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

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

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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 through 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
## 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

### 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
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
<table>
<thead>
<tr>
<th>Layoffs</th>
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<tbody>
<tr>
<td>• Most agencies have retained the right to layoff subject to bargaining impacts and effects</td>
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<tr>
<td>• If you have a “no layoff clause” find ways to work around it and change it as soon as possible</td>
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<td>• Consider whether a comprehensive layoff article permits implementation without further negotiations</td>
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<tr>
<th>Layoffs – Impacts and Effects Bargaining</th>
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<tr>
<td>• Layoff matters relating to wages, hours and other terms and conditions of employment</td>
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<tr>
<td>• Order of layoff, seniority and bumping issues</td>
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<tr>
<td>– Government Code section 45100 requires general law cities to “observe the seniority rule.”</td>
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<th>Layoffs – Other Legal Considerations</th>
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<td>• Discrimination laws</td>
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<td>• Retaliation claims</td>
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<td>• Denial of due process: Levine v. City of Alameda</td>
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<td>• Practical Concerns in Implementing Layoffs</td>
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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
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
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

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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

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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
### Speaking with Press/Public

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<th>If agreement is reached:</th>
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<tbody>
<tr>
<td>– Consider joint statement with Union</td>
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<td>– Focus on positives</td>
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<tr>
<td>– Explain difficult fiscal realities</td>
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<td>– Keep it simple</td>
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### Speaking with Press/Public

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