LCW Liebert Cassidy Whitmore

40 years 1980 - 2020

Negotiating Retirement and Health Benefits In Tough Economic Times

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Presented By:

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AGENDA

- Legal Hurdles to Cost Savings
  - Vested Rights
  - Statutory Impediments
- Cost Saving Strategies
  - Employees Share the Burden
  - Eliminate or Reduce Reportable Items
  - Restructure or Tier Benefits

Legal Hurdles to Cost Savings

Vested Rights

General Principles

- Constitutionally protected
  - Both U.S. and State Constitutions
  - Contracts Clause
    - The government may not impair vested contractual rights
- Retirement benefits are earned as worked, but payment is deferred
  - Once the employee begins to work, the employee "vests" in a future benefit

California Rule

- Court decisions have created rule
- Pension promises become vested when employment starts
- No impairment of vested right
- Changes to vested rights limited:
  - Change is required to preserve the system
  - Alternative equivalent benefits are provided in exchange for the change in the pension benefits

Alameda

- Changes in PEPRA limiting compensation for classic members under 1937 Act
- Largely upholds California rule
- Does not help local agencies reduce pension costs
  - Likely further judicial challenges

Alameda (cont.)

Court's Analysis:

- Are constitutionally protected rights implicated by the modification?
- Is the purpose of the modification constitutionally permissible?
- Must the modification be offset by comparable advantages, or would a comparable advantage defeat the purpose of the permissible modification?

Are Retiree Medical Benefits Different?

- Same vesting principles apply
- Retiree medical benefits used to be given the same protection as pension benefits
- Recent case law makes it much harder to prove a promise of retiree medical is vested
- Now easier to revise or reduce retiree medical benefits promised to current employees

Statutory Impediments

Statutory Restrictions

- No statutory basis to lower retirement benefits for prospective service
- PEPRA prohibits any new tiers of benefits
  - Limited exception: lower tiers allowed for prospective new safety members

Important Statutes to Know

- Gov. Code § 20474 states, in part:
  - Any election made by amendment to the contract shall be irrevocable until the contract is terminated. However, benefits provided by the amendment may be increased or improved from time to time by further amendment to the contract.
  - Essentially a codification of main components of California rules

Cost Saving Strategies

Employees Share the Burden

Eliminate EPMC

- Eliminate EPMC for classic members
  - Lowest hanging fruit
  - Saves additional cost if also reporting EPMC as special compensation
  - Most agencies already eliminated EPMC or increased cost sharing

Increase Cost Sharing of Employer Contribution

- Government Code § 20516
  - Can be by CalPERS contract amendment or just by MOU
  - Can apply to classic and new members
  - Can be for any or all of employer contribution
  - Can be different percent for classic and new members
- **By agreement only**

Cost Sharing

Section 20516(a)

- Amendment to CalPERS contract
- Considered employee contributions
- Requires election
- Generally accepted as pre-income tax

Section 20516(f)

- Agreement in MOU
- Considered employer contributions
- Usually treated as pre-income tax, but still a gray area

Impose Additional Costs on Classic Employees?

- PEPRA added Government Code § 20516.5
  - Allows limited imposition of additional employee costs
  - Limit on maximum employee contribution
- Must exhaust meet and confer requirement
- Inapplicable if already paying 50% of normal cost, including 20516 cost sharing
- Not for new members

Unilateral Imposition

- How is Section 20516.5 implemented if an employer unilaterally imposes?
  - Unclear, no guidance from CalPERS
  - Likely requires a resolution of the governing board
- Can only be imposed after meet and confer and exhausting all impasse procedures
  - Limits to amount that can be imposed
    - 8% for miscellaneous
    - 12% for local police and fire
    - 11% for all other local safety

Polling: Cost Sharing Case Study

Classic miscellaneous city employees have an 8% employee contribution. Employees already pay the entire member contribution.

How much can the employer impose under Government Code § 20516.5?

Cost Sharing Case Study Cont.

What other options might an employer have to consider at the table when it seeks to obtain cost savings in this situation?

Eliminate or Reduce Reportable Items

Eliminate or Reduce Reportable Compensation

- Negotiate swaps to reduce reportable compensation
- Examples:
  - Salary for healthcare contributions
  - Special compensation for car allowance
  - Special assignment pays for additional time off

Eliminate or Reduce Reportable Compensation

- Provide non- "PERSable" forms of payment for both classic and new members
  - More time off
  - Health benefits
  - Contributions to retiree medical trusts
  - Structure specialty pays to NOT satisfy CalPERS regulations, making them non-reportable (e.g., hybrid specialty pays)
  - Purely discretionary bonuses
  - Non-reportable lump-sum payment

Polling: Reportable Compensation Case Study

MOU states that employees with five or more years of service with the city will receive longevity pay of 1% of base salary each year in which they receive a satisfactory or higher performance evaluation.

True or False:

This item of compensation is reportable to CalPERS.

Polling: Reportable Compensation Case Study

City employees who have five or more years of service with the city receive an additional 5% of base pay. Employees who have a POST Certificate receive an additional 5% of base pay.

True or False: The city can structure the benefit so that it can continue to provide these benefits, reduce the number of employees eligible, and not have to report the amounts to CalPERS.

Restructure or Tier Benefits

Meet and Confer Issues

- Compensation and retirement benefits subject to negotiations
- Short-term contracts to be more flexible as rates change
- Alternatively, reopeners if employer rates hit set thresholds

Negotiating Medical

- Any changes to retiree medical benefits or contributions are subject to bargaining
- Negotiate cost-containment strategies
  - Defined contribution savings plan
- Phase out of future employee retiree medical benefits
- Implement fixed cap for employees rather than a percentage of premium which automatically escalates with inflation
- Negotiate a gradual reduction in percent of premium the agency pays

MOU Language

When drafting MOU language:

- Avoid "future tense"
  - "For the life of the employee"
  - "For future retirees"
- Tie benefit to term of MOU
  - "Employees who retire during term of this MOU are eligible…"
- Provide specific language stating that benefit is not vested and/or is subject to revision or termination

Reduce or Eliminate Retiree Medical

- Check documents promising benefit to determine if vested (less likely under current case law)
- Negotiate, and impose, if necessary, reductions in future retiree medical benefits for current employees
- Current retirees? Still risky.

PEMHCA Agencies

- Must comply with equal and minimum contribution rules
- Contributions for retirees will never be completely eliminated
- 2020 minimum contribution is $139 per month
- Increasing to $143 per month in 2021

Possible Immediate Cost Savings Options

- Utilize sections 20516 and 20516.5 to the extent applicable
- Take inventory of all reportable items of pay, then negotiate to swap reportable compensation for non-reportable compensation
- Cap medical contributions for employees

Possible Longer Term Cost Savings

- Have governing body adopt a policy of not increasing reportable compensation prospectively and stick to it
- Structure future compensation to be non-reportable and state in MOU that is intention
- Review retiree medical benefits for vested status. If not vested, reduce benefits that current employees and future employees can expect (Reduce current retiree benefits? More risk.)

Rancho Cucamonga

Overview

- Preparing for negotiations
- Negotiating in times of uncertainty
- Resetting expectations
- Non PERSable costs and benefits

Rancho Cucamonga Overview

- Inland Empire of CA
  - Population: 177,751
  - 3 labor groups
  - 326 FT employees and 70 PT employees
  - Post Prop 13 city

Preparing for Negotiations

Preparing for Negotiations

Partnering with Finance, Actuarial and Sales Tax consultant.

- Total compensation spreadsheet
- Cost of doing nothing – CalPERS increases
- CalPERS costs and trends
- Cost of 1% increase
- Comparability – agreed upon salary survey
- Average pay and benefit costs
- Economic trends and budget projections

Preparing for Negotiations

Putting together the negotiating team.

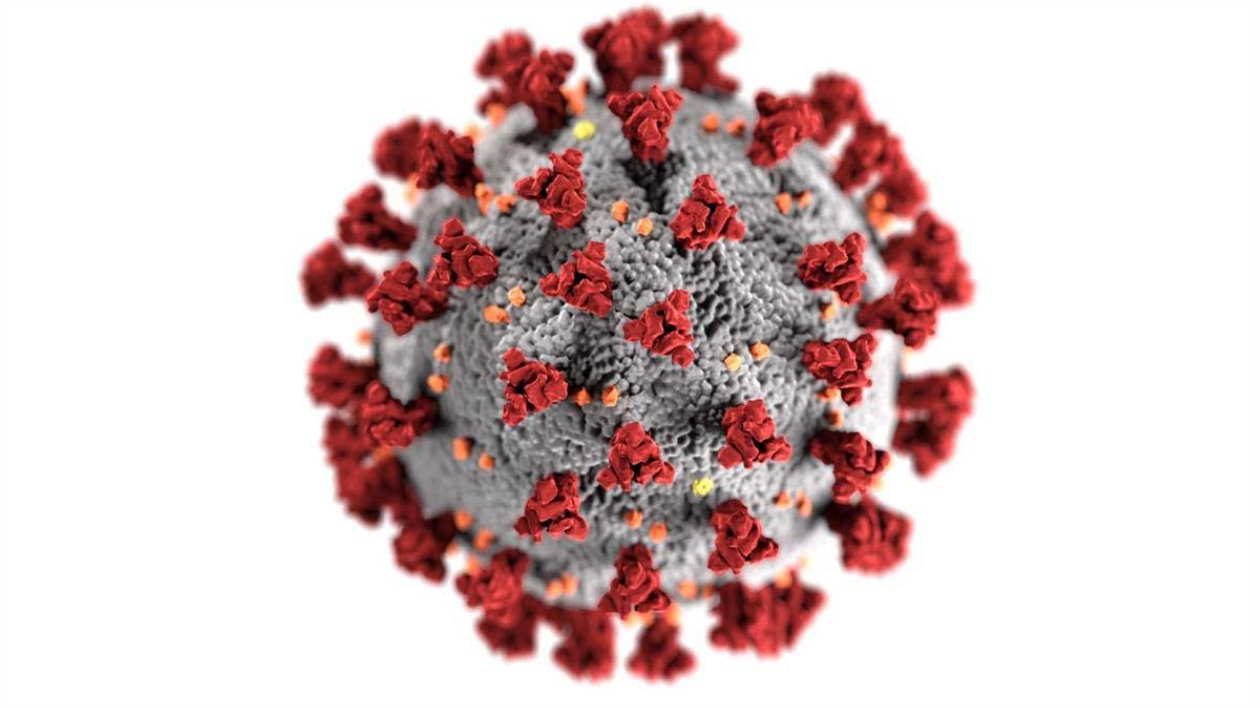
- Team leader – someone well versed in negotiations and comfortable in the role
- Bridge builder – someone who has built up trust in the organization has a positive relationship with member on the Union panel
- Technical experts - someone who takes good notes and does good analytical work - someone from Finance who can explain the numbers
- Access to good legal advice

Preparing for Negotiations

Partnering with Elected Officials.

- Provide financial information as verified by finance
- Work with CM to set goals for negotiations
- Work to get clear authority regarding costs and issues
- Keep them informed of the concerns of both parties during negotiations

Preparing for Negotiations



Negotiating in Times of Uncertainty

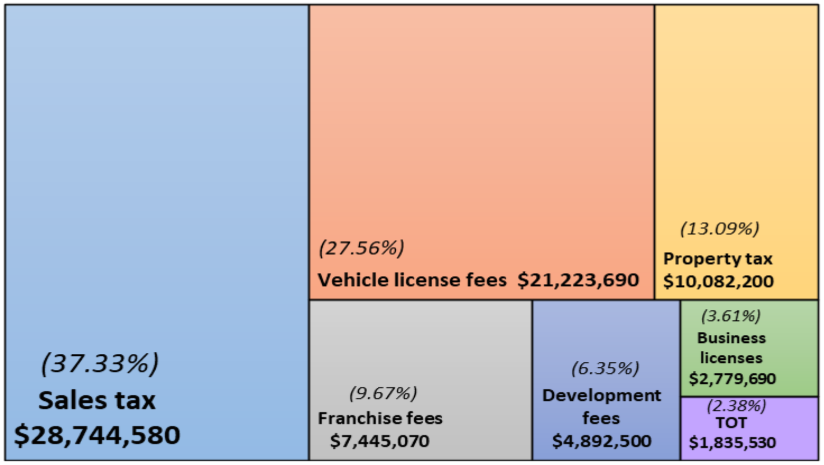
Declining Sales Tax

RANCHO CUCAMONGA

- Statewide forecast on economic growth
  - 5.4% decline in business & industry (tied for City's 3rd highest sales tax category)
  - 2.5% decline in general consumer goods (City's highest sales tax category)
  - 6.5% decline in restaurants & hotels (tied for City's 3rd highest sales tax category)
- FY 2019/20
  - Pre-pandemic, projected sales tax revenue budgeted: $32.55 million
  - COVID-19 business closures in March and April alone equated to over $2 million loss in sales tax revenue
  - Today, projected sales tax revenue: $28.9 million
  - Budgeted revenue shortfall: $3.65 million
- FY 2020/21
  - Projected: $28.74 million
  - Compounded revenue shortfall: $11.11 million

Operating Budget Revenues

Primary Tax Revenue Sources	Primary Non-Tax Revenue Sources
Property Tax	Franchise Fees
Sales Tax	Charges for Services
Property Tax In-Lieu of Vehicle License Fee	Licenses & Permits
Transient Occupancy Tax	Use of Money or Property

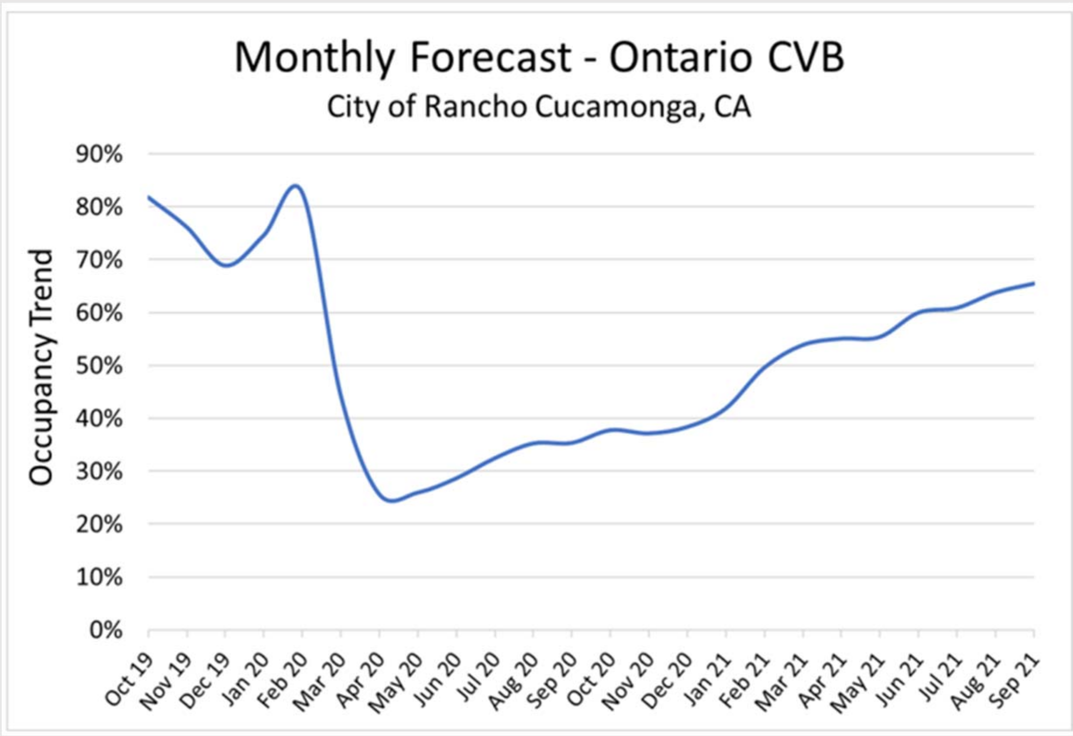


Loss in TOT

RANCHO CUCAMONGA

- In FY 18/19, City received $4.5 million in TOT (5th largest revenue source)
- Since 2012, City averaged a hotel occupancy rate of 70-80% & an average daily room rate of $100 - $140
- Forecast for FY 2020/21: occupancy rate average of mid-40% range & an average daily room rate of $115
- Economic projections suggest occupancy and room rates will not likely recover until end of 2022 calendar year

Loss in TOT


Monthly Forecast - Ontario CVB
City of Rancho Cucamonga, CA
Occupancy Trend
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Oct 19
Nov 19
Dec 19
Jan 20
Feb 20
Mar 20
Apr 20
May 20
Jun 20
Jul 20
Aug 20
Sep 20
Oct 20
Nov 20
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Aug 21
Sep 21

Cost-Cutting Measures

- $ 1.05 million cuts in department budgets
  - Net savings to General Fund = $789,720
- Community services closures
  - Lions East/West
  - Sports Center
  - Cultural Center
  - Family Playhouse
- Closure of Family Resource Center
- Community services programs and classes canceled
- Reduced days and hours and/or appointment-only for public access to City Hall, Animal Center, libraries and parks

Polling: Cost Cutting Measures

What cost cutting measures have participating agencies put in place as a result of the COVID-19 pandemic (can choose all that are applicable)?

Cost-Cutting Measures

The economic impact of the pandemic required the City to make difficult decisions to cut costs including:

- Furlough of part-time employees
  - 283 part-time employees furloughed in March 2020
  - 56 FTE positions cut
  - 32% reduction in part-time employee FTE
- Layoff of full-time employees
  - 33 full-time positions cut
  - 10 employees laid off
- Ask employee groups with current contracts to consider eliminating July COLAs

Resetting Expectations

Where We Were Pre-COVID-19

Our two-year February proposal contained:

- COLAs
- Medical benefit increases,
- Reductions in EPMC to get us to 0%EPMC at the end of the MOU
- Increased deferred compensation matches
- student loan repayment benefit (with a set-budget)
- shoe allowance increase
- Several nonmonetary changes including addressing constructive receipt

What We Proposed

Our one-year March proposal contained:

- No COLA
- A slight medical benefit increases,
- shoe allowance increase
- Several nonmonetary changes including addressing constructive receipt

Where We Are Now

- The group declared impasse in August
- We suggested mediation
- They declined and we went to factfinding
- The factfinding was held in September
- The factfinding chairman recommended a settlement prior to providing a report
- The parties discussed the matter through supposals
- The group voted down a proposal to the city
- The Factfinding report was received and is scheduled to go to the City Council

What’s Next

- We are finishing our preliminary salary surveys and will share them with the employee groups later this month
- We anticipate negotiating with all three bargaining units beginning in January
- I anticipate that we will again be looking for ways negotiate the remaining EPMC amounts with the groups

Non-PERSable Costs and Benefits

Things to consider

- Voluntary Employee Benefits Association (VEBA)
- Health Reimbursement Arrangement (HRA)
- Reducing EPMC
- Negotiate cost sharing of employer PERS costs
- Combine 2 PERSable special compensations to make them ineligible for CalPERS – combine uniform pay and longevity into one benefit and it becomes non-PERSable
- Reduce/eliminate PERSable special pay and put those funds towards benefits that do not build PERS costs
- Increase time off in areas like parental leave

Thank You!

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