The Moral Compass

Law firms seem to be stealing signs baseball on salary issues

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Law News Network
February 4, 2000

Law firms are off to a great start in the new millennium if they want to emulate major league baseball owners. In the last two weeks, Big Silicon Valley and San Francisco firms have rushed into a steeply escalating salary war that threatens to spread across the country. Menlo Park's Gunderson Dettmer jumped first, before the new year, elevating first year salaries to $125,000 with a guaranteed bonus of $20,000 and another $5,000 for ... well ... good behavior. By mid-January, Silicon Valley stalwarts Cooley Godward, Wilson Sonsini, and Gray Cary had matched Gunderson leap for leap. By the end of the month, another dozen Bay Area firms and a few New York firms' west coast outposts had jumped into the compensation abyss.

Fears of losing associates to the temptations of Silicon Valley start-ups undoubtedly played a role in Gunderson's thinking. But the firms that have followed Gunderson are more reminiscent of lemmings. "When Cooley decided to match Gunderson's base that meant we were going to, "Brobeck, Phleger & Harrison's chairman Tower Snow, Jr. said. Hastings, Janofsky & Walker's Seth Zachary sees it as a recruitment issue: "The demand for legal talent is huge, and we want to continue to attract top-tier associates and pay whatever the market is." One legal recruiter agreed. "Quality of life is a myth. Put your money where your mouth is," she insisted.

But the big firms' strategy makes no more sense than the profligate spending of baseball moguls. It's one thing to consider paying baseball great Ken Griffey, Jr. $140 million or more. He's baseball's best rainmaker, putting fans in the seats -- and money in the owners' pockets -- with his home run swing and diving catches instead of his book of business. First year associates, on the other hand, are at best unproven talent with sparkling statistics from the minor leagues. Sure, Harvard Law Review and Yale Journal are great, but can these kids hit the curve ball? But like the baseball teams that pay utility players and pitchers with losing records millions of dollars a year, Silicon Valley and Bay Area law firms have let the top of the salary scale raise the bottom. A first year associate with no legal experience, who may never even have come in contact with a client, can now demand -- and get -- $150,000 and more.

Associates, meanwhile, monitor the situation like day traders watching the Nasdaq. The latest raises are the hot topic on the "greedy associates" boards that now permeate Yahoo. In the past week, the "Greedy Silicon Valley" board has had daily, even hourly, updates on which firms have matched Gunderson and which are considering it. One associate posted a link to the Pillsbury fee structure memo while another, with the nom-de-list "Gossip Boy" laid out an entire chart of the new Heller Ehrman salary structure. There were even a few posters who claimed to be reporting directly from a Palm Pilot while actually sitting in their firm's salary meeting. The boards are filled with details of each salary structure: whether bonuses are tied to hours billed; whether the raises apply just in the Bay Area, in New York, or in all offices; what the differences are between the strategies of Bay Area and New York firms.

It's understandable that these associates are so interested. Many are already working sixty billable hours a week for partners that see them as productivity units. They're tired, cranky, and ready for any raise they can get. Those firms that haven't moved yet are subject to intense speculation and, quickly, criticism. When New York's Skadden, Arps made no move, one associate who says "I will bill 250 hours a month, although that's nothing new," demanded, "Come on Skadden. Step up to the plate." Even more blunt was this post entitled "Summary of Latham meeting" : "F**k you associates. We only made $900,000 per partner last year."

The associates react much like their baseball counterparts. "Two months ago," one wrote, "I was getting offers to go to start-ups, where I'd be getting a raise PLUS options.... These offers aren't looking nearly as good anymore. Yes, throwing money at this problem WILL WORK."

But will it? Law firm boom times, like the stock market, is cyclical. It was only a decade ago that we were in a recession. Litigation associates were unceremoniously dumped by fickle law firms that simply had no more use for them, to be followed by longtime partners -- "grinders" and "minders" -- who weren't pulling their weight. With the rise of the stock market and the reign of Silicon Valley, IP. lawyers are now the favored sons and daughters. But for how long? And at what eventual price?

One price no one can ignore is the effect of this buying spree on fees. Many clients already balk at the increasing cost of legal services. It's hard to argue that there's much benefit to them in the meteoric rise in law firm salaries. These clients are akin to the parents who suddenly discover that it costs $200 to take their two kids to the ball game and be close enough to see the field.

At least these clients can get in the ballpark. For most members of the general public, salary hikes and escalating fees just puts the price of legal services further and further from their grasp. It was over two decades ago that then-president Jimmy Carter said, "Ninety percent of our lawyers serve ten percent of our people. We are over-lawyered and under-represented." Nothing, unfortunately, seems to have changed.

Finally, there's the enormous problem that most firms giving raises tied those inflated salaries to billable hour requirements that strain credulity. Brobeck claims its salaries now exceed Gunderson's, but in order to earn them, associates will have to meet billable hour levels of 2,100, 2,250, and -- for the big $12,500 payoff -- 2,400 hours a year. Brobeck's Snow admits that last year, firm associates averaged a mere 1,950 hours. Incredibly, he accompanied the announcement of raises with this disingenuous statement: "We don't want our people working these excessive hours, but if they do, we want to acknowledge them." San Francisco billing expert William Gwire sees it differently. When law firms bow to the god of the billable hour, they send a clear message: "Never mind the quality of your work."

Morrison & Foerster stopped its incentives at 2,200 hours. Stephen Dunham, MoFo's chairman, claimed that "we didn't want to create artificial incentives to work at higher levels than is professionally appropriate." But most lawyers from large firms, if caught in a moment of candor, would acknowledge that billing anything north of 2,000 hours means doing exactly that. Either they must work most evenings and every weekend, or they'll have to bill several clients at once and write up bills for others by being less than honest about time spent.

"When you set the bar too high, you are just motivating people to cheat," Gwire says. "I know what I had to do for 1,800 legitimate hours a year and still maintain my practice, do the business development and meet the other firm requirements," said Gwire, who worked as both a big firm partner and associate. "You kill yourself. It's six or six and a half days a week, nine to ten hours a day, and I was only able to do that for two to three months at a stretch. So people who bill 2,200 hours, year in and year out, I don't know how they are doing it except by lying."

Our advice for those potential free agents waiting eagerly for the latest word by Palm Pilot on their firm's new salary structure? Be careful of what you wish for, lest it come true. While the parade of large firms jumping off the salary cliff continues, those who are likely to crash on the rocks below are not the managing partners and chairmen, but the disposable commodities -- the associates. Today's expensive rookie free agents may be tomorrow's castaways.

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