

# Hot Topics in Commonwealth Employee Relations

A LOOK AT THE CHALLENGES OF TODAY'S  
EMPLOYEE RELATIONS ENVIRONMENT

DARREN HEFFNER, SENIOR LABOR RELATIONS SPECIALIST  
ED PHILLIPS, DIRECTOR, BUREAU OF EMPLOYEE RELATIONS

GOVERNOR'S OFFICE OF  
ADMINISTRATION

# Public Sector Management Challenges

- ▶ Fiscal Challenges
- ▶ Public Pressures from Citizens, Watchdog Groups, and the Media
- ▶ Pressures and Constraints from Legislatures
- ▶ Federal and State Legislation and Regulatory Changes
- ▶ Impact of Leadership Changes
- ▶ Court Decisions – *Janus v. AFSCME* Supreme Court Ruling
- ▶ Results of these Challenges

# Fiscal Challenges



**Flat or decreasing revenue streams (PIT, corporate taxes, oil & gas funds, motor vehicle funds, etc.)**



**Per IFO, 5-year budget outlook indicates expenditures will outpace revenues through FY 2023/24.**



**IFO projects a \$1.7 billion deficit in FY 2019/20 growing to \$1.8 billion in FY 2022/23.**

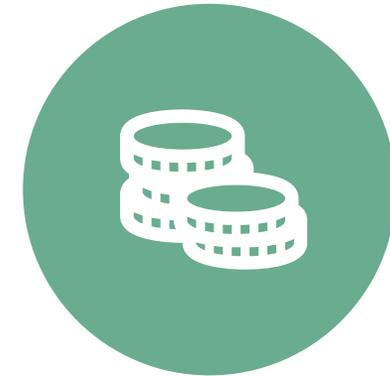
# Public Pressures from Citizens, Watchdog Groups, and the Media



**Citizens and watchdog groups assert pressure for salary and benefit concessions.**



**Right to Know Law requests used by watchdog groups to further their agendas and attempt to manipulate public opinion.**



**Growing pension and healthcare costs have turned public sector labor relations into a hot media topic.**

# Pressures and Constraints from Legislatures



**National Conference of Legislatures identified employee retirement and healthcare costs as the fastest growing areas of state budgets.**



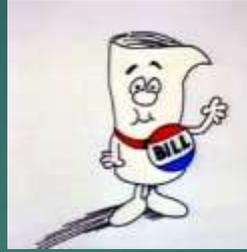
**Increased legislative efforts to constrain or eliminate collective bargaining rights of public sector employees.**



**Passage of state laws that diminish union rights and strengths (right-to-work laws).**



# Federal and State Legislation and Regulatory Changes



**Inconsistent and conflicting regulations on the federal level adversely impact employee benefit costs**

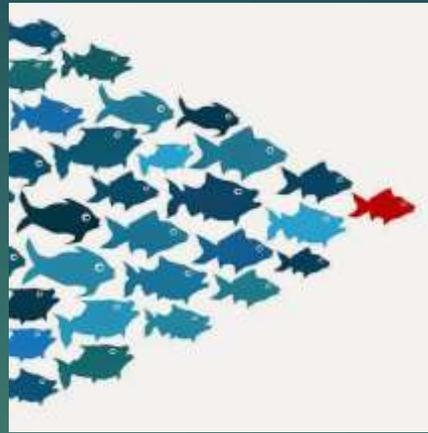


**EEOC Regulations limit incentives for employee wellness programs**



**On the federal level, elimination or limitations on pharmaceutical rebates could impact the PEBTF reserve**

# Impact of Leadership Changes



**Change of union and/or government leadership impacts tone and strategy**



**Unionized workforce can have high expectations based on such changes**



**Both side must temper expectations and balance promises with necessary compromise**



# Court Decisions

*JANUS V. AFSCME* SUPREME  
COURT RULING

# Janus

- ▶ Public Sector “law of the land” was the U.S. Supreme Court (SCOTUS) case *Abood v. Detroit Board of Education* (1977).
- ▶ In *Abood* SCOTUS held that requiring non-members of public sector labor unions to pay “fair share” fees was constitutional.
- ▶ Mark Janus was an AFSCME covered public sector employee in Illinois when he challenged the *Abood* ruling and the obligation to pay “fair share” fees.
- ▶ Janus was represented by attorneys from the Liberty Justice Center, a non-profit litigation center with conservative interests.
- ▶ The case made it to U.S. Supreme Court.



# Janus

- ▶ Following the appointment of Justice Neil Gorsuch, SCOTUS heard arguments in *Janus v. AFSCME*.
- ▶ On June 27, 2018, by a 5-4 vote, SCOTUS held that requiring non-members of public sector labor unions to pay “fair share” fees was unconstitutional.
- ▶ SCOTUS finds *Abood*’s distinction between political activity and public sector bargaining to be spurious.
- ▶ Immediate impact on public sector unions as employees may no longer be compelled to pay “fair share” fees.



# *Janus Impact - Commonwealth*

- ▶ In calendar year 2017, approximately 70% of COPA employees in union covered positions were union dues payers.
- ▶ Janus decision invalidated both Act 84 (1988) and our “union security” contract/MOU provisions.
- ▶ Approximately \$6.5 million paid in “fair share” fees in 2017. Such fees were ended by the Janus decision.
- ▶ Commonwealth took immediate steps to implement and provide guidance to Cabinet and Senior management, with an emphasis on neutrality.

# Results



**Added attention to collective bargaining has made it increasingly difficult to manage the “Optics of the Deal” and to protect leaders from criticism.**



**Increasingly critical for both sides to manage expectations at the bargaining table. Cannot label everything as a priority.**



**When leadership has been publicly supported by unions, bypassing the bargaining process to cash in political chips becomes more prevalent.**



**Janus ruling has created an environment where unions are feeling financial pressure to grow membership while being attacked by forces determined to undermine them. This pressure extends to the bargaining table.**



Questions?