

THE PUBLIC SECTOR

Lessons learned from the Badger State

by Jonathan Holtzman

It's a difficult time to work in public-sector labor relations and HR. California public agencies are being overrun by declining revenues, skyrocketing pension and health care costs, and unfunded retiree health liabilities. And then, just as everything was going well, Wisconsin burst on the scene. At least in the short run, Wisconsin makes a rational discussion of the problems inherent in public-sector labor relations more intractable because of Governor Scott Walker's extremist views and the heavy-handed way in which he has delivered them.

What's wrong with Wisconsin

What's most upsetting about *Wisconsin* (the phenomenon, not the state) is that there are a few grains of truth in Governor Walker's rhetoric. What are they?

First, public employers do face an enormous challenge in dealing with the rising costs of pensions — some of which are excessive — and health care. If we don't address that challenge immediately, public services in California virtually will cease to exist. Fixing the problem is greatly complicated by the disastrous state of California jurisprudence on the issue of "vesting." Simply put, we don't know the extent to which courts will permit adjustments to pension and retiree health care plans, short of bankruptcy. Logically, public agencies should be free to change plans prospectively for current employees, which private employers can do under the Employee Retirement Income Security Act. But vesting case law in California has yet to embrace that view.

Second, there *are* problems with bargaining over pension benefits. Unfortunately, politicians negotiate bargaining agreements in the public sector. The life span of a political job is often eight years at most, especially in the era of term limits. Yet vested pension benefits last forever. Ironically, other major commitments such as general obligation bonds require voter approval.

Except in a very few places such as San Francisco, no similar approval is required for vested pension benefits. Requiring voter approval on retirement benefits makes bargaining more difficult; no one at the bargaining table knows whether voters will approve a pension package. But it's a key safeguard. It's no coincidence that San Francisco is one of the few major

California cities that didn't adopt the disastrous "3% at 50" pension plan for police officers and firefighters.

Third, public employers don't have "management" in the same way as in the private sector. Under California labor laws, managers have a *right* to union representation. For collective bargaining to work, the distinct interests of management and labor must be articulated, disputed, and ultimately harmonized. With unionized managers who lack strong incentives, it's hard to take a tough position. And, oh, did I mention that politics sometimes undercut strong management positions, especially when it comes to police officers and firefighters?

All of that said, Governor Walker's decision to shut down communications between public employees and government employers was unnecessary, punitive, and antithetical to what HR and labor relations work to achieve. It will cause only bigger problems down the road.

Lessons learned

The challenge is to continue to pursue thoughtful reforms that make government sustainable while distinguishing ourselves from Wisconsin. That won't be easy. According to a *New York Times*/CBS news poll conducted right after Governor Walker touched off the Wisconsin debate, only 22 percent favored cutting public workers' benefits to reduce "your state's deficit." Only 33 percent of persons polled favored "taking away some of the collective bargaining rights of public employee unions." I bet those proemployee numbers are even stronger now.

Those of us who work in the public sector should continue to take reasoned positions, press for change, debate issues armed with *facts* (not just beliefs), and recognize that the most enduring reforms in the field of public-sector employment come from pursuing the high road, not from following the mob. That's where Wisconsin went wrong. As the polls show, what seems like a mob calling for the heads of public employees can quickly become a prounion peace rally when the word "reform" begins to sound like an invitation to tyranny. An awful lot of voters are employees at heart — and in fact.



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