Funding the Multiemployer Pension Plan in the United States

by John A. MacDougal Jr. (USA)

Introduction

The role of multiemployer plans, the funding of these plans, and the impact of funding legislation on the operation of these plans, presents an interesting subchapter in the history of funding pension plans in the United States. This history also serves to illustrate that legislating funding requirements and assigning withdrawal obligations may leave much to be desired if the development of soundly financed pension plans is a desirable social goal, however the actuary or other interested parties may interpret the term "soundly financed pension plans."

This paper will serve to review this history, albeit briefly, and present for the consideration of the reader some concerns and problems that have developed with respect to the multiemployer plan in the United States.

Before proceeding further, it is appropriate to define some of the abbreviations used here and which are now common jargon in the United States.

1. ERISA — Employee Retirement Income Security Act of 1974 which was signed into law on September 2, 1974 and generally applies to all pension plan years commencing on or after January 1, 1976 insofar as funding requirements are concerned.
2. PBGC — Pension Benefit Guaranty Corporation established under Title IV of ERISA to administer plan termination insurance.
3. MEPPAA — Multiemployer Pension Plan Amendments Act of 1980 which substantially amended the impact of ERISA and the operation of PBGC insofar as multiemployer pension plans are concerned.

The Characteristics of the Multiemployer Plan

The multiemployer plan has filled a very special role in the United States since World War II. These plans cover approximately 8 million workers and represent slightly more than 25 percent of all workers covered by private defined benefit pension plans.

A review of the general characteristics of the multiemployer plan will bring out the basis for its special role in providing pension benefits to US workers.

1. The plan is a direct result of the collective bargaining process between labor and management.
2. The plan is sponsored and managed by a board of trustees comprised of an equal number of management and union trustees. In some few trusts there is provision for one additional trustee representing the public who serves to resolve deadlocks between management and union trustees.
3. The industries in which the plan has been adopted are characterized by small employers, among whom there is a high level of business failure and/or terminations, and secondly, a high level of mobility among member businesses within a given geographical area. Although there have been deviations in some multiemployer plans, this continues to be an important characteristic in the traditional multiemployer plan.
4. The existence of the plan reflects the implementation of a desire by labor and management to provide retirement benefits to empoloyees in the industry on a basis which will maintain competition while recognizing the responsibility of the industry to its employees.
5. The liabilities of contributing employers before ERISA were defined in terms of fixed contribution commitments related to units of employment or compensation, pursuant to the terms of applicable collective bargaining agreements.
6. From the date of establishment of the plan, full portability is provided to covered employees who move within the jurisdiction of the plan and, quite often, throughout an industry as a result of reciprocity agreements established among the plans existing in an industry. Accrued benefits are quite often protected in the case of the promotion of an employee out of the collective bargaining unit, so long as he remains with the employer who gave him this promotion.
7. Participating or contributing employers may come and go, but the benefit expectations of the participating employees are underwritten by the total fund. This assurance is indirectly provided as a consequence of a periodic review of the level of benefits provided by the contribution commitment of the participating employers. This pooling arrangement is, in effect, spread over all participating employers over the life of the plan.
8. Plans were and are designed to recognize the special attributes of the industry as they affect the covered employees working therein.
9. In certain industries, the plan was forced by economic necessity to concentrate on benefits payable at or after age 65. This emphasis recognized the plight of employees retiring from such industries. The priority was not selective, but painfully obvious to concerned labor and management.
10. Records are, of necessity, centralized. Boards of trustees establish administrative offices designed to administer the needs of the plan and the employees covered by the plan. The high termination rate of many participating employers necessitates this centralization of administration.

Given the preceding characteristics, one can reasonably conclude that the multiemployer pension plan falls in a separate and unique category of pension plans. The existence of the multiemployer pension plan has made retirement benefits over and above those provided by Social Security available to many employees who would otherwise have no such benefits.

The reader familiar with ERISA will realize that some, but not all, of the above characteristics were incorporated into the Act in 1974.

Funding the Multiemployer Plan before 1976

The collective bargaining process between the union and the concerned employer association(s) established the financial commitment to the underlying trust on the part of the contributing employers. This commitment, in turn, was the basis for the plan of pension benefits provided by the trust.

What funding standards were applicable in setting the benefit patterns of these plans? There were relatively few statutory standards. Those statutes that did exist were the result of regulations established by the Internal Revenue Service based on rather broad interpretations of the Internal Revenue Code of the time. The plan administrator was expected to certify, pursuant to IRS regulations, that contributions to the fund or trust during the period of the collective bargaining agreement were sufficient to:

1. Fund the full present value of pension benefits to employees expected to retire during the period of the collective bargaining agreement; and
2. Fund the normal cost plus interest on the unfunded past service liability, all in accord with the funding method adopted by the plan.

Little was done with the certifications provided on behalf of these plans. There were numerous cases in which the certification was never provided. As a practical matter, anyone could attest to the requirements of the regulations so that actuarial competence

was never required. Where a board of trustees retained a competent actuary, the soundness of the plan depended on the actuary and, in turn, his acceptance by the trustees.

We may conclude that prior to 1976 multiemployer plans were virtually free of any outside regulation. The Internal Revenue Service had minimal concern, since the contributions required by the pertinent collective bargaining agreement were paid to a third party trust completely outside the control of the contributing employer and, presumably, not subject to manipulation for tax purposes by the employer. The only regulating forces were the principles and practices of the actuary, if any, retained by the plan and the desires of the trustees to maintain a financially sound plan.

Given competent and concerned actuarial advice, the primary concern of the multiemployer plan has been, is, and will continue to be the economic health of the industry, area, and craft which the plan serves. It is fair to say that prior to 1976 those plans that retained and implemented competent actuarial advice were able to cope with funding problems, including those arising out of a change in the plan's economic environment. Those plans that encountered serious problems were typically those that lacked actuarial advisors or, in some cases, when the actuary was constrained, for whatever the reason, from plying his profession.

The Multiemployer Plan and ERISA

ERISA, whatever its merits, was not drafted with a knowledge of the problems and needs of the multiemployer plan. The Act addressed itself to the single employer plan, dealing with the multiemployer plan indirectly and by reference. Completely ignored were the concepts of risk sharing, portability, reinsurance, and reciprocity incorporated into the multiemployer plan as a consequence of its purpose and experience.

An element of reinsurance against the cessation of participation by any contributing employer was a necessity built into the contribution of any properly-funded multiemployer plan. Whatever weakness might have been inherent in this approach, almost certainly it was better than the original version of reinsurance contained in Title IV of ERISA as originally enacted.

The passage of ERISA completely changed the ground rules and contractual commitment giving rise to the multiemployer pension plan. The liability of the contributing employer was changed overnight to a benefits guarantee subject to certain limitations. The overall limitation on the liability of a contributing employer (limited to his share of the unfunded vested benefits guaranteed under Title IV) became 30 percent of his net worth. In addition, this liability is independent of the number of multiemployer and single employer plans to which the employer may be contributing, which is quite unrealistic. The termination liability would have been assessed only upon the termination of the whole plan.

On the positive side, the multiemployer plan was greatly benefitted in operation by the minimum funding standards, definition of fiduciary obligations, and the concept of the enrolled actuary, legislated through ERISA. The actuary in the United States now had the crutch necessary to enable the implementation, on a minimum basis at any rate, of funding standards.

It is important to note that the termination liability concept contained in Title IV of ERISA as originally passed was never implemented for the multiemployer plan. The myriad problems presented by Title IV for the multiemployer plan were addressed in the MEPPAA.

What was the impact of ERISA on the funding of multiemployer plans? Unfortunately, there seems to be very little documentation or statistics available to respond authoritatively to this question. It is, perhaps, fair to say that the great majority of multiemployer plans were able to continue with the funding standards followed prior to the passage of ERISA. There is no question that a minority of plans faced substantial concerns as a consequence of the funding standards established by ERISA. Because there were a number of plans that faced imminent termination and the expansion of the termination liability set out in Title IV of ERISA as originally passed, there arose an immediate need to recognize the unique aspects of the multiemployer plan and to clarify Title IV as it applied to the multiemployer plan.

The Impact of the MEPPAA of 1980

The new Act recognized the need to revise the provisions of Title IV as they apply to the multiemployer plan. The concept of reinsurance, i.e., providing for a minimum benefit payment to covered employees by a terminated plan, was changed for the multiemployer plan to the concept of a withdrawal liability assessed on the withdrawing employer(s) in proportion to its share of the total unfunded vested benefits prior to withdrawal with an underlying guarantee by PBGC in the event of the insolvency of the total plan and then only to the extent that withdrawing employers are unable to meet the minimum guaranteed by PBGC. The concept of withdrawal liability applies to all employers contributing to multiemployer plans from April 29, 1980.

While the 1980 Act alleviated a number of concerns raised by the original version of ERISA, they were replaced by a new set of concerns. The trustees now know precisely what the liability to a withdrawing or terminating employer is under ERISA. The new Act and the emerging regulations establish great detail in regard to the determination and administration of an employer's withdrawal liability. Contributing employers individually and, more importantly, through their various associations, are now gravely concerned as to the liabilities spelled out by the 1980 legislation. It is now clear as to the impact of ERISA, as originally passed, when it changed the liability from one of contribution to one of benefits. Had this change in employer liability under the multiemployer plan been fully appreciated in 1974 and the years immediately following, the constitutionality of the legislation might well have been challenged more forcefully. However, it was not until 1980 when the liabilities were spelled out in detail that the contributing employers fully realized what had been done with the passage of ERISA. It should be noted that legal challenges have now been mounted on an individual basis by a number of employers contributing to multiemployer plans in regard to withdrawal liabilities assessed on them.

Legislation is pending in the US congress strongly supported by individual employers and employer associations, with some unions also giving support, which would redefine the liability of contributing employers under multiemployer plans and relate this liability to that which existed prior to the passage of ERISA in 1974. The outlook for this legislation at this writing is questionable, although it is receiving strong support and recognition in the US Senate.

Funding the Multiemployer Plan Today

The legislative environment associated with the funding of multiemployer plans today will certainly test the mettle of the actuaries counseling the plans. The contributing employers and the trustees representing this group focus on the termination of the plan. The multiemployer plan may never terminate, but no individual employer can take comfort in this position. The labor trustees reflecting concerns of covered employees are less concerned about the termination liability emphasizing instead the need for improved benefits to both active and retired employees, which is considered the most important need in these inflationary times. At the same time, the state of the economy forces labor and management to consider the concerns of the contributing employers.

The basic problem for some time will be the maintenance of the pension plan on a going-concern basis when the emphasis will be on termination liabilities. From another viewpoint, why would one establish a pension plan if the primary concern immediately focuses upon termination of that plan?

How does the actuary cope with these concerns in recommending and implementing a funding policy under current statutory requirements? A professional response to these concerns will involve the following considerations:

1. Plan design, of necessity, must reflect the statutory requirements. maximizing benefits while minimizing the impact on funding and especially the magnitude of the terminal liability becomes a key goal. Increases in the accrued liability of the pension plan must be made in specific amounts so as to avoid the open-ended liability commitments continuing indefinitely into the future. For example, benefit adjustments reflecting actuarial gains and/or increased contributions might be related to accrued benefits only with future benefit accruals adjusted if and when subsequent experience and contribution commitments justify. In this manner, the growth and funding of the increase in the plan's liabilities are both predictable and manageable.
2. Relationships must be established between the going-concern liability and the termination liabilities in terms of funding goals. There is a need to establish benchmarks which will relate these values and measure the funding progress in meeting the total plan obligation.
3. Clear, concise reporting to all concerned as to the state of the funding and the future outlook must be maintained. The actuary should be completely candid in this regard without alarming, on the one hand, or promoting overconfidence on the other. The emphasis is on good communication.

Some Conclusions

This very brief overview of the funding of multiemployer plans in the United States leads to some tentative conclusions.

1. The multiemployer plan would have been better served had it been completely ignored in the legislative process when the actual history to date is reviewed.
2. With respect to all pension plans, but especially the multiemployer plan, the statutory requirements would best have been limited to the establishment of funding standards, emphasis on fiduciary obligations, and minimum competency standards for a qualified actuary. Statements of these requirements in general terms rather than in detail would be preferred.
3. The guarantee and/or reinsurance of unfunded terminal liabilities for private pension plans is a dream whose day has not yet come.

There will be further legislative activity in the United States amending ERISA and the MEPPAA in response to problems associated with the legislation to date. There is little indication at this date as to the direction this legislation will take.