

Municipal Budget and Civil Service Considerations

Paul N. Lalley, Esquire
Rebeca R. Chieffallo, Esquire

535 Smithfield Street, Suite 700
Pittsburgh, PA 15222
(412) 395-1280

One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
(610) 227-2591

Budgeting and Bargaining

- Collective bargaining complicates budgeting because wage rates may not be known in advance (or even sometimes after they were expected to take effect, where a deal is not reached before CBA expiration, which is fairly common).
- Unions often request copies of the budget – if a 4% wage increase is budgeted, that could complicate the bargaining and interest arbitration process by giving the unions unrealistic expectations, particularly if the current wage settlement trend and/or the employer’s goal is, for example, 2.5%.

Budgeting and Bargaining

- There is a recent trend in interest arbitration of unions using expert witnesses who base much of their analysis on areas where the local government's costs came in under budget.
- Unions often must be reminded in bargaining that it is not unusual to overestimate potential expenditures and to underestimate potential revenues when developing a budget.
- Focusing on the actual expenditures and revenues can effectively defuse a union's budget-based argument.

Budgeting and Bargaining

- Employee wages and benefits are typically the largest cost of providing local government services.
- An analysis of increases in expenditures for bargaining unit wages and benefits, and/or the overall department expenditures, over the course of several years is often extremely useful in bargaining or interest arbitration.
- Your manager and finance director may have the information and perspective needed to help contract negotiators explain the real facts behind fund balance increases or revenue growth.

Budgeting and Bargaining

- Unions often want to focus on wage comparisons or isolated benefit enhancements.
- Budgetary analysis can show the impact of proposed CBA changes and can help to highlight the overall cost of compensation.
- Regardless of the financial state of your local government, there are good cost-based arguments that can be made to counter the union arguments.

Don't Forget Health Care and Pension Costs

- Health care is a major labor cost that consistently increases at a faster rate than other costs.
- TIP: If employees contribute based on a percentage of the health care premium, rather than a percentage of pay or a fixed dollar amount, the union will be much more willing to consider agreeing to steps to reduce health care costs.
- Post-retirement health care benefits have all but vanished in the private sector and are fading in the public sector. Do not go against the trend and agree to increase costly post-retirement health care benefits.

Don't Forget Health Care and Pension Costs

- Minimum Municipal Obligation (“MMO”) payments your municipality makes to its pension plan are a significant expense that is often overlooked by unions and employers in bargaining.
- Remind the union that the costs of health care and pension benefits must be taken into account when discussing the compensation of employees, not just wages.
- Pensions and health care benefits tend to be much more generous (and expensive) for local government employees than they are in the private sector.

Private Sector Bargaining & Public Sector Bargaining

- In private sector bargaining, the cost of bargaining proposals are typically “costed out” based on the cents per hour impact.
- Cost of 2 additional personal days for 10 employees who work 2,080 hours per year and earn an average base rate of \$28 per hour =
 - $2 \times 8 \text{ hours} \times 10 \text{ employees} \times \$28 \text{ per hour} = \$4,480$
 - $\$4,480 \text{ divided by } 10 \text{ employees divided by } 2,080 \text{ hours} = 21.5 \text{ cents per hour.}$
 - $21.5 \text{ cents per hour divided by } \$28 = \text{equivalent of } 0.77\% \text{ wage increase.}$

Evaluating proposals without costs is like...



Costing Out Proposals

- Every benefit has a cost which can be evaluated on a dollars-and-cents basis.
- Without understanding those costs, a public employer cannot effectively tackle high-costs in its CBAs.
- A public employer also cannot meaningfully respond to proposals in collective bargaining without knowing (1) its current labor costs, and (2) what its costs would be after the proposed changes.



Understanding Costs Provides an Employer With Leverage!

Advantages of Costing Out Proposals

- Supports your insistence that the union prioritize its demands.
- Brings reality to the bargaining table.
- Allows a meaningful comparison to the relevant pattern of settlements.
- Gets you prepared for interest arbitration (if necessary).



Advantages of Costing Out Proposals

- Sets up the argument that there is a specific and limited amount of money available.
- Can support your argument that your side is being reasonable and the union is not.
- Gives the union some tools in dealing with unreasonable members.
- Helps decide if interest arbitration is the better option.
- Puts you in charge of the most relevant information at the bargaining table.



Basic Principles

- Reducing all proposed cost increases to a cost per hour figure.
- Use either the basic hourly rate of the top-of-the-scale employee as the common denominator, or, use a weighted average straight-time rate.
- Demonstrate the percentage “cost” of each proposed improvement.
- Show that certain proposals will force the community to choose between cutting service or expanding the workforce.

Replacement Costs of Additional Paid Leave

- Any form of leave which allows employees to take additional time off from work will result in additional labor costs for replacement workers, often at an overtime rate.



Drawing Comparisons to Social Security Increases

Year	CBA Base Wages Weighted Average	CBA Base Wage Increase	SSA COLA	Base Wage Increase by COLA	Difference
2012	\$44,483.63			\$44,483.63	
2013	\$45,706.93	2.75%	1.5%	\$45,150.88	\$556.05
2014	\$46,963.87	2.75%	1.7%	\$45,918.45	\$1,045.42
2015	\$48,255.38	2.75%	0.0%	\$45,918.45	\$2,336.93
2016	\$49,582.40	2.75%	0.3%	\$46,056.20	\$3,526.19
2017	\$50,945.92	2.75%	2.0%	\$46,977.33	\$3,968.59
2018	\$52,346.93	2.75%	2.8%	\$48,292.69	\$4,054.23
2019	\$53,786.47	2.75%	1.6%	\$49,065.38	\$4,721.09
2020	\$55,265.60	2.75%	1.3%	\$49,703.23	\$5,562.37
2021	\$56,785.40	2.75%	5.9%	\$52,365.72	\$4,419.68
2022	\$58,347.00	2.75%	8.7%	\$57,215.02	\$1,131.97
2023	\$59,951.54	2.75%	3.2%	\$59,045.91	\$905.64
AVERAGE PERCENT INCREASE		2.75%	2.64%		
TOTAL					\$31,958.16

Drawing Comparisons to CPI Increases

Year	CBA Base Wages Weighted Average	CBA Base Wage Increase	CPI Increase	Base Wage Increase by CPI	Difference
2012	\$44,483.63			\$44,483.63	
2013	\$45,706.93	2.75%	1.5%	\$45,150.88	\$556.05
2014	\$46,963.87	2.75%	1.6%	\$45,873.30	\$1,090.57
2015	\$48,255.38	2.75%	0.1%	\$45,919.17	\$2,336.21
2016	\$49,582.40	2.75%	1.3%	\$46,516.12	\$2,698.93
2017	\$50,945.92	2.75%	2.1%	\$47,492.96	\$3,077.89
2018	\$52,346.93	2.75%	2.4%	\$48,632.79	\$3,552.96
2019	\$53,786.47	2.75%	1.8%	\$49,508.18	\$3,887.07
2020	\$55,265.60	2.75%	1.2%	\$50,102.28	\$4,278.29
2021	\$56,785.40	2.75%	4.7%	\$52,457.09	\$4,328.31
2022	\$58,347.00	2.75%	8.0%	\$56,653.65	\$1,693.35
2023	\$59,951.54	2.75%	4.1%	\$58,976.45	\$975.09
AVERAGE PERCENT INCREASE		2.75%	2.62%		
TOTAL					\$28,474.72

Leveraging Costs

- Unions often try to make single issue comparisons with other communities in an effort to increase specific benefits.
- You do not always know if other benefits are lower in the other community, if the employees there pay more toward their health care, or what the union gave up in the past to get those benefits.
- Showing the total cost of proposed contract changes can put the impact of changes into perspective.

Leveraging Costs

- Labor costs are the biggest cost for local government – how can you commit to additional expenditures without a true understanding of what those costs are?
- Labor costs are controllable – with the right bargaining strategy and by using interest arbitration where advantageous to do so - consider first the costs of doing the work of government, then determine what's left for employee benefits.

Leveraging Costs

- Knowing how much revenue a one mill tax increase would generate can be very useful when responding to demands for excessive increases in bargaining that would likely require a tax increase.
- Your goal in bargaining should be to keep wages and benefits at a level that is sustainable for your community and its taxpayers, while providing a fair compensation package to employees.
- Bargaining is also the time to fix operational issues and problematic language in your CBA, but keep your focus on changes that will make the department more efficient and cost effective.

Leveraging Costs

- Developing costs-per-hour data for all benefits allows for meaningful comparisons of proposals in light of current trends.
- By analyzing the cost of proposals, local governments can determine whether interest arbitration is the better route to take with the arbitration eligible groups (police & fire).



Civil Service

Why is it important? Who is covered?

- Different statutes for different types of municipalities
- Govern different hiring, promotional, and disciplinary procedures
- Failure to comply could result in lawsuits and appeals to Civil Service Commission
- Clear instructions and standards for testing, background investigations, and hiring

Borough Code

- Civil Service does not apply to boroughs in the Commonwealth if:
 - A borough has a police force of less than three members; or
 - A borough has three or more members, but those in excess of two are appointed on a temporary basis through a Federally funded program; or
 - A borough has a volunteer fire department or company which employs its own operators; or
 - A borough has less than three salaried operators of fire apparatus.

First Class Township Code

- Hereafter, each and every appointment to and promotion directly by the township shall be made only according to qualifications and fitness to be ascertained by examinations which shall be competitive, as hereinafter provided.
- No person shall hereafter be suspended, removed or reduced in rank as a paid employee in any police force or as a paid operator of fire apparatus of any township, except in accordance with the provisions of this subdivision.

Third Class City Code

- Third Class City Code's civil service provisions contained in Act 2014–22 contained significant changes designed to streamline civil service procedures for Third Class Cities.
- The 2014 amendments exclude certain previously covered nonuniformed positions (such as building inspectors, health inspectors and employees in the engineering and electrical departments) from civil service requirements.

Third Class City Code

- Police chiefs and fire chiefs continue to be excluded from civil service requirements.
- “The chief of police shall be designated by the mayor from within the ranks and may be demoted without cause in the same manner, but not to any rank lower than the rank which was held at the time of designation as chief of police. In the event that no qualified officer from within the ranks has applied for the designation, the chief of police shall be designated by the mayor from outside the ranks...”

11 Pa.C.S.A. § 12002.

Home Rule Municipalities

- It has been held in various cases that while Home Rule Municipalities have some flexibility in changing the civil service process, there are limits.
- Commonwealth Court has held that:
 - A provision in a home rule charter granting the Mayor the sole power to appoint, discipline and remove police officers in the Borough was not an invalid exercise of home rule power. See *Santangelo v. Borough of Norristown*, (2002).
 - A city ordinance allowing consideration of applicants to entry level police officer positions without regard to the eligibility lists generated through civil service testing was permissible because it affected only applicants for positions who were not (yet) employees. See *Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh* (1994).

Home Rule Municipalities

- Municipalities which were previously Boroughs, First Class Townships, or Third Class Cities should generally continue to adhere to civil service requirements which existed prior to the adoption of the home rule charter for promotions, discipline, and terminations for existing employees.
- For applicants for civil service covered positions, a home rule municipality may well have more flexibility to craft a hiring process that does not strictly follow the civil service provisions
- The scope and parameters of this flexibility have not been fully determined and the Pennsylvania Supreme Court has not weighed in on the matter.

The Civil Service Commission

- Terms of Commissioners
- Filling and Handling of Vacancies
- Alternate Commissioners
- Incompatibility – Multiple Elected/Appointed Roles
- Organization and Re-organization; Quorum Requirements
- Duties of Individual Roles
- Clerical Assistance from Municipality
- Records/Minutes of Meetings
- Amending Rules and Regulations
- Compliance Investigations
- Annual Reports

Civil Service Rules and Regulations

- Current practices must align with your municipality's Rules and Regulations.
- Amend Rules and Regulations following changes/advancements in the law (Act 57, Veterans' Preference, Borough Code, First Class Township Code, etc.)
- Strictly construed by courts; regular updates and compliance help reduce liability and provide defenses to claims in Civil Service Appeals.
 - “Substantial” compliance is not enough.





Civil Service Rules and Regulations

- Rules and Regulations should cover a variety of topics:
 - Definitions of commonly used terms
 - Commission structure and operation
 - Examination procedure and scoring (entry-level and promotions)
 - Certification of eligible applicants and appointment
 - Suspensions, removals, reductions in rank
 - Resolution adopting the Rules and Regulations

Model Rules and Procedures

The Governor's Center for Local Government Services has published "The Civil Service Guide for Pennsylvania Municipalities."

- Model Rules and Explanations
- Sample Forms and Letters
- Sample Testing-Related Notices

Great resources for municipalities drafting Rules and Regulations for the first time or reviewing current Rules and Regulations which have not been recently updated.



Pennsylvania
Department of Community
& Economic Development



pennsylvania
GOVERNOR'S CENTER FOR
LOCAL GOVERNMENT SERVICES

Meetings & the Sunshine Act

- Civil service commissions are considered “agencies” for purposes of Pennsylvania’s Open Meeting Law, AKA the “Sunshine Act.”
- This generally means that commission meetings must be publicly advertised in accord with the Sunshine Act.
- Hearings before civil service commissions in both Boroughs and First Class Townships following rejection of an *applicant* are open meetings.
- The Borough Code and the First Class Township Code differ on this point for existing employees.
- In these types of hearings, in Borough hearings are within the nature of an executive session and, therefore, are not open to the public unless the employee requests otherwise.

Examinations and Scoring – Entry Level

- Application Circulation and Submission
- Qualifications
 - Age, education, prior completion of training/certification, etc.
- Incompatibility
 - Elected positions, criminal/employment history.
- Examination Components and Minimum Required Scores
 - Written, Fitness, and Oral Examinations
 - Background Checks, Physicals, and Psychological Examinations



Examinations and Scoring – Promotions

- While the Model Rules provide language which a municipality may use to identify minimum requirements for promotional eligibility, before appointing an individual to a promotional rank within a department, the municipality should ensure that the rank to be filled has already been created.
- Education requirement, length, or type of experience required to apply for a promotional opportunity is up to the municipality as a minimum qualification for promotion.
- Changes to the promotional process, such as instituting an oral examination where none existed previously, or reducing the number of eligible applicants, must be bargained.

Recruitment Efforts

What should your municipality consider when beginning the application process?

- Tuition Costs
- Budget Allocations
- Job Titles and Probationary Periods



Test Elements – Physical Fitness

- Physical agility tests should adequately measure physical fitness without creating unnecessary risks of liability.
- In April 2021, the Pennsylvania State Police settled a lawsuit with the U.S. Department of Justice for \$2.2 million.
- Consider whether your current test accounts for both the sex and age of applicants to avoid claims of disparate treatment/impact.



Rejecting Applicants

- Rejections should comply with Rules and Regulations, relevant Civil Service Statutes, and other employment-related statutes and laws.
- Obtaining Applicant Information
 - Application Process
 - Background Investigations
 - Polygraph Examinations



Certification and Appointment

Eligibility List

- Includes all applicants who successfully completed the examination portion of the application process (written, physical fitness, and oral).
- Veterans' Preference adds ten (10) points to an applicant's **overall** score.
- Rules and Regulations should discuss how tied scores are handled and how long an eligibility list is valid for.

Furloughed officers may have preference over eligible applicants.

Certification and Appointment

Certified List of Three

- Municipality notifies Commission when there exists an open position; Commission then certifies and provides the top three (3) applicants from the Eligibility List as the “Certified List of Three.” Rules should set forth certification procedures.
- Veterans also receive hiring preference when included on the Certified List of Three with non-veteran applicants. If more than one veteran exists on the list, the municipality has discretion to choose who first receives a conditional offer of employment.



Certification and Appointment

Conditional Offer of Employment

- Medical Examination (physical)
- Psychological Examination

Probationary Period

- Check governing municipal code for permissible durations.
 - Ex: Borough Code: no less than six (6) months but no more than one (1) year.
 - CBA considerations for applicants who are employed while completing Act 120 training.

Suspensions, Removals, Reductions in Rank

- Grounds for Disciplinary Action
- Notice Procedure
- Hearing Procedure



Hearing Procedures

Civil service hearings generally arise in two different scenarios for employees covered by the civil service process:

- 1) when an applicant applies for either a new position or a promotional position and they either fail a testing component or are otherwise determined to have not met one of the minimum requirements; and,
- 2) when an existing employee is demoted, suspended, or terminated they may request a civil service hearing in lieu of pursuing their appeal of the employment action through the labor arbitration process (provided they are represented by a union, which is often the case).

Hearing Procedures

- If an employee does request a hearing under either scenario, the municipality is required to follow its governing statute and its civil service rules and regulations with regard to the appropriate process to be followed.
- This means that having detailed, up-to-date, and compliant civil service rules and regulations is abundantly important.

Questions?

