

PRE-COUNCIL MINUTES
August 7, 2006, 3:00 p.m.
RE: City Employee Benefits

The City Council met on Monday, August 7, 2006, at 3:00 p.m. in Room 113 of the City County Building to hear a report on the legal opinion of Bill Austin and Bill Harding regarding City employee benefits. Council members present: Chair Patte Newman, Jon Camp, Jonathan Cook (arrived 3:20 p.m.), Robin Eschliman, Dan Marvin, Annette McRoy and Ken Svoboda. Others present: Bill Austin, Dana Roper, Don Taute, Steve Hubka, Pat Kant, Bill Thoreson, Mark Bowen, Don Herz, Mayor Seng, media, and numerous concerned employees.

Patte Newman opened the meeting by asking Bill Austin (attorney with the law firm of Erickson & Sederstrom) to introduce himself and to go through the legal opinion he and Bill Harding (attorney with the law firm of Harding, Shultz & Downs who was unable to attend the meeting to share in the presentation) had prepared at the Council's request. Mr. Austin said that he and Bill Harding had been requested to give the Council an opinion on the ability of the City to make adjustments to the retirement benefits on a unilateral basis and whether or not any other aspects of the benefit package of City employees could be changed unilaterally.

Regarding the civilian pension plan for existing employees, Austin said the Nebraska Supreme Court has considered that to be a matter of contract from the inception of employment and that the benefits cannot be unilaterally changed without violating the federal constitutional provision prohibiting the impairment of contracts by state and local governments, and as a contract it is something in which the employees have a vested right from the time they begin employment. Mr. Austin cited and explained several Nebraska cases supporting the opinion.

Turning to the question of whether benefits could be changed for future employees, Mr. Austin said that technically the City could do that, but as with any issue involving public employment, there are a number of nuances that must be kept in mind. He enumerated on those as follows: First, if the plan were changed for new employees, comparability would have to be considered; second, with labor contracts, benefits for new employees would still be a bargaining issue due to the fact that it would potentially create a situation where two union or association members work side by side doing the same job, but they have different pensions.

Regarding health insurance, worker's compensation, and injury leave for City employees, Mr. Austin said those issues are clearly subject to collective bargaining and could not be amended unilaterally. Austin pointed out that a couple of the union contracts only have one contractual provision regarding health insurance and that provision controls the amount of the City's contribution toward the plan (i.e. 98%- 2% for single or 84%-16% for family or 2/4). He said changes could be made to the benefits within the health insurance package but changes to the percentage being paid toward the premium would have to be negotiated. He added that two of the union contracts have a benefit savings clause which also makes the amount of benefits contained within a health plan subject to bargaining and not subject to unilateral change.

Injury leave is covered in all contracts (except LCEA) and it is the subject of a city ordinance that improves upon the pay available for someone injured on the job. It enhances the benefits available through worker's compensation. This is also subject to collective bargaining and could not be changed – with the possible exception of LCEA – without bargaining. What is left out of the mix are a couple of small groups of employees – X's and M's who do not have contracts but tack on to the benefits of comparable contract groups, but as with any public employee, these employees are subject to comparability.

Upon conclusion of his presentation, Newman thanked Austin for the timeliness of his and Mr. Harding's response. Newman explained that while the legal opinion of Austin and Harding resulted in the same conclusions as those provided by the City Attorney and Personnel Director, the Council hired outside counsel to make sure that there was no sense of impropriety. She said the Council respected the opinions of the City Attorney and Personnel Director but the Council wanted to make this process very public and very open.

The meeting was then opened for questions from the Council.

Councilman Marvin asked about the difference between defined benefit plans and defined contribution plans and which is the more prevalent practice. Austin explained that a defined benefit plan is one in which the benefit will be paid out based upon some formula such as years of service and/or percentage of their ending salary; defined contribution plan is one in which there is an agreed upon payment of matching contributions with no assurance as to what amount there will be at the end. In terms of prevalent practice or comparability, the defined benefit plan is prevalent in the array of cities used for comparability. Marvin then asked whether the City is at risk of being forced to go from a defined contribution to a defined benefit plan. Austin said he believed the City's defined contribution plan falls within midrange in the array of comparable cities and that it is close in terms of the benefit provided. Marvin asked if the City were at risk from a litigation standpoint if it were to go to a two-plan system where new employees would have a pension benefits paid in at a matching ratio of 1:1 or 1:1.5. Austin said the City must always consider the issue of comparability but it is his understanding that pension plans fall into the comparability mix in a generalized way. The CIR will compare pension plans without a dollar-for-dollar comparison. If the City's pension plan is cut back radically, the CIR will look to see if it is still within the general range of providing close or similar benefits. To the extent it is bargained for by the union, the pension plan is well protected in that respect.

At this point in the meeting Newman, pursuant to the open meetings law, announced that the new law is posted by the door and apologized for her oversight in not making the announcement earlier.

Camp asked the City Attorney to advise the Council if the discussion got into areas that should be discussed in an executive session meeting rather than an open meeting. Camp then raised questions regarding changes to the employees' insurance coverage. Austin confirmed that the percentage amount contributed by the City for health insurance premiums could not unilaterally be reduced but the coverage provided in the underlying plan could be modified. However, Austin pointed out that the LCEA and Firefighters contracts contain a savings clause that provides that benefits cannot be changed except by mutual agreement of the parties, so changes to those health insurance coverages would have to be negotiated. Unlike the pension plan, these benefits are not so written in stone that they are not subject to change through a mediating force such as the CIR.

Taute reported that over the years minor changes have been made in benefit design without being challenged. He went on to discuss a memo he had prepared for the council addressing direct benefit plans and direct compensation plans and the array of cities used for comparability purposes in negotiations. With the memo Taute included charts showing what the current market reflects relating to the comparable cities, other public entities, and the private sector. He pointed out that in the comparable cities, the prevalent practice is the defined benefit plan, and other public entities generally have a pension match higher than 1:1. He reiterated that if the Council was considering the possibility of changing the pension plan, one of the key things to first be considered is the issue of negotiating and what would be entailed in that and aspects that would be considered by the CIR.

In response to Camp's question about the difference between injury leave and worker's compensation, it was explained that the City's injury leave is an enhancement of the worker's compensation benefits required under state law. The City provides full pay to injured workers for up to six months which is above and beyond state worker's compensation requirements. The City's statutory obligation to pay worker's compensation is covered through its injury leave provisions.

In closing, Taute said that if the City were to change benefits and be challenged in the CIR, one of the potential dangers would be an outcome forcing the City to change to a defined benefit plan. He said the prevalent practice in the market of comparable cities is the defined benefit plan and he made the following hypothetical comparison of defined benefit plan (DBP) and a defined contribution plan (DCP) from a cost standpoint of the employer: The average account balance under the City's DCP for an employee 50-55 years of age making a salary of \$55,000 is just under \$200,000 which costs the City about \$6,400 annually to fund and a DBP would cost about \$6,000. An employee retiring at age 55 under a DBP getting 64% of his salary for the rest of his life expectancy (approximately 26 years) results in a payout of over a million dollars. Current value discount brings it to \$414,000. The DCP employee retiring at 55 could be making \$90,000 annually but would only have \$200,000 to live on for the next 26 years. Taute said there is a much higher taxpayer obligation with a DBP.

Camp brought up that airlines now operate under two-tier systems - one for grandfathered employees and one for new employees. Austin responded by pointing out the state mandate on comparability for public entities and the obligation to negotiate contract terms. He said courts have determined pension plans to be contractual and that this is a federal requirement, and unless there are some overwhelming reasons why the plan is being changed or unless it has to be changed for the integrity of the plan, it can't be done from a constitutional standpoint. These are requirements airlines or other private entities do not have to deal with.

Chairman Newman thanked Mr. Austin for being there. She acknowledged that the Council's discussion of benefits has caused some confusion but said it was an issue that had to be discussed. Newman added that the Council has heard that the morale in city departments is lower than it has been in 30 to 40 years, and in closing she thanked city employees for their hard work.

The meeting adjourned at 3:40 p.m.

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