Retirement Plan Problems: A Synopsis and an Update

With Comments on Pending Litigation

November 2018

Colloquial, Real-World Definitions

Member Contribution: The amount deducted for retirement from your paycheck (8% minus a 0.05% service charge); 7.95% reaches member accounts.

Normal Cost: Until 2014, the minimum employer contribution, determined by the cash needs and investment success of the other, defined-benefit plan.

Employer Transfer Amount: The amount paid to TRSL by universities that reaches employees' ORP accounts (after 2014, this replaces the normal cost)

Total Employer Contribution: The amount paid to the retirement plan manager ("TRSL") by the employer (your campus). This sum is not visible either on your pay stub or on your retirement fund statements.

Unfunded Accrued Liability Contribution: That portion of the employer contribution that is diverted from employees in order to cover the non- and under-funded obligations of the state retirement plans. Employees do not see this sum on pay stubs or retirement fund statements.

Bare-Bones Explanation of the Problem

Very large sums of money—sums that comprise a substantial percentage of higher education budgets—are removed from the total employer contribution in order to pay down the "UAL" (unfunded accrued liability). Despite the UAL being a public obligation, employees in the quasi-private "ORP" (Optional Retirement Plan) pay, via the reduced employer contribution, an enormous fee toward the elimination of a debt that they did not incur. The vast majority of the UAL (circa 88%) results from the fund of K-12 pension obligations. ORP members are not allowed to vote in TRSL elections and have no representation in or at the state government.

PROBLEM ONE
UNFUNDED ACCRUED LIABILITY (“UAL”)

- **A large debt resulting from underfunding of the defined benefit plan**
- **Imposed on ORP members at the inception of the ORP plan**
- **Represents a de facto transfer or charging of state expenses to employees**
- **K–12 wedge issue**
- **Also affects TRSL (“defined benefit”) participants, although that impact is difficult to locate, trace, or measure**

IMPACT OF THE “UAL” (2018)

- For ORP members: Employees contribute 8% (minus 0.05% TRSL fee)
- Employer (LSU System campuses) contributes 28%
- Total contribution is 36%
- Only 6.2% of the employer contribution reaches employee accounts
- Of the total contribution of 36%, only 14.15% reaches employee accounts (36.9% of the amount paid)
- Employer contribution continue to spiral upward

Doing Better is Doing Worse

Until 2014, the normal cost for the ORP—the portion of the employer contribution that employees receive—was tied, by law, to the normal cost for the defined-benefit plan. That normal cost is set by contract actuaries who answer to the Governor. When the defined benefit plan experienced good investment results, the amount of current cash required to cover its current obligations is smaller. As a result, the normal cost declines. Not only is more money from the employer contribution diverted to the UAL payment, but the reduction in the normal cost also reduces payments to ORP participants. Thus, ORP participants were punished for good performance by TRSL investments.

Although the normal cost calculation has now been replaced by a flat contribution, the majority of ORP participants received the majority of their benefits under the normal cost system. It thus continues to influence the lion's share of their retirement resources.

A Worsening Problem: A Long-Term Comparison

1995: Normal cost, 7.1%; UAL, 9.4%; total employer, 16.5%; employee receives 15%

2018: Transfer amount, 6.2%; UAL, 21.8%; total employer, 28%; employee receives 14.15%

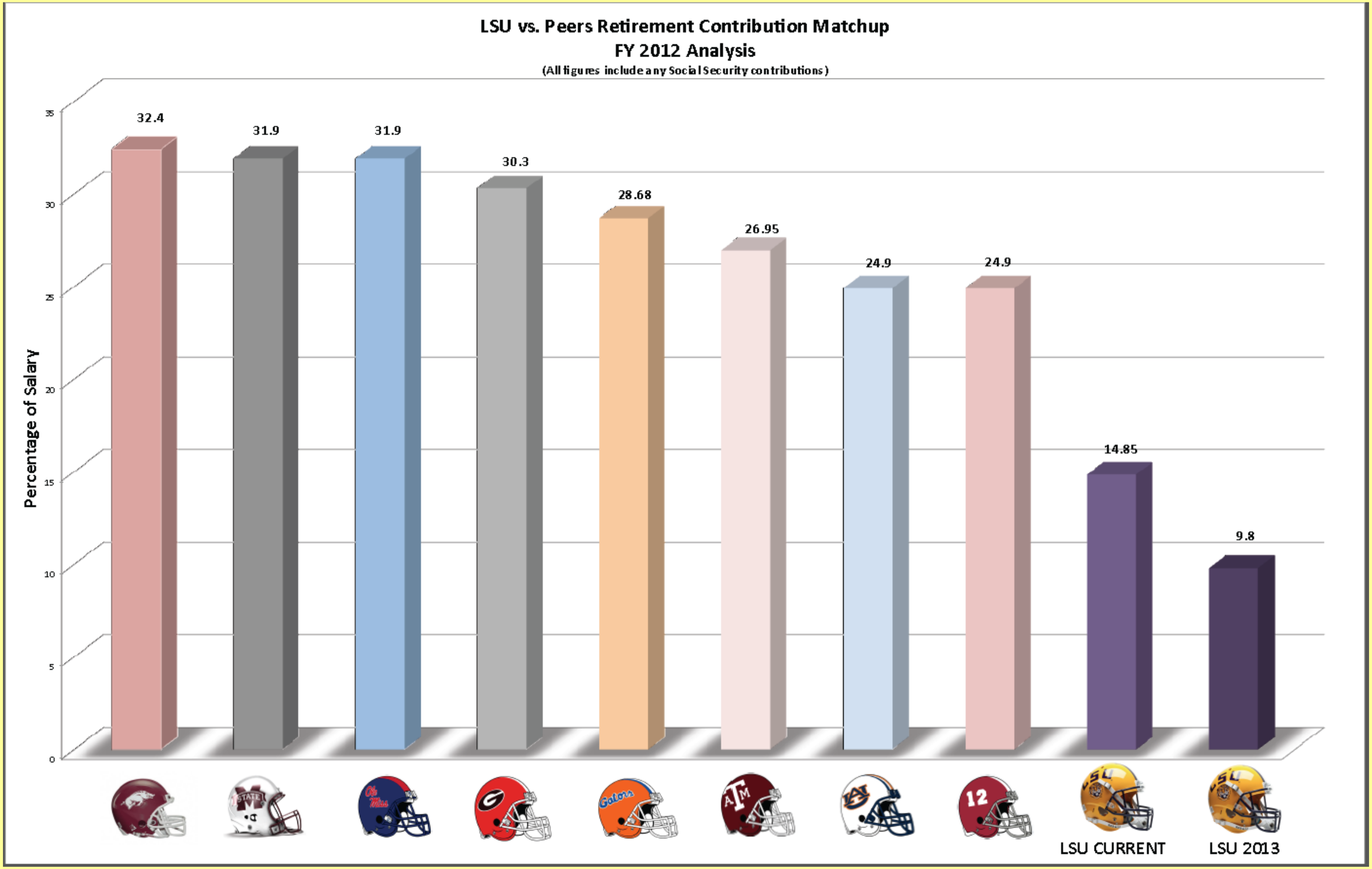
IMPACT OF “UAL” ON HIGHER EDUCATION

A circa $300,000,000.00 annual charge to higher education by way of contribution to the UAL. That money could be used for better retirement benefits, raises, facility improvement, cultural activities, research travel, awards, professorships, or multitudinous other good purposes. This charge is likely to grow in coming years.

MORE UAL IMPACT ON DEFINED BENEFIT PLAN PARTICIPANTS

It is possible that the UAL could expand until the TRSL defined benefit plan becomes insolvent. In that case, TRSL (defined benefit) pensions would be in jeopardy or might require federal intervention. Defined-benefit plan participants enjoy no "COLA" guarantees. Their status as creditors vis-à-vis the retirement system remains unclear.

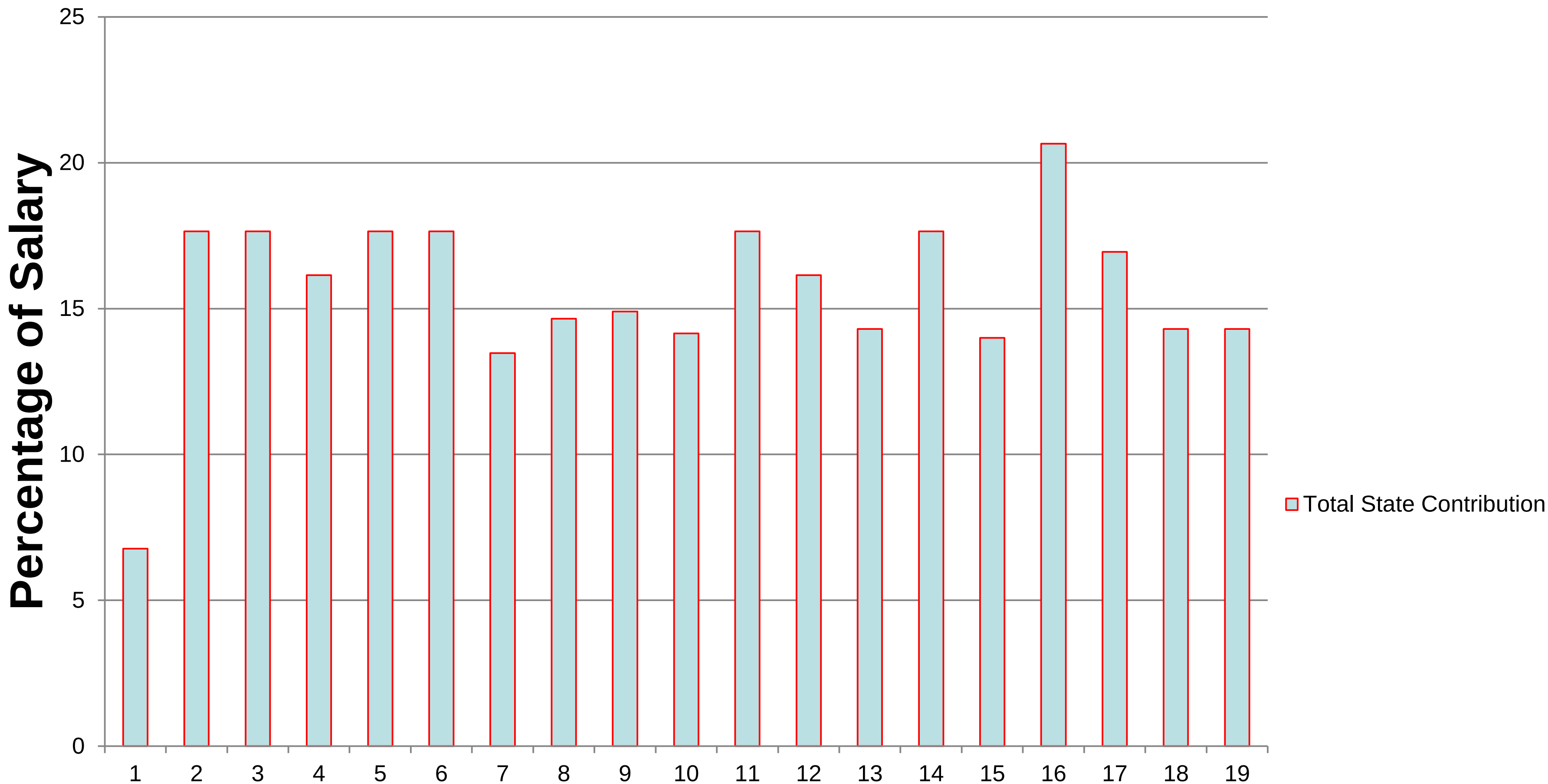
Not a Pretty Picture: Retirement Contribution, LSU Campuses vs. SEC Schools



Greener Pastures for Former, Mobile Campus Executives: Michigan Tech as an Example of Better Benefits

Social Security Contribution: 6.2%
Matching Contribution to Employee Contribution: If an employee pays the 8% assessed at LSU, that employee receives the same 8% from MTU: hypothetical result, 16%, or a total benefit of 22.2%.

Total State Contribution to Retirement (Percentage of Salary)



1,LSU;2,Georgia,3,Iowa State;4,Kansas;5,Michigan;6,Indiana; 7,Oregon;8,Arizona State; 9, Mississippi State;10,South Carolina; 11,Kentucky;12,Kansas State; 13,Texas; 14,Michigan State; 15,Ohio State; 16,Arizona; 17,Penn State; 18,Texas A&M; 19,Texas Tech)

PROBLEM TWO: LACK OF CHOICE

- ORP began as the only alternative to a plan that required a ten-year vesting period in an institution with mobile faculty and six-year tenure windows
- ORP participants have no control over their choice of vendors or fund offerings
- Auditing of the ORP is done by private, contract auditors answerable to the state executive branch
- The lack of independence from state agencies is of questionable legality

PROBLEM THREE: GOVERNANCE

- ORP is managed by TRSL but ORP members are not allowed to vote in TRSL elections
- Higher education has only one Board representative of fifteen; the others are from K–12 or are political appointees
- TRSL management testifies AGAINST faculty governance delegates at legislative hearings
- Some state lawmakers want substantial payment requirements to exit TRSL

PROBLEM FOUR: COMPARISON TO BEST PRACTICES

- No other university or state deploys such a governance system
- Comparable states and institutions offer retirement systems designed for higher-education professionals
- Entailing of UAL on new plan (ORP) was of questionable legality
- Uncertainty regarding status of plan with respect to Social Security exemption

PROBLEM FIVE: CUSTOMER SERVICE

- Lack of vendor expertise
- Selection of vendors by groups other than clients
- Poor vendor customer service
- Difficulty in obtaining data
- Poor web sites
- Confusing statements, interfaces, and documentation

LITIGATION UNDERWAY

Past LSU Faculty Senate President Kevin Cope and former Benefits Committee Chair Roger Laine have filed a lawsuit against TRSL and the LSU Board of Supervisors. Filing of the lawsuit followed repeated attempts to find solutions through negotiation with and diplomatic outreach to LSU, the LSU System, the Board of Regents, TRSL, the Board of Regents, and assorted legislators. A replacement plan advocated by former HRM chief A. G. Monaco was also left in the archives. The lawsuit focuses on eight items.

ITEMS ADDRESSED IN THE LAWSUIT, ITEMS 1 AND 2

1. The lawsuit seeks to establish who is the employer of faculty. LSU and its campuses alternately claim that faculty work for a campus, for the LSU Board of Supervisors, for the LSU System, or for the State of Louisiana. Determining who is the employer is a way of determining who is responsible for the retirement plan (and for its shortcomings).

2. The lawsuit is directed at both the LSU System and TRSL because these two entities seem deeply and mutually entangled in the retirement plans and in assorted problems with those plans. Of course, it is the ORP—the Optional Retirement Plan or the defined contribution plan—that is at the core of the complaint.

ITEMS ADDRESSED IN THE LAWSUIT, ITEMS 3 TO 6

3. The lawsuit seeks to determine whether LSU has met all requirements for exemption from participation in Social Security or whether it is violating at least the spirit of those rules (for example, by counting employee contributions toward the minima required to escape Social Security requirements). Finding that LSU has evaded Social Security would establish that LSU or TRSL or the State owes employees compensation for that omission.

4. The lawsuit asserts that the using of funds earmarked or otherwise tagged as retirement contributions for other purposes, such as funding the unfunded accrued liability (UAL), is a violation of federal law (and that funds so diverted should have been paid to to employees).

5. The lawsuit asserts that the use of funds marked for retirement funds for any other purpose (such as funding the UAL) or the enrich any other plan or any other group of employees is a violation of the takings clause of the United States Constitution.

6. The lawsuit asserts that, in maintaining two unequally beneficial retirement plans (the ORP and the defined-benefit plan), the LSU System treats employees unequally, a civil rights violation.

ITEMS ADDRESSED IN THE LAWSUIT, ITEMS 7 AND 8

7. The lawsuit alleges that TRSL disenfranchises employees by denying ORP members the right to vote in TRSL elections and otherwise to participate in retirement plan governance.

8. The lawsuit asserts that TRSL and the LSU System have violated their fiduciary responsibility in a variety of ways, from inadequately supervising the retirement fund vendors to providing unequal levels of assistance to defined-contribution (ORP) and defined-benefit plan members to failing to supervise monitor the actions (or lack of actions) by the TRSL managers and staff.

LAWSUIT STATUS

Judge Janice Clark of the 19th State Judicial Court affirmed that the case has merit and may proceed. For this open-court hearing, LSU and TRSL fielded five attorneys by way of opposing faculty interests.

Subsequently, a three-judge panel of the same court examined a request for dismissal from LSU and TRSL. The three-judge panel again determined that the case had merit.

The first set of depositions, of LSU and TRSL officials, has taken place. Deposition of the plaintiffs is being scheduled.

More to Come

This presentation is only an update and an introduction. Louisiana's higher education retirement plan is unequaled in the nation with respect to its poverty and its resistance to best practices and usual standards. LSU and LSU System faculty governance bodies are working with other faculty leaders throughout the state to improve the retirement plans.