A Hitchhiker's Guide to Taft-Hartley

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Welcome to the arcane world of multiemployer defined benefit pension plans. "Multis" are often called Taft-Hartley plans, after senators Robert Taft of Ohio and Fred Hartley of New Jersey, co-sponsors of the 1847 Labor-Management Relations Act. Just don't call them union plans, or risk rankling labor executives, who are quick to explain that these collectively bargained plans are managed by boards of trustees staffed with equal numbers of union and employer representatives. But keep in mind that a typical ten-member Taft-Hartley pension fund board consists of five trustees who are members of the same union and five trustees who likely represent competing employers in the same industry.

A cluster of confounding pension rules and regulations began seriously gumming up the multiemployer pension works when financial markets took a nosedive in 2008. Increased employer bankruptcies and unemployment were heaped onto already stagnating union membership rolls. But even before that market melt-down, pension law and multiemployer plans had a trouble relationship.

"The complex web of rules that govern multiemployer pensions are part of the problem," asserts Michael Sullivan, general president of the Sheet Metal Workers International Association in Washington and chairman of the board of the Sheet Metal Workers' National Pension Fund. "Over the years I've seen the goalposts keep moving because we have too many regulatory groups involved – the Department of Labor, the Internal Revenue Service and the (Pension Benefit Guaranty Corp.)" Adds Kenneth Hoffman, an employee benefits specialist attorney at Washington-based law firm Venable, "Multis are so different from single employer, it's difficult to understand the rules."

First came the Employee Retirement Income Security Act, better known as ERISA, passed in 1974 to regulate private pension funds, including Taft-Hartleys. A weakness in the law soon became evident when employers who paid into the multi plans on behalf of an often time, mobile union workforce ceased contributing to the plans, leaving employees in the lurch.

The Multiemployer Pension Plan Amendment Act of 1980 was passed to force employers in these plans to keep their pension promises. It ensured that if one company went out of business, the remaining employers in the plan would have to pick up the pension contributions for the unemployed workers, or "orphans." It also required an exitting employer to cover its liabilities before withdrawing from a plan. When all employers but one have either gone bankrupt or bought their way out of a multiemployer fund, that last employer is, in Taft-Hartley parlance, "the last man standing."

"The price of success is to pick up all the liabilities of your competitors," observes Thomas Nyhan, executive director of the Teamsters' Central States Southeast and Southwest Areas Pension Fund in Rosemount, Illinois.

ERISA created the PBGC to protect pensions through an insurance program. But it wasn't to be of much use to Taft-Hartley plans. PBGC aid to multi plans has always been in the form of loans rather than out-right plan takeovers, and multiemployer boards still government the funds. Taft-Hartley plan sponsors have always paid less into the PBGC insurance program: currently, $9 per year per participant, versus $35 per participant in single-employer plans. Benefits are comparably structured, with union retirees receiving about $12,870 annually for an employee with 30 years' service, compared with a $54,000 maximum for single-employer retirees.

The MPPA required departing employers to pay up their liabilities rather than ship them off to the PBGC. The more underfunded a plan was, the greater the withdrawal liability would be; but historically, very few multiemployer plans have relied on the PBGC for succor. In fact, since 1980 only 59 multi plans have called on the PBGC, for total relief of $417 million, versus roughly 3,850 single-employer plans and $39.4 billion. "Multiemployer pension plans have performed the role of the PBGC for many, many years," says Judith Mazo, director of research in consulting firm Segal Co.'s Washington office.

One of the primary causes of today's Taft-Hartley pension crisis has been the Pension Protection Act, signed into law in August 2006. The PPA changed pension funding rules: A present-day snapshot was no longer adequate to determine funding levels; plans must project future liabilities and take remedial action to cover the future funding requirement. Depending on the severity of the asset-liability gap, pension trustees would have to report the fund's status annually, the idea being that the sooner the problem was identified, the sooner it could be fixed. The hard part: Any protected asset-liability shortfall would have to be paid off a lot sooner than is often possible.

Inspired by the security color code created in the aftermath of the September 11, 2011, terrorist attacks, a multi fund was considered to be in the "green zone" if it was at least 80 percent funded and "endangered" in the "yellow zone" if it was between 65 and 80 percent funded. Plans with less than 65 percent of the assets required to fund their liabilities were termed "critical" and placed in the "red zone," necessitating a ten-to15-year rehabilitation plan. Red-zone plans must also inform participants of possible reduction in income accrued benefits or adjustable benefits like disability payments or early retirement subsidies.

The PPA brought at least one positive change. It released employers from having to pay an excise tax when a fund passed the 100 percent funding mark. That old ERISA requirement kept plan sponsors from creating rainy-day funds during heady markets. Instead, they tended to pay out all the "extra" earnings in enriched benefits that, locked in through collective bargaining agreements, couldn't easily be reduced when the markets tanked. The new trigger became 140 percent (150 percent for single-employer plans), but when the markets sank in 2008 and early 2009, the previously thin coffers were quickly emptied.

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The U.S. Department of Labor (DOL) lists critical and endangered multiemployer pension plans here: http://www.dol.gov/ebsa/criticalstatusnotices.html