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An Aging Workforce: States and Municipalities Respond

Steven P. Goodin, Esq.
Graydon Head & Ritchey LLP

Stockton, California

Rhode Island

Illinois

Chicago

Kentucky

Arizona

\$2.7 *Trillion*

Estimated nationwide funding gap
in state public pension systems
(not including municipal systems)

- *Brookings Institute (2013)*

1/3

**Percentage of U.S. citizens
whose lives are impacted by
public pension crises**

Actuarial Challenges

Unsustainable benefit levels

Non-CPI-based COLAs

Underfunding

Direct exposure to market
fluctuations

Legal Challenges

“Vesting” arguments

State constitutional challenges
(contract clause)

Bizarre statutory protections
(Kentucky’s “inviolable contract”)

Due process/property rights

Political Challenges

Reforms =

Attack on organized labor

Lack of consensus

Generational warfare

(retirees vs. active employees)

New GASB rules

Good reforms, bad decisions

- Arizona

Comprehensive, consensus-driven revamp of Public Safety Personnel Retirement System (PSPRS)

BUT – Arizona Supreme Court restored “vested” retiree COLAS – instantly adding \$1.5 billion to PSPRS unfunded liability

Judges (as plaintiffs) now challenging increased employee contribution

Good reforms, bad decisions

- Illinois

State Supreme Court invalidated reform package designed to lessen \$111 billion unfunded liability

- City of Chicago

State Supreme Court again found that major reforms violated state constitution

Good reform, better decision

- New Jersey

June, 2016 State Supreme Court decision held that COLAS were not included in statutory “non-forfeitable” general pension right

- Atlanta

December, 2015 State Supreme Court decision allowed city to mandate increased employee contributions and move new hires into “hybrid” benefit structure

Alternative approach:
Cincinnati's Collaborative
Settlement Process

Wait ...

Cincinnati is on the
forefront of something?







**IF THE WORLD
COMES TO AN END,
I WANT TO BE IN
CINCINNATI.
EVERYTHING
COMES THERE
TEN YEARS
LATER.**

Mark Twain

www.quote-coyote.com



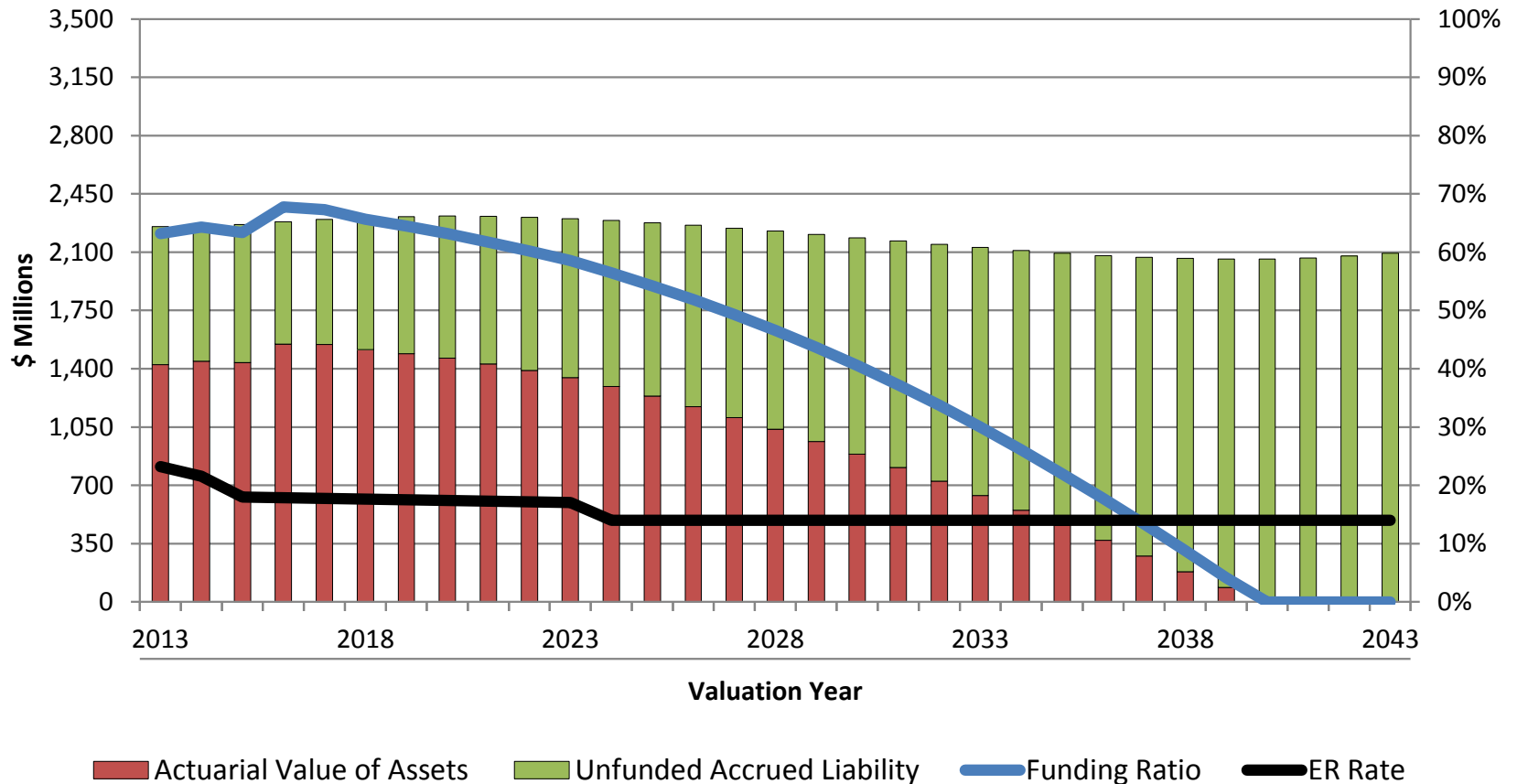
\$874 million unfunded liability

62 percent funded

“Negative” outlook

Threat of receivership

“death spiral”



- Effective 7/1/2014, City (ER) contributes 14% indefinitely (plus an additional contribution for the ERIP through 2023)
- 3.00% Return for 2014 and then 7.50% annual return thereafter
- 3% Simple COLA for all Groups
- No COLA Holiday
- \$100M cash infusion in 2016



Detroit



Retiree legal theories

- Unconstitutional taking
- Impairment of right to contract
- Promissory estoppel
- Laches
- General equity

Gamel v. City of Cincinnati

Ohio Supreme Court and U.S.
District Court agree:

No “vested right” to retiree
healthcare

But still –

Public sector unions sue

Retiree groups sue

Unrepresented active employees
sue

Basic legal theory:

“It just ain’t fair.”

And, “The City should pay more.”

AFSCME v. City of Cincinnati

- Writ of mandamus
- Alleged that City had failed to follow its own formula for determining its pension contribution since 1983
- City would have had no choice but to seek immediate bankruptcy protection

Election of new mayor

- November 2013 – John Cranley elected as Cincinnati's 69th mayor
- Harvard-educated litigator with public finance background
- Ran on removing “dark cloud” from City's finances

The City re-evaluates its leverage

- *Gamel* ruling allowed City to liquidate *entire* 401(h) healthcare trust at its sole discretion
- Healthcare fund was 120 percent funded at \$560 million thanks to previous litigation

Unlikely inspiration:

2001 Cincinnati riots



Racial profiling consent decree

- Thirty-year agreement overseen by neutral federal judge
- Monthly meetings to review progress and compliance
- All stakeholders – civil rights groups, individual and class action plaintiffs, police brass – represented in final negotiations
- Extensive use of objective outside experts to collect and verify data

Litigation strategy?

Sue us.

Transparency?

Against it.

Fed. Civ. R. 501 and 408

- These negotiations could NOT have taken place in the public eye
 - U.S. District Court Judge Michael Barret (S.D. Ohio) employed both the federal mediation privilege and a gag order on the parties
 - Allowed for confidential exchanges of proposals and actuarial data
 - Negotiations occurred over 18-month period
 - Quite simply, these talks would have been impossible under Ohio's broad open meetings law applied

Fed. Civ. R. 24

The City invited the retirees to intervene in the new litigation

- Desire for an omnibus resolution was strong
- More than 8,000 retirees and their dependents/beneficiaries were impacted
- Allowed us to look at the big cost-drivers: COLA suspension periods and implementation of Medicare exchanges



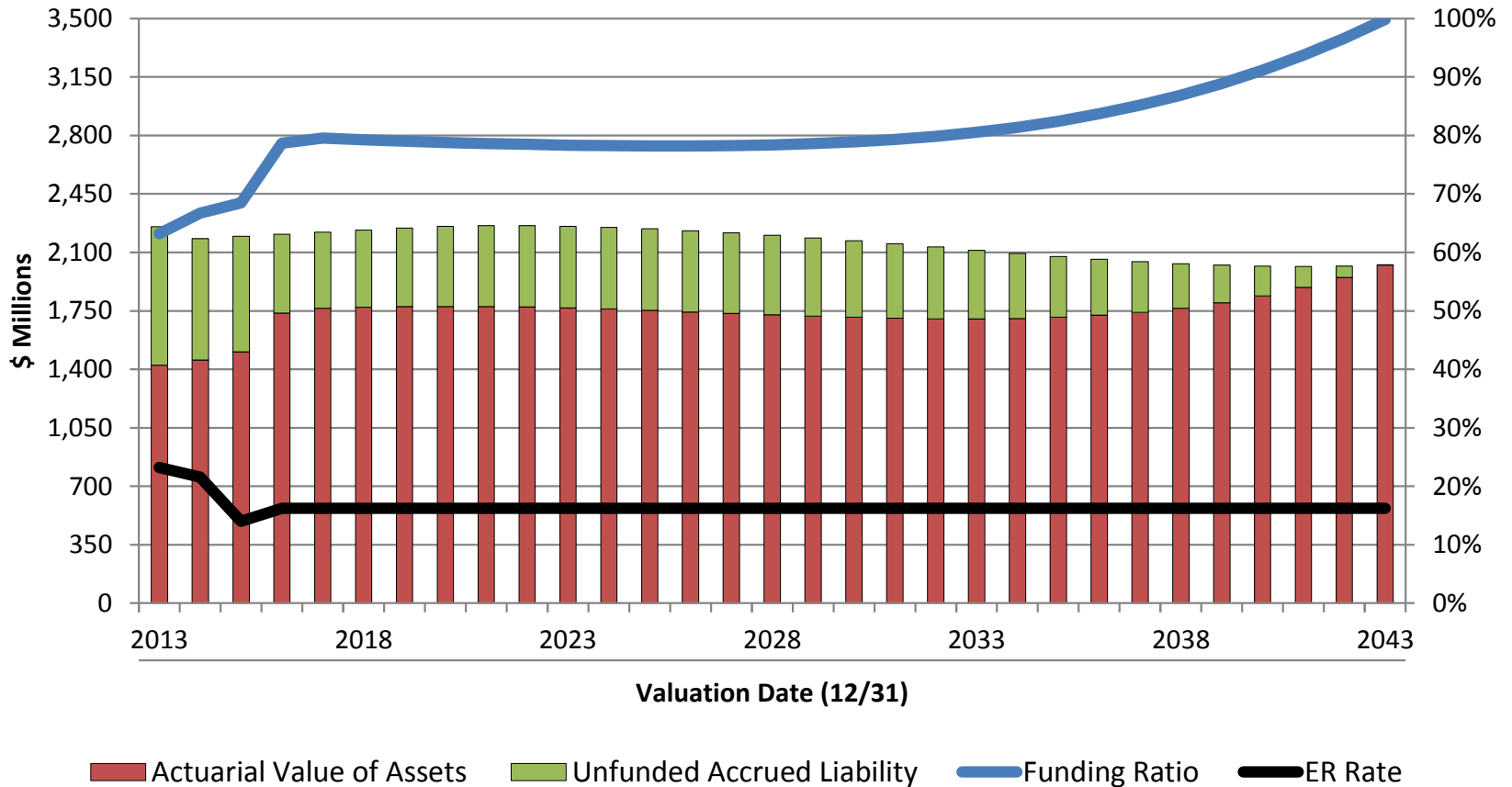
Final agreement included series of reforms
which would have been unthinkable in 2009

Three-year COLA suspension period

Elimination of compound COLA

Stabilized City contribution

100 percent funded in 30 years



- City (ER) contributes 16.25% for all years beginning 1-1-2016
- Actual December 31, 2014 asset figures and then 7.50% annual return thereafter
- 3.0% simple COLA for members affected by agreement
- 3-year COLA suspension for members affected by agreement
- Proposed changes for active members vested as of July 1, 2011
- **\$200M Cash Infusion in 2016**
- **Payoff of ERIP liability (\$50.0 million) mid 2015**

Cavanaugh MacDonald, Segal and Xerox Buck were crucial players in the negotiations

- Ability to run real-time projections kept talks going during tough times
- Seen as honest brokers by all parties (even though the City retained them)
- Great witnesses at fairness hearing

Importance of federal supervision

For the next 30 years, any changes to CRS benefits must be approved by the federal court

- Removes politics from process
- Increases role of objective actuarial data
- Ensures public input
- Settlement process allowed objectors multiple opportunities to voice concerns

Steven P. Goodin, Esq.

Partner

Graydon Head & Ritchey LLP

Cincinnati, Ohio

sgoodin@graydon.com

(513) 629-2845

