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Certificated Step and Column "Freezes"

[Editor's Note: While there are signs of economic recovery in California, the loss of one-time federal stimulus dollars and the persistent loss of state funds to support K-14 education means that 2010-11 will be much more difficult for schools. Local educational agencies will be forced to make budget cuts in 2010-11, and many will seek concessions from employee groups. We are often asked if freezing step and column is a concession worth pursuing. In the following guest article, the attorney's of Lozano Smith offer some food for thought on this complicated issue.]

As the ongoing economic downturn continues to take its toll, many school districts have run out of cost-containment options that can be implemented unilaterally without the support and agreement of its unions. Districts are now faced with examining various cost-saving measures and utilizing creative strategies to weather this economic crisis that require negotiations. Some of the cost-saving measures being considered include negotiating furlough days, increasing health benefit premium contributions, restructuring health benefits, reducing salary, and freezing step and column costs. These options, alone or in combination, may result in significant cost savings for a school district in both the current and future years. These options can also help to save jobs. However, each option must be carefully considered with the individual district's unique culture and needs in mind.

This article specifically addresses the concept of a "freeze" on step and/or column for certificated employees, and discusses the legal parameters in which such a "freeze" must be considered, as well as practical considerations for implementation.

When considering a step and/or column "freeze," it is essential to first define your terms. Union and district officials use the term "step and column freeze" but there are many different ideas embodied in the concept. Generally speaking, a step and column freeze is intended to mean that compensation will remain the same this year as last year. A step and/or column "freeze" differs from a salary reduction in that salaries are "frozen" at current levels, not reduced. It is imperative to define whether, in using the phrase "step and column freeze," you mean a temporary or ongoing freeze, a freeze of both vertical and horizontal salary advancement, or something entirely different. The term is not universally understood and is not legally defined; therefore, play the definition game and define your terms to avoid potential misunderstandings at the bargaining table.

Second, differentiate "step" from "column." Step movement refers to a teacher's vertical advancement on the salary schedule resulting from an additional year of experience and service. Column movement refers to horizontal advancement on the salary schedule due to the acquisition of additional educational units. As a general rule, a district will achieve greater savings by "freezing" step advancement than by freezing column movement. This is because teachers automatically move one step each year and column movement requires teachers to seek approval of accumulated educational credits in order to move columns. Therefore, determine the cost of step and column movement separately and then consider freezing step or column or both, depending upon your district's needs.

Third, determine your goal. If your goal is a permanent and ongoing reduction in costs to the district, the district's interest in freezing step and column will probably require a restructured salary schedule. If, on the other hand, your goal is a cash flow need and the district intends to restore teachers to the appropriate placement on the existing salary schedule when money is available, the step and column freeze is actually

functioning as a temporary reduction in costs. Rarely, but occasionally, the district may even plan to reimburse teachers in some subsequent year for the dollars lost during the freeze. So . . . know your goal.

Forth, draft clear language and consider using examples to explain your intent. Imprecise language or misunderstandings about whether and/or when a salary freeze will end could lead to costly legal disputes.

In the traditional sense, a step and column "freeze" involves maintaining employees at the same step and/or column and not allowing advancement on the salary schedule for a specific time period. When considering a step and column freeze, it is important to consider and reach agreement on what happens when the "freeze" is lifted.

There are two possible actions that can be taken when the freeze is lifted: (1) advance the employees to the appropriate step/column on the existing salary schedule, meaning they may get two or more advancements in the recovery year, or (2) retain a restructured salary schedule to avoid the cost of double or triple step and column in the recovery year.

Salary Uniformity Issues

One of the issues that can potentially arise under a traditional step and column freeze is that when the "freeze" is lifted, employee salary schedule placements do not universally comport with employee years of service or education. Additionally, under a traditional step "freeze," employees who are newly hired into the district are placed at the same step as existing employees. This can potentially create a salary uniformity issue for the district.

Education Code Section 45028 requires that certificated employees be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, unless the District and the certificated bargaining unit agree to a salary schedule based on other criteria. One recent California Court of Appeal case, Adair v. Stockton Unified School District (2008) 102 Cal.App.4th 1436 ("Adair"), held that that the compression of the salary schedule violated the uniformity requirement because it "unfairly penalized" more experienced teachers by putting them in the same salary level as teachers with less experience. In addition, it is important to remember that the teachers association cannot waive an individual teacher's right to be paid uniformly. (See Education Code Section 44924.)

In order to avoid a potential violation of salary uniformity requirements when implementing a traditional step and column freeze, it is necessary to consider the specific impact that the "freeze" will have on both current and new employees and whether the resulting salaries will be non-uniform.

1. Advancement on the Existing Schedule Option

If the district freezes step and column with the intent to maintain the existing salary schedule and advance employees to the appropriate cells when it "unfreezes" the salary schedule, the restoration will result in a significant additional cost in the year of restoration. Thus, a freeze followed by restoration to the "regular" placement on the existing salary schedule is simply a temporary reduction in salary costs. In the recovery year, the cost of moving teachers two or more steps and/or columns will be significant and there are no guarantees that the district's economic outlook will be more promising at the time that the advancement is owed.

Most districts do not make restoration retroactive, but if they do, other issues must be considered. A salary freeze followed by reimbursement has income tax and retirement implications that must be carefully considered. For example, if a teacher's salary is "frozen" in the 2010-11 school year with a promise of repayment in the 2012-13 school year, has the teacher "constructively received" the salary for tax purposes in 2010-11 or is the income taxable when actually received in 2012-13? In what year is the income considered received for retirement purposes?

One possible alternative to a retroactive reimbursement that restores the employee's salary to where it would be if there had been no freeze, is reimbursement in the form of a one-time bonus. The one-time bonus may help to avoid the constructive receipt issue because the bonus is not connected to any particular period of time worked. In addition, with a one-time bonus, the district converts an ongoing expenditure into a one-time cost. A one-time bonus, however, only counts toward the employee's defined benefit supplement retirement program and not the primary defined benefit program.

2. Continuation of a Restructured Salary Schedule Option

The restructured salary schedule is an alternative methodology that can be used to implement a step and column freeze. With a restructured salary schedule, a new step (i.e., Step 1) is added to the salary schedule to mirror the current Step 1 and all employees are advanced one step with no additional compensation. Column movement remains unaffected under this restructured salary schedule option.

For example, a unit member who is on Step 3 of the salary schedule for the 2009-10 school year would advance to Step 4 for the 2010-11 school year, but the salary paid to the unit member at Step 4 would be the same salary currently paid to the member at Step 3 due to the addition of the new Step 1.

The purpose of the restructured salary schedule is to avoid the potential uniformity issues associated with a step "freeze." In addition, under the restructured salary schedule option the District does not retroactively reimburse employees for the period of the "freeze" because it is a permanent change to the salary schedule. Restructuring the salary schedule in this manner results in a permanent reduction of costs to the District. See the example below:

Example Before Freeze		
Columns		
Steps	Column I	Column II
	BA<30	BA+30
Step 1	50,000	62,500
Step 2	50,000	62,500
Step 3	52,000	65,000
Step 4	53,000	66,250
Step 5	54,000	67,500

Example After Freeze with Restructured Schedule		
Columns		
Steps	Column I	Column II
	BA<30	BA+30
Step 1	50,000	62,500
Step 2	50,000	62,500
Step 3	50,000	62,500
Step 4	52,000	65,000
Step 5	53,000	66,250
Step 6	54,000	67,500

In the after "freeze" example, a new step one is created at the top of the schedule that is the same as the original step one and all other steps are renumber accordingly.

When implemented and negotiated appropriately, a freeze to step and/or column offers a cost-savings mechanism that can help restructure salary costs and avoid salary reductions and other options that may be perceived by teachers, the district and the community as less favorable. However, negotiating and implementing a freeze should be approached with caution. A step and/or column "freeze" or restructured salary schedule may not be the appropriate means to achieve cost savings in every school district and taking a one-size-fits-all approach to negotiations will likely prove unsuccessful.

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