The “Me Too” Clause

An In-Depth Look at the Ramifications of a “Me Too” Clause in Labor Contracts

Sergeant Carrie Carver

Lane County Sheriff’s Office
Whether you are entering a bargaining session representing the employer or the union, the presence of a “me too” contract clause can greatly affect the strategies and focus of the negotiations. A “me too” clause is a clause found in some labor union contracts that states that one bargaining unit will accept the terms negotiated by another bargaining unit specific to a certain area of the contract.¹ This is sometimes referred to as an automatic contract upgrade when another union bargains better benefits. A “me too” clause is also sometimes called the “most favored nations” clause, or has been referred to as a parity agreement.² The concept of a “me too” clause is referenced in the National Public Employee Labor Relations Association Academy I: The Foundation of Labor Relations as a contract clause utilized in collective bargaining agreements. Though the clause is rare, it’s worth discussing so employers are aware of the potential impacts prior to agreeing to a “me too” clause.

This paper will explore the ramifications of a “me too” clause as it relates to labor contracts, including tips on how to craft specific and effective language so both parties enter into the contract fully aware of how the clause can be triggered, and by whom.

Advantages and Disadvantages of a “Me Too” Clause for the Bargaining Unit

A “me too” clause is generally written into a contract as a bargaining unit benefit to ensure that one union does not negotiate better benefits than another in the same region or job class. The “me too” clause was originally designed to help create uniformity between multiple unions regarding wages, benefits, and working conditions.

Advantages for the Bargaining Unit

The benefits that can be subject to a “me too” clause are wide ranging, and can include health insurance, holiday and sick pay, and parking, to name a few. A “me too” clause can trigger changes in a contract outside of normal bargaining windows, can be retroactive depending on how the language is crafted, and it can also be triggered by a non-represented group of employees depending on how the clause is crafted. Great thought should be put into the crafting and implementation of the clause because of its binding nature.

Below is an example of a “me too” clause from Culver City, California regarding retiree medical benefits:

“During the term of this memorandum of understanding, should any recognized Culver City (city) bargaining unit reach a signed agreement that results in a higher retiree medical benefit than provided to members of the Culver City Employees Assn., the city agrees to adjust the retiree medical benefit provided to CCEA to an equivalent amount.”³

In the above example, the members of the Culver City Employees Association (CCEA) would benefit if another Culver City bargaining unit negotiated “a higher retiree medical benefit” because they incorporated “me too” language into their contract. The other Culver City union’s negotiation of a better benefit would trigger the above “me too” clause, and thus grant the CCEA the specified better benefit. The CCEA would get the benefit because they have a “me
“Me Too” clause in their contract, and would not have to give anything up above and beyond what 
they gave up to incorporate the “me too” language initially.

It is important to note that a “me too” clause must be negotiated into a contract or authorized 
by both the employer and the bargaining unit, just as other benefits are negotiated. Once a 
“me too” clause is ratified into contract language, that bargaining unit is subject to a change in 
benefits based on the outcome of negotiations in other bargaining units.

Employers should be aware of tactics used by bargaining units who may work together with 
other bargaining units to increase the chances of favorable outcomes. There may be one union 
that is clearly stronger or has more bargaining power than the other unions in jurisdictions with 
multiple unions. The unions may work together to bargain “me too” language into their 
contracts regarding a certain highly coveted benefit(s), and follow by having the strongest 
bargaining unit negotiate the coveted benefit(s) into their contract, thus triggering a “me too” 
clause in the other contracts and obtaining the benefit for the other, less robust bargaining 
units. For example, in June 2012, the Service Employees International Union (SEIU) Local 73 
negotiated a “me too” clause into their contract, stating that if members of the Chicago 
Teacher’s Union received more than the 2% raise that SEIU negotiated, then SEIU would get the 
same raise increase. Orlando Sepulveda authored an article titled “A Contract That Could 
Divide” that explored the ratification of the SEIU. In that article, Sepulveda captured the 
 Essence of this approach when he stated, “In other words, we'll let them do our fighting, and 
benefit from the result.”

Because of this automatic benefit, employers should be extremely 
hesitant to include such a clause in their contracts, especially if they manage multiple 
bargaining units.

Disadvantages for the Bargaining Unit

Though the clause is generally written into a contract to benefit one or more bargaining units, 
the presence of a “me too” clause in one contract can hurt other bargaining units. In 
Vancouver, British Columbia, the presence of a “me too” clause in other union contracts turned 
out to be a major factor preventing a raise for teachers. If the teachers were to receive a raise, 
it would trigger “me too” clauses in multiple public sector union contracts, causing the 
reopening of several contracts and the granting of equivalent pay, retroactive, to those with a 
“me too” clause. Education Minister George Abbott commented “It could get very expensive, 
and very quickly.”

Advantages and Disadvantages of a “Me Too” Clause for the Employer

The effects of a “me too” clause on the employer can be compounded by the size of the 
employer and the number of collective bargaining agreements that have a “me too” clause. A 
benefit negotiated by one bargaining unit that triggers a “me too” clause for multiple other 
bargaining units can be costly to an employer, however, a “me too” clause can also work in an 
employer’s favor by keeping benefit increases consistent amongst bargaining units.
Advantages for the Employer

A “me too” clause can be crafted to benefit the employer to help control increases in benefits and to assist in creating parity in benefits between multiple work groups. The presence of a “me too” clause within one bargaining unit contract can actually assist employers in the negotiation of other contracts in some circumstances. If every other bargaining unit in a jurisdiction has negotiated a 2% raise and some or all of those contracts have “me too” language with regards to wage increases, it becomes easy for an employer to justify a wage increase of no more than 2% because the cost of implementing a larger raise for multiple unions is not economically feasible for many employers and therefore not an option. Instead of spending multiple negotiation sessions going back and forth with proposals, the maximum benefit the employer can negotiate before triggering a “me too” clause is clear to both sides, and can help move negotiations along.

Employers can utilize the presence, or encourage the placement of “me too” clause language in a contract to show that they are committed to parity between groups and are bias free when it comes to negotiating benefits. It is not uncommon for bargaining units to cite the benefits of other units and ask for those same benefits in the name of parity. The employer can use this to their advantage and negotiate benefits for one group in the same fashion that they desire all groups to have. The employer can then justify, for example, no more than a 2% raise for one bargaining unit because it is the same raise they bargained for other units, thus keeping costs down.

Disadvantages for the Employer

The above cases have highlighted when a “me too” clause can benefit the employer, but there are times when a “me too” clause can have unintended effects, and can tie an employer’s hands. For many employers, there are limits to the negotiable items in a contract that an employer can “give” on. These limits are often dictated by budget, and what the negotiating team is authorized to spend in a given contract. As the effects of the economic recession continue to negatively impact both the public and private sector, employers sometimes do not have a lot of wiggle room in negotiations and are sometimes in a position to have to negotiate a wage increase or benefit increase to gain concessions in another area. These wage and benefit increases may be a last resort for employers if they have few or no other bargaining chips, and these increases may trigger a “me too” clause in another contract, thus compounding the cost of the negotiation.

In some cases, a “me too” clause can actually create a wider discrepancy of benefits between unions, which is in direct conflict the intended purpose of a “me too” clause. For example, a city may have an employee group that is lagging behind their comparables in pay. The employer sees that its employees are making 5% less than the other comparable agencies in the area. Seeking parity is beneficial to the City when it comes to employee morale, hiring and retention, and a plethora of other business goals that are affected by what goes on at the bargaining table. The employer’s negotiating strategy is to increase the employee’s wages to
that of other like-agencies by negotiating a 5% raise for the first year of a three year contract. This negotiation is with good intentions and benefits both the employer and the employee.

A ripple effect occurs when the City realizes that another bargaining unit, whose wages are above their comparables, has a “me too” clause in their contract stating that if another bargaining unit in the City receives more than the 1% wage increase that they negotiated, then they would receive a wage increase equal to what the other bargaining unit negotiated.

Negotiating the 5% raise for the under market employee group triggered a “me too” clause in the work group that is above market with regards to wages, causing a 5% raise for the above above market group and widening the gap of wages, which is the very opposite of the initial purpose of a “me too” clause.

The “me too” clause in this case creates great barriers, and sometimes prevents, employers from trying to do the right thing because of the great economic impact. Negotiating a 5% raise for the group whose wages are below comparables would not solve the issue of wage disparity, it would create a larger gap in wages between the groups. In the end, the cost of the 5% raise for both groups may be cost prohibitive for the City, resulting in the under market employees remaining well below their comparables with no way to create parity as long as the “me too” clause is present in the other contract. It is highly recommended that employers proactively craft language to prevent this from occurring.

For public sector employers, the “me too” clause can have far reaching ripple effects, including how it affects the tax-payers. In some scenarios, the presence of the clause can help keep costs under control. For example, if one bargaining unit negotiated a 2% COLA and there’s a “me too” clause present, the employer has a good argument for not giving other bargaining units more than a 2% raise. On the other hand, should the employer end up giving one of the unions affected by the “me too” clause a 4% raise and then have to provide the same raise to the other unions, the cost of negotiating one contract can quickly become astronomical. For bargaining units who participate in binding or interest arbitration where an arbitrator is forced to choose between the last best offers, an arbitrator may end up awarding a benefit that can be extremely costly to a department. The impacts of an interest arbitration award are then compounded when contracts with “me too” language extend that award to other employees in the workforce. In the end, that money comes from the tax-payers, and results in higher taxes or fewer services – neither of which is a popular choice amongst the voters.

Legality of the “Me Too” Clause

The legality of a “me too” clause is frequently challenged. Parties have argued that a “me too” clause places a great burden on labor organizations because the result of their negotiations directly impacts other labor unions. In 1995, Local 2157 of the International Association of Firefighters had a “me too” clause in its contract with the City of Gainesville, Florida. When the city’s police union negotiated a higher wage increase than the firefighters, the firefighters attempted to enforce the “me too” clause which resulted in the filing of a grievance. The City of Gainesville filed an unfair labor practice (ULP) complaint, alleging that the “me too” clause was illegal. Florida’s Public Employment Labor Relations Commission (PERC) would not rule
that all “me too” or parity clauses were illegal. The PERC ruled that these labor clauses would only be deemed illegal if they created a burden on other future labor negotiations.  

The Whatcom County Deputy Sheriff’s Guild (DSG) in Washington State argued that “parity clauses are per se illegal” in 2005. This argument was rejected, which allows each individual case, if challenged, to be viewed on its own merits, and not to prohibit the use of such clauses on the basis of the negative effects the clause had had in particular circumstances in the past.

The question of the legality of the clause appears to rely on how deeply the clause inhibits the negotiation process from operating the way that it should. In a 2002 case with the City of Bremerton, Washington, it was determined that the “me too” clause could not be prohibited because the presence of the clause didn’t prevent the parties from bargaining in good faith, but that “different facts could warrant a different result.”

**Considerations for the Employer Prior to Implementing a “Me Too” Clause**

While many “me too” clauses come together in the final stages of bargaining a contract, the implications of a “me too” clause should give employers pause. Once a clause is in a contract, it may be very difficult to bargain it out, thus is can be viewed as a permanent addition unless the employer has something valuable to give in the future in return for the removal of the clause.

Employers should look at the size and make-up of their agency in the present time, and project these qualities into the future. Is the agency likely to grow, and would that growth entail taking on new work groups with existing labor contracts that may include “me too” language?

For example, a county department that is unable to provide wage increases to its employees negotiates free parking into its union contract. Over the next year, the department assumes responsibilities once assigned to other sections of the county. One of the new unions is particularly large and is now under the department. They have a “me too” clause that dates back years saying that if any bargaining unit in the same department has free parking, then they will receive free parking as well. Unfortunately, the department only has a small parking lot that they own, and is now forced to purchase expensive parking spots for each employee of the very large new union to fit into an adjacent lot. This budget item will likely cause the need for cuts in another area, an unfortunate side effect of the monetary hit that can be caused by the “me too” clause. For this reason, employers should consider having a time limit or a “sunset clause on any “me too” clause.

Employers should also consider how “me too” clauses can affect the flexibility the bargaining team has, specific to spending authority. The presence of one or more “me too” clauses in other bargaining units may significantly decrease how far the granted spending authority will go, and could lead to impasse and costly arbitration.

**How to Draft a Solid “Me Too” Clause**

If both sides of the bargaining table agree to have a “me too” clause in the contract, it is important to word the clause in a way to eliminate any confusion. Specific language is needed and is preferable to language that begs interpretation. The clause can have some benefits both
to employers and bargaining units, but confusion in language interpretation can nullify intended benefits unless care is taken to make sure the intent is understood by both sides of the negotiating table.

First, be very specific in the language. Include which bargaining units can trigger the “me too” clause. If there is the potential that the City or County may take on other work groups or bargaining units in the future, the language can specify the bargaining units in the contract instead of saying “any City bargaining unit.” This may prevent a “me too” clause from being triggered by the addition of new work groups into a jurisdiction.

Second, take good meeting notes, which will ideally capture the intent of the language. If there is ever confusion about how to interpret the language, the notes should be detailed enough to provide the “whys” and may assist with conflict resolution in the future.

Third, be specific as to whether the clause applies to benefits, concessions, or both. Although “me too” clauses historically to are provide more favorable benefits to one union if another union bargains those favorable benefits, there have been some contracts that have sought equality through all parties taking equal concessions.

Lastly, employers should be extremely careful about agreeing to a “me too” clause that can impact wages and benefits with a union that has the ability to take a negotiations impasse to final and binding interest arbitration. Cases like this result in allowing an interest arbitrator to, in effect, order wage or benefit increases to employee groups outside the scope of the labor agreement in question.

For the Retired Nurses Professional Association (RNPA), a “me too” clause was ratified into its collective bargaining agreement on February 7, 2013 and stated that each bargaining unit would accept certain wage concessions to assist in a County wide budget deficit. In this case, the “me too” clause meant that each affected bargaining unit took concessions to create parity, and the language was specific to reflect the intent. Specifically wording contract language to say what the clause covers can save time in arbitration later which is a benefit to the employer as well.

If the union and the employer intend the “me too” clause to only be in effect when other units bargain more favorable benefits, it should be clearly stated in the wording of the contract clause. For example, AFSCME included the following “me too” language in its contract with the City of Ann Arbor, Michigan:

“If another bargaining unit receives an increase higher than the settlement with AFSCME, such increases will also be granted to AFSCME for this contract period as a “me too” on wages.”

The language above clearly stipulates that the “me too” clause only applies when another unit receives a wage increase. The language also designates a clear time period that the increase will be granted.

Another example below is from the contract negotiated by the Washington Federation of State Employees (WFSE):
“If, during negotiations for the 2013 biennium, the University of Washington (UW) agrees to across-the-board salary increases for any SEIU 925 bargaining unit that are more favorable than those negotiated by WFSE, UW will grant the same salary increases to WFSE-represented employees.”

Again, the language is specific about time period by stating “...during the negotiations for the 2013 biennium.” The language specifies what will trigger the clause, which is if “...the UW agrees to across-the-board salary increases for any SEIU 925 bargaining units that are more favorable than those negotiated by WFSE.” The clause is specific about what will happen if the “me too” clause it triggered, by stating that “UW will grant the same salary increase to WFSE-represented employees.” There is little or no wiggle room for differing interpretations of this language, which is the goal when crafting any contract language, but especially “me too” language.

Employers and employee should consider possible scenarios where the clause may be triggered and test them against the language to ensure there are not areas of confusion or language that is so narrow that it might not cover all possible circumstances, which may lead to costly arbitration in the future. The Smyrna Police Employee Association in Delaware had “me too” language in their contract stating that “the Town agrees to provide the same Cost of Living Adjustment under this contract as it does for other Town employees.” In 2005, the Town Council increased the pay scale by a set dollar amount for non-sworn staff. The Association claimed that they should receive the same increase because of “me too” language in its contract. When the Town refused, the Association filed an unfair labor practice complaint which resulted in the Public Employment Relations Board ruling against the Association. The matter was taken to trial court where it was dismissed, citing that the Association’s “me too” language was specific to Cost of Living Adjustment (COLA) and the increase given to the non-sworn employees was not considered a COLA. In this case, the employer benefited from the overly specific language and did not have to grant the Association a raise. The Association could have benefited from reviewing the contract language to ensure that all forms of favorable economic compensation were included.

Conclusion

In closing, a “me too” clause, though designed with good intentions, has the potential to create the very imbalance that it strives to negate. The presence of a “me too” clause has a plethora of possible unintended benefits that narrow a variety of negotiating options. It is important for employers to be aware of existing “me too” clauses in any contracts it has in its jurisdiction, and to also be aware of “me too” clauses in other departments that may name one of your bargaining units as a possible trigger for a “me too” clause. It appears that a vast majority of “me too” clauses in collective bargaining units are advantageous to the bargaining unit and not the employer. Great caution should be exercised by employers when considering incorporating a “me too” clause into a contract and consider including concessions as well as benefits when possible to create true parity.
The bargaining process works well when both sides enter the process with good intent. Simple, easy to interpret language is the very core of a successful “me too” clause, and paves the way for sound decision making for both parties for the life of the contract, and can prevent costly arbitration surrounding interpretation issues in the future.

If both parties understand the potential ramifications of a “me too” clause, it can have positive benefits to the workforce and it has the great potential of achieving its original goal: to create uniformity between multiple unions regarding wages, benefits, and working conditions.
Bibliography


Written by: Sergeant Carrie Carver
Lane County Sheriff’s Office
101 W. 5th Avenue
Eugene, Oregon 97401
(541) 682-2246
Carrie.Carver@co.lane.or.us