LESSONS FROM UNIFOR

A union’s perspective on how to manage collective bargaining on pensions

BY MARCIA McDOUGALL

Employers that see pension discussions with union representatives as an inevitable battle should consider an attitude adjustment. Jerry Dias, national president of Unifor—Canada’s largest private sector union—says that when it comes to pension issues, unions are more solutions-oriented than employers give them credit for.

“It doesn’t do the company or its employees any good if a union tries to protect pension benefits that will bankrupt the organization,” says Dias. “We want to maintain jobs for our members.”

However, Dias emphasizes that “pensions are the most important issue” for unions, and they “will fight to preserve them.” He feels some organizations that provided a DB plan “used the 2008 economic crisis as an excuse to shift the onus of liability to employees;” often by switching to DC plans for all or at least new employees. While sustainability is certainly a concern, Dias is quick to object to a double standard. “We saw companies pushing employees into a DC plan while they maintained a DB plan for executives because they knew it was better,” he says. “That’s incredible hypocrisy.”

One of the biggest misconceptions that employers might have about unions is that they think only with their hearts and not with their heads. “Companies may not realize the depth of knowledge unions have,” explains Dias. “We have really excellent pension and benefits professionals on staff at Unifor. They bring an experienced set of eyes and ears to the process and are in a position to advise, recommend and add a new perspective.”

For example, take the recent stand-off in Thunder Bay, Ont., between Bombardier and Unifor Local 1075. The company had demanded that the DB plan be closed to new hires and retiree benefits denied to anyone hired after 2010. The union wanted to preserve decent retirement benefits for the upcoming generation of workers. Both employer demands were defeated, and union members eventually ratified a new three-year collective agreement that maintained the DB pension plan for current and future workers. In exchange, union members were willing to delay early retirement and increase contributions.

While the outcome ultimately satisfied everyone, it didn’t come without hardship on both sides: union members were on strike for eight weeks before an agreement was reached. Dias regrets that members had to strike and encourages employers to adopt a collaborative approach to negotiations early in the process. “Listen,” he advises. “There are solutions that can achieve company objectives without putting pensions at risk.”

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By Tony Palermo

The best of times, making changes to a DB pension plan is a difficult task, as sponsors try to balance business constraints with funding and risk concerns. But throw a union into the mix and the process becomes even more difficult.

Difficult, yes—but not impossible. Industry experts agree that the process becomes easier when you clearly identify the changes you want to make and why, and you’re willing to approach the collective bargaining process with the goal of letting both sides walk away as winners.

Andrea Docter, a lawyer and partner with Stikeman Elliott, says there are a couple of legal considerations that come into play. It starts with the employer knowing what its obligations and entitlements are with regard to changing the pension plan.

In a unionized environment, explains Docter, the question from the employer’s perspective is, What does the collective bargaining agreement allow us to do? “Does the agreement require that all changes be bargained, or can some or all of the changes be made without bargaining?” The employer needs to be clear about what it’s entitled to do.

The second immediate consideration is that any change to the plan needs to comply with all of the applicable federal and provincial legislation. For example, while pension plans registered in Ontario need to adhere to the provincial Pension Benefits Standards Act, federally regulated employers must register their pension plans under the federal Pension Benefits Act, and federally regulated employers must register their pension plans under the federal Pension Benefits Standards Act. Docter says there are several other pieces of legislation to consider as well. For example, employers need to look at the federal Income Tax Act, which regulates what employers are allowed to provide in terms of benefits in a pension plan, as well as the provincial Labour Relations Act, which governs the collective bargaining process.

Her biggest piece of advice to plan sponsors is to take advantage of the period between collective bargaining agreements to develop a pension strategy: research and think about the issues and the proposed changes you want to make, and have a well thought-out plan before you go into bargaining.

“Bargaining is not the ideal time to be asking your actuary to produce cost estimates or your lawyer if it’s possible to do X, Y or Z,” says Docter. “Some employers figure they’ll wait to hear the union’s demands and then react to them during bargaining. That may be fine for most employers with DC plans, but for employers with complicated DB plans, not having a strategy may result in an agreement that costs more than anticipated.”

Kevin Sborhats, a partner with Morneau Shepell, says there typically isn’t ongoing dialogue between the employer and the union on pensions during the term of an agreement: both sides tend to go full-tilt through the negotiations, and when they’re done, other projects become the focus and the conversation is discontinued until the next round of bargaining. As he explains, this isn’t necessarily the best approach to negotiating changes to a pension plan—any proposed changes to retirement benefits tend to cause a lot of stress for the plan members affected.

“We all know that even small changes in life are tough on us as individuals,” says Sborhats. “But when we’re talking about changes to pensions and benefits, the stress can get magnified many times over.

Sborhats says another problem compounding pension negotiations is that, historically, there’s been a lack of trust between both sides regarding the numbers being shared, and...
there always seems to be much debate over which numbers represent the real cost of the pension plan and financial position of the employer. As he says, it’s not necessarily that one side is trying to mislead the other. It’s likely more about the complexity of pensions and understanding what the numbers represent in a given context because the methods and actuarial approaches to determining pension costs can vary significantly.

“One method is going concern, which is the funding valuation with a long-term outlook,” he explains. “There’s the solvency valuation, which is your hypothetical plan windup. There’s the accounting basis, where a company reports on their financial statements what their pension obligation is. And, back in the news recently, the financial economics model is being talked about, where you value the pension obligation as a corporate debt rather than the pension plan as a self-standing entity.”

To complicate matters, not only are those calculations done differently, but the underlying interest rate used in the calculations can be significantly different, too. As an example, Sorhaitz says on the solvency basis today; the interest rate used to value the pension cost might be around 4%, whereas the going rate for standing entity.”

The art of negotiation is for both sides to come out winners,” explains Sorhaitz. “When you become determined to beat the other side, that can create animosity for the next round. The losing side is likely to dig in even harder—and they’re going to want to win the next round.”

If unions and employers can continue talking during the agreement period—to better understand each other’s emerging positions and asks, and to have their experts try to agree on some of the more technical aspects such as how to determine pension and benefits costs for negotiation purposes—those efforts should go a long way toward keeping the focus on the key issues instead of having an actuarial debate.

Doing It Right: A Case Example

On Sept. 2, 2014, the Government of Newfoundland and Labrador announced it had reached an agreement with five member unions to amend the Public Service Pension Plan (PSPP) to ensure the plan’s sustainability. The PSPP, a DB plan with about 27,000 contributing plan members and approximately 17,000 pensioners, was facing significant financial challenges.

In a government news release, Minister of Finance and President of the Treasury Board Charlene Johnson hailed the agreement: “This agreement will help to ensure the future health of the Public Service Pension Plan and the overall unfunded liability of all public sector pension plans, which, when combined with other post-employment benefits, accounts for 74% of the province’s projected net debt as of March 31, 2015.”

Carol Furlong, president of the Newfoundland and Labrador Association of Public and Private Employees (NAPE)—the largest of the five unions with members in the PSPP—says this was a successful deal that will help to ensure the plan remains viable into the future.

“Government had talked about the unfunded liability and how it was affecting their credit rating,” notes Furlong. “The last actuarial valuation indicated the PSPP had a significant unfunded liability of $3.2 billion with a projection for it reaching $8.1 billion in 15 years. Clearly, something needed to be done, and pension reform was inevitable.”

Noting that the PSPP is a legislated plan (a pension plan typically for federal and provincial government employees, whose authority and terms are defined in law), Furlong says the government could have unilaterally made changes to the plan without consulting the member unions. But the unions demanded—and received—an opportunity to negotiate changes to the plan.

Furlong says the member unions had two main goals: to maintain the DB plan and to recognize that, although there would have to be some changes, any reform of the PSPP would affect its members as little as possible.

One of the biggest changes involved the unions agreeing to joint trusteeship, but only if the plan was fully funded. In the end, the government agreed to make a significant payment to the PSPP in the amount of $2.685 billion—up from its initial proposal of $1 billion.

“We were very pleased with this and didn’t want to turn our backs on that offer,” explains Furlong, noting that a joint trusteeship arrangement gives unions an equal say in how the PSPP is managed into the future. “In other words, never again will the PSPP be in a position where changes are left to the sole discretion of the government.”

Furlong says the government wanted to start using a career average formula to determine pension payouts. However, the unions took a firm stance and refused to entertain the idea, since it had the potential to reduce some pensions by up to 40%. In the end, both sides agreed to change how benefits are calculated from the best five years of earnings to the best six years.

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I was diagnosed with prostate cancer at 58. Not a candidate for surgery or radiation, I accepted the opportunity to participate in a new clinical trial. My cancer has responded well. I’ve lived with cancer for 8 years, and thanks to targeted research and innovative medicines, there’s a chance that I’ll be around for 15 or 20 more years. Innovative medicines give people like me the chance to continue living fully, and I continue to work with others living with prostate cancer to create awareness, educate, and instill hope.

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