THE PUBLIC SECTOR

An initial take on this year's bargaining season

by Jon Holtzman

As the bargaining season slowly winds to a close in many local governments, a few patterns seem to be emerging. First, after years of concessions—or zero wage increases—some better-off jurisdictions are offering small annual wage increases. Frequently increases have been in the 1% to 2% range. In addition, temporary employee concessions such as furloughs are being phased down. These steps are often in response to great pent-up frustration of workers, whose effective wages have been stagnant or falling since 2008.

This pattern doesn't extend to the Central Valley, to jurisdictions that didn't have ongoing concessions over the last few years, or to jurisdictions in serious economic trouble. In those places, we are seeing continuing need for major concessions.

A second pattern has been employers' increased emphasis on employee cost sharing for pensions. Interestingly, there remains great diversity among jurisdictions with respect to the extent of pension cost sharing. Some agencies, such as BART, continue to pay all or a very large portion of employees' pension costs—including the portion that pension plans refer to as the "employee" contribution. Others are now requiring employees to pay 100% of the employee portion of pension costs—typically 7% to 9% of pay—but continue to pay far more than half the cost of the pension. The recent state pension legislation, the Public Employees' Pension Reform Act (PEPRA), states that the "standard" going forward is that employees should pay half of the "normal cost" of pensions. Typically, half of the "normal cost" of pensions is considerably higher than the employee portion. Some jurisdictions are now moving toward the 50% standard.

A similar pattern has been emerging with respect to employee contributions to health benefits over the last decade. Relatively few jurisdictions are now paying 100% of employee health premiums. It's common for jurisdictions to pay between 80% and 90% of health premiums. More recently, many jurisdictions are moving to "cap" the employer contribution and use a variety of programs to stretch healthcare dollars, including high-deductible plans, cafeteria plans, and healthcare reimbursement accounts.

In almost every jurisdiction in which I have worked, the tension between upward wage pressures and the need to spread the cost of pension and healthcare costs is leading to friction with unions. BART is the prime example. The tension is understandable: Employees are frustrated by declining wages and view cost sharing as a further "concession." Employers simply can't afford increasing health and pension costs and are cognizant of pressures from the public to restore services as revenues improve.

Which brings me to the third trend that seems to be emerging: the use of "triggers" to reopen contracts if revenues improve faster than currently projected. Designing a good "trigger" for an economic reopener is tricky business. The trend with reopeners seems to be to base them on the rate of revenue increases—a fairly concrete number that is easily measured and not subject to manipulation. The problem, however, is that these triggers often fail to consider adequately the biggest driver in local governments' financial equation: rising employee pension and medical costs. To a certain extent, of course, with sufficient political will, the triggers can be designed anticipating the projected increase in these costs. But there is often pressure to ignore the costs—meaning the triggers are betting on growth that is needed simply to sustain existing services.

In a sense, triggers really put the central question of the year in stark relief: How much of revenue improvements should go to restoring services, and how much should go to restoring employee compensation? We know that neither services nor public wages will fully recover from the great recession anytime soon. But as we move forward, perhaps it makes sense to develop a rule of thumb. For example, perhaps new employee costs (including wage, pension, health, and workers' compensation) shouldn't exceed half of new general fund revenues. I'm not suggesting such a rule be incorporated in labor agreements; formulas and triggers are prone to unanticipated outcomes. But as the economy recovers, we should consider what the proper balance between restoration of services and restoration of compensation is.

We are seeing increasing labor strife this year as employee expectations rise but services and infrastructure wane. Perhaps the best we, as HR professionals, can do is ensure that the trade-offs between compensation and services are transparent and readily understandable. The rest is politics.

The author can be reached at Renne Sloan Holtzman Sakai LLP in San Francisco, jholtzman@publiclawgroup.com. ✤