Multiemployer Pension Plans Face Uncertain Future
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A devastating confluence of events is threatening the viability of hundreds of multiemployer plans.

Thomas Nyhan's job keeps getting tougher. As executive director of the Central States Southeast and Southwest Areas Pension Fund, Nyhan is responsible for making sure that 454,000 retired Teamster truck drivers receive their monthly pension checks. Last year, Nyhan paid out a whopping $2.7 billion in benefits due to Central States' retirees and their beneficiaries. The problem is, with only 65,000 active truck drivers contributing to the pension plan and only $19.1 billion in its coffers — down from a high of $26.8 billion in 2007 — it is just a matter of time before the Rosemount, Illinois–based fund executive can no longer write those checks.

"It's like a tsunami coming off the shore — you can see it," says Nyhan.

But shrinking assets tell only half the story at Central States. On the other side of the collectively bargained plan sit the employers, mostly small trucking companies — about 2,000 at last count — as well as two very large ones, YRC Worldwide and ABF Freight System. Trucking companies both large and small that signed on to Central States to provide benefits for their drivers are being reamed by cutthroat competition, mostly from nonunionized employers that do not offer a union's generous array of benefits. Escalating pension contributions threaten to put already suffering companies like YRC, which has been teetering on the brink of bankruptcy since 2007, over the edge. Last August, during negotiations with the International Brotherhood of Teamsters, the union granted the Overland Park, Kansas–based trucking company an 18-month reprieve from paying into Central States. According to trucking industry experts, ABF Freight, the biggest unit of Arkansas Best Corp., has requested similar treatment.

The Central States fund is not alone in its struggle to provide retiree benefits. In mid-2009, after the previous year's devastating market rout, the 385 largest multiemployer pension plans, including Central States, represented an estimated $250 billion in assets, down from $392 billion at the end of 2006, according to the Washington-based National Coordinating Committee for Multiemployer Plans. But there are also hundreds of smaller plans. In total, the Pension Benefit Guaranty Corp. counts 1,500 multiemployer plans and 10.1 million union member retirees and participants in its insurance program.

A devastating confluence of events — economic, sociological and regulatory — is threatening the retirement security of millions of union workers while creating financial hardship for tens of thousands of employers. Market losses, growing unemployment, diminished union membership, pension regulation that backfired and rich benefits negotiated in halcyon times are creating a potent mix that is choking the viability of hundreds of multiemployer plans, the name given to union-sponsored pension funds, also called Taft-Hartley plans. Labor industry leaders warn that unless drastic measures are put into place — a painful blend of benefit cuts, increased employer contributions and legislative action — the unionized labor force, which represents 20 percent of all defined benefit participants, is on the fast track to becoming a colossal taxpayer burden.

"The events of 2008 shattered the illusion of safety," says Richard Epstein, a law professor at the University of Chicago. "You're looking at a catastrophe in 2020."

Part of the problem has been the steady decline in union membership. Central States, for example, had 8,000 participating employers in 1980, before industry deregulation passed that year made it easier for nonunion trucking companies to compete. Nyhan says that by the time he took on the role of director in 1985, the fund was already in trouble. Although the bull markets of the 1990s helped the fund offset the loss in contributions as companies left the plan, the bursting of the tech stock bubble in the early 2000s delivered a near-fatal blow. After experiencing a $6 billion drop in total assets as a result of those market losses, operating expenses and benefit payments, the fund saw a further $6 billion eviscerated by the 2008 market meltdown. As it stands today, the Central States plan has almost no hope of funding all of its Teamster members' defined benefits down the road.

"We've been acting in the shoes of the PBGC for the past 30 years," says Nyhan of his fund's role providing benefits to retirees whose employers have gone bankrupt. "The plan and the remaining employers can no longer afford it."

Even as calls mount for public pension reform, the plight of multiemployer pension plans has gone largely unnoticed outside of union halls — in part because union officials and pension executives tend to be even more secretive than hedge fund managers. But the main reason is that there simply isn't a lot of readily available data about Taft-Hartley plans, because of the large number of very small funds. According to Segal Co., a New York–headquartered consulting firm with deep roots in the union world, "multi" funds range from the tiny, with perhaps 50 to 100 workers and two to four contributing employers in a local plan, to megaplans like the 33-state Central States. The average plan has 1,000 to 5,000 participants and assets of between $100 million and $250 million.

Big or small, most plans have suffered huge losses in assets during the recent financial crisis, and rebuilding them will take a long time. One way to measure pension fund health is by comparing current assets with future liabilities, or the amount of assets needed today to pay retirement benefits sometime down the road. For example, if a plan has 100 percent of the assets needed to pay off its future liabilities, it is said to be fully funded. If a plan has 80 percent of the assets needed for future benefit payments, it is termed 80 percent funded, or 20 percent underfunded. In a September 2009 report, Moody's Investors Service estimated that the 126 largest multiemployer pension funds were only 56 percent funded. This is equal to a staggering $165 billion in unfunded liabilities.

Multiemployer funds face unique challenges in rebuilding their assets. Once an underfunded plan begins a regimen of remedies mandated by the Pension Protection Act of 2006 — increased employer contributions, benefit cuts or both — they cannot be undone until the plan recovers. Such long-term, inflexible fixes can threaten an industry and cause years of unnecessary losses to both employers and participants, warned Judith Mazo, Segal's director of research, in her testimony before the U.S. House of Representatives' Ways and Means Committee last October.

Mazo explains that the shrinkage of union penetration in the U.S. is another threat to multi funds. For example, according to the American Trucking Associations, before industry deregulation in 1980, 75 percent of trucking companies were unionized. Today fewer than 25 percent are union shops. Union workers made up 12.3 percent of all employed wage and salary workers in 2009, down from 21 percent in 1983, according to the Department of Labor's Bureau of Labor Statistics.

"The vast majority of liabilities are attributable to employees who aren't working anymore," asserts James Dexter, a pension expert in the Princeton, New Jersey, office of consulting firm Mercer.

An influx of new workers is needed to help pay current retiree benefits. In fact, some observers see the necessity of continually bringing new members into multiemployer plans as their biggest flaw. "Multiemployer pension plans are like a pyramid scheme," says Ken Margolies, director of organizing programs at the Cornell University School of Industrial and Labor Relations. Diana Furchtgott-Roth, senior fellow at the Hudson Institute in Washington, likens multiemployer plans to a "Ponzi scheme" that puts newly unionized workers into an underfunded pension plan. Margolies, who has worked with unions like the Teamsters and the Communications Workers of America, is pro-union, while Furchtgott-Roth, a former chief economist at the Department of Labor, is decidedly not. Still, the point is clear.

"This is a snowball that's going downhill, and the only way to stop it is to throw live bodies of current workers in front of it," asserts University of Chicago's Epstein.

The threat of a downward spiral of ever-increasing contributions and diminished employee benefits in the Central States pension fund prompted the management of United Parcel Service to make a bold move. Every five or six years, UPS negotiates a full plate of benefits — health and welfare, pensions and wages — in a master contract with the Washington-based International Brotherhood of Teamsters that covers 240,000 of its brown-garbed drivers, who participate in 21 multiemployer plans. When national contract negotiations opened in 2007, the company decided to buy its way out of beleaguered Central States. "We realized the pension levels and benefits due these drivers were in jeopardy because of the application of a new law [the PPA] and the need to maintain a certain level of financial stability," explains Norman Black, spokesman for the package delivery company, long the largest employer in Central States, with 44,000 participating drivers.

But there was a bigger problem. Over two decades, as 6,000 contributing employers exited the Central States plan, UPS management was compelled by multiemployer laws to pick up the pension tab for employees who had never worked a day for the shipping giant. By 2007, UPS had had enough. As part of its negotiations with the Teamsters, the company agreed to pay $6.1 billion to exit the Central States fund. The one-time payment allowed UPS to withdraw all 44,000 employees, while remaining in 20 other Teamster funds.

But the $6.1 billion windfall was soon wiped out in the market downturn. "UPS and the investment losses were just crippling," says Nyhan, whom Central States first hired as an outside litigator to prosecute lawsuits arising from massive employer bankruptcies in the early '80s. In 1985 he traded litigating for fund management.

The UPS buyout was unique in its size and scope. "You can buy your way out, but it's expensive," says Barbara Bovbjerg, director of education, workforce and income security issues at the Government Accountability Office in Washington. Bovbjerg has started work on updating the GAO's 2004 report on multiemployer pensions, requested by California Representative George Miller, chairman of the House Education and Labor Committee.

Employers large and small are struggling to keep up with regular contribution payments and, unlike UPS, cannot afford a withdrawal liability payment of any size. In fact, says Jack Abraham, an actuary and partner at PricewaterhouseCoopers in Chicago, "Most small employers don't know what they've got themselves in for." Those that do, from small trucking companies to corporate giants like FedEx Corp., are pushing back on union membership.

Dick Herman began driving pneumatic tanker trucks for L.J. Beal & Son out of Jackson, Michigan, in 1972. A careerlong Teamster who turns 64 this month, Herman began the ten-year vesting process to qualify for a pension from Central States that same year, as a member of Local 166. In 1988 he moved to Yellow Freight System (now YRC Worldwide) and transferred his Teamster membership to Local 299, famously Teamster boss Jimmy Hoffa's branch in Detroit. Transferring his Central States pension account took Herman a bit longer than switching his local union affiliation. The former driver, a member of watchdog group Teamsters for a Democratic Union, fought for reciprocity and won. His "30 [years] and out" pension now pays him $3,000 a month. Despite the asset losses to Central States and YRC's precarious health, Herman, who retired in 2006, is not concerned about his pension. "From what they tell us, ones that are already drawing are set," he says.

Herman is aware that YRC has ceased paying into the Central States fund. "Guys that are still working, I'm not sure where they're at," he acknowledges. "Right now they're not getting any credit for the time they're working."

Plan portability and reciprocity between employers paying into the same plan are two of the key advantages of multiemployer pensions, created especially to benefit workers in construction, trucking and other industries where job changing is endemic. To ensure that Herman and hundreds of thousands of present and future retirees continue to enjoy those benefits, Central States fund director Nyhan has signed on to the NCCMP Multiemployer Plans Coalition to add his voice to pension rescue efforts now under way in Washington.

Michael Sullivan, general president of the Sheet Metal Workers International Association, has also joined the coalition. Sullivan, who began his career in 1965 as a sheet metal apprentice in his hometown of South Bend, Indiana, has dedicated most of his adult life to the union, which today boasts a total of 150,000 skilled craftspersons. “On this issue it is so pressing that I stepped out of character,” admits Sullivan, who generally has tried to avoid the spotlight since taking the job in 1999. “We meet often in times of crisis.”

The recent crisis has taken a chunk out of the Sheet Metal Workers’ National Pension Fund, whose assets declined from $3.3 billion in October 2007 to $2.3 billion at the end of March 2009, before bouncing back to $2.8 billion by the end of last year. As chairman of the board of trustees of the fund, Sullivan has been on an all-out campaign to preserve pension benefits for his union’s workers. It’s no surprise to learn that his lifelong devotion to the SMWIA is a family affair: His father’s and uncle’s memberships combined totaled more than 110 years. Last fall, Sullivan testified before the Department of Labor’s Advisory Council on Employee Welfare and Pension Benefit Plans on the pressing need to rescue troubled plans.

Both Sullivan and Nyhan face daunting odds, as the construction and trucking industries have the most-battered multiemployer pension funds, according to Moody’s. Today there are 75,000 actively employed members and 42,000 retirees and beneficiaries, who receive a combined $33 million a month in benefits from the Sheet Metal Workers’ National Pension Fund, administered since 1995 by Marc LeBlanc, former counsel to the fund. These numbers are typical for the construction industry, where the ratio of active employees to retirees is less than two to one, down from an industry average of four to one 20 years ago.

Sullivan is worried because the Sheet Metal Workers’ plan’s funding ratio plummeted to just 48.9 percent in January owing to shrinking employer contributions and ongoing benefit payments on top of a 27.9 percent portfolio loss in 2008. These problems meant that even though returns recovered substantially last year, it was not enough to lift the fund out of the “red zone.” Plan documents indicate that the well is anticipated to go dry by December 31, 2012. The serious asset deficiency can be traced to the benefit structure implemented between 1966 and 1990, which turned out to be unsustainable, explains LeBlanc. When union membership did not grow as hoped, assets reached a point where contribution income wasn’t enough to fund the benefits. Liabilities assumed from the more than 30 local SMWIA plans that merged into the national fund between 1967 and 1999 exacerbated the problem.

“It gave you an influx of capital but in many instances didn’t end up being a big payday,” says LeBlanc, who is also serving a three-year term as vice chairman of the Department of Labor’s Advisory Council on Employee Welfare and Pension Benefit Plans.

Employers that pay into the fund are also worried. As with other construction industry union plans, the Sheet Metal Workers’ National Pension Fund is dominated by small-business owners, many of whom are former workers still vested in the national or local funds, according to officials at the Sheet Metal and Air Conditioning Contractors’ National Association in Washington. The group’s membership earlier took some corrective steps when it saw problems with funding levels in anticipation of the PPA. “We had plans that contributed to national and local funds,” says Dana Thompson, director of political affairs and assistant director of legislation for the trade group. “Some of our contractors have been hit on two levels.”

Unions have been steadily losing market share, which hurts pension contribution rates and contractor liability. Though employer contributions into the Sheet Metal Workers’ plan were down an estimated 15 percent in 2009 as employment and hours worked dropped, employers still must make up the shortfall. “Contributions to the plan are frankly unaffordable,” says Deborah Wyandt, executive director of labor relations at SMACNA. “It’s putting a hardship on everyone.”

“Employers are on the hook for the unfunded liability,” says Craig Dobbs, institutional consulting director at Graystone Consulting, a unit of Morgan Stanley Wealth Management that runs a manager-of-managers program for the Sheet Metal Workers’ national fund. Dobbs was hired ten years ago to manage the portfolio, now one of about 50 Taft-Hartley plans under his roof. “When you have a plan like the Sheet Metal Workers’, you have a lot of catching up to do,” Dobbs explains. With employment down he is looking to years of superior portfolio performance, and help from Washington, to improve the bottom line. Dobbs figures it will take 12 years with a 7.5 percent annual return assumption to grow assets back to an 80 percent funding level. But fund administrator LeBlanc believes that return assumption is too high. “When I started, our funds were at 6 percent [return assumption], and I felt that could be high,” he says. “When you increase the actuarial assumption — that seems to have been a problem.”

Although the Central States’ and the Sheet Metal Workers’ plans are among the hardest-hit multiemployer funds, many that started 2008 in the “green zone” are now underwater as well. Out in Pasadena, California, the Operating Engineers Funds’ pension portfolio began 2008 in the green zone, at 88 percent funded. Unlike other multi funds, Operating Engineers escaped the downturn in 2001–’02, partly because of its outsize real estate portfolio, explains Michael Graydon, a former Segal consultant who has managed the fund since 2008. Not surprisingly, that portfolio, which accounts for 36 percent of the $1.7 billion pension fund, was down 30 percent for the fiscal year ended June 30, 2009. The entire fund was off 25 percent, enough to send it spiraling into the red zone, with a 64 percent funding level. “We’re at the epicenter of the real estate downturn,” says Graydon, whose fund trustees recently hired a new consultant, Cambridge, Massachusetts–based NEPC, to overhaul the asset allocation.

Now that the stock market is no longer seen as a panacea for ailing pension funds, all eyes are on Washington. Representative Earl Pomeroy, a Democrat from North Dakota, is cosponsoring the Preserve Benefits and Jobs Act along with Ohio Republican Patrick Tiberi. The bill centers on relief from the Pension Protection Act’s amortization schedules. “The PPA forces you to take aggressive snapshots,” says Stephen Abrecht, executive director of the Service Employees International Union Master Trust in Washington. “Nobody thought the equity markets would collapse by 40 percent. It wasn’t in the calculus.” PB&J would allow plans to take more time to fully fund themselves, giving employers more cash to save and create jobs. In early February, Treasury Secretary Timothy Geithner endorsed this idea for all defined benefit pension plans.

Not everyone is pleased. Many see the constant patches put on ERISA as just so many Band-Aids, not long-term solutions. “The Pomeroy legislation is a good effort, but it’s based on a short-term fix,” says David Blitzstein, director of the negotiated benefits department at the United Food and Commercial Workers International Union in Washington. The UFCW covers roughly 800,000 active workers and pays benefits to 400,000 retirees. Unlike their counterparts in the construction trades, most UFCW employers are large publicly traded companies such as supermarket operators Safeway and Kroger Co. Although the Securities and Exchange Commission doesn’t require corporations to reveal their multiemployer pension liabilities in their financial statements (as they must with their own corporate plans), Kroger’s 2009 10-K warned shareholders that these liabilities could double in the near term. The 125-year-old Cincinnati-based retailer, which boasts 2,500 stores in 30 states, has seen its multiemployer contributions increase at a rate of 6 percent a year since 2004, to $219 million in 2008.

Despite the PB&J’s short-term nature — it calls for temporary funding relief — Pomeroy is full steam ahead with his bill, which would provide some relief for multiemployer plans. “The multiemployer issues are even more complicated,” Pomeroy told Institutional Investor during a press conference in early February. “We do provide several provisions for multiemployer pension plans,” including a ten-year increase in the amortization of underfunding by plans. Pomeroy is looking to March 31 for a vote on the PB&J bill that he believes will provide $66 billion of “funding breathing room.”

There were two other features in the bill that address multiemployer plans, but they were removed because they’re not quite ready for prime time: plan partition and plan alliances. Plan partition would require the plan to get assistance from the PBGC in the form of a subsidy to help pay partial benefits before the plan reaches the point of “last man standing,” when there are no longer enough employers in an industry to support it.

The issue is starting to get some attention from lawmakers, says NCCMP executive director Randy DeFrehn, and Congress has begun trying to figure out how many plans would need this remedy. Of course, there is a cost attached to it — for starters, the PBGC is itself $22 billion underfunded, and employer payments would likely increase. DeFrehn’s coalition is also asking to increase the maximum multiemployer retiree annual benefits to $20,000 from the current $12,870.

Plan alliances may be the solution in the future, if DeFrehn gets his way. Alliances are conceived as a way for a group of multi plans to join together for economies of scale. But healthier pension funds worry that taking on their weaker brethren could harm their funding status. “We’re trying to find a vehicle to make mergers more attractive to receiving plans,” says DeFrehn. Alliances would put less pressure on the PBGC, be better for contributing employers and ensure that employee benefits wouldn’t be reduced to PBGC levels, says DeFrehn, who is framing this solution as “a win-win-win.”

The Central States plan has been cutting into benefits even as large employer YRC has ceased contributions, at least for now. On January 1, 2004 plan trustees reduced participant accruals — what they earn on a go-forward basis — by 50 percent. “For the same contribution rate, they get half the benefit,” reports Nyhan. Trustees also froze ancillary benefits such as early retirement.

“They are very expensive benefits, and we didn’t think we could afford them anymore,” Nyhan adds. “These were very unpopular moves with the membership and union, but trustees thought it was imperative they stop the liability creep and allow the markets to come back.”

Sullivan, who’s fighting to keep his union’s pension promise for both his family and his fellow workers, is pleased that DeFrehn is leading the charge to rescue multiemployer pensions. But Sullivan is also calling for a halt to the patchwork ERISA fixes and a wholesale overhaul of the outdated 1974 law. He envisions a presidential commission “to put people in a room and give them a year or two to address the problem, rather than just fix it crisis to crisis.”

Sullivan is on to something. ERISA has increasingly become a relic of a bygone era, a time when General Motors Corp. and Ma Bell ruled the day and workers expected lifetime employment. Deregulation, oil shocks, global competition, complex financial instruments and a brave new world of technology have changed the employment landscape forever. Now it is time to consider changing how retirement security is meted out, in a way that benefits both employers and employees. Given enough time, a working group of big thinkers, pension industry gurus, employee and employer representatives and voices from all sides of the pension debate just might be able to forge an ERISA 2.0 that would fit the economic reality of the 21st century.

While Capitol Hill has been taken up with the health care bill, pensions have gotten short shrift. But Sullivan is not giving up any time soon. “I’m doing my own thing because I see the necessity for it,” he says. “I just hope some group in Congress will listen.”