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Analysis of the Agreement Between

The City of Omaha and the Professional Firefighters Association of Omaha

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Abstract

The proposed agreement between the city of Omaha and the Professional Firefighters Association of Omaha (the Omaha Firefighters Union) takes small steps toward a more sustainable agreement. However, the proposed agreement falls short in many key aspects of effectively reigning in the excessive benefits provided under the previous agreement, and some of the new provisions actually make a bad situation worse.

Analysis indicates that the city of Omaha could potentially benefit by waiting until October 1, 2011 for the Commission on Industrial Relations (CIR) reform bill to go into effect. The Commission of Industrial Relations would be able to consider cost of living and pension plans of comparable cities for this contract if disputes were brought before the CIR.

Rather than implement another seriously flawed contract, the city of Omaha should offer the Omaha Firefighters Union an agreement that accurately reflects provisions found in comparable cities. City officials need to serve the best interests of Omaha taxpayers instead of the Omaha Firefighters Union.

Background

Over the past 30 years in the United States, private sector union membership has declined from 33 percent of the total work force to 15 percent of the work force.[1] During this same period, however, public sector unions have thrived. Public sector union membership currently stands at 36 percent of the total public work force. While private sector unions can be constrained because their demands may force employers into bankruptcy, public unions face no such constraint. Local and state governments have the ability to raise additional funds through taxes or push costs to future taxpayers through issuing bonds.

There have been two primary effects of the shifting roles of unions in America: a private sector dominated by competition and liquid labor markets, and the public sector becoming synonymous with job security and first-rate benefits.[2] Public sector unions place a tremendous strain on governments to meet union demands of excessive benefit packages. Additionally, the public union sway over election-minded politicians has created unsustainable agreements between cities and public unions.

Unsustainable agreements have become the norm rather than the exception, particularly in urban settings. A recent study completed by Northwestern University's Kellogg School of Management concluded that a tax increase of $1,398 per U.S. household per year would be required in order to fully fund state and local pension systems in the U.S. over the next 30 years.[3]

The trimming of government budgets nationwide, and specifically here in Omaha, has cast a light on compensation disparity between private sector and public sector employees. The proposed agreement between the city of Omaha and the Omaha Firefighters Union is under scrutiny from the public and taxpayer advocacy groups. The previous collective bargaining agreements with the fire and police unions left the city of Omaha with an approximate $1 billion pension liability—$594 million of that unfunded.[4] Although the proposed contract with the Firefighters Union makes some small adjustments, it retains unnecessary premium features and institutes additional provisions.

This new contract must be evaluated on its own to determine if it is sustainable and equitable for both the Firefighters Union and the taxpayers of Omaha.

The Status Quo

The current collective bargaining agreement between the city of Omaha and the Omaha Firefighters Union is testament to the power of unions in Omaha and the unwitting short-term bias during the past decade of Omaha mayors and city councils. In a classic case of unintended consequences, years of city politicians granted generous pension benefits in exchange for reduced wages. The result was a $594 million unfunded pension liability.

One practice allowed under the contract resulted in some firefighters making more money in retirement than they did while employed full-time due to "pension spiking"—a process in which firefighters inflate their compensation by working considerable overtime in the last few years of employment to increase pension benefits. KETV obtained a document that verified a former fire chief earning $55,000 per year had retired to a $90,000 per year pension.[5]

Another questionable contract provision allows Omaha firefighters to retire with pensions at age 45. No other fire department in the CIR's most recently used comparable cities has a retirement age lower than 50. Two of the cities, Des Monies and Milwaukee, have a minimum retirement age of 55.[6]

Omaha's current unsustainable contract—intended to expire in 2007—has remained in effect for the past four years while the two parties have negotiated contract details. If the city of Omaha and the Omaha Firefighters Union cannot agree on significant reform to address the pension liability, Omaha will have to divert resources from infrastructure, education, and economic development to pay for the inflated pensions.

The Proposed Agreement

CIR Timing

The proposed agreement between the city of Omaha and the Omaha Firefighters Union was announced the same week that the Nebraska Legislature gave final approval for CIR Reform, LB 397, a "measure designed to give public employers more control over labor costs."[7] LB 397 makes changes to the CIR—the body that governs disputes between public entities and their employees. The CIR does not have the ability to force the implementation of a contract. It will only issue an opinion and define the terms of negotiation for the contract year in question. The new law will have no impact on 2010 and minimal impact on 2011 because it is not retroactive.

The new CIR law goes into effect on October 1, 2011. It provides more flexibility to local and state governments for cost containment measures regarding their personnel wages and benefits and adds pension benefits and cost of living to the factors the CIR can consider. Reforms to the CIR were not as expansive as the Platte Institute would have liked, but it would be fiscally irresponsible for the city to not take advantage of the taxpayer protections under the new law.

The CIR reforms will have no impact on the proposed Firefighter Union agreement if passed before October 1. The agreement will be under the rules of the CIR before the reform legislation was passed this year. In other words, what city and state officials didn't like with the CIR, will govern this new contract until another contract is reached sometime after 2014. Many people have rightly questioned the timing of this contract, including Governor Dave Heineman, who expressed concern that the city and the union had been in negotiations for four years "and all of the sudden they got it done in two weeks?"[8] Further criticism came from City Councilmember Jean Stothert. "With all of the attention the Nebraska Legislature paid to meaningful CIR reform this year, it would be irresponsible to ignore their progress,"[9] she explained.

Small Steps Forward

The proposed firefighters union contract takes a few small steps forward. The proposed contract addresses two primary areas of concern: pension spiking and retirement age. However it is necessary to review the current contract and the proposed contract, as well as what elements might change if the city of Omaha waited for CIR reform to take effect October 1.

The underlying problem that needs to be resolved with this collective bargaining agreement is $574 million of unfunded pension liabilities (with the new police union contract, the unfunded liability is now $574). Under the proposed contract, this will be addressed through benefit reductions and increased salary contribution rates from both the city of Omaha and the Omaha Firefighters Union. To fund all current benefits a contribution of 37.17 percent of pensionable earnings is required. Firefighters' regular contributions will increase from 15.4 percent to 16.15 percent of pensionable wages, while the city will remain at 21.02 percent of pensionable wages, with an additional provision requiring the city to contribute an extra 11.95 percent in hopes of pension solvency. Firefighters will accept benefit reductions of 11.95 percent, coming largely from an elimination of pension spiking and a higher retirement age. Taxpayers are being asked to contribute cash now, whereas 11.25 percent of the union's contribution will come in the distant future. This is an unequal trade given the higher present value of the cash contributions compared to the lower value of the future benefit reductions. The city administration has stated that this contract, along with the recently passed police contract, will make the pension fund solvent in 48 years.

Pension Spiking

The proposed agreement gradually eliminates pension spiking—arguably the most egregious issue permitted under the current firefighters union contract. Pension spiking occurs when employees dramatically increase their overtime hours in the period immediately preceding retirement, thus inflating their pension under the current pension formula. It as been a source of tension between the firefighters union and the taxpayers and has been a significant factor in the city's $574 million unfunded pension liability. The proposed contract will calculate a career overtime average dating back to 1991 rather than the three years preceding retirement to calculate pensions for current employees. Overtime pay will not be used to determine pensions for new hires. These benefit reductions require the city of Omaha to make additional cash contributions of equal value to the pension fund.

It is troubling to view the elimination of this practice as a "concession" on behalf of the union, requiring the City to "give" the union something in return, rather than it be seen as correcting a loophole.

Retirement Age

The proposed firefighters union contract creates three different pension scales: current firefighters with at least 20 years of service, current firefighters with less than 20 years of service, and new hires. Compared to the current agreement, the proposal reduces pension, at age 45 with 25 years of employment to 70 percent of salary, compared to the full pension of 75 percent. It is yet to be determined if the five percent is enough incentive to deter firefighters from retiring at age 45. According to the mayor's website, "current employees [with less than 20 years of service] retain the right to retire at age 45 with 30 years of service," while "a 'handful' of [current] employees with 25 years of employment may retire at age 45 with a reduced pension." The tiered pension system of

Table 1: Pension Systems

Array City	Tiers	Early Retirement	Retirement Benefit	
		Age	Min	Max
Omaha, NE (Proposed)	EE's w/ at least 20+ Years of Service	Age 45 @ 25 Years Age 50 @ 20 Years	75% 55%	75% @ 25 Years 75% @ 20 Years
	EE's w/ < 20 Years of Service	Age 45 @ 25 Years Age 50 @ 20 Years	70% 50%	75% @ 30 Years
	New EE's	Age 50 @ 20 Years	50%	75% @ 30 Years
Des Moines, IA (IPERS)	None	Age 55	54.4% @ 20 Years	72% @ 30 Years
Lincoln, NE		Age 50 @ 21 Years	53.76%	64% @ 25 Years
Madison WI (ETF)		Age 50	50% @ 20 Years	85% @ 34 Years (No Social Security) 65% @ 26 Years (With Social Security) Allows for Market Adjustments
Milwaukee, WI (ERS)		Age 55 @ 15 Years	37.5%	90% @ 36 Years
St Paul, MN (PERA)		Age 50	45% @ 15 Years*	90% @ 30 Years*

the proposed contract preserves the old pension scales for current employees.

It is notable that the mayor's office does not state the number of firefighters eligible for retirement at 45 with a reduced pension. The mayor's office also states the "few employees eligible to retire at age 45 is actuarially insignificant" while arguing that it is costing the city "$125,000 a month in accrued pension costs not to settle the fire contract"— implying that $125,000 is actuarially significant.[10] These positions do not reconcile with one another. For instance, a firefighter who had an average salary of $50,000 and was eligible to retire at age 45 with a reduced pension of 70 percent would receive approximately $35,000 in pension benefits per year, excluding health care. Assuming that this applies to ten firefighters—estimating from the unspecific quantities such as 'a handful' and 'a few,' it would eventually cost the city $350,000 per year. Multiplying this number by five (the number of years to the mode retirement age of firefighters in the array) equals $1.75 million in potential savings that could be achieved by increasing the retirement age on the "actuarially insignificant" number of affected firefighters. Moreover, increasing the retirement age by five years means that a firefighter would pay into the pension system for five additional years and five years' worth of health care costs would be saved from not hiring a new employee. This sum might be insignificant given the $574 million unfunded pension liability, but it's a start. Furthermore, the city should not use a savings of $125,000 per month to justify pushing the agreement through before CIR reform takes effect.

Firefighters with over 20 years of experience will be grandfathered into the current unsustainable pension scale. The CIR's 2010 ruling between the city of Omaha and the firefighters union found that none of the cities used in the array for comparability purposes (Des Moines, Iowa; Lincoln, Nebraska; Madison, Wisconsin; Milwaukee, Wisconsin; and St. Paul, Minnesota) had an early retirement age under 50, with the majority of the cities' full pensions started at age 55.[11] Unfortunately, at that point in time, the CIR did not have the authority to rule on the pension and will not until CIR reform takes effect.

Pension comparison analyses are a complex and expensive undertaking. The potential benefits from pension comparison under the CIR reform are difficult to estimate unless the array cities for comparison are known. However, the risk of waiting until the CIR reform takes effect October 1 seems minimal to the potential savings Omaha could obtain.

Wages

Wage disputes have been traditionally settled by the CIR comparing similar positions and requirements of firefighters in other midwestern cities. Disputed wages will be resolved in a similar manner to the current agreement with cost of living analysis now taken into account under the CIR reforms. The proposed agreement maintains the frozen wages of the previous one and a half years and includes pay increases for the last half of 2011 and all of 2012 and 2013. The increases in 2012 and 2013 will be determined under the parameters of the current CIR using the array of cities from CIR case 1227. According to the city, the projected savings from the wage freeze are approximately $3.9 million of a $43 million annual wage budget.[12]

Health Care

Our analysis found that the health care benefits in the proposed firefighters union contract are comparable to the cities used in the CIR's 2009 array. Using the deductible, co-insurance, premium share, and maximum out of pocket expense for comparison, no substantial difference could be observed. However, this could change depending on the chosen array cities for the next labor dispute. A recent study done by the *Omaha World Herald* using a different set of comparable cities found the firefighters' health care plan to be "generous." The analysis showed Omaha's share of monthly premiums for a family health care plan to be about one third more expensive than average.[13]

One questionable benefit included is free LASIK eye surgery for employees and their dependents. Free LASIK eye surgery as a benefit could not be found in any other collective bargaining agreement within the array. When asked about the provision in an interview with *Nebraska Watchdog*, Mayor Suttle discounted its importance by saying "We tried to negotiate (LASIK) out. It stayed in there. But I'm not going to argue about $45,000 when we've got a settlement on a $600 million problem."[14]

Defined Benefit

The current and proposed contracts are both defined-benefit pension plans in which the city must pay the

Table 2: Health Care

Array City	Health Insurance Premium Share — Family	Free LASIK
Omaha, NE (Proposed)	3% (2011)	Yes
	6% (2013)	
Des Moines, IA	3% (2011)	No
Lincoln, NE	6% (2011)	No
Madison, WI	6% (2013)	No
	12% (2014)	
Milwaukee, WI	0% (HMO)	No
St Paul, MN	7% (2011)	No

pension based on a calculated formula. An increasing amount of public sector pension plans are switching to defined-contribution systems—a set contribution rate by both employer and employee into the pension rather than a set payout—to save money. Under a defined-benefit plan, the city must make up for any shortfall in the pension. The defined-contribution plan eliminates unknown variables and ensures the city knows exactly how much it must contribute each year, capping the city's liability and reducing long-term costs. Switching plans would require the city to continue paying for existing defined-benefits, while new hires pay into a separate defined-contribution system, thus increasing short-term pension costs to the city. Current accounting rules force employers to recognize those costs more quickly once the defined-benefit scheme is closed to new members—deterring states and cities from changing systems.[15] Unfortunately, due to Omaha's lingering recession and budgetary issues, switching to a defined-contribution plan would be difficult because of the added short-term costs to transition systems.

Under its defined-benefit plan, the city must make assumptions when determining its future pension liabilities. Currently, the city of Omaha is able to discount its liabilities based on an assumed rate of return of 8 percent. While this may have been the average rate of return in the past, it is a risky assumption because past market performance does not guarantee future results. The practical problem is that the assets are risky while the liabilities are certain. The *American Enterprise Institute* states: "Market volatility plays the major role in determining asset values; even a plan that is fully funded by actuarial standards would have only around a 40 percent chance of having sufficient assets to fund liabilities. This alone illustrates the absurdity of public-pension accounting standards."[16] Not surprisingly, private companies are required to use the lower yield on an AA-rated corporate bond when determining their pension liabilities.[17] Therefore, if the private sector rules applied to calculating Omaha's pension liability, its present value would be much higher than the current $1 billion. Making bold assumptions in investment returns that don't indicate the true cost of the system's liabilities is irresponsible and only passes the problem on to future elected officials and taxpayers.

Room for Improvement

The proposed firefighters union contract falls short in many areas and fails to protect the taxpayers of Omaha. Notable issues with the proposed contract include: the addition of a full-time union employee, the inclusion of the National Firefighter Protection Association (NFPA) standards in the contract, management control over staffing, and the increased pension percentage contribution by the city.

Union Representative

A previous CIR ruling in February 2008 required the city to decrease the maximum number of hours paid for union business from 3,000 to 1,200.[18] The new proposal adheres to this ruling, however, it essentially side-steps the decreased number of paid union hours by implementing a full time union representative position whose 2,100 hours are not counted in the CIR-mandated 1,200 hours. Only two other cities in the six-city array provided for a full-time union representative: Cincinnati and Milwaukee. Cincinnati was removed for the most recent array, and Milwaukee's full time representative, according to Article 46 of Milwaukee's fire contract, "when not performing contract administrator duties, shall perform assigned duties as determined by the Fire Chief."[19] Contrary to this precedent, it does not appear that Omaha's proposed full-time union representative will have duties outside of union business. Section 7 states: "While working in this full-time release capacity the Union representative shall receive his/her full salary and benefits… This full-time Union representative shall be assigned under the office of the Chief, but shall be free to conduct the affairs of the Omaha Fire Union."[20] The city estimates the annual cost in wages and fringe benefits for this added position will be $91,286.[21] Thus, the proposal side-steps a previous CIR ruling and grants the union representative a release from departmental duties, which is not allowed by any other contract in the array, and is unfair to taxpayers.

NFPA 1710 Mandate

The National Fire Protection Association is an international nonprofit organization that advocates consensus codes and standards, research, training, and education. Inclusion of the NFPA's 1710 standards into the contract has been highly publicized because of its minimum staffing provision. NFPA 1710 is a performance guide for a career fire department that generally provides for organizational, service, and staffing standards. It is not a requirement that fire departments follow the standards precisely, but the standards are widely used as a guide in determining policy within fire departments. Ray Crouch at the University of Tennessee stated: "98 percent of the standard [1710] is non-controversial but there are two major sticking points." The two controversial provisions are minimum staffing requirements and response time. "Most Fire Chiefs and local government officials believe that these two decisions are very complex and should be left up to the local jurisdiction to determine."[22] According to Crouch, when the provisions were adopted in 2001, the "International Association of Firefighters (IAFF) saw this as a perfect opportunity to mandate a minimum level of staffing per fire department vehicle by instituting new NFPA 1710 standard." Minimum staffing requirements and response time were combined into a single criterion, leaving little room for flexibility in variation. The IAFF effectively campaigned the controversial provisions into NFPA 1710.

There is no doubt that minimum staffing is a very complex issue that requires a careful balance of firefighter protection and cost to the taxpayer. For operational emergency vehicles, Omaha's proposed agreement states, "the City will guarantee four employees on Pumps and Trucks and two employees on a Medic Unit." Both national and local studies have concluded there is a positive correlation between staffing of engine companies, performance efficiency, and firefighter safety when responding to fire related incidents. Nevertheless, the Omaha Fire Department's 2009 Annual Report reveals that only 4.08 percent of all incidents in 2009 were fire related. Safety standards should never have to fluctuate with the ever-changing city budget, but safety and efficiency are not mutually exclusive as this all-encompassing provision implies.

The possibility of reducing cost while preserving safe standards in the remaining 95.92 percent of non-fire incidents should not be off the bargaining table.

Management Control

The proposed contract adds new language that strips management of control. Article 44, Section 2 "prohibits reductions in staffing unless through attrition." Therefore, no current employees can be laid off. Furthermore, Section 3 prohibits reductions in employee's rank unless through

Table 3: Pension Contribution

Array City	Pension Contribution Rate
Omaha, NE	32.97%
Des Moines, IA	9.97%
Lincoln, NE	12.14%
Madison, WI	11.30%
Milwaukee, WI	0%
St Paul, MN	14.40%

attrition. This process has traditionally been a management prerogative and cannot be found in any of the other array cities' contracts. One positive finding in regards to management control is that the proposed contract would delete the current contract's provision for a minimum of 657 firefighters.

Increased Contribution Rate

The proposed contract increases the city's pension contribution by 11.95 percent. According to the city, the annual monetary value of this increase equals $4,978,369.[23] This brings the city's total pension contribution to 32.97 percent, far surpassing any other city in the array. St. Paul had the second highest percentage with 14.40 percent—under half of Omaha's total.

Additionally, the proposed contract states that the city's increased contribution related to unfunded pension liability shall not be considered pension contribution in any litigation before the CIR. This partially nullifies CIR reform that includes pension contributions in wage analysis. CIR reform will not be able to alter employee's pension benefits, but it will adjust wages accordingly after calculating the total hourly rate value of the pensions, insurance, and salary. The language attached to the 11.95 percent increase is an attempt to protect wages from future CIR rulings. Furthermore, Article 40 of the proposal confirms that the city will also continue providing a pension supplement of "three percent or sixty-five dollars ($65) per month, whichever amount is less, beginning in the thirteenth (13th) month of retirement." This is an unnecessary appendage on an already excessive plan.

Now vs. October

The primary taxpayer benefit for passing the contract now is that the city will avoid paying back-wages and benefits to firefighters for 2010 and 2011. If the proposal's passage were to be postponed, the firefighters union would take its case to the CIR and be awarded the back-wages and benefits. The city finance director, Pam Spaccarotella, estimates those savings to be about $3.9 million.[24] That said, the benefits of waiting for the new CIR to go into effect could still far outweigh the costs of these paid back wages combined with the $125,000 a month in accrued

Table 4: Cost of Living

Determined by www.bankrate.com

Array City	Cost of Living Relative to Omaha
Omaha, NE	—
Des Moines, IA	+ 2.87%
Lincoln, NE	+ 3.91%
Madison, WI	+ 18.00%
Milwaukee, WI	+ 15.24%
St Paul, MN	+ 24.61%

pension costs not to settle. Substantial benefits could potentially be attained from cost of living assessment under the new CIR.

Cost of Living

The proposed four-year fire contract includes wage freezes for 2010 and the first half of 2011, and pay increases for the last half of 2011 and all of 2012 and 2013. On the surface, this appears to be a concession made by the union, but the actual impact may turn out to be a tremendous gain for the firefighters. An often overlooked aspect of the new CIR law is the ability to include cost of living into the equation for determining appropriate wages comparable to other cities in the array. Omaha has a substantially lower cost of living compared to the other array cities in the CIR's most recent ruling—on average 13 percent lower.

For determining wages using the cost of living data, the CIR will average the mean and median of the array cities. Under the most recent array, the number would be approximately 14 percent. Thus, if the city waited for the new CIR law to go into effect and a similar array was used, wages could be significantly reduced at a level far surpassing the cost of allowing the 2.3 percent rate of inflation and comparable increases for 2010 and 2011 to be back paid (estimated $3.9 million). The wage freeze will allow the firefighters to avoid this correction. Additionally, this overcompensation relative to the array has been exacerbated when the pensions have been calculated. The proposed set wage scale championed by the city as a concession from the union could, in reality, be a means to secure inflated wages and pensions for two more years.

Conclusion

The proposed contract, and the process under which it was devised, fails Omaha taxpayers. The benefits of waiting for CIR reform to go into effect would outweigh the costs of the paid back wages and the $125,000 a month in accrued pension costs not to settle. The risk seems worth the wait.

Deeper cuts must be made to the pension formula in a more equitable manner to the taxpayers, unnecessary provisions must be removed, and management must be given back the freedom to manage—to promote talented firefighters, to demote ineffective ones, and to implement innovative reform. In the current economic climate, savings must be made wherever applicable. The city must act in the interests of the taxpayers and wait to take full advantage of the new CIR law in the fall.

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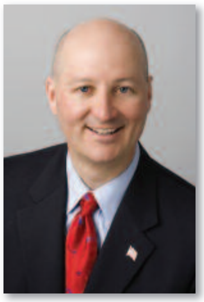

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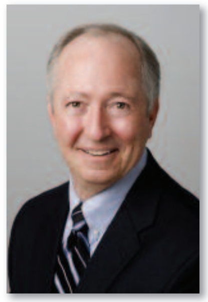

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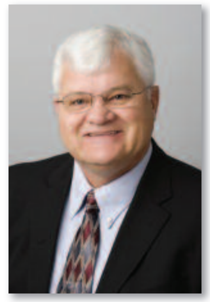

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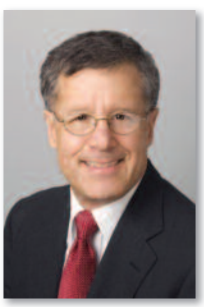

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