Yours Mine and Ours: The Impact of a Merger of Agencies on Labor Relations

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Note: The California Joint Powers Agency. The Sacramento Employment & Training Agency (SETA) is a creation of Sacramento City and County.

Introduction

This paper explores the effort of two agencies, the City of Sacramento and County of Sacramento, to effectuate a joint exercise of power agreement in a manner consistent with the public policy priorities of each entity while allowing the resulting joint powers agency, the Sacramento Employment and Training Agency (SETA), to evolve into its own separate identity. The focus will be on the ongoing impact that this shared jurisdiction has on the labor relations of the new agency, (SETA).

This paper will explore the jurisdictional dynamics involved in three labor relations management systems:

- SETA’s adoption of an automated payroll and accounting system;
- SETA’s establishment of a new deep classification for its Workforce Development Department; and
- SETA’s administration of its staff benefits program.

The SETA Legal Authorization and the Purpose of SETA

California Govt. Code Sec. 6500 et seq. provides that two or more public entities may agree to jointly exercise any power common to the entities. The section is commonly known as the Joint Powers Agreement (JPA) statute in California. The Sacramento Employment and Training Agency (SETA) was created by an agreement between the City of Sacramento and the County of Sacramento on July 7, 1988.

SETA is serves a multi-jurisdictional area by planning and operating comprehensive manpower programs and providing job training and employment opportunities for unemployed, economically disadvantaged and under employed as well as oversight and administration of:

1. Workforce Investment Act (WIA)
2. Head Start (HS)
3. Community Services Block Grant (CSBG)
4. Refugee funds and any other federal or state statutes under which financial assistance is provided, or under which financial assistance is received from private sources
The authorizing document lists twenty-seven agreements entered into between the City and County of Sacramento. Included in the list of twenty-seven are three agreements that delineate the *dejure organizational structure of SETA*. These cover: Governing Board, Staff and Legal Counsel.

4. **Governing Board.** The Joint Powers of the Agency shall be administered by a Governing Board which shall consist of five members, each serving in an individual capacity as a member of the Governing Board. Two members shall be appointed by the Board of Supervisors of the County of Sacramento, and two members shall be appointed by the City council of the City of Sacramento, and one member shall be jointly appointed by the Board and Council.

14. **Staff.** The County Executive of the County of Sacramento and the City Manager of the City of Sacramento shall jointly appoint a Director of the Joint Powers Agency, to confirmation by the Board of Supervisors and the City Council. The Director shall serve at the pleasure of the appointing authorities and may be removed from office by the County Executive and the City Manager, with the approval of the Board of Supervisors and City Council.

15. **Legal Counsel.** Independent legal counsel to the Joint Powers Agency shall be appointed by the Governing Board of the Agency. The Counsel shall serve at the pleasure of the Governing Board of the Agency. The Counsel shall not be either the County Counsel of Sacramento or the City Attorney of the City of Sacramento.

**Defacto Organizational Structure for the Exercise of Powers**

There are no prohibitions in the authorizing document against providing SETA with General Fund monies from either or both entities to operate its programs and pay its employees. However, all parties understood from the beginning that that SETA would be a solely grant funded agency. The document begins with several “WHEREAS” recitals that refer to federal and state government poverty programs and acknowledge the grant funding these entities have put in place. The first and second recitals illustrate the point.

WHEREAS, the United States has enacted the Job Training Partnership Act of 1982, pursuant to 29 U.S.C. 1501 et seq., as amended, hereinafter referred to as JTPA, and the State of California has enacted the Family Economic Security Act, pursuant to California Unemployment Insurance Code Section 15000 et seq. …

WHEREAS, JTPA and FESA provide financial assistance to enable local governments to assume responsibilities for job training and for other purposes;

There is nothing in the authorizing document to indicate the perspective that the City Manager held about jointly exercising the City’s powers with the County through SETA. However, the City’s Organization Chart includes an Assistant City Manager for Community Services. Under this Assistant City Manager is listed: JPA Partners Coordination for the Library, Sacramento Housing and Redevelopment Agency (SHRA), and SETA. Based upon the nature of the energy and effort directed toward SETA and other JPA’s it appears that the City is interested in dealing with these agencies in a coordinated fashion and to maintain synchrony of the pay and benefits of the JPA employees with those of City employees. This is evidenced by the fact that the City has a side agreement with SETA providing that a city management employee be the chief negotiator for SETA in its labor relations activities. This side agreement states:
Scope of Services

The Services to be performed by the City are:

a) Represent SETA as a Chief Negotiator during labor negotiations with employee organizations representing employees of SETA;
b) Participate in developing SETA’s position on matters within the scope of bargaining;
c) Advise management staff regarding interpretation and application of provisions of agreements dealing with employees;
d) Such other services related to employee relations as requested by SETA.

The perspective of the County Executive Office with regard to jointly exercising the County’s powers with the City through SETA is indicated in the authorizing document. The document presents clear evidence of the County’s interest in overseeing the financial affairs of the JPA. The agreement regarding “Funds-Accountability” makes it very clear that the County desires to oversee and control the financial operations of SETA. The agreement specifies that the County shall “have custody of all the money”:

17. Funds – Accountability

   (a) The Treasurer of the County of Sacramento is hereby designated as the treasurer of the Joint Powers Agency. The treasurer is designated the depository of the Joint Powers Agency to have custody of all the money, from whatever source, and as such, to have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code of the State of California.

Paragraph 17 b) and c) below had particular relevance to one of the illustrative efforts described later in this paper relating SETA’s effort to establish an independent payroll system.

   (b) The auditor – controller of the County of Sacramento Is hereby designated as auditor – controller of the Joint Powers Agency and, as such, shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Government Code of the State of California. The auditor – controller shall draw warrants to pay demands against the Joint Powers Agency when the demands have been approved by the Governing Board of the Agency, or by its delegee, pursuant to valid delegation of authority from the Governing Board.
   (c) The treasurer and / or the auditor – controller shall establish records as required. In particular, the funds received from each funding source shall be managed in such a manner that accounting may be had of receipts and expenditures of funds provided by the funding sources.

The authorizing document gives the Governing Board a degree of independence to explore program options within the scope of its mandate. The document allows the Governing Board to assess the legal viability of its initiatives without the burden of undue influence from either the City or the County. The Board is authorized to employ a legal counsel who is independent of the City and the County. The authorizing document does not limit the scope of the counsel’s work. This counsel then is available to offer confidential advice to the Board even with regard to potential conflicts with one or both of the founding entities.

The Dynamics of Yours Mine and Ours
SETA’s local management can say to the County: the lead person for labor relations is YOURS. To the City: program development is MINE. The success or failure of the Agency is OURS. Now to consider how YOURS, MINE and OURS impacts SETA’S three program areas.

I. The Yours Mine and Ours, Impact on Contract Administration (Payroll)

At the heart of Labor Relations is contract administration. At the heart of contract administration is implementing the provisions of the agreement that say people will be paid for the work they perform.

The Agreement Between Sacramento Employment and Training Agency and United SETA Employees, American Federation of State, County and Municipal Employees (AFSCME), Local 146, provides at Article 7 Salary Administration 7.1 Paydays:

Employees will be paid on a bi-weekly basis on the Friday following the end of the pay period, except that if Friday is a recognized holiday, employees will be paid on the last working day preceding that Friday.

Timesheets and the Book of Record

That statement in Article 7.1 is not just a formula for determining a payday schedule. It is a grievable condition of employment.

Paying employees involves keeping track of hours worked, ensuring that each employee is paid at the correct rate, calculating taxes and social security, ensuring proper withholding for taxes and garnishments, and other tasks and calculations. Then a warrant must be drawn from Agency funds.

Typically, government entities utilize a Human Resource Information System (HRIS) to accomplish this. HRIS is a software or online solution for the data entry, tracking, and information needs of the human resources, payroll, management, and accounting functions within an entity. Some systems handle only payroll, others only accounting. Payroll and accounting work well as functions within the same system. Payroll is typically the largest agency expenditure ranging up to ninety percent of the budget.

Agreement 17 of the Joint Powers Agreement (above) gives the County of Sacramento control of SETA’s money and the County (and not SETA) has the authority to “draw warrants”. The County based upon the article declares itself to be “the book of record” Until recently the County virtually controlled SETA’s payroll operation although the work was performed by employees of SETA. The County had contracted with a private provider for an HRIS system which the county operated with the technical support of and interaction with the system provider.

SETA was directed to use the HRIS (which performed a number of operations for the County) for the limited purpose of payroll only. This entailed a cumbersome process. The SETA employees first entered the employee hours and pay codes (worked hours, vacation, sick leave etc.) into a local data base designed by SETA employees. This information was converted into an application licensed to the County by the HRIS provider. This data along with enough money to cover payroll was transferred out of SETA’s bank into a County account. The HRIS then drew individual warrants or County Paychecks for each employee.
This whole process required so much time that some SETA employees were required to estimate their hours and pay codes for the entire second week of the two week pay period provided in the AFSCME contract. The HRIS vendor offered an application called Time Management Self Service (TMSS). With this application employees would be able to enter their hours and pay codes directly into the system. With this approach an employee would need estimate only the last day of the pay period. Removing the need for estimating up to a week would have some important labor relations benefits.

Timesheet Woes

Having to record employees’ hours and pay codes so far in advance led to an AFSCME contract administration issue in that forecasting such information so far in advance could produce inaccurate results because of unexpected illness, childcare problems, transportation and so forth. This meant that on the next time sheet it was necessary to make adjustments then add an asterisk and an explanation. The supervisors of course have the responsibility to approve time sheets. The supervisor should know when an employee worked or not. However, in the real world this would be problematic even when everyone deals in good faith. Under the circumstances described here however, disciplinary issues result, when a supervisor is a little less attentive than warranted, and an employee proceeds with less than good faith. The week of projected worked hours and projected pay codes can put employees on the defensive by requiring them to defend their timesheet entries and explain apparent inconsistencies. The basic questions (whether asked or not) was “did you intend to cheat?”

From a labor relations perspective this situation set the stage for discussions of first level disciplinary actions. The AFSCME contract states at Article 12. 1. a, that:

Regular employees may be disciplined for just cause only…

Just cause is defined in the SETA Personnel Policies and Procedures Article 10.05 f and n as:

f. Dishonesty
n. Any failure of good behavior either during or outside the duty hours which is of such a nature that impairs, disrupts or causes discredit to his/her Agency or his/her employment;

The first level of discipline is a written reprimand, Article 12. 1. a. of the AFSCME contract continues:

…Discipline shall include a written reprimand, suspension, demotion, withholding of an in-grade step in-crease, salary reduction, and discharge.

The verbal warnings and the counseling memorandums that grew out of the timesheet situation never actually rose to the status of first level discipline of a written reprimand.

Who or What to Blame

No theory of management philosophy explains why none of the employee behavior in question resulted in a written reprimand. One explanation may be found at the tenth point of Dr. Edward Deming’s fourteen points. Dr. Deming is the American businessman credited with the turnaround of Japanese industry after World War II. He is also recognized as the progenitor of the Total Quality Management (TQM) approach to management. Deming’s Point ten:
"Eliminate slogans". Another central TQM idea is that it's not people who make most mistakes - it's the process they are working within. Harassing the workforce without improving the processes they use is counter-productive. *(a)*

The mistakes emanating from work hours projections were made by supervisors who did not check timesheets thoroughly. Employees were suspected of not acting in the best of faith. To go beyond training and counseling of all parties could give rise to the assumption that employees are generally falsifying their timesheets.

Proving such an accusation is difficult. The underlying reason for the cumbersome process (which created an opportunity for mistakes) would be hard for an arbitrator or anyone outside the SETA bureaucratic family to grasp. There was clearly an easier way of conducting time management. How the process could be improved was known to all involved.

Representatives of the City, the lead player for labor relations, encouraged the County and SETA to work it out. The goal from a labor relations perspective was to improve the fiscal payroll process. The issue was not cost to the County since all the monies involved emanated from SETA grants. The issue was about the county being able to demonstrate that it was complying with its mandate to keep: “…custody of all the money” and to: draw warrants to pay demands against the Joint Powers Agency and be the book of record.

**The “Ours” Solution**

After much discussion, a process improvement is now underway. SETA has been allowed to contract directly with the HRIS provider. When the payroll data is finalized it is routed to the HRIS provider via the County. So, long as the County does not affirmatively challenge the data the HRIS provider is automatically authorized to pay warrants drawn on SETA’s account. The County does not have to affirmatively approve the data. It simply has to refrain from affirmatively challenging the data for this automatic authorization to occur.

SETA is still in the development stage in putting the TMSS in place. When completed, employees will not have to project more that one day ahead on their timesheets.

**II. The Yours Mine and Ours, Impact upon Meet and Confer regarding a Deep Class**

The labor relations act applicable to SETA is the MEYERS-MILIAS-BROWN ACT is administered by the Public Employees Relation Board. The act provides for meet and confer activities between labor and management:

3504.5. Notice of proposed act relating to matters within scope of representation; meeting; emergencies

(a) Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions…
This section is largely implemented at SETA through a Labor/Management Committee authorized in the AFSME agreement at Article 15.8:

…The responsibility of the Committee will consist of labor relations matters not covered by the Agreement…

In October of 2005 SETA proposed the establishment of a deep classification by merging six existing classes into one class with three alternative salary ranges. The proposal was to merge the classes into the deep class with specific ranges as well as the requirements for each range. Meetings were held for about a year with groups consisted of employees in the affected classes. A Senior Analyst from Personnel facilitated these meetings. The focus groups fashioned a proposal that management received and edited and took to the Labor/Management Committee.

The Labor/Management Committee considered the proposal for about another year. These discussions were led for management by SETA’s chief negotiator who is a City of Sacramento management employee. In contrast to the situation with the payroll system, no divergent goals existed between the City, the County, and the local governance of SETA. The joint efforts were seamless. The fiscal issues relative to funding were viewed as the province of the SETA Governing Board and staff. No issues of fiscal processes were at hand. The City negotiator worked to assess and reflect the position of SETA management.

The “Ours” Solution

The proposal was a significant one in both size and scope for SETA. It included an immediate two and one-half percent pay increase for those employees who were to be merged into the new class. The AFSME leadership presented the proposal to its membership and it was ratified and then adopted by the Governing Board in November 2007.

II. The Yours Mine and Ours, Impact upon Benefits regarding Retiree Medical

SETA employees are members of the Sacramento County Employees Retirement System (SCERS). However, similar to the situation with the California Public Employees Retirement System (PERS), SETA can customize those benefits to a degree for their employees.

The County has never vested its retirees with a medical or dental insurance benefit. However, since 1980, based upon annual determinations by the Board, County retirees have been provided an offset to assist them with the purchase of medical and dental insurance. Beginning in Fiscal Year 2004-05, the Sacramento County Employees Retirement System (SCERS) stopped funding retiree medical and dental benefits. Since that time, the Board has adopted annual resolutions establishing retiree medical and dental care benefit programs for SCERS retirees. This program provides benefits to both County and participating Special District retirees who were drawing a pension check from SCERS. The County funds the program via allocated charges to all County departments. Although SETA is a joint powers agency and not a Special District, with regard to SETA’s participation in the benefit offering of the County and for procedural purposes, the County treats SETA as a Special District.

Quasi County Preemption

Article VI of the United States Constitution is known as “The Supremacy Clause”. The clause says that the laws of the federal government are the supreme laws of the land and that state courts are bound by them:
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

For the most part state and federal laws cover different things. Sometimes federal and state laws cover the same general topic but different parts of the topic. Other times, however, the congress takes a position which is so strong or so complete that the congress is said to have: “occupied the field”. When congress has occupied the field any attempted state law is said to be “preempted”. This means that congress will give the detailed direction as to how the subject will be handled in the United States.

As discussed earlier, the Joint Powers Agreement and the supreme control of finances is given to the County of Sacramento by Article 17 of the Agreement. Over the years the parties to the Agreement have adopted an approach that on some financial matters that greatly impact the employees of the County of Sacramento, the JPA (SETA) will follow the lead of the County even when to do so would not technically violate Article 17 of the Joint Powers Agreement.

The “Yours” Solution

Retiree benefits fit this profile. The SETA governing Board has followed the County’s led on this very controversial issue year after year. The County has many more employees than SETA. SETA was an entity the County helped bring into being to address profound employment issues within its borders. It is reasonable that SETA would give great deference to the public policy of the county on this issue, and the Governing Board has done so.

Conclusion:

Labor relations is challenging for every public employer in California. This is especially true for Joint Powers Agencies. When entities come together to address a public issue, two entities become three. The resulting agency must still reflect the fundamental public policy of it creators as it addresses challenges. Working through this process can bring great rewards for the community.

We have seen two “ours” solutions where the parties to the Joint Powers agreement participated in steering the course of the agency and a “Yours” solution where the public policy of one of the required great deference.

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