Pension Protection Act of 2006: Collective Bargaining & Other Implications

Presented to:

BCTD Legislative Conference

March 26, 2007

By:

Randy G. DeFrehn
Executive Director
NCCMP

Marc. E. LeBlanc
Administrator
Sheet Metal Workers
National Pension Fund

Judy Mazo
Sr. Vice President
The Segal Company
THE NCCMP

A non-partisan, non-profit advocacy organization Established in 1974 to

• Lobby
• Educate
• Advocate
• Defend
• Support
Who Are the NCCMP Members?

- Approximately 200 groups representing over 600 individual funds
- Membership spans virtually every part of the economy with multiemployer plan benefit structures
- Plans include groups from 26 international unions and corresponding employer associations
Today’s Focus

• Legislative / Public Policy:
  – Pension Production Act of 2006
  – Technical Corrections to PPA

• Proposals for Universal Health Care
EXPECT TO HEAR

- Remain Competitive / Retain Market Share
- Unfunded / Withdrawal Liability
- Ownership Society
- Defined Benefit Plans are Dead, Too Expensive, A Relic of The Past
- Allocations must be bargained
- Let’s Get Rid of Everything We Can for the Terminated Vested Group
- When / How Can We Terminate the Plan?
Expect to Hear

This Law Was Written to Favor the *Unions*

• Expect Them to Be Totally Unreasonable

• They’re Not Going to Accept anything but Higher Contributions

• Expect a Strike!
EXPECT TO HEAR

This Law Was Written to Favor the Employers

• They Won’t Accept Anything but the Default Schedule

• They’ll Only Agree to Maximum Cuts in Benefits
Designed to Prevent Disintegration of Multiemployer Plans

Would not have been independently designed or endorsed by either Labor or Management but was achieved with the agreement of both

The Alternative Was Unacceptable...
Your retirement is safe. We rebuilt the levee!
PPA

- Affects all pension plans
- Most egregious provisions apply to single employer plans
- Multiemployer provisions are more favorable because of joint labor — management support
Pension Protection Act of 2006 (PPA)
### Comparison: Multiemployer vs. Single Employer Pension Reform Rules

<table>
<thead>
<tr>
<th></th>
<th>Multiemployer</th>
<th>Single Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Faster Funding</strong></td>
<td>• 15-year amortization for benefit increases &amp; assumption changes</td>
<td>• 7-year amortization for everything including accrued benefits</td>
</tr>
<tr>
<td></td>
<td>• If funded above 80% no mandatory targets</td>
<td>• 100% funding target (phased in)</td>
</tr>
<tr>
<td><strong>Credit Balances</strong></td>
<td>• No change in way they are used</td>
<td>• Greatly restricted used of credit bal.</td>
</tr>
<tr>
<td><strong>Smoothing</strong></td>
<td>• No change from current 5 year smoothing</td>
<td>• 2 year smoothing for assets, interest rates</td>
</tr>
<tr>
<td><strong>Interest rate, mortality</strong></td>
<td>• No change interest &amp; mortality assumptions still set by actuary with input from trustees</td>
<td>• Specified interest rate 3-segment yield curve</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Uniform updated mortality, for underfunded plans</td>
</tr>
</tbody>
</table>
## Comparison: Multiemployer vs. Single Employer Pension Reform Rules (cont.)

<table>
<thead>
<tr>
<th></th>
<th>Multiemployer</th>
<th>Single Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Faster IRS relief</strong></td>
<td>• Yes – Automatic 5 yrs</td>
<td>• No Change from current rules</td>
</tr>
<tr>
<td><strong>Higher Deductions</strong></td>
<td>• 140% current liability</td>
<td>• 150% funding target</td>
</tr>
<tr>
<td></td>
<td>• 25% of Compensation Combined Limit Repealed</td>
<td>• 6% or 25% DC contribution okay</td>
</tr>
<tr>
<td><strong>Underfunded plans, in general</strong></td>
<td>• “Yellow-zone” rules</td>
<td>• If less than 80% underfunded, no benefit increases</td>
</tr>
<tr>
<td><strong>Seriously underfunded plans</strong></td>
<td>• “Red-zone” rules</td>
<td>• At-risk plans - no benefit accruals, tougher funding requirements</td>
</tr>
<tr>
<td><strong>Disclosure</strong></td>
<td>• More</td>
<td>• More</td>
</tr>
</tbody>
</table>
PPA
Multiemployer Provisions
PPA –
Multiemployer Provisions

• **Objective is to:**

  – IMPROVE THE FUNDED POSITIONS OF PLANS; AND

  – PROTECT PLANS, PARTICIPANTS AND CONTRIBUTING EMPLOYERS FROM THE DISASTROUS CONSEQUENCES OF ERISA’S FUNDING DEFICIENCY RULES
PPA – Multiemployer Provisions

• Largely based on proposal negotiated over approximately 8 months by members of the Multiemployer Pension Plan Coalition — a group of over 50 labor, employer and trade organizations - formed, funded and coordinated by the NCCMP to lobby for multiemployer pension relief
Designed to Prevent Disintegration of Multiemployer Plans

**Motivating Factors:**

- *For Employers, Extra-contractual contributions and excise taxes from Funding Deficiencies would lead to*
  - Employer bankruptcies,
  - Voluntary withdrawals
  - Plan failures
Designed to Prevent Disintegration of Multiemployer Plans

- **Motivating Factors:**
  - For Labor
    - Plan failures
    - Significant benefit reductions to meager PBGC guarantee levels for all participants and retirees and
    - No plans for future generations
Overview of Provisions

• **Restores Trustee and Bargainers’ flexibility to salvage severely under funded plans**

• **Protects normal retirement benefits at Normal Retirement Age**

• **Protects Employers From Sanctions**

• **No Panacea** – Tough Medicine to Protect Plans, Participants and Employers

• **Imposes a notion of “Shared Pain”**

• **Traffic Light Analogy**
Broad Requirements

• “Green Zone”
  – 70% of funds
  – Changes Amortization Period for Benefit Improvements & Assumptions from 30 to 15 yrs
  – Automatic 5 yr Amortization extensions
  – Increased max deductible to 140% of old limits
Broad Requirements

• “Yellow Zone” or “Endangered”

- 20 to 25% of funds
  - Facing funding deficiency > 7 yrs
  - Less than 80% funded
- Requires adoption of Funding Imp Plan
- Imposes funding benchmarks to be met over 10 yrs (generally)
- Restricts certain benefit improvements
- Prohibits acceptance of contracts that reduce participation or contribution rates
- Interim Steps required for Seriously endangered plans
Broad Requirements

“Red Zone” Or “Critical Status” plans

- 5 - 10% of funds
- 5 triggers in 3 areas
  - Solvency
  - Funding Deficiency
  - Demographics
- Certification & Notice Requirements
Broad Requirements

“Red Zone” Or “Critical Status” Plans

—Shared Pain—

• Employer Surcharges
• Benefit restrictions imposed

—Participant Protections

• 1% Floor on Accruals
• Normal Benefits preserved at Normal Retirement Age
• Contributions [Benefits] Subject to Bargaining
BROAD REQUIREMENTS
“Red Zone” Or “Critical Status” Plans

- Trustees required to adopt a Rehabilitation plan
  • Must emerge from Red Zone within 10 yrs and defer deficiency for 10 more
- Must provide Bargainers with at least one schedule (default)
  • Benefits affordable under currently negotiated Contributions
  • May adjust “non-core” benefits
    - Subsidized early retirement
    - Subsidized Survivor Benefits
    - Pre-retirement Death Benefits
BROAD REQUIREMENTS

“Red Zone” or “Critical Status” Plans

EXPOSURE:

— Excise Taxes and/or civil penalties apply for failure to adopt plans

— Plans & Employers that live up to requirements are protected from minimum funding deficiency sanctions

— Excise taxes still apply in limited circumstances
  
  • Failure to meet benchmarks for 3 consecutive years
  
  • Failure to meet benchmarks by end of period
Implications For You

- **Excise taxes** apply to employers who **Refuse to comply with a schedule that meets requirements of rehab plan**

- **Projections** that determine which zone a plan will fall into may be a source of Conflict (e.g. hours assumption) (How Deep to Cut?) and possible civil penalties if not adopted on time

- **Effective date of benefit modifications** is tied to future bargaining — may have significant retroactivity to those who retire after notice of critical status is given
  - Implications for term of agreement
  - Implications for possible re-openers
Implications For You

- **Concern by Employers over Funding Levels** will create pressure to eliminate tradition of the Union Allocation of wage package.

- **Reduction of benefits for terminated vested participants** may sweep in signatory contractors who left covered employment.
Implications For You

- **Additional Disclosure to all Stakeholders will:**
  - Increase questions from and engage many who had previously been unaware of funding issues
  - Increase the likelihood of “Second Guessing” or “Monday Morning Quarterbacking” with respect to decisions made by Board
  - Increase the opportunity for “mischief” by Political Opponents of current Union Leadership
Implications For You

• **Higher Maximum Deductible Limits**
  
  - Likely to make benefit improvements more difficult to negotiate
  
  - Debate for well funded plans will be over “How much is enough” to provide buffer against market downturns
Implications For You

• **Bill is extremely complex**
• **It imposes grave new obligations on Trustees and Bargainers**
• **Learn as much as you can**
  ‒ About the law
  ‒ About your plan’s status
  ‒ **Eliminate Barriers to Trustee Education**
**Implications For You**

- **Begin the dialogue between the Trustees and Bargaining Parties and between the parties themselves - Do it Now!**
  
  — *Reduce opportunity for rumors to poison negotiations*
  
  — *Earlier action will reduce amount of any required new contributions and depth of benefit reductions that will be the source of conflict*
Technical Corrections

• Needed to resolve issues that got “lost in translation” when 900+ page bill was drafted

• Still debating whether bill will include only truly “Technical” issues or broader policy issues related to “Congressional Intent”
Technical Corrections

• Issues to be addressed:
  - Permitting continued payment of Soc Sec Level income option benefits in pay status before a plan reaches critical status
  - Clarification that only one schedule is required in both Endangered and Critical status
  - Need to resolve “Rovolving Door” problem of exit and reentry to Critical Status
  - Need to remove disincentive to make meaningful changes as soon as possible by recognizing such efforts negotiated before imposition of surcharges
Technical Corrections

• ISSUES TO BE ADDRESSED: Yellow Zone

– Eliminate “Flip-Flopping” by:
  • Clarifying that a plan that goes into “Seriously Endangered status will be subject to the 20% over 15 years benchmark for the entire time it remains “Yellow”; or
  • Eliminating the 80% trigger
    – Would eliminate need to distinguish between Endangered (“Yellow”) and Seriously Endangered (“Deep Yellow”) Plans
    – Would cut the number of Yellow Zone plans by more than half
    – Would seek to have all Endangered plans facing a funding deficiency use “Seriously Endangered rules and benchmarks
Technical Corrections

• Issues to be addressed: **Yellow Zone**
  
  – **Revise “Interim Steps”** to clarify that Benchmarks should “Stabilize” the funded Status of a Plan rather than Achieve specific goals
  
  – **Clarify that Progress towards recovery need not be linear, but consistent with Funding Improvement Plan**
  
  – **Eliminate Prohibition on bargained rate reductions while Under a Funding Improvement Plan.**
  
  – **Extends Prohibition against negotiating out new hires during FIP to Rehab Period for Critical Status Plans**
Proposals For Health Care Reform
Health Care Reform

• Administration Proposal:
• Tax Treatment of Health Benefits
  — Objective is to expand coverage through tax incentives
  — As proposed, will actually decrease coverage by allowing employers to drop coverage pushing employees into individual markets
WHY???
Health Care Reform

• Administration Proposal:
  – First $15,000 of income for families ($7,500 for individuals) not taxable
  – Deduction applies regardless of amount spent
  – Will push younger & healthier to lesser plans forcing costs higher for those with needs
  – 2/3 of uninsured make less than $10,000 (individuals) or $20,000 (families), pay no taxes and still have insufficient income to buy coverage
Health Care Reform

• Universal Health Care Bills
  — AmeriCare Health Care Act
    • Stark – HR 5886 (109th Congress)
    • Expansion of Medicare
    • Cost sharing with employers (80-20)
    • Employer must either offer equivalent plan and pay 80% of premium or pay 80% of premium for AmeriCare
    • Private Health Plans can continue to participate in Medicare and supplement coverage
    • Eliminates Tax Favored Status of Employer Sponsored Benefits
Health Care Reform

• **Universal Health Care Bills**
  - **U.S. National Health Insurance Act**
    • Conyers – HR 676 (109th Congress)
    • Expanded & Improved Medicare for all Act
    • Eliminates Medicare, Medicaid, SCHIP, FEHBP and CHAMPUS
    • Substitutes US National Health Insurance Program
    • Public funding from Existing federal sources
    • Global Budgets, fixed reimbursement rates for providers, modest payroll & increased income taxes for wealthy, small tax on stocks & Bonds
Health Care Reform

• Universal Health Care Bills
  – Medicare for All Act
    • Kennedy/Dingell – S 2229/ HR 4683 (109th Congress)
    • Expanded & Improved Medicare program
      – Better drug coverage
      – Coverage for Children, preventive services, home and community based care
    • Can also choose coverage under FEHBP
  • Cost Sharing
    – No premiums for individuals enrolled in Medicare
    – FEHBP covered individuals will receive subsidy up to Medicare Premium and must pay difference
Health Care Reform

• Universal Health Care Bills
  – Health Care For America (not Currently Proposed Legislation)
    – Combination of existing employment based system supplemented with national risk pool
    – Requires Mandate on Employers & Self Employed
    – Must offer equivalent plan or contribute to HCFA Risk Pool (6% of payroll)
    – Anyone not covered by employment based program buy private insurance or buy into HCFA Program
    – Consolidated purchasing will influence both costs and quality of health care
Health Care Reform

• Catastrophic Coverage Proposal

• Keep America Competitive Tax Credit Act
  – Stabenow
  – Would provide employers tax credits for 50% of claims over $50,000
  – Structural problems for multiemployer plans
    • Problem allocating tax credits
    • Proposed in MMA for subsidy to go to employers
    • Indirect benefit to employers if plan gets refundable tax credit
Who Makes it Possible to Protect our Plans?

• Our Members!
• Funding comes from Member Dues
• Participation is critical
JOIN THE NCCMP!

Member Benefits:

• The latest on benefit issues as they develop
  - Discounted Conf. Registration Fees
  - Input on issues affecting your plans!

• A better chance to:
  - Protect the interests of all stakeholders in multiemployer plans
  - Minimize government interference with plan operations
Annual NCCMP Events

Lawyers’ and Administrators’ Meeting
April 10, 2007
AFL-CIO Headquarters Building
815 16th Street, N.W.
Washington, DC

2007 Annual Conference
September 15 – 19, 2007
Westin Diplomat Resort and Spa
Hollywood, Florida