

Union Pension Woes Help Spur Push For Forced Arbitration

By [SEAN HIGGINS](#), INVESTOR'S BUSINESS DAILY Posted 07/20/2009 07:22 PM ET

A possible Senate compromise on pro-union card check legislation would strip out the card check part itself but that isn't doing much to mollify Big Business. Firms fear that remaining provisions — especially mandatory arbitration — would still harm them. Among their concerns is that they could be forced to pay into ailing union-run pension funds. Indeed, many business lobbyists believe this is the real agenda behind the legislation. "The status of underfunded pension funds is a huge part of the motivation to get card check passed," said Ted Phlegar, an attorney with the Chamber of Commerce. Why pensions? Because many union-managed funds are seriously underfunded. The average union pension has resources to cover just 66% of what is owed to participants, according to the Pension Benefit Guaranty Corp. That was as of 2006, the most recent data available. By comparison, the 100 largest corporate defined benefit pensions, as of 2008, had assets to cover 75.7%, according to the Milliman 100 Pension Funding Index. The sharp bear market likely has taken a further toll on pensions generally, though stocks have rallied in recent months.

Card Check Mate?

Late last week, several moderate Democrats were reported to be backing a compromise version of the Employee Free Choice Act that would drop the card check provision, which would make union organizing radically easier. Under card check, workers' secret ballot to vote on organizing would be replaced with a public petition. Big Labor said card check is necessary to give them a fair chance to attract workers. Big Business countered that a public process would lead to coercion and intimidation. Both sides lobbied hard and "card check" soon became short hand for EFCA on Capitol Hill. The compromise may not stick. Service Employees International Union head Andy Stern has distanced his group from the reported deal, affirming SEIU's desire that card check remain in the bill. "There is no deal," said SEIU spokeswoman Ramona Oliver. "Speculation about what is or is not in the bill is fruitless until there actually is a bill." But the deal may be the best Big Labor can hope for. Their Senate allies lack the 60 votes needed to beat a Republican filibuster due to moderate Democratic defections. "Senator (Charles) Schumer has been telling these guys for a while that if they want to pass this thing they have got to take the card check provisions out," said a business lobbyist.

Pension Push

EFCA's other provisions include mandatory binding arbitration if workers have voted to unionize but the union and the company haven't agreed on a contract. One thing unions could push for in arbitration is having the firm contribute to a union-run pension fund. Labor leaders and their allies have indicated that this is on their minds. President Obama met privately with the heads of Big Labor last week. Among the issues they discussed was the fate of pensions, AFL-CIO President John Sweeney told the Detroit News. Labor's allies have also highlighted EFCA as a means to shore up unions' pension coffers. "Americans need to know ... that a lifetime of effort will bring a secure retirement and a better future for their children," said Sen. Ted Kennedy, D-Mass., in a March speech introducing EFCA. Business lobbyists also cite a March letter sent by pension fund trustees for Teamsters Local 507 to asset managers and reported on by Politico. The letter stated, among other things, that: "EFCA would strengthen defined benefit plans by ... increased plan participation from newly-organized union members." About half of union pension plans are multi-employer defined benefit ones, covering roughly 10 million people. Union locals manage them, taking contributions from the different companies that represent their members. Businesses fear arbitration could be used to require them to take up the slack in underfunded pension plans. In effect, companies could have to pay the pensions of people who never worked for them. "We would walk in the door inheriting the unfunded liability that a pension plan already has on the books," said Brett McMahon, a vice president of Miller and Long, a construction company, and a member of Associated Builders and Contractors, which opposes EFCA. "Once you start contributing (under current law) you become liable for the plan's deficiencies before you got there." SEIU's Oliver said the arbitration push has nothing to do with pensions, claiming that

business is resorting to "ludicrous" scaremongering. "Mandatory binding arbitration is extremely important because one of the ways that bosses keep (organized) workers from having a voice is ... by dragging their feet and refusing to negotiate in good faith on a contract," Oliver said.

Union Pensions Troubled

How weak are union-managed pension funds? The Labor Department today lists 96 in "critical status", meaning they have less than 65% of the assets needed to cover present and projected liabilities. Another 127 are listed as "endangered," with 65% to 80% of the necessary assets. That is based on data from last summer, before the market's September meltdown. The Labor Department's list is set to be updated later this summer. Cynthia Eagan, spokeswoman for the Central New York Painters and Allied Trades Pension Plan, said they had only enough assets to cover 54% of their liabilities. "That was based on last year's numbers. This year's numbers are even worse," Eagan told IBD. Asked when the fund may be able to get out of critical status, she replied: "We're not able to say right now." A 2008 study based on 2005 data by the conservative Hudson Institute found that while overall non-union pension plans were able to cover 98% of their liabilities, union plans covered only 88%. Among large defined-benefit programs — those with more than 100 participants — the institute found that only 19% of union plans are fully funded vs. 37% of non-union plans. Overall, 11% of large union defined benefits programs fell in the DOL's "critical" status and another 28% were "endangered." It's a subject that unions don't like to talk much about. Teamsters national spokesman Galen Munroe, for example, declined to discuss it, saying that was a matter for the locals. None of the locals contacted by IBD responded.

Union Leaders Better Off

Why are the plans underfunded? Union officials have cited the recession, though the available data predate last year's Wall Street tumble. Eagan blamed her fund's woes on declining membership. There are fewer and fewer unionized workers to support retirees, she says. But some funds seem to be well-run. The Hudson Institute study found that while the 21 largest union pension plans had less than 70% of the necessary assets, the pension plans for officers of those unions were 88% funded. Diana Furchtgott-Roth, a senior fellow at the Hudson Institute who did the study, argues the problem is that during contract talks unions have focused on wage gains rather than shoring up pensions, preferring an immediate payoff to down-the-road ones. "So say (the union leaders) come back to the workers and say, 'OK, we've negotiated a larger amount from the employer. The pension plan is going to be actuarially fine. But, by the way, you're not getting a raise this year,'" Furchtgott-Roth said. "Do you think they are going to be popular?"