



Bargaining to Take Place Against Backdrop of Uncertainty

By Michael Rose, January 12, 2017

Collective bargaining is set to take place in 2017 against a backdrop of uncertainty about the economy, the Affordable Care Act and the general political climate, observers told Bloomberg BNA.

President-elect Donald Trump and congressional Republicans are vowing to repeal part or all of President Barack Obama's signature health-care law. Trump's labor secretary pick is widely viewed as being hostile to unions. Potential U.S. Supreme Court decisions and National Labor Relations Board appointments could weaken unions' power. All of this indicates that much is in flux.

"My sense is that people in the labor movement are anticipating the worst," Paul Clark, director of the School of Labor and Employment Relations at Penn State University, told Bloomberg BNA. "I think that the signals that the Trump administration is sending and will continue to send, are probably going to embolden employers."

Employers Could Take 'Harder Line.'

As for bargaining, employers may "take a harder line than they might have if this was a pro-labor Clinton administration," Clark said. Furthermore, the potential rollback of the ACA may have an effect on negotiations, he said.

"People are going to be arguing about health-care benefits without knowing what's going to happen in a week, a month, a year" as it concerns employer-provided benefits, Clark said. "It's going to create a lot of uncertainty, and uncertainty is something that isn't helpful at the bargaining table."

Some 8,429 collective bargaining agreements are due to expire or be modified in 2017, covering about 2.3 million workers, according data provided to Bloomberg BNA by the Federal Mediation and Conciliation Service. The FMCS is a federal agency charged with helping to resolve labor disputes. It provides mediators to help employers and unions at the bargaining table.

Entertainment, Health-Care Contracts

The industries with the largest numbers of workers covered by contracts expiring this year include construction, health care, manufacturing and entertainment (see related chart).

The figure for arts and entertainment includes major contracts in the entertainment industry, represented in bargaining by the Alliance of Motion Picture and Television Producers. The AMPTP has a contract covering 165,000 actors represented by SAG-AFTRA, as well as an agreement with the Writers Guild of America covering 8,200 workers and one with the Directors Guild of America covering 15,000. Those three contracts expire in May and June.

In the health-care sector, National Nurses United will negotiate a contract with Kaiser Permanente covering some 18,000 nurses in Northern and Central California. NNU has had a contentious relationship with the nonprofit health plan and health-care provider in the past, and it staged a two-day strike during the last bargaining round. The Kaiser/NNU contract expires Aug. 31.

FMCS to Continue Work

Allison Beck, director of the FMCS, told Bloomberg BNA that the agency's work will continue much as it has before the unexpected presidential election results, and unions and employers will continue to face tough issues at the bargaining table.

"Everybody seems to be suggesting that this election was about frustration of millions of workers who have felt left out in this new economy and who feel their voices and their needs have not been heard," Beck said. "There's clearly a place to bring parties together" through collective bargaining.

Beck also pointed to Trump's intervention in a labor dispute at Carrier Corp., which was slated to move union-represented jobs to Mexico. Trump claimed credit for getting the company to agree to keep the jobs in Indiana, but a United Steelworkers representative confirmed that fewer jobs would be "saved" than Trump claimed.

FMCS could be a resource for unions and employers that find themselves in similar circumstances, Beck said.

FMCS Head: Workers to Speak Out

"Workers are going to be empowered and are going to speak out and are going to expect solutions," Beck said. "I think we can play a role in helping the parties come together around some of these issues," such as the need to cut costs to avoid outsourcing.

Many employers and unions also will be concerned with health insurance, especially if all or part of the ACA is rolled back. In past years, the law's excise tax on high-value health plans, known as the "Cadillac tax," has been a top concern of parties to labor contracts. That's because of the potential for increased costs that would be levied on employers if the cost of their health plans exceeded the tax's threshold.

"A lot of unions are really concerned" about the Cadillac tax and the ACA in general in the wake of the election results, Adrienne Eaton, associate dean at the School of Management and Labor Relations at Rutgers University, told Bloomberg BNA.

ACA Issues?

"What is it going to mean if 20 million people get kicked off their insurance, and employer-paid health insurance premiums end up costing more because hospitals and providers have to recoup lost payments for those folks?" Eaton said.

Although some unions were opposed to the Cadillac tax, they don't want the ACA to be completely erased, Eaton said. They may have been hoping to "cut a political deal" with Democrats to phase out the tax, but Democrats didn't take the White House, the Senate or House, she said.

Still, in terms of bargaining, parties should proceed as if the tax will remain in place, at least in the short term, Eaton said.

As for wages, "so much of the money that's been available for increases in overall compensation has gone to health care" in recent years, Eaton said, so employers may continue to push back hard on unions that bargain for wage increases.

Management Attorney Perspective

Ronald Kramer, an attorney with Seyfarth Shaw LLP in Chicago who represents employers in collective bargaining, agreed that parties should assume the ACA will stay in place for now.

“The ACA, as far as I'm concerned, is business as usual,” Kramer told Bloomberg BNA. For one thing, many contracts that address the Cadillac tax issue have already been negotiated, and parties may continue to address those issues, he said.

“Employers like the idea of reining in the cost of health insurance,” Kramer said. “There's a mutual benefit to doing that even if the law doesn't require it.”

Until anything happens with the ACA in Congress, “you have to follow the law with regard to bargaining,” Kramer said.

Contract Reopeners?

In anticipation of potential changes to the health-care law, employers and unions could consider negotiating a provision allowing for a reopening of bargaining talks in the middle of a contract term to address those changes, he said.

Both Eaton and Kramer also said the Labor Department's overtime rule could figure into bargaining talks, as it remains unclear whether the rule will take effect. The rule would make more people eligible for overtime by increasing the maximum annual salary under which workers are entitled to time-and-a-half pay. It's currently being challenged in federal court.

Kramer said parties to contracts also could negotiate a reopener to address overtime issues if the rule does end up taking effect.

Eaton said the overtime rule is “another area of uncertainty” that parties would have to deal with, even though it would only apply to certain employees.

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