



KING COUNTY AUDITOR'S OFFICE

AUGUST 24, 2020

Labor Relations: Opportunities for Efficiency and Consistency

JUSTIN ANDERSON
ELISE GARVEY
BROOKE LEARY

Executive Summary

Nearly all of King County's labor contracts are completed after the prior contract expires, which creates significant added workload for county staff to process retroactive pay for employees. The Office of Labor Relations has made several improvements to its workflow and communication with other county agencies but does not have processes in place to further improve the timeliness and quality of contract language. This increases the risk of vague or conflicting language, making contracts more difficult to implement and requiring staff time to clarify language. Finally, the County does not centrally track employee contract grievances, which makes it harder to ensure equitable response practices and improve future contracts.



King County

Labor Relations: Opportunities for Efficiency and Consistency

REPORT HIGHLIGHTS

What We Found

Nearly all of King County's labor contracts are completed after the prior contract expires. Between 2010 and 2019, 99 percent of King County labor contracts were approved after the previous contract expired. The timeliness of contracts depends on multiple actors, including the Office of Labor Relations (OLR), labor unions, the County Executive, and the County Council, and these actors have made recent efforts to shorten the amount of time needed to approve contracts. We focused on OLR for this audit and found that OLR is increasing its focus on timeliness, but lacks specific dates for contract management milestones, which contributes to contract timeliness challenges. Contracts completed after the prior contract expires have many consequences, including that county staff spend significant time to calculate and provide payments backdated to the start of the contract to employees.

Vague or conflicting contract language can create liability for the County and add work for county agencies. Like timeliness, the quality of contract language depends on multiple actors. Since 2016, OLR has made several improvements to its workflow and communication with county agencies and unions, but the office does not have enough guidance or steps in place to ensure the quality of contract language. This increases the risk of vague or conflicting language, making contracts more difficult to implement and requiring more time from staff to clarify language. Finally, the County does not centrally track employee grievances, which makes it harder to improve contracts and ensure consistent response practices across the County.

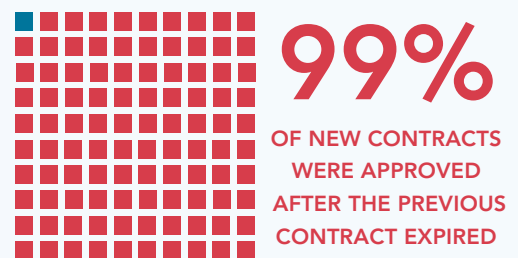
What We Recommend

To reduce the workload of county agencies implementing contract terms and processing payments, we recommend that OLR continue to build on improvements it has made by providing negotiators with guidance and steps to help manage timeliness and the quality of contract language. We also recommend that the County Executive implement a grievance data system to support OLR's efforts to improve contracts and help agencies ensure equity in grievance responses.

Why This Audit Is Important

Labor contracts establish the pay and working conditions for many county employees. OLR plays a critical role in King County's employer-employee relations by helping to craft the labor agreements that guide county operations and inform the cost of labor. OLR negotiates, implements, and administers over 75 labor agreements covering the terms of employment for the County's approximately 12,500 represented employees. OLR must help ensure that all stakeholders clearly understand the terms of labor contracts to ensure correct implementation in county processes and systems.

Contract timeliness since 2010.



Source: King County Auditor's Office analysis

Labor Relations: Opportunities for Efficiency and Consistency

TABLE OF CONTENTS

- 1 Contract Timeliness
- 13 Contract Language Quality

APPENDICES

- 18 Executive Response
- 21 Statement of Compliance, Scope, Objective & Methodology
- 23 List of Recommendations



Contract Timeliness

SECTION SUMMARY

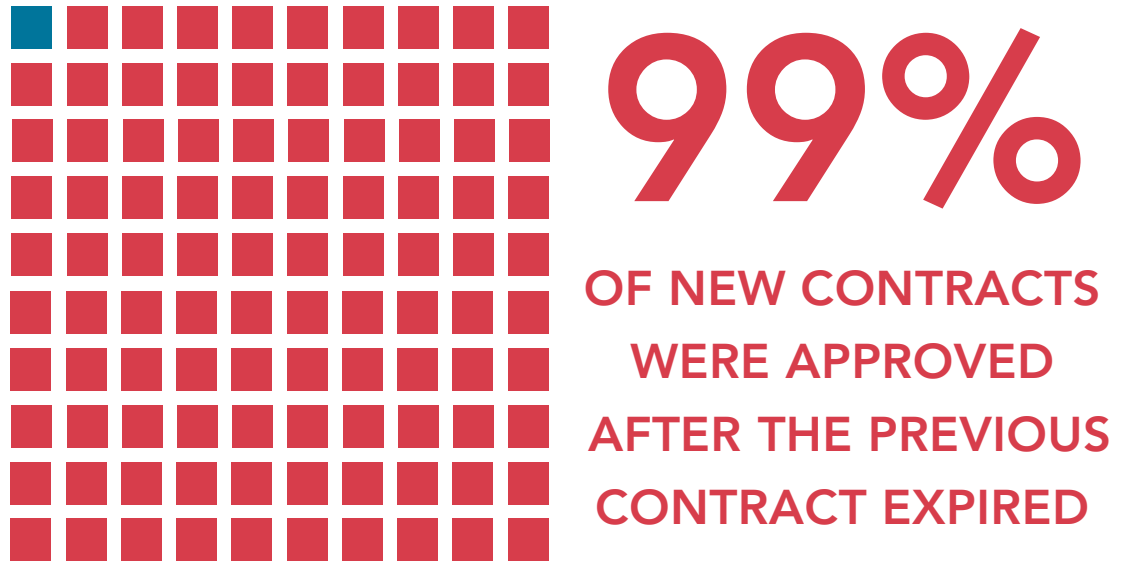
Between 2010 and 2019, nearly all county labor contracts were completed late.¹ County leaders have made legislative changes to help complete contracts faster, but the root causes for late contracts still exist. To be timely, a new labor contract with a union-represented bargaining unit must be finished before the previous contract's term ends. County labor contracts are almost always approved after this point—in part, because bargaining can extend beyond the previous contract term and in part because the processes of documenting, transmitting, and approving the contract agreement can take too long. Efforts to address contract timeliness by the Office of Labor Relations (OLR), the County Executive, and County Council are positive steps, but do not address the main causes of contract delay: lengthy negotiations and OLR administrative process phases.

How timely are King County labor contracts?

King County labor contracts are almost always approved after the previous contract has expired. Between 2010 and 2019, we found that 99 percent of King County labor contracts were approved by unions and King County leaders, or through arbitration, after the previous contract expired (see Exhibit A). In total, three labor contracts have been completed on time since 2010, the most recent of which was in 2015. Each labor contract is between King County and a defined group of workers—a bargaining unit—and each contract has a defined period. For example, a three-year contract could begin on January 1, 2018, and expire on December 31, 2020. In this example, if a new contract is not approved before December 31, 2020, it would be late because it would be approved after the previous contract expired. Until the new contract is approved, King County and the bargaining unit would continue to operate under the terms of the expired contract, and employees would be paid at rates defined in the expired contract.

¹ In this audit, the term “late” refers to contracts completed after the expiration of the previous contract. This term does not necessarily imply issues with performance.

EXHIBIT A: Between 2010 and 2019, nearly all King County labor contracts were approved after the previous contract expired.



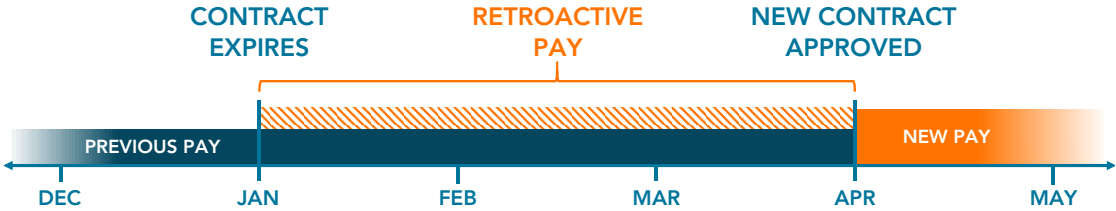
Source: King County Auditor's Office analysis of Office of Labor Relations' administrative data, 2010-2019.

What is the impact of late contracts?

Implementing late contracts creates work for county administrators when contracts include retroactive pay. Retroactive pay is the difference in employee pay between old and new contracts for the period of time from the end of the old contract to when the new contract is approved. When a new contract is completed on time, payroll staff can set up pay changes to take effect on the new contract's start date. However, when contracts are late and include retroactive pay, payroll staff have to program the new contract's pay terms into the county's payroll system to take effect after the contract is approved, and then calculate retroactive pay for each employee within that bargaining unit. Although the County does not have to guarantee retroactive pay, OLR staff and county administrators noted that retroactive pay has been included in every late contract since 2010.

Extending the negotiation period past the expiration of a contract can have benefits for the County as well. According to OLR's director, in certain cases, allowing the contract to expire and taking the time to negotiate pay proposals can save more money for the County than the cost of processing retroactive pay for that contract.

EXHIBIT B: Retroactive pay makes up the difference in employee pay from the old contract to the new contract for the time between the old contract’s expiration and the new contract’s approval.






Source: King County Auditor’s Office example.

Retroactive pay requires additional county resources due to its complexity.

Determining retroactive pay for county labor contracts is often complicated because administrators must take multiple steps to calculate how much is owed based on an employee’s individual situation (see Exhibit C). For example, a single employee can receive multiple rates of pay, including a base hourly pay rate, an additional amount for overtime at different fixed rates depending on the type of overtime, and receive premiums on those hours at a percentage rate. To determine retroactive pay for each employee, administrators must first determine the period of time that elapsed between expiration of old and implementation of new contracts, then calculate the portion of pay received under old contract terms during the expired contract period and determine pay based on new contract terms for the period of time previously calculated, and finally calculate the difference between the two pay amounts to determine retroactive pay that may be due to the employee.

EXHIBIT C: Calculating retroactive pay is a multistep process for administrators.

<p>STEP 1</p> <p>Review all previous calculations for each individual paycheck, for each employee—including overtime premiums, other pays, and taxes.</p> 	<p>STEP 2</p> <p>Calculate what the employee would have been paid had the new contract terms been active during the pay period.</p> 	<p>STEP 3</p> <p>Determine the difference between the two pay structures over time and the total difference in pay.</p> 
--	--	--

Source: King County Auditor’s Office analysis.

As the amount of time increases between an expired contract and implementation of a new contract, so does the complexity of calculating retroactive pay, because the factors affecting pay must be recalculated for each pay period. For example, an employee may work some overtime during one pay period, none during the following pay period, and a different type of overtime in the next pay period. Each, then, requires recalculation to determine retroactive pay. And, because nearly all county contracts are late, staff must complete these calculations for thousands of employees.

Some county agencies—including the Business Resource Center, the Department of Adult and Juvenile Detention, and the Department of Metro Transit—currently have full-time staff dedicated to implementing retroactive payments. We estimate the cost to the County for calculating retroactive pay in these departments to be at least \$485,000 annually. Since almost all other county labor contracts include retroactive pay, other county departments likely also incur their own costs. Additionally, agency staff reported that the workload associated with retroactive payments prevents them from working on other efforts, such as streamlining their own processes and improving employee experiences. As noted above, OLR leaders stated that the costs of implementing retroactive pay may be lower than the potential gains to the County from additional negotiations, however, the total amount spent by the County on retroactive pay implementation is not known.

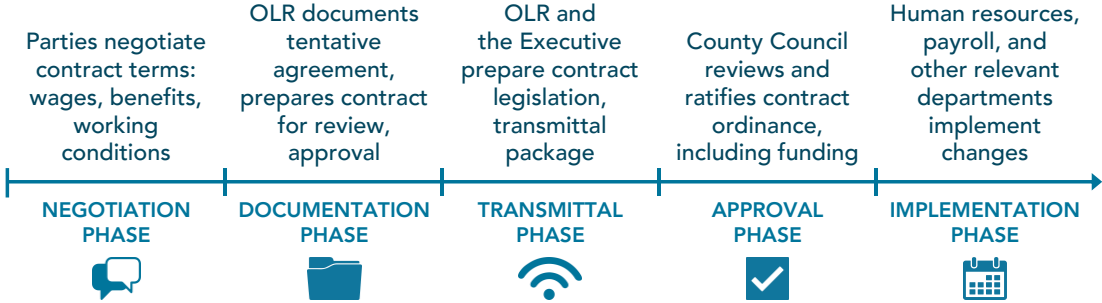
Retroactive pay can negatively impact employees by delaying pay increases.

The County provides retroactive pay to employees as a lump sum. Although this can appear as a windfall, employees do not actually receive any pay beyond what they would have been paid had the contract been completed on time. Retroactive pay also may not always be completely accurate. In some instances, the County has negotiated terms simplifying the pay because the complexity involved means the County cannot guarantee the accuracy of its calculations. In addition, because employees were not paid new contract rates at the time they were earned, employees lose the opportunity to get the full value from that pay in terms of spending or investing, compared to if they had received it earlier.

What are the steps to approving a labor contract in King County?

In King County, the labor contracting process can be broken into five phases: negotiation, documentation, transmittal, approval, and implementation (see Exhibit D). To be fully complete, a labor contract must also be documented, funded, and implemented in county systems. This is a complex process, and the specific tasks in each phase can overlap, but each phase is necessary to complete the contract.

EXHIBIT D: The contract negotiation process has five phases.



Note: Distance on the line in the figure does not denote duration.
 Source: King County Auditor’s Office summary.

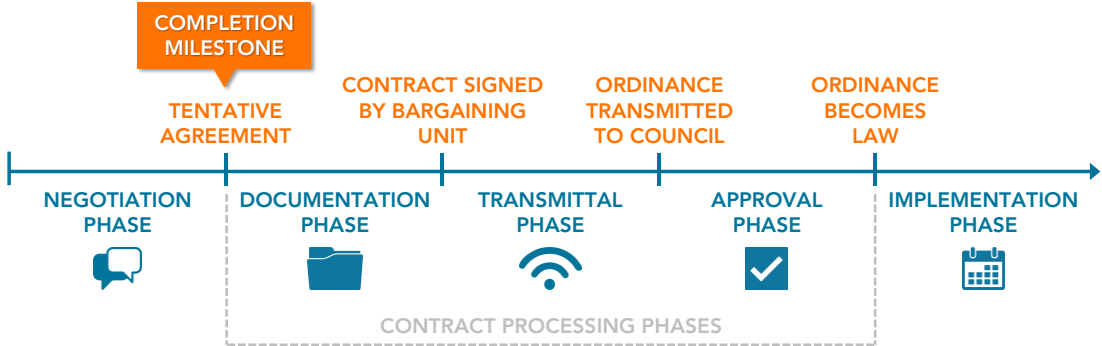
How does the contract approval process relate to contract timeliness?

To be completed on time, each of the five phases of the contract negotiation process must be completed before the existing contract expires. Though some tasks can occur simultaneously, each phase must be completed prior to the next (see Exhibit E). For example, a union representative cannot sign an incomplete contract, and the County Council cannot ratify an ordinance that has not been transmitted. To ensure that all phases of a proposed contract can be completed before the existing contract expires, negotiators and administrators must

1. have an accurate understanding of the deadlines throughout the contracting process.
2. be able to meet those deadlines.

At the time of this audit, neither of these elements is satisfied by the current process. There are no agreed deadlines for contracting steps, which prevents process participants from meeting them. We explain further, below.

EXHIBIT E: Timeline of labor contract processing phases and completion milestones:



Note: The phases in the above graphic vary in duration, as is discussed later in this report section.
 Source: King County Auditor’s Office analysis of Office of Labor Relations’ administrative data.

Who is responsible for contract timeliness?

Timely contracting primarily depends on both OLR and the County’s labor partners. OLR staff, labor representatives, and subject matter experts explained that OLR’s work is a collaborative partnership. Completing a contract on time depends on the participation of both OLR and the County’s labor partners in reaching contract milestones. Ultimately, a contract can only be timely if OLR and the bargaining unit together reach a tentative agreement, and the bargaining unit ratifies and approves the contract, with enough time for the processing phases to occur. As such, both sides should have an accurate understanding of deadlines throughout the contracting process—even if those deadlines will not be met due to the circumstances of any particular negotiation.

Which contract phases are the main causes of delay?

Negotiation, the first processing phase for a new contract, typically extends beyond the contract expiration date or concludes without enough time remaining to allow timely completion of the other processing phases. Delays also happen in the documentation, transmittal, and approval phases, but to a lesser extent (see Exhibit F).²

As noted previously, 99 percent of new contracts we reviewed were approved late. Of that 99 percent:

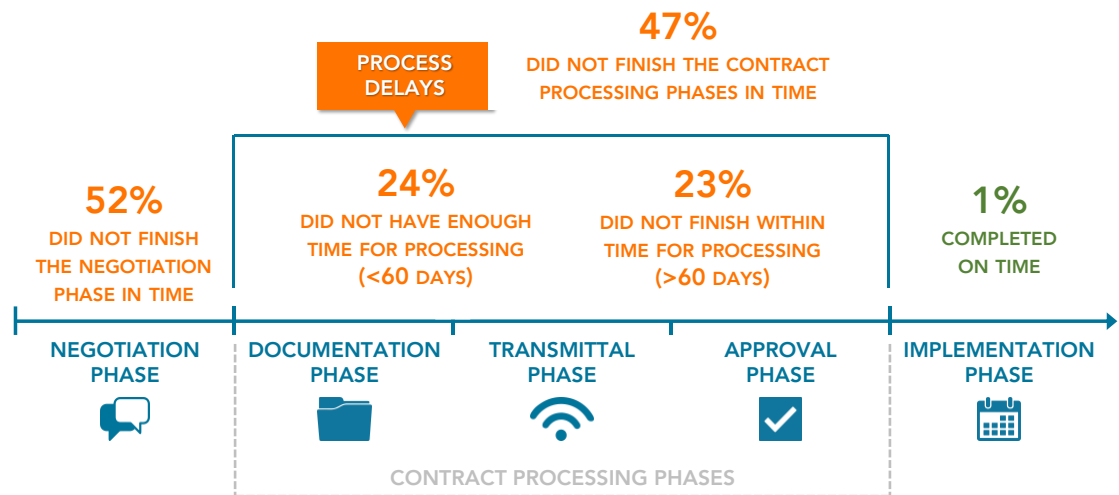
- 52 percent reached a negotiated tentative agreement after expiration of the previous contract.
- 24 percent reached a negotiated tentative agreement before expiration of the existing contract, but without enough time remaining to complete the other processing phases before expiration. We estimated, using OLR data, that a minimum of 60 days is needed.³
- 23 percent reached a negotiated tentative agreement with enough time to complete documentation, transmittal, and approval of the proposed contract before expiration of the existing contract, but processing delays prevented timely finalization.⁴

² Note that mandatory arbitration can affect the timeliness of negotiations; some bargaining units, like police and paramedics, have mandatory arbitration rights that allow them to arbitrate contracts that have reached impasse in negotiations. Interviewees noted these contracts can take more time due to the additional steps in negotiation and arbitration.

³ Historically, there has been no requirement for how long the documentation and approval phases should take; the transmittal phase was a maximum of 45 days, reduced to 7 days under Ordinance 19013 (discussed later in the section). Along with King County Charter and Code requirements, the transmittal and Council-approval processes take, at minimum, 45 days. Sixty days provides an additional 15 days for ratification by the bargaining union and preparation of the contract transmittal package.

⁴ Of the contracts that were late due to lengthy processing phases, the majority were for participants in the 2018 Master Labor Agreement, discussed below.

EXHIBIT F: For more than three quarters of contracts completed between 2010 and 2019, negotiation was either not finished or finished too late for the contract to be documented, transmitted, and approved on time.



Source: King County Auditor’s Office analysis of Office of Labor Relations’ administrative data.

How does mandatory arbitration affect contract timeliness?

Some large county bargaining units have mandatory arbitration rights, and these contracts take eight months longer, on average, to complete compared to other contracts. Arbitration is when representatives of the County and labor unions present evidence to a neutral third-party, who then decides the terms of the contract. Bargaining units for Metro Transit operators, Sheriff’s Office deputies, Department of Adult and Juvenile Detention corrections officers, and others have specific rights under state law that allow them to arbitrate contracts. Subject matter experts noted these contracts take more time due to the extended negotiations involved. For example, negotiations on some interest arbitration contracts reached a tentative agreement through the standard negotiation process that was then voted down by the members of the bargaining unit before going to interest arbitration, while other contracts did not reach tentative agreement and were arbitrated after the parties agreed they were at an impasse. Contracts for these groups, on average, took over twice as long—an additional eight months—to reach union ratification, in comparison to county labor agreements as a whole, due to these added negotiation and arbitration steps.

Has the MLA process improved contract timeliness?

The first Master Labor Agreement process did not result in timely contracts. In 2017, The Master Labor Agreement (MLA) process reconfigured 60 contracts into one main agreement between the County and participating unions, and a series of small table agreements (individual bargaining unit contracts) between the County and each bargaining unit. The process was a major accomplishment for the County and helps streamline the complexity of negotiations, but the process presents other challenges in coordinating the MLA and small table agreements.⁵ As part of the MLA process, OLR and the individual bargaining units also completed small table tentative agreements much earlier, on average, than in prior years. Despite this, most bargaining units (87 percent) ratified their individual contracts after the new contract start date, and OLR waited for all individual contracts to be ratified by bargaining units before transmitting the MLA contracts as a single package to Council.

What is the county's position on contract timeliness?

County stakeholders generally want to complete new contracts on time, barring other policy considerations. Council labor policy states that completing contract negotiations before the expiration of the previous contract is a county goal.⁶ The policy also directs the County Executive to work with bargaining units to schedule enough time to complete timely approval of new contracts. In addition, state law requires negotiations for contracts subject to interest arbitration to begin at least five months before the Executive submits the budget to the County Council. In audit interviews, OLR, union negotiators, and county managers agreed that completing new contracts on time is better. Labor representatives noted that timely contracts mean their members get the benefits of new contracts as early as possible. And, OLR has made contract timeliness a priority within its office and in communications with other stakeholders.

⁵ Sixty county bargaining units participate in the MLA process. The process standardizes many basic contract terms for all participants (the Master Labor Agreement), leaving specific terms relevant to individual bargaining units for additional negotiation (small table agreements).

⁶ LAB 4-010. Timeliness of Labor Contract Negotiations: "It shall be the goal of King County to complete negotiations with its collective bargaining units prior to the expiration of any agreement in effect subject to the concurrence of the Union as party to the agreement and individual circumstances pertaining to any given contract. In order to implement this policy, and if both parties agree, the Executive shall work with the County's collective bargaining units to make whatever scheduling adjustments may be necessary to allow sufficient time for negotiations to commence, be concluded and for mutual approval to be secured." (LP 2010-031, § I.12, 2010).

What is being done to improve contract timeliness?

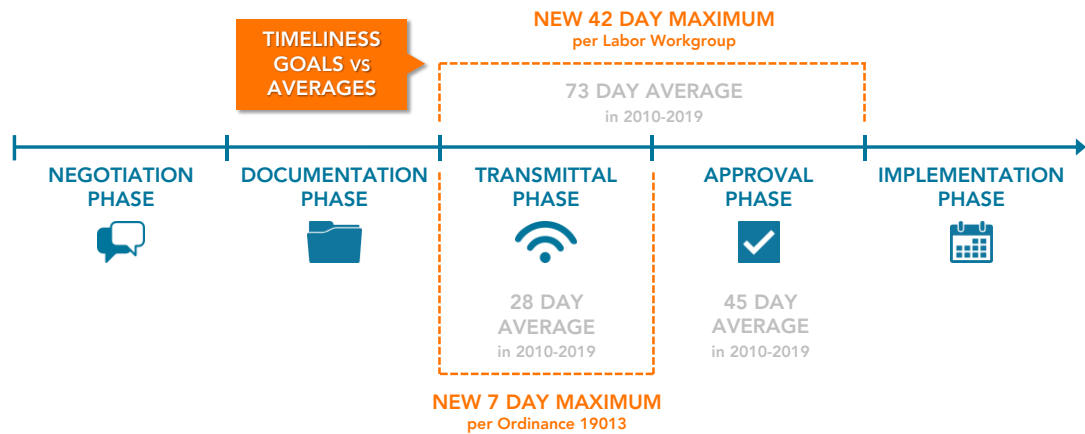
Although the negotiations phase is the primary cause of delay, county leaders have committed to shortening the timeline for the transmittal and approval phases, with significantly shorter time periods than in previous practices. In September 2019, the Labor Process Workgroup, consisting of OLR, County Council, County Executive, and union representatives, made several commitments to improve contract timeliness, including a six-week timeframe for transmittal and approval. This work also informed Ordinance 19013. Among other things, Ordinance 19013 reduced the time period allowed for legislative transmittal of a labor contract once it is approved by a bargaining unit from 45 days to seven days.⁷

Historical analysis of the contract process phases shows that transmittal and approval have consistently taken longer than these time periods (see Exhibit G).

- **Transmittal:** Contracts spent an average of 28 days in the executive transmittal phase between 2010 and 2019. During this period, only two contracts went through this phase in seven days or less.
- **Approval:** Council approval of contract ordinances took an average of 45 days between 2010 and 2019.

Additional analysis performed by council staff shows that transmittal and County Council approval may not be feasible in six weeks under current county law. Council staff have identified areas for implementing process changes in order to meet the new timeline but indicated that the six-week timeframe is ambitious.

EXHIBIT G: Timeliness goals set in 2019 provide for significantly shorter time periods to complete processing steps than have been achieved historically.



Source: King County Auditor’s Office analysis.

⁷ See King County Code 3.16.040 Time Limit, *et seq.*

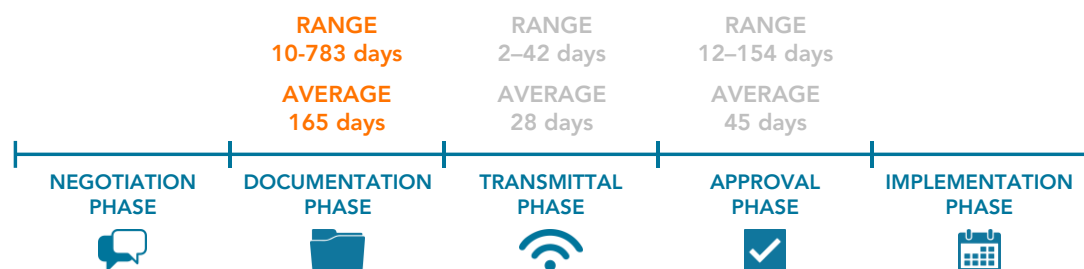
Do these changes address the main causes of delay?

The Ordinance 19013 changes will address some delays, but not their primary cause. This is because the changes in the ordinance are focused on the transmittal and approval phases, which have not caused significant delay in comparison to negotiation and documentation phases by OLR. Since 2010, the amount of time contracts spent in each processing phase varied widely. However, the durations for the transmittal and approval phases were more consistent than for OLR and executive negotiation and documentation phases.

- **The transmittal phase** ranged from 2 to 42 days, with an average of 28 days.
- **The approval phase** ranged from 12 to 154 days, with an average of 45 days.
- **The documentation phase** took between 10 and 783 days, with an average of 165 days.

As a result, the changes in the transmittal and council-approval phases may not have a significant effect on contract timeliness if OLR does not complete its negotiation and documentation phases in a timely manner.

EXHIBIT H: The documentation phase managed by the Office of Labor Relations has historically taken the most time of the three processing phases.



Source: King County Auditor's Office analysis.

How may these changes affect OLR's work?

Changes to the transmittal timeline required by Ordinance 19013 may put pressure on the Office of Labor Relations' internal work processes in earlier phases. Because Ordinance 19013 reduces the time for the transmittal phase from 45 to seven days, many of the tasks OLR and others previously performed in the transmittal phase will now need to occur earlier. For example, development and approval of the fiscal note for a contract ordinance will need to be completed in the documentation phase. These changes may in turn put additional pressure on OLR to ensure that all the steps in the development of the transmittal package occur in a timely way, because OLR is primarily responsible for the work in the documentation phase. Given that the negotiation and documentation phases already have the most historical delays, the ordinance could exacerbate the challenge of completing contracts before they expire.

Does OLR use milestones for contract project management?

The Office of Labor Relations does not use a project management-based schedule with milestones or deadlines, contributing to contract timeliness problems. Although contract agreements are projects, OLR does not use a standard project management tool—a schedule featuring tasks with milestones and deadlines—to manage its work during the contract negotiations and documentation phases, despite the complexity of these projects due to the multiple stakeholders involved. Labor negotiators reported they had an understanding of when contract elements needed to be completed for contracts to be on time, depending on the negotiation—by early September, for instance—but, did not have a calendar or schedule for managing the sequence of work following a tentative agreement. This may present problems because these administrative tasks are a linear process; although some tasks can occur at the same time, the tasks in one phase must be completed before the next, so the lack of a project calendar could lead to unnecessary delay. For example, the fiscal note required for each ordinance must be completed before the ordinance can be transmitted to the County Council; timely transmittal of the ordinance depends on timely completion of the fiscal note. If the fiscal note is late, so is the contract.

Staff reported that contract and budget documents are forwarded, without a deadline, to the person responsible for review and are returned when review is complete. These exchanges can occur without advance notice or a specific deadline. Because there is no formal process for managing workflow, OLR’s ability to know how much time would be needed to complete each transmittal package is limited—and, in turn, its ability to know if a contract can be approved in a timely manner is limited. The lack of a schedule is also inconsistent with county labor policy, which directs OLR to work with bargaining unit representatives to collaboratively identify a timeline for timely completion of contracts.

OLR staff noted that developing a project management-based schedule may not make a difference because the contracting process ultimately depends on labor participation. While this is true, a project management-based labor contract schedule could help provide all participants greater understanding of the individual processes, and, in turn, transparency for specific deadlines. A labor contract schedule could help identify areas where contracting steps could be streamlined and give information about why a particular deadline must be met to complete a contract in a timely way. In addition, a robust project management-based schedule would also help support internal processes for OLR—for example, in meeting new timelines in compliance with Ordinance 19013.

Recommendation 1

The Office of Labor Relations should develop and implement a project management-based schedule to manage the workflow of those parts in the contracting process that the Executive Office controls. The schedule should include the timeframe, deadline, and responsibilities for each task in the process, and the critical path for timely contract completion.

Are there challenges to contract timeliness beyond OLR's control?

Collective bargaining policy choices may limit timely contracting. Stakeholders opined that executive policy direction for negotiations can affect timely contract completion. Primary among these is retroactive pay; many noted that, because the County has traditionally agreed to provide retroactive pay on all contracts, there may be less incentive to complete contract negotiations on time because there are no direct consequences when agreements are not reached. Others noted that the County has chosen not to unilaterally implement contracts, meaning that it does not use its legal authority to implement contracts when bargaining has reached an impasse.⁸ Policy options that may impact contract timeliness can also include positive incentives, such as signing bonuses for timely contracts. Because these options are part of the negotiations between the County and bargaining units, they are subjective policy decisions.

⁸ This does not apply to contracts with bargaining units subject to interest arbitration, and applies only to contracts over a year after expiration. See [RCW 41.56.123](#).



Contract Language Quality

SECTION SUMMARY

The Office of Labor Relations has made improvements to its practices but does not yet have enough review steps in place to ensure the quality of labor contract language. OLR's current contract review practices are inconsistent. This increases the risk that contracts contain conflicting or vague language, which leads to inefficient use of staff time spent clarifying contract language. It also means employees could miss out on the benefits of agreed-to terms if county agencies do not implement those terms as intended. Lastly, the County is not tracking comprehensive grievance data, which makes it harder to improve contracts and ensure consistent responses across the County.

OLR making improvements, but still lacks consistent review steps

Since 2016, the Office of Labor Relations has been improving its preparation and review processes, but the office still lacks consistent steps to ensure contract language quality. Negotiators and agency staff we interviewed said that OLR has made improvements to how it works with other agencies, and interviewees noted OLR has been communicating more before and during negotiations. Additionally, in response to our office's 2019 audit of Peoplesoft, OLR plans to dedicate staff to review payroll language, which is an example of a step to help ensure contract language quality.

Despite positive changes, OLR does not have consistent steps outlined in policies, procedures, or project management tools to ensure the quality of contract language. Because of this, steps vary by negotiator, which can introduce inconsistencies. OLR noted that improving language from prior contracts that is vague or conflicting can be difficult since changes must be bargained and because it takes time to consult with agencies during negotiations. To help its negotiators manage these challenges and to improve the consistency of steps to ensure contract language quality, OLR can provide tools and guidance for contract review.

Vague or conflicting language has created additional work for county agencies

Contract language that is conflicting, vague, or hard to implement for county agencies can have lasting negative effects or require extra staff time to clarify. High quality contract language is precise, clear, and understandable so that staff who implement the contract can do so accurately and efficiently. This is especially important for labor contracts because, as OLR and county agencies told us, contract language can be very difficult to change once it is finalized, even after subsequent rounds of negotiation.

Our review of memoranda of understanding (MOU) between the County and labor unions identified MOUs that potentially indicate contract quality issues.⁹ For example, some MOUs showed that a single contract had clauses that conflicted with one another or that the parties found the language too vague. We also interviewed agencies about challenges they have with contract language. For example, the Wastewater Treatment Division (WTD) noted that the MLA has helped standardize contract language for interview screening, but conflicting older language remains in sections for some bargaining units, giving current employees preference for interviews. This means that WTD cannot meet the terms for one contract if it implements the other as written. This could negatively affect hiring and advancement of current employees in the agency.

We found additional examples in our recent audit of Peoplesoft where payroll terms were used differently among contracts, making implementation difficult for agency and county payroll staff. This contributed to inconsistencies and errors in pay calculations.¹⁰ These types of contract inconsistencies can be costly for the County. OLR could save staff time, reduce county liability, and ensure contract quality by improving its procedures for labor negotiators.

Recommendation 2

The Office of Labor Relations should develop, document, and implement procedures to guide and support negotiators in ensuring high quality contract language.

Timing and definition of PAO review is not consistent

The Office of Labor Relations’ practices for Prosecuting Attorney’s Office review of contracts are inconsistent across contracts, which reduces the ability of the prosecutor’s office to provide feedback and help prevent contract language from being vague or illegal. Currently, the Prosecuting Attorney’s Office’s (PAO) only formal review step occurs after tentative agreement has already been reached for a contract. The PAO can have a review role prior to tentative agreement, but this is inconsistent. OLR has included the PAO on the MLA negotiation team, where the PAO has been able to review proposed language. Some negotiators also reported working with the PAO during negotiations to have an attorney review contract language. For example, when the state’s sick leave requirements changed, negotiators brought drafted contract language to the PAO for review before tentative agreement was reached to ensure the contract language met the new requirements.

⁹ Memoranda of understanding or agreement document mutually agreed-upon terms between unions and the county on various aspects of contract interpretation and implementation, including the settlement of grievances, clarification of contract language, accretion of new positions into bargaining units, among others.

¹⁰ King County Auditor’s Office, *Inconsistent Overtime Calculations Add Up for Corrections Officers and Paramedics*, 2019.

Since OLR has not consistently built the PAO into its contract language review process prior to tentative agreement, time constraints may prevent the PAO from seeing language problems in time for changes. The PAO reported it sometimes sees contract language for the first time after union ratification, which is late for making substantive changes to address any problematic language attorneys identify. To make changes to a ratified contract, the County and the labor union need to agree on the changes and might need to reconvene bargaining.

In addition, we found that the PAO and OLR might not have the same understanding of the purpose of the current review process. OLR and the PAO agree that an attorney needs to review for potential legal issues; however, an attorney can also offer feedback on the precision of contract language to help avoid confusion among those interpreting and implementing the contract, but OLR and the PAO have not always agreed when the PAO should take on this role.

This lack of clear process and timeline for legal review reduces the PAO’s ability to provide meaningful feedback to help prevent contract language from being vague or illegal, which in turn creates legal risk for the County and misses an opportunity to make contract language more consistent and easier to implement for county agencies.

Recommendation 3

The Office of Labor Relations, working with the Prosecuting Attorney’s Office (PAO), should define and document the purpose and timing of the PAO’s review of contracts and ensure that PAO participates as outlined.

Lack of grievance data makes it harder to improve and ensure consistency

The County does not track grievances centrally, which makes it harder for staff to ensure grievance response practices are consistent across the County or for negotiators to use grievance information to improve contracts. Employees can file a grievance alleging a violation of their contract, or disagreeing with a disciplinary action taken against them, and the County then works with employees to resolve the issue. Contracts outline the steps a grievance can go through to be resolved for represented employees. Early steps are decentralized and reside within the agency and then generally escalate up to OLR and/or arbitration if the grievance is not resolved (see Exhibit I). Contracts also outline the timeframes that need to be met at each step for each actor. This means that not all actors involved know the outcomes of all steps. OLR might not know about a grievance until it has escalated to a higher step.¹¹ Agencies we interviewed said if they want to know how another agency resolved a similar grievance, they must call around to find that information.

¹¹ OLR does not have a formal role in grievances for at least one contract.

EXHIBIT I: In the County’s multistep grievance procedure, only some grievance information gets to the Office of Labor Relations, while other grievances end at earlier steps.



Source: King County Auditor’s Office.

Some individual county agencies track grievances and OLR tracks grievances that have escalated to it, but the County does not have a centralized database that includes comprehensive data. This means county actors have less information to ensure grievance responses are consistent across groups, which could lead to inequitable outcomes for employees. For example, two managers in the same bargaining unit, but in different departments, could both grieve how they were disciplined for a similar issue. If the agencies resolve the grievances differently, inequities could result, particularly if differences exist on a large scale over time and disadvantage specific groups. OLR and agencies we interviewed reported that some of the benefits of their respective grievance data include:

- improving efficiency and equity through understanding how similar grievances were addressed in the past
- identifying where improvements in the contract could be made
- ensuring that grievance responses meet contractual timelines.

The Department of Human Resources and the Office of Risk Management have attempted to implement countywide grievance tracking several times since 2015, but these efforts were not sustained. Agencies we interviewed reported that previous County efforts to track grievances failed because the software used, Peoplesoft, did not work well and the type of information gathered was not useful to the county actors who needed it. Some agencies also reported a reluctance to participate out of concern that the information gathered could be stigmatizing to their agency.

Recommendation 4

The County Executive should develop and implement a grievance database in consultation with the Office of Labor Relations and county agencies that would be using the data.

CONCLUSION **The Office of Labor Relations has made recent improvements in contract timeliness and contract implementation, and more structure could bolster these efforts.** OLR's work is fundamentally a partnership; it cannot complete or implement contracts in a timely manner on its own. OLR's success depends on its engagement and collaboration with the County's labor partners and the department managers and administrators who implement the contracts OLR negotiates. A more robust, project management-focused approach within OLR would support future improvements. Identifying deadlines and formalizing expectations for process participants would help provide greater information and transparency regarding the specific needs in the contracting process, in turn helping all participants to work together to address them.

Executive Response



King County

Dow Constantine

King County Executive

401 Fifth Avenue, Suite 800
Seattle, WA 98104

206-296-9600 Fax 206-296-0194

TTY Relay: 711

www.kingcounty.gov

May 22, 2020

RECEIVED
MAY 22, 2020
KING COUNTY
AUDITOR

KyMBER Waltmunson
King County Auditor
Room 1033
C O U R T H O U S E

RE: Response to OLR Process Audit

Dear Ms. Waltmunson:

I would like to thank the Council Auditor for a thorough and helpful audit report regarding the Office of Labor Relations' (OLR) negotiation process. Enclosed are responses to the specific audit recommendations. We concur with each of the recommendations and will move forward with implementing them as described in the enclosed document. The implementation of audit recommendations will help us pursue our goals of being a best run government and an employer of choice for this region.

Labor negotiations are inherently difficult to conform to a set project management schedule because they are not entirely under the County (OLR's) control. Our labor partners, the unions, play a significant role in determining the length of negotiations. Additionally, depending on the county's bargaining priorities in support of operations, and how much change they require in the labor agreement, negotiations may take longer than expected.¹

Similarly, while OLR agrees that retro payments add time and administrative burden, they may be a less costly alternative to reaching a timely agreement with a union if doing so means agreeing to a proposal that increases labor costs.

With that said, OLR agrees that the County's negotiation process would benefit from more formal project management tools to ensure OLR is doing everything within its control to complete negotiations, and the contract transmittal process, on time. As the audit notes, OLR has, starting in 2016, taken steps to streamline negotiations, including earlier preparation for

¹ For example, due to the COVID-19 pandemic and unforeseen, sudden budget shortfalls, the complexity of the pending successor MLA and Total Compensation negotiations may result in an untimely labor agreement. OLR will do everything in its power to avoid an untimely agreement, but the unique challenge of these negotiations, for labor and management, cannot be overstated.

KyMBER Waltmunson
 May 22, 2020
 Page 2

negotiations, and socializing with the unions the reality that untimely contracts necessitate costly retro and delay employee realization of new and/or improved benefits. Additionally, in the recent labor policy update process, OLR was successful in adding the following underlined language to the labor policy on timeliness of contract negotiation:

LAB 4-010. Timeliness of Labor Contract Negotiations: It shall be the goal of King County to complete negotiations with its collective bargaining units prior to the expiration of any agreement, recognizing that the implementation of changes to benefits and/or wages requires significant lead time, and in an effort to avoid retroactive payments, and the associated costs and administrative burden. In order to implement this policy, and if both parties agree, the Executive shall work with the County's collective bargaining units to make whatever scheduling adjustments may be necessary to allow sufficient time for negotiations to commence, be concluded and for mutual approval to be secured. (LP 2010-031, § I.12, 2010).

As we implement the audit recommendations, we will continue our efforts to achieve an appropriate balance between the need to streamline bargaining and transmittal of labor agreements while also pressing for changes to the agreements that facilitate the County's strategic objectives, vision, and business innovations.

With respect to the recommendation that OLR "develop, document, and implement procedures to guide and support negotiators in ensuring high quality contract language," OLR plans to implement guidance around "best practices" in drafting. That said, language is inherently subjective and therefore open to interpretation. It is also difficult to conceive of a single guidance document that contemplates all possible bargaining topics and associated language. Finally, because developing new contract language is part of the negotiations process and, therefore, subject to joint drafting with the unions, the final contract language is not fully in the county's control.

As noted in the audit, OLR has already appointed an in house subject matter expert on payroll and FLSA contract language in response to the 2019 Payroll Audit. This negotiator sits on a countywide cross-functional payroll governance committee and is already working with OLR negotiators on an implementation plan for improving payroll-related contract language.

In closing, we appreciate your efforts in identifying areas for improvement in OLR's negotiation process. We will actively work during the balance of 2020 to implement the OLR-specific audit recommendations and we look forward to providing updates about our progress. If you have any questions about this response to the audit, please contact Megan Pedersen, Director of the Office of Labor Relations, at 206-263-2898.

Sincerely,



for Dow Constantine

cc: Whitney Abrams, Chief People Officer
 Megan Pedersen, Director, Office of Labor Relations
 Jay Osborne, Director, Department of Human Resources

Recommendation 1

The Office of Labor Relations should develop and implement a project management-based schedule to manage the workflow of those parts in the contracting process that the Executive Office controls. The schedule should include the timeframe, deadline, and responsibilities for each task in the process, and the critical path for timely contract completion.

Agency Response

Concurrence	Concur
Implementation date	11/2020
Responsible agency	OLR
Comment	

Recommendation 2

The Office of Labor Relations should develop, document, and implement procedures to guide and support negotiators in ensuring high quality contract language.

Agency Response

Concurrence	Concur
Implementation date	11/2020
Responsible agency	OLR
Comment	OLR currently uses a number of checks and balances to ensure contract language is clear and high quality, including requiring internal review by the OLR deputy director and review by the PAO before language on complex topics is proposed, and re-review by the PAO if the language changes through bargaining. Finally, all contracts undergo a peer review before they are finalized and executed by OLR and the unions.

Recommendation 3

The Office of Labor Relations, working with the Prosecuting Attorney's Office (PAO), should define and document the purpose and timing of the PAO's review of contracts and ensure that PAO participates as outlined.

Agency Response

Concurrence	Concur
Implementation date	08/2020
Responsible agency	OLR/PAO
Comment	

Recommendation 4

The County Executive should develop and implement a grievance database in consultation with the Office of Labor Relations and county agencies that would be using the data.

Agency Response

Concurrence	Concur
Implementation date	TBD
Responsible agency	DHR
Comment	A holistic project designed to better understand the County's grievance tracking needs and a proposed tool to track grievances countywide will be included in DHR's upcoming 2021-2026 Information Technology Strategic plan. This work is considered a priority. However, given the COVID-19 response, and budget concerns, a grievance tracking database may not be able to be implemented in the 2021-2022 timeframe as initially planned.



Statement of Compliance, Scope, Objective & Methodology

Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Scope of Work on Internal Controls

We assessed internal controls relevant to the preparation, negotiation, and execution of King County labor contracts, primarily the Office of Labor Relations' (OLR) controls for its role in those processes. This included interviews with knowledgeable staff and leaders within OLR and in other county agencies, including the Department of Human Resources and the Business Resource Center. We reviewed OLR documentation and communications. We also conducted semistructured interviews with OLR negotiators. In performing our audit work, we identified concerns relating to the lack of sufficient controls for managing the timeliness and quality of contracts.

Scope

This audit examined the process to prepare, finalize, and implement county labor agreements and address grievances between 2010 and 2019.

Objectives

- Which factors affect the timely completion of new collective bargaining agreements, and to what extent do OLR's practices help support timely agreements?
- Which factors affect the ability of the County to implement new collective bargaining agreements, and to what extent do OLR's practices help ensure the County can implement contract terms efficiently and effectively?
- To what extent does OLR manage its performance and engage in continuous improvement?

Methodology

To understand the timeliness of contracts, we analyzed available data on key negotiation and contract milestones for 223 King County labor contracts from January 1, 2010 through December 31, 2019. We reviewed relevant county policies and requirements for the timing of new contracts and implementation. We interviewed OLR leadership and staff about guidance and steps toward improving timeliness. We also interviewed other county agencies and union representatives about the impact of late contracts on employees, costs, and workload, particularly for implementing retroactive payments.

To assess the extent to which OLR has sufficient steps and guidance in place to ensure the quality of contracts, particularly the clarity of language and ability of county agencies to implement the contracts, we reviewed the text of over 300 memoranda of understanding (MOU) between the county and labor unions from 2015 to 2019 to test whether an MOU might indicate a contract quality issue. We interviewed several county agencies that are tasked with the implementation of contracts, including the Department

of Human Resources, the Business Resource Center, the Department of Metro Transit, the Wastewater Treatment Division, and the Department of Adult and Juvenile Detention. We also interviewed these agencies and the Prosecuting Attorney's Office about opportunities to provide feedback to OLR on contract quality issues. We conducted semistructured interviews with all of OLR's negotiators to understand the steps negotiators take to ensure the quality of contract language, such as when they might consult others for review of contract language and what steps they take to understand potential contract quality issues that could be addressed in upcoming negotiations.

Lastly, to understand what kind of data is kept about grievances, we reviewed OLR's grievance and arbitration database and included questions about grievance data practices during our interviews with staff at OLR and other county agencies. We also interviewed the Department of Human Resources about previous efforts to gather countywide data on grievances.

For our primary data sources, we assessed the reliability of the data by reviewing for anomalies and interviewing staff who manage the data. We determined that all the data were sufficient to support our findings and conclusions.



List of Recommendations

Recommendation 1

The Office of Labor Relations should develop and implement a project management-based schedule to manage the workflow of those parts in the contracting process that the Executive Office controls. The schedule should include the timeframe, deadline, and responsibilities for each task in the process, and the critical path for timely contract completion.

Recommendation 2

The Office of Labor Relations should develop, document, and implement procedures to guide and support negotiators in ensuring high quality contract language.

Recommendation 3

The Office of Labor Relations, working with the Prosecuting Attorney's Office (PAO), should define and document the purpose and timing of the PAO's review of contracts and ensure that PAO participates as outlined.

Recommendation 4

The County Executive should develop and implement a grievance database in consultation with the Office of Labor Relations and county agencies that would be using the data.



KING COUNTY AUDITOR'S OFFICE

Advancing Performance & Accountability

KYMBER WALTMUNSON, KING COUNTY AUDITOR

MISSION Promote improved performance, accountability, and transparency in King County government through objective and independent audits and studies.

VALUES INDEPENDENCE - CREDIBILITY - IMPACT

ABOUT US The King County Auditor's Office was created by charter in 1969 as an independent agency within the legislative branch of county government. The office conducts oversight of county government through independent audits, capital projects oversight, and other studies. The results of this work are presented to the Metropolitan King County Council and are communicated to the King County Executive and the public. The King County Auditor's Office performs its work in accordance with Government Auditing Standards.



This audit product conforms to the GAGAS standards for independence, objectivity, and quality.