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Jobs, Income Inequality and Taft-Hartley Benefit Plans

BY GEORGE M. KRAW

"I'm also proud to say this is a union show," said an emotional Jay Leno in his on-the-air February farewell as host of "The Tonight Show." "And I have never worked—I have never worked with a more professional group of people in my life. They get paid good money and they do a good job."[1]

Leno's praise focused on an industry bargain that provides well-paid jobs in exchange for performance and stability. These arrangements profit employers, employees and the nation at large. The key to their success is a mutual pragmatism that avoids ideological dead ends, finds specific solutions for specific circumstances and achieves the greatest good for the greatest number of workers, consistent with the long-term interests of the industry that employs them.

President Barack Obama has made social inequality and building "ladders of opportunity" major domestic policy goals. The House Republican leadership speaks of achieving "growth and jobs."

There is an immediate opportunity to accomplish such ends by revitalizing and expanding the existing benefit programs that form the Taft-Hartley multiemployer system. The multiemployer plan model provides training, work and social protection to millions of American workers, financed by private employer and employee contributions. The plans and the industries that support them offer a path for the unemployed and underemployed to productive and dignified lives. A job that pays a decent wage is a better cure for social ills than food stamps, Medicaid and extended unemployment benefits.

Roughly 26 million Americans rely upon multiemployer plans.[2] Some plans provide pensions, others health benefits, some focus solely on job training and other programs. Affiliated plans often operate as a single grouping in an industry. While policy makers debate the need and advantages of new strategies to reduce inequality and unemployment, multiemployer plans are treated with a bipartisan condescension that makes them an afterthought in most policy debates. Concerns about them today focus on the plans' awkward relationship with the Affordable Care Act[3] and the financial threat that some large multiemployer pension plans pose to the solvency of the Pension Benefit Guaranty Corporation.[4]

Decisive action can overcome these problems. Necessary policy and regulatory changes include permitting the plans to participate directly in the health-care exchanges, allowing low-wage plan participants access to ACA subsidies and giving the retirement plans greater flexibility to adjust benefits and contribution rates. The PBGC should receive a federal backstop in the form of a guarantee of the corporation's obligations by the full faith and credit of the U.S. government. Any future restructuring of employment tax credits should take into

[1] "Jay Leno Ends Final 'Tonight Show' In Teary-Eyed Goodbye," Real Clear Politics, Feb. 6, 2014, http://www.realclearpolitics.com/video/2014/02/06/jay_leno_ends_tonight_show_in_teary-eyed_goodbye.html

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[2] The number 26 million is used by the National Coordinating Committee for Multiemployer Plans, e.g., correspondence from NCCMP to Centers for Medicare & Medicaid Services, Feb. 21, 2013, http://www.nccmp.org/submissions/pdfs/HHS/NCCMP%20Comments%20on%20Certified%20Application%20Counselors.pdf

[3] "Unions Irate With Obama Administration Over Perceived Mistreatment on ACA," by Sean Forbes, Pension & Benefits Daily, Feb. 6, 2014 (25 PBD, 2/6/14; 41 BPR 316, 2/11/14).

[4] "There is a substantial risk that, absent changes to the multiemployer plan system and PBGC's program, the multiemployer insurance program will become insolvent and not be able to pay plans the financial assistance they need to pay guaranteed benefits," 2013 PBGC annual report, p. 32, http://www.pbgc.gov/documents/2013-annual-report.pdf#page=9

account the effect of such changes on multiemployer plans and provide further incentives for both employers and employees to participate.

For a variety of reasons, mostly political, none of these changes are likely to occur in the foreseeable future without a greater appreciation by policy makers of the plans' past record and continuing ability to improve the lot of American workers.

The political challenges to revitalizing multiemployer plans stem from the plans' close identification with unions. There is also a general unwillingness among government regulators and policy makers to allow the plans to adjust to changing economic and social circumstances. Critics of proposals that would help the plans often dismiss such efforts as a ''union bailout'' even though they are better seen as investments in the social infrastructure of the nation.[5] Any assistance to the plans in the aftermath of the Great Recession and during a period rife with systemic long-term unemployment is as justified as the disaster relief provided to victims of storms and earthquakes.

The plans have improved the lives of struggling Americans, and failing to support them risks the successes the plans have achieved. Workers in unionized industries generally, and in jobs tied to multiemployer plans in particular, earn more than their nonunion counterparts. Rather than seeing the plans and their stakeholders as unwanted legacies of a bygone era, irrelevant to the information age, policy makers would do better to focus on what works in the plans, especially the training programs, and how the plans and their industries provide an entry to the middle class for Americans on the lower rungs of the economic ladder and help them move up. Successful self-governing plans allow working people to take charge of their own futures. Providing additional political support and incentives to follow the multiemployer plan model will make them more effective and provide more opportunities.

Taft-Hartley Plans Surprised Both Parties

Multiemployer plans were created by the Taft-Hartley Act in 1947, and are jointly sponsored by unions and one or more employers. They are overseen by trustee boards with an equal number of labor and management members. The Taft-Hartley Act was enacted by a Republican Congress over the veto of President Harry Truman. The presidential veto message stated:

> The bill would limit the freedom of employers and employees to establish and maintain welfare funds. It would prescribe arbitrary methods of administering them and rigidly limit the purposes for which they may be used. This is an undesirable intrusion by the Government into an important matter which should be the subject of private agreement between employers and employees.[6]

The criticism and predictions concerning multiemployer plans proved wrong; the end results were different from what either side expected. The plans' structure was intended to limit the influence of unions over employee benefit programs, as part of the overall goal of the Taft-Hartley law to restrain the power of unions. The irony of multiemployer plan origins is how well the plans have worked subsequently, and how well they have served to strengthen unions. The Taft-Hartley Act was enacted during a period of labor unrest after the Second World War, when the end of wartime price controls and the bumpy transition to a peacetime economy led to frequent conflicts between employers and workers. The chief sponsor, Sen. Robert Taft (R-Ohio), was a principled conservative who earned a chapter in John F. Kennedy's book ''Profiles in Courage'' for his opposition to the ''victors' justice'' of the Nuremberg Trials, an opposition that likely cost him the Republican presidential nomination in 1948. He was determined to reduce the power of unions and initially hoped to overturn much of the New Deal labor legislation enacted in the 1930s.

The law itself was largely written by a junior lawyer from Taft's Cincinnati law firm[7], and contained a wide array of restrictions on unions and the collective bargaining process, of which the rules for multiemployer plans were only one piece.

The plans became an unexpected triumph of labor management relations in the latter half of the 20th century by providing pensions, health care, disability income, unemployment coverage and training to millions of American working families. The multiemployer plans also provided stable workforces for American industries. They are today found in such diverse industries as food, coal, hospitality and retail, among others, and are especially important to industries with mobile or transitory workforces, such as construction and entertainment.

The plans are overregulated and underfunded in a fitful economy at a time of declining union membership. Federal policy is chiefly focused on compliance issues for the plans, with little effort to encourage their growth in spite of their proven ability to train and maintain workforces. A better approach would be for the federal government to provide the financial resources necessary to address the plans' challenges, both through tax benefits to health-care plans and regulatory relief to pension plans.

Throughout the 2008-2009 financial collapse and subsequent recession, Taft-Hartley multiemployer benefit plans became collateral damage. The highly regulated pension plans saw more constraints placed upon them through the Pension Protection Act, in a failed attempt to regulate into solvency financially weaker multiemployer plans.[8] The end result was to raise the overall costs of the plans, without making their participants safer. To broaden participation, the plans must have the flexibility to address their specific circumstances. There is a cliche among multiemployer plan professionals that if ''you've seen one multiemployer plan, you've seen

[5] See, e.g., ''The Union Pension Bail Out,'' The Wall Street Journal, June 1, 2010, and ''The Obamacare Bailout for Unions Is Here,'' by Katie Pavlich, Townhall.com, http://townhall.com/tipsheet/katiepavlich/2013/11/07/the-obamacare-bailout-for-unions-is-here-n1742210

[6] Harry S. Truman veto of Taft-Hartley labor bill, June 20, 1947, http://www.presidency.ucsb.edu/ws/?pid=12675

[7] Art Preis, ''Labor's Giant Step: The First Twenty Years of the CIO: 1936-1955,'' Pathfinder Press (1964).

[8] See ''Lawmakers Should Let the Sun Set on the Pension Protection Act,'' by George M. Kraw and Katherine McDonough, National Law Journal, Dec. 16, 2013, for discussion of failed efforts to compel solvency for multiemployer pension plans, http://www.nationallawjournal.com/id=1202632754956/Lawmakers-Should-Let-the-Sun-Set--on-the-Pension-Protection-Act?slreturn=20140311210333.

one multiemployer plan.'' No one-size-fits-all regulatory scheme will permit individual multiemployer plans to reach full potential. The union connection makes them anathema to those who see unions as their political enemies. The continuing decline of unionized workforces provides separate challenges, although the millions of Americans who belong to unions and union-sponsored multiemployer plans can't be ignored even by those who wish the unions would disappear completely.

The financial problems that many multiemployer plans face partly result from their ambitious goal to raise large numbers of working people into the middle class by providing high-paying job opportunities, training and social protection against the demands of old age and illness. In a recent speech, Rep. Paul Ryan (R-Wis.), the Republican vice presidential nominee in 2012, said that what the supporters of federal poverty programs were ''offering people is a full stomach and an empty soul.'' The statement was criticized as showing disdain for the working class. But the core point is worth considering in a broader context: Both government maintenance programs and low-wage, dead-end jobs are debilitating when they provide no exit and no hope. We as a nation can do better than that.

Multiemployer plans are not seen as poverty programs, but they help to fight poverty. They will not solve all the problems of systemic unemployment, but they will train workforces. They will not provide every American with a ladder of economic opportunity, but they have done so for millions. There is no single solution to stubborn social ills that leave millions of Americans reliant on food stamps and other social programs to make ends meet, even with a job. No one on either side of the political divide should oppose programs that provide decent wages, a way to keep current in job skills and a dignified retirement. The political challenge is to get pragmatic men and women of good will to move beyond their preconceptions and day-to-day policy differences, and together work to find solutions to the problems of economic hardship and inequality. In this, multiemployer plans have an important contribution to make, if allowed to do so.