



By Lindsay Minard

# TIES THAT BIND

## Why Washington Is Really Pushing Union-Friendly Legislation

*The term “Ponzi scheme” has made a comeback in recent months thanks to Berny Madoff ripping off his clients to the tune of nearly \$50 billion. The plot is ancient, but got its name from Italian immigrant Charles Ponzi in 1903. Ponzi’s scam was so grand in scale that it only seemed appropriate to give credit where credit was due.*

*A Ponzi scheme pays returns to shareholders with their own investments or the investments of other shareholders instead of from profits. Shareholders are enticed into the situation with fancy marketing language and promises of high returns in a short amount of time. The quick turnaround and high returns require steady cash flow. When that cash flow slows or dries up, the scheme begins its downward spiral.*

What if the government knew about a program where there was an increasing need at the top and significantly declining buy-in at the bottom; in other words your typical Ponzi triangle? What would the government do? Americans likely expect that their government would denounce a scheme that devastates people’s pocketbooks and futures; however, it appears that the government’s solution is to use legislation to cover up the problem and fund the scheme.

Barack Obama, the candidate, promised a new Washington; a government that looked out for the “little guy” and brought transparency to the Office. And yet on February 6, 2009, President Obama made his first step towards old Washington ways by supporting hidden agendas and signing Executive Order 13502.

Perhaps our new President was not purposely trying to be sneaky but was simply growing too uncomfortable with Andy Stern breathing down his back. According to an article published in the *Wall Street Journal* in December 2008, entitled “America’s Most Powerful Union Boss Says Europe Offers a Good Economic Model,” Stern, president of the Service Employees International Union (SEIU) expects his organization’s campaign contributions to get more than just a thank you. The SEIU’s contributions totaled \$85 million of the \$450 million given by unions to Democrats in 2008.

According to the article, Stern “[Expects] nothing less than what [Obama] said he was going to do, and we should hold him accountable.” But maybe it is not that \$85 million that has got our new President uncomfortable. Maybe it is the reported \$10 million that the SEIU has set aside to get individuals unelected if needs be. “We would like to make sure people appreciate that we take them at their word and when they do not live up to their word there should be consequences,” says Stern in the article.

Executive Order 13502 and the Employee Free Choice Act (EFCA) are inane and obviously bad for the economy and the taxpayer. No matter which side of the aisle a politician sits on, believe the fact that they ALL know this. But nevertheless, it seems that Congress and our President are going to support devious legislation that continues to burden taxpayers in the middle of an economic collapse; it seems our government is assuming that American business owners, workers and taxpayers are ignorant and will never see it coming.

With approximately 85 percent of the construction industry nationwide being non-union, that leaves us to ask why our new administration that has pledged to the American people an eventual victory on this economic crisis, would choose to turn a blind-eye to sound business economics and push a union agenda on them now.

All Andy Stern references aside, perhaps it all comes down to a dirty little secret involving union pension plans. The ties that bind together union pensions, EFCA and Executive Order 13502 are disturbing and create a scenario that may have made Charles Ponzi envious.

## The Multiemployer (Union) Pension Plan

Multiemployer pension plans, otherwise known as union pension plans, cover workers from more than one employer, with all employers paying into one big pot. The multiemployer pension plan is considered an important part of the advantage of union membership. In theory the plan allows employees to attain credits

towards their pensions based on hours of work with multiple employers if said employers are contributing to the plan. The advantage it creates for workers, especially in the construction industry, is that it allows them to move from job to job and continue to earn credits toward their retirement.

As defined by the Labor Management Relations Act or Taft-Hartley Act of 1947, the multiemployer pension plan is funded solely by employers making contributions, decided in collective bargaining negotiations between labor and management. The amount that an employer is required to contribute is determined after an examination of the plan’s assets and the business’ demographics. An actuary estimates the rate at which promised benefits will be paid out and then develops the funding criteria to fulfill the plan’s obligations.

## The Problem with Multiemployer Pension Plans

In theory, the union pension program sets companies up to work for the good of the whole. And in theory all the businesses that make up the whole thrive and are unaffected by marketplace changes.

In reality, union pension plans have not caught a break in a long time. There are far less contributors to the plan as union popularity has nearly faded away, making up around 15 percent of industry today, and baby-boomers that comprise two-thirds of the workforce are nearing or at retirement age and living longer than any previous generation.

Fully-funded plans in the late 90s, drove contribution rates down and benefits up. The plan’s increased liabilities could not keep up with the volatile post 9/11 market and so began the funding gap.

What do Americans do when they are short on funds? They charge it! So the plan’s credit was initially used to balance the widening gap; but because of actuary smoothing rules that tolerated asset values based on averages from the booming market of the past, contributions remained low and benefits continued to increase.

**“A lot of employers are in for a big surprise if they end up joining existing defined benefit pension plans with large unfunded liabilities. These plans may look to the new employers to pitch right in and help make up the shortfall.”**

**John McGowan, professor of accounting,  
St. Louis University**

Today the credit is gone, smoothing is on the decline and whether the actuaries made an error, were guilty of wishful thinking or were paid off; their inaccurate assessments have the plans nearly six feet under.

## Multiemployer Pension Plans and the Pension Benefit Guarantee Corporation (PBGC)

On January 15, 2009, John McGowan, an accounting professor at St. Louis University released a study that details the multiemployer or union pension predicament. The study details the financials of five trade organization pension plans based on data from a form 5500 database, and outlines the financial problems of the PBGC, a government sponsored program created by the Employment Retirement Income Security Act (ERISA) that bails out single and multiemployer defined benefit pension plans.

According to the study, PBGC, which insures roughly 1,500 multiemployer pension plans that cover around 10 million beneficiaries, is experiencing an escalation in the need for union pension insurance and financial assistance.

In 2006 the Pension Protection Act was written into law in an effort to solve the funding issues of the union pension plans and to lessen the exponentially increasing burden being placed on the PBGC. According to the Act, "yellow zone" pension plans are defined as those less than 80 percent funded and "red zone" pension plans

are defined as those less than 65 percent funded. Plans that fall into these categories must work to fix their funding issues. Methods to solve their problems include increasing employer contributions, increasing the withdrawal payment for companies looking to get out of the plan, decreasing employee benefits and in some extreme cases decreasing already earned benefits.

The study indicates that tax return data from fiscal dates December 31, 2006 through May 31, 2007, showed three of the five trade unions sampled were in the "yellow zone" and two were in the "red zone." With the Dow Jones plummeting below 8,500 in December 2008, recalculations put all five trade unions in the "red zone," adding up to more bad news for the PBGC's growing deficit.

PBGC's multiemployer insurance program deficit increased \$216 million dollars from 2006 to a grand total of \$955 million in 2007. In 2008, the organization lost \$4.8 billion in the market.

While it is not explicitly written anywhere, the assumption is that if PBGC was to go under, the government would have to bail them out; "With what," you ask? Taxpayer money, obviously.

### 13502's Connection to the Multiemployer Pension Plan Problem

#### *PLAs Today*

In any economy, union-only project labor agreements (PLAs) are bad for business,

discriminatory of workers and cost taxpayers more money by driving up construction costs on projects. Today with the federal government being the only entity spending money and a federal stimulus package being unveiled that is supposed to put people back to work and help industries crawl out of their holes, Executive Order 13502 is a fundamentally irresponsible reality.

"When you eliminate the majority of competition on government work, the job price goes up and taxpayers have to make up the difference. When a PLA is placed on a project, our government which is known for awarding the lowest qualified bid, has to make that decision based on what is available and more often than not the most qualified business is not bidding the job," states Patrick Dean, president of Associated Builders and Contractors-Virginia Chapter.

13502 allows and encourages federal agencies to require the use of union-only PLAs on federal and federally-funded construction projects, \$25 million and above. Firms that want to bid or do work on these projects must unionize. The Office of Management and Budget (OMB) has been ordered to assess the order and decide if the range of the \$25 million cap should be lowered to include smaller jobs.

Because of the recession and the fact the federal government is spending money the private sector cannot, there is more likelihood contractors will strongly consider unionization to work on a project that has a PLA. But while construction firms may look at organizing as a short-term fix, it comes with a long-term problem. A company that unionizes today subjects their employees to an underfunded retirement plan, uninsurable by the PBGC for approximately five years. In addition, according to one Union Pension Booklet, union workers that take jobs with non-union companies during the span of their career may not be entitled to their vested benefits.

**"With the EFCA proposal, companies would not get this opportunity and employees would be forced to indicate their choice of whether to join a union by signing a card in front of their co-workers, employers, and union organizers, opening the door to coercion and intimidation by depriving them of the freedom to make an honest, private decision."**

**Ryan Dunn, senior regional political manager,  
Associated Builders and Contractors**

“A lot of employers are in for a big surprise if they end up joining existing defined benefit pension plans with large unfunded liabilities. These plans may look to the new employers to pitch right in and help make up the shortfall,” asserts John McGowan.

### ***Withdrawal Liability***

As the unions have lost members and their pensions have lost contributors, premiums have gone up for those still participating. In an effort to stop the domino effect of companies withdrawing from the plan, ERISA was amended in 1980 by the Multiemployer Pension Plan Amendments Act (MP-PAA) to include a provision that requires an employer who withdraws from a plan to pay for unfunded vested benefits the plan promised but could not deliver.

If a contractor works on a project under a PLA and thus is required to pay into a multiemployer pension plan, even after the contractor is finished with the job, the contractor’s business is subject to a withdrawal liability bill. Before an appeal can even be considered, by law the contractor has to immediately pay the bill or establish a payment plan.

For example, according to the St. Louis study, shipping giant UPS says it can no longer afford to pay full benefits because of companies exiting the plan. To withdraw from the plan and set up its own plan, the Central States Pension Fund is demanding that UPS pay a one-time withdrawal fee of six billion dollars.

So what does withdrawal liability mean for contractors? If they continue to do the same genre of work in the same geographic region as the PLA project, contractors who no longer wish to pay into the pension are subject to withdrawal liability. The MPPAA states that withdrawal liability does not apply to contractors who retire, close down or sell their business.

According to surveys conducted by the Segal Group, an HR consulting firm, it is estimated that every four out of five multiemployer pension plans are underfunded and thus the possibility of an employer being hit with a dramatic withdrawal liability is probable, especially given the vitals of the stock market today.

## **Congressman George Miller (D-California) and the Multiemployer Pension Plan PROBLEM**

### ***Congressman Miller and EFCA***

Remember George Miller? He is the congressman that sponsors the ridiculously titled Employee Free Choice Act; a piece of legislation that, if passed, will likely define his career.

Proponents market card check as workers versus big business. They do a great job of acting like they genuinely believe that private ballot elections give employers time to coerce employees to vote against organizing. In a bit of irony, as reported by unionfacts.com, the National Labor Relations Board’s 2005 annual report stated that unions faced 6,381 allegations of Unfair Labor Practices; 82 percent alleged illegal restraint and coercion of employees and 594 of the charges were for illegal union discrimination against employees. On the flip side, the main allegation against employers was refusal to bargain.

The fact is EFCA is equally as bad for workers as it is for their employers. EFCA not only takes away a workers’ right to a private vote, but simply ignores their rights to Freedom of Association and Equal Protection and gives employers no opportunity to communicate their side of the story. Employees are forced to make an uneducated decision with a union representative standing over their shoulder. No pressure, right?

**“If businesses get organized they will find themselves trapped in an underfunded multiemployer plan that will erase significant portions of their company’s net worth, alter their credit worthiness and severely restrict their financial flexibility. Companies are going to have to face stark choices. Business closures and consolidations are not irresponsible to consider.”**

**Brett McMahon, president,  
Miller & Long Co., Inc.**

On top of all of that, newly organized companies that do not reach an agreement with their new union within 120 days, are assigned arbitration and an agreement is reached for them. If a company does not like the agreement, too bad; it is unchallengeable for two years by either the business or union. Looks like our new government is here to show business owners who is boss.

“Under the current system, the independent National Labor Relations Board oversees a private-ballot election with both the union and the company having a chance to explain to the employees the benefits and disadvantages of being in a union. However, with the EFCA proposal, companies would not get this opportunity and employees would be forced to indicate their choice of whether to join a union by signing a card in front of their co-workers, employers, and union organizers, opening the door to coercion and intimidation by depriving them of the freedom to make an honest, private decision,” explains Ryan Dunn, senior regional political manager for Associated Builders and Contractors.

While EFCA is radical and undemocratic, it passed through the House in 2007 and will likely pass again in 2008 and come before a Democratic majority Senate. If it gets through the Senate, there is little doubt that President Obama will sign it into law, especially considering union campaign contributions.

So why is Congressman Miller staking his career on this radical piece of legislation that even has members of his own party balking?

### ***Congressman Miller and the PBGC***

Congressman Miller just happens to be the chairman of the Committee on Education and Labor that oversees the PBGC. Remember the PBGC? It is the organization that is losing money hand over fist in the markets while continuing to inherit the responsibilities of all the bankrupting companies paying defined benefits. The Congressional Budget Office (COB) estimates that the program's funding issues will put them in the hole \$86.7 billion by 2015.

Congressman Miller has a big problem on his hands. Companies are dumping their defined benefit plans on the PBGC at an exponentially higher rate than companies are entering into such plans. The methods to improve solvency for underfunded multiemployer pension plans, as detailed by the Pension Protection Act, involve raising premiums on contributors and reducing worker benefits; that reality is likely weighing heavily on Congressman Miller as he evaluates the options.

So back to the point; when a business joins a union they are required to participate in the union's defined benefit pension plan. More contributors lessen the financial load being placed on the small percentage of contributors left.

In terms of Virginia's construction industry, about 96 percent of businesses are non-union and many are now offering defined contribution plans versus defined benefit plans. So how does Congressman Miller get that 96 percent of Virginia's construction industry to flip sides and buy into these union pension plans? Since it is unlikely the company executive would consider it, perhaps eliminating the secret ballot from union organizing campaigns might help? Maybe no one will see it coming if its named the Employee FREE Choice Act?

### **The Ultimate Ponzi Scheme?**

Either the numbers are lying or our government is using taxpayer dollars and discriminatory legislation to fix the funding problem;

taking money from young workers to pay pensions for retired workers. Assuming the young and old workers are shareholders and the pension is the promised return, if the numbers are right, it looks like the government is trying to pull off a Ponzi scheme.

In addition to worrying about whether or not their benefits will be substantially decreased to counterbalance the funding gaps with their union's plan, retirees with vested plans also have to continue to worry about a union they used to work for going under. Why? Because the PBGC that acts as a savior for many single employers with defined benefit plans does not provide the same amount of insurance for the multiemployer plans that default to them. Under the Pension Protection Act, the PBGC only guarantees up to approximately \$13,000 for multiemployer plans, versus the maximum of \$54,000 they guarantee for single employer plans.

Remember the definition of a Ponzi scheme? Remember the fancy marketing language used to entice shareholders into investing? Now, consider the oddly named Employee Free Choice Act and the current suggestion for PLAs on projects being \$25 million and above; a \$20 million break considering Clinton's \$5 million suggested cap. Are these simply cases of marketing savvy?

Do not be fooled. PLAs and EFCA are simply methods the government is using to put a band-aid on the problem by forcing non-union businesses to organize and pay for a crisis they should not be liable for.

13502 can be looked at as a backup to card check; if the construction industry and country, as a whole, does not fall for the fancy language, the OMB will likely come back with an assessment on 13502 that drops that \$25 million cap. In other words, they are trying really hard to get you - *you* being the non-union companies.

"If businesses get organized they will find themselves trapped in an underfunded multiemployer plan that will erase significant portions of their company's net worth, alter their credit worthiness and severely restrict their financial flexibility," affirms Brett McMahon, president of Miller & Long Co., Inc. "Companies are going to have to face stark choices. Business closures and consolidations are not irresponsible to consider."

There are a lot of people infuriated that Berny Madoff is relaxing at home on house arrest; wonder why? Well, perhaps the government has a sense of fairness and it surely is not fair to make an example of someone from whom you are still taking tips.