

THE IMPACT OF LIVING WAGE AND \$15.00/HOUR LAWS
ON COLLECTIVE BARGAINING AND LABOR RELATIONS

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NATIONAL ACADEMY OF ARBITRATORS

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Introduction

The news is full of stories on “living wage” laws and \$15.00/hour minimum wage campaigns. The focus of such patchwork efforts has been on low wage workers and industries. Initiatives have been primarily local in scope, but national in certain industries, such as fast food. Most such workers are not represented by unions. But there are unionized work forces in low wage industries. What is the impact of living wage, \$15.00 minimums and other wage mandates on collective bargaining and labor relations in such workplaces? The consequences can be significant, challenging and disparate, depending on the coverage of the living wage laws and the shape of the industry and relevant labor markets. This paper and panel will explore the impact of such laws using the relationship between LSG Sky Chefs, a nation-wide airline catering company, and UNITE HERE, the Union that represents its hourly employees.

Let's open with a brief history of minimum wage, describe the development and evolution of the living wage movement and its synthesis as a more directly political movement, review examples as to the application of living wage coverage and then turn to the impact of such laws on Sky Chefs/UNITE HERE as an example the workplace impact of such laws. I served as National Umpire between Sky Chefs and

UNITE HERE from 2011 through 2019. Chuck Hendricks is the Bargaining Director for the Sky Chefs contract and Bruce Murray has been the Director of Labor and Employee Relations for the Company. Their bios are in your materials.

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Minimum Wage/Living Wage Laws

The governmental imposition of wage rates has a long history, notwithstanding espoused free market principles. The laws began primarily as protection against exploitation of women and children. The laws were explicitly conceived in some jurisdictions as ways to help bolster wages of workers and decrease class stratification. By 1923 15 states and D.C. had passed minimum wage laws, usually covering women and children; however, U.S. Supreme Court consistently invalidated labor regulation laws because they “interfered” with the ability of employers to freely negotiate wage contracts with employees. See, e.g., *Adkins v. Children’s Hospital*, 261 U.S. 525 (1923)

The New Deal’s National Industrial Recovery Act set minimum wage and maximum hours on an industry and regional basis but Supreme Court ruled the entire Act unconstitutional. *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). However, in 1937, the U.S. Supreme Court upheld constitutionality of minimum wage legislation enacted by the State of Washington. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937)

A national minimum wage of \$0.25 per hour was included in the Fair Labor Standards Act of 1938 (FLSA) covering “employees engaged in interstate commerce or in the production of goods for interstate commerce”; that wage rate was described by its supporters as a “living wage”. The U.S. Supreme Court upheld the FLSA in 1941, holding that the U.S. Congress had the power under the Commerce Clause to regulate employment conditions. *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941)

By amendments in 1961 and 1966, the federal minimum wage was extended (with slightly different rates) to employees in large retail and service enterprises, local transportation and construction, state and local government employees, as well as other, smaller expansions. A grandfather clause in 1990 drew most employees into the purview of federal minimum wage policy. In July 2009, the federal minimum wage was reset to its current rate of \$7.25 per hour. Exclusions from the reach of the Federal minimum wage remain. Current exclusions are farm workers, seasonal workers, workers with disabilities, full-time students, employees under 20 years old in their first 90 consecutive days of employment, tipped employees, student learners, apprentices and messengers.

Minimum wage laws have also been enacted on a state level and, where allowed by state constitutions, on more local levels. As of January 2018, there were 29 states with a minimum wage higher than the federal minimum. Fifteen jurisdictions enacted or amended such laws in 2019. Part of the disparity is the result of the lack of any Federal increase since 2009. State minimum wage statutes typically contain exclusions similar to the federal law. Some counties and cities have passed ordinances with minimum wages that are higher than the state in which they are located. Absent specific statutory provisions or non-contiguous exclusions, the laws are written so that the higher of the different applicable rates apply.

As indicated, a minimum wage is simply a statutory amount (with exceptions specified) that must be paid to workers in particular geographical area; the rate is not directly connected to any measurement of poverty, inflation or the cost-of-living. The current national minimum wage of \$7.25 per hour has not increased since 2009, in partial consequence of a soft economy at the outset of the period and in

consequence of political gridlock as the economy has strengthened. As of 2018, 29 states have established a minimum wage that is higher than the national minimum wage. Minimum wages higher than the national minimum wage may be supported by arguments based on cost of living in particular areas, but the wage levels set are based on the politics of the jurisdiction in which it is being considered.

Living Wage Movement

Although not always so stated, minimum wage laws have been described as tied to a “living wage” concept, either directly or, through the impact of such a wage “floor” on the overall wage structure. As indicated, the characterization of the original \$.25 FLSA minimum wage was that it was a “living wage”. That said, stark differences in cost of living and labor markets, as well as partisan and regional politics, make impractical a national minimum wage at a level to provide a living wage for workers and families in high cost localities. A more formal living wage movement was developed in the 1990s by academics, economists, social engineers and community activists for the purpose of developing and justifying the enactment of local minimum wage laws calculated and justified on the basis of providing workers covered by such laws with wages sufficient to live comfortably.

Living Wage Definition

There is no formal definition of the term “living wage.” The commonly understood definition is a wage level that meets basic needs (usually defined to include food, housing, clothing and other essential needs such as medical expenses, transportation and child care) in a particular geographic area. The wage calculations produce different rates based on the number of wage earners in a household and the size of the family unit. It is, in essence, a localized minimum wage where the regular minimum wage (federal and/or state) is not high enough to allow people to live there and work there in ways that an unregulated economy would not permit.

Living Wage Calculator

The models to determine a living wage rate or rates can be quite intricate. See, for example, the *Living Wage Calculator*, prepared for Amy K. Glasmeier, Ph.D., by Carey Anne Nadeau, Consultant, Open Data Nation, as updated 2/7/2017, published through the Department of Urban Studies and Planning, Massachusetts Institute of Technology. This mechanism calculates the basic needs required to support a family group of varying sizes and compositions in a particular geographic location. Basic needs include the family’s likely minimum food, childcare, health insurance, housing, transportation and other basic necessities (e.g., clothing, personal care items, etc.) costs. The rough effects of income and payroll taxes are also considered in order to determine the minimum employment earnings necessary to meet a family’s basic needs while also maintaining self-sufficiency. According to the author, the living wage is the minimum income standard that, if met, draws a very fine line between the financial independence of the working poor and the need to seek out public assistance or suffer consistent and severe housing and food insecurity.

The M.I.T. calculator estimates the living wage needed to support families of 12 different compositions: one adult families with zero, one, two or three dependent children; two adult families where one adult is not in the labor force with zero, one, two or three dependent children; and two adult families where both adults are in the labor force with zero, one, two or three dependent children. Families with one child are assumed to have a “young child” (four years old); families with two children are assumed to have a “young child” and a “child” (nine years old); and families with three children are assumed to have a “young child,” a “child” and a “teenager” (15 years old).

The sources for the basic needs budget were the following: food – USDA’s low-cost food plan; childcare – state-level estimates from the National Association of Child Care Resource and Referral Agencies; health – health insurance costs from the Agency for Healthcare Research and Quality and medical services, drugs and medical supplies from the BLS Consumer Expenditure Survey; housing – HUD Fair Market Rents estimates; transportation – BLS Consumer Expenditure Survey; other necessities – BLS Consumer Expenditure Survey; and taxes – Urban-Brookings Tax Policy Center Microsimulation Model (federal) and CCH State Tax Handbook (state). M.I.T.’s 2016 Update calculated living wages at the county, metropolitan area, state, regional and national level. Thus, the living wage is calculated for 381 metropolitan areas and all 50 states and D.C. Not surprisingly, application of a Living Wage calculations to a particular locality is likely to require covered employers to pay wages that are well above federal or state minimum wage levels.

As might be expected, little of the noble theory and intricate calculations contained in the models survives contact with the legislative process. Advocates of living wage laws describe access to such coverage as a “right” (as characterized recently by Cong. Alexandria Ocasio-Cortez) while employers describe it as a “job killer” and hint darkly that adoption of such ordinances will lead to job losses and business flight from covered localities. The result of these competing arguments in the political arena has frequently been legislative gridlock. When such laws do wend through the legislative process, they frequently include dilutions in coverage and phase ins of the adopted wage rates over a period of years, thereby creating a moving target: by the time the deferred living wage of today is fully phased in over a period of years, it is unlikely to reflect a living wage as calculated by the models. Indeed, the meaning of the term living wage has acquired multiple meanings: (1) the minimum wage in a particular area that is based on the living wage rate nominally necessary for that area and (2) the minimum wage in a particular area for government contractors and their employees (or some variation of captive employers) in that area. The latter limitation may result either from legislation or Constitutional limitation. The goal of “living wage” advocates thus becomes to get the minimum wage in a city/state as close to a living wage for that area as possible. As a result, a living wage is often referred to as a minimum wage, although it may have started its doctrinal and legislative life based on cost of living calculations. Indeed, the living wage movement has morphed in many contexts into a flat \$15.00 wage rate, as championed, for example, for workers in the fast food industry. The \$15.00 rate has been set, according to organizers, because \$10.00 per hour was too low to make an impact and \$20.00 per hour was too high to be attainable. The complex calculations have been reduced to what fits on a picket line sign.

Coverage Under Law for Employees Covered by Collective Bargaining Agreements

Some of the local ordinances have included exemptions for workers covered by collective bargaining agreements. For example, the 2010 Fresno (California) ordinance excluded from coverage employees covered by a collective bargaining agreement. UNITE HERE grieved the refusal of Sky Chefs to adjust bargained wages to include the legislated rates. A Board of Arbitration, (Vaughn, Chair) denied the grievance. The Los Angeles City Council approved in 2014 a minimum wage for hotel workers other than those covered by collective bargaining agreements of \$15.37 per hour. However, this led to an anomolous situation where longtime workers at unionized hotels, such as the Sheraton Universal earning the state minimum wage of \$10.00 per hour, were making less than non-union employees at a non-union Hilton less than 500 feet away making at least \$15.37 as mandated by the City ordinance. In 2016, the Washington, D.C. Council passed a minimum wage ordinance that initially included a waiver for employers and employees covered by collective bargaining agreements; however, the Mayor vetoed it and, later that year, the Council approved an increase without the union waiver. Anti-union groups,

supra, argue that the unions support such exclusions in order to encourage employers to agree to unionize, thereby making collectively bargained, but lower, wage rates available to them.

Adoption of Wage Laws in Different Jurisdictions

The application of minimum wage and living wage laws across jurisdictions, yields layered, sometimes confusing, results: Examples include, in Washington, D.C., a Minimum Wage of \$13.25 (effective 7-1-18), to be increased to \$15.00 effective 7-1-20. It was established pursuant to “Fair Shot Minimum Wage Amendment Act of 2016,” D.C. Code, Title 32 (Labor), Chapter 10 (Minimum Wages), Subchapter I (General), § 32-1001 *et seq.* However, the District also has a living wage of \$14.20 (effective 1-1-18), which is payable by government contractors who receive \$15,000 or more per year in contracts. It was established pursuant to “Living Wage Act of 2006,” D.C. Code, Title 2 (Government Administration), Chapter 2 (Contracts), Subchapter X-A (Living Wage Requirements), § 2-220.01 *et seq.* While some wage laws give employers “credit” for providing employees with health insurance, the D.C. Code sets the hourly wage rate at \$11.75 per hour, regardless of whether health care benefits are provided.”

In the State of Maryland, a minimum wage of \$10.10 (effective 7-1-18) was established pursuant to Maryland Code (2017), Labor and Employment Article, Title 3 (Employment Standards and Conditions), Subtitle 4 (Wages and Hours), Part III (Required Wages), § 3-413 (Payment of minimum wage required). However, Maryland also has a living wage of \$13.96 (Tier 1); \$10.49 (Tier 2) (effective 9-28-18), which is payable by certain state contractors and subcontractors but does not apply to county and municipal contracts. The living wage law only applies to Service contracts awarded on or after 10-1-07 valued at \$100,000 or more, or \$500,000 or more if the employer has 10 or fewer employees. There are also exclusions based on employee status: for example, it does not apply to employees who work less than half their time in any workweek on contract or employees who are 17 years of age or younger. The latter rate was established pursuant to “Living Wage Law,” Maryland Code, State Finance and Procurement Article, Title 18 (Living Wage), § 18-101 *et seq.* Maryland’s State laws apply differently to Tier 1 Counties (the predominately urban Counties of Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties and Baltimore City) while Tier 2 rates and conditions are applicable to all other counties.

Montgomery County, Maryland has established two separate wage requirements: a “Minimum Wage” which must be paid to most employees who work in the County and a “livable wage” which must be paid to employees of county government contractors.

The minimum wage is currently \$12.25 per hour for employees who work for employers in the County that have at least 51 employees and \$12.00 per hour for employees who work for employers that have fewer than 51 employees; it rises, effective July 1, 2019, to \$13.00 for the former and \$12.50 for the latter. Thereafter, the minimum wage rises incrementally each July 1, eventually rising to \$15.00 for all employees (effective July 1, 2021, for employees who work for employers that have at least 51 employees; effective July 1, 2023, for employees who work for employers that have 11-50 employees; and effective July 1, 2024, for employees who work for employers that have ten or fewer employees). The County’s minimum wage does *not* apply to employees under 18 years old or to those who work fewer than 20 hours per week or to tipped employees (who must be paid at least \$4.00 per hour and their paid hourly rate plus tips must equal the County minimum wage). Employees of amusement and recreational establishments must be paid at least 85% of the state minimum wage rate (currently \$10.10 per hour) and employees under 20 years old must earn at least 85% of the County minimum wage rate for the first six months of employment (the full amount thereafter).

The “livable wage” that Montgomery County contractors and sub-contractors must pay their employees is currently \$14.75, \$15.05 effective July 1, 2019 (through June 30, 2020). The nine exceptions to payment of the livable wage include contractors who, at the time a contract is signed, received less than \$50,000 from the County in the most recent 12-month period and will receive less than \$50,000 from the County in the next 12-month period; a contract with a public entity; a contract with a non-profit organization that has or qualifies for Section 501(c) exemption; a non-competitive contract if the County’s Chief Administrative Officer finds that the performance of the contract would be significantly impaired if these wage requirements applied; a contract for electricity, telephone, cable television, water, sewer or similar service delivered by a regulated public utility; a contract for services needed immediately to prevent or respond to an imminent threat to public health or safety; an employer that is expressly precluded from complying with the wage by the terms of any federal or state law, contract or grant; an extension to an existing contract; a contract entered into under a cooperative procurement. The State of Maryland also has a minimum wage and a minimum payable by state government contractors; however, since both are at levels below the levels required by Montgomery County, they need not be discussed here. There is no exemption under either law for employees covered by a collective bargaining agreement.

Prince George’s County and City of Baltimore, by way of example, have established their own local Minimum Wage laws, different in amounts, implementation and exclusion. The enactment of laws inconsistent in their terms, coverage and implementation creates difficulties in adjacent, related labor markets.

O’Hare Living Wage Coverage

Living Wage ordinances may be state or local. The laws cover specific jurisdictions and, in some cases, only particular types or sizes of employers or employees in different relationships – such as government contractors or employers of vendors at a regulated facility. Frequently, the kitchens may be in a different jurisdiction than the airport. At Chicago O’Hare International Airport, the location of a large Sky Chefs facility, some surrounding jurisdictions have adopted living wage ordinances; some have not. Some of the municipalities in the O’Hare area have local ordinances; others do not. Employees of airport vendors are covered by an airport-specific living wage ordinance.

For Cook County, the minimum wage is set by statute at \$11.00/hour, increasing to \$12.00 effective 7/1/19. The City of Chicago minimum wage is set at \$12.00/hour, to increase to \$13.00/hour effective 7/1/19. And for O’Hare Airport itself, the minimum wage is \$13.80/hour. The Airports minimum wage is applicable to service providers (baggage handlers, cabin cleaners, wheelchair attendants, janitors, security officers, ticket collectors and de-icers). It is not applicable to food service employees who are not employed by the airport or contractors of the airport. Because Sky Chefs is not an airport contractor and its employees are not airport employees, it is not subject to the higher Airport minimum wage.

Impacts of Multiple, Overlapping Laws

As the O’Hare situation illustrates, employers may be covered by multiple, overlapping ordinances, each with different applications, different rates and different phase-in periods. Some laws, including the City of Chicago living wage ordinance, may use an appeal procedure to be deferred or exempted from coverage. Sky Chefs utilized the process, but was not successful.

Most living wage laws are based on where employees work, so there may be situations where some employees of an employer are covered and some are not or where some employees are covered by a different law than others. The first question for any employment specialist is whether the employer and employees are covered and if so by which ordinances. I rule, in this regard, that none of the ordinances impacting O'Hare operations have exceptions for employees whose wages are set by collective bargaining. It appears that exclusions of employers and employees from coverage of living wage laws based on coverage by collective bargaining agreements have generally fallen out of favor.

Because the kitchens of different catering companies may be located in different jurisdictions, the patchwork of living wage ordinances may have markedly different direct economic impacts on wage costs and competitiveness between different companies as well as between companies. That direct differential impact is lessened somewhat in a tight labor market, as employers competing in the same labor pool must either raise pay rates or suffer losses as employees migrate to higher paying employers (whether rates are set by law or by the market). In adjacent jurisdictions so being outside of the coverage of a particular law does not insulate an employer from competing for employees whose employers are covered.

Sky Chefs and Catering Operations

LSG Sky Chefs and UNITE HERE offer a clear almost unique example of the impact of living wage laws on labor relations and collective bargaining. Sky Chefs is an airline catering company. It has contracts with airlines to prepare and stock passenger-carrying commercial aircraft with food and beverages. A subsidiary of Luftansa - the "LSG" stands for Luftansa Service Group - Sky Chefs operates at 53 locations within the United States as well as abroad. Its U.S. hourly employees are represented by UNITE HERE.

The food for the Company's catering operations is prepared at "kitchens", most but not all of which are located off of airport property, and loaded onto scissor trucks for transport to the airport operating area ("AOA") and onto the tarmac, where the trucks are elevated to service door level, the food and beverages loaded and trash removed. While most of the tasks performed by catering company employee are not difficult, work schedules are taxing, with lots of early morning, late night and weekend work. The working environment is difficult, with lots of pressure to service flights on time and to change schedules on short notice. As a result, breaks may be postponed or eliminated. Much of the work for drivers and helpers who cater the aircraft is on the tarmac, subject to the mercies of the weather, and with little opportunity to leave the field, other than to return for more loads. The low wage/low skill level and difficult working environment results in high turnover, particularly, in a tight labor market. Difficulties obtaining qualified employees result in high levels of overtime. These difficulties are exacerbated when the economy is expanding and unemployment is low.

The negotiated procedure recognizes that wage rates need to vary from locality to locality. It provides for frequent renegotiation of rates, which creates issues for the Employer, which needs long term contracts with airlines. Catering employees are subject to airport security checks, so no undocumented employees work in airline catering. The Sky Chefs workforce is comprised primarily immigrants and minorities. An expanding economy, restrictions on immigration and tightened requirements on undocumented workers in other industries has exacerbated hiring and turnover problems. Drug testing and criminal record check requirements further reduce the eligible applicant pool.

Food and beverages are high-cost items for airlines; and there are a number of competitors in the airline catering industry, including Gate Gourmet and Flying Foods. The cost of entry is not high, and new competition for established catering companies is a constant threat. In the competitive cost

environment of airline operations, airlines hold caterers to high standards and cancel contracts, or threaten to do so. Airlines also play catering companies against each other in bidding for new contracts. Airlines work on tight schedules, and are judged by their customers on the basis of performance. Contracts between airlines and catering companies have performance provisions, and airlines may cancel contracts or take other economic action against catering companies which do not deliver quality, on time performance. Notwithstanding the glamour which might be associated with commercial airlines, the result of the business environment is a low-wage, high turnover work force. The low wage rates and difficult working conditions produce frustrated, sometimes militant, local bargaining units. That frustration is directed toward the Union as well as the Company.

When changes occur in the relationship between a catering company and an airline it serves, competitors - frequently caterers already located on site and providing service to other airlines - are always waiting in the wings to replace the incumbent caterer. Competitors may underbid contracts to build market share. The ascending caterer needs to staff up quickly and minimize the learning curve for management and staff, so the general procedure in the industry is for the ascending caterer to advertise vacancies and hire the descending catering company's work force, virtually intact and with credit for seniority and preexisting wage rates. It is not uncommon for employees of a caterer which has lost a contract to stop work for that caterer on one day and start work for the new caterer the next. One result of this system is a reduced level of loyalty to any particular caterer on the part of employees.

Sky Chefs / UNITE HERE Bargaining Structure

Sky Chefs is covered by the Railway Labor Act (29 USC 151 et seq), which differs in significant ways from the NLRA: collective bargaining agreements do not expire, ever. They become, instead, amendable. Bargaining which follows is governed by Section 6 of the RLA, which provides for mediation after impasse. However, there is no right to strike or lockout unless the parties are "released" from mediation by the National Mediation Board. Even then, the parties are subject to the establishment and operation of Presidential Emergency Boards. The parties can get stuck in mediation limbo for literally years, while bargaining issues are frozen and wages get more and more out of line.

As indicated, all Sky Chefs hourly employees are represented by UNITE HERE. The Parties are signatory to a single Master National Agreement (MNA), the most recent of which was executed in 2016. The MNA provides for wages to be set in local agreements, called Local Wage Supplements (also LWS). Wages are subject to bargaining and, if bargaining does not result in resolution of the dispute, to grievance arbitration to set the rates at "fair and reasonable" levels. That structure - essentially treating RLA Section 6 issues as Section 3 minor disputes - Notices to open local bargaining - avoids the RLA limbo.

The 2016 MNA Contract provisions with respect to Rates of Pay state as follows:

1. Rates of pay for Job Classifications in the same locality will be negotiated between the Company and the Union. Each Party may use criteria and methods concerning economic factors, industry factors, local factors, operations and position qualifications in preparing for wage rate negotiations.

Employees shall receive rate of pay which reflect the negotiated rates for each of the corresponding job classifications in the same locality in which they perform most of their services as set forth in the annexed Local Wage Supplements.

The Local Wage Supplements are made a part of this Agreement and set forth the rates applicable at the relevant location until changed by new Local Wage Supplements as provided herein.

* * *

3. If the parties are unable to agree upon the rates, the matter shall be referred to the System Board of Adjustment/Arbitration. Employees in each locality shall receive rates of pay which reflect a fair and reasonable wage in the locality in which they perform most of their services. At the discretion of the System Board of Adjustment/Arbitration, the Board may take into account all relevant factors including but not limited to:
 - a. Rates paid other employees in the same or similar classifications in the same locality;
 - b. The existence of Living wage or other wage and benefit laws or regulations specific to the affected airport or City.
 - c. The cost of living in the affected areas.
 - d. Prevailing wage rates for comparable work in that market;
 - e. Retention and employee turnover at the affected facility or facilities.

The Agreement recognizes the possibility of local living wage laws and seeks to exempt the contractual wage rates from their coverage:

4. The Parties expressly agree that, to the full extent permitted by law, the terms of this Agreement shall supersede any state, city, municipal or other local wage or benefit law, ordinance, code, or regulation that might otherwise apply to employees covered by this Agreement. Accordingly, the parties hereby expressly waive the application of any such state, city, municipal or other wage or benefit law, ordinance, code or regulation. The parties expressly agree that this provision shall not exempt the Company from complying with all applicable federal and state minimum wage laws. * * *

As indicated, most such laws do not exempt employee wages from coverage as a result of being collectively bargained.

The MNA provides for frequent local wage renegotiations: Paragraph C of the MNA (Changes in Rates of Pay), provides that

Either party may request a change in rates of pay to be incorporated in a Local Wage Supplement at any time following the expiration of twelve (12) months after the last such change. If the Union and the Company are not able to agree, the matter shall be referred to the System Board of Adjustment/Arbitration at the request of either party, and the System Board of Adjustment/Arbitration shall determine what, if any, change in rate (on a cents per hour basis) shall be granted. The changes, if any, shall be effective no later than thirty (30) days from the date of the request.

As a practical matter, the 12- month opener period and the contractual procedure means that bargaining is almost continuous. Depending on circumstances, local bargaining may involve only a single, or perhaps multiple/coordinated disputes.

Fringe Benefits, Terms, and Conditions are also reopenable by either party, but no more often than once every four years by either party with respect to employees in a particular locality. If the parties are unable to agree, benefit disputes are referred to the System Board of Adjustment/Arbitration to determine whether with respect to such employees, the total value of the fringe benefits, terms and conditions provided by the Company equals or exceeds, in the aggregate, the value of fringe benefits, terms and conditions available to employees in the same locality. If the System Board of Adjustment/Arbitration finds that not to be the case, it determines what changes should be made for employees in the locality in questions and the effective date. Changes will be incorporated in the Agreement.

Impacts of Living Wage Laws on Labor Relations and Bargaining

Airline catering operations are mostly located in larger urban areas where costs of living are higher and the politics favor imposition of Living Wage Laws. Accordingly, many, perhaps most, airline catering companies and their employees are subject to Living Wage or Local Minimum Wage Laws. Few, if any, of the laws applicable to Sky Chefs contain special treatment for employees covered by collective bargaining agreements.

Description of Pattern LWS Negotiations

Bargaining between Sky Chefs and the Unions have frequently followed patterns: The parties discuss multiple locations in the same negotiations. If the negotiations are not successful, the parties may take a single location to arbitration and use the resolution as a pattern to resolve LWS disputes at other locations. The availability of pattern negotiations and resolutions becomes more difficult as the different locations have different wage rates as a result of different laws. It pushes the parties toward individual location bargaining.

Assessment of Common or Separate Labor Markets

The lack of coverage of a particular location by a particular wage ordinance does not relieve all of the economic pressure on a Sky Chefs location: if Sky Chefs needs to recruit and retain employees to work a location, it may need to consider wage increases for employees there, even though the location is not subject to the law. Wage laws raise the floor on wages for any shared labor market, not just for jobs in covered localities. Pay rates are subject to pressures to enable the Company to be able to recruit and retain employees.

Wage Compression

Living wage laws operate by raising the floor on wages. They do not require adjustment for either seniority-based wage increases within classifications or for higher job classifications within a line of promotion. If an ordinance mandates a \$13.00 minimum wage and the agreement sets the Grade 1, Step 1 rate at \$12.00, employees at that grade and step will be increased by \$1.00 as of the effective date of the law. But if Step 2 employees are at \$13.25, they will receive only a \$.75 increase as a result of operation of the law. If Step 4 is \$13.50, there will be no change as a result of application of the law.

Thus, the first steps within a classification are increased, but the more senior steps may not be. The result will be to flatten the wage scale and devalue seniority and reduce retention.

Similarly, the jobs at lower job classifications are increased by application of laws, but generally not higher classifications. Thus, if the contract rate for Grade 1 employees is at \$12.00, a \$13.00 living wage law will result in a \$1.00 increase for them. But if Grade 2 employees are at \$13.00 already, there is no bump. Thus, the effect of such laws is to compress the wage scale, both within and between classifications. That decreases the economic value of seniority and makes accepting promotions to more challenging (and generally higher paid) jobs less appealing.

Indirectly, the impact of such compression may be to force employers to increase wages not directly required by law in order to maintain the separations described. That, in turn, creates problems, since the contracts between catering companies and airlines may cover cost increases required by law, but not those follow-on increases that are voluntary, rather than compelled.

The Union generally pushes, in LWS negotiations, to increase wages across the board to mirror legally mandated increases. Indeed, it has been a pattern in wage scales which are negotiated, to include across the board increases.

The Company's unilateral adoption of selected increases during the course or at the end of bargaining triggered a class grievance now pending. The Union claims that adoption of across the board increases whenever a Living Wage law goes into effect is a binding past practice. The Employer contends that is only when the increases are the result of collective bargaining, rather than as a result of a legally required increase.

The Employer generally resists across-the-board increases in negotiations, since from its perspective, it is willing to suffer large turnover at lower levels and to increase wages beyond what is required by law only with respect to jobs, such as drivers with CDLs, where it is experiencing difficulties hiring and retaining employees at the existing wage rates.

Unilateral Changes in Wage Rates

The Company has experienced spot shortages in applicants in certain classifications (e.g., CDL Drivers) for which it has sought agreement from the Union for targeted wage increases. The Union has resisted these increases, holding out for general wage increases across all wage scales. The parties may or may not have bargained to impasse. The scope of the Company's right to make these unilateral, targeted wage increases is an open question, probably to be resolved in arbitration.

Long-Term Catering Contracts

The execution of long-term contracts between airlines and catering companies, as Sky Chefs recently entered into with United Airlines at O'Hare, should result in a more stable business model and a better shake for the Company. That said, the airlines continue to squeeze their caterers, and the competition between companies remains intense. Whether the desire for longer range contracts will soften the hard lines generally taken by the airlines in their dealings with caterers. Unless the airlines are willing to increase their payments to cover maintenance of the pay grid, Sky Chefs and other caterers (which are frequently in mid-contract with the airline when living wage mandates hit) will absorb increased costs or find other ways to cut them.

Conclusion

Sky Chefs and UNITE HERE have developed a system-wide local wage dispute resolution process which keeps a constant upward pressure on wages, countering the downward pressure created by the problematic relationship between the Company and other catering companies, on the one hand, and airlines on the other. That process has been complicated by the involuntary and inconsistent application of living wage laws. However, the tightening labor markets are gradually replacing the mandated wage rates with market driven rates. While still incomplete and imperfect, the return to a market-environment reflects the flexibility of the collective bargaining process, notwithstanding the difficult environment in which Sky Chefs and UNITE HERE continue to find themselves.

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