News and Lessons From the Bargaining Table

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April 15, 2011
ICCCFO Conference – Utica, IL
Salary/Wage Issues

- Table Trends and Employer Negotiations Strategies
  - “Step Only” Contract Settlements
  - Off-Schedule Salary Payments
  - Delayed Step Advancement or Non-Retroactive Wage Settlements
Salary/Wage Issues

- Salary Reopener Provisions
  - Advantages:
    - Duration of Contract Extended
    - Reduced Risks
    - Union Ratification
  - Disadvantages:
    - More Frequent Bargaining
    - Risk of Strike or Work Stoppage

- CPI-Based Salary Increase Provisions
Salary/Wage Issues

- Comparable District Wage/Salary Schedules, Benefits Packages, and Contract Settlements
  - Practical Tips:
    - Make sure what districts agree to as “comparables” are actually true comparable districts.
    - Comparable colleges should be of similar size, budget, EAV, and location.
    - Reject the union’s attempt to add nearby “high-end”, colleges to the agreed list of comparable districts.
    - Comparison of salary schedules should not be limited to the entry level, salary step.
    - Fringe benefits comparisons are valid only if the specific benefit plans are compared, not simply the percentage of contribution by the board.
Health Insurance

- Table Trends: The Affordable Care Act
  - The big question in this bargaining season is how to address the health care reform legislation that went into effect last year.
  - From a bargaining perspective, the most important question may be whether to maintain a grandfathered plan.
  - Grandfathered plans are those that were in place as of March 23, 2010, and are exempt (or have delayed implementation) from some of the Act’s requirements.
Grandfathered Plans are subject to delayed implementation of the requirement to cover adult children.

Grandfathered plans are also exempt from:
- Providing preventative services at no cost to employees
- Providing consumer protection appeals
- Implementing choice of health care providers and emergency services providers.
- Eliminating pre-existing condition exclusions for certain dependents.
**Health Insurance**

- Loss of Grandfathered status:
  - Increasing employee deductible or out-of-pocket
  - Increasing employee’s percentage of cost-sharing
  - Change in carriers
- If you propose cost reductions you may lose your grandfathered status.
- Before making such proposals, decide whether it is more affordable to retain the grandfathered status because of the costs imposed by the Act or whether the costs of retaining your current plan is more expensive.
Addressing other aspects of the Affordable Care Act

- The Act is implemented in phases and there is still little regulatory guidance on how it is to be applied.
- The old bargaining rules apply – maintain flexibility in what you are obliged to provide.
- Consider the use of re-opener language to make adjustments based on the ever-evolving requirements of the Act.
Health Insurance

- **General Principles**
  - Comparable college information is increasingly more important.
  - Addition of lower cost options.
  - Elimination of expensive plans.
  - More changes to health insurance plan design.
  - Health insurance committees.
    - Note: Unions may utilize joint committee to limit board’s rights to:
      - Change health insurance plan
      - Reduce benefits
      - Increase employee premium cost contributions
Health Insurance

- Employer Negotiation Strategies
  - Focus on limiting or “capping” board’s health insurance premium contribution.
  - Cost Sharing Formulas
    - Recommend: Use historical average health insurance cost increases to negotiate formula.
Health Insurance

- Add Cash Benefits Option – “Opt-Out”
- Modify Health Insurance Plan Benefits Options
  - Substitute HDHP/PPO
  - Combine HDHP with HAS
Health Insurance

- Change Health Insurance Plan Design
  - Increase deductible and co-pays

- Eliminate Health Insurance for Retirees

- Delete Restrictive Collective Bargaining Agreement Language
  - Eliminate Maintenance of Benefits Provision
Retirement Benefits

Advantages of Retirement Incentives

- Staff turnover reduces college’s total salary costs and can lower rate of health insurance premium rate increases.

Disadvantages – Retirement Plans

- Retirement payments are additional fringe benefits costs paid to departing employees – payments do not benefit continuing employees.
Retirement Benefits

- Table Trends
  - Reduce Amount of Retirement Benefits
  - Avoid SURS Penalty Payments
  - Offer Different Level of Retirement Benefits Based Upon Employee’s College Service or College’s SURS Penalty Costs
    - Example: Employee receives $500 for each year of district service, payable over employee's final pre-retirement years, subject to SURS 6.0% earnings cap.
Retirement Benefits

- Employer Negotiation Strategies

  - Eligibility: District’s should consider restricting retirement benefits to employees who are eligible to retire without subjecting the board to SURS ERO or 6.0% earnings cap penalty payments.

  - Link Post-Retirement health Insurance Benefits to SURS Health Plan Enrollment.
Recoup Pre-Retirement Payments If Eligibility Criteria Not Met.

- Deterrent Effect: Recoupment provisions are an important mechanism to discourage employees from changing their retirement date.
Program Elimination and Reduction in Force

- Colleges should prepare a RIF plan based on the specific reason for the reduction.

- Proposed RIF for financial (cost savings) reasons is subject to mandatory mid-term bargaining with the union regarding both the decision and the “impact” (i.e., layoffs) of the RIF.

- Decision to RIF in order to reorganize or restructure its delivery of services is a matter of “inherent managerial policy” and thus not mandatorily negotiable.
Contract Considerations

- Do not agree to contractual restrictions on its ability to RIF or lay off bargaining unit employees.
Contract Considerations

- Be Wary of:
  - The union may seek to extend the duration of the applicable RIF recall period for employees on the recall list to access any available vacancies in bargaining unit positions.
  - The union may attempt to define seniority to allow bargaining unit employees additional rights to “bump” less senior employees.
Contract Considerations

Recommend:

◦ Maintain maximum flexibility to “target” the positions subject to layoff and avoid contractual definitions of seniority or seniority categories.

◦ Review current RIF/Seniority policies and contract provisions, and make sure seniority lists are updated, accurate, and consistent with seniority provisions in the contract and board policy.
Recommended Procedural Steps

- What to Tell the Union:
  - Notify union in advance of any anticipated RIF for cost savings reasons.
  - Advise union of maximum number of positions subject to layoff.
  - Respond to union information requests.
  - Consider any procedural obligations in the collective bargaining agreement.
Obligation to Bargain:

- Bargain with union upon receipt of demand to bargain RIF for economic reasons.
- College may implement RIF decision even if parties fail to reach agreement or impasse.
- College must only bargain in good faith to impasse or agreement and is not required to make concessions.
Understanding Mediation, Impasse, and Potential Outcomes
What Impasse Means

- Mediation Impasse – Reach impasse before implemented last best offer.
  - Mediation must have been used without success.
  - Continuing negotiations would be futile.
  - The college has issued to the union its "last best offer" and has given the union the opportunity to respond to (and reject) the offer.
  - Provide written notice to the union that an impasse has occurred in the parties' negotiations.
  - Reaching genuine impasse allows the college to implement its last best offer.
**Pre-mediation Planning**

- Re-confirm the board’s priority items.
- Prepare a cost analysis.
- Develop a series of economic package proposals.
- Prepare a summary of the unresolved issues and each side’s position on the open items.
Mediation Strategy

- Be consistent and accurate in their statements to the mediator.

- Understand the rationale for each board proposed item.

- Be prepared to inform the mediator that it has reached its maximum financial authority.

- Be open to the mediator’s recommendation and consider any suggested “supposals” or “what if” proposals.
The Choreography of the Mediation Process

- The good faith bargaining obligation
  - Avoid surface bargaining (going through the motions)
  - Unreasonable bargaining demands
  - Regressive bargaining
The Choreography of the Mediation Process

Tactics to consider:

◦ Have at least two moves.

◦ Seek clarification from union as to their position and rationale for its position.

◦ Use of supposals.

◦ Package proposals: the last best offer must be packaged to make it clear that impasse is total.
The Choreography of the Mediation Process

- The mediator’s supposal
  - A mediator tool to explore parties’ bottom line.

- The mediation last best offer.
  - Insure you can live with what you declare as your last best offer.
  - Last best offer must be rejected before you can implement.
Implementing the Last Best Offer and Implications

- The implemented contract must contain those elements which are mandatory bargaining topics and which were included in the last best offer proffered before the declaration of impasse.

- Tentative agreements reached prior to impasse must be included.
Implementing the Last Best Offer and Implications

- Do not alter the terms of its last best offer, to do so would constitute an unfair labor practice.

- Notice of the implemented contract should be given to the union.

- Bargaining obligation continues.
Memo to individual bargaining unit employees summarizing the status of negotiations.

The status memo can effectively deter the union from initiating a successful strike vote by informing employees of the board’s last economic proposal and disclosing how close to settlement the parties are at mediation.

Develop a strategic press release to inform the community of the status of negotiations.
QUESTIONS?