

# The Ultimate Backup

A Client News Bulletin

RAINS LUCIA STERN, PC

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## Layoffs, Furloughs & Demotions

### A Labor Association Perspective on Local Government Reactions to Economic Downturn

By Rocky Lucia

As many of our existing clients are aware, many cities, counties and districts have been experiencing significant reductions in revenues as a result of the economic downturn facing our nation and state. While some local agencies have been shielded from the slump in the economy, others have not been as fortunate.

#### **Fiscal Accountability – Verify!**

RLS has always made “fiscal accountability” a cornerstone of our negotiations and collective bargaining practice. We have encouraged our association clients to conduct financial/economic analysis of their local government employer in an attempt to ascertain the agency’s true ability to pay the requested wage and benefit packages.

Over the last few months, we have experienced the harsh reality of many jurisdictions truly suffering from significant loss in revenues. For the most part, most of our association clients have been shielded from layoffs and forced demotions. However, when it appears that the employer is in need of relief, the employee association

must base any economic decisions on facts and not speculation.

Our firm has established relationships with independent local government finance consultants who assist our clients in ascertaining the true financial condition of the employer. While many employers raise the Vallejo bankruptcy as a doomsday scenario, the Vallejo situation is an extremely rare situation. Do not blindly accept the “Vallejo” situation as your crisis point.

We are encouraging all of our clients, whether they are faced with threatened layoffs, impasse at negotiations, or simply confronting government leaders who are nervous about the economy, to stay the course and be thoughtful in responses. Many agencies are experiencing financial challenges, yet others have vibrant local economies and our clients are relatively assured of getting through this temporary economic downturn without significant concessions.

## **Know Your Legal Rights Concerning Your Economic Benefits**

When dealing with the consequences of this economic situation, there are a number of legal and collective bargaining issues that you must be aware of if you're considering any type of economic concessions. Those concessions may be requested during the term of an existing contract or during MOU negotiations. The laws concerning a municipal employer's obligation to abide by negotiated contracts and refrain from breaching those agreements are now being tested at various agencies.

Employers have mandated legal obligations to meet and confer on layoffs. Failure to assert those rights will have devastating consequences. In addition, there are very specific items that should be addressed by the association in such meet and confer sessions. Finally, agreeing to "meet and confer" when not required to do so could permit the employer to reopen an existing MOU. Such a turn of events could lead to a forced modification of the MOU.

Contracts are negotiated and enforceable, and unless language in those MOUs and side letters permits an agency to force a reopener, there are legal safeguards which should be invoked. If the employer is attempting to circumvent the MOU and force changes in working conditions or benefits, consult with legal counsel immediately.

Be aware of your legal rights prior to committing your association to short or long-term concessions.

## **Establish a Game Plan – Selling it to the Members**

Whether you're about to commence MOU negotiations or responding to an overture by the employer to make mid-contract concessions, always establish a game plan with the thought of securing membership approval. In many situations, concessions or compromises may be perfectly appropriate and completely justified. In some cases the association membership may be perfectly willing to accept concession bargaining. However, in many cases the membership is not completely informed on the many issues associated with the economic downturn and the impact on local government revenues and will require a showing of due diligence by the association leadership.

When facing the current economic climate and the prospect of bargaining, every association should establish a game plan, which includes:

- Verification of the employer's financial ability to pay.
- Review of the status of negotiations with other bargaining units.
- Review of efforts undertaken by the employer to mitigate its economic situation.
- Consideration of comparable agencies and local jurisdictions relative to concessions.
- Possible realignment of association priorities in terms of the concession bargaining for non-economic enhancements.
- Careful consideration of the long term impact on any concessions.

In the final analysis, whatever the result of your negotiations, the membership will ultimately have to have their say. Be organized, thoughtful and prepared.

### **Assistance of Rain Lucia Stern**

As most of our clients are aware, in some cases it is entirely appropriate to consider concession bargaining. However, this is the last step in a series of steps that are associated with this new and challenging bargaining dynamic. Rains Lucia Stern has developed strategies and safeguards to ensure that minimal damage is done to your members' economic benefits. The market and local revenues are in a constant state of flux and with the number of clients we are representing, we can quickly provide our clients with perspectives throughout Northern California.

To all of our clients, please feel free to contact any of the attorneys, labor relations representatives, or Maggie Bedig of our office to discuss our firm's availability to consult with your association leadership to discuss establishing a game plan to survive this economic downturn.

### **DISCLAIMER**

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