State Notes

TOPICS OF LEGISLATIVE INTEREST

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Civil Service Commission, Collective Bargaining, and Compensation Plans for Fiscal Years 2008-09, 2009-10, and 2010-11
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On December 19, 2007, the Civil Service Commission approved new three-year collective bargaining agreements with nine of the 10 State employee bargaining units represented by five State employee unions. The newly approved agreements do not include the Michigan State Police Troopers Association (MSPTA) because bargaining for the next three-year contract for fiscal year (FY) 2008-09 through FY 2010-11 will not begin until the spring of 2008.

Over 70.0% of the total State classified work force is represented by unions eligible to bargain collectively on behalf of State employees. Employees not eligible for exclusive union representation include those in supervisory, managerial, and confidential positions as well as employees in business/administration services. These nonexclusively represented employees (NEREs) have their terms and conditions of employment determined through a process administered by the Civil Service Employee Relations Board. The Employee Relations Board serves as a Coordinated Compensation Panel that recommends a Coordinated Compensation Plan for NEREs to the Civil Service Commission. The Coordinated Compensation Plan and the collective bargaining agreements are subject to review, modification, and approval by the Civil Service Commission.

The following provides an overview of the collective bargaining process and the recently approved collective bargaining agreements that will be in effect for fiscal years 2008-09, 2009-10, and 2010-11.

The Process

Article XI, Section 5 of the Michigan Constitution of 1963 establishes the classified State Civil Service and the State Civil Service Commission (CSC), and provides for a process to increase the rates of compensation for State employees. Ultimately, the CSC has authority over rates of compensation and conditions of employment, including the authority to make modifications to previously agreed-upon collective bargaining agreements. The CSC created the collective bargaining process for certain State employees based on the premise that the Michigan Constitution does not prohibit collective bargaining as long as the collective bargaining agreements are subject to review, modification, and approval by the Commission (*Patrick, et al.* v *Michigan Corrections Organization, et al.*, United States District Court, Western District of Michigan, 2000). Chapter 6 of Civil Service Commission Rules provides for the collective bargaining process. The rules clearly describe the plenary nature of the CSC's constitutional authority over all conditions of employment. Rule 6-3 states:

> *The ability of eligible employees to elect an exclusive representative and engage in collective bargaining is a privilege granted by the civil service commission under its exclusive constitutional authority. However, the commission cannot delegate its constitutional responsibilities to the collective bargaining parties and the privilege to engage in collective bargaining remains subject to the commission's sovereign authority and the rules of the commission.*

Under CSC Rule 6-3.1(c), the Civil Service Commission retains the authority to modify the agreement without the approval of the parties at any time during the term of the collective bargaining agreement.

Article XI, Section 5 of the Michigan Constitution also states that increases in the rates of compensation authorized by the CSC require prior notice to the Governor, who then transmits the increases to the Legislature as part of the budget. Within 60 calendar days following the transmission, the Legislature, by a two-thirds vote of the members elected to and serving in each house, may reject or reduce increases in rates of compensation authorized by the CSC. Reductions made by the Legislature must apply uniformly to all classes of employees and cannot adjust pay differentials already established by the Commission. Rates of compensation also cannot be reduced below those in effect at the time the increases were transmitted to the Legislature.

Impasse Panel and Resolution

According to CSC Rule 6-9, State employee contracts are negotiated on behalf of the employer by the State Employer. The State Personnel Director is responsible for establishing a time frame for primary negotiations as well as impasse resolution that is in line with the legislative budget cycle and provisions within the Constitution that govern the timing of wage increases for State classified employees. If agreement cannot be reached in the collective bargaining process by the date set by the State Personnel Director, the matter may be referred to the impasse panel for resolution. The Civil Service Commission may refer unresolved matters to the impasse panel if the parties have not voluntarily reached agreement or requested impasse panel assistance before the expiration of an existing collective bargaining agreement. Rule 6-9.4 states:

> *If either party files a timely request for impasse panel assistance, the parties are eligible for impasse panel assistance. If neither party files a timely application, the parties are ineligible for impasse panel assistance, except as provided in rule 6-9.3. If the parties are ineligible for impasse panel assistance, the state personnel director may require the use of mediation, advisory arbitration, or fact-finding provided in the regulations. If the civil service commission approves increases in the rates of compensation too late to be included in the governor's budget, the increases must be submitted under the waiver of notice provisions of article 11, section 5, of the constitution.*

If an impasse resolution is sought, the State Personnel Director then notifies the Employee Relations Board and the board appoints the members of the impasse panel. The impasse panel must act in accordance with civil service rules and regulations and make a recommendation to the Civil Service Commission by the date set by the State Personnel Director. The final step is the review and action of the CSC pursuant to Rule 6-10. Specifically, CSC Rule 6-10.1 reads as follows:

> *It is the policy of the civil service commission to encourage agreement between the parties. However, the commission retains the final authority to approve, modify, or reject, in whole or in part, all primary and secondary collective bargaining*

agreements, impasse panel recommendations, and coordinated compensation recommendations submitted to the commission. Therefore, if the parties reach a proposed collective bargxaining agreement, the parties shall submit a copy of the proposed agreement to the commission for review. If the parties are at impasse, the impasse panel shall submit its recommendations for impasse resolution to the commission. The commission shall review each proposed agreement, impasse panel recommendation, and coordinated compensation recommendation. The commission shall approve, modify, or reject, in whole or in part, each agreement and recommendation.

Collective Bargaining Agreements for FYs 2008-09, 2009-10, and 2010-11

On December 17, 2007, the Civil Service Commission approved collective bargaining agreements for the next three fiscal years (2008-09, 2009-10, and 2010-11) for employees exclusively represented by the American Federation of State, County, and Municipal Employees (AFSCME), the Michigan State Employees Association (MSEA), the Michigan Corrections Organization (MCO), the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), and the State Employees International Union (SEIU) Local 517M. The agreements include hourly rate increases as follows:

October 1, 2008 - 0%
October 1, 2009 - 1%
October 1, 2010 - 3%

Because State employees will not receive an adjustment to their hourly wages in FY 2008-09, the net savings compared with the cost of wage increases built into the FY 2007-08 budget amount to $91.6 million. (For FY 2007-08, State employees received a 2.0% increase on October 1, 2007, and will receive an additional 2.0% increase in April 2008.) Based on the FY 2007-08 costs built into the budget, and assuming that the work force will be generally the same, it is estimated that the costs of the wage increases scheduled for FY 2009-10 will be in the neighborhood of $25.0 million while the estimated cost of the anticipated wage increase for FY 2010-11 is approximately $75.0 million. The exact costs will depend on the actual work force and the statewide payroll at the time.

Health Care Benefit Changes

Along with rates of compensation and conditions of employment, health care benefits also are negotiated in the collective bargaining process. The newly approved collective bargaining agreements for FYs 2008-09, 2009-10, and 2010-11 make some significant changes to the premium and co-pay amounts paid by State employees. Regardless of the health care plan chosen by an employee, the amount of the annual premium that he or she must pay will be higher over the next three-year period than it was in the previous contracts for all plans. The employee's portion of the premium is deducted from his or her biweekly earnings.

Employees choosing to enroll in the State Health Plan PPO (preferred provider organization) will now be required to pay 10.0% of the annual premium, compared with 5.0% in the previous contracts. Those enrolling in a health maintenance organization (HMO) plan previously did not pay any portion of the premium; instead, the State paid 100% of the annual premium. Under the new contracts, employees choosing an HMO plan will pay 5.0% of the annual premium. The State's portion of the annual premium payment for those choosing an HMO plan will be capped at the amount the State pays for employees enrolled in the State Health Plan PPO, meaning that any portion above that capped amount will be paid by the employee. Thus, in some instances, depending on the HMO plan chosen, employees selecting an HMO plan will pay more than 5.0% of the annual premium. (It must be noted that based on FY 2007-08 estimates, the annual premium for an HMO plan is on average about $1,000 less per employee than the annual premium for the State Health Plan PPO; thus, the cost to the State is about $500 more on average per employee choosing the State Health Plan PPO.) As shown in Table 1, these changes in the amount of the annual premiums that the State will pay on behalf of State employees will result in savings to the State of an estimated $32.8 million in FY 2008-09.

In addition, Civil Service employees also receive dental and vision care benefits. The collective bargaining agreements approved on December 17, 2007, made no changes to the current amounts of premiums paid by the employee. As currently required, for the next three fiscal years employees will have to pay 5.0% of the dental care premium while the State will continue to pay 100% of the vision care premium for all employees. The difference in the annual premiums between the two is about $1,000 (dental being higher).

Table 1
Estimated FY 2008-09 Savings From Changes to State Employee Health Care Premiums, Deductibles, and Co-Pays (millions of dollars)

Item	Estimated Savings From Changes for Active State Employees	Estimated Savings From Changes for State Retirees
Health Care Premiums	$32.8	$10.2
Deductibles	5.6	4.6
Co-pays	16.9	32.3
Total	**$55.3**	**$47.1**

Source: Office of the State Employer

The new collective bargaining agreements for FYs 2008-09, 2009-10, and 2010-11 also make significant changes to the deductible and prescription and office visit co-pay amounts that are paid by State employees. The deductible for members under the State Health Plan PPO will increase from $200 per member ($400 per family) to $300 per member ($600 per family) for in-network services, while the deductible for out-of-network services will increase from $500 per member ($1,000 per family) to $600 per member ($1,200 per family). The out-of-pocket maximums remain the same as under the current contract ($1,000 for individuals and $2,000 per family for in-network; $2,000 for individuals and $4,000 per family for out-of-network).

While the current prescription drug plan is maintained, the co-pay amounts are increased under the new collective bargaining agreements. The co-pay for generic drugs increases from $7 to $10 while the co-pay for brand name drugs increases from $15 to $20. Also, the co-pay for nonpreferred brand name drugs increases from $30 to $40. Finally, the co-pays for office visits and emergency services are increased for in-network services. The office visit co-pay increases from $10 per visit to $15 per visit, while emergency visits are still covered at 100%; however, if an individual is *not* admitted to the hospital, there will be a $50 co-pay per emergency room visit. As shown in Table 1 above, the total savings from these changes in deductibles and co-pays for FY 2008-09 are estimated at $22.5 million.

Retired State employees are required to pay the same annual premiums for health care benefits that active Civil Service employees pay. As stated in MCL 38.20d, health care premiums for defined benefit plan retirees are to be paid in the same proportion as for active State employees. Members of the defined contribution plan are required to pay the portion of their premiums as laid out in MCL 38.68, which establishes a 10-year vesting requirement with employer contributions equal to 3.0% per year of service up to a maximum of 90.0%. Thus, as required by statute, all of the health care changes negotiated for active State employees will be extended to State retirees, resulting in savings in FY 2008-09 of an estimated $47.1 million, as seen in Table 1.

Conclusion

Nearly 40,000 State Civil Service employees are represented by a union and thus are represented in the collective bargaining process. The contracts for the next three fiscal years (FYs 2008-09, 2009-10, and 2010-11) have been negotiated and approved by the Civil Service Commission. The agreed-upon contracts will provide no increase to base salary in FY 2008-09, but will provide a 1.0% and 3.0% increase in FY 2009-10 and FY 2010-11, respectively. The decline in available State revenue over the last several years along with rising health care costs for active employees and retirees have put severe constraints on the budgets of all State departments and agencies. Difficult decisions have been made and State employees have made concessions in the past to help balance the State's budget. (For more detail on these concessions, please see the May/June 2007 State Notes article, "A Brief History of State Employee Wage Increases and Concessions: FY 1997-98 through FY 2006-07".) The contracts for the next three years will require State employees and retirees to pay a larger portion of their health care premiums, higher deductibles, and increased co-pays for prescription drugs and doctor office visits. The resulting savings to the State are estimated to total $102.4 million in FY 2008-09 alone.

Article XI, Section 5 of the Michigan Constitution allows the Legislature 60 days from the date of the Governor's transmission of any increases in State employee wages, by a two-thirds vote of the members elected and serving in each house, to reject or reduce increases in rates of compensation authorized by the CSC. Therefore, the currently agreed-upon contracts that provide for a 1.0% increase in wages in FY 2009-10 and a 3.0% increase in wages in FY 2010-11 could be reduced or eliminated by action of the Legislature if the Legislature acts within 60 days of the Governor's transmission of those wage increases in the upcoming Executive budget recommendations for FY 2009-10 and FY 2010-11. Also, it is important to note that the ultimate authority regarding these contracts lies with the Civil Service Commission. As stated in CSC Rule 6-3.1(c), "Notwithstanding that the civil service commission previously approved the provisions of a collective bargaining agreement, the commission retains the authority, during the term of a collective bargaining agreement, to modify the agreement without the approval of the parties…".