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California Society of Municipal Finance Officers (2010 Annual Conference)

“Public Agency Issues During Lean Economic Times: Cost Cutting, Layoffs, Furloughs, Early Retirement Incentives, Negotiating Tips”

February 18, 2010

Presenter:
Peter Brown

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LIEBERT CASSIDY WHITMORE
EMPLOYMENT LAW | LABOR RELATIONS | EDUCATION LAW | MANAGEMENT TRAINING

**Public Agency Issues During Lean Economic Times:
Cost Cutting, Layoffs, Furloughs,
Early Retirement Incentives,
Negotiating Tips**

Presented by:
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Introduction and Agenda

- General Goal
- Long-term versus Short-term Objectives
- Preliminary Considerations
- Downsizing Alternatives
- Tips for Negotiating During Lean Economic Times



Goal

- To continue to be able to deliver the maximum level and quality of services at a lowered cost that does not exceed projected revenues.
- Effectively plan and negotiate downsizing options.

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Understand the Budget

- Identify and quantify revenue impacts
- Consider increased sources of revenues
 - Additional or increased user fees
 - Tighter controls on reimbursable expenses and programs
 - Better employee practices to increase reimbursement in mandated or grant funded programs
 - Better documentation in health services for reimbursable services
 - Requiring clients/customers to promptly provide needed paperwork for reimbursable services



Understand the Budget

- Trimming Expenditures
 - Deferred maintenance
 - Delaying implementation of projects
 - Implement programs/practices for reducing use of utilities
 - Employees generally embrace being involved in this effort
 - Consider expanding the scope of existing programs that could save money
 - Alternative workweek/scheduling options
 - Reducing or changing hours of operation in some programs
 - Expansion of job-share programs
 - Contract out or Privatize



Preparation is KEY

- Review all potentially applicable agency procedures and practices
 - History (practices remembered from downsizing 10 years ago?)
 - Personnel rules
 - Collective bargaining agreements
 - Departmental rules
- Clearly identify processes required in advance of implementing any recommendations

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Preparation is KEY

- Formulate objectives regarding clearly identified and defensible types and levels of service
- Prioritize services and programs
- Develop plans regarding how essential services will be provided
- Be prepared with an agency response to anticipated challenges – your priorities will be closely scrutinized
 - Educate key groups about mandated and necessary programs
 - Educate key groups about funding challenges external to the organization



Developing a Downsizing Plan

- Downsizing payroll though reducing the number of employees will go smoother and be much more defensible after consideration of all of these previous alternatives
- Examining the need to reduce staff against other viable options will help reduce the emotion and anger that necessarily accompanies downsizing staff
- Where downsizing needs arise quickly, simultaneous consideration of these factors may be necessary



Downsizing Alternatives

- Reducing staff through attrition
- Reduce temporary staff
- Hiring freeze
- Early retirement
- Transfers and reassignments
- Voluntary reduction from full-time to part-time
- Required reduction in work hours
 - Furlough days

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Downsizing Alternatives

- Voluntary unpaid leaves
- Unpaid workdays accompanied by compensatory time credit
- Defer personnel actions
 - Reclassifications
 - Promotions
- Defer wage increases



Furloughs

- Pros
 - Immediate savings
 - Can be targeted
 - Alternative to layoffs
- Cons
 - FLSA Issues
 - Likely to be fought as hard as layoffs



Furloughs

- Strategies
 - Keep track of hours
 - Make furlough all in one work week/period
 - FLSA exemption lost for each workweek/period in which exempt employee performs some work but does not receive full pay due to earlier furlough

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Reducing Retirement Costs

- Current retirees
 - Most protection
 - No impairments to vested rights allowed
- Current employees
 - Some protection
 - Impairments in certain circumstances allowed, but must provide alternative benefits
- Future employees
 - No protection unless by statute or in MOU



Reducing Retirement Costs

- Retiree medical benefits
 - Is it vested and how much is vested?
 - Sappington v. Orange USD
 - Can there be immediate cost savings? It depends:
 - Nature of vested rights
 - PERS Medical
 - 37 ACT
 - Limit retiree medical for future employees
 - May reduce annual contribution necessary to fund unfunded liability



Retirement Alternative to Layoff: The Golden Handshake

- Early retirement incentive
- Must identify categories of eligible employees
- Employees must have a 90-180 day period to accept
- Employee gets 2 years PERS service credit
- Employee must have at least 5 years of service credit
- Must certify that at least one position will remain permanently unfilled

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Layoffs

- Most agencies have retained the right to layoff subject to bargaining impacts and effects
- If you have a “no layoff clause” find ways to work around it and change it as soon as possible
- Consider whether a comprehensive layoff article permits implementation without further negotiations



Layoffs – Impacts and Effects Bargaining

- Layoff matters relating to wages, hours and other terms and conditions of employment
- Order of layoff, seniority and bumping issues
 - Government Code section 45100 requires general law cities to “observe the seniority rule.”



Layoffs – Other Legal Considerations

- Discrimination laws
- Retaliation claims
- Denial of due process: *Levine v. City of Alameda*
- Practical Concerns in Implementing Layoffs

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Negotiating During Lean Times

- Preparation is essential to success
- Conduct preliminary research
 - Comparable Agencies
 - Legal issues (e.g., FLSA)
 - Grievances
- Create proposals
 - Counter-proposals
 - Management proposals



Negotiating During Lean Times

- Set realistic goals
- Avoid excessive expectations
 - Communicate possible outcomes to:
 - Governing body
 - Interested Managers
- Avoid excessive proposals
 - Balance aggressiveness with diplomacy



Negotiating During Lean Times

- Establish effective communications
 - Governing body
 - Management
 - Employee organizations
 - Employees

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Negotiating During Lean Times

- Adopt problem-solving approach at the table
 - Identify problem (articulate objectives)
 - Complete and full exchange of information
 - Separate people from the problem
 - Have open-minded and creative options
 - Do not predetermine solutions
 - Consider Union's interests



Communications at the Table

- Listen
- Discuss proposals fully and freely
- Justify negative responses
- Provide/obtain requested information
 - Accurate
 - Jointly developed
 - Request substantiation



Communications at the Table

- Ask open-ended questions
- Assume your proposal should be accepted
- Only agree to proposals you can accept
- Allow Union to save face if possible
- Change subject if no progress

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Negotiating Take-Aways

- How much money will it save?
- Are there alternatives?
- Do other agencies provide the benefit?



Negotiating Take-Aways

- Strategies at the table
 - Offer as an exchange
 - Make it temporary
 - Provide objective support
 - Ask Union for alternative solutions



Working with the Governing Body

- Communicate, Communicate, Communicate
- Be honest
 - Remind that negotiations can be difficult
- Ask elected officials to stay open-minded
- Ask elected officials to avoid speaking with Unions or employees

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Working with the Governing Body

- Ask elected officials to avoid making incendiary public statements
- Confirm and stay within authority
- Determine what principles stand behind their proposal ideas



Unable to Reach Agreement

- Should agency impose last, best & final offer?
 - Pros
 - Ends process
 - Conveys benefits of final offer to employees
 - Cons
 - Employees may feel abused
 - Only good for one year (or less)
 - Possible PERB charge/litigation



Unable to Reach Agreement

- Implementation Process
 - Ask for legal help
 - Make sure your agency has:
 - Negotiated in good faith
 - Exhausted impasse procedure
 - Notified Union of intention to impose
 - Given Union opportunity to address governing body in public session
 - Ensured that governing body has complied with the Brown Act
 - Implemented last, best & final offer

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Speaking with Press/Public

- If agreement is reached:
 - Consider joint statement with Union
 - Focus on positives
 - Explain difficult fiscal realities
 - Keep it simple



Speaking with Press/Public

- If unable to reach agreement
 - Avoid emotional outbursts
 - Try to build bridges
 - Inform public about difficult budget choices
 - Consider use of a P.R. Consultant or Public Information Officer to help with communications with the press/public

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