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BUILDING AND CONSTRUCTION TRADES ON PENSIONS
AND OTHER EMPLOYEE BENEFIT PLANS

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HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, D.C.
APRIL 19, 1977

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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END

BUILDING AND CONSTRUCTION TRADES ON PENSIONS AND OTHER EMPLOYEE BENEFIT PLANS

TUESDAY, APRIL 19, 1977

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to notice, at 9:25 a.m. in room 2175, Rayburn House Office Building, Hon. Carl D. Perkins (chairman of the committee) presiding.

Members present: Representatives Perkins, Thompson, Dent, Hawkins, Cornell, Simon, Beard, Le Fante, Weiss, Heftel, Kildee, Quie, Sarasin, Buchanan, Jeffords, and Pettis.

Chairman PERKINS. Ladies and gentlemen, the committee will come to order. A quorum is present.

First, let me say that it is a great pleasure for me to welcome all of you distinguished Americans to the Capitol and especially, to the House Committee on Education and Labor.

Bob Georginne, your legislative representative for the AFL-CIO was responsible, I think, for setting up this meeting as well as Harold Buoy, the president of the Boilermakers, and Jack Curran of the Laborers. I see you gentlemen are all here this morning along with the representatives of the building trades throughout America.

We are delighted to have you here. Naturally, we have work to do. This committee has a record of working for the improvement of labor conditions in this country. Back in my high school days, I used to read that that was the purpose of the Department of Labor when it was established as a department of Government. It was to advance the cause of the laboring people in this country.

We have tried to do just that. We have, I think, a wonderful committee, as constituted, which represents all sections of the United States.

I am going to ask Mr. Quie if he wishes to make a statement and let any members who may wish to make an observation have the opportunity to do so.

Mr. Quie?

Mr. QUIE. Thank you, Mr. Chairman. I went ahead and read your testimony so that when I leave to take care of some other matters, I just want to know that I do know what you have to say.

I appreciate your bringing to us the concerns on ERISA. I think we do need the pension plan law. We have heard the testimony of you who have lived under it for a short period of time and from those who do represent the workers. I appreciate your bringing this information to us.

Chairman PERKINS. Mr. Dent, first.

Mr. DENT. Mr. Chairman, thank you, and greetings to all of you. It has been many long days since we had the first gathering of interested parties to try to do something about the private pension systems in the United States.

I was looking through some old papers, and I found the campaign circular that I used in 1936 when I was running for the Senate in Pennsylvania.

I had been elected in 1935 and I had served for a year plus a few months in the House. All I had to run on was the record of legislation that I had put through in the House during my very first year as a legislator.

The first bill on that circular, which you may have had an opportunity to see, Jack, is lying on my desk. I keep it there to remind me that there is still a lot of work to be done in this country.

I helped to pass the Dent pension bill in the State of Pennsylvania in 1935, and the first one in the history of the country. It took a long time to get up here. When I did get up here, we started to work on pension reform for the whole country.

ERISA is not perfect. I am sorry to say that it is not possible to draw a perfect piece of legislation. That is why we have the amendment process. That is why we have you here to give us your reaction on how it is administered, what points have to be changed, what can be strengthened, how it can better reach the goal that we have in mind—to make pension plans secure for those who participate in the pension system.

I do not have much more to say. I want to hear what you have to say. Tomorrow morning, we have a hearing of my committee on the prime subject matter before the committee today; that is, to try to consolidate the administration of ERISA.

I think one of the grievous mistakes that we had to make, and that mistake had to be made in the last 3 months before we finally passed the bill or we would never have had the bill, was to concede to the Ways and Means Committee a joint jurisdiction on the matter.

The tax people wanted the maximum Keogh plan contribution, wanted to go from \$2,500 to \$7,500. I told them I would not go along with attaching this item to ERISA. In order to get it passed, they went before the Rules Committee and got the ruling that I had to share the jurisdiction over the legislation with the Ways and Means Committee.

They then insisted that we give joint administration to the IRS along with Labor. It really should be in Labor. That is where it ought to be because, as the Chair has told you, almost 60 years ago when we created the Department of Labor, it was created specifically for the purpose of labor problems.

If they do not know that this is one of labor's big problems, they do not know what is really going on in this country. Therefore, I am looking forward to your testimony. Again, you have always been a help in the past. I know you will be a help in the future.

Mr. BROR. It is always good to see you.

Mr. QUITE. Mr. Sarasin, do you have an observation to make?

Mr. SARASIN. I do, Mr. Chairman. Thank you. I apologize to the gentleman. I will also be leaving. Mr. Hawkins and I have a hearing with Secretary of Labor Marshall, who will be appearing before us and who is possibly waiting for us at this moment.

I have had the pleasure of working very closely with Mr. Dent and with Mr. Erlenborn in 1973 and in 1974 when this act was put together. I feel very proud.

Mr. QUIE. Mr. Sarasin, would you yield?

Chairman PERKINS. I yield to the gentleman from California for just a second. He has to go up and see the Secretary of Labor. Go ahead, sir.

Mr. HAWKINS. I think he has already made the statement. Without apologies, there are certainly several of us who are interested in the subject matter. I just wanted to associate myself with the remarks already made and to indicate that, in addition to Mr. Sarasin, Mr. Le Fante, and Mr. Weiss, the representatives of a subcommittee that was supposed to take testimony from the Secretary of Labor at 9:30, I just wanted to say that, in order to accommodate him, some of us will be leaving.

I just wanted to explain why we seem to be drifting out. It is because of this prior meeting. That is the only announcement that I wish to make. I thank Mr. Sarasin for allowing this interruption.

Chairman PERKINS. Mr. Dent?

Mr. DENT. Mr. Chairman, I want to acknowledge before the Republican member leaves, that, without the help, the understanding, and the solid support of all of the Republicans on the committee and the majority of the Republicans in the House of Representatives, we would not have been able to pass ERISA.

I want it clearly understood that I am grateful to John Erlenborn, who fights me on much legislation. He has been a great help, and Mr. Sarasin, likewise. They were two of the stalwarts in getting this legislation passed. I owe them that and I give it gladly, right where it belongs.

Mr. SARASIN. Mr. Chairman, I will quit while I am ahead.

Gentlemen, thank you for being here. I have read your statement. I will look forward to the discussions of the Labor Standards Committee.

Chairman PERKINS. I am going to take the members as they come down the line: Congressman Simon?

Mr. SIMON. Thank you, Mr. Chairman. I welcome your contribution. I would note that the president of the Boilermakers is from the State of Illinois, Mr. Chairman, not the State of Kentucky.

We have two people who are very close to my district, back here, who are not in my district but are very close to it. I appreciate your being here. I understand there are some people from Kentucky here.

I can tell those people from Kentucky that you are being very ably served by the chairman of this committee. I have no other comments, Mr. Chairman.

Chairman PERKINS. Mr. Heftel?

Mr. HEFTEL. Mr. Chairman—

Mr. CURRAN. Mr. Chairman, could a witness ask for personal preference before Congressman Sarasin leaves? I wish to say that, before

Congressman Sarasin left yesterday, that he was paid a very high accolade by his colleague, Congressman Frank Thompson, for the help that he had given the building trades in trying to come up with a satisfactory bill that would be acceptable to the House. I wanted him to hear that before he left. I am sorry that he did not.

Chairman PERKINS. Mr. Heftel, did you want to make a statement? I am sorry.

Mr. HEFTEL. I see time is running away. I want to see the gentlemen's testimony so I will pass. Thank you.

Chairman PERKINS. Go head, Mr. Jeffords.?

Mr. JEFFORDS. Mr. Chairman, I have no statement. I just want to join in welcoming the people here and to listen to their testimony. I am anxious to hear it.

Chairman PERKINS. Mr. Le Fante?

Mr. LE FANTE. Other than to wish you a welcome this morning, I have no statement. I noticed in your third paragraph you say, "At this time, I wish to express a deep sense of gratitude." I think we want to keep it that way so I will just pass.

Chairman PERKINS. Mr. Kildee?

Mr. KILDEE. Mr. Chairman, Jack Curran was one of the first persons to welcome me to Washington, D.C. and I would like to welcome him back to the committee.

Jack, you understand that at 10 o'clock I have six members from the building trades from Michigan who will be meeting with me in my office so I will slip out temporarily. Prudence would dictate that I go meet those people from Michigan and then I will come back here.

Chairman PERKINS. Mr. Beard?

Mr. BEARD. I wish to welcome you and I look forward to hearing you.

Chairman PERKINS. Does anyone else want to make a statement? All right; first, we will hear from the president of the Boilermakers, or anyone who would like to proceed, first, Mr. Buoy, or Jack Curran, any way that you wish to do it.

Which way do you wish to do it? Mr. Buoy, go right ahead.

**STATEMENT OF HAROLD J. BUOY, GENERAL PRESIDENT OF THE
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON
SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, ACCOMPANIED BY JACK CURRAN, LEGISLATIVE REPRESENTATIVE OF
THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA**

Mr. BUOY. Thank you, Mr. Chairman, and members of the committee. My name is Harold J. Buoy, and I am general president of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers.

Today, I address the committee representing over 3,000 building trades delegates to the National Legislative Conference of 17 affiliated international unions.

I relish this opportunity to present the views of our 4 million members, and I am honored to have the counsel and company of Jack Curran, legislative representative of the Laborers' International Union of North America.

At this time, I wish to express a deep sense of gratitude, Mr. Chairman, to you and the members of this committee who have worked so long and so hard in behalf of America's working people.

I appear before you today specifically to advise the committee on the challenges to our pension and other employee benefit plans of both the economy generally, and ERISA, specifically.

The economy continues to provide an enormous challenge to the validity of pension and other employee benefit funds. Most of our plans base contributions on fixed rates per hour of work.

Therefore, during the continuing depressed level of employment, they still suffer from reduced contribution rates. Yet, they are faced with ever-increasing numbers of retirees, on the one hand, and participants requiring medical and other benefit services, on the other.

At best, we can hope for only a modest upturn in the construction industry which will do little to bring down the double-digit unemployment rate. Therefore, the prognosis for the future is continued economic uncertainty for our plans.

Concurrent with the significant cost impact of the recession, we are now also feeling the impact of the pension reform law which is forcing our plans to increase contribution rates by as much as 30, 40, and 50 percent just in order to maintain current benefit levels.

In addition to those increases mandated by the law, our building trades plans are still faced with the threat of overregulation, a threat which has the potential for being exceptionally costly with little, if any, benefit to those of us who are participants in those plans.

It would be impossible to enumerate each of the costly specific regulations. A few examples, however, will convey the seriousness of the problems facing pension plans and other employee-benefit plans in our industry.

PROHIBITED TRANSACTIONS

The prohibited transactions sections of ERISA present a unique opportunity to examine the interaction between the sluggish economy and ERISA as they jointly impact upon our plans.

In May of 1975, a building trades health and welfare plan was in serious financial difficulty due to the low level of contributions. Indeed, all indications were that it would not be able to meet its financial obligations for the ensuing 12 months without a \$40,000 loan.

Faced with the possibility that its members would be deprived of health benefits, the sponsoring building trades union agreed to lend the plan \$40,000 interest-free from the union treasury. To make the loan even more attractive, the union agreed that repayment would not have to be made until the health plan's board of trustees, both labor and management, agreed that the plan was financially capable of repaying the loan.

Unfortunately, before the loan was made, counsel advised the plan and the union that it was a prohibited transaction under ERISA. The parties, therefore, applied to the Department of Labor for an exemption, advising the Department that the loan would only be needed until the spring of 1976 when an upturn in construction was anticipated in Florida, where the plan was located.

Fourteen months later, when the loan was no longer needed, the Labor Department granted the exemption. The prohibited transactions sections of ERISA simply do not work. They set up an artificial barrier between the plan and its sponsors which is totally inconsistent with the union's responsibilities under the Labor Management Relations Act and totally inconsistent with sound plan management.

There is something basically wrong with a law or regulation which requires a plan to obtain an exemption from a Federal bureaucrat before it may secure an interest-free loan from the union responsible for its establishment.

There is something basically wrong with a law which requires an apprenticeship plan to get the Government's permission before it can accept a rent-free training site, another real live case.

There is something basically wrong with a statute which is based on the proposition that plan participants need to be protected from their trustees by the Government in Washington even if the trustees have done nothing wrong.

Even Members of Congress whose motives cannot be challenged, have recognized that the prohibited transactions provisions of the statute are being interpreted to prohibit, or call into question, a great many practices for the benefit of plan participants and beneficiaries which are legitimate and necessary.

The legal problems are compounded by the inability of the agencies to deal with the statutory exemption procedure.

We urge that consideration be given to legislation which could replace the cumbersome dual jurisdiction machinery and general catch-all prohibitions, with statutory authority in the Secretary of Labor to prohibit transactions with parties in interest which he finds to be abusive. We believe this can be achieved without any loss of protection to our plan participants.

ADMINISTRATION OF THE LAW

When ERISA was enacted, it created the two-headed monster of dual administration. Jurisdiction over our plans was given concurrently to both the Labor Department and the Internal Revenue Service.

While this is a bureaucrat's delight, it has led to a crippling of our plans. Regulations implementing the beneficial standards of ERISA have gone through endless delays. Indeed, more than 2½ years after the statute was enacted, standards such as seasonal industry rulings, have not yet been issued, depriving many of the Nation's neediest workers of the special protections afforded by ERISA.

With respect to the day-to-day administration of our plans, the agencies are totally incapable of processing the necessary exemptions from the prohibited transactions provisions of ERISA to enable plans to function in the most efficient manner. You already have one example of this problem. Other examples are legion.

Now, from his ivory tower in the halls of justice, a Federal district judge has ruled that our plans are securities subject to the Securities Act of 1933 and the Securities Exchange Act of 1934. The bureaucrats of the Securities and Exchange Commission can hardly wait to sink their teeth into our plans.

Indeed, if the Securities and Exchange Commission has its way in court, the courts will impose on our plans, retroactively, the standards of ERISA which Congress intentionally wrote to be prospective only, making them applicable to employment under our plans as much as 20 to 30 years ago.

It has been estimated that if this decision is upheld, it will cost pension plans throughout the country between \$200 and \$300 billion in retroactive liability.

Let me make it clear that we do not oppose SEC coverage of the investment practices of plans as they relate to the sale and purchase of securities. But the district court in Chicago went much further and subjected the relationship between the plan participant and his or her plan to the securities laws.

Legislation is needed to remove the double-headed or triple-headed bureaucratic burden from the shoulders of our plans. Jurisdiction should be placed exclusively in one agency. We believe that agency should be the one charged by Congress with responsibility for protecting the interests of workers, the U.S. Department of Labor.

EMPLOYER DELINQUENCIES

Mr. Chairman, at any one time as many as 33 $\frac{1}{3}$ percent of the contributing contractors to any one of our plans may be in a state of delinquency. Historically, many of our plans have attempted to work with the contractors, where possible, to secure repayment of those delinquencies in a reasonable period of time, as opposed to forcing the issue to litigation, automatically.

The reasons are twofold: In the first place, if we force the contractor to the wall, he may declare bankruptcy thereby ending forever our hopes of securing payment to the funds. In the second place, our members may lose their jobs.

During the first year and a half under ERISA, we were faced with a ludicrous interpretation by the Labor Department that however reasonable they may be, ERISA prohibited us from working out arrangements with contractors for repayment of their delinquent contributions.

Finally, we succeeded in persuading the Labor Department and the Internal Revenue Service to permit plans to enter into any reasonable arrangements for repayment. They accomplished this objective by granting an exemption from the prohibited transactions section to permit a plan to extend credit to the delinquent contractor.

However, in the same regulation, the agencies announced that it was not a violation of the prohibited transactions provisions of ERISA for contractors to fail to make payment in accordance with their contracts; that is, it was not a prohibited transaction for a contractor to grant himself a unilateral extension of credit by failing to make timely payments of his contributions.

Our plans need as much help as possible, during this period of sharp economic downturn, in securing the complete payment of all contracted for contributions. To facilitate this objective, we need the regulatory or legislative authority to force contractors to make their contributions.

It is imperative that the law be amended to provide that the failure to make contributions to either pension plans or other employee benefit plans is a violation of ERISA.

BANKRUPTCY PRIORITY

A continuing related problem in our industry is the high level of bankruptcy. In such cases, by virtue of two Supreme Court decisions, pension and other benefit contributions, unlike wages, are not eligible for priority treatment under the bankruptcy laws. Therefore, when a contractor goes bankrupt, his delinquent contributions are lost forever.

Chairman PERKINS. If you will excuse me, Mr. Buoy, I want to compliment you personally on your wonderful testimony. You can be assured that I intend to carry out your suggestions and to carry out everything that I possibly can to see that labor and the standard of living of the people you represent is improved, as long as I am chairman of this committee.

The Secretary of Labor is upstairs before Mr. Hawkins' committee. I am expected to make a statement up there. At this time, I am going to call on my good friend, Congressman Dent from Illinois, to chair this committee—excuse me, from Pennsylvania.

I know that my good friend Jack Curran will not think I am running out or anything of that nature, and will forgive me. And, Jack, I do not know how things are in Chicago but I am going to find out.

Mr. DENT. Thank you, Mr. Chairman.

Mr. BUOY. Although it is not subject to the jurisdiction of your committee, we urge your support for legislation granting priority treatment under the bankruptcy law for collective bargained contributions to all employee benefit plans.

Mr. DENT. We may not, as you know, be able to change the bankruptcy laws, but as we get into the testimony that you and other are giving in these hearings, I am sure that we can try to provide in the legislation that wages and other benefits, including pensions, must be treated in all respects exactly the same as wages.

Mr. HEFTTEL. Would the chairman yield? Unfortunately, I know where I have to be at 11 o'clock. I am disturbed that all benefits that are to be a part of the basic compensation to an employee were not always treated in the same way as that which was considered as direct payment, as opposed to direct or fringe payment.

I do not think that there is a question that, unless you go bankrupt and affect that day's wages, in effect, there is no way that bankruptcy should ever serve to sever or terminate that which is a part of what you are earning when you work, only to find out that it is not.

That is a very basic error in the way that it was drafted, in contrast to any contractual law under any circumstances. I think that we have an obligation now to modify or amend, as the case may be, the way that all fringe benefits are treated; be they pension, fringe benefits or any others.

Mr. DENT. Thank you very kindly. The only reason we did not even discuss putting it in the statute was because we hoped that, if there was any question about it, the administration, both in Labor and IRS, would clarify it under regulations.

I would like to make one other comment. It is preposterous to require any one segment of the population, I do not care what it may be, to deal with more than one agency in the interpretation and application of law for that individual group; whether it is pension plan or any other facet of conduct.

It is mindboggling to think about dealing with IRS, Labor Department, Securities, and Exchange Commission, as each regulates a different aspect of a pension plan or health plan.

Again, there has to be some clarification in the law that puts the responsibility on one agency of Government and makes the plan and those connected with the pension plan responsible to that one agency.

Otherwise, you have the conflict of who is doing what, as each entity says the other one is or should be doing it. That way, that which is supposed to be done is never done. We, again, have an obligation to draft the legislation or amend the legislation so that we can point the finger to a single agency of Government and a single agency of Government can point the finger at the trustees of the pension plan.

When we look at the constant failure of these plans to live up to expectations, it is a wonder that they are surviving, in a number of instances, at all. When you recognize what it is like to deal with any one of those agencies, it is most difficult, but dealing with all three is self-defeating and contrary to what this committee is here to do.

Mr. BUOY. Thank you, Mr. Congressman, we appreciate that.

Mr. DENT. Thank you very much for your worthwhile contribution. Please proceed, Mr. Buoy.

UNNECESSARY PAPERWORK

Mr. BUOY. Unlike the situation with respect to pension plans in heavy industry, employers in the construction industry negotiate an hourly wage package. To a great extent, the decision with respect to the distribution of that hourly package between direct wages and other benefits has been tailored to the needs of the employees, as expressed by their representatives.

The employer typically is less concerned with the specific distribution than he is over the total wage package. In a very real sense, therefore, any increase in the cost of operating our pension plans comes directly out of the pockets of the participants.

In a nutshell, every unnecessary or unwisely spent dollar either comes out of the employees' hourly wage or out of their retirement benefits. Although they will certainly be willing to expend money to insure proper administration of their plan and to insure adequate benefits, there is no justification for requiring the use of such moneys to generate unnecessary and duplicative paperwork or to provide protection for persons who are undercutting our plans.

Even our union dues-financed plans are not free from the heavy hand of unnecessary and duplicative regulation. We in the trade union movement wholeheartedly support the view that unsuspecting participants in employee benefit plans must be protected from unscrupulous and illegal conduct.

We share the congressional judgment that the unsuspecting can best be protected by requiring that fiduciary obligations be imposed upon those with discretionary authority over employee benefit funds; that

such persons report on a regular basis to the Government on the activities of those funds; and that such persons be required to disclose to the participants the full details of the plan.

With respect to activities funded by union dues, Congress saw these needs almost two decades ago when it enacted the Labor-Management Reporting and Disclosure Act of 1959, the Landrum-Griffin Act.

The law already requires that union constitutions be made available to the burden of filing a third set of forms to no apparent purpose with the Labor Department and with the Internal Revenue Service.

Under the Landrum-Griffin Act, union officials are already considered fiduciaries with respect to such funds whether or not they are established in separate trusts. Yet, the Labor Department is imposing totally duplicative reporting and disclosure regulations under ERISA on union dues-financed benefit plans covering more than 100 members.

It is unjustifiable from any point of view to be putting these plans to the burden of filing a third set of forms for no apparent purpose and to be imposing the ERISA superstructure on those dues-financed plans which are already subject to the Landrum-Griffin Act. For those plans, we need legislative relief.

VESTING

In the area of vesting, the agencies of Government are proposing to turn the commendable purposes of the law into regulations which require our members to pay for vested rights based on nonbargaining unit work.

Let me explain our predicament very briefly. The pension reform law requires the granting of vesting credits to participants. Because the pension reform law was written with single employer industrial plans in mind, the vesting and participation requirements relate primarily to employment with a particular employer, rather than employment under the scope of a multiemployer plan.

In our multiemployer plans, participants build credits regardless of the employer for whom they are working. They can and often do move from employer to employer several times during the year. Yet, they still build credit so long as their work is covered by the plan.

Indeed, this procedure is the building trades voluntary answer to the need for portability. Now, regulations have been issued, however, which would require that all continuous hours of service by a construction employee with his employer be counted for vesting and participation purposes even if some of those hours are in employment not covered by the collective bargaining agreement.

For example, nonbargaining unit work, such as supervisory work or white collar work, must be covered despite the fact that no contributions are made by the employer for those hours of work.

A bargaining unit employee who leaves the unit will build vesting credit in the bargaining unit plan even if, at the same time, he was building credit in a supervisor's plan.

Most indefensible is the requirement that hours of service be counted for participation and vesting purposes even if they were for work performed at a nonunion job by a construction employee who remains with an employer who left the unit to do that nonunion job.

Such a requirement, in effect, imposes on the union members the obligation to finance the pension guarantees for nonunion labor. In effect, our members are being asked to finance the vesting credit of scab labor. This is totally unacceptable and must be remedied.

We will seek legislation to require multiemployer plans to grant vesting and participation credit only for bargaining unit work.

SUSPENSION OF BENEFITS

ERISA prohibited plans from suspending benefits of participants except when they return to work for the employer who maintains the pension plan. Recognizing the different structure of multiemployer plans, Congress wrote a special rule permitting suspension of benefits in the building trades if the participant returns to work "in the same industry, in the same trade or craft, and the same geographic area covered by the plan."

The purpose of the special rule for our plans was to:

Prevent plan assets from being used to pay retirement benefits to persons who have, in fact, returned to work for employers covered by the plan. Also contemplated are provisions designed to protect participants against their pension plan being used, in effect, to subsidize low-wage employers who hire plan retirees to compete with, and undercut the wages and working conditions of employees covered by the plan.

The Labor Department is responsible for issuing regulations but has not yet done so. Any such regulations must take into account the problems of self-employment so typical in our industry. Regulations must permit the plan itself to determine the geographic area covered by the plan and the reemployment prohibition.

Also, regulations must not permit a participant to retire on a pension from a plan covering a particular craft and return to work, without penalty, in the same geographic area, and in the same industry, but in a different trade, craft, or occupation.

Often the line of demarcation between one trade or craft or occupation, and another may not be clear. The purpose of the suspension of benefits provision was not to allow the benefits of a multiemployer plan to be used to subvert the employment standards of the industry, trade, or craft in the area of the plan.

Finally, our plans must be able to retain their rules permitting 6-month or 12-month benefit cancellations if a petitioner engages in prohibited reemployment. Unlike the Federal Government which has at its disposal various criminal sanctions for fraudulent claims for Federal retirement benefits, our plans have no protection unless they may impose reasonable suspension rules.

We might add that this was clearly contemplated by the Congress and must be implemented by the administration.

TERMINATION INSURANCE

When ERISA was being considered our plans originally urged that the termination insurance requirements not be applicable because of the historical evidence that multiemployer plans, by their nature, demonstrated a minimal risk of termination to the disadvantage of participants.

Therefore, we felt it would be an imprudent waste of our plan assets to be paying premiums for unnecessary insurance. We did agree, finally, to coverage at reduced premiums. Since enactment of ERISA, however, we have seen the termination of several multiemployer plans in so-called dying industries.

We are also witnessing the impact of changing technology and changing economic circumstances on some of our local plans. For example, as jobs move from the northeastern region of the country to the southwestern region of the country, some of our local plans are in serious jeopardy, demonstrating the wisdom of the Congress. It is, therefore, necessary for our plans and their participants to be protected by termination insurance.

Recently, as you well know, a challenge to the coverage of our multiemployer plans was undertaken in California. In the *Connolly* case, a Federal district court ruled that a typical boilerplate, collectively bargained Taft-Hartley trust was not covered by termination insurance.

I am pleased to advise this committee that the National Coordinating Committee for Multiemployer Plans, an organization which most of our building trades plans and unions are affiliated with, has filed an amicus brief in that case supporting coverage of multiemployer plans. We hope the Government is successful.

However, the termination insurance provisions of ERISA were not written to recognize the unique nature of multiemployer plans.

Therefore, amendments to ERISA will be necessary not only to protect the plans, but also to insure that the burden of possible termination, and termination insurance, does not fall unfairly on the contractors who maintain their relationships with the plan.

Rather, the burden should be placed squarely on the backs of those contractors who, by their own actions, such as withdrawing from the bargaining unit, place the economic viability of the plans in jeopardy.

Mr. Chairman, I appreciate once again, this opportunity to share with you our concerns and look forward to working with you in this Congress to improve ERISA for the benefit of our members.

Mr. DENT. Thank you very much, Mr. President. I can assure you that this committee has already taken the first step by introducing H.R. 4340 to put the administration of ERISA in one agency.

In our draft which is before us, we have left it up to the President of the United States to decide which agency he wants to put it in or create an independent agency, if he so desires.

However, I personally have let the President know that I believe, and I hope my committee has given very serious consideration that it ought to go into the Labor Department, if we can get it there. We will try.

In any event, there must no longer be a hydra-headed administration for this particular piece of legislation. You have covered, probably better than any other testimony that has come before us on this serious matter of regulation, the importance of regulations in this area.

We are intending to hold oversight hearings as soon as we can get action on the consolidation bill. When we get that, I hope the committee can find some time to really do the job.

Before I leave this Congress, I would like to very seriously put the public workers pension bill on the books. In fact, I would say, without

fear of contradiction, that there was more jeopardy to the workers in public works today and public functions than there was to the private sector before the passage of ERISA.

ERISA was intended for one purpose and one purpose only: to guarantee the worker the pension he paid for, whether it was paid for by the employer, or paid for jointly by the employee or paid for solely by the employee.

These regulations that they are putting out—it is an old saying in politics, especially, in legislative politics, that any similarity between a bill that is passed by Congress or any State legislative body or counsel body, any similarity between that and what the law becomes by regulation, is purely accidental, because the bureaucrats never look at the record. They never even look at the law.

I am very much in sympathy with all of this statement that you have made. I want to say, again, that it is one of the best testimonies to come before us. I recommend it very seriously and I will send every member of the committee who was not here, a copy of this.

Jack, if you have sufficient copies for us, I want to send a copy to every member and ask them to please read this testimony.

I am sorry, but I have to chair my other committee on trying to fund the Assassination Committee. That is not one of my most pleasant duties, if you want to know the truth.

Mr. BUOY. Congressman Dent, I would like to thank you and the chairman, and the members of the committee for hearing my testimony this morning. I would like to thank you personally.

I have known you for many years and I know the dedication and the sincerity you have put into trying to develop safeguard programs. I am confident that you recognize the needs for the refinements in this program. I look forward to working with you on it. Thank you.

Mr. DENT. Thank you. They elected me to do a job and I am trying to do it.

Mr. CURRAN. Mr. Chairman, before you go, I would like to add my two pennies' worth to what President Buoy has said in regard to the excellent work that you have done in this area. I do not think there is any Member in Congress who is more informed in the area of pensions who has spent more time or been more concerned about the problems of the laboring men and women concerning their pension rights and protecting their rights, than is Congressman Dent.

He refused to be pressured when a one-sided bill was being presented to the House of Representatives who did not take into consideration the problems of the multiemployer plans that we are concerned with.

Instead of yielding to pressure, he stayed with us and listened to our problems and helped to work out those problems. For that, Congressman, we are eternally grateful. I just wanted to add that to the remarks of President Buoy.

Mr. DENT. Jack, thank you very kindly. Since you recently got married, you know the value of having a happy wife. If you would write that down and send it to Babe, for me. [Applause.]

Mr. Simon will chair the meeting from now on. I thank you very kindly, from Pennsylvania.

Mr. SIMON. I want to join my colleague in commending you for a solid statement. We appreciate it.

Mr. Jeffords?

Mr. JEFFORDS. I also want to commend you for an excellent statement in a most critical area that we have to face right now. In fact, it does face us almost immediately. The future is in question with respect to pension programs. Your testimony will be of great help to us. Thank you very much.

Mr. SIMON. Mr. Buchanan?

Mr. BUCHANAN. I do not want to sound like a me-too Republican, so I will say, instead, that some months ago right after President Carter was elected, I was riding on the subway train with a freshman Congressman, a Democrat.

I asked him if he knew how to speak Southern Baptist. I offered to tutor him if he did not. I asked him if he did. He replied, "Amen, Brother. Praise the Lord!" I told him he qualified.

That is the way I feel about your testimony, Mr. Buoy. You make good sense and I am pleased to hear what Chairman Dent said.

I am not a member of the subcommittee. I do not claim to have expertise in this area but I know what you said is sound. I am pleased to hear he is going to move on it. I thank you for coming today.

Mr. SIMON. Ms. Pettis?

Ms. PERRIS. Mr. Buoy, your testimony has been a real education to me. I am not on the subcommittee, either. I can see that you have a real case. I will be interested in following the legislation as it works toward its goal. Thank you.

Mr. SIMON. We thank you very much for being here, both Mr. Buoy and Mr. Curran. I hope that we can follow through on the problems. They are very real problems that obviously have to be addressed and I hope and believe they will be addressed by Congress.

Thank you, sir, that concludes our meeting.

[Whereupon, at 10:20 a.m., the hearing was adjourned.]

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