HEARING BEFORE THE SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

"PENSIONS IN PERIL -- HELPING WORKERS PRESERVE RETIREMENT SECURITY THROUGH A RECESSION"

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**WRITTEN TESTIMONY PRESENTED
ON BEHALF OF
UNITED STEELWORKERS**

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I am David Jury, and I am an Associate General Counsel of the United Steelworkers International Union (USW).

The USW represents 1.2 million active and retired members found in nearly every manufacturing industry, not only steel, but paper, forestry, rubber, energy, mining, automotive parts, and chemicals, as well as healthcare, service and public employment. On behalf of the USW and International President Leo Gerard, I thank the Committee for the invitation to appear today to address the impact of pension plan terminations on workers and retirees and the urgent need for pension funding and other related relief, a need that has become even more acute during this recession.

Defined benefit pension plans are the cornerstone of retirement security for millions of Americans. The Pension Benefit Guaranty Corporation (PBGC) serves a critical function in the nation's economy and social safety net by insuring the pensions of 44 million current or former workers covered under private-sector defined benefit plans. PBGC operates to protect the economic security of American workers and sits at the intersection of numerous forces affecting American workers – deregulation, globalization, trade policy, and the decline of the manufacturing sector.

Among the USW's traditional core jurisdictions is the steel industry. Between 1998 and 2003, the steel industry experienced a crisis brought on by a rising tide of imports which flooded the market and drove steel prices down to 20-year lows. The result was $11 billion in net losses, 44 bankruptcies, 18 liquidations and the loss of 55,000 jobs.

During this period, the PBGC initiated terminations of the defined benefit pension plans of 16 steel companies, involving over 250,000 participants and over $7.0 billion in unfunded guaranteed pension benefits.

A distress or involuntary termination of a defined benefit pension plan is extraordinarily disruptive for workers and retirees. While the pension benefits most retirees are unaffected, pensioners who retired during the last five years prior to the termination or who were forced out of their jobs by plant shutdowns or disabilities often suffer substantial reductions in their pension benefits. Indeed, according to a study by the PBGC of trusteed plans published in September 2008, over 25,000 or 21% of participants in terminated steel industry plans had their benefits reduced, with an average cutback of 26%.

When a sponsoring employer is unable to fund the promised benefits and an underfunded plan is terminated or abandoned, the PBGC takes over the plan and pays benefits, subject to certain limits under the law.

Pursuant to existing law, the PBGC does not guarantee:

- non-vested pension benefits;
- basic monthly pension benefits in excess of the monthly maximum guarantee level in effect at the time of plan termination;
- early retirement supplements or “bridge” benefits that are typically designed to provide a retiree with additional income until he or she becomes eligible for Social Security;
- severance or lump sum death benefits;

- disability benefits when disability occurs after plan termination; and
- as a result of the Pension Protection Act of 2006, benefits earned after the employer's date of bankruptcy filing or benefits earned after a Plan's funding target falls below 60%.

Further, plan participants who have not qualified for a service or event-based benefit as of the termination date (such as a 30-year or shutdown pension) are forever unable to qualify, even if he or she continues to work for the employer beyond the date of plan termination. This is a harsh outcome for an employee who, in the example of a 30-year benefit, falls just short of the mark at the time of plan termination and is told that he or she can never qualify for the 30-year pension that he or she expected.

Plan terminations and PBGC benefit cutbacks are even more painful because they often affect employees who are, at the same time, losing their jobs and/ or retiree health care benefits. After working years in difficult, and often dirty and dangerous jobs, affected workers rightly feel shocked and angry by this convergence of events.

Unfortunately, it has been the USW's experience that workers often do not learn the full extent of PBGC benefit cuts until years after the plan is terminated and the PBGC assumes responsibility. When the PBGC takes over a plan, it continues making benefit payments based upon an initial calculation of the guarantee level. If the estimated benefit exceeds the PBGC guarantee, the pension is reduced. However, the PBGC continues paying this "estimated benefit" level until it completes the final benefit determination.

According to the PBGC's own data, the average amount of time required by the PBGC to complete final benefit determinations was 3.3 years in FY2008. In complicated cases, it is often much longer. While the PBGC has responded commendably to the increase in its workload caused by the large steel and airline terminations, the delay in completing final benefit determinations is deeply unsettling for the retirees involved.

One such example is the Republic Technologies International pension plan. RTI employed USW members in Ohio, New York, Pennsylvania, Illinois, and Indiana. The pension plan was relatively complex as it featured a number of supplemental benefits and offset provisions. RTI filed for bankruptcy in 2001 as a result of the financial crisis that swept the American steel industry. On June 14, 2002, PBGC terminated the RTI Plan. The USW therefore joined in an action in federal court against PBGC regarding the payment of shutdown benefits. The litigation concluded in 2004, with the Court of Appeals for the Sixth Circuit finding in PBGC's favor with respect to the shutdown benefit issue.

PBGC did not issue final benefit determinations until May 2008. Consequently, for nearly six years, the RTI plan participants received benefits from PBGC based upon estimated benefit determinations. It was only after PBGC issued final benefit determination in May 2008 that many participants learned that they had received benefit payments in excess of the benefits guaranteed by PBGC, and that (1) their monthly benefits would be reduced on a prospective basis to comply with the plan's terms and the PBGC's limits, and (2) they owed large sums of money to PBGC as a result of the overpayments they had received. Some retirees owed PBGC a few thousand dollars, while many others owed $60,000 or more. Similar stories are prevalent in the other steel industry cases, though the period between the date of plan termination and the issuance of final benefit determinations was not as great.

In order to prevent undue hardship, PBGC does not require participants to pay back the overpayments all at once, nor does it charge interest on the debts; instead, PBGC deducts 10% from the participant's monthly benefit until the full amount is recouped. While the PBGC's repayment policy is not unreasonable, for many retirees the benefit cutback and overpayment notice of tens of thousands of dollars causes great financial and emotional distress.

Stories such as these beg the question: what can be done to address the problem? The source of the problem is not PBGC, but rather is the legislative framework that governs single employer defined benefit pension plans. Rather than promoting the maintenance of defined benefit pension plans and elevating the interests of workers and retirees, aspects of the current law undermine the vital role played by defined benefit pensions in the U.S. retirement system.

In 2006, Congress responded to pension plan terminations in the airline and steel industries and the growing PBGC deficit by passing the Pension Protection Act (PPA). While the stated goal of the PPA's supporters was to strengthen the retirement system and fortify plan funding, it has, in the USW's experience, produced quite the opposite result.

The limited time available does not allow me to describe the USW's concerns regarding pension funding and the need for reform. We would welcome the opportunity to express our views more fully at a later date.

Nevertheless, there is also growing evidence that the PPA has encouraged employers to freeze benefit accruals under existing single employer defined benefit plans and has further accelerated the shift to defined contribution pension plans. During the current economic crisis, our Union has observed an increase in the number of employers (whether inside or outside of bankruptcy) seeking to freeze or terminate their defined benefit pension plans, often specifically citing the accelerated funding obligations of PPA.

PPA has made pension funding more onerous, inflexible and volatile by effectively requiring pension plans to be fully funded at all times, a requirement that is based upon the erroneous assumption that all funds can be withdrawn at any time. The consequences of these new funding rules on employers during an economic downturn were predictable as plummeting investment returns ratcheted up an employer's funding obligation. But, in the shadow of the worst economic crisis since the Great Depression, the PPA threatens to require employers to contribute massive amounts to their defined benefit plans when they can afford it the least and when credit and product markets have not yet recovered. Without action, these funding obligations may cause additional bankruptcies and distress terminations, which only will further burden the PBGC and erode the retirement security of American workers.

It must be noted that The Worker, Retiree and Employer Recovery Act of 2008 and IRS technical changes have provided some *breathing room*. However, the relief was only temporary and additional relief for 2010 and 2011 is urgently needed.

For these reasons, in the interest of preserving the defined benefit pension system and fulfilling employee and retiree expectations, the USW urges Congress to provide immediate funding relief to single employer defined benefit plans, including:

1. extending the seven year period to amortize unfunded liabilities, which will allow plans to pay off their funding shortfalls at a slower, more reasonable rate;

2. allowing additional asset “smoothing,” which will reduce shortfall payments for plans that experienced dramatic losses in the stock market. Such a move recognizes that pension obligations are long-term obligations best measured over time rather than as a single snapshot;

3. delaying the PPA benefit limitations and “at-risk” accelerated funding requirements for the duration of the relief period. The limitation on benefit improvements disproportionately penalize Union-represented hourly employees covered by flat dollar benefit formulas, which require periodic adjustment to keep pace with earnings and inflation, whereas most salaried employees enjoy earnings-based formulas which increase automatically and are specifically excluded from these restrictions;

4. repealing the PPA-mandated freeze on benefit accruals for plans that are less than 60% funded. As stated before, these provisions penalize workers who are responsible for neither their employer’s pension funding decisions nor the macro-economic conditions that have increased pension underfunding; and

5. repealing PPA Section 404, which calculates PBGC guarantees based upon the date the plan sponsor filed for bankruptcy rather than the date the plan is actually terminated. Again, this is another example of current law penalizing workers for circumstances entirely beyond their control.

Further, in the interest of fostering the important public policy encouraging companies to maintain existing single employer defined benefit pension plans, this relief should be provided only to plans which have not frozen benefit accruals. Employers should not be rewarded for actions which undermine worker and retirement security.

The need for pension funding relief is urgent because the effects of the current economic crisis continue to place increasing pension funding demands on industrial employers. These demands, ultimately, impair the retirement security of workers and retirees throughout the U.S. On behalf of the USW, we encourage Congress to act quickly and provide necessary and appropriate relief for the defined benefit pension system.

Thank you again for the opportunity to appear before you today.