Hot Legal Topics: The Labor/Management Relationship in the Wake of COVID-19

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ICCCFO Conference | April 22, 2022
Sick Leave Restoration and Paid Leaves under HB 1167

Robbins Schwartz
Summary of HB 1167

- Attempt #2 for paid COVID-19 leave
  - Now includes vaccination condition
- Two new pay requirements for colleges
  - Reimbursement of sick leave for COVID-19 reasons
  - Paid administrative leave for COVID-19 reasons

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Definitions and Conditions

- “Employee”: People employed when the Act goes into effect.
- “Fully vaccinated”
  - 2 weeks after 2 doses of a 2-dose series or a single dose of a vaccine with FDA approval or EUA, and
  - Any recommended booster doses if the individual is eligible and IDPH has adopted CDC’s change to its definition of “fully vaccinated.”
  - CDC definition does not include booster doses as of 4/13/2022.
- COVID-19 reasons for sick leave or paid leave include when the employee or their child is restricted from being on college property because they:
  - Have a confirmed diagnosis from a molecular amplification diagnostic test result (such as PCR),
  - Have a probable diagnosis from an antigen diagnostic test,
  - Are a close contact with a person who had a confirmed case and must be excluded, or
  - Is required to be excluded from district property due to COVID-19 symptoms.
- To qualify for the new paid administrative leave or sick leave, employees must receive all of the vaccine doses required to be fully vaccinated no later than May 10, 2022.

- If IDPH later requires booster doses for full vaccination:
  - Employees have five weeks to update their shots to ensure future eligibility.
  - Colleges may not rescind paid administrative leave or sick leave they have granted on the basis that an employee is no longer “fully vaccinated.”

- Employees must provide “all documentation requested by the college” for paid administrative leave.

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Return of Sick Leave

- Available to all employees who have the required vaccine dose(s) by May 10
- Only available for sick leave that was used:
  - during the 2021-2022 year, and
  - for the listed COVID-19 reasons
- SURS implications

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COVID-19 Paid Administrative Leave

- Available to all employees who:
  - have required vaccine dose(s) by May 10 and
  - (if applicable) participate in required testing

- Only available when the employee is/was absent or excluded:
  - during a disaster declared due to a public health emergency, and
  - for the listed COVID-19 reasons

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Lessons from the Bargaining Table

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The COVID Bargaining Experience

- COVID Midterm Adjustments
  - Greater Collaboration
  - Unique Proposals
- Remote Bargaining
  - Advantages
  - Disadvantages

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Successor Bargaining

- Rollovers
- Prolonged bargaining cycles
- Labor Shortages
  - Faculty
  - Support staff
- Inflationary pressures

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CPI 2017 – 2022 (Chicago)

12-Month Percent Change
Series Id: CWUR529A50
Not Seasonally Adjusted
Series Title: All items in Chicago-Naperville-Elgin, IL-IN-WI, urban wage earners and clerical workers, not seasonally adjusted
Area: Chicago-Naperville-Elgin, IL-IN-WI
Item: All items
Base Period: 1982-84=100

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CPI 2017 – 2022 (U.S. city average)
CPI 2017 – 2022 (Midwest city average)

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Impact of Inflation

- Tax revenues should increase but the Union is countering with cost of living (living wage) arguments
- The death of the CPI formula?
- Now we are competing with fast food and Amazon

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Strategies

- The planning process is more important than ever.
  - Revenue projections may need to be adjusted.
  - Be ready to depict salary/wage growth and the cost of benefits to the College.
  - The use of comparators.
- Consider Alternative Forms of Bargaining

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• Formal Process with respective teams in a traditional meeting setting.
  • Proposals are developed away from the bargaining table to reflect the objectives of the College.
  • Spokesperson selected to communicate proposals and positions on behalf of the College’s bargaining team.
  • Objective is to reach a compromise through the exchange of proposals and counterproposals.

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Table Discussions
- Primarily designed to facilitate presentation and explanation of proposals.
- Presenting teams states rationale for the proposal.
- Questions addressed.
- Use of Caucus meetings to develop responses to questions and additional counter-proposals.
- Use of Sidebar discussion to problem solve.
Disadvantages of Traditional Bargaining

- Formality of process may inhibit open conversation and exchange of new ideas.
- Structure of meetings with teams sitting across a table makes the process seem more adversarial.
- Structure of process may provide less ability to address and resolve issues outside of contract language.

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• Interest based bargaining ("IBB") goes by various names including, “win-win” and “mutual gains bargaining.”

• IBB dispenses with the use of a chief spokesperson and sequential exchanges of formal written proposals in favor of participation by many individuals and reliance on interest-based problem-solving techniques.

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• The process:
  • Participants identify issues – both union and employer.
  • Issues are to be framed as a joint problem.
  • Participants identify the various interests both parties have in the issue (participants are to avoid taking positions on the issues identified).

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Options into solutions

- Participants jointly brainstorm options and solutions. (No judging! No judging!)
- Participants apply “standards” or criteria to evaluate possible solutions or options. (Now you judge!)
  - Feasibility: Can the option be done
  - The Benefit: Does the option improve conditions
  - Acceptability: Can this option be approved

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• Other Features
  • No separate teams;
  • Limited caucus meetings;
  • Limited sidebar discussion;
  • Language issues are generally addressed first before you work on the economics.

• The Economics
  • Even in a well-run IBB process, the parties will usually revert to traditional bargaining when trying to resolve salary and other problematic economic issues.

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The process relies on:
- Extensive training of the bargaining teams – generally larger bargaining teams – in problem solving and listening techniques.
- Commitment of all or most of the members of the board of trustees to participate in the training and interest based bargaining negotiation sessions.
- A willingness of all the participants to follow the IBB format and principles.

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Advantages:

- Open exploration and discussion of issues may help promote better understanding and relationships.
- Union may develop greater appreciation of boards limitations and interests.
- Process may help dissipate acrimony built up over previous difficult negotiations.
- The process usually entails an expedited process with a deadline.

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Disadvantages:

- Multiple participants in discussion raise possible contract language problems and grievances. Bargaining history is more difficult to discern and verify.

- Individuals may be subject to personal attacks if parties do not adhere to interest based bargaining principles. Failure to stay committed to the process may damage, not help, labor relations.

- The process demands significant time commitment of all participants.

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