A Pension Double Header: Reforming Hybrid and Multi-Employer Pension Plans
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Testimony

Chairman DeWine, Senator Mikulski and Members of the Subcommittee, I thank you for the opportunity to testify on multiemployer pension plans. My name is John Ward and I am the President of Standard Forwarding Company which is a small, family-owned union trucking company located in East Moline, Illinois. I appear before this Subcommittee both on behalf of my company and the other trucking company members of the Multiemployer Pension Plan Alliance (MEPA Alliance).

The MEPA Alliance was formed last year in response to the financial crisis that arose in the Central States pension plan to which we all are long time contributing employers. It is an understatement to say we were shocked to learn that this plan had become so severely underfunded that it reached a deficiency in 2004 that would trigger federal excise tax penalties and additional contributions that our companies could not afford to pay.

Unless significant reform is enacted multiemployer plans will ultimately lose the fight. Rather than creating an environment that encourages employers to grow their businesses and participate in these plans, the law has created a death spiral with traps and penalties that will forever drive current and prospective employers away. In fact, in a March 5, 1982 Wall Street Journal article, George Lehr, the Executive Director of the Central States pension plan said in a reference to withdrawal liability: “In theory, it’s a wonderful law; in practice, it doesn’t work. In the long run, employer liability is the single most damaging thing pension funds will be facing.” [Exhibit 1]

The smaller businesses that have participated in the Central States pension plan were kept in the dark about its financial deterioration; neither the plan administrator nor the trustees informed us of the dire financial condition until they needed our assistance in seeking legislation that would allow them to postpone this deficiency. At that time, we realized that we needed to seek our own representation and make our case for meaningful reform of these plans and the governing law.

The alternative of doing nothing places in jeopardy the future of smaller, family-owned companies, such as Standard Forwarding, that have been built up and have operated over several generations. Substantive legislative reform of multi-employer pension laws is the single most important legislative issue now confronting the unionized trucking industry.

Unless Congress addresses this year the chronic and now dire underfunding in many of the Teamster multiemployer plans, many smaller union firms will be forced into bankruptcy. We face a classic case of double jeopardy. We cannot afford current law on funding deficiency that mandates additional contributions and excise tax penalties. We also cannot afford the portion of the UPS/Teamsters reform proposal which permits the Funds to establish unlimited levels of pension contributions and then expel companies for not paying. If we are expelled from the Central States pension plan, our companies will be forced to pay a withdrawal liability that has grown so large that it now substantially exceeds the net worth of our companies. Obviously, this means immediate bankruptcy.

We desperately need the assistance of Congress and we need it soon. We appreciate that Congress is willing to address not only reforms to the single employer defined benefit system, but also to the multiemployer pension plan system. Both are at risk today.

The MEPA Alliance members recommend that this Subcommittee focus on the following critical areas:

• Repeal of the current tax law that imposes punitive excise taxes and additional contributions on employers in severely underfunded plans. We generally support some aspects of the reform proposals developed by other groups, but with a safeguard so that plans may not expel smaller employers and impose withdrawal liability if they cannot bear the cost of the plan-imposed additional pension contributions. Plan-imposed contributions should be capped at 15 percent above the employer's contributions under its prior collective bargaining agreement.

• Ideally, the withdrawal liability rules should be repealed, rather than tightened. Short of this, we support reenactment of the law prior to the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) that properly and fairly held that no more than 30 percent of any employer's net worth can be taken when it withdraws from an underfunded plan. It is patently unfair that a family-owned company can be stripped of all of the assets it has built up over generations notwithstanding that the company has made all its required pension contributions.

• Refrain from making the withdrawal liability rules even more onerous as UPS/Teamsters have proposed. That proposal would impose withdrawal liability when a company uses independent contractors or third party driver leasing companies to meet customer needs. The trucking industry rule should not be repealed and the current rule that reduces liability for a company in liquidation should be maintained. As will be discussed, the withdrawal liability rules established in 1980 have discouraged new employers from entering these plans and have sealed the fate of these plans by causing a declining participation base.

• Limit the controlled group rules so that withdrawal liability is confined to the contributing employer and any related, fractionalized entities that were separated out from the contributing employer to avoid withdrawal liability. We also support repealing the "pay now and dispute later" provisions of MPPAA.

• Establish objective funding standards for all plans that would prohibit benefit increases when there is insufficient income and assets to fund those benefit promises. Benefit increases should not be allowed in plans that have a funding ratio below 90 percent. As early as 1996, the Multiemployer Plan Solvency Coalition reported that trustees of the Central States plan had imprudently increased benefits beyond the means to pay for them and that it would exacerbate the underfunding crisis. Benefit promises should be made only when they can be paid. Similarly, the Alliance believes that Congress should move to eliminate or substantially increase any high end caps on funding of the plans and permit funding up to 140% of full funding without penalty.

• Require timely and accurate disclosure of the key financial information by the plans to all participating employers, their employees and the PBGC. There needs to be sunshine in the dark rooms of these plans that have withheld information from contributing employers and plan participants in the past. Too much is at stake to tolerate the nondisclosure of this financial and actuarial data to all but the union and the employer companies that have trustees on these plans.

• Create an objective Congressional commission to study and make recommendations on how to fairly apportion and pay for the huge underfunding that has arisen in these plans, and in particular the benefits being paid to retirees that no longer have an employer contributing to these plans. The Central States plan currently pays approximately $1 billion annually to 100,000 retirees that lack a contributing employer. Those benefits consume nearly 100 percent of the annual contributions received by the plan from all the remaining employers. Contributing employers can no longer shoulder this entire burden which is mounting each year.

The Alliance members are committed to achieving these legislative reforms for multiemployer plans to promote plan solvency, preserve pension benefits and save our smaller companies through a fair realignment of pension responsibilities and liabilities.

The Plight of Smaller Businesses Like Standard Forwarding

Standard Forwarding is typical of the transportation firms that make up the Alliance members. Our company, based in East Moline, Illinois, was founded in 1934 and provides transportation services to companies over the five state area of Iowa, Illinois, Indiana, Minnesota and Wisconsin. Our dedicated employees deliver a high quality of service that has been a factor in the success of our customers which in turn has driven our expansion. We now employ 440 employees, generate over $50 million in revenue annually, operate 250 tractors and 700 trailers, and use the latest information technology found in the trucking industry.

Standard Forwarding has been a union-represented trucking company for the majority of our 71 years in business. We believe our Teamster employees are among the best trucking employees in the industry. As demand for our services has grown, Standard Forwarding, unlike many contributing employers to the Central States pension plan, has expanded our union workforce. Unfortunately, every additional union employee I hire only increases our portion of the unfunded pension liability in this plan. This liability has increased at a cruel pace that exceeds any profitability or equity growth that our company could ever hope to generate. Consider that in 2001, Standard Forwarding employed 211 union employees and had a withdrawal liability of $3.2 million. This was $2 million more than our corporate equity. A mere three years later, in 2004, we had increased our union employees to 292 and our withdrawal liability had mushroomed to $20 million, which exceeded our equity by $16 million!

As hard as it may be to believe, the federal pension law created by the Multiemployer Pension Plan Amendment Act of 1980 severely penalizes our company, and other companies like it, for growing union jobs.

In fact, that law has also made it impossible to sell our company. No prudent investor is willing to inherit the mounting liabilities that come with acquiring a unionized firm that participates in an underfunded plan, such as the Central States plan.

Contrary to the principles of the American dream, growing our company significantly increases our liability and wipes out any stake that we may have built up in our businesses. Sadly, MPPAA even precludes us from applying our expertise to other business ventures. Under the so-called controlled group regulations, the assets of an affiliated company are also at risk to pay for withdrawal liability if the owners have controlling interest in both Standard Forwarding and the affiliated company.

Many of you on this Subcommittee may be or once may have been owners of small businesses or worked in a family owned business. Consider for a moment what you would do if your family business were faced with a decision to participate in a multiemployer pension plan like Central States? Would you do it knowing that one day you could wake up and your family's life work was wiped out because of it? That is the stark reality I face with Standard Forwarding. It is a nightmare that I share with all the Alliance members. Only Congress has the ability to rectify the problem.

Smaller businesses lack both the capital and diversification to weather much longer the financial crisis in these multiemployer pension plans. We have absolutely no control over the negotiation or setting of benefits or contributions in these plans and, as mentioned earlier, it is difficult for us to even obtain timely and accurate financial information from them. The trustees are not accountable to us. They represent either the Teamsters union or one of the major national companies that pay their salary. We also lack the leverage at the collective bargaining table of those national companies. In sum, we cannot reform or change these plans from within, or at the bargaining table. We need your assistance.

The Deteriorating Financial Condition of
The Major Teamster Pension Plans

Much of the discussion in this testimony focuses on the Central States pension plan. That is because all the Alliance members participate in that multiemployer pension plan and it is the second largest Teamster pension plan with over $17 billion in assets. However, financial information on several other significant Teamster plans, which are also severely underfunded or at risk, is attached to this testimony. [Exhibits 2 - 4]. Central States may be one of the worst plans, but it is not alone.

The deteriorating financial condition of these plans is widespread because no new employers are willing to join and be exposed to withdrawal liability. Deregulation of the trucking industry and the passing of MPPAA in 1980 commenced the slow, but steady, decline of the unionized trucking industry. Many unionized employers have ceased operations and the Teamsters have lost over 100,000 jobs in the freight sector. This in turn has dwindled the contribution base of these plans.

For example, there are now more retirees drawing pensions from the Central States plan than active workers on whose behalf employers are making contributions. [Exhibit 5]. The plan is experiencing a two percent decline annually in the contribution base. With more and more workers reaching retirement age, the situation worsens each year. The average age of a union truck driver is approximate 55 years old.

Consequently, the Central States pension plan has an annual negative cash flow of over $1 billion. It must rely on the returns on its investments each year to cover this expanding shortfall in revenue. For a while the rapid increases in the stock market masked these problems. But the stock crash in 2001 caused these plans assets to plummet and they are unlikely to change in the near or long-term future. The Central States plan, which reached a funding deficiency in 2004, is experiencing another bad year in 2005. It is projecting another $1.2 billion loss; for the first quarter 2005, it lost $461 million and had a negative return on investments.

Since the passage of the Multiemployer Pension Plan Amendments Act of 1980, there has been a steady decline in these multiemployer plans. There were approximately 2200 plans in 1980 and fewer than 1700 remained by 2003. Only five new plans have been created since 1992. The number of active participants in these plans has decreased by 1.4 million since 1980. Thus, Central States is not alone in this financial struggle; it is however on the front burner having already reached a funding deficiency.

The seven largest Teamster plans were collectively underfunded by $16-23 billion in 2002, depending on the method of calculating the assets. In 2003, the Central States plan alone was underfunded by $11.1 billion. It has been estimated that underfunding in this plan has further increased in 2004 to $15 billion. Many of these other plans are as financially strapped as the Central States plan, based on the 2002 data. These Teamster plans account for one quarter of the $100 billion in total multiemployer pension plan underfunding.

However well intentioned, the changes made to the pension laws in 1980 have exacerbated the financial problems of these plans rather than strengthened them. These plans cannot continue to exist without new employers and more active participants. MPPAA shut the door on future participation by imposing withdrawal liability on all employers for plan underfunding. The problems confronting these multiemployer plans are systemic and they will not solve themselves.

It is both shortsighted and patently unfair to propose an alleged solution which could force smaller contributors out of business rather than a solution that encourages them to grow their businesses, increase union jobs and continue to make plan contributions.

The Impact of Plan Underfunding On Smaller Businesses

Underfunding in multiemployer plans creates serious financial problems for all employers in the plans, but especially for smaller firms that lack access to capital that is available to publicly-traded companies.

First, there is a cash flow problem when a plan, like Central States, reaches a funding deficiency. The employers, by law, are obligated to pay for this deficiency to put the plan back within the minimum funding standards of ERISA. Compounding the funding deficiency payments are excise tax penalties that are imposed.

Exhibits 6 – 8 illustrate how the combination of additional contributions and excise tax penalties would destroy the finances of a smaller company with 100 employees. A funding deficiency of approximately $400 million, an amount consistent with the Central States plan’s estimates for 2004, would increase this company’s pension contributions by 40 percent. It would incur an additional 5 percent excise tax penalty that goes not to the plan but the general treasury and therefore does not help plan solvency. This company may be able to survive the first year of the funding deficiency. However, in the second year, it will be forced out of business because the additional contributions then would increase to 135 percent of current contributions to the plan, and the excise tax penalty would be an additional 100 percent of the prior year’s deficiency.

The second way in which plan underfunding harms employers is when a withdrawal from a plan occurs. While a cessation of operations is the most common way in which withdrawal liability results, it can also arise through a change in operations, a terminal shutdown, a decline in union workers, involuntarily by strike or decertification of a union by the employees, expulsion by the pension fund, or disclaimer of continued representation of the bargaining unit by the union.

The financial impact of withdrawal liability is now overwhelming. The amounts of liability, which are calculated on a pro-rata share of underfunding, now far exceed the ability of most companies to pay; it exceeds their entire net worth. The withdrawal liability of Standard Forwarding for 2004 is $20 million which is well beyond our means. Bankruptcy would be our only recourse.

For the MEPA Alliance members, the costs associated with withdrawal liability that would be owed the Central States plan can be as high as five times their net worth and ten times the profits in their most profitable year.

While the MEPA Alliance has focused on the harsh financial reality of underfunding on employers, ultimately it will impact the employees’ pensions and the federal government through the PBGC. If these plans cannot regain solvency, they face termination. The employees are only guaranteed payments of approximately $1,000 per month, which is far below the $3,000 a month maximum benefit under the Central States plan. Therefore, they could lose up to two-thirds of their benefits. The PBGC would be obligated to pay that amount, if plan assets were insufficient.

Therefore, employers, employees and their Union representatives, and the federal government all have a vested interest in solving this problem promptly.

The Needed Congressional Reforms

1. Full and Timely Disclosure of Plan Financial Information:

The time is long overdue for complete, timely and accurate disclosure of the key financial information by these plans. The financial condition of the Central States plan has been a guarded secret, with only the union and four major transportation companies privy to the most up-to-date information.

Under current law the multiemployer pension plans provide annual reports almost nine months after the end of the current fiscal year. Therefore, the Central States plan will release its 2004 information in September of this year. There is simply no reason why this annual report information in the Form 5500 cannot be disclosed much sooner, such as within 3 months after the end of the fiscal year. The key financial information, including the annual actuarial reports, should be released to all participating employers and employees, by written communication or posting it on the plan’s website. The Alliance members also believe that these pension funds, like mutual funds, should be required to provide quarterly updates. These updates are now provided by the Central States plan to the court overseeing the fund, so this would not be a new or burdensome requirement.

Consideration should also be given to mandating a change in the make-up of the Board of Trustees, which is now controlled by the union and largest transportation companies. A rotation of employer representation, to allow for participation by smaller employers, may be appropriate.

2. Repeal of the Federal Excise Tax and Current Funding Deficiency Rules is Essential:

Under current law, the combination of federal excise tax penalties and additional mandated payments under the minimum funding standards will drive smaller trucking companies out of business within one to two years. They simply lack the cash to pay an additional 135 percent of contributions. These rules should be replaced with new reorganization procedures that apply to any plan that is severely underfunded or at risk of becoming severely underfunded. A severely underfunded plan should be defined as one that has a funding ratio of assets to liabilities of 65 percent, An at-risk plan should be defined as one with a funding ratio below 80 percent. It is simply imprudent to wait for a plan to become severely underfunded, or near terminal, before remedial, reorganization measures are imposed.

While the Alliance members support the general framework of the legislative proposal made by UPS/Teamsters and the national LTL carriers, safeguards need to be built into that proposal to protect smaller employers. Under their proposal, when a plan goes into reorganization, additional contributions can be imposed on employers up to 10 percent of the existing contribution rate of the employer. This 10 percent cap remains until the next collective bargaining agreement is negotiated. At that time, the pension plan will become involved in the collective bargaining process by submitting schedules to the parties based on the funding needs of the plans. The pension plan could submit a schedule that requires a 40 to 100 percent, or more, increase in pension contributions that a smaller employer cannot afford to pay. Under their proposal, the employer could be expelled from the plan, withdrawal liability then would be imposed, forcing bankruptcy upon the company. This unprecedented delegation of power to the plan to impose additional contributions needs to be restrained for the good of all employers. The Alliance members believe that a cap on additional contributions should be set a 15 percent above the rate under the prior collective bargaining agreement.

3. Re-establishment of Limitations on Employer Liability:

Nothing could be more unfair or more anti-business than a law that provides that even though you have made all of the pension payments agreed to with your union, you still can lose all of your company’s assets if a plan becomes underfunded resulting from the actions of others outside your control. Essentially, the changes made to the federal multiemployer pension laws in 1980, made all contributing employers bear the burden for the pensions of workers who never performed any jobs for their company and for the pension obligations of their competitors who have gone out of business. That violates the most basic American principle, that a person and business should be allowed to prosper from the fruits of their labor.

The Alliance members believe that Congress should restore the law in effect prior to 1980 that limited the liability of an employer in an underfunded plan to 30 percent of the employer’s net worth. Ideally, the concept of joint liability of all employers for plan underfunding should be repealed. It has only served to deter new employers from joining these plans and it has not improved the financial condition of the plans which was the main rationale behind the concept of withdrawal liability.

Even unions recognize this plight. As stated as early as 1982: “The International Ladies Garment Workers Union hopes the PBGC will permit its multiemployer plan to exempt the small entrepreneur who simply wants to sell his business and retire. ‘He’s tired, he wants to quit or he has a few bad seasons and feels another bad season would wipe him out,’ observes the union’s president, Sol Chaikin. ‘My own feeling is that it would be cruel and unusual punishment for our union pension fund to demand his unfunded liabilities going back 20 years. That would leave him without a penny.’”

The plans will tell the Subcommittee that they generally only collect 10 percent of the amount owed when an employer withdraws because few assets are left when an employer ceases operations. The PBGC has testified that they collect a comparable 10 percent amount when a single employer goes into bankruptcy.

Just as the Federal Government has found it intolerable that 90 percent of these costs in single employer plans are passed on to the PBGC, the employers in multiemployer plans find it intolerable that they are made to bear this huge expense. In fact, they can no longer shoulder this cost. No company should have all it assets on the line for an obligation it never made to workers who were never employed by them. The 30 percent net worth standard needs to be restored by Congress.

4. Withdrawal Liability Rules Should Be Eliminated Not Made More Onerous:

The current law is extremely onerous on contributing employers to multiemployer pension plans. First, they are made liable for plan underfunding that they had no part in the making. Then, they are required to pay the withdrawal liability assessed by a plan before they have the right to contest it in arbitration. Moreover, the plan's determination and calculation of withdrawal liability is presumed correct until proven otherwise by the employer. It is patently unfair and contrary to normal rules of American jurisprudence to require employers to pay this alleged liability before the liability is even established.

Likewise, the fund can sue all the affiliated companies and individuals that have majority ownership interest in the participating company and affiliated companies and seek to make them jointly liable for the withdrawal liability. All employers would be well served by repealing these "pay now and dispute later" rules and controlled group liability regulations.

Further, it is wholly inappropriate to tighten the withdrawal liability rules, as proposed by UPS/Teamsters. No company should be exposed to withdrawal liability when it uses owner operators, independent contractors or third party leasing companies to perform transportation services at its facilities. That is contrary to federal labor law and labor policy. It will only harm trucking companies and their customers. It will provide a basis for these plans to expel employers and drive them into bankruptcy.

The trucking industry rule should also not be repealed. This rule is one of the few beneficial exceptions to withdrawal liability that Congress created in 1980. More trucking employers will only enter these plans if they have an assurance that they will not be on the hook for past underfunding. Congress must resist attempts to tighten the noose of these withdrawal liability rules.

5. Pension Promises Should Be Made Only When They Can Be Paid:

In 1992, the PBGC became aware that the alarming rise in pension plan underfunding was due in part to benefit increases that could not be sustained by the income to these plans. It is neither fair to the employers nor to the employees to increase benefit levels that cannot be sustained by the contributions to the plan and the return on the investments. Yet that is what has occurred. Consequently, these plans have had to make recent changes to future benefit accruals and in other areas permitted under current law.

What is needed is an objective standard that governs future benefit increases. In the past, bills have been introduced in Congress that would allow a plan to increase benefits only when it is at least 90 percent funded. Such an approach makes sense and the Alliance members support it to ensure that future benefits can be paid. Otherwise, they are only false promises that increase the withdrawal liability of employers.

6. The Need For A Congressional Study On Long Term Solutions To Plan Underfunding:

While all the above reforms are vital to the short-term viability of these plans and their contributing employers, there remains a need for Congress to address the significant past underfunding in these plans. The Central States plan has $11-15 billion in accumulated underfunding. Our recommended reforms will prevent this plan from becoming worse, but it will not solve the ills created in the past.

At best, we project that the plan, which is now about 65 percent funded, may become 75 percent funded with our suggested changes. The reason for this modest improvement is that cost of the benefits to the retirees, who have no contributing employer, is consuming all the contributions to the plan, a situation that is getting worse each year. It is unsustainable over the long term. We believe that an objective study is necessary to remedy the problem. A Congressional study commission is an appropriate method to develop meaningful and fair solutions for employers, retirees and the Government. We therefore ask that Congress fund such a study and require a report back, with recommendations, within one year.

Conclusion

The Alliance members recognize that defined benefit plans, both single employer and multiemployer plans, once were the pillars for creating a sound retirement income for workers in this country. The sad reality today, however, is that countless numbers of businessmen and women will not offer them to their workers because of the onerous rules and liabilities that attach to them under ERISA and MPPAA.

The basic elements of opportunity and incentives are missing from the equation. Meaningful reforms of the law, as discussed above, can revitalize these plans. Without change, the plans will continue to decline in numbers, in financial strength and as retirement vehicles for workers.

The Alliance sincerely appreciates the opportunity to address this important issue with the Senate Subcommittee on Retirement Security and Aging. We will do all we can to assist you in this difficult, but critical, decision-making process. This is the single most important legislative issue confronting unionized trucking companies. It is not an overstatement to say change is necessary for the very survival of the smaller, family-owned, union trucking company members of the Alliance.

Respectfully Submitted,

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