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State Labor Agreements – Beyond the Numbers

Nearly a year into the biennium and with labor arbitration imminent, the Dayton administration and the state's two largest public employee unions – MAPE and AFSCME – reached agreement on a two-year contract for FY 12-13. An August hearing of the legislature's Subcommittee on Employee Relations to examine the agreements delivered on the expectations of being very testy and partisan. But underlying the prickly, politically charged debate over contract numbers, a couple of labor-force related issues were raised which deserve much more discussion.

The basic economics of the contract details would seem to belie the intensity of the hearing. The agreements call for a 2% across-the-board cost of living adjustment (COLA) in January 2013, or 18 months into the two-year agreement. It would be the first such COLA for state employees since July 1, 2008. In addition, tenure-based salary increases (commonly known as "steps") provided to employees on the anniversary of hiring dates would be retroactive to July 1, 2011 – the beginning date for the contract. According to the Minnesota Management and Budget Department (MMB), about 50% of the workforce covered under these agreements would receive these step increases since they have not reached the maximum salary for their job class.

Unions agreed to deductible and co-pay modifications to their health plans (see sidebar on page 2). The state would continue pick up 100% of the insurance premium for employee-only packages and 85% of the premium for family coverage. Even though these modifications save the state \$7.9 million, the health care benefit package remains excellent and quite generous by most any objective standard. According to testimony at the hearing the agreements would increase biennial employment cost by an additional \$13 million beyond the expected \$46 million increase under a step-receiving but COLA-less contract.

Some legislators clearly took issue with the affordability of the contract and raised con-

cerns about a disconnect with recent private sector realities. But the tension of the hearing also reflected that something much more fundamental was being debated than biennial costs. It was clear the contract details are for some simply symptomatic of deeper philosophical concerns over the basic design of public sector compensation and the process of collective bargaining itself.

Two Steps Forward

If there was one area of strong bipartisan agreement in the hearing, it was that it is imperative to reward excellence among state employees and retain talent. However, the best methods for accomplishing this are a source of significant dispute.

Of chief concern is the use of "steps" in achieving this goal. MMB officials argued that steps incent professional progress and development and are an important part of a labor force retention strategy. Critics argued steps are a poor proxy for performance and that the state must make stronger efforts to weave performance appraisal into the compensation system.

Theoretically, step advancements are not automatic but conditioned on a performance review. Practically, from current and former managers we have spoken with, they are much more automatic than not. MMB officials noted an ongoing effort to strengthen state performance evaluations, which is a good thing since it appears to be an area where Minnesota has needed improvement. A 2009 Pew Center for the States Report found that:

"Performance appraisal instruments are developed by Minnesota agencies and require adherence to statewide policies, but because there is no administrative oversight or accountability on the development of agency instruments, not all of the state policies are followed. For example, nearly 20 percent of classified employees did not receive an annual performance appraisal despite statewide policy requiring one."¹

¹ Minnesota factsheet in "People Forward, Human Capital Trends and Innovations" Pew Center on the States, 2009

This finding also suggests that without a formal linkage to compensation, such performance evaluation systems can become little more than a bureaucratic exercise.

The efficacy of steps as a proxy for performance based compensation will always be in question due its indiscriminating, untargeted nature. It provides no ability to distinguish between great employees, good employees, and the merely passable. In addition, it's an expensive approach because of the opportunity costs of directing compensation resources toward step increases. Step increases vary by contract but historically have been in the 2.5% – 2.75% range for AFSCME and 3.0% – 3.5% for MAPE. The compounding effect of steps and COLAs together are a major commitment of compensation dollars.

To illustrate, we model the effects of the proposed FY 2012-13 contract on one position – Accounting Officer Intermediate – hired on November 15, 2010 at Step 4 (i.e. – someone with at least four years of education and experience). Because all step changes in the proposed MAPE contract are around 3.5% and the proposed COLA is 2% for all employees, the compounding math is essentially the same for any MAPE employee who is eligible for a step increase in both years of the contract.

As the table indicates, under the proposed agreement with the retroactive step increases, salaries for step-eligible MAPE employees will have increased by about 9% by the end of the contract term in July 2013. At the same time nearly 50% of the state workforce is already at the top step for their job class, and so are denied step increases even

State Employee Health Care Benefit Changes

Changes are effective January 1, 2013

Provision	Old Contract	New Contract (Benefit Level 2) ¹	Change for employee
Employee Cost Share of Premium	0% for employee/ 15% for dependents	0% for employee/15% for dependents	None
Deductible for all services except drugs and preventive care	\$140 single \$280 family	\$180 single \$360 family	\$40 increase single \$80 increase family
Office Visit /Urgent Care copay	\$22	\$23	\$1 increase
Emergency Room Copay	\$75	\$100	\$25 increase
Facility Copay -inpatient admission	\$180	\$200	\$20 increase
Facility Copay – outpatient surgery	\$110	\$120	\$10 increase
Coinsurance (MRI, CT scan and services not subject to copay)	5%	10%	
Prescription drug copay	Tier 1 — \$10 Tier 2 — \$16 Tier 3 — \$36	Tier 1 — \$12 Tier 2 — \$18 Tier 3 — \$38	\$2 increase
Maximum Drug Out of Pocket	\$800/\$1600	\$800/\$1600	No change
Maximum Non Drug Out of Pocket (Single/Family)	\$1,100/\$2,200	\$1,100/\$2,200	No change

¹ Under the state health care plan, employees are incentivized to use lower cost providers in a four tier benefit level system. In the design of this system, employee deductibles, copays, and maximum out of pocket will increase for utilizing higher cost providers (“Benefit Level 4” being the highest cost providers). The new contract provisions and changes in this table are for Benefit Level 2. For benefit levels 3 and 4 deductible and copay increases are larger in the new contract and maximum non-drug out of pocket limits increase from 35% to 127%. No information on the utilization of benefit levels was readily available. Assumes having received a health assessment and opted- in for health coaching. Otherwise the copay is \$27 under the old contract and \$28 under the new.

though a 9% salary increase may be vital to reward and retain them given their capabilities, experience or outstanding performance.

“Accounting Officer Intermediate” hired on November 15, 2010 at Step 4 (4 yrs experience)

Date	Triggering Event	Salary Increase	Salary	FICA	MSRS	Total Cost
6/30/2011	N/A		\$40,361	\$3,088	\$2,018	\$45,467
7/1/2011	New Fiscal Year	No change	\$40,361	\$3,088	\$2,018	\$45,467
11/15/2011	Anniversary of hiring date	Step increase of 3.57%	\$41,802	\$3,198	\$2,090	\$47,090
7/1/2012	New Fiscal Year	No Change	\$41,802	\$3,198	\$2,090	\$47,090
11/15/2012	Anniversary of hiring date	Step increase of 3.40%	\$43,222	\$3,306	\$2,161	\$48,690
1/2/2013	Negotiated COLA	COLA increase of 1.98%	\$44,078	\$3,372	\$2,204	\$49,654
Two year salary increase:					\$3,717	9.21%
Two year change in employer expense for salary and retirement (FICA and Social Security):					\$4,187	9.21%

It is commonly suggested that defined benefit pension plans are the necessary and complementary retention mechanism for state employees at the top end of the pay scale with no prospects for step increases but with opportunities to obtain higher salaries available elsewhere. While this back ended form of compensation can undoubtedly induce some individuals to stay in public service, there is growing concern that defined benefit plans may lock in funds that could instead be used to recruit and retain high-performing employees with needed skill sets through higher salaries or alternative methods of compensation. In short, this retention tool may be unintentionally pushing needed talent away from government service.²

The debate over performance-based compensation automatically draws attention to this bedrock construct of the traditional collective bargaining process. Another fundamental issue raised in the hearing concerns the transparency of the collective bargaining process itself.

What Should the Public Know and When Should They Know it?

At the subcommittee hearing, legislators directed numerous questions at MMB officials in efforts to understand more about the evolution of the negotiations. Several legislators wanted more information on initial bargaining positions, descriptive information on offers and counteroffers, the origin of the final deal, and some general sense of the aggressiveness with which the state defended its positions. It's fair to say these legislators were left unsatisfied.

It's an entirely understandable and reasonable line of questioning. The primary obligation of a union is to advance the private economic interests of its membership. In negotiations with public sector unions, it falls to management to represent the public interest and the continued production of effective services with limited budgets. As former union organizer and Clinton-era Labor Department official Marty Manley notes, "every union agreement has two signatures on it" and "blaming unions lets city and state managers off the hook much too easily." Unfortunately, it is very difficult for the general public to ascertain how well elected officials are fulfilling their obligations in pur-

suing and defending the public interest in this negotiating process.

Several unique characteristics of collective bargaining in the public sector suggest a need for greater levels of transparency of the process itself. The potential of labor capture and the degree to which political and financial support is intertwined between the negotiating parties has been a topic of discussion for decades. In addition, unlike the private sector where unions rarely sway company strategy, public employee unions can significantly shape government policies through their contracts by constraining what elected officials can or cannot do — regardless of voter desires or mandates. Public sector unions, unlike their private sector counterparts, deal with monopolies that are free from market forces and have the power to raise as much money as they like through taxation. Moreover, the government's negotiating team consists of managers whose primary motivation is not the financial interests of the taxpayer but preserving stability and avoiding a strike if at all possible.

One solution would be to allow full disclosure of proposals and counter proposals and public access to negotiation sessions. Such "open bargaining" laws are a source of great contention around the country. Critics argue vociferously that open bargaining is a real and direct threat to the integrity of the bargaining process by disrupting the free exchange of ideas and proposals and hindering workforce involvement and participation. Proponents argue that open bargaining does not in any way affect the right to organize, associate or express viewpoints but does provide the public a clearer and more comprehensive understanding of the issues and enhances accountability of both elected officials and union representatives. It's a belief also shared by some public employees and public sector managers around the country.³

Interestingly, Minnesota law already features a very strong public sector collective bargaining transparency provision; but attaches a condition that renders it essentially hollow. Minnesota law states, "All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives are public

meetings except when otherwise provided by the commissioner."⁴ That final phrase renders the provision essentially moot. Bargaining team leaders have long argued that privacy is important and acknowledge that if a member of the media or public did decide to witness the negotiations, the meetings would likely be closed. In the Venn diagram of collective bargaining meetings, those two circles are the same.

Recognition of the unique qualities and characteristics of public sector collective bargaining go back to the days of FDR who stated in 1937, "Meticulous attention should be paid to the special relations and obligations of public servants to the public itself and to the Government....The process of collective bargaining, as usually understood, cannot be transplanted into the public service." Public sector collective bargaining is deeply embedded in the culture of this state. Transparency initiatives are a worthy and important measure to address the unique concerns associated with its practice in government.

Beyond the political posturing surrounding this lightning rod topic, there is real and important public policy substance. Contract squabbles are symptomatic of deeper issues. As we noted in our 2010 public sector workforce compensation report, the economic and budget realities of the 21st century will require higher levels of flexibility, adaptability, accountability and performance in public sector human resource management. Public sector human resource systems must move away from functioning as administrative bureaucracies to being strategic assets in workforce management and design. Critical knowledge, experience, skill sets must continue to be aggressively recruited, competitively paid, and developed as core assets within government. In a state known for its blue ribbon commissions to tackle tough, sensitive issues, we renew our call for such an effort to examine public sector compensation design and human resource management in the 21st century. ■

² Pensions Blamed for Costing Schools New Talent. Education Week, April 22, 2009

³ When Unions Negotiate with Governments, Capital Research Center, June 2008

⁴ Minnesota Statutes 2011, section 179A.14, subdivision 3