Bloomberg BNA

Daily Labor Report®

COLLECTIVE BARGAINING

The coming year brings its share of contract negotiations, including in the health-care, retail food and transportation sectors. The director of the Federal Mediation and Conciliation Service tells Bloomberg BNA that she expects negotiations in 2016 to continue to be long and contentious, but that her agency is increasing its outreach to help unions and employers resolve issues at the bargaining table. It's also possible that parties will put off dealing with the Affordable Care Act's excise tax on high-value health plans (the ''Cadillac tax'') in bargaining now that it has been delayed by Congress for two years.

Bargaining Will Continue to Be Contentious This Year, Observers Say

Against a political and legislative climate that many view as stacked against them, unions engaged in collective bargaining this year will continue to stake claims to wages and benefits they feel they've earned, observers told Bloomberg BNA.

And thanks to Congress, employers and unions also will be able to postpone some concerns about the cost of health-care benefits. The Affordable Care Act's excise tax on high-value health plans, known as the Cadillac tax, was slated to take effect in 2018, but was delayed for two years as a result of a provision in the most recent omnibus appropriations bill signed by President Barack Obama in December. As a result, many observers told Bloomberg BNA, parties to labor contracts may breathe a sigh of relief at being able to put off discussions of how to avoid the tax.

Wages will continue to be a major issue for organized labor in 2016. A Jan. 19 report by the AFL-CIO detailed various union successes in boosting wages for workers in 2015, through collective bargaining and other means, and said working people would continue those fights.

''We're building understanding, creating joint actions, developing strategies together,'' the report said. ''We're standing for the future and standing up for our kids. We're strong and resolute,'' even in the face of a ''torrent of intolerance and hate unleashed by would-be presidents . . . designed to sow fear and division.''

Although the number of large contracts covering more than 10,000 workers is somewhat limited in 2016, Allison Beck, director of the Federal Mediation and Conciliation Service, told Bloomberg BNA Jan. 11 that she didn't expect the major issues that employers and unions would deal with this year at the bargaining table to be that different from those they negotiated about in 2015.

'Long, Contentious' Talks to Continue. ''In 2015, negotiations were contentious and they were long,'' Beck said, pointing in particular to negotiations covering workers at West Coast ports and in the auto and steel industries. ''We really expect that trend to continue.''

Unions and employers will continue to bargain over wages, health-care and other benefits, pensions and job security, Beck said.

''These issues are never easy, but I think we're seeing a new twist on what have been traditional topics,'' she said. For example, younger workers see two-tier wage systems, under which newer hires make less than more senior employees, as critically important, she said.

Furthermore, parties to collective bargaining agreements will continue to deal with subcontracting issues, Beck said. It remains to be seen, however, whether such issues will continue to be important to younger workers, who typically don't stay as long at one job as more senior employees might, she said.

As for health care, those issues continue to be ''incredibly difficult,'' Beck said. ''Even with the Cadillac tax postponement, we're still seeing a debate over cost containment versus cost shifting'' to workers.

Despite the novelty of legislative issues that may arise in the so-called ''new economy,'' such as workers' demands for higher wages and paid sick leave, workers generally also ''really seem to want collective bargaining,'' Beck said. ''We're just beginning to see maybe a bit of an uptick'' in union organizing, she said.

FMCS Conference to Return. For the first time since 2008, Beck said her agency will hold a national labor-management conference, slated to take place in August in Chicago. The conference, she said, is targeted at labor and management practitioners and will carry the theme ''The Future at Work: Trends, Tools and Techniques for Partnering in the New Economy.''

The agency also plans to expand its labor-management grants program, Beck said, with grants awarded for proposals that contain ''innovative approaches and enduring solutions to improve labor-management relations.'' Grantees could include not only unions and employers, but also other community members and officials.

The FMCS's database lists some 8,788 collective bargaining agreements due to expire or be modified in 2016, covering some 2.2 million workers.

Major industries with the largest number of workers covered by contracts expiring this year include retail trade, arts, entertainment and recreation, and health care (see related chart).

In the grocery industry, the United Food and Commercial Workers will bargain contracts with several grocery chains in various regions, including agreements covering some 23,000 workers at Giant Food LLC and Safeway Inc. in the Washington, D.C., and Baltimore areas. A UFCW contract with Stop & Shop Supermarket Co. in New England covers some 34,700 workers and will expire in February.

Large health-care contracts due to expire include an agreement with the Service Employees International Union covering workers at California hospital chain Dignity Health.

In transportation, United Airlines will negotiate a contract covering some 30,000 workers with the International Association of Machinists, and negotiations covering more than 140,000 workers at the nation's freight railroads are ongoing (see related story).

Boeing Contracts Resolved Early. A pair of agreements covering some 20,000 professional and technical engineers at Boeing Co. represented by the Society of Professional Engineering Employees in Aerospace was due to expire in October, but the parties Jan. 13 tentatively agreed to extend those contracts by six years, through 2022. Union members are voting by mail on ratification through Feb. 10.

Prior to the tentative contract extensions being agreed upon, Leon Grunberg, a professor of sociology at the University of Puget Sound who studies labor relations at Boeing, told Bloomberg BNA that the company was likely to seek to end its defined benefit pension plan, as it did several years ago in its contract with the International Association of Machinists. The tentative SPEEA agreements would phase out the pension by 2019.

''Boeing is an engineering company, so engineers are really important,'' Grunberg said. ''But they don't feel like they're being very well treated.''

Dissatisfaction with pay and benefits could be a common theme expressed by unions generally in collective bargaining this year, according to Paul Clark, director of the School of Labor and Employment Relations at Penn State University. Reiterating some of what he said at the beginning of 2015, Clark told Bloomberg BNA Jan. 11 that now that the economy is improving somewhat, unions will be seeking economic gains.

Unions 'Starting to Push Harder.' ''We're in a situation where unions have been very patient over a number of years now and they're starting to push harder,'' Clark said. Although some economic conditions have improved over the past several years, employers may still be wary of ceding too much ground to workers in bargaining, he said.

Although it's possible that parties could be subject to ''more conflict'' in bargaining this year, Clark said he didn't necessarily predict an increase in strikes or lockouts.

''While unions want more, and are impatient about getting some things back, I think they're still a little tentative about the state of the economy and how far they want to go,'' Clark said.

Bob Bruno, director of the labor education program at the University of Illinois, told Bloomberg BNA Jan. 6 that it is important to view bargaining this year against the backdrop of the formidable challenges facing labor unions generally.

In recent years, Bruno said, ''we've seen an onslaught of statewide legislation that's rolled back worker protections, and has placed greater restrictions on workers' ability to organize.'' Right-to-work laws also continue to be debated at the state level and in some cases passed, he said, further weakening unions.

Possible Effects of *Friedrichs*. The U.S. Supreme Court's forthcoming decision in *Friedrichs v. California Teachers Association* (No. 14-915) could have a detrimental effect on union power, Bruno said.

The court in *Friedrichs* is set to decide whether the First Amendment prohibits public sector employers from entering ''fair share'' or agency-shop agreements that unions depend on to finance their representation of public sector workers. Although the decision would only directly affect government employers, it could have ramifications for the private sector as well.

As a result, contract campaigns this year likely will contain an additional element: pleas by union leaders for rank-and-file members to engage in more activism than they have in the past, Bruno said.

''What we're seeing across the country is this real effort to internally educate and mobilize members. This crisis mentality that's unfolded for the labor movement is an opportunity to look inward and ask some hard questions about how committed union members are,'' Bruno said.

That activism, he said, could take the form of fighting initiatives in a state legislature or educating members on the issues at stake in a contract campaign.

For example, the United Steelworkers in their contract campaigns with the major steel manufacturers emphasized the fact that steel prices are closely linked to global trade policy. The union in December reached a tentative pact with U.S. Steel, but is in continuing negotiations with the nation's other large steel producer, ArcelorMittal.

Employers 'Reluctant to Spread Gains.' Lee Adler, senior extension associate at the Cornell University School of Industrial and Labor Relations, agreed. In the public sector especially, if the *Friedrichs* case turns out unfavorable to unions, as many observers expect,

   ISSN 0418-2693

unions will need to step up their engagement of rank-and-file members, Adler told Bloomberg BNA Jan. 11.

As for the private sector, ''unless something really dramatic occurs, it seems to me that private sector [employers] are going to continue to be reluctant to spread any gains that they have to their union workers,'' Adler said.

For example, during contract negotiations between the United Auto Workers and the ''Big Three'' automakers last year, the companies, which had strong balance sheets, ''put tremendous pressure on the UAW and UAW leadership to settle for much less than what was fair to the rank and file,'' he said.

''It took the rank-and-file's efforts to push for more and more'' to get the gains that eventually were agreed to in the UAW auto contracts, Adler said. The ''lesson,'' he said, was that it's imperative that unions ''really mobilize a strong rank and file in the private sector wherever big contracts are coming up. I think that dynamic will be one that will be followed'' by other manufacturing unions in the coming year, Adler said.

ACA Excise Tax Issue. Meanwhile, the ACA excise tax continues to figure into bargaining, according to observers, despite the two-year delay, although the reprieve may allow the tax to take a back seat to other issues in the near term.

''To the extent that we've been encouraging our clients to reorganize their [health] plans to minimize or avoid the tax issue, well, they can put that on the back burner right now,'' Patrick McGovern, a management-side attorney with Genova Burns in Newark, N.J., told Bloomberg BNA Jan. 8.

Assuming contracts bargained this year extend for two or three years, parties should have ''plenty of time to get their act together in 2018 or 2019, assuming the Cadillac tax remains on the horizon'' and will take effect in 2020, McGovern said.

Major Collective Bargaining Agreements Expiring in 2016

Major contracts in a variety of industries expire in 2016, including airlines, aerospace, building services, postal workers, retail food, utilities and health care. Among the contracts coming due this year are the following:

- The International Association of Machinists and United Airlines Inc. have agreed to start negotiating early on contracts covering 30,000 workers including ramp and fleet service workers and passenger service representatives. The contracts will become amendable at the end of 2016.

- The U.S. Postal Service and the National Association of Letter Carriers have a contract covering 201,230 employees that expires May 20. Another contract, between the U.S. Postal Service and National Postal Mail Handlers Unions, also expires May 20. That deal covers 43,375 employees.

- The ratification vote is scheduled to be tallied Feb. 10 for a pair of contracts covering about 20,350 Boeing Inc., workers represented by the Society of Professional Engineering Employees in Aerospace. Tentative six-year labor agreements were announced Jan. 13, about 10 months before the expiration of existing collective bargaining agreements. The proposed contracts cover 6,100 technical workers and a separate deal covers about 14,250 professional engineers.

- United Food and Commercial Workers Local 555 and Allied Employers Inc. of Kirkland, Wash., have several contracts expiring in November. These contracts cover about 14,000 employees at some 300 retail food stores. The deals cover workers of Safeway Inc., Albertson's LLC, and Fred Meyer , which negotiate the deal under the umbrella of Allied Employers.

- The Communications Workers of America has two contracts expiring that cover a total of more than 25,000 workers within divisions of AT&T Inc. That includes a pact with 9,400 employees within AT&T Mobility LLC that expires Feb. 26. The other contract expires April 9, covering about 15,900 employees of AT&T West, which operates in California and Nevada.

- A collective bargaining agreement expires in October between United Food and Commercial Workers Local 99 and the Arizona-based Fry's Food & Drug, covering about 11,700 workers.

- Costco Wholesale Corp. and the International Brotherhood of Teamsters have a pair of contracts expiring in February, covering about 15,000 warehouse workers, clerks, meat cutters and delivery drivers in California and on the East Coast. One deal covers about 12,000 workers at some California locations, who are represented by six IBT locals. The other contract covers about 3,000 workers at more than a dozen Costco locations in New York, New Jersey, Maryland and Virginia, who are represented by three IBT locals.

- United Food and Commercial Workers locals have five separate three-year collective bargaining agreements with Stop & Shop Supermarket Co. that expire Feb. 27. The deals cover about 34,700 supermarket workers in Connecticut, Massachusetts and Rhode Island.

- United Food and Commercial Workers locals in the Washington, D.C., and Baltimore regions have contracts with Giant Food LLC and Safeway Inc. that expire Oct. 29. The deals cover about 23,000 workers.

- On Feb. 27, a three-year labor contract expires between the UFCW and Stop & Shop, covering about 34,700 workers at 250 retail food stores in Connecticut, Massachusetts and Rhode Island.

But McGovern said he had observed an increase in unions seeking to bargain over other contract terms related to the ACA, such as the number of hours per week an employee must work in order to be eligible for coverage under an employer's health plan.

Bargaining Over Other ACA Issues? ''More often now, unions are requesting bargaining about some of the mechanics that go into determining which employees are and are not eligible for coverage under the ACA,'' McGovern said.

For example, while the law specifies that employees who work an average of at least 30 hours per week during a given measurement period must be eligible for a large employer's health plan, unions might seek to lower the weekly hourly average, or bargain over the measurement period itself, McGovern said.

Ronald Kramer, an attorney with Seyfarth Shaw in Chicago, told Bloomberg BNA Jan. 9 that employers ought not to postpone dealing with the Cadillac tax, despite the two-year delay. For one thing, although some have estimated that only about 20 percent of employers' health plans would hit the threshold for the tax, ''it's only going to be worse in two years'' because of climbing health-care costs, Kramer said.

''Unfortunately, [Congress] is doing everyone a favor, but from a collective bargaining standpoint there's still uncertainty, and you're still going to need to deal with it,'' Kramer said. Some parties to collective bargaining agreements might consider provisions to reopen contract negotiations on health care if it appears a given plan will hit the tax's threshold, but must allow sufficient time to do so, he said.

It's also possible, Kramer said, that Congress could raise the Cadillac tax threshold, even if it doesn't eliminate the tax altogether, as some unions have lobbied for. If that happened, however, Congress would need to figure out a way to pay for the rest of the ACA's provisions, a potentially tall order, he said.

Increased Health-Care Efficiencies. On the other hand, some unions and employers have managed to avoid the tax altogether by partnering to increase efficiency in health care and reduce health-care costs, according to John August, associate director of the Healthcare Transformation Project at the Cornell ILR School. He told Bloomberg BNA Jan. 8 that ''to some degree, the fact that the excise tax is hanging out there in the vapor just adds incentive for what unions and employers are slowly coming to grips with, and that is [the need to] build in long overdue efficiencies into their health plans.''

Such efficiencies, August said, could include education of health plan beneficiaries or negotiations by union health plans with providers or pharmacies to lower costs.

And, ''in some cases, parties are simply agreeing that in the event that the tax is going to hit the threshold,'' parties will likely negotiate in good faith to avoid it, August said.

FMCS Director Beck said early indications are that the delay of the Cadillac tax may be helpful to parties dealing with other issues in bargaining.

From her observations, ''parties are feeling more optimistic about resolving [negotiations] quickly because the Cadillac tax is off the table,'' Beck said. ''I can only say anecdotally, but my sense is that if people can kick it down the road, when there are so many other issues to deal with, I think more likely than not that they'll put it off in 2016.''

By Michael Rose

To contact the reporter on this story: Michael Rose in Washington at mrose@bna.com

To contact the editor responsible for this story: Susan J. McGolrick at smcgolrick@bna.com

   ISSN 0418-2693