



THE PUBLIC SECTOR

The homestretch

by Jonathan Holtzman

We currently are in the homestretch for public-sector labor negotiations, with most public agencies starting their fiscal year on July 1. Ask any public-sector employment attorney, and he will tell you he has never seen a year like this one. With revenues generally flat or down and pension and retiree health benefits, medical insurance, and workers' compensation costs going through the roof, it has been a brutal year for government. We have seen the unthinkable: large numbers of layoffs in public safety, concessions sometimes totaling 10 percent of wages, second-tier retirement systems, and other unfathomable cuts in public spending. And in cities that are on the edge, we are seeing increasingly aggressive measures, including emergency measures that test the limits of the vested rights doctrine and labor contract principles.

Devising a strategic plan for the coming year

Not even the most optimistic among us think we have hit the bottom. Most agencies are facing large increases in retirement and health costs and slow revenue growth over the next few years. Because public agencies are so reliant on real estate values, there remain large stocks of unsold foreclosed homes, and many homes that have lost value have not been reappraised. Thus, the revenue prognosis for the next couple of years isn't good, even if the general economy recovers.

The best time to begin addressing what we will do next year is right after the current budget is adopted and the problems are fresh. During the budget season, some of the most promising budget-slashing options end up on the cutting room floor because they are too complicated to accomplish quickly, require too much discussion with unions, and rely on restructuring organizations. So despite the general exhaustion that prevails among budget and labor folks this time of year, the time to get going on next year's solutions is right now.

The first step is to assess the likely service-level effects of the 2012-13 budget. While many facts about the next budget are unknown, a few key facts are known or subject to reasonable forecasts. Revenues can be forecast. Pension rates are either known or knowable. Other cost drivers also can be predicted. Add 'em up and you get the level of service cuts that likely will be necessary to balance next year's budget.

If significant service cuts result, consider taking the following steps:

- (1) **Restructure and consolidate.** Real restructuring takes a lot of time and may require consultants. If you don't look at restructuring as an option now, it's likely to be the first issue on the cutting room floor next year.
- (2) **Contract out.** Determining whether contracting out services is cost-effective requires testing the market and carefully analyzing what will be gained and what will be lost. Additionally, gaining a consensus on contracting out work is often an enormous task.
- (3) **Study benefits solutions.** Determining which benefits are "vested" and which ones aren't (or are "on the line") requires a detailed legal analysis of how the benefits were granted in the first place and how they have changed over time. When benefits can be changed, actuarial studies are frequently needed, and significant efforts must be made to educate employees and the public. Reforming health benefits also requires extensive study.
- (4) **Ballot measures.** Ballot measures take time to develop, and if a measure affects the terms and conditions of employment, it likely will require meet-and-confer obligations, which are difficult to satisfy.
- (5) **Build coordination between labor and budget functions.** So much of the difference between successful labor outcomes and train wrecks has to do with delayed communication, meaning that effective negotiations that start in, say, January, are not possible. Successful labor outcomes in a concessionary environment almost invariably take time.

Bottom line

For lawyers who both negotiate and litigate, autumn typically is litigation time. That will be all the more true this year because of the concessions imposed, emergencies declared, new language tested, and novel approaches employed to deal with the biggest challenge to government in decades. So seize the moment to work with your bargaining teams and policymakers to put together a strategic plan for the coming year.



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