EXECUTIVE SUMMARY

The status of the bargaining structure for public employees like the entire world has evolved since 1974. The unusual bargaining process that occurred in November of 2010, where the unions initial offer was immediately accepted without further negotiations, a significant reported disparity between private sector and public sector compensation and the limited rights of management to adjust the size of government makes it clear it is time for a review as to whether the evolved results makes sense in 2011.

The fact that the system needs reviewed is illustrated by the recent union settlements. With steps included, the past AFSCME contract provided for wage raises of 12% without calculating the unions give back of five furlough days and without calculating insurance costs. The next contract, with steps included, calls for 15% wage increases for these same workers without the cost of insurance included. The must be contrasted with the private sector where employees are accepting cuts, freezes and greater insurance participation. This also must be evaluated in light of other states who are aggressively reviewing whether the public bargaining system needs fixed.

Today the system is structured in a way that mandates ignoring the private sector economic realities and comparisons between public sector and private sector compensation and preserving the status quo. The bargaining process has evolved in a fashion that management rights to address changes are extremely limited. The process has forfeited resolving the crucial and technical questions of health insurance and other insurance benefits to the bargaining process. The results are that innovation is difficult and competition is restricted. Any changes in this status by bargaining is limited or at best slow and costly without statutory changes.

CHANGES TO THE DUTIES OF PERB

The Public Employee Relations Board (PERB) has two board members in place with terms that expire in 2012 and 2014. I would save the cost of a third board member for a while and attempt to redefine PERB'S duties. I would recommend amending Chapter 20 so that PERB be allowed to charge fees for each

request for a list of mediators and arbitrators and any training it provides. I would require PERB to first use its own staff and Federal Mediators, if available, to handle the crunch of mediation, and once that resource is exhausted, to provide the parties with an approved list of available ad hoc mediators and their fee structure. The parties can then select their neutral mediator and will be responsible for their costs and expenses.

This statutory change removes a significant cost and duty from PERB. The costs would be shifted to the actual users and would be a savings on the State's budget. The fact that the State provides a free mediator at a very substandard rate for a maximum of five hours does not serve anyone properly. If the mediators were paid a reasonable rate more professional mediators would be attracted. The elimination of a five hour maximum would help settlement as five hours barely allows the mediator to get the issues sorted out. This would align mediation services with arbitrations services where the parties split the costs.

I would also statutorily change Chapter 8A which deals with non-union merit pay employees. These employees are allowed the right to grieve and the definition is not well defined. Arguably this right is broader than the grievance rights in union agreements. I would limit the grievances to discipline, salary reduction, and denial of fringe benefit. (8A.415). I would also make the PERB'S Administrative Law Judge's (ALJ) decision final and binding like any other arbitrators decisions. (8A.415) This lifts the repetitive burden of a De Novo review by PERB and allows a resort to the court only for the normal reasons to appeal an arbitrator's decision.

RECOMMENDATIONS ON CHAPTER 20 BARGAINING STRUCTURE

The reality is that the balance between the unions duty to represent its people and managements obligation to represent its constituency, the taxpayer, has become out of balance over the years.

The wage structure needs to be more aligned with the private sector. The health benefit plan needs to be addressed creatively. Management has negotiated severe limitations of management rights that deny it the ability to adjust to changing times in a nimble fashion. The likelihood of resolving all such issues by

negotiations or arbitration is problematic as they are now in the contract and Chapter 20 virtually assures maintaining the status quo.

The following legislative action should be made as soon as possible to facilitate planning, defining the future bargaining platform, expedite the health insurance restructuring and to facilitate the costs savings in the reduction of PERB's duties. To the extent any changes may clash with the union agreements, the union agreements would be honored.

(1) I would suggest Chapter 20.22. 9 be revised to eliminate the obligation to consider past contracts between the parties. Why command adherence to status quo? That never happens in the private sector. Such a restriction by an enunciated factor is nonexistent in surrounding state's impasse process. Why would Iowa have such a standard except to perpetuate the status quo?

(2) I would amend these provisions to allow the arbitrator to consider comparable data regarding "public employees not represented by a union and private sector employees" as an addition to considering only "other public employees." This would allow the arbitrator to look at the entire spectrum of facts at a given time without being restricted to a bizarre standard of comparing Union proposals to other public employer's Union contracts which the same Union also often negotiates.

My cursory review of the statutes of states contiguous to Iowa makes it clear that Iowa is one of the more restrictive states on what an arbitrator may consider. Indiana allows the arbitrator to consider private sector comparable wages. South Dakota does not limit the subjects to be considered. Wisconsin directs a consideration of the public interest in efficiency and economical government. Nebraska references its internal established prevailing wage rates for people of comparable skills which includes the private sector. Minnesota has broad language referencing efficient management. Illinois specifically references considering the private sector.

(3) I would suggest also adding some broad language the arbitrator to consider "efficiency, increase in taxes and decrease in service". Such language is common in surrounding states statutes.

(4) I would also add a fail-safe provision to Chapter 20. If the arbitrator or the parties arrive at a provision that the Executive Branch or Legislative Branch feels is unacceptable it can be rejected. The standard for the exercise of this right needs to be defined. One possibility is if the provision "could not be supported by the budget without new taxation or curtailment in services".

(5) Chapter 20.9 defines management rights and in the last sentence prohibits bargaining regarding all retirement systems. The rationale apparently was that the retirement system impacts the entire spectrum of State employees and should not be the subject of alteration by the bargaining process. It seems strange that this same rationale was not applied to Health and all other insurance benefits. The current union contract goes into extreme detail defining the provisions of health insurance terms and limits the choice to Wellmark products .

I would suggest that this provisions of Chapter 20 be expanded to preclude other subjects from the bargaining process; (a) the terms and source of health and other insurance, (b) any restriction or limitation on outsourcing, (c) any provision that denies the State the right to consider other factors such as skill, training or education as well as seniority in a layoff and (d) any provision that obligates the state to pay in excess of a fixed % of any employees insurance premiums.

Insurance has become an incredibly complex area. The State, whether it be via the legislature, the Governor or the Insurance Department, should have the freedom to evaluate the best coverage for the dollars spent. It should be able to provide an insurance plan that applies to all public employees and strikes a balance between fair coverage and taxpayer costs. It should be able to freely and flexibly investigate alternative coverage or additional providers through the use of local and national experts. All of these considerations are now handled by union negotiations.

Why would the State want to give up this crucial right to the parties in the bargaining process? Why should the bargaining process dictate who is the sole carrier (Wellmark) to the exclusion of other carriers? Why should that process define the terms and choices available to all public employees? Why should the current process forfeit control of the complex issues of health coverage alternatives

to the exclusion of local and national experts who can provide creative and periodic adjustments to the field as needed?

The aforementioned non-insurance exclusions from Chapter 20 bargaining are also crucial. They would reinstate significant and lost management rights which would allow the State to act in a nimble fashion to react to changing economic situations. The current situation finds the State in the Human Relations (HR) area with few alternatives other than deep permanent layoffs and periodic temporary layoffs to address a budget crisis and the increased costs of the new union contracts. The level of services provided by the State obviously will be impacted and altered.

OTHER STATUTORY ISSUES

Senate file 2855 places a ration of 1-15 between management and employees and mandates middle management layoffs to maintain that ratio. AFSCME contends they would go for a higher number as they want less management. I do not understand the history of this legislation and why the legislature would want to pass a bill that micro manages traditional management rights. I would eliminate it.

ECONOMIC RECOMMENDATIONS

In my efforts of evaluating the status of State Employee bargaining, I have not attempted to address non-employee related potential areas of change that may produce costs savings for the state. The business of running a state is big business and is very complicated. However, the mood of the nation is clearly becoming one of change from big government to effective efficient government. Responding to such a mood cannot be accomplished by minor changes. Sweeping changes in government management issues needs evaluated.

The economic steps relating to adjusting the personal costs of operating the State are;

(1) AFSCME and all other unions need to be approached as to a voluntary adjustment in these raises. I would not place much hope in this approach as the unions will, as in the past, attempt to trade savings for other economic protections and contract advantages. With an uncertain future, I could not recommend the State agree to more restrictions on its options.

(2) A determination needs made regarding following the historical practice of passing along the AFSCME negotiated raises to unrepresented employees. In the 2010-2011 period nonunion employees wages including steps were frozen , and in certain agencies they have been frozen for multiple years. The Union wage steps were not frozen, however and they contents their 2% annual increase was returned in the form of five furlough days Clearly the non-union public employees were treated in a despaired fashion.

If such new raises for 2011-2013 are passed along, this will add future stress to the budget. If the conclusion is that these raises are extreme in light of the private sector, the budget and other states actions, passing them along increases the costs of a wrong decision in granting such unusually large increases in troubled times.

This may be the right time to start establishing a wage increase and benefit plan that is more aligned with the private sector with a small raise without steps (as not all employees receive steps) and establishing a percentage of contribution towards health care. This obviously would set the stage for the same treatment of union workers when their contracts expire. Since the impacted non-contract employees were treated in a despaired fashion from the union employees, this results does not feel good from a human point of view even if it is good business. There is no clear right answer.

(3) All areas of operations need to be critically examined as to how to downsize even if it means to reduced service. Management is not exempt. This inquiry needs to focus on all employees whether they are union, nonunion and/or management.

(4) A calculation needs made as to the costs of all new raises and a determination made regarding the level of permanent layoffs and temporary layoffs necessary to recoup at least that amount from union and all other employees. The

layoffs must be done with good business judgment not with sweeping unfocused efforts. Not all areas can or should be cut. Some areas may even justify increased staffing. I would urge swift and deep cuts should be made to meet the needs of the budget.

(5) Outsourcing needs studied to determine if the cost savings by turning to the private sector would off-set the contractual obligation of finding the impacted employees jobs in state government with no reduction in pay. If the proposed Chapter 20 changes are adopted this avenue may be an important step in right sizing government by resorting to the private sector and a competitive environment.

(6) A study is needed as to the overtime practices in various departments of the State and except in situations involving safety and health overtime must be severely curtailed.

OTHER STEPS TO CONSIDER IN RIGHT SIZING GOVERNMENT

An internal evaluation needs made as to whether the HR area in DAS is right sized and dedicated to preserving management rights. This study needs to include the issue of whether the DAS's HR rules are effective or do they actually limit nimble management action.

An evaluation needs made as to whether segments of government have kept their own HR function to the exclusion of centralized HR from DAS? Are there further savings involved in more centralization? Are there any redundancies between the DAS HR function and the Regents an HR function?

Would the costs of school, county and municipal bargaining be reduced by formation of employer associations for bargaining a master agreement for large areas? By way of example why use three hundred labor consultants for school bargaining when five or ten would suffice? An added benefit is that better coordination should result from this process. Formation of such associations could be done voluntarily, but it also could be statutorily mandated in order to speed-up

the process. Clearly this would provide cost savings but it would be a significant change in concept in the name of efficiency.

The State should establish a process for collection of labor relations data and trends from contiguous midwestern states and local comparable school, municipal and county bargaining units. This data is assembled by the unions. The state could find it useful in determining trends and in preparing for arbitrations.