

COLLECTIVE BARGAINING TRENDS AND DEVELOPMENTS



IPELRA 40TH ANNUAL
TRAINING CONFERENCE
OCTOBER 22, 2018

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HAPPY 40TH IPELRA! THEN & NOW

- No Illinois Public Labor Relations Acts
- Minimum Wage was ...
 - \$2.65 then
 - \$8.25 now in Illinois
 - \$12 in Chicago!
- Inflation
 - 7.62% in 1978
 - 2.3% today



THEN AND NOW

- Cost of a Dozen Eggs
 - 48 cents then
 - \$2.67 (Walmart)
- Major Events in 1978
 - Camp David Accords Signed
 - First Test Tube Baby Born in UK
 - First Women Astronauts in US (incl. Sally Ride)
 - Garfield Comic Strip first published



THEN AND NOW

- Susan B. Anthony Dollar was minted
- First ever cellular mobile phone introduced (Illinois Bell)
- Biggest Movies of 1978
 - Grease (opened on June 16)
 - Saturday Night Fever
 - Close Encounters of the Third Kind
 - Trivia Question: What well known Union lawyer was born in Roswell, NM?




THEN AND NOW

- President was
 - Jimmy Carter
- National Unemployment Rate
 - 6.0% in 1978
 - Versus the lowest rate in 50 years today!
- Mortgage Interest Rates:
 - 11.75% then
 - 4.75% today (30 yr. fixed)

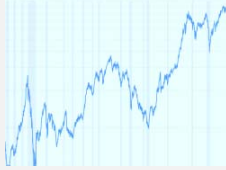


THEN AND NOW

- Average Cost of New House 
 - Was \$54,800
 - Today \$388,400
- Median Household Income (per Census)
 - \$15,060 then--\$55,322 now (2016)
- Cost of a Gallon of Gas
 - 63 cents then
 - \$2.96 (regular) per AAA

THEN & NOW

- DJIA Closed
 - At 805 in 1978
 - 25,598 on 10/10/18



- University of Illinois Resident Base Tuition
 - \$586 for 1978-79
 - \$16,004-21,008 (Tuition & Fees)

THEN AND NOW

- Top Pay for a Skokie Patrol Officer on May 1, 1978 was \$19,302
 - Today it is \$97,458



- In Wheeling, in 1978
 - Entry level Firefighter salary was \$14,952
 - Entry level Police Officer salary was \$15,208

THEN AND NOW

- Illinois Governor in 1978
 - James (Big Jim) Thompson (second term, after defeating Michael Bakalis in November)
- Chicago Mayor
 - Michael A. Bilandic
 - But the great snow blizzard of 1978 helped Jane Byrne get elected in February of 1979
 - And she endured the bitter Chicago Firefighter Strike of 1980

UNION MEMBERSHIP

- Overall, has declined steadily over the last 40 years
 - But union membership in the public sector has held fairly steady since 1980's.
- Union membership was 20.1% in 1983
 - Compared to 11.1% in 2015
 - NY and IL had among the highest union membership rates in 2015

Source: (US BLS Spotlight on Statistics, Sept. 2016)

UNION MEMBERSHIP TODAY

- BLS measures union membership rate at 10.7%, overall -- about 14.8 million workers
- Public sector union membership is over 5x private sector workers
 - 34.4% v. 6.5%
- Membership = \$\$ = political power
 - AFSCME Council 31 PAC donated more than \$760,000 to Friends of Mike Madigan (Ill. News Network, 9/26/18)



FAIR SHARE THEN AND NOW

- 40 Years Ago—*Aboud* was the law of the land
 - Fair Share Upheld by US Supreme Court in *Aboud v. Detroit Bd of Ed (1977)*
 - Permitted in 22 states
- More recently, Constitutionality of Fair Share Challenged
 - Prior case, *Friedrichs v. California* deadlocked at 4-4, following untimely death of Justice Scalia
 - Thereafter, Justice Gorsuch appointed by President Trump

JANUS V. AFSCME

- Major public sector case, originating in Illinois
 - Biggest threat to organized labor in decades
 - Direct challenge to fair share fees
- 5-4 Decision Issued
June 27, 2018
- *Majority Held:*
Fair Share is Unconstitutional



THE MAJORITY DECISION AUTHORED BY JUSTICE ALITO

Key quotes in decision:

- “*Aboud* was wrongly decided and is now overruled”
- “Neither an agency fee nor any other payment to the Union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay” (Emphasis added)



THE MAJORITY DECISION

Key quotes in conclusion:

- “By agreeing to pay, non-members are waiving their First Amendment rights”
- “Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met”



THE MAJORITY DECISION

Analysis of Court majority's reasoning:

- Public employees have certain constitutional rights to free speech via First and Fourteenth Amendments;
- Freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all"
- "When speech is compelled ... individuals are coerced into betraying their convictions"



THE MAJORITY DECISION

Analysis of Court majority's reasoning:

"The First Amendment does not permit the government [via agency shop] to compel a person to pay for another's speech just because the government thinks the speech furthers the interests of the person who does not want to pay"



THE MAJORITY DECISION

Analysis of Court majority's reasoning:

What about so-called "Free Riders"?

- Janus objects to "free rider" label. "He argues that he is not a free rider on a bus headed for a destination that he wishes to reach, but is more like a person shanghaied for an unwanted voyage." (Emphasis added)



THE MAJORITY DECISION

Analysis of Court majority's reasoning:

"We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant transition costs in the short term, and may require unions to make adjustments in order to attract and retain members. But we must weigh these disadvantages against the considerable windfall that unions have received under *Abood* for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector unions in violation of the First Amendment. Those unconstitutional exactions cannot be allowed to continue indefinitely." (Emphasis added)

KEY THEMES OF JUSTICE KAGAN'S DISSENT

- Employers want and benefit from a strong exclusive bargaining representative
- Fair share fees are speech within the workplace, which the Court has historically regulated
- Undoing 40 years of precedent will have consequences
- The First Amendment was meant for better things.



IMPACT OF THE JANUS DECISION ON UNION MEMBERSHIP

ESTIMATES VARY ...

The Illinois Policy Institute, in a study issued shortly before the *Janus* decision, estimated that 49,000 Illinois public employees would opt to not pay union dues



UNION RESPONSE – BARGAINING REQUESTS & DEMANDS

- What about existing contracts?
 - Check your Savings clause
 - If mid-term bargaining is required, consider the applicable impasse resolution procedures

Note: This is a general overview. Please consult your legal counsel for specific advice in your jurisdiction.

UNION RESPONSE

- Letters to public employers urging immediate discontinuation of fair share deductions
- Distributing new dues checkoff cards
- Requests for names and addresses and list of fair share payors



UNION RESPONSE

- Internal changes in dues amounts or dues structure
 - A Teamsters local increasing dues to account for fair share impact
 - A Police union reportedly considering a “cafeteria plan” approach to dues charges



UNION RESPONSE – BARGAINING REQUESTS & DEMANDS

Possible Demands to bargain over impact and effects

- Changes to Checkoff Cards
 - Limited escape clause for revocation
- CBA Proposals to make dues check off irrevocable during contract term
- Paid time to address employees on benefits of union membership
- Changes to grievance procedure

UNION RESPONSE – BARGAINING REQUESTS & DEMANDS

Excerpt from AFSCME card:

“I hereby authorize my employer to deduct from my pay each pay period that amount that is equal to dues and to remit such amount monthly to AFSCME Council 31 (“Union”). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of authorization and shall automatically renew from year to year unless I revoke this authorization by sending written notice by the United States Postal Service to my Employer and the Union postmarked not more than 25 days and not less than 10 days before the expiration of the yearly period described above, or as otherwise provided by law.”

ONE EMPLOYER’S RESPONSE

The Village declines to agree to contract language which would make dues authorizations irrevocable, except during an annual “escape” period. *See, e.g., City of Fairview Heights, Case N. S-DR-91-4*, in which the ILRB General Counsel found that a proposal to restrict the revocation of dues checkoff authorizations to an annual “escape” period would violate the Act and would therefore constitute an illegal subject of bargaining. *See also*, 150 ILCS 125/2 which permits a local governmental entity to withhold dues upon an employee’s written request, “which an employee may revoke in writing at any time.”

LEGISLATIVE RESPONSE – FLORIDA EXAMPLE

§ 447.401 of Florida Public Employee Relations Act



- “. . . All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization. . . .”

UNION RESPONSE – BARGAINING REQUESTS & DEMANDS

There are several open issues in the post-*Janus* world

- *Fairview Heights* was an advisory GC opinion, which some unions argue no longer applies
- Organized labor may seek legislative changes to the Duty of Fair Representation
 - Perhaps following the Florida model
 - Other legislative solutions may parallel NJ and NY, for example
- Exclusivity may be impacted
- Be sure to check with counsel about your situation

COLLECTIVE BARGAINING UPDATE



- Leading Economic Indicators
 - Settlement Trends
- Challenges for the Future
 - Key Takeaways

STATE OF THE ECONOMY

Unemployment Rate 3.7%—BLS Reports Lowest in 49 Years!

- **September 2018 was 3.7%!!**



STATE OF THE ECONOMY

Unemployment Rate Impact

- Greater labor force participation
- Upward wage pressure (2.8% from a year earlier)
- Amazon raising min. pay to \$15/hour; Costco @ \$14.
- **Do you have a lateral hire clause in your CBA?**



STATE OF THE ECONOMY

- Other hiring challenge responses
 - Some employers have quietly stopped testing for marijuana
 - Some have lowered entry level requirements
 - Some are offering significant hiring bonuses



LABOR MARKET IMPACT ON WAGES

- As unemployment continues to decline, wage pressures are mounting
- “A robust economy drove U.S. wages higher in August, new evidence that workers are gaining bargaining power with their employers as the nation’s pool of available labor tightens.” *WSJ 9/7/18.*

TAX LEGISLATION BOOST

Over 125 large private employers are reportedly providing \$1,000 “Tax” Bonuses, including, for example:

- Walmart
- AT&T
- Comcast
- Wells Fargo
- Alaska Airlines
- American Airlines
- Bank of America
- Southwest Airlines
- Nationwide
- Travelers
- US Bancorp

Others are boosting hourly pay or raising matching contributions to retirement plans

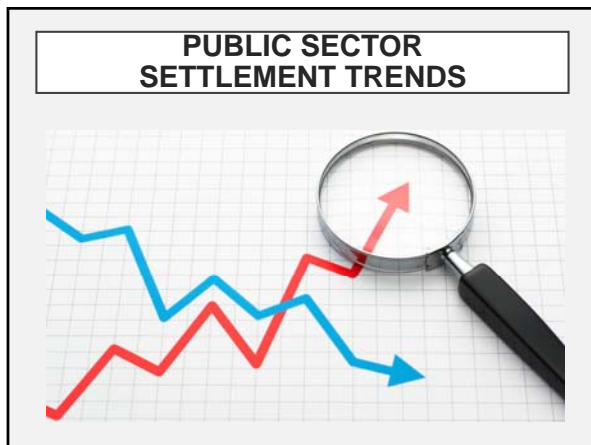
SOCIAL SECURITY ADJUSTMENT

- Yearly Social Security adjustments are tied to changes in CPI-W from September to September
- Effective in January **2018**, the COLA increase was **2.0** percent
- In January **2019**, the COLA increase will be **2.8%**



INFLATION MEASURE— CONSUMER PRICE INDEX	
CPI INDEX	MOST RECENT 12 – MONTH CHANGE
CPI – U U.S. City Average, All Items	2.3% 12 Month Period Ending August, 2018

BLS RELEASE 10/11/2018



1st Year Negotiated Wage Increases – State and Local Govt. Employees (w/o lump sums)			
YEAR	WEIGHTED AVERAGE	AVERAGE	MEDIAN
2009	3.3%	2.0%	2.0%
2010	1.1%	1.3%	1.0%
2011	0.4%	0.9%	0.0%
2012	0.8%	1.1%	1.0%
2013	1.1%	1.6%	1.8%
2014	2.2%	1.8%	2.0%
2015	2.8%	2.2%	2.0%
2016	2.6%	2.5%	2.3%
2017	2.7%	2.4%	2.0%
2018 (YTD)	2.5%	2.6%	2.1%

*Source:
Bloomberg
BNA*

ILLINOIS INTEREST ARBITRATION AWARDS ON WAGES—PROTECTIVE SERVICES

	2016	2017	2018	2019
All awards*	2.5%	2.45%	2.24%	2.5%

*Data excludes awards where one or both parties offered equity adjustments.



CADILLAC TAX UPDATE

- Remember, under the ACA, there is a 40% excise tax on the cost of employer-sponsored health insurance plans over a specified amount, starting in 2020 (\$10,200 for S; \$27,500 F, as adjusted for COL)
- Here's the latest:*
 - Under a federal spending bill signed by President Trump on January 22, 2018, the effective date of the Cadillac tax is delayed 2 more years, to **2022!**

INSURANCE CONTINUED...

- The WSJ reported the average annual cost of employer-provided family medical coverage rose to nearly \$20,000.
 - Annual premiums rose 5%, citing Kaiser Foundation data.
 - Employers continued to boost employee deductibles, seeking to blunt rising premiums.

INSURANCE CONTINUED...

- Nationwide, workers paid an average of \$5,547 towards premium costs for a family plan, or about 29% of total premium cost.
- Between 2006 and 2016, individual employee deductibles have gone up from \$584 to \$1,573. (For employee only, in plans with a deductible).

WSJ, 10/4/18.



RECENT INSURANCE INT. ARB. AWARD

- City sought to increase HMO premiums from 13% to 15%, and PPO premiums from 20% to 25%, and a .75% increase to the salary schedule as a *quid pro quo*. Arbitrator Meyers rejected the proposal in favor of the status quo, and opined as follows:

"Employee contributions toward health coverage is such a basic and critical part of compensation that contribution rates should be decided by the parties at the bargaining table. A closer look at the City's proposed addition of another adjustment to the salary schedule as a *quid pro quo* for increases in employee contribution rates

RECENT INSURANCE INT. ARB. AWARD

demonstrates why. First, any *quid pro quo* should be the result of negotiated agreement between the parties to a collective bargaining agreement, and not imposed by a third party, however well-informed and well-intentioned... . The evidence conclusively shows that the proposed salary addition will not cover the increased cost to employees for participating in the PPO family plan. There is little basis for finding that if the parties had been able to reach an agreement on a new *quid pro quo* for increased employee contributions toward insurance coverage, they would have settled on a salary addition that was too small to cover the increase relating to the PPO family plan." (Emphasis added.)

City of Elmhurst and IAFF Local 3541, S-MA-18-300 (Meyers, Arb. August, 2018), Award #721.

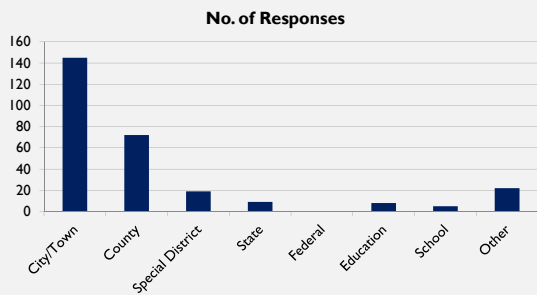
**THE NATIONAL PELRA
COLLECTIVE BARGAINING
SURVEY**

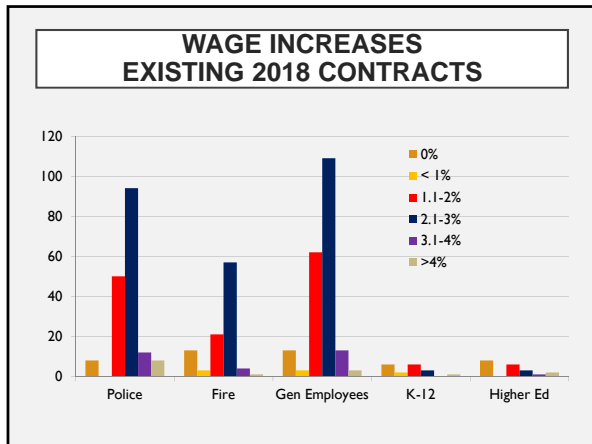


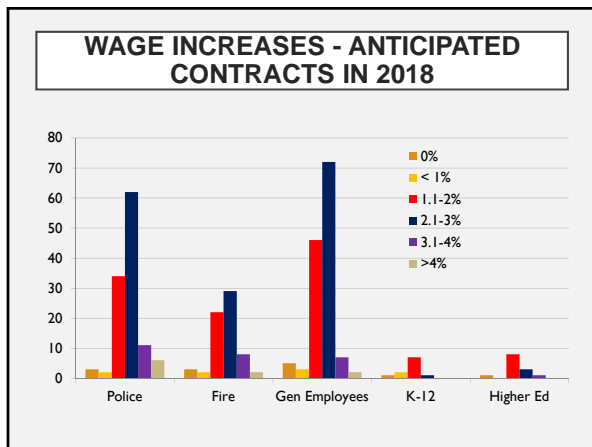
**2018 NPELRA
ANNUAL COLLECTIVE
BARGAINING SURVEY—
KEY EXCERPTS**



**DEMOGRAPHICS OF 2018
SURVEY**







- ### NPELRA SURVEY RE: ANTICIPATED LABOR RELATIONS ISSUES IN 2018
- | | |
|---|---|
| <ul style="list-style-type: none"> • Wages • Structural deficit • Specialty pay • <i>Janus v.</i> – union’s proving their worth • Paid parental leave • \$15 minimum wage • Workforce reductions resulting from state budget and loss of state funding | <ul style="list-style-type: none"> • Attendance • Incorporating longevity into base rates • More ambitious proposals by management • New union members not understanding give and take of bargaining • Maintaining staffing levels and wages at jail |
|---|---|

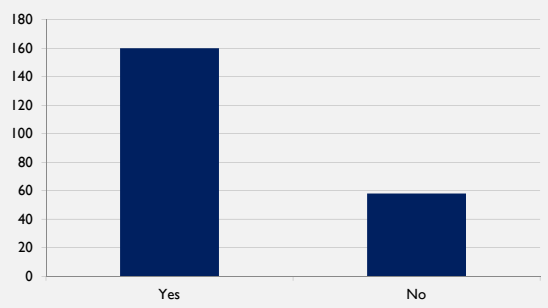
NPELRA SURVEY RE: ANTICIPATED LABOR RELATIONS ISSUES IN 2018

- Political power of unions to stop or delay new and innovative projects
- Keeping wage increases around 2%
- New pay equity law going into effect 7/1/18
- Succession planning
- Should be minimal—FOP got everything in 2017
- Pension costs
- Hours worked as related to overtime
- Lack of leadership
- Mass retirement
- FMLA policy administration
- Rising pension liability
- Educating bargaining unit on our financial position

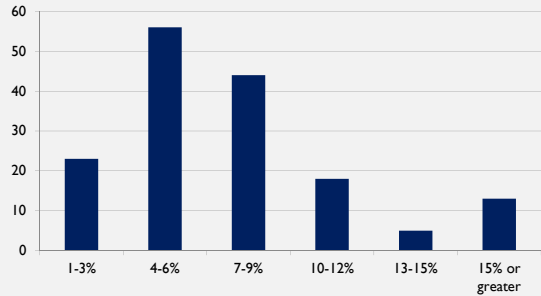
NPELRA SURVEY RE: ANTICIPATED LABOR RELATIONS ISSUES IN 2018

- Union receiving raises while non-union getting 0%; morale issues
- Cuts from the state
- New law regarding officer-involving shooting
- Elected officials
- Rising health care costs
- Finding and retaining qualified staff, including police and fire
- Shift definition – should never have been put in CBA; causing loss of flexibility for police
- Retiree medical for police (and spouses)

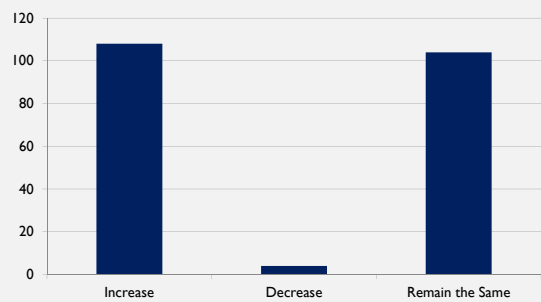
DO YOU EXPECT AN INCREASE IN HEALTH PREMIUMS?



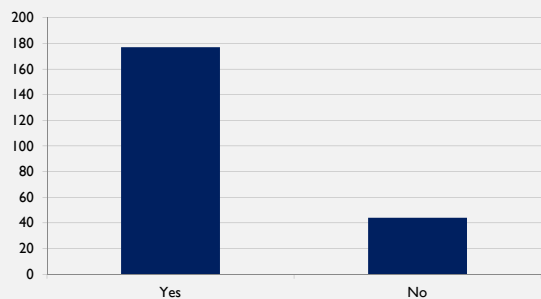
WHAT PERCENT INCREASE DO YOU EXPECT IN HEALTH PREMIUMS?



FORECAST OF EMPLOYEES' SHARE OF HEALTH INSURANCE PREMIUM



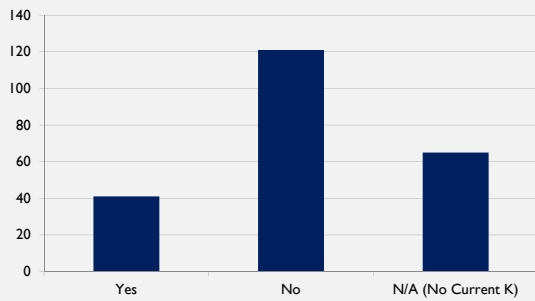
DO YOU HAVE A WELLNESS PROGRAM?



NPELRA SURVEY RE: WELLNESS INCENTIVES

- Health insurance premium credits
- 20% decrease in premium
- 2% decrease in premium
- One month premium free
- \$ for wellness exam; \$ for on-line health assessment
- \$300 to participate in health screening
- \$20/mo credit for health risk assessment
- Day off for reaching top goal
- Paid Leave
- Gym membership discounts (*many have this*)
- Employee recognition

PLAN ON NEGOTIATING CONCESSIONS IN 2018?



NPELRA SURVEY RE: CONCESSIONS IN UPCOMING CONTRACTS

- Greater employee contribution toward health insurance (*again*)
- *Prefer not to*
- Move from step system to open range pay structure
- Gain scheduling flexibility and reduce premium pay accruals
- Body Worn cameras
- 2-tier wage system; inc. wage progressions; address language that reduces management flexibility; expand random drug testing pool
- Overtime = computed in strict accordance with FLSA ... only time actually worked *aka* "sweat hours"
- Eliminate attendance incentives

FINAL THOUGHTS -- HOPE FOR THE BEST BUT PREPARE FOR THE WORST...

- Consider
 - Contingency clauses allowing future wage increases to be reduced if revenues drop
 - Furlough clauses
- Control or reduce legacy costs
- Continue to control health care costs to reduce liability and avoid potential imposition of 40% Cadillac tax



KEY TAKEAWAYS FOR THE FUTURE

Preserve and enhance management flexibility in your CBA's

- Avoid **minimum staffing** clauses
- Maintain right to reduce the workforce by **attrition**
- Maintain right to hire **part-timers**
- Right to **lay off** is critical during an economic downturn or unexpected fiscal challenge
- Preserve **outsourcing** ability



KEY TAKEAWAYS FOR THE FUTURE

- Train Your Managers and Supervisors
 - How to effectively administer the contract and handle grievances
- Share important information, especially bad news, with your employees
- Use your IPELRA Network!