

## Financial News

# Detailing Industry's Pension Problems

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Billions of dollars in unfunded pension liabilities could cause headaches for builders in the not-so-distant future.

What does your company have in common with General Motors, IBM, several major airlines, and a host of other industry giants? Unfortunately, the answer to that question may be "a looming pension problem."

While the financial problems of multibillion dollar pension funds may seem to have little immediate relevance to most builders, the fact is many contractors may soon be facing pension issues of their own. These issues could have a serious negative impact on future labor costs and on their ability to secure financing, performance bonds, and other vital financial support. Ultimately, they could impair their cash flow and overall financial stability.

With so much at stake, prudent owners and financial officers will want to assess their companies' exposure in this area, and take appropriate steps to prepare for possible changes in funding and reporting requirements.

### THE SIZE OF THE PROBLEM

As a national issue, the problem of unfunded pension liabilities has been growing — and gaining increasing attention from lawmakers and regulators — for many years. Responding to these concerns, Congress passed the Pension Protection Act of 2006, which went into effect in January 2007.

During hearings leading up to that bill, officials of the federal Pension Benefit Guaranty Corp. (PBGC), estimated that single-employer pension plans in the United States are underfunded by more than \$450 billion,<sup>1</sup> and multiemployer plans — the union-sponsored and administered plans that are more common in the construction industry — are underfunded by an estimated \$150 billion.<sup>2</sup>

To address this looming shortfall, the act imposed several new funding requirements on participating employers, which can have an immediate impact on a contractor's cash flow. In addition, the act spells out new reporting requirements designed to provide more timely and accurate information about a plan's financial condition and the potential liability of the employers who fund it.

These changes can directly affect participating employers' financial statements, which in turn could have significant consequences to a builder's financing and bonding capacity.

### THE CAUSES OF UNDERFUNDING

In the construction industry in particular, one underlying cause for the growing unfunded liability of multiemployer plans has been the shrinking role of organized labor in the industry as a whole. According to the Bureau of Labor Statistics, the percentage of construction craft workers who are unionized shrank to just 13 percent in 2006,<sup>3</sup> a significant decline from 25 percent in 1977.<sup>4</sup>

As the ratio of active workers to retirees shrinks, union pension

plans' revenues fail to keep up with the demand for benefits. Moreover, like all sectors of the economy, the construction industry is about to experience the demographic effect of the retiring baby boom generation, along with a variety of other factors ranging from increasing life expectancy to the general ups and downs of the business cycle.

### SINGLE-EMPLOYER VS. MULTIEmployer PLANS

Although multiemployer pension plans and single-employer pension plans are both designed to provide specified monthly benefits to workers at retirement, there are major differences in how the two types of plans are structured. Because of these differences, the accounting standards for the two types of plans also vary significantly.

For example, in a single-employer plan, the sponsoring company's liability is generally determined by actuarial formulas that compare the expected projected benefit obligation against the plan's assets. If the projected future outlays exceed the plan's assets, the difference is essentially recorded as a liability on the sponsoring company's balance sheet. This requirement was recently expanded in Financial Accounting Standards Board (FASB) Statement No. 158.<sup>5</sup>


In multiemployer plans, however, the accounting standards are less clear-cut. Since participants in multiemployer plans can continue to accrue pension credits when they change employers, an individual company's future pension liability is much more difficult to assess.

Thus, even if the sponsoring labor organization has an accurate picture of its pension plan's long-term solvency, it is difficult to accurately estimate an individual company's share of any future shortfall.

According to FASB Statement No. 5 (typically referred to as FAS 5), a liability is recorded on a company's balance sheet only when it is probable and the amount can be accurately estimated.<sup>6</sup> Clearly, future pension obligations in a multiemployer plan do not meet this standard.

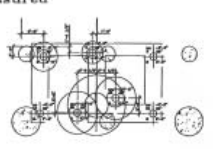
Therefore, unlike single-employer plans, unfunded pension

**please see Liability, page 14**



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**Disputes, from page 10**

When asked about points of procedure when a dispute arises, many of the professionals polled agreed on one thing ... there are no universal points of procedure. The reasons surrounding disputes are as varied as the jobsites on which they occur, and there's no one way to skin this particular cat.

"Each one is unique," said one administrator trusted with risk management when asked about similarities between the squabbles. "They really do need to be handled on a case-by-case basis. Something that works one time isn't going to fix every situation.

"In many cases, you just have to wait and see what happens. You can get the business reps of the two unions together. In many cases, that's one of the first things that happens."

An employee on the job site or the risk management professional at a company can take the first steps to sitting the two unions down.

"There's no specific process to follow," said another executive. "If we're keeping it generic, the Field Superintendent makes an initial attempt to facilitate an on-site solution. You talk through things and reason with the competing unions, assuming the claim is justified."

**RESOLUTIONS**

A number of jurisdictional disputes can be settled not long after they've started by the union representatives sitting down and discussing their views with the contractor present.

"You can talk to both of the unions at a pre-job conference and get them to agree about which trade is going to perform the work," one representative said. "You can try to resolve the problem by using a split crew. Ultimately, it's up to the challenging union to make a case for why they should do that work."

If an agreement can not be reached, one administrator mentioned that his company will send the objecting union a policy, stating his company's position and rules. Demonstrating a set policy, he says, kills two birds in that it shows the union where the contractor stands and prepares the company to show a history of awarding that work to one union if the case is taken before the National Labor Relations Board.

Beyond that, there are a number of NLRB guidelines to follow. A history of awarding certain kinds of work to the same group can go a long way toward preserving a favorable outcome for a contractor.

"Once a group challenged our position in a dispute, brought it before the National Labor Relations Board and lost," that representative said. "We solved the dispute because from the start, we have consistently assigned the same work to the same labor groups."

That philosophy has paid dividends for some of the other contractors, and may have helped stop countless disputes before they even started. Other factors that could help resolve disputes quickly, according to the company administrators, were an experienced Superintendent on-site and knowledge of labor laws.

In terms of cutting short jurisdictional disputes or avoiding them altogether, however, nothing can beat good, old-fashioned consistency.

"Historically, we always have assigned the same type of work to the same type of craft," one BA company representative said. "That way, if a problem arises, we can show our old rule of who

always works on what.

"We don't reassign the same work to new labor groups. We always have the same groups do the same jobs they've always done for us, and that helps to prevent disputes from starting."

**BEST PRACTICES**

No amount of care can completely eliminate the possibility of a dispute on a jobsite. As complicated as the issue can get, simply being prepared and knowledgeable can help a contractor react the right way when the time comes.

"I think having a fairly decent knowledge of whose work has been whose, both with our executives and with the guys on the jobsite, has helped us in the past," one executive said. "We're in a good situation in that we do tend to have experienced personnel on the job, and they can put what they've learned over the years to good use."

Another executive echoed the sentiment that experienced personnel can go a long way toward diffusing a potentially difficult situation.

"An experienced Super on your jobsite is important," he said. "It's the first step. If the Super doesn't feel comfortable or doesn't feel like the matter is likely to get resolved, then management gets involved. You also want to investigate and see if the union that's claiming the work has previously disclaimed it in another instance, which is sometimes the case.

"Either way, you can draw on experience. If you have people who are prepared and knowledgeable, it can help."

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