Current Trends in Public Sector Employment: Collective Bargaining Trends

NIU Financial Forecast Forum
January 24, 2020

Benjamin E. Gehrt
Clark Baird Smith LLP
Post-Janus Legislation
Public Act 101-620
Illinois Finally Passes Its Own Janus Legislation (S.B. 1784)

1. Employee Personal Contact Information Must be Provided to Union Once Per Month in Excel
2. Prohibition on Disclosing Employee Information to non-Union Third Parties
3. Union Access for Grievance Investigations and “Complaints”
4. Union Access to New Employees
5. Union Access to Discuss Collective Bargaining
6. **Union right to use Employer Bulleting Boards and Mailboxes**

7. **Employers must Honor Dues Cards**
   - One-year card duration, with annual automatic renewal unless revoked during 10-day window period is now presumed lawful
   - Employees must direct revocation requests to the union
   - During employee challenges, employer must continue withholding dues, and deposit money into an escrow account
   - ULP liability for improperly stopping dues withholding
   - Union indemnification provisions if employer is sued by employees
8. Employers Cannot Speak to Employees About Union Membership
   ➢ ULP to discourage remaining a member of a union, authorizing representation by a union, or authorizing dues deduction
   ➢ All employee inquiries must be referred to the union

9. Legal Obligation to Establish Email Policies to Prohibit Use of Email by “Outside Sources”
Janus Legislation Action Items

- Develop employee information reporting procedures
- Work with IT to limit third party use of email systems
- Train FOIA staff about third party requests for employee information
- Train managers and supervisors about illegal speech
Janus Legislation Action Items

- Review current CBAs and existing access rules
- Establish procedures for when and where union meetings will be permitted for new and current employees (i.e., what will “impede normal operations”)
  - Effects bargaining?
- Establish procedures for processing union requests to utilize bulletin boards and employee mailboxes
  - Effects bargaining?
Collective Bargaining Wage Trends
National First Year Negotiated Wage Increases – State and Local Govt. Employees (w/o lump sums)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>WEIGHTED AVERAGE</th>
<th>AVERAGE</th>
<th>MEDIAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>0.4%</td>
<td>0.9%</td>
<td>0.0%</td>
</tr>
<tr>
<td>2012</td>
<td>0.8%</td>
<td>1.1%</td>
<td>1.0%</td>
</tr>
<tr>
<td>2013</td>
<td>1.1%</td>
<td>1.6%</td>
<td>1.8%</td>
</tr>
<tr>
<td>2014</td>
<td>2.2%</td>
<td>1.8%</td>
<td>2.0%</td>
</tr>
<tr>
<td>2015</td>
<td>2.8%</td>
<td>2.2%</td>
<td>2.0%</td>
</tr>
<tr>
<td>2016</td>
<td>2.3%</td>
<td>2.4%</td>
<td>2.3%</td>
</tr>
<tr>
<td>2017</td>
<td>2.2%</td>
<td>2.1%</td>
<td>2.0%</td>
</tr>
<tr>
<td>2018</td>
<td>2.6%</td>
<td>2.8%</td>
<td>2.3%</td>
</tr>
<tr>
<td>2019</td>
<td>2.9%</td>
<td>2.8%</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

Source: Bloomberg BNA
### 2019 National First Year Negotiated Wage Increases State and Local Govt. vs. All Employees Less Construction & Govt.

<table>
<thead>
<tr>
<th></th>
<th>Government</th>
<th>All Employees</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted Avg.</td>
<td>2.9%</td>
<td>3.2%</td>
<td>+0.4%</td>
</tr>
<tr>
<td>Average</td>
<td>2.8%</td>
<td>3.7%</td>
<td>+0.9%</td>
</tr>
<tr>
<td>Median</td>
<td>2.6%</td>
<td>3.0%</td>
<td>+0.4%</td>
</tr>
</tbody>
</table>

Source: Bloomberg BNA
2008-19 Illinois Interest Arbitration
TOTAL AWARDS

2008 - 2018 YTD* Interest Arbitration Cases
* excludes supplemental awards
## Illinois Interest Arbitration Awards Issued in 2019

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Decisions</td>
<td>5</td>
<td>12</td>
<td>13</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Avg. Award</td>
<td>2.43%</td>
<td>2.53%</td>
<td>2.58%</td>
<td>2.46%</td>
<td>2.50%</td>
</tr>
<tr>
<td>Highest Award</td>
<td>3.00%</td>
<td>3.00%</td>
<td>3.50%</td>
<td>3.00%</td>
<td>2.75%</td>
</tr>
<tr>
<td>Lowest Award</td>
<td>2.00%</td>
<td>2.20%</td>
<td>2.00%</td>
<td>2.00%</td>
<td>2.25%</td>
</tr>
</tbody>
</table>
# Police / Fire Wage Increases

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>2.46%</td>
<td>2.50%</td>
<td>2.58%</td>
<td>2.63%</td>
</tr>
<tr>
<td></td>
<td>(200)</td>
<td>(133)</td>
<td>(73)</td>
<td>(24)</td>
</tr>
<tr>
<td>All Fire</td>
<td>2.33%</td>
<td>2.38%</td>
<td>2.41%</td>
<td>2.27%</td>
</tr>
<tr>
<td></td>
<td>(105)</td>
<td>(71)</td>
<td>(35)</td>
<td>(11)</td>
</tr>
<tr>
<td>Municipal Fire</td>
<td>2.27%</td>
<td>2.36%</td>
<td>2.40%</td>
<td>2.19%</td>
</tr>
<tr>
<td></td>
<td>(77)</td>
<td>(54)</td>
<td>(27)</td>
<td>(9)</td>
</tr>
<tr>
<td>F.P. Districts</td>
<td>2.48%</td>
<td>2.42%</td>
<td>2.44%</td>
<td>2.63%</td>
</tr>
<tr>
<td></td>
<td>(28)</td>
<td>(17)</td>
<td>(8)</td>
<td>(2)</td>
</tr>
</tbody>
</table>
Lateral Hire Programs
Gallup – June 2019: Americans’ Confidence In Institutions

1. The military
2. Small business
3. The police
Pew research center – September 2019:

“Carry Out Job-Specific Duties Effectively”

1. The military

2. The police

3. Tech leaders
Lateral Hire Programs

1. Whether to have a lateral hire program is a management decision

2. If you have a lateral hire program, how you pay employees with prior work experience is a mandatory subject of bargaining
   - Consider both pay and benefit time

3. Reimbursement agreements to recoup training and onboarding costs are a mandatory subject of bargaining
Illinois Cannabis Regulation & Tax Act “Trailer Bill” (P.A. 101-0593)
Helpful Clarifications:

▪ Employers permitted to discipline firefighters, law enforcement officers, and corrections officers for the “consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty, unless provided for in the employer’s policies.”

▪ Can’t discipline, however, based “solely on the lawful possession or consumption . . . by members of the employee’s household.”
Additional Clarification:

- No lawsuit for “actions” taken against an employee “or applicant” based on a “reasonable workplace drug policy.”

- “Actions” could include:
  - Reasonable drug and alcohol testing
  - Reasonable and nondiscriminatory random testing
  - Discipline
  - Termination
  - “Withdrawal of a job offer due to a failure of a drug test”
Consolidation of all Article 3 (police) and Article 4 (firefighter) pension funds into two separate statewide funds (one for fire, the other for police)

Two nine-member governing boards will be created for the two new funds, with three members selected from municipal chief executive officers, three members from participating pension funds, two members who are current beneficiaries of participating funds, and one member recommended by the Illinois Municipal League.
Pension Consolidation (S.B. 1300)

- Consolidation of all investing, auditing and actuary services into the two statewide funds
- Individual accounts for each community’s pension fund would be maintained, and “local control” over disability pension decision-making
Possible **Hidden** Costs for Tier 2 Fire and Police Pensions

- Revised final average salary formula (4 of last 5 years, instead of 8 of last 10 years)
- Reinstitute Tier 1 survivor benefits
- Annual pensionable earnings cap increase (full CPI-U instead of ½ of CPI-U)

**Overall Cost Unclear**

- IAFF President Pat Devaney recently estimated the additional cost will be $70 to $90 million over a 5-year period