COLLECTIVE BARGAINING TRENDS AND DEVELOPMENTS—A National Perspective

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IPMA-HR INTERNATIONAL TRAINING CONFERENCE

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• BLS measures union membership rate at 10.7%, overall -- about 14.8 million workers

• Public sector union membership is over 5x private sector workers
  ▪ 34.4% v. 6.5%

• Membership = $$ = political power
  ▪ In NY, for example, public sector unions collect over $860 million from some 1 million public sector workers
Fair Share
- Upheld by US Supreme Court in *Abood v. Detroit Bd of Ed* (1977)
- Permitted in 22 states

Constitutionality of Fair Share
- Prior case, *Friedrichs v. California* was argued in early 2016, then deadlocked at 4-4, following untimely death of Justice Scalia
JANUS V. AFSCME

- Major public sector case, originating in Illinois
  - Biggest threat to organized labor in decades
  - Direct challenge to fair share fees
- 5-4 Decision Issued June 27, 2018
- Majority Held: Fair Share is Unconstitutional
Key quotes in decision:
• “Abood was wrongly decided and is now overruled”
• “Neither an agency fee nor any other payment to the Union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay” (Emphasis added)
Key quotes in conclusion:
• “By agreeing to pay, non-members are waiving their First Amendment rights”
• “Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met”
Analysis of Court majority’s reasoning:

Public employees have certain constitutional rights to free speech via First and Fourteenth Amendments;

Freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all”

“When speech is compelled … individuals are coerced into betraying their convictions”
Analysis of Court majority’s reasoning:

“The First Amendment does not permit the government [via agency shop] to compel a person to pay for another’s speech just because the government thinks the speech furthers the interests of the person who does not want to pay”
Analysis of Court majority’s reasoning:

What about “Free Riders”?

• Janus objects to “free rider” label. “He argues that he is not a free rider on a bus headed for a destination that he wishes to reach, but is more like a person shanghaied for an unwanted voyage.” (Emphasis added)
Analysis of Court majority’s reasoning:

“We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant transition costs in the short term, and may require unions to make adjustments in order to attract and retain members. But we must weigh these disadvantages against the considerable windfall that unions have received under Abood for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector unions in violation of the First Amendment. Those unconstitutional exactions cannot be allowed to continue indefinitely.” (Emphasis added)
Employers want and benefit from a strong exclusive bargaining representative.

Fair share fees are speech within the workplace, which the Court has historically regulated.

Undoing 40 years of precedent will have consequences.

The First Amendment was meant for better things.
The Illinois Public Policy Institute, in a study issued shortly before the *Janus* decision, estimated that 49,000 Illinois public employees would opt to not pay union dues.
UNION RESPONSE – BARGAINING REQUESTS & DEMANDS

• What about existing contracts?
  • Check your Savings clause
  • If mid-term bargaining is required, consider the applicable impasse resolution procedures

Note: This is a general overview. Please consult your legal counsel for specific advice in your jurisdiction.
Possible Demands to bargain over impact and effects

- Changes to Checkoff Cards—*most common*
- Paid time to address employees on benefits of union membership—*second most common*
- Changes to grievance procedure
- Undo previous “trade offs” involving fair share clause
• Letters to public employers urging immediate discontinuation of fair share deductions
• Distributing new dues checkoff cards
• Requests for names and addresses and list of fair share payors
• Internal changes in dues amounts or dues structure
  - A Teamsters Local increasing dues to account for fair share impact
  - A Police Union reportedly considering a “cafeteria plan” approach to dues charges
“Workplace Democracy Enhancement Act” (May 18, 2018)

- Right to meet with employees on premises during workday to investigate grievances, complaints, etc.

- Right to meet with newly hired employees at individual or group meetings (between 30 to 120 minutes in length) within 30 calendar days of hire
LEGISLATIVE RESPONSE – NEW JERSEY

- Within 10 days of hire, provide employee contact information to union
- Exempts employee home addresses, phone numbers, emails, etc. from public disclosure
- Interest arbitration to resolve disputes over these terms
- ULP for employer to “encourage” employees to resign union membership or revoke dues deduction authorization cards
- 10-day window preceding hiring anniversary for revocation of dues deduction cards
Amendments to Public Sector “Taylor Law” (April 12, 2018)

- Withdrawal from dues payment according to terms of dues deduction cards
- Notify unions within 30 days of a new employee being hired, rehired, or promoted
- Provide unions with name, address and work location of new employees
• Permit unions to meet with new employees for a reasonable time within 30 days of hire, and without charge to leave credits

• No duty to represent non-members in disciplinary cases (investigations, evaluations, arbitration), with employees having ability to use their own personal advocate
• Expanded collective bargaining rights for judicial employees and higher education student-employees
• ULP for public employers to deter or discourage public employees from maintaining union membership
LEGISLATIVE RESPONSE - CALIFORNIA

PENDING - AB 1937

• Employees must direct requests to cancel dues to the union rather than the public employer
• Employer can only rely on union information when deciding whether to cancel dues
§ 447.401 of Florida Public Employee Relations Act

• “. . . All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization. . . ."
NATIONAL COLLECTIVE BARGAINING UPDATE

• Leading Economic Indicators
• Settlement Trends
• Challenges for the Future
• Key Takeaways
Economists surveyed in early February, 2018 by The Wall Street Journal on average predicted U.S. gross domestic product would rise 2.8% in 2018, supported by the recent package of tax-code changes.

They also projected the unemployment rate would fall below 4% by midyear.

And it Did!!
STATE OF THE ECONOMY

Unemployment Rate

• August 2018 was 3.8%!!
• Greater labor force participation
• Wage pressure
• Job shortages
Citing Census Bureau data, the WSJ reported that State and local governments shed 286,000 employees from 2008 to 2016. More recently, there has been slow growth.

22 states faced budget shortfalls in 2017. Ten couldn’t agree on a new budget before the start of their next fiscal year. Illinois’s credit rating was downgraded nearly to junk status.

WSJ 3/28/18
TAX LEGISLATION BOOST TO THE ECONOMY

Over 125 large private employers are reportedly providing $1,000 “Tax” Bonuses, including, for example:

- Walmart
- AT&T
- Comcast
- Wells Fargo
- Alaska Airlines

- American Airlines
- Bank of America
- Southwest Airlines
- Nationwide
- Travelers
- US Bancorp

Others are boosting hourly pay or raising matching contributions to retirement plans.
Labor Market Impact on Wages

• As unemployment continues to decline, wage pressures are mounting
• Private sector hourly wages grew 2.9% from a year earlier according to US Department of Labor.
• “A robust economy drove U.S. wages higher in August, new evidence that workers are gaining bargaining power with their employers as the nation’s pool of available labor tightens.” WSJ 9/7/18.
Yearly Social Security adjustments are tied to changes in CPI-W from September to September.

Effective in January 2018, the COLA increase was 2.0 percent.

In January 2017, the COLA increase was just 0.3%.
<table>
<thead>
<tr>
<th>CPI INDEX</th>
<th>MOST RECENT 12 – MONTH CHANGE</th>
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<tbody>
<tr>
<td>CPI – U U.S. City Average, All Items</td>
<td>2.7% 12 Month Period Ending August, 2018</td>
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PUBLIC SECTOR SETTLEMENT TRENDS
<table>
<thead>
<tr>
<th>YEAR</th>
<th>WEIGHTED AVERAGE</th>
<th>AVERAGE</th>
<th>MEDIAN</th>
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<tr>
<td>2009</td>
<td>3.3%</td>
<td>2.0%</td>
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<tr>
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<td>1.1%</td>
<td>1.3%</td>
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<tr>
<td>2011</td>
<td>0.4%</td>
<td>0.9%</td>
<td>0.0%</td>
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<tr>
<td>2012</td>
<td>0.8%</td>
<td>1.1%</td>
<td>1.0%</td>
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<tr>
<td>2013</td>
<td>1.1%</td>
<td>1.6%</td>
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<tr>
<td>2014</td>
<td>2.2%</td>
<td>1.8%</td>
<td>2.0%</td>
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<tr>
<td>2015</td>
<td>2.8%</td>
<td>2.2%</td>
<td>2.0%</td>
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<tr>
<td>2016</td>
<td>2.6%</td>
<td>2.5%</td>
<td>2.3%</td>
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<tr>
<td>2017</td>
<td>2.7%</td>
<td>2.4%</td>
<td>2.0%</td>
</tr>
<tr>
<td>2018 (YTD)</td>
<td>2.3%</td>
<td>2.3%</td>
<td>2.0%</td>
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Source: Bloomberg BNA
# ILLINOIS INTEREST ARBITRATION AWARDS ON WAGES—PROTECTIVE SERVICES

*Data excludes awards where one or both parties offered equity adjustments.*

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<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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<tbody>
<tr>
<td>All awards*</td>
<td>2.49%</td>
<td>2.32%</td>
<td>2.36%</td>
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THE NATIONAL PELRA COLLECTIVE BARGAINING SURVEY
2018 NPELRA ANNUAL COLLECTIVE BARGAINING SURVEY—KEY EXCERPTS
DEMOGRAPHICS OF 2018 SURVEY

No. of Responses

City/Town: 140
County: 60
Special District: 10
State: 5
Federal: 5
Education: 5
School: 1
Other: 10
WAGE INCREASES EXISTING 2018 CONTRACTS
WAGE INCREASES - ANTICIPATED CONTRACTS IN 2018
ANTICIPATED LABOR RELATIONS ISSUES IN 2018

- Wages
- Structural deficit
- Specialty pay
- *Janus v.* – union’s proving their worth
- Paid parental leave
- $15 minimum wage
- Workforce reductions resulting from state budget and loss of state funding
- Attendance
- Incorporating longevity into base rates
- More ambitious proposals by management
- New union members not understanding give and take of bargaining
- Maintaining staffing levels and wages at jail
ANTICIPATED LABOR RELATIONS ISSUES IN 2018

- Political power of unions to stop or delay new and innovative projects
- Keeping wage increases around 2%
- New pay equity law going into effect 7/1/18
- Succession planning
- Should be minimal–FOP got everything in 2017

- Pension costs
- Hours worked as related to overtime
- Lack of leadership
- Mass retirement
- FMLA policy administration
- Rising pension liability
- Educating bargaining unit on our financial position
ANTICIPATED LABOR RELATIONS ISSUES IN 2018

- Union receiving raises while non-union getting 0%; morale issues
- Cuts from the state
- New law regarding officer-involving shooting
- Elected officials
- Rising health care costs
- Finding and retaining qualified staff, including police and fire
- Shift definition – should never have been put in cba; causing loss of flexibility for police
- Retiree medical for police (and spouses)
DO YOU EXPECT AN INCREASE IN HEALTH PREMIUMS?
WHAT PERCENT INCREASE DO YOU EXPECT IN HEALTH PREMIUMS?
FORECAST OF EMPLOYEES’ SHARE OF HEALTH INSURANCE PREMIUM

- Increase
- Decrease
- Remain the Same
DO YOU HAVE A WELLNESS PROGRAM?
WELLNESS INCENTIVES

- Health insurance premium credits
- 20% decrease in premium
- 2% decrease in premium
- One month premium free
- $ for wellness exam; $ for on-line health assessment
- $300 to participate in health screening
- $20/mo credit for health risk assessment
- Day off for reaching top goal
- Paid Leave
- Gym membership discounts (*many have this*)
- Employee recognition
PLAN ON NEGOTIATING CONCESSIONS IN 2018?

- Yes: 40
- No: 120
- N/A (No Current K): 60
CONCESSIONS IN UPCOMING CONTRACTS

- Greater employee contribution toward health insurance (again)
- Prefer not to
- Move from step system to open range pay structure
- Gain scheduling flexibility and reduce premium pay accruals
- Body Worn cameras

- 2-tier wage system; inc. wage progressions; address language that reduces management flexibility; expand random drug testing pool
- Overtime = computed in strict accordance with FLSA … only time actually worked aka “sweat hours”
- Eliminate attendance incentives
• Remember, under the ACA, there is a 40% excise tax on the cost of ER sponsored health insurance plans over a specified amount, starting in 2020 ($10,200 for S; $27,500 F, as adjusted for COL)

• Here’s the latest:
  ▪ Under a federal spending bill signed by President Trump on January 22, 2018, the effective date of the Cadillac tax is delayed 2 more years, to 2022!
H.R. 4846, Introduced 1/19/18

Public Safety Employer-Employee Cooperation Act

Would provide collective bargaining rights for public safety officers (police & fire)

Interest arbitration included

Stay tuned…
HOPE FOR THE BEST BUT PREPARE FOR THE WORST...

- Consider
  - contingency clauses allowing future wage increases to be reduced if revenues drop
  - Furlough clauses
- Control or reduce legacy costs
- Continue to control health care costs to reduce liability and avoid imposition of 40% Cadillac tax
Preserve and enhance management flexibility in your CBA’s

- Avoid **minimum staffing** clauses
- Maintain right to reduce the workforce by **attrition**
- Maintain right to hire **part-timers**
- Right to **lay off** is critical during an economic downturn or unexpected fiscal challenge
- Preserve **outsourcing** ability
KEY TAKEAWAYS FOR THE FUTURE

• Train Your Managers and Supervisors
  ▪ How to Effectively Administer the Contract and Handle Grievances
  ▪ Consider a contract audit...
• Share important information, especially bad news, with your employees
THANK YOU IPMA-HR!
PLEASE FOLLOW ME ON TWITTER FOR LATE BREAKING NEWS:

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