A Pension Double Header: Reforming Hybrid and Multi-Employer Pension Plans
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Testimony
Mr. Chairman and Members of the Committee:

Good morning. My name is Timothy Lynch and I am the President and CEO of the Motor Freight Carriers Association (MFCA). I want to begin by thanking Chairman DeWine and the other members of the Subcommittee on Retirement Security and Aging for holding this hearing to discuss suggestions for securing the long-term viability of the multiemployer pension system.

I am here today as a representative of an association of trucking industry employers who by virtue of their collective bargaining agreement are major participants in a number of multiemployer plans. Their companies are key stakeholders in these funds. The employers I represent are concerned about the current framework for multiemployer plans and strongly believe that if not properly addressed, the problems will increase and possibly jeopardize the ability of contributing employers to finance the pension plans. The end result could put at risk the pension benefits of their employees and retirees.

While we were supportive of Congressional efforts last year to address short-term relief for multiemployer plans under the Pension Funding Stability Act, we believed then, and continue to hold the view, that significant reform needs to occur if we are to secure the long-term viability of these plans. The financial difficulties facing the Central States pension fund are well known to this Committee, but Central States is not alone. Nor are the factors contributing to the problems of Central States unique. The challenges facing these pension funds need immediate attention.

In my testimony today, I will outline a series of recommendations that are the result of many months of discussion and negotiation among the parties most directly affected by the MPPAA statute. These recommendations represent a unique opportunity in that they are the only reform proposal that has the full support of contributing employers, organized labor, and those responsible for the governance and administration of multiemployer plans. I would respectfully suggest that the effort to bring all these diverse interests to common ground is worthy of Congressional consideration.

MOTOR FREIGHT CARRIERS ASSOCIATION

MFCA is a national trade association representing the interests of unionized, general freight truck companies. MFCA member companies employ approximately 60,000 Teamsters in three basic work functions: local pick-up and delivery drivers, over-the-road drivers and dockworkers. All MFCA member companies operate under the terms and conditions of the Teamsters' National Master Freight Agreement (NMFA), one of three national Teamster contracts in the transportation industry.

Through its TMI Division, MFCA was the bargaining agent for its member companies in contract negotiations with the Teamsters for the current National Master Freight Agreement (April 1, 2003 – March 31, 2008). Under that agreement, MFCA member companies will make contributions on behalf of their Teamster-represented employees to 90 different health & welfare and pension funds. At the conclusion of the agreement, MFCA companies will be contributing $12.39 per hour per employee for combined health and pension benefits, or a 33% increase in benefit contributions from the previous contract. This is in addition to an annual wage increase.

DESCRIPTION OF PLANS

MFCA member companies, along with UPS, car-haul companies and food-related companies are typically the largest contributing employers into most Teamster/trucking industry-sponsored pension plans. The Teamster/trucking industry benefit plans vary widely in size, geographic scope and number of covered employees. The two largest plans – the Central States Pension Fund and the Western Conference of Teamsters Pension Fund – have reported assets of $18 and $24 billion respectively and cover over 1 million active and retired employees in multiple states.

As Taft-Hartley plans, these pension funds are jointly-trusteed (an equal number of labor and management trustees) and provide a defined benefit (although some plans offer a hybrid defined benefit/defined contribution program). MFCA member companies are represented as management trustees on most of the plans to which they make contributions. In an effort to help improve the management of the plans, MFCA member companies have made a concerted effort to nominate as management trustees individuals with backgrounds in finance, human resources, and employee benefits.

RELATIONSHIP BETWEEN COLLECTIVE BARGAINING AND THE PENSION PLANS

In a report to Congress last year, the General Accounting Office (GAO) stated that multiemployer plans "contribution levels are usually negotiated through the collective bargaining agreement" and that "[b]enefit levels are generally also fixed by the contract or by the plan trustees." In our case, that is only partially correct: the NMFA only establishes a contribution rate. It does not set a pension benefit level. It is worth reviewing for the Committee the relationship between collective bargaining and the multiemployer pension plans.

Like most multiemployer plans, our plans are maintained and funded pursuant to collective bargaining agreements. During each round of bargaining, the industry and union bargain and agree on the per-hour contribution rate required to be paid by employers to the plans for pension and health benefits. Once the rate is established, however, the role of the collective bargaining process and of the collective bargaining parties with respect to the plans – in terms of the level of benefits, the administration of delivering those benefits, management of plan assets, etc. – is over. For employers, the only continuing role in the plans is to make the required contractual contributions. That is, unless the plan, over which the employers have no control, runs into financial crisis. I will talk more about that in a moment.

Each multiemployer pension plan is a separate legal entity managed by an independent board of trustees. It is not a union fund controlled by the union. Nor is it an employer fund, over which the employer has control. Rather, by law, the plans are managed independently by their trustees under a complex set of statutory and regulatory requirements. Although the trustees are appointed - half by the union and half by the employer - each trustee has a legal obligation to act not in the interest of the union or employer that appointed them, but rather with a singular focus on the best interests of the plans participants. Trustees who do not act in the best interest of participants may be held personally liable for breach of their fiduciary duty.

As noted earlier, employers' role with respect to multiemployer pension plans is limited to making contributions unless the plan runs into financial difficulty. Under current law, employers are ultimately responsible for any funding deficiency that the multiemployer plan may encounter. Specifically, if a multiemployer plan hits a certain actuarially-calculated minimum funding level, employers in the fund are assessed a five percent excise tax and their pro-rata share of the funding shortfall or face a 100% excise tax on the deficiency.

HOW WE GOT TO WHERE WE ARE

1980 was a watershed year in the history of the trucking industry. In that year Congress passed two major legislative initiatives – the Motor Carrier Act (MCA) and the Multiemployer Pension Plan Amendments Act (MPPAA) – that radically altered the profile of the industry and the landscape for industry-sponsored pension plans. The first brought about deregulation of the trucking industry and ushered in an era of unprecedented market competition. The second, while perhaps not recognized at the time, upset the essential balance between exiting and entering employers that is key to maintaining a viable multiemployer pension program.

To put this in some perspective, I have included in my statement (Appendix A), a list of the top 50 general freight, LTL carriers who were operating in 1979, the year just prior to enactment of MCA and MPPAA. Of those 50, only 7 are still in operation and of those 7 only 5 are unionized. Virtually all of the 43 truck companies no longer in business had unionized operations, and consequently were contributing employers to industry-sponsored pension plans. There have been no subsequent new contributing employers of similar size to replace these departed companies. And beyond the top 50 there were literally hundreds, perhaps thousands, of smaller unionized truck operators who also have fallen by the wayside. The simple fact is that since 1980 there has not been a single trucking company of any significant size to replace any of the departed companies on the Top 50 list.

And what happens when these companies leave the plans? Their employees and retirees become the responsibility – not of the PBGC – but of the plans and their remaining contributing employers. In short, the remaining contributing employers function as a quasi-PBGC ensuring the full pension benefit.

One of the key elements of the MPPAA statute was the ability to recover assets from withdrawing employers or withdrawal liability. Unfortunately, that has not been the case. One of the largest trucking industry plans reports that bankrupt (withdrawing) employers ultimately pay less than 15% of their unfunded liability. And what happens when these liabilities are not fully recovered? They become the responsibility of the remaining contributing employers. This represents one of major differences between the treatment of liabilities of single versus multiemployer pension plans.

Nothing highlights the inequity of this situation more than the bankruptcies of two contributing employers: Consolidated Freightways (CF) and Fleming Companies. Both companies were in the top 10 category of contributing employers to the Central States plan. They also sponsored their own company, single-employer plan for their non-collective bargaining covered employees. The PBGC has assumed responsibility for the CF plan with a potential liability in excess of $250 million and the Fleming plan with a projected liability in excess of $350 million or a combined liability for PBGC of over $600 million.

Conversely, the Fleming and CF employees/retirees covered under multiemployer pension plans like Central States will now be the responsibility of the remaining contributing employers (less whatever these plans can recover in withdrawal liability payments). These beneficiaries will be entitled to a guaranteed full pension benefit. This will only add further cost to what is already one very stark financial fact of life for the Central States fund: half of its annual benefit payments now go to beneficiaries who no longer have a current contributing employer.

MEPPA delineates a very different role for PBGC with respect to single employer versus multiemployer plans. The GAO report identifies four: monitoring, providing technical assistance, facilitating activities such as plan mergers, and financing in the form of loans for insolvent plans. In contrast to PBGC's more aggressive role with single employer plans, these are relatively passive activities. It was not until the recent Congressional debate over whether to provide limited relief to multiemployer plans that attention was focused on the need to have a better understanding of the true financial condition of these plans. And underlying that need was a concern whether the relief would provide assistance for a truly short-term issue or mask a more fundamental, long-term problem.

Furthermore, the remedies available to multiemployer plans in the form of amortization relief, short-fall methodology or waivers are often viewed as "last resort" solutions. There are no intermediate steps that can assist a plan well before it reaches this point.

RECOMMENDATIONS FOR LEGISLATIVE ACTION

Last October, we began participating in a small working group of trucking company and union representatives to try to develop recommendations that would be acceptable to multiemployer plans, unions and contributing employers. The objective was to develop a legislative proposal that would alleviate the short-term consequences of funding deficits and promote long-term funding reform for multiemployer plans. As a representative of contributing employers, I entered those discussions with a clear mission to protect the economic interests of my membership. My union counterparts entered with a similar mission to protect the interests of their membership.

Early on in those discussions, we agreed on several fundamental issues that ultimately formed the basis for our recommendations.

- Because of the diversity of multiemployer plans, a one-size-fits-all approach would not be productive. Instead remedial programs would be targeted to those plans facing the greatest financial problems.
- Multiemployer plans function as a quasi-PBGC, with contributing employers assuming plan liabilities and shielding the federal agency from that responsibility until plan bankruptcy. Unfortunately, plan trustees don’t have all the tools available to the PBGC to address funding problems.
- Furthermore, most of the tools available to address funding problems become available too late in the process and are often viewed as “last-resort” remedies by federal agencies.
- All parties to the plans deserve more timely and meaningful disclosure of information about the status of the plans.
- The need to establish an early warning system for “at risk” plans and a separate category for “severely underfunded” plans.
- The burden to fix the problem of severely underfunded plans should not be borne disproportionately by any one party to the plans. To do otherwise would, in fact, jeopardize the continued viability of the plan and its defined benefits.

This process ultimately was expanded to include employer and union representatives from other industries. The result is a coalition proposal that has the support of a wide range of business and labor organization interests.

From the contributing employer perspective, the key elements of the coalition proposal are the following.

FUNDING RULES

Under the proposal, multiemployer plans will be required to have strong funding discipline by accelerating the amortization periods, implementing funding targets for severely underfunded plans and involving the bargaining parties in establishing funding that will improve plan performance over a fixed period of time. In addition, the proposal limits the ability for plan benefit enhancements unless the plan reaches certain funding levels.

FUNDING VOLATILITY

By virtue of their collective bargaining agreements, contributing employers must make consistent payments regardless what gains are achieved in the financial markets. (This is in contrast to single employer plans that may avoid contribution payments in lieu of above-average market returns.) However, the volatility of these plans occurs in the form of funding deficiencies. The coalition proposal addresses this situation by allowing the plans to use existing extension and deferral methods to permit time for the bargaining process to address the underfunding over a rational period of time.

EARLIER WARNING SYSTEM

The coalition proposal establishes a “yellow zone” or early warning system. The goal of the yellow zone concept is to make sure plans are cautious in the ability to have affordable benefit levels. Additionally, plans in the yellow zone must improve their funded status in a responsible manner, one that does not put extreme pressure on the benefits provided or eliminate the ability for employers to operate in a highly competitive marketplace. The coalition proposal strikes a reasonable balance through creation of a bright line standard for an improving funded status but not one that creates an insurmountable and unreasonable financial burden on contributing employers. While it is important that yellow zone plans develop a program for funding improvement, the burden to do so should be commensurate with the ability to recover over a rational period of time.

PLANS WITH SEVERE FUNDING PROBLEMS

Under the coalition proposal, plans facing severe funding problems are in a “red zone” or essentially reorganization status. When a plan is in reorganization status, extraordinary measures will be necessary to address the funding difficulties. It is here that the concept of shared responsibility for balancing plan assets and liabilities fully comes into play. Reorganization contemplates a combination of contribution increases – above those required under the collective bargaining agreement – and benefit reductions – though benefits at normal retirement age are fully protected – to achieve balance.

TRANSPARENCY AND DISCLOSURE

The Pension Funding Stability Act of 2004 greatly improved the transparency of multiemployer plans. The coalition proposal expands those disclosures and places additional disclosure requirements for plans that are severely underfunded in the red zone.

WITHDRAWAL LIABILITY

For the remaining contributing employers in the trucking industry, this is the proverbial "between a rock and a hard place" issue. These employers have no ability to control the extent of their potential liability when other contributing employers withdraw from the plan. Withdrawal liability was intended to address that problem. However, as I indicated earlier, one large trucking industry plan estimates it recovers on average less than 15% of assets required to cover the benefit liabilities. Non-sponsored participants now make up 50% of the benefit pool in Central States.

From a public policy perspective, it is difficult to justify a denial or reduction of benefits to these non-sponsored participants. However, if that remains government policy it is equally difficult to justify allowing withdrawing employers to fully escape or significantly limit their liability responsibilities. The coalition proposal attempts to strengthen and clarify withdrawal liability rules to protect the remaining contributing employers from assuming a disproportionate and unfair burden from non-sponsored participants.

Mr. Chairman, thank you for giving me the opportunity to present the views of the Motor Freight Carriers Association. I look forward to working with the members and staff of this Committee to develop a long-term solution to the problems facing multiemployer pension plans. I would be happy to answer any questions you may have.

TOP 50 LTL CARRIERS IN 1979

1. Roadway Express
2. Consolidated Freightways
3. Yellow Freight System (Yellow Transportation)
4. Ryder Truck Lines
5. McLean Trucking
6. PIE
7. Spector Freight System
8. Smith's Transfer
9. Transcon Lines
10. East Texas Motor Freight
11. Interstate Motor Freight
12. Overnite Transportation
13. Arkansas Best Freight (ABF Freight System)
14. American Freight System
15. Carolina Freight Carriers
16. Hall's Motor Transit
17. Mason & Dixon Lines
18. Lee Way Motor Freight

19. TIME-DC Inc.
20. Wilson Freight Co.
21. Preston Trucking Co.
22. IML Freight
23. Associated Truck Lines
24. Central Freight Lines
25. Jones Motor-Alleghany
26. Gateway Transportation
27. Bowman Transportation
28. Delta Lines
29. Garrett Freightlines
30. Branch Motor Express
31. Red Ball Motor Freight
32. Pilot Freight Carriers
33. Illinois-California Exp.
34. Pacific Motor Trucking
35. Central Transport
36. Brown Transport
37. St. Johnsbury Trucking
38. Commercial Lovelace
39. Gordons Transports
40. CW Transport
41. Johnson Motor Lines
42. System 99
43. Thurston Motor Lines
44. Watkins Motor Lines
45. Santa Fe Trail Transportation
46. Jones Truck Lines
47. Merchants Fast Motor Lines
48. Murphy Motor Freight
49. Maislin Transport
50. Motor Freight Express

Bold = Still Operating on 4/1/04