be much harder on the Permanente side than hospitals.*
Union Rep:	*Will assembling funds for backfilling cut into resources available for wages and benefits?*
Hospital Mgr:	*Backfill has to be worked into budgets.*
Union Rep:	*Considering all the joint staffing that is involved, who will do this?*
Hospital Mgr:	*Does backfilling as a subject get us into the bigger issue of joint staffing?*
Union Rep:	*We should be trying to solve this problem right now, and come up with something that can be implemented this fall.*
Union Rep:	*This will not be easy. Rates have already been set for 2006, but perhaps the budget cycle is still open.*
Physician:	*Many of the changes that we want can be done with better scheduling.*

Union Rep: *I find what we are working on here is a good concept, really good.*

Throughout the deliberations, the participants used a frank sharing of concerns to achieve a working rapport. The discussion of a solution to the role challenges posed by the Partnership is noteworthy in this regard.

Union Rep: *We are proposing the concept of Contract Administrator – one person per thousand members. We will rotate these CAs, and it will free up stewards to work in a partnership way.*

Union Rep: *Our stewards have been schizophrenic, and are always torn between being a good partner and being a strong representative.*

HR Person: *Let me say that our HR consultants face the same dilemma, e.g., working on grievances and traditional matters, and at the same time reaching out to become a partner.*

As would be expected when "hot button" subjects were addressed, the tenor of discussion in the plenary sessions became more animated, reflecting the juxtaposition of strong interests. Yet, even here, the discussions remained calm. For example, the issue of minimum requirements for service illustrates the tension that arose over whether to base the decision on seniority or on management's desire to select employees who demonstrated competence in delivering high- quality service.

Union: *I wonder about the objectivity of tests. "I'm having a hard time saying that for internal transfers we require a minimum level of service."*

Management: *As long as we have objective measures for measuring service, it should be all right.*

Union: *I have a concern about internal transfers. Why not emphasize OJT?*

Management: *For employees on the inside, they should always be working on service skills, so we should be able to establish a go/no-go before an inside transfer.*

Management: *I want to be able to select the best employee, not the most senior. "I have a problem if what is good for the new employee (the minimum qualifications regarding service) is not good for the internal employee."*

Union: *There can be ethnic and racial bias in making the assessment.*

Management: *We can all work together on this if we put it into the minimum qualifications.*

Union: *I'm in favor if we put it in the job description and are specific about how service is measured, especially in terms of ongoing evaluations.*

Management: *We should be using the technical plus behavioral competence, and if we have teams doing interviewing, it should be OK.*

Management: *We introduced service as a criterion in promotion to Charge Nurse.*

Union: *I cannot stand in front of 8,000 members and say that seniority will not get you the transfer if you do not meet minimum qualifications of service.*

Another instance involved refining the nature of involvement (here a real breakthrough occurred in terms of understanding decision making in a partnership environment).

HR Rep1: *Are we talking about involving labor through the department-based teams in all aspects of the business? For example, payment of bills?*

HR Rep2: *The report from the Red team sounds to me like they are advocating co-management.*

Hospital Mgr: *We need to have an off-line discussion about what we mean by integration and the elimination of parallel structures.*

Union Rep: *We want to be involved, but not to co-manage.*

Union Co-Lead: *We are not talking about co-management. We are talking about co-leadership.*

Renegotiating Attendance Recommendations

As noted earlier, attendance was a key issue in the 2005 negotiations. During the BTG sessions, members of the attendance BTG were under particularly intense scrutiny from other participants in the BTG process as well as from constituents and managers back at home. When the Attendance BTG presented at the report-out to the CIC at the end of the BTG process, the room was abuzz with reactions to their recommendations. At no point in the negotiations was it possible for the researchers to find someone who did not have strong opinions about the attendance issue.

The recommendations of the Attendance BTG were both a source of great potential in resolving the issue *and* a liability in getting to the next stage of the process. They were a liability because the recommendations were difficult to understand and therefore open to critiques that were often based on misunderstandings. Initially, most people outside the BTG reacted negatively to the recommendations, regardless of whether they were from management or the Coalition. Yet it was noteworthy that once someone was patiently walked through the recommendations their response was usually supportive—and often this same person would go on to explain the proposal to others.

At the CIC negotiations at Manhattan Beach, much of the work around this issue involved painstaking presentations by CIC members who sat on the Attendance BTG, including Dr. Marty Gilbert, a pediatrician from Southern California; Ken Dietz, a staff member from UNAC; and Wayne Clary from the Steelworkers. Rhonda Goode from SEIU 535, who was not officially a member of the CIC but who had sat on the BTG and who had been working on the attendance issue prior to the negotiations, also took part in many of the smaller-group discussions around this issue.

Attendance was again a hot topic during the sessions at Manhattan Beach. A major reason for this was that the Southern California Medical Director, Dr. Jeffrey Weisz indicated he was not ready to accept the BTG recommendations and urged his representatives at the CIC to press for an alternative approach. Participants talked about the attendance issues in the thematic (color) groups, over meals and whispered discussions in hotel hallways, and in cell phone conversations during the numerous breaks in the days' events. At this stage, most of the discussions were negative and reflective of bad feelings around the issue. So everyone sensed that reaching an agreement on this will would be difficult.

Dr. Gilbert played a key role in negotiations around attendance. Early on in the BTG process he mentioned that he was coming to the negotiations with "marching orders" from his medical director to reform the sick leave policy that was leading to excessive absenteeism, and indeed at the beginning it looked as if he were there to push for a more draconian agenda. Gilbert was the most vocal management representative in the Attendance BTG. He was also very willing to listen and learn from what others had to say and could change his mind. He ended up very well respected in the group. Of particular concern to Gilbert were last-minute call-offs that left his department chronically understaffed, and he was open to novel ways of thinking about how to solve the problem. In the end he pushed for a set of recommendations he really believed would solve the problem.

Toward the end of the first week, the co-leaders decided it was time to address the subject head on. Members of the CIC were assigned to the attendance working group and to several other sub groups, to address issues that had been reserved for attention by the CIC (see Appendix A). The sessions that followed were characterized by intense discussions that occurred among CIC members, between CIC members and managers and physician leaders back in their regions, and at a crucial point among the highest level executives and medical directors. Our field notes from these sessions, reported below, capture the pivotal nature of these discussions.

Margolin opens the morning session on July 17 by recusing herself from her usual facilitating role and passing her duties to an RAI facilitator, Gary Bergel, for the day. Solemnly, she tells the group that attendance is the *"single most important issue for management in negotiations."*

Gilbert begins by skillfully presenting an overview of the BTG recommendations. These recommendations had been tinkered with in the last few days during extended conversations between CIC members who had been a part of the BTG—Gilbert plus Wayne Clary and Ken Deitz, as well as two new key players in the discussion, Alice Dale from UHW and Mary Ann Thode from Northern California (both of whom had followed the pattern from skeptic to spokesperson). As he had done with Dale and Thode in days prior, and as he would do again and again in the smaller groups that continued work around the issue, Gilbert carefully laid out the issues and talked about how the recommendations were to address them.

After Gilbert's presentation, hands go up. Many of the questions seek clarification about the specifics of the new sick leave plan, which few people outside the attendance BTG entirely understood. Other questions were more leading and more of a way to express dissatisfaction with the spirit of the recommendations.

After a while, Margolin steps in with a statement from management about the recommendations. She says management will try to be as open as possible, but that they cannot emphasize enough the importance of solving the absenteeism problem. *"We won't be able to achieve a national agreement without some movement on this. I don't say this as a threat or an ultimatum, just my best read of the tea leaves and my attempt to be as open as possible."* She stresses that this isn't just a Southern California issue, though the problem there is particularly severe.

Margolin voices what she calls "one worry and two concerns." The worry is that the recommendations won't fully address what she refers to as the "entitlement issue," which is the (perceived) problem of employees taking sick days because they see them as additional days off. What else might they add to the recommendations to ensure the kind of culture change that the organization needs?

The first concern is relatively minor: she doesn't think it makes sense to let employees cash out their sick leave bank when they resign. The second is more substantial and what she calls *"the single biggest thing missing from the* *recommendations."* The problem, she says, is what if the recommendations don't work? Her answer to the question is controversial. She suggests a series of yearly "check-ins" to evaluate the effectiveness of the new policies and to run intervention in the event that the use of sick leave doesn't change. After expressing that he believes this issue is entirely resolvable, diCicco responds to Margolin with two concerns of his own. First is his worry that Kaiser Permanente is moving back to an Earned Time Off (ETO) program, which is a problem for labor, both practically and symbolically. diCicco argues the culture of entitlement was created by the very system that labor is worried management may be pushing for once again. *"The reason you have a culture that views sick leave as an entitlement,"* he remarks slowly and emphatically, *"is that you had a program that treated it as an entitlement."* Yes, these new recommendations are a move to change this, he says, but it won't be something that happens overnight. Like all culture change, it will take time.

diCicco is irritated by the suggestion that attendance issues be given priority over other obligations in the contract. *"There are so many things we wish we could have check-ins about,"* he reminds the group, *"so much that didn't happen with the last contract."* He points out that labor is taking a risk in working very closely and sincerely with management around an issue that is of such concern to management—something labor doesn't do with any other employer. *"So we have a reaction to your saying, 'Unless we have a culture change around attendance in one year, we'll revisit this.' We can take this discussion forward, but it needs to be in a context of all our goals that haven't been met yet."*

There is more discussion. Thode publicly agrees with Margolin on the idea of check-ins, adding diplomatically that this shouldn't be the only thing for which there are check-ins. Gilbert brings up that when talking about the culture of entitlement they should also note that there is a culture of management not granting time off. He tells the group that this was a big realization for management in the BTG.

Jorge Rodriquez, who will prove to be the most formidable union critic of the recommendations throughout the day, has the most extensive reaction to the recommendations and the way the discussion is framed. He thanks Gilbert for bringing up the fact that management often does not grant time off and talks about how this is a major issue for members in his region. His members will really resist new policies around attendance because they don't trust that management is interested in changing the negative work environment that leads to people missing work. And not just this – there is a larger distrust of the Partnership and the Southern California leadership. Management is not interested in changing the work environment and, he says, *"I'm not sure this is going to change during the term of the agreement. I don't have much confidence."* Rodriquez also accuses management of "ultimatum bargaining: *"Saying, 'If we don't get X we'll back out'—which is what we are doing now—this isn't interest-based negotiating."*

After questions, the group breaks for lunch and divides into smaller groups. One key subgroup fiddles with the details of the sick leave bank until very late that night.

The issue of ultimatum bargaining comes up later on in the attendance subcommittee.

Management 1:	*How are we bargaining in an ultimatum sense?*
Union 1:	*Weisz will pull out of the Partnership if this doesn't happen. We've been hearing this the past year.*
Management 2:	*We hope you don't feel that this is what we are doing.*
Union 1:	*No, but we are operating under that shadow.*
Management 2:	*There will always be this issue in bargaining. I felt this way in benefits around the common multiplier.*
Union 1:	*There is a difference between a hard position and something that we could leave over.*
Union 2:	*Does it bother you that we don't think this is working the way it should?*

Still, labor continues to actively engage in discussions about attendance.

Building consensus for the attendance proposals is an exercise in patience. As was the case for much of the CIC negotiations, there is sometimes a split in opinion within management between those at bargaining who are actively engaged in interest-based negotiations and those on the management team not present at the negotiations. For the attendance issue to get resolved, the management bargaining team needs the support of the Union Coalition team, but they also need the support of the managers not in negotiations – many of whom have strong and influential stances on the issue. Jeff Weisz, the Southern California Medical Director, has been particularly adamant about the need to address this issue.

Management caucuses after dinner to discuss whether to put forward a new idea that had been suggested to the management team that afternoon (involving a reduction in the number of days of sick leave in return for increased wages for the days given up) or to continue down the path negotiations were moving toward an agreement that incorporated the basic approach recommended by the Attendance BTG. After considerable discussion of the pros and cons of introducing a new proposal at this late stage of the Attendance negotiations, the management team decides unanimously to work with their labor counterparts to iron out the final details of the BTG's suggested approach. To do otherwise would risk charges of bad faith bargaining and risk losing support from key labor negotiators who now were prepared to go with several modifications of the BTG recommendations that the management team felt were needed. The managers and physicians on the team truly believed that the recommendations were going to work, and they were willing to go to bat for this belief.

This resolves the attendance issue.

By this point a number of labor representatives are feeling that they have put a great deal of time in on this issue and fully engaged management's concerns and interests and that management owes them something in return. A typical comment to us was: *"We talked forever about attendance, now we need to talk about [something labor cares about deeply]."*

CIC Bargaining, Session II: Deadline Bargaining in Full Measure

On August 1, negotiations moved to Atlanta for five days. The new venue was chosen because a number of the union delegates were planning to be in Atlanta to participate in a march in honor of the fortieth anniversary of the Voting Rights Act. As noted above, initially these days were planned as a time to draft the final agreement. Negotiations were expected to be done by then. But this was not the case, in part because of the time required in Manhattan Beach to resolve the Attendance issue. Instead, the economic package had to be negotiated in Atlanta. Indeed, the final days in Atlanta would take the form of rather traditional deadline bargaining, with high drama, emotion, and extremely intense internal negotiations within both the management and union organizations.

The process started with a *long* day and a half of union and management caucuses in which each team worked on developing its initial economic proposals. Our notes on these caucuses are interspersed with comments about the length of time it was taking and the seemingly disorganized nature of the discussion. It was clear to us that neither Margolin nor diCicco were actively pressing their teams to develop proposals quickly. Instead the meetings took on more of a free-flowing interchange of the views and priorities of various team members.

Developing Management's Initial Offer

Margolin opened [the management caucus] by telling the group that this week would be very different from the others.

> *We are under time pressure and getting into the guts of the economics. The interest-based process doesn't lend itself perfectly to dealing with this part of it, but we should still hold onto what we've learned in terms of seeking to understand and address each others' interests. But it's important to remember that they will and we will get more positional.*

Margolin talked about the importance of communicating with people back home. She said it was important not to focus on particular issues, but to ensure that people were getting a sense of the whole. There would be a KPPG call every night at 8:15, which would include two presidents participating in negotiations. Margolin would brief the other presidents separately at 7:00 p.m. She indicated the KPPG members preferred to be briefed separately. Our notes on this point indicated we thought it odd that there would be separate briefings for these two key management groups and took it as another indication of the difficulties this divided management structure posed for negotiations.

Margolin then presented a framework for thinking about what had to be decided during the week. The first part was framing across-the-board (ATB) increases. She said: *"We need to think about what this should be based on – such as market size, or market share, or overall viability. We will need to have <u>some</u> ATB..."*

Throughout the first day, participants in the management caucus discussed how to shape their opening offer. There were clearly divisions within the management team, reflecting in large part the differences in market conditions and financial pressures in different regions. Some in the room were also reflecting the views of their principals back in their regions. In the afternoon Margolin outlined a broad framework for a proposal and asked Gary Bergel, an RAI facilitator, to lead a discussion so that she could listen to people's reactions. This produced a lively interchange over how much to differentiate the across-the-board increases by region. Some argued very strongly for differentiating between Northern and Southern California as well as among the regions outside of California. Others argued this was totally unrealistic—there would be no way that either the Union Coalition (or in one case a management leader) would ever accept a Northern-Southern California difference. Similar discussions took place over a wide range of issues. The day ended with no resolution or consensus on a proposal.

Our notes from that first day observed:

> *We are a bit perplexed by the lack of progress in developing proposals within both the Union Coalition and the management team. It is clear to us that this is going very slowly and that there are significant internal differences within both the management and union organization that are slowing things down and holding back diCicco and Margolin from putting their respective proposals on the table.*

Early that evening diCicco, Margolin, and John Stepp met briefly in Margolin's hotel suite to discuss how the day went and where things stood. diCicco reported that he did not want to push for a specific proposal yet. His team still had a long list and that he would need more time. Margolin reported that she would be having phone conversations that evening with the RPG and KPPG leaders and expected these to be difficult. diCicco and Margolin agreed to touch base again later that night after the management phone calls were completed.

Evening Updates: Internal Bargaining at Work

Margolin began the 7 p.m. phone call with the RPG and the subsequent call to KPPG members by reporting that proposals had not yet been exchanged but there would likely be a sizable gap between management and union positions when they would be presented. She expected the initial proposal exchange to occur sometime the next day (Tuesday).

There was considerable push-back from both the RPG and the KPPG members on these calls. Concerns over future budget and financial projections were emphasized. A desire for regional differences in across-the-board increases was repeated. Leaders in Southern California made it clear they wanted a lower settlement than Northern California. Considerable discussion occurred over how to group different regions for across-the-board increases.

As these phone conversations carried on, frustration was growing among the management team members in the room. It was clear that there was no consensus within management over either what should be proposed initially by the management team or the bottom line for the economic package. At one point Margolin suggested that since no proposals had yet been exchanged and that most likely there would be little progress to report on Tuesday night, perhaps they should not have another conference call until Wednesday evening. KPPG leaders balked at this and insisted on another update phone call on Tuesday. The call ended with an agreement to hold another conference call on Tuesday. As the call was about to end, Kathy Lancaster, the Vice president for Finance, asked Margolin to call her separately later that night. Margolin agreed to do so.

After the call ended, members of the management team that were in the suite participating in the call vented their frustrations with the KPPG members on the other end of the phone call. One captured the sentiment in the room succinctly: *"They just don't get it. Here we are trying to get this done and they are still trying to control things without knowing what will work and what is totally unrealistic."*

In a side conversation with Margolin later that evening, a member of our research team who sat in on the phone call meeting expressed a concern with the dynamics of the internal management discussions and the state of the negotiations process.

> *You are going to need someone to stand up on these phone calls and tell the KPPG leaders they are not going to get a settlement in the ranges they are talking about. Someone will have to call the question with them and it can't be just you. Who will do this?*

Margolin agreed but did not have an answer at that point.

Later that night Margolin had a long phone conversation with Kathy Lancaster. Lancaster had done more analysis of the costs of the defined benefit pension plan improvements the BTG had recommended and indicated that these would be much more expensive than originally estimated. She urged Margolin to try her best to avoid agreeing to these changes.

Developing Labor's Initial Proposal

The Union Coalition started talking about what they want in an economic package on Monday as well, and as in the management caucus, their discussion carried over to Tuesday. The discussion was free-flowing and at times disorganized. Each participant had a particular issue he or she wanted dealt with. It was not until mid afternoon of the second day that the Coalition put together its initial proposal.

Everyone in the room came to treat this first proposal as a "wish-list" (someone in the back of the room whispered to a research team member that they should write "Dear Santa" on the top of the proposal).

Tuesday: A Proposal and Response

Much of Tuesday was again taken up with separate management and union caucuses. Once again our research team sat through these sessions wondering why both the management and union teams were progressing so slowly in putting their initial proposals together. By mid day it was clear to us that both diCicco and Margolin were consciously going slow. diCicco had communicated to Margolin that the union was still at a rather high number and that it would take more time for them to put their proposal together.

Margolin began the morning caucus with a report on the phone conversations from the night before. Then the management team discussed sub-committee work of the night before. Most of the morning was taken up in further discussion over whether to have two or three regional groupings for their across-the-board proposals. A number of people continued to favor three groups, even though Margolin reminded everyone that in the 2000 negotiations the Union Coalition had a very hard time agreeing to a two group (California and all other regions) arrangement. She and several others made it clear that a three group differentiation would be an extremely hard sell with the Union Coalition.

After lunch, discussion turned to efforts to craft an initial management proposal. This went slowly. In mid afternoon, diCicco knocked on the door and asked to see Margolin privately. They met for about ten minutes. When Margolin returned to the management caucus she was clearly shaken. She reported the Union Coalition was ready to present its offer and that she could only describe it as *"extreme."* It would be totally unrealistic and way beyond anything anyone in the room expected the union to propose, even as an initial proposal. So now the question was how management should respond. Margolin asked for a short break to collect her thoughts on this question.

During the break Margolin went to the flip chart and began slowly outlining an initial management proposal as a counter to what the Union Coalition was expected to present. She described it to the management caucus when it reconvened. It was a very low proposal, included three regional differences, and some small amounts to be allocated to hard-to-fill positions. She asked for someone other than herself to make this proposal on behalf of the management team. She thought it would be better if she did not make the proposal but rather saved her voice for later in what was destined to be a back and forth traditional process.

Some thought it best not even to respond to what would be such a "blue sky" union proposal. The management caucus ended with a general consensus that it might be better to ask for a break after hearing the union proposal before responding and to then decide what should be said and who should say it.

The management caucus ended at this point but the Union Coalition still was not quite ready to meet. Margolin and a member of our research team and several others convened for a few minutes and she voiced her deep frustration with the process and said she was really offended by what the Union Coalition was doing. She asked for our thoughts on whether she or someone else should respond to the union's proposal. We urged her to do it and to say what was on her mind since it was clear that some emotional response would be needed to get this process moving. She agreed.

Right before they adjourned their caucus to present the proposal, diCicco gave a short speech about what they should expect as they went in to meet with management. He told them:

> *We have an extraordinarily large package here, and it has taken us a long time to get here. We need to think about how management will react. There is no way for management to detect what our priorities really are. It will be hard for them to take this seriously.*

<u>Labor Presents its Initial Proposal</u>

The joint meeting began with an opening statement by diCicco.

> *In preparing for this, we will remind you that this is our first occasion to present our objectives around the economic settlement. We looked back at 2000 and what we were able to accomplish. When we put that agreement together, Kaiser Permanente was coming out of difficult times. We look back and see that Kaiser Permanente has had outstanding progress and performance in recent years. Not all of that performance is from us but we do think that it is an opportunity for us to share in what has happened. [Regarding the strategic plan and the projection*

of difficult years ahead] Kaiser Permanente is not so good at projecting – at best it's a guess. Will these [market] pressures really hinder things, or will we have the performance we've had in the past several years?

diCicco then asked Bill Rouse to present the union's opening offer. The highlights of the proposal are summarized in Figure 8.

Figure 8
Summary of the Union Coalition's Initial Proposal

Retirement	<u>Plan A:</u> • with 1800 hours service • prorate at less than 1000 hours • long-term disability to age 65 • keep union leave provision • give short-term disability to Northern California and eliminate 30 days wait in Middle Atlantic states
Defined Contribution	<u>Benefits:</u> • BTG decided that a Defined Contribution plan is a good idea. • 2% in first year, move to 4 percent during remainder of contract • some employer match • eligibility would be either immediate with vesting or vested after 2 years • if someone has a DC now, they would be brought up to 2%
Retiree Medical	• eligibility at 62 and 25 years service – fully paid in all regions • surviving spouse gets benefit
Medical Benefits	• Dental - ortho in NW up to current maximum of $1000/yr (to be contracted out if needed) - everywhere else: raise ortho cap to $1500/year, and dental cap to $2000/year • Eliminate all premium sharing for .5 FTE or more • Flex plan - keep it but make some changes - no charge to economic package; cost neutral - ability to enroll and de-enroll each year - fully funded with credits - savings from flex plan should be applied elsewhere – to be decided • Maintenance of Benefits - need more extensive language, should cover all benefits - OB applies to all levels of flex, not just fully funded flex
Wages	• 6 percent ATB • All regions and classifications, each year of contract • Special adjustments – One time and Annual - special RN adjustment, all regions: additional annual 1percent
Performance Sharing	4 percent (increase of 1% from 2000 Agreement)
Holidays	MLK day: Add as a float holiday if bargaining unit already has it
Contract Specialist	1/1000 and no reduction of current levels if higher than this
'Workforce Development	Trusts funded at levels worked out in BTGs
Shift Differentials	11% evening, 14% night
Education Days	5 days for position that requires training 5 year agreement with 3-year reopener on economics
Local Equity	2% total

Management’s Response

After the union’s presentation, Margolin gave a dramatic speech. She started by saying that she honestly didn't know how to respond, and that the proposal was shocking and stunning and radically different from what they had expected. She said it was like they (union and management) were living in separate universes. She also said that labor's proposal misses the point of an interest-based process—that it does not address the interests of either side because if this proposal were accepted, many regions would immediately go out of business and even California would eventually get hit. She said if this is really where labor is in its thinking, then "*I don't see why we've bothered to engage 400 people over the past five months.*" Then she talked about how she's worked harder on this than anything else in her life, and how she doesn't plan on coming back after Friday if things continue this way. She ended by talking about how Kaiser Permanente is a much better employer than any other in the industry. Finally, she said it seemed foolish for management to present its proposal after what they just heard, and the management team then left for caucus.

Reactions to this joint session were profound. A number of the management representatives were visibly upset by the union proposal and made comments such as, *"We've been betrayed."*

On the union side, several veteran negotiators were equally surprised by what they viewed as an overly emotional reaction by Margolin to their opening offer. Some thought that she was putting on a show for her team. Others felt badly and even somewhat embarrassed by the size of the union’s proposal. Others thought this was just a normal start to real negotiations. As one union veteran put it: *"So we're high and they're low; what's the big deal? That's bargaining isn't it?"*

In a post-negotiation interview, we asked Margolin "How much was your impassioned and angry response to the unions’ initial offer a real statement of your feelings or designed to move the process along? She replied, "*Mostly to move the process along---some to reassure the management team, some to tell labor don't mess with us and waste our time, and some real frustration. Maybe one-third for each of these."*

Whatever its intent, the session in general and the speech and its reaction had the cathartic and catalytic effect of getting the tension building within each team out on the table. Without this type of release, negotiations would likely have remained bogged down. It sent all a message that there was a great deal of work to do if the parties were to get an agreement by the Friday night deadline.

Following the joint session Margolin opened the management caucus by saying the proposal was even worse than what she had thought it would be. Then discussion turned to whether management should go back with an equally low and unacceptable "position" or take the high ground and continue trying to negotiate with an interest-based approach. Some managers believed that many of the labor people felt "guilty" about the proposal because they weren't looking up while it was being presented. The group decided to go back to the Union Coalition and "take the high road"—that is, present their interest-based proposal as planned. But on their way out the door, diCicco intercepted Margolin and asked for a small group to meet, and the plan changed. There would be no joint meeting at that point.

Then there was a break for dinner. For the first time, there was no mixing of the two sides at the meal tables.

Post Cathartic Recovery

Early that evening a small group of union and management representatives—Leslie Margolin, Pete diCicco, Jorge Rodriguez, Alice Dale, Kathy Sackman, Carolyn Kenney, Judith Saunders, Marty Gilbert and MaryAnn Thode—met and each person talked about why they had the reaction they did (shock at the proposal and shock at the shock). Margolin and diCicco decided it was best to take this conversation public, and asked their teams to reconvene in a joint session at 10 p.m.

Mostly, managers and union leaders from the small group spoke. Managers talked about how they took the interests of both sides into consideration while labor didn't seem to care about Kaiser Permanente. They criticized labor for not prioritizing any of the BTG recommendations, for the huge equity requests, for increasing benefit plans when union member surveys showed members were happy with their benefits across regions, and overall for presenting a plan that added up to a 23 percent increase in the first year. Labor talked about what they saw as a breakdown in communication (they weren't aware they were supposed to prioritize) and countered the argument that they don't care about Kaiser Permanente as an organization. Most ended their remarks by saying they thought they could still come to agreement. Then most people went to bed.

That night the management team also had another telephone conversation with the RPG and KPPG leaders. Margolin and the management team reported the general terms of the union's initial offer. One of the management team members then reported on the "impassioned" speech Margolin made. The phone calls ended with an agreement to have another call on Wednesday night.

Management's Initial Proposal

On Wednesday morning management made its opening proposal to the union. The presentation was short.

As one management negotiator described it: It was as ridiculous (low) as the union's (high). The offer called for three market-based regional variations in the across-the-board increases and small amounts of money to be set aside for equity adjustments and for hard to fill positions. It also contained some money for a workforce development fund.

Labor asked lots of questions after the presentation. The fundamental issue was why the offer was less today than in 2000. There were questions about why workforce development was included in the economic package, why the return to market based wages when there was an effort to get away from this in 2000, why there wasn't an effort to close some of the gaps in wages between regions when it was clear this was the vision of where they were headed. One union leader made a comment that sounded like an ultimatum: *"Kaiser Permanente took some risks 5 years ago and it proved to be successful. If Kaiser Permanente isn't willing to take risks this time around, then we're not willing to take the risk of a long-term contract."*

When the Union Coalition met in caucus to discuss the management proposal Sal Rosselli [who had joined the negotiations that morning] started by saying: "*Now is a time to draw a line in the sand. We need to give them the opportunity to change – see if the political will is there – and if we need to, we can extend bargaining and cancel the weekend delegates meeting."*

There was a discussion of the possibility of walking out of bargaining. Many people noted that their members were ill-prepared for anything less than a major improvement in the contract, and that they hadn't been preparing members for a breakdown in bargaining. One union delegate said she could stop singing "*kumbaya*" at any time and break out the picket signs. Another tempered this discussion by saying that they wouldn't want to call off bargaining with the proposal they had put out thus far – and that they should continue to think about what their next steps should be. Though she also said this was a good lesson for the future: they needed to prepare their membership better for the possibility of a strike if bargaining should break down.

The mood of the management caucus was completely different. Where the labor caucus continued to be raucous and upbeat—given that most people felt secure in their chances in local bargaining, if need be—the management caucus continued to be somber. Margolin attempted to steer the group towards increasing the value of their proposal. She said that dividing the regions into three groups was a "non-starter." She said labor needed to make progress on closing the gap between regions, though they were unrealistic in what they were hoping for. They will accept no change in the eastern regions, but there has to be an increase in the across-the-board (ATB) in Southern California. She suggested two regions and a higher ATB along with some other changes that would narrow the gap in wages paid to certain Southern California groups.

Clearly, what was happening outside the room during these caucuses was as important as what was happening in the room, as Margolin and her smaller team met several times with a small group of union leaders. She used some of the private information from these sessions to suggest what might be possible and acceptable. But there were still discernable splits among management present at the table. After Margolin suggested these changes, there was resistance from several management team members. One key leader said that if it were up to her, she wouldn't sign the contract. An animated discussion ensued over whether or not to agree to equity adjustments that would bring Southern California closer to the Northern California level for various jobs. At one point a discussion in the back of the room turned to the issue of why should Kaiser Permanente buy into the SEIU strategy of raising wages for working people—*"won't this just lead to more jobs leaving the country?"* Discussion also turned to the question that had surfaced in some previous management conversations: Should they continue with national bargaining? Should they let Southern California negotiate its own agreement? Margolin pointed out that it might come to this but her sense was that SEIU would agree to an incremental (incomplete) narrowing of differences in regional wages in national bargaining but would not agree to the same incremental deal if they were bargaining separately with Southern California's leadership.

The rest of the day was taken up in caucuses and a number of smaller group and side bar meetings of union and management leaders.

Internal Management Negotiations—Building to a Crisis

Wednesday night's phone calls with the RPG and KPPG turned out to be as dramatic and intense as any internal management discussion any of us, researchers and management participants alike, had ever experienced.

Margolin reported that while progress was being made there were still considerable differences between labor and management proposals and that she still didn't have a clear authorization from top management on the amount of money available to deal with the equity issues of central concern to the union. The conversation then began to heat up as various KPPG members voiced their concerns when told the money on the table would not be sufficient to get an agreement.

Southern California leaders wondered aloud whether they would be better off negotiating separately.

Margolin responded:

> *We have killed ourselves for Southern California, standing up on attendance and your salary structure issues. In recent memory there is not one year where you in Southern California didn't say the sky is falling. If Southern California wants to drop out it would be terrible thing, more for Southern California than anyone. They (the unions) would strike you in a blink.*

Others on the phone call indicated that they could not see how they could meet their financial goals if they agreed to what the union was proposing. Specific suggestions were offered by KPPG members and staff for changes to a second proposal that management had presented to the union earlier that day. These suggestions were not well received by the members of the management bargaining team. They saw it as second guessing their judgments. At one point Margolin put the phone on mute and said to her colleagues in the room: *"Somebody has to tell them this is not a picnic."*

This prompted several back and forth comments among members of the bargaining team and KPPG leaders. Bargaining team members pointed out that they were using their best judgments and that the union coalition had modified their proposals considerably in the past day. Others pointed out that KPPG leaders simply had to trust that the senior managers sent to negotiate were doing the best job possible. Several KPPG members reiterated their concerns about reaching an agreement that would allow them to meet their budget objectives and to reflect market differences. Bargaining team members responded by noting they had gotten labor to accept the need for some regional differentials but that there was no way to move labor off the view that they should settle for less than in 2000.

After considerable back-and-forth dialogue, CEO George Halvorson summed up the options:

- *Go forward as is*
- *Negotiate separate contracts with each union*
- *Accept that all stay with a national contract except that Southern California Medical Group goes it alone.*

He went on to say:

> *I've seen other organizations with labor unrest and the costs of labor wars are horrible; they undermine morale. It is also a tough time to argue we are poor. If we are going to argue that then lets get back to traditional bargaining about work rules, etc. The peace we have had with the Partnership has been golden. I sympathize with concerns expressed about absenteeism and quality but instead let's think of what we can do with labor and use this as an opportunity to make change.*

After more heated exchanges (including back and forth comments on whether the 2005 negotiations were turning into a repeat of what happened at the end in 2000) George Halvorson asked Margolin, *"What do you need to get this done?"* After hearing her response he then went around the table of KPPG members and polled each to see if they were willing to authorize the amount Margolin thought would be needed and got agreement to go forward.

Push to Agreement

On Thursday the movement toward a final agreement began in earnest. diCicco began the morning union caucus by outlining on a flip chart what he saw as a potential framework for an agreement. There was considerable discussion of his outline. At the same time a number of side conversations were occurring among key management and union leaders. One critical conversation took place on Thursday that various people refer to as the "balcony talk" involving Margolin, Thode, and Rosselli. Issues discussed included the timing of the allocation of equity adjustment monies and conditions that would govern a mid-term wage reopener.

When union leaders returned to their caucus and presented the results of the "balcony discussion," non-SEIU union leaders exploded, as they believed that SEIU was only addressing its own interests at the expense of the others. This led to long discussions of how to rearrange the economic package to address the equity concerns of the other unions. At one point Margolin cycled back to reiterate that there was no more money available—management's best offer was now on the table. It was up to the Coalition to find ways to allocate it equitably.

Meanwhile, members of the management negotiating team were getting more and more upset, having to endure long periods waiting for the Union Coalition's response to their last offer. Some were threatening to give up and leave. Frustrations were high.

By this point the deadline for calling union delegates and instructing them not to come to Atlanta, an option the Union Coalition had been considering had passed. It was now moving into the middle of Friday night.

A final obstacle to an agreement then developed. The drafting team working on language governing equity adjustments ran into a problem with allocating funds to regions outside of California. After several hours of back and forth discussion of what to do, a breakthrough suggestion was made by one of the union delegates to set up a fund that could be allocated by joint labor and management agreement. The drafting team thought this would work. Having overcome this final hurdle, at 3:30 a.m. Saturday, only hours before the first union delegates would be arriving in Atlanta, the parties declared they had reached a tentative agreement.

Terms of the Agreement: Economic Issues

The agreement's provisions call for a first year across the board increase of 5 percent for Northern and Southern California, Colorado, and the Northwest and 4 percent in the first year for the other regions. The second and third years of the agreement call for 4 percent across-the-board increases in Northern and Southern California, Colorado, and the Northwest and 3 percent in other regions. A wage re-opener is scheduled to take place in year three to set the across-the-board increases for years four and five of the five year contract. A target of 3 percent per year is established for performance sharing improvements, continuing the approach and levels negotiated in the 2000 contract. The agreement also calls for a workforce development fund, equity adjustment monies, and monies set aside for designated hard-to-fill positions.

From the Coalition's standpoint, the economic dimensions of the settlement achieved some important objectives:

- creating a workforce development fund,
- getting across-the-board increases that reflected the financial success KP achieved in recent years.
- reducing differentials across regions for people doing the same work
- dealing with equity issues
- no reductions in health or pension benefits (while this is the common feature of bargaining in so many other negotiations around the country), and
- continuing the principle of performance sharing.

KP's management was successful in maintaining several key principles:

- having wages tied to regional/local market conditions and settling within the approved KPPG guidelines
- avoiding putting more money into the defined benefit pension program
- putting money into its hard-to-fill positions
- keeping the pay-for-performance target at the same level as in the prior contract and tying it to the "line of sight" design criterion
- developing a flexible benefit plan
- getting agreement for a defined contribution benefit plan tied to performance

The economic settlement evoked strong reactions among some top KP and Union Coalition leaders. For example, Dr. Jeffrey Weisz, Medical Director for the Southern California Region stated:

> *I was quite concerned that during negotiations, wage rates in Southern California would be escalated to match Northern California's wage structure. My concern was heightened since the Watson Wyatt survey demonstrated that our salary structure was 20% above the community. The number one issue in health care today is cost. We owe our members an affordable product. Now that Medicare reimbursement payment rates are due to be cut, the organization is concerned about balancing our budget. In addition, the contract has a reopener in year 3 and labor will most likely want another salary increase, and continue to migrate Southern California wages to match Northern California. We are in different markets, have different competitors and must deliver an affordable product. We grew 50,000 members in January, and must be able to deliver an operating margin that allows us to invest in new offices and equipment. Our past history has been that when money gets tight, we cut back in new capital expenditures and reduce operations. This will only lead to unsatisfied staff and members. We must guard against this.*

George Halvorson, CEO of the Health and Hospitals' Corporation put it this way.

> *We ended up pretty near the top of the industry in compensation; this doesn't make me uncomfortable as long as it doesn't adversely affect our premiums. I'd much rather have well paid employees, but there has to be a total package to make sure they are the most efficient in the industry or a high cost per employee will be untenable. The contract has provisions in it for us all to work together to create efficiencies and better service and it includes a major commitment to deal with absenteeism that wasn't in the earlier contract. So that's the type of issue that needs to be addressed; we can't have both the highest pay and high absenteeism.*
>
> *Now the challenge is to realize the benefits. The deal gives us a structure to help us do good things. So the next challenge is to take advantage of the agreements written into the contract to create the outcomes we want.*

Sal Rosselli, President of UHW, summarized his views of the economic terms of the agreement as follows:

> *It's perhaps the best contract we've negotiated with KP. The most significant part of the agreement is that we got somewhat away from market based criteria for wage increases. Having common across the board increases for Colorado, the Northwest, and for Northern and Southern California was really important to us. We eliminated market wage differences in Northern California—in three years, all workers will have the Bay Area wage scale. And we made progress in bridging the gap between Northern and Southern California in some of the other adjustments. We now have pretty much the same benefits in all of California.*

Other Critical Outcomes

The Agreement emphasizes the importance of integrating the Partnership structure with the ongoing organization of the business. The parties clearly took to heart the high priority labor and management representatives assigned to "accountability" going into negotiations. The 2005 agreement uses the term throughout the document, especially with reference to service quality, performance, attendance and joint marketing. One of the co-leads in the Performance Improvement BTG described the settlement this way: *"I think the emphasis on accountability, the overall commitment to performance of the organization, and the intention to move away from parallel structures, these are the big 'wins' for all of us."*

The commitment to implement unit-based teams as the standard delivery mechanism for performance improvement is also viewed as a major achievement. This is seen by most representatives as a step toward transforming the LMP from a labor relations program to health care delivery focused partnership. The language of the agreement is very explicit about the parties' determination to make this the standard approach to delivering health care. The 2000 agreement observed that parallel structures would be implemented as a transition towards integrated structures. By contrast, the 2005 agreement states quite clearly: "*Partnership should be the way business is conducted at KP. Partnership structures should be integrated into existing operational structures of the organization at every level."*

The agreement also highlights a term that did not appear in the 2000 agreement: "engagement." For example: *"Engaged and involved employees will be highly committed to their work and contribute fully . . . Engagement in the Partnership is not optional."*

Post-National Agreement Negotiations

The terms of the agreement proved more difficult to turn into specific contract language than anyone anticipated. This phase triggered considerable frustration for many union and management leaders and especially for those who were engaged in local negotiations. This was one of the most frequently cited criticisms of respondents who offered write-in comments on the post negotiation survey. Indeed, negotiation over the interpretation of what was agreed to in the "final" agreement continued for several months. One participant put it this way:

> *The process was loose and undisciplined at the end. There were three weeks of all-day calls where they were fighting over [contract language]. This is after the Delegates have voted, after the KP Board of Directors has met. I've never seen anything like it. And the worst thing is that something similar happened in 2000 and everyone said, we're not going to let that happen again."*

Nevertheless, the agreement was ratified by over 90 percent of the rank-and-file members who voted.

Local Negotiations

As soon as the main table negotiations were concluded in Atlanta, local negotiations began. In fact, cross-regional negotiations for SEIU involving several locals in California and separate locals in the Northwest and Colorado, had commenced during the intervening week between negotiations in Manhattan Beach and Atlanta. In total, local negotiations occurred at 44 separate tables, and involved over 1000 participants.

In general, local negotiations tended to be much more traditional than the interest-based methods that had characterized the national negotiations, especially for the BTG phase and early phases of the CIC. In several cases, such as in San Diego and in the SEIU state-wide bargaining sessions, participants used interest-based tools, including consensus decision making, and use of subcommittees to work on language issues. However, given the fact that for the most part, local negotiations were conducted by representatives who had not been involved in either the BTG or CIC deliberations, it was inevitable that the process would be more traditional. For example, at one local table in northern California, the union broke off negotiations and returned only after management indicated a willingness to propose substantially different options on two important issues: weekend rotation and posting of jobs that the union felt belonged within the bargaining unit.

For several local negotiations, critical issues developed that required the intervention of national leadership, specifically Atlanta and Denver. In the case of Atlanta, a serious issue developed regarding the timing of the across-the-board wage increase to be implemented for the first year of the contract. The union argued that the full 4 percent should be paid while management understood that the amount would be the difference between the wage increase implemented the previous Spring and the 4 percent. For Denver, tough bargaining occurred over the issue of health care for retirees and how to bring a unit of mental health workers under the terms of the contract (earlier this unit had opted out of the national negotiations but with details of the national contract known, this unit wanted back in).

In addition to dealing with issues unique to particular locations, the local tables spent considerable time translating the terms of the national agreement so that implementation could take place. The new program for attendance created just such a challenge. A member of management in Southern California noted:

> *We need clarity on the national contract. Someone needs to do a Q and A, especially on attendance in Southern California. Some managers in Southern California are saying that if everyone in a department asks for the same day to go to x's wedding, they're going to shut down the department. Ridiculous, but that's what they're saying.*

In other instances the terms of the national agreement did not apply to a local situation and the local negotiation had to grapple with "being left out." Again, an issue generated by the new attendance program, this time from the perspective of a labor representative:

> *6000 ETO/PTO [earned time off and paid time off] people have been disenfranchised - kept out of Attendance BTG from the beginning. They're punished for being on PTO in the first place and then a second time by being excluded for new Attendance Benefits. The benefits are substantial and they're out of luck. Talking Points on national agreement downplay this. But it's in the fine print.*

It is not surprising that given the various histories and unique features of the different labor markets across KP that the sorting out process that occurred at the local tables became a major task for the parties. For those on the front lines of local negotiations, however, the process was at times frustrating.

Views of the Process and Results

Respondents to the post-negotiations' survey were asked to rate their satisfaction with the process and results of national and local negotiations. The results are summarized in Figures 9-12 and below.

National Negotiations

The data in Figure 9 show that union and management respondents both report high levels of satisfaction with the effects of the national negotiations on the Labor Management Partnership (71 percent of union respondents and 62 percent of management respondents), use of problem solving and interest-based principles in negotiations (about 67 percent for both union and management respondents), and the increased respect and trust gained between labor and management (about 60 percent for both labor and management respondents).

Significant differences in satisfaction are observed in union and management responses to the other questions. Overall, union representatives tend to be more satisfied with these aspects of the process and the results of national negotiations then management representatives. Specifically, union members express more satisfaction regarding the reduced wage differentials across regions than the management representatives. Management representatives are significantly less satisfied regarding the aspects that were more essential to them, specifically with the ways the national negotiations process reflected the different market conditions in different regions, increased labor's accountability for organizational performance, reflected KP's projected revenue and intensified competition, and addressed both KP and workforce interests.

Figure 9
Satisfaction with National Negotiations Process and Outcomes

Based on your assessment of the process and results of national negotiations, how satisfied or dissatisfied are you that these negotiations...

Number and Percent Very Satisfied or Satisfied

	Union		Management	
	N	*%*	*N*	*%*
Strengthened and advanced the LMP	101	71	32	61
Reflected different market conditions in different regions	67	49	14	27
Increased respect and trust between labor and management	86	61	31	60
Increased labor's accountability for organizational performance	90	64	13	25
Reduced wage differentials in different regions	88	62	9	18
Reflected KP's projected revenue and intensified competition	74	54	18	34
Shared KP's financial successes in recent years	91	65	34	64
Used LMP problem solving and interest-based principles	96	68	35	67
Addressed both KP and workforce interests	102	72	27	51
Increased management's accountability for LMP	65	46	29	56

The same pattern is repeated on the bottom line question of satisfaction with whether the results of the agreement addressed each of the parties' key interests and priorities. Sixty five percent of labor respondents were satisfied national negotiations addressed their key interests and priorities compared to 42 percent of management respondents. These data are reported in Figure 12 below.

Respondents were also asked to rate their satisfaction with the provisions of the agreement pertaining to the work of the different BTGs and other special sub-committees (see Figure 10). Union and management respondents both indicated high levels of satisfaction with the results on workforce development (76 and 72 percent respectively) and a majority of union and management respondents were satisfied with results for work-life balance (57 union, 54 percent management), benefits (56 percent union, 53 percent management), and service quality (75 percent union and 54 percent management). Approximately half of both union and management respondents were satisfied with respect to scope of practice.

Again union respondents reported significantly higher levels of satisfaction than management respondents for performance improvement (73 percent union, 35 percent management), attendance and absenteeism (64 percent union, 31 percent management), service quality (75 percent union, 54 percent management), performance-based pay (61 percent union, 40 percent management), subcontracting work (52 percent union, 33 percent management), and implementation of KP HealthConnect technologies (50 percent union, 32 percent management).

Figure 10
Satisfaction with BTG Process and Results

The national negotiations process had "Bargaining Task Groups" and several subject specific sub-groups address the topics and issues listed below. How satisfied are you that the final agreement addresses the critical challenges facing KP and the workforce on ...

Number and Percent Very Satisfied and Satisfied

	Union		Management	
	N	*%*	*N*	*%*
Performance Improvement	102	73	16	35
Service quality	106	75	25	54
Attendance and absenteeism	89	64	15	31
Workforce/career development	107	76	34	72
Work-life balance	80	58	25	54
Performance-based pay	85	61	19	40
Scope of practice	68	50	21	49
Benefits	79	56	25	53
Subcontracting of work	74	55	14	33
Implementation of KP HealthConnect technologies	67	50	13	32

Source: Post-Negotiation Survey

Overall, the respondents seem to be less confident that these issues will be implemented when compared to their expressed satisfaction with the way the negotiations addressed these problems (see Figure 11). Less than forty percent of union respondents are confident of implementation of agreements reached on subcontracting and work-life balance while less than forty percent of management respondents are confident of implementation with respect to performance improvement, attendance and absenteeism, subcontracting, performance-based pay and service quality. These responses indicate the significant challenges that lie ahead in implementing the terms of the agreement.

Figure 11
Confidence Contract Terms will be Implemented

How confident are you that the national agreements reached on each of the following issues will be implemented effectively to achieve their intended results?

Number and Percent Very Confident and Confident

	Union		Management	
	N	*%*	*N*	*%*
Performance Improvement	57	42	12	26
Service quality	66	49	17	36
Attendance and absenteeism	60	43	14	29
Workforce/career development	58	41	22	45
Work-life balance	50	36	24	49
Performance-based pay	65	48	17	35
Scope of practice	56	41	24	51
Benefits	80	56	32	65
Subcontracting of work	37	28	16	39
Implementation of KP HealthConnect technologies	68	52	19	40

Source: Post-Negotiation Survey

Local and Regional Negotiations

Figure 12 compares satisfaction with several aspects of local and regional negotiations with national negotiations. Overall, union respondents report relatively similar levels of satisfaction with national and local negotiations with respect to their ability to surface and communicate interests and the extent to which the results addressed their key priorities and interests. They report somewhat lower satisfaction with the communications received about local negotiations compared to national negotiations. Once again, union respondents were more satisfied with all of these items than were their management counterparts. Management respondents also gave lower satisfaction ratings to their local negotiations compared to national negotiations.

Figure 12
Satisfaction with National and Local Negotiations

How confident are you that the national agreements reached on each of the following issues will be implemented effectively to achieve their intended results?

Number and Percent Very Confident and Confident

	Union		Management	
	N	*%*	*N*	*%*
Performance Improvement	57	42	12	26
Service quality	66	49	17	36
Attendance and absenteeism	60	43	14	29
Workforce/career development	58	41	22	45
Work-life balance	50	36	24	49
Performance-based pay	65	48	17	35
Scope of practice	56	41	24	51
Benefits	80	56	32	65
Subcontracting of work	37	28	16	39
Implementation of KP HealthConnect technologies	68	52	19	40

Source: Post-Negotiation Survey

The qualitative comments offered by respondents indicated that the biggest concern of local negotiators had to do with the decision not to allow local negotiations to deal with any monetary issues. 12 of the 41 qualitative comments about negotiations addressed this concern. The absence of equity money for allocation at the local level meant that as one union negotiator expressed the point "There was nothing left to negotiate." Another put it this way: "*How could national negotiations take away ALL of our bargaining tools without asking the very people that they were taken from? It seemed that there wasn't much our local negotiations could do with respect to pay, benefits."*

A number of local negotiators also were frustrated by their lack of input into what issues were dealt with at the national versus local levels as illustrated by the following comment: "*The national should not make decisions about topics they will negotiate exclusively, locking the local bargaining units from negotiating them, without notification to, and support from, the local units."*

This frustration was shared by many others involved in local negotiations. Approximately 10 percent of the qualitative comments offered by respondents to the post negotiation survey mentioned concern with the coordination of national and local negotiations.

V. Conclusions/Implications/Recommendations for KP and the Coalition

Implementing the Agreement

> *We need an implementation team this time around over the national agreement - taking more of a look at what is going on in the regions. They just weren't able to do that last time… there needs to be a team that absolutely finds ways to support what we bargained and agreed to, so we can achieve some outcomes. Hopefully over the next five years we'll find a way to do that.*

The above quote from a union representative captures the major challenge the parties now face. The effects of these negotiations will largely be determined by the success or failure of the implementation and follow through process. So many of the terms of the agreement, such as those addressing performance improvement, attendance, service quality, backfill, workforce development, among others, depend on the speed, quality, and breadth of implementing the practices recommended by the BTGs and included in the final agreement. The parties clearly recognize this and have moved quickly to develop an implementation plan complete with designated leaders and teams for different issues. Figure 13 is an excerpt from a memo sent out from top LMP leaders describing the importance of the implementation process and the implementation plan.

The judgment of the agreement by physicians will be especially influenced by whether or not the implementation process achieves concrete results. One leader made this point in very clear terms when asked how physicians are responding to the agreement and how it will affect their support of the LMP:

> "*Right now they see it as a very expensive settlement. Concerning the Partnership it is very simple: If they see improvements in attendance and productivity it will help and if not it will be the end of the Partnership from the physicians' point of view.*"

Concern about the agreement has also been expressed by management more generally:

> *There's no piece of data that suggests that we should have moved in the direction of equalizing area wage rates. And we knew that and we talked about it. It will be very hard to close the door now that we are marching toward wage parity in the two regions – this will bleed to other regions and threatens to put Southern California in an untenable position. They're already 16% above the market in compensation.*

Figure 13
Implementation Memo

December 8, 2005

… You are aware of the Strategy Group comprising of 32 of our Coalition, Management and Permanente Group leaders (please see attached roster), whose main charter is to set a clear strategy and recommend course corrections, as needed. The Strategy Group has chartered the Common Issues Action Team (CIAT) comprised of the four of us. The CIATs role is to work through issues and make the agreement a reality throughout Kaiser Permanente.

Implementation of the national agreement will proceed in the Regions and needs to be executed in the spirit of partnership that will set the tone for sustained success and pride. Three National Agreement components must be completed by Dec. 31: the new Educational Trust; the new Attendance program, which will start Jan. 1 in Southern California and throughout the year in other regions; and the 2006 Performance Sharing Plan. Your local support of these efforts will be critical to our overall success.

In major areas of longer term commitments, we will set up action teams with labor and management senior sponsors and labor and management team leads. Progress against our commitments will be reported to the Strategy Group monthly and the Board on a quarterly basis.

We are now in the process of establishing the Project Management Office (PMO) whose immediate goal is to finalize the senior sponsors' team leaders and teams, develop a robust but realistic action plan and create the necessary tools to assist with a unified and successful implementation in all the Regions. Our aspiration is to set clear and unambiguous accountabilities to ensure that Kaiser Permanente continues to lead our nation as the best place to receive care and best place to work.

Peter S. diCicco
Executive Director, Coalition of Kaiser Permanente Unions
Leslie A. Margolin
SVP, Health Plan and Hospital Operations
Lon O'Neil
SVP, Human Resources Kaiser Permanente
Anthony Wagner
VP, Office of Labor Management Partnership

We went into negotiations saying that the most important thing for management was to really get teeth in the performance side of the agreement. And that got ignored in all of the economic wrangling of the last week. And we ended up without what we said was most important to us. The overall cost of the deal is too high - there's so much other program cost and infrastructure and resource cost and systems and data cost that are baked into our commitments.

Especially given the fact that we left without any greater performance criteria, we should have said we give only if we get measurable performance outcomes.

However, other executives view the settlement differently:

There are skeptics who only look at the cost numbers and aren't as confident that the commitment of labor is there to deliver on performance improvement and the Partnership. When we talk about gains we should not talk about them in terms of how performance improvement will pay for the agreement as if it is all within the box of the agreement. I think we're able to talk about it in terms of how this will help our strategy to really work. So this is how KP HealthConnect really achieves the potential that it has to transform care. This is how we really get to a very different place in terms of customer service.

One of the most important outcomes of these negotiations is the social capital built up among those involved. In interviewing members of management, we were impressed that many individuals who have heretofore not participated in labor relations came away convinced of the potential power of the Partnership. In effect, these individuals had a type of learning and perhaps conversion experience by being involved in the negotiation process. One management member of the CIC reflected on the value of the experience:

I took the time since my union counterpart was also on the CIC. He and I took the time to really get to know one another. We had some lunches. We had some away time from the CIC. I have an appreciation of where he is coming from. I actually believe that he has an appreciation of where I am coming from too. It's not that we're going to agree on every issue but I think, I know, that I trust him and I would like to say he trusts me as well. I think that's the other pillar of the Partnership.

And a similar comment from another management member of CIC:

A big outcome from the 2005 negotiations is that a whole generation of leaders on both sides went through the process together. We had some senior people who intellectually had learned about the Partnership and understood the ideas behind it but hadn't really engaged in this way around it. I really hope we can build on that. I told George (CEO) and the board that we ought to look at participation in national bargaining as an essential step on the road for any rising leadership talent on the management side even though it's only every three or five years.

The social capital built up in negotiations is an asset that, if drawn on, should help the implementation process, given the support of those who participated directly in the negotiations for the key concepts (accountability, integration, and performance) included in the agreement.

A Benefits' BTG?

Many have commented in retrospect that benefits should probably not have been delegated to a separate BTG. We see two alternatives: (1) keep benefits at the CIC level with wages, (2) have a BTG address the economic issues of wages and benefits together so that the full package of economic issues gets discussed and analyzed in one group. There are some advantages and disadvantages to both options.

The obvious advantage of option one is that ultimately the economic issues need to be negotiated by a central table and cannot be delegated. The advantage of having some group such as a BTG discuss the basic economic issues prior to the final weeks of bargaining are equally obvious—tough issues can get identified earlier; more joint research/analysis of data can occur without commitments, and more time can be allocated to these issues before the deadline looms.

We see considerable merit in the second option, especially since the parties have established the practice of sharing so much financial data. A joint committee tasked with analyzing these data and presenting a report to the CIC could be useful in identifying areas where expectations and analysis are aligned and where the parties differ in their interpretation of the economic/financial data or on their implications for negotiations. Had this been done in 2005, the sizable gap in expectations might have been identified earlier in the process as an issue that needed attention.

Size and Scope of BTGs

The number of participants in the BTGs was very large, and any conventional advice on problem solving groups would say they were too large. However, the size and make-up was determined in part for political reasons, to provide a voice for a broad range of constituencies and linkages back into the different regions. Some respondents to the BTG survey, for example, suggested involving more supervisors or line managers who were knowledgeable about the workplace issues being addressed. So keeping the size of these groups small will not be easy.

On average, 72 percent of the BTG survey respondents felt the size of the BTGs was "just right." The other 28 percent felt they were too big (no one reported they were two small!). The one exception to this overall average was in the Workforce Development BTG, which with 39 people was the second largest group after Benefits. For this group the percentages were essentially opposite the others: 71 percent felt it was too big and 29 percent felt it was about the right size. These data suggest that the mix of members participating in a BTG is more important than keeping the size to a small number consistent with research evidence on effective problem solving groups.

The BTGs performed two important functions. One was to generate ideas and substantive recommendations for ways to solve the problems associated with its mandate. The second was to build social capital and political support for the recommendations among those constituencies that have an important stake in the issues involved. Meeting both objectives means that the BTGs need to be larger than is optimal for a traditional problem-solving group or a subcommittee in more traditional negotiations. As the Workforce Development and Benefits numbers suggest, however, going beyond 35 members may be stretching the limits.

BTG members had more mixed views on whether the scope of their charter/mandates was too broad or about right. A majority in all but two BTGs, Performance Improvement and Scope of Practice, reported the mandates to be about right. Some of those interviewed following negotiations suggested that more direction from the CIC would have been helpful in sorting through the different issues that were raised in BTG deliberations. There was wide agreement (over 80 percent across all BTGs), however, that having CIC members participate in and help lead the BTGs was an improvement over having them present but not lead them in the 2000 negotiations. As noted earlier in this report, having key CIC members present in the Attendance and Workforce Development BTGs proved to be especially helpful, given the importance of these issues to the overall negotiations.

BTG Processes

Some BTG members felt too much time was spent at the beginning on training and emphasizing the interest-based process. Others, including both chief negotiators, disagree strongly with this view, arguing that unless adequate time is spent up-front on training, these problem-solving processes tend to break down. We generally agree that common training is critical to effective use of interest-based processes, even for those with prior experience with these tools. By going through the training process together everyone can hold others accountable for using the tools effectively.

We did, however, observe several points where we felt a BTG was too focused on following the standard procedures. This was most visible around the times just prior to the two interim report outs to the full BTG/CIC gathering. A considerable amount of time was spent in discussion of what type of presentation to make rather than on the substantive tasks and issues at hand (this changed by the time of next-to-last report outs, when it was decided – by the CIC – to have co-leads do the presentations in order to save time for more substantive work in the BTGs).

In other instances, opportunities to delve deeper into substantive issues were missed because the parties and facilitators felt compelled to stick to the planned process, e.g., when protocol indicated they should be identifying interests, not generating and analyzing options. This led to frustration on some BTG participants' part, feeling the process constraints were overruling their considerable experience in both negotiations and problem-solving.

One feature of the IBN process that needs further development is how to handle emotional tensions that develop as the process unfolds. From time to time we observed caucuses in which labor or management BTG members would express considerable frustration with the process. But adherence to IBN protocols provided no ready outlet for these tensions in the joint sessions, so they tended to remain simmering under the surface. The Benefits BTG addressed this problem by organizing a dinner meeting where members laid out their frustrations with each other and with the process. This opened the door to significant progress the next morning. Since IBN processes do not eliminate emotions from negotiations, options for channeling emotional tensions should be developed in the training and the deployment of IBN in the future.

Another issue that arose from time to time was how to use caucuses by the union or management teams. The general principle was that caucuses could be called but only as needed, and that the caucusing party would report to the other party the reason for their caucus and the general issues discussed (but not necessarily the content of the discussion). Margolin and diCicco had to intervene in one BTG when the union team got in the habit of caucusing each morning prior to the day's first joint session. This routine use of caucuses in an interest-based process had the predictable effect of increasing distrust and limiting the problem solving potential of the process. The process improved in this BTG after the morning caucus routine ended.

Facilitating the BTGs

BTG participants recognized the value and rated highly the skills of the lead facilitators of their groups. Between 80 and 90 percent of respondents were satisfied or very satisfied with their lead RAI facilitators. The facilitators were well-versed in the techniques of interest-based negotiations and problem-solving and performed an incredibly valuable role in keeping the process on course. Quoting from our field notes:

- They know how to summarize and move the process forward.
- They take the days' work and by the next morning arrive with a summary.
- They show considerable flexibility – often modifying or abandoning a format that they have proposed to ensure that the group takes ownership for the final product.
- They are creative in providing a road map for the work of the BTG's. One facilitator used the metaphor of building a house; another used the image of constructing an auto and the sub group that was working on departmental based teams returned to the full group with their "steering wheel."
- The facilitators met frequently off line to insure that overlaps and handoffs of topics from one BTG to another proceeded smoothly. The handoffs did not

involve "throwing an agenda item over the wall" to another BTG but a negotiation to ensure acceptance and ownership.

The parties were less positive about the use of joint RAI and FMCS facilitator teams, indicating that one facilitator per BTG group might be preferable to avoid shifting styles and personnel. This observation is not unusual. The history of joint mediation efforts in collective bargaining is less than positive, except in special cases where the mediators develop a clear division of labor and bring different expertise to bear on the substantive and procedural issues involved. We will comment on potential alternative third-party models for mixed interest and traditional negotiations involving multiple parties of interest below. For now, it is sufficient to note that the parties might rethink not whether facilitation is needed in future negotiations but who is best suited to carry it out in a fashion consistent with the training provided and the requirements of the process.

CIC Deliberations: Mixing Interest-Based and Traditional Negotiations

Deliberations within the CIC reflected a mix of interest-based and more traditional negotiations. This should be expected, given the reality of both shared and separate interests and given the divisions of interests and attitudes and relationships within both the management and union teams. So the fact that bargaining took on more traditional patterns as the parties addressed economic issues, and as the deadline for an agreement approached should be viewed as neither a failure of the process nor surprising. The real issue here is how well prepared were the parties to engage in this mixed process, and how well was it actually carried out.

In hindsight, most participants interviewed after the negotiations were completed felt that not enough time had been allowed for bargaining over basic economic issues. Some felt that at least one additional week should have been allocated to the CIC's calendar. Several factors were at work. For one, an unexpected amount of time was required to resolve the attendance issues when the CIC met in Manhattan Beach in mid-July. Part of the problem may also have been underestimating the size of the gap between labor and management expectations and time horizons; that is, labor was looking at past financial performance and management was looking at future market trends and financial projections. Finally, there was the "surprise" element that some on the management team experienced when the Coalition presented what management viewed as an extreme initial proposal. Some managers saw this as a setback for the process. While they recognized that bargaining over economic issues would be tough, they felt the experiences in the interest-based processes that characterized negotiations up to that point would carry forward in bargaining over economic issues.

Could these differences in substantive and process expectations have been surfaced earlier? Would doing so have helped the process by providing more time to negotiate these issues and reducing the surprise effect? While we cannot answer these questions definitively, one option for future consideration would be to make more complete use of the tremendous amount of information available to the parties by chartering a task force—another BTG—to prepare reports analyzing the different sets of economic data. Data on past financial performance, future market trends and financial projections, comparative salary data and data on collective bargaining settlements of comparable occupational groups in health care were assembled and at some stage discussed. However, it was clear that they were interpreted differently by labor and management representatives. Having a joint task force prepare a single report that identified areas of consensus and areas of disagreement in interpretation of the data would provide a means of assessing the areas and size of differences in expectations at an earlier stage in the process. If done in the BTG phase of the process, it would provide more time for the parties to close the gaps in their expectations. It would also serve to identify and put on the table explicitly any differences that exist within the labor and management teams, thereby providing more time to resolve these differences.

Facilitating/Mediating Multi-Party Negotiations

These negotiations featured the most intensive intraorganizational bargaining that we have ever witnessed. All negotiations have strong internal negotiations features—both within unions and within management organizations. But these were especially intense on both sides of the table. Indeed, it may be more accurate, and helpful in designing the role of third-party facilitators and mediators to think of these not as two-party but as multi-party negotiations.

Two stereotypical models of third party assistance are now well established in collective bargaining: traditional mediation for traditional negotiations and facilitation for interest-based negotiations. While both recognize that internal conflicts are common in collective bargaining, both are built on a two party negotiating model. Not surprisingly, neither model played a major role or fit well with the final stages of the 2005 negotiations. There were multiple parties of interest within the Union Coalition and within the Kaiser Permanente management and Permanente medical group leadership. If, as we would expect, these divisions persist, mediation tools suited to multi-party negotiations may have value in future negotiations. For example, single-text mediation has been used successfully in international negotiations involving multiple (more than two) stakeholders or interested parties. Single-text mediation calls for a mediator who is well-acquainted with the issues and the multiple parties' interests to draft an initial proposal that attempts to address and/or bridge the different interests. The parties are then asked to not just indicate aspects of the proposal with which they disagree but to also propose alternative ideas and/or language that would be acceptable to them and that they believe could be acceptable to the other parties of interest. This iterative drafting/redrafting process continues with the active assistance of the mediator until all parties can accept the terms proposed. Whether this type or any third party role would have been helpful in this case is hard to say, but clearly others could be considered for the future.

It took extraordinary effort and intense negotiations on the part of the management negotiating team and leaders of the KPPG and the NLT to overcome their different interests and points of view to empower the management negotiating team to put their final offer on the table and move toward an agreement. The persistence of differences into the latter stages of negotiations reflects the division of authority built into the KP governance structure. Resolving them required the highly skilled intraorganizational bargaining and leadership displayed in the management phone calls that took place on the final evenings in Atlanta. These differences in points of view will likely continue within management given dispersed authority and mix of interests and perspectives embedded in the KP structure. The question is: can these internal differences be addressed at an earlier stage of negotiations or addressed more effectively than was the case in 2005? One clear improvement would be for the key management parties to be together physically in the final stages when tough decisions need to be made. The phone conference call mode of communications is highly problematic for making critical final decisions.

Differences persisted within the Union Coalition up to the near end of bargaining as well. The differences that persisted reflected the heterogeneity of occupations, regions, and unions inside this Coalition. Like the management team, to resolve their final differences, the union negotiating team needed the pressure of the impending deadline and strong management statements that the best offer was on the table and no more money would be forthcoming. It is tribute to the Coalition and its leaders that the difficult equity issues were addressed in the final stage of negotiations with SEIU agreeing to reallocate monies to deal with specific problems of different unions/regions. This is another example of intraorganizational bargaining at its best. Still, however, some non-SEIU representatives left negotiations feeling that their interests did not get the attention they deserved in either the process or the outcomes of bargaining.

Having said this, there remains significant internal tensions and some dissatisfaction within the Coalition and there remains a concern that SEIU aspires to be the dominant or even exclusive health care union. This tension will need continuous management and negotiation as the parties go forward. While some additional consolidation of locals and even perhaps across national unions may occur, it is equally clear that a number of groups, nurses in particular, will continue to insist on having their separate unions and the Coalition will need to continue to work on internal, cross-union relationship building and maintenance.

The Role of Communications in Bargaining

All parties, both separately and jointly, felt it desirable to regularly communicate with constituents and principals regarding the negotiations. A variety of web-based and hard copy publications and other tools were developed the LMP Communications' Team and used throughout the negotiations' process. These included:

- *Inside Out*—a communications tool developed for the CKPU

- *Bargaining Notes*—a communications tool for management
- *At the Table*—a communications tool for both management and labor groups

Existing publications such *Hank*, the LMP's magazine, carried articles prior to, during, and after negotiations commenting in very frank fashion on both the process and results of negotiations. In addition, an hour-long documentary has been prepared that draws on the many hours of video-taping of negotiations.

A good deal of informal communications complemented these formal tools. For example:

- Most union members of the BTGs held meetings back at their places of employment with other stewards between sessions of the BTGs.
- All union representatives reported on developments as they "made their rounds" and interacted with union members face-to-face.
- One of the leaders from UHW, after each BTG meeting, held a conference call of all chief stewards.
- On the management side, all of the co-leads from the BTGs participated in a telephone conference after each BTG session.
- One of the management participants from the East estimated that six phone and or video conferences had taken place during negotiations with presidents and medical directors from the three Eastern regions: one prior and two during the BTG phase and three during the CIC phase.

In our post negotiations interviews we asked union negotiators how they kept their members abreast of what was going on in negotiations. One summarized how this worked:

> *We used the Inside Out publication. We also had the other documents that were produced at the table and we have labor liaisons at each facility responsible for making sure information is disseminated to our stewards and then they distributed it to all the rank in file. They were also aware of the website that they could go to. We didn't do any particular independent communication to them outside of what was already being produced by the Coalition. And then when we had our ratification meeting we posted all those publications on the walls where people could look and see what was in the agreement and they were quite amazed at the communications that had come out - even those that hadn't pay any attention. Because most rank-and-file members are just complacent - they don't care.*

A similar task is present on the management side as well, as illustrated by the comments of this participant:

> *When I was back in the region, I would attend executive council meetings. So there is the head of the medical group, head of the health plan, various senior leaders ready to receive updates. My problem was putting those updates in a*

context that they could follow. It was a funny spot to be in. I wanted direction from the group and I certainly wanted input but what I didn't want was a lot of, "thou shalt nots" and you have to do this and you can't do that. These statements could definitely get in the way at bargaining.

Similarly, the challenge facing lead management negotiators was to find ways in their briefing of key decision makers to convince them to authorize the resources that they felt would be necessary to reach agreement. One of the lead management participants, who was privy to these high-level briefings, had this to say about getting the attention of top management:

I think we did a much better job in 2005 than in 2000 on the management side in communicating with key people behind the scenes. There would be formal points when Leslie would report to the National Leadership team, to the regional presidents, and to the medical directors. But when we reached the CIC phase, there would be nightly contact about what issues were arising. Unfortunately, the communication with these key people often got squeezed into the end of agenda that were covering many other items of business. The result was that when we got down to the final stages, we had to do a fair amount of reminding people of where we had started, what our original management objectives were, and where we were with respect to achieving them. The difference for me is that when union people report out, the people they are reporting to do not have many other issues on their minds. But for the managers we were talking to, our report was only one of the many important things they were worrying about.

It is interesting to follow the "paper trail" from the content of the 2005 agreement to the information presented to the rank and file at the time of ratification. The briefing document developed by the Coalition mentioned the themes of unit based teams and integration but said nothing about engagement, flexibility or accountability.

In turn, the briefing paper prepared by UHW makes no mention of any of these themes – rather it focuses attention on the economic elements in the agreement. It does draw attention to the SEIU Master agreement and concludes: *"Having the same expiration date places us in a position that guarantees that Kaiser Permanente will listen to us now because we are in a partnership but also in the future because we have significant power."*

VI. The Bottom Line

Will the 2005 negotiations be viewed as historic an achievement as were the 2000 negotiations? The answer could well be yes. The following are among the impressive features of the 2005 negotiations that, taken together, could warrant viewing the 2005 negotiations as another historic achievement.

- The parties held together and managed extremely diverse interests within both the labor and management organizations and resolved their internal differences sufficiently to reach an agreement. The difficulty and significance of this achievement should not be under-estimated. Given the diversity of interests and priorities within both parties, the external developments in the labor movement that were outside the Coalition members' control, and the different perspectives and challenges perceived as critical across regional executives and medical leaders, these negotiations could have easily ended in an impasse or a breakdown of national bargaining. It is a tribute to the commitment and skills of those at the bargaining table, and other leaders who shared decision-making responsibilities within the various organizations involved, that they resolved their differences and enabled an agreement to be reached.

- The parties once again designed and implemented an innovative structure and process for engaging large numbers of management and labor representatives in problem-solving processes on the critical issues facing Kaiser Permanente and the workforce. The problem-solving that took place within the BTGs and the CIC sets a benchmark for others that use the tools of interest-based bargaining. Moreover, the scope of issues addressed went way beyond the legal limits of our nation's labor laws and therefore demonstrate to others both the irrelevance of these legal doctrines today, and the value that can be generated when labor and management are not constrained by outdated concepts of "mandatory and non-mandatory" subjects of bargaining.

- The parties generated an enormous amount of social capital and a shared vision for moving their Labor Management Partnership on to its next stage and level of development. Absent the national bargaining forum, some alternative venue would have had to be created to craft and shape this vision and shared commitment. National negotiations provided the natural setting and created a sense of urgency needed for the parties to address issues central to the future of the Partnership.

- The parties mixed interest-based and more traditional negotiations processes in ways that allowed them to both achieve important shared interests and bridge what was clearly a significant gap in expectations over conflicting interests on wages and benefits without either the threat of a strike or a pause in partnership activities.

- Traditional bargaining has historically relied on a firm deadline to motivate movement to an agreement. This case was no exception. Having a deadline—the union delegates were coming to town—did focus efforts and create pressures that were needed to resolve final differences on economic issues.

- The parties achieved a significant substantive breakthrough by agreeing to a new joint workforce development fund and process. Moreover, they avoided both cutting benefits, as is so common in negotiations around the country today, and adding costs to those parts of the benefit package that could pose significant liabilities in the future.

- The negotiators addressed a tough problem—absenteeism—and came out of negotiations with a shared commitment to translate the new language into concrete improvement on this critical issue.

- Throughout the negotiations, both union and management showed a determined commitment to the objective of improving KP performance. This was a driving factor in the negotiations.

- Unlike other relationships where Partnership activity often stops as tensions around contract negotiations rise, this was not the case in these negotiations. So, in addition to the prospective influence of the Agreement on the Partnership and on important deliverables, the negotiation process was conducted in a way that allowed the Partnership to continue without interruption over the roughly six month period devoted to the 2005 negotiations.

- Throughout the negotiations we observed numerous examples of the payoffs to the deep trust, open and honest communications, and mutual respect that representatives carried over from their prior working relationships or developed in bargaining. This is one of the most important dividends of the parties' decade long Labor Management Partnership. The trust and mutual respect we observed in these negotiations set a very high benchmark for others to meet.

It would be easy to view these as adding up to an historic achievement in labor management relations, especially when compared to the rather dismal state of labor relations one observes in America today. However, as the post negotiation survey and interview data suggest, there are significant numbers within management that are less satisfied with the agreement and less confident than their union counterparts that the key provisions of the agreement will be implemented effectively. Because of these concerns, and the importance of the qualitative terms of the agreement, we believe whether or not the negotiations are recorded as historic will all depend on the quality, speed, and breadth of follow-through and implementation of the new provisions in the contract.

It is very unlikely that as good a settlement could have been achieved (for management, the unions, or the various interests within each of these two groups) through separate negotiations by or with separate unions. The result would likely have been more differentiation across regions and across occupational groups. This in turn would have made negotiations of other occupational groups difficult. The threat or reality of a work stoppage would have been much more salient in separate negotiations than was the case in national negotiations in either 2000 or 2005.

However, all the achievements noted above will pale in comparison to the critiques that will come if the shared sense of purpose and the vision embodied in the formal language of the agreement are not realized. The language of the 2005 agreement provides the platform for the Partnership to transform the delivery of health care across the Kaiser Permanente system and to transform the Labor Management Partnership from one focused on improving labor management relations to one that is centered on improving the delivery of health care. If the parties follow through and translate these words into actions on a broad scale, the 2005 negotiations will not only be viewed as another historic achievement in labor negotiations, they will be viewed as a pivotal turning point in the delivery of health care at Kaiser Permanente, and perhaps as a model for addressing the health care crisis in America.

If, on the other hand, the absenteeism initiative fails to work, the performance improvement and unit-based teams are slow to spread or produce only sporadic results, the KP HealthConnect technologies are either slow to be implemented or are implemented in ways that fall short of their potential, the internal tensions within the Coalition lead it to implode, the divided management structure and different levels of support among managers and physicians continue to slow or block the Partnership from reaching its full potential, then the 2005 negotiations and the achievements listed above will only be a footnote in the history of labor relations and labor management Partnerships.

So the question of how these negotiations will be ultimately judged now is in the hands of the teams that will implement the agreement.

Appendix A
Issues Reserved By or Referred To By the Common Issues Committee

1. HRIS Process Consistency Recommendations
2. Employment and Income Security
3. Labor Relations Subcommittee Items
    - Mandatory Overtime
    - ATB Escalator
4. Joint Marketing Recommendations
5. LMP Governance Structure
6. LMP Trust Funding
7. Joint Education Trust
    - Structure
    - Funding
8. Pathways to Partnership Document
9. Workplace Safety Recommendations
10. Subcontracting
11. Maintenance of Benefits
12. Issue Resolution and Corrective Action
13. Term of Agreement
14. Accountability Local v National v Regional
15. Local Referral
16. Contract Implementation Planning
17. Wages
    - Overall Wage Structure
    - Equity Adjustment Rules
18. Benefits

Appendix B
Summary of BTG Recommendations in the Final Agreement*

<u>Performance Improvement</u> (Management CIC Co-Leads: Ray Baxter and Carolyn Kenny) – KP and the Coalition unions are committed to the enhancement of organizational performance so that working in Partnership *is the way we do business*. Under the 2005 National Agreement, we will work together to:

- Develop and invest in people, with special emphasis on development of and investment in managers, supervisors and union stewards.
- Engage employees at all levels.
- Align the systems and processes that support the achievement of organizational and Partnership goals.
- Recognize and reduce parallel structures.
- Ensure joint management-union accountability for performance.
- Grow membership.
- Redesign work processes for improved effectiveness and efficiency.
- Develop and foster unit based work teams.
- Share and establish expectations regarding broad adoption of successful practices in areas such as service, attendance, workplace safety, workforce development, cost structure reduction, scope of practice, and performance-based pay through a system to be administered by the National Operations Team.

<u>Attendance</u> (*Management CIC Lead: Marty Gilbert, M.D., supported in final CIC design development by Ray Baxter, Jane Finley, Carolyn Kenny, Keith Shultz, and Mary Ann Thode*) – Sick leave is recognized as a benefit, not an entitlement, and is essential to employee well-being and program performance. Good attendance contributes to quality and continuity of care, improved organizational performance and cost structure, efficiency, member service, employee and physician morale, and workplace safety.

The national agreement provides a comprehensive, multi-faceted solution that addresses the root causes of poor attendance. This solution encourages significant reduction of excessive absenteeism and offers an integrated approach to chronic and recurrent health issues. It provides a benefit change with increased flexibility of life balance days so employees aren't inclined to rely on sick leave when they need time off for other reasons. With this benefit change, employees can create a sick leave bank in the event of long-term illness. The solution also includes an annual cash-out option for unused sick leave as an incentive to decrease "casual" use of sick days. A process to help managers plan and budget for backfill is an integral part of the attendance solution.

The attendance program is sponsored by KP's National Leadership Team, regional presidents/medical directors, and Union Steering Committee members, who are all charged with anchoring a chain of accountability for attendance policies that extends to the work-unit level. The National Attendance Committee will develop timelines, goals, and performance expectations for the attendance program.

Wages and Benefits (Wage negotiations were reserved for, and addressed by, the entire management CIC, led by a CIC subgroup that included Marty Gilbert, Carolyn Kenny, Judith Saunders, Mary Ann Thode, and Leslie Margolin. Management CIC Co-Leads for benefits were Keith Shultz, Mary Ann Thode, and Tony Wagner.) – The agreement allocates the total economic package across wages and benefits and separately addresses training and other programs which support our compensation structure in their focus on retaining existing employees, attracting the next generation workforce, and reinforcing organizational performance.

The total compensation package supports improved rate and market position while considering regional variations and the need to strengthen existing markets and expand into new ones. The agreement achieves management's objectives of eliminating regional equity pools (which, in 2000, proved inadequate for some unions and created windfalls for others) and, in fact, succeeds in addressing all economic issues at the national table, referring to the local tables only the region-specific, hard to fill, job classification categories precisely as identified and requested by management. No other economic issue, unless specifically referred by the CIC, can or should be raised at either the UHW/SEIU cross-regional table or at any local table. Additionally, the economic settlement is within the range of health care industry settlements over the past few years and is within the levels of authority granted to the CIC by the KPPG.

Particularly important to achieving management interests are the planned design and implementation of a flexible benefits program that, for the agreement term, will be an option employees may choose annually. Also introduced this year in support of a key management interest related to recruitment is a defined contribution plan across the nation. The economic package includes significant performance ties, recognition of market distinctions in the ATB (across-the-board) increases for our three eastern regions plus Texas, and, as noted above, market-based distinctions for all markets with respect to addressing the issues management brought to the table relating to "hard to fill/hard to recruit" roles.

Performance-Based Pay (Management CIC Co-Leads: Beth Roemer and Chuck Phillips) – Management's critical interest in preserving performance-based compensation programs and enabling them to be more localized and focused on line-of-sight performance was achieved by this team. The current plan, designed under the 2000 Agreement, was recognized by the BTG and CIC as a cutting edge plan to be preserved. Enhancements include enabling local plans, minimizing the number of targets, giving the design team strong guidance regarding the preference for outcome versus process measures, and maintaining the original self-funded plan design and clarifying that operating margin shall be the funding mechanism for the plan. Final design details and roll-out plans will be addressed by a joint team accountable to the LMP Strategy Group (which includes several union presidents, all Regional Presidents in LMP regions, representatives of the Permanente Medical Groups and the Permanente Federation, and several members of the NLT and OLMP).

Scope of Practice (Management CIC Co-Lead: Kerry Kohnen) – Management wants to ensure that the terms and conditions in current agreements support compliance, don't put KP at risk of non-compliance with regulations, and create career development opportunities for employees to practice to the full scope of their licenses. Formally acknowledging that management retains the ultimate decision-making right and responsibility for scope of practice issues, the agreement provides the following:

- KP and representatives of Coalition unions will work in partnership to address Scope of Practice issues.
- Education/training programs will be developed and deployed throughout the organization.

Service Quality (Management CIC Co-Leads: Judy Lively, M.D., and Peggy McClure) – KP and the Coalition unions are committed to making KP the recognized leader in service quality. The agreement includes many elements, some of which are:

- Support of unit based teams that will be involved in point-of-service decision making, service-related training, and deployment of service-related teams.
- Universal accountability for service quality.
- Inclusion of a service component in all job descriptions, performance evaluations, and job competencies.
- Recognition.
- Metrics programs that measure service quality.

Work-Life Balance (Management CIC Co-Leads: Jane Finley and Corwin Harper) – Healthy employees who have work-life balance are more effective overall and in their contributions to KP's success. The agreement provides the following:

- We will work together to extend the Care Management program to KP employees with conditions such as diabetes, obesity, chronic pain, and smoking addiction.
- A plan for acknowledging Martin Luther King, Jr., will be designed in year one and implemented in year two.
- We will designate a KP Recognition Week celebrating our founders, Henry J. Kaiser Permanente and Sidney Garfield, M.D.
- On the Friday before Memorial Day, employees of KP may conduct a program to recognize and honor deceased employees.
- Human Resources, nationally and regionally, will have a more visible and more formalized role with respect to overseeing work-life balance efforts across the Program.

Workforce Development (Management CIC Co-Leads: Judith Saunders and Angela Corbin, M.D.) – KP and Coalition unions agreed to jointly develop and launch a comprehensive Workforce Planning and Development program with four key components: Workforce Planning, Career Development, Retention/Recruitment, and Education/Training. This work will be undertaken jointly through a Program-wide Workforce Development structure with accountability to the LMP Strategy Group.

- The agreement includes investing in people, systems, and processes for individual and organizational performance improvement.
- The current Employment and Income Security Agreement is a continuing commitment.
- The joint Workforce Development teams will develop a program-wide, integrated approach to education and training within six months of contract ratification.

  In year one of the agreement, KP will make a contribution to a Joint Education Trust. The contribution is front-loaded and is equal to 1% of Coalition payroll for 2005. The contribution could go as high as an additional 2%, depending on region-specific operating income in excess of the 2005 Strategic Plan.

This trust will fund critical education initiatives that several BTGs identified during national bargaining.

Source: Memo from Leslie Margolin to CIC Members and Support Staff, August 9, 2005