NCCMP
2001
ANNUAL REPORT

National Coordinating Committee for Multiemployer Plans
NCCMP

April 14, 2002

A Message from the Chair…

It gives me great pleasure to present to you, the membership and friends of the NCCMP, this summary of our activities for the 2001 calendar year. As you will see, your organization has represented the interests of multiemployer plans in an outstanding manner, while undergoing a major internal restructuring to better serve the interests of member plans and their participants.

As your Chairman, I urge you to take a few minutes to read through the pages of this report to gain a sense of the progress made to rejuvenate the NCCMP and make it more responsive to the needs and desires of the membership. Due to these efforts and your support, our membership grew by approximately 40% during 2001, reversing a trend of declining membership seen in the past few years. This progress is merely the beginning, however, and the need to do more is paramount if we are to take on those who would destroy these great plans that were built by those who have gone before us. The way to do that is to expand our membership beyond our traditional base to all plans who benefit from the work of the NCCMP.

Make no mistake, the aggressive assault against our plans we have witnessed in recent years will continue and take on a new ferocity. As you know, we have seen a “free-fall” decline in the percentage of the workforce covered by defined benefit pension plans from 30% in 1975 to slightly more than 5% today, replacing them with “more modern” defined contribution plans that shift the entire risk of investment performance to the employee. Those who were responsible for this shift have begun to turn their attention to our health benefit plans as they promote Medical Savings Accounts and “more modern” defined contribution health benefit plans. In addition, the trial lawyers and other special interest groups continue to promote legislation that would allow participants, and even individuals who were never participants, to sue plans and Trustees for damages. These suits would not just have a claim paid, but would provide compensatory and punitive damages that could jeopardize the very existence of our plans.

The only group standing in the way of their success is your NCCMP. Just as this report is a testament to our collective efforts in the last year, our future and the future of all multiemployer plans depends on your continued support. As the organization continues to evolve, please take advantage of the growing opportunities to participate in meetings and conferences and, when asked, by sharing your time, thoughts and experience with others, so the NCCMP can realize its true potential to protect and defend multiemployer plans everywhere.

Sincerely and Fraternally,

Edward C. Sullivan
Chairman

The year 2001 was characterized by a fundamental shift in the operations of the NCCMP. As recommended by the management consultant previously retained by the Board, two new staff members were hired who assumed responsibility for rejuvenating the organization. Overall, the results of these efforts were positive. This report will summarize the most significant highlights of the year in review in the areas of legislative and regulatory activities, member services and organizational developments.

1. LEGISLATIVE AND REGULATORY REPORT

One of our primary activities is lobbying on behalf of constituent plans and their participants before the United States Congress and with various federal agencies. On the legislative front, the past year brought a major success as well as additional challenges. The most significant are summarized below:

Pension Policy

IRC Section 415

Undoubtedly, ***our greatest legislative accomplishment of recent years was achieved early in 2001 when Congress passed the much sought-after relief from the punitive aspects of Section 415 of the Internal Revenue Code.*** The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), passed by Congress on May 26, 2001 and subsequently signed into law by the President, repealed the 100% of compensation limit and dropped the requirement that multiemployer plan benefits must be aggregated with single-employer benefits funded by the same employer when applying the 100% of pay limit to single employer defined benefit plans.

The amendment to Section 415 also increased the dollar limit to $160,000 at age 62 and modified other rules that govern amounts that can be deducted for contributions to defined contribution accounts. Most importantly, however, through these efforts the potential benefits that participants in our member funds can receive have been increased significantly.

Defined Benefit Pensions

According to a study published by the Department of Labor's Pension and Welfare Benefits Administration, the percent of workers covered by defined benefit pension plans has declined since ERISA became effective in 1976 from approximately 30% of the American workforce to slightly more than 5% by the end of 1997. Recognizing that defined benefit pensions are the only reliable mechanism to ensure lifetime income protection,[1] the NCCMP has adopted a policy to begin to take an affirmative position with respect to our public pension policy that goes beyond the traditional role of the NCCMP of reacting to proposed laws and regulations. This position will seek to affirm the primacy of defined benefit pensions and the security such plans provide to working men and women. One of the first areas in which this approach was used was to strengthen the language regarding defined benefit pension plans in the resolution on social and economic justice passed by the most recent AFL-CIO convention.

Other Pension Policy Issues

In addition to these items, we also provided comments to various governmental agencies concerning other pension policy issues including:

- *Disclosure Requirements for Plan Fiduciaries*—In response to a request for information issued last January, we filed comments with the Pension and Welfare Benefits Administration Office of Regulations and Interpretations opposing a proposal to impose additional, formal regulations concerning communications by plan fiduciaries that could have had the effect of limiting communications between plan fiduciaries and participants.
- *Special Rules for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates*—In April we filed comments with the Internal Revenue Service concerning how, when and what types of communications are required to be made by plans when a retroactive payment is made.
- *Required Distributions from Retirement Plans*—We

(1) If a pension plan is intended to provide a secure stream of income to an employee following his retirement for the remainder of his lifetime, only a defined benefit plan meets that definition. Defined contribution plans including annuity, thrift savings, 401(k), and profit sharing plans are actually savings plans that place the security of a workers retirement income in jeopardy by shifting the risk of investment performance from the plan to the individual. Hence, workers who must depend on favorable market conditions at the time of retirement run the risk of having to defer retirement or of running out of money before the end of their life. Such plans make excellent supplemental savings vehicles, but only when combined with the stability of a defined benefit plan.

also commented to the Internal Revenue Service in April concerning the need to clarify that multiemployer plans should not be disqualified because of failure to make a distribution to a terminated participant for reasons beyond the plan's control.

- *Use of 30-Year Treasuries for Valuing Pension Liabilities by Single Employer Plans*—Recognizing the need to protect and advance the interests of defined benefit plans in general, we offered our support to the single-employer plan sponsor community in their efforts to secure temporary relief to the unreasonable burden they face due to the current requirement to use the rates paid on 30-year Treasury bonds to value certain liabilities. Over the past year, the reductions in the federal deficit and the demand for this type of investment have resulted in historically low interest rates. This drop in interest rates equates to an enormous increase in plan liabilities that will almost certainly result in a renewed effort to terminate more defined benefit plans.
- *Funding/Under funding Notice Requirements*—In response to ongoing efforts by certain congressional staff members to require new, more expensive and expansive disclosure by multiemployer plans (similar to requirements already in place for single employer plans) the NCCMP has continued to actively oppose the addition of any such requirement. Citing the obvious differences in the numbers of multiemployer plan failures in comparison to single employer plan experience, and that multiemployer plans are far less likely to fail simply because there are, by definition, more than one employer supporting the plans, we have attempted and will continue to attempt to reshape their thinking to make any new reporting requirements useful to the plans and their participants.

Health Benefits Policy

Patients' Bill of Rights

The most significant legislative initiative addressed during 2001 with respect to health benefit plan coverage is clearly the Bipartisan Patients Protection Act of 2001, better known as the "Patients' Bill of Rights" (or PBOR). Substantively, both the Senate and House versions are largely the same. The primary differences of interest to multiemployer plans relate to the liability provisions. Under current law, participants whose claims are denied may sue to recover the cost of a claim plus attorneys' fees. Under the PBOR, a participant who is wrongly denied a benefit can also sue the plan for compensatory and punitive damages. Our legislative efforts have been mainly focused on eliminating these provisions, or making substantial modifications to their structure to permit our plans to survive if such provisions are eventually adopted and enacted.

The Senate passed its version in June with significant modifications resulting from intervention by the NCCMP, in cooperation with the AFL-CIO, the Building and Construction Trades Department, various affiliated International Unions and several employer associations including the Mechanical Contractors Association of America, Sheet Metal and Air Conditioning Contractors National Association, and the National Electrical Contractors Association. Among the changes obtained through these efforts were:

- an exclusion from exposure to the liability provisions for all retrospective claims;
- elimination of personal liability exposure for plan trustees;
- a blanket exemption from the bill's liability provisions from suit for non-medically reviewable decisions made by plans that are both self-funded and self-administered;[2]

(2) Unfortunately, a companion provision that would have exempted all multiemployer plans from the liability provisions was dropped from the bill as the result of a floor fight.

- protection against liability for money damages for multiemployer health and welfare plans to the extent that they use qualified "designated decisionmakers" to make benefit claims decisions (medical and non-medical), even if the fund's board of trustees is involved in the appeals process;
- elimination of an ERISA cause of action that would have exposed health and welfare funds, their trustees and their administrators to money damages for any alleged breach of duty that caused personal harm to a participant;
- clarification that a health and welfare fund can use fund assets to purchase liability insurance for any new money damages liability created by this legislation;
- federal jurisdiction for lawsuits claiming damages for non-medical benefit claims determinations; and
- a deferred effective date for some provisions for multiemployer and other collectively bargained plans.

The House passed its version of the PBOR in August after a deal was struck between the White House and Congressman Norwood. While the majority of the protections negotiated into the Senate bill were carried over into the House-passed version, one noteworthy protection was not carried forth. The exemption for self-funded, self-administered plans from money damages arising from non-medical benefit claims decisions was not included, both because the Democratic leadership feared losing votes, and because Congressman Norwood opposed it as a matter of policy. Nevertheless, the House added a protection that was not in the Senate version. It modified the conditions under which a multiemployer plan could be considered an "Association Health Plan" from a mandatory designation to a purely voluntary one.

Due to the events of September 11, the PBOR, along with virtually all other domestic agenda items, has taken a back seat to issues of National Security. Nevertheless, it is certain that the issue will be revived when the 107th Congress reconvenes. When it does, the coalition led by the NCCMP's lobbyist will continue to work with key members of the Senate and the House to protect our funds by influencing the final outcome of this important legislation.

Other Health Policy Issues

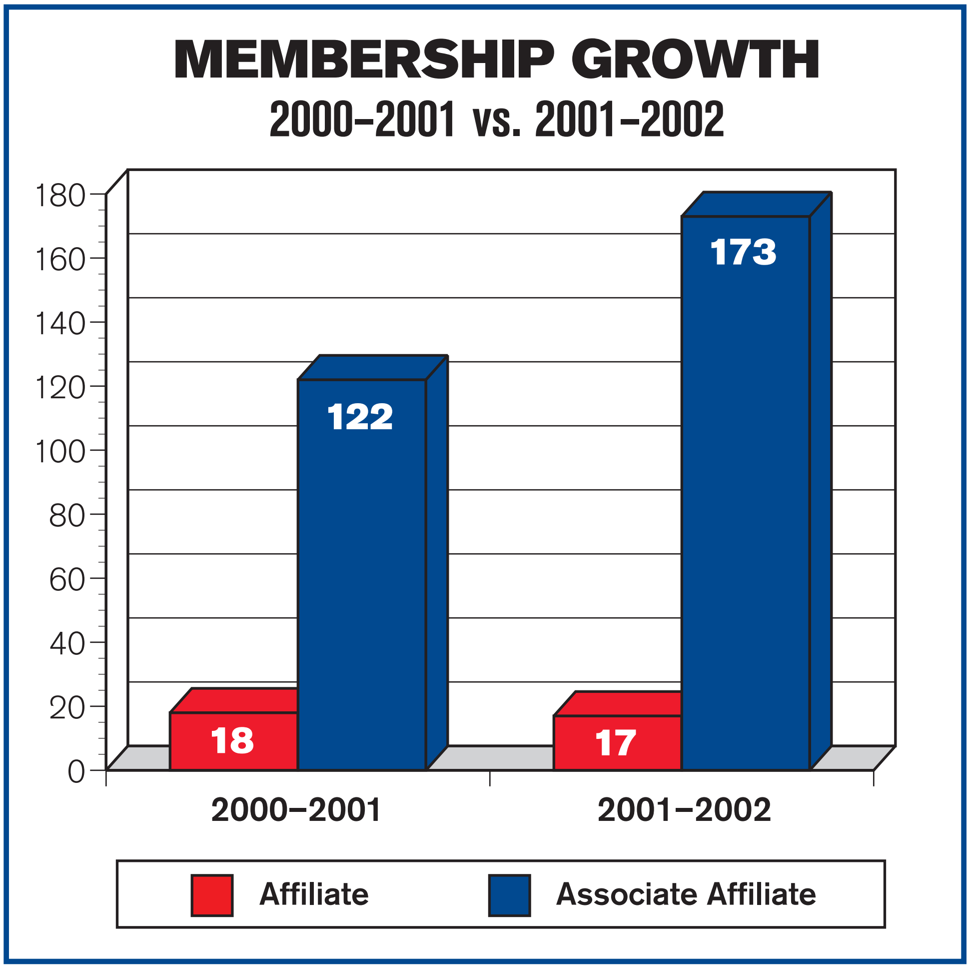
As in the pension policy arena, we continued to be active in making the voice of multiemployer plans heard in the health policy arena including, but not limited to, the following:

- *Retiree Health Care Issues (Erie County Pennsylvania)—Erie County* involves a school district which was found to have violated federal age discrimination laws because its retiree health benefits structure changed at age 65, coinciding with a retiree's eligibility for Medicare. The EEOC issued instructions to institute action against similar plans.

  Although this case involved a public employer rather than a multiemployer plan, many multiemployer plans are similarly structured. Therefore, the public policy and enforcement implications of this decision caused the NCCMP to work with a variety of other interested parties to persuade the EEOC to stop its enforcement action while it studied the value of Medicare in comparison with other employer sponsored benefit plans, and the regulatory and legislative alternatives available to resolve this problem.
- *Continuation of Coverage for Employees Who Lost Health Care Coverage as a Result of the Events of September 11, 2001*—In November we surveyed member plans and provided information and suggestions to lawmakers concerning the needs of multiemployer plan participants whose employment and related health benefits coverage were lost, as part of the debate over how best to structure an Economic Stimulus bill. The NCCMP lobbied in favor of

extending the same federal assistance being developed for employer sponsored health benefits to multiemployer plans whose participants were affected by the events and aftermath of September 11.

- *Non-discrimination in Health Coverage*—In April we submitted comments to the IRS regarding the applicability of certain non-discrimination rules contained in the HIPAA legislation.
- *National Coalition on Health Care*—We reactivated our affiliation with the NCHC as a means of increasing the influence of multiemployer plans, along with that of other major purchasers of health care, on matters of cost and quality in the health care delivery system.
- *Defined Contribution Health Benefits Plans*—In response to policy statements issued in conjunction with the Social and Economic Justice resolutions considered by the recent AFL-CIO convention, we suggested that the federation take a more definitive position in opposition to the proliferation of defined contribution health benefit plans.



2. MEMBERSHIP AND MEMBER SERVICES

Report on Membership

As a dues funded organization, recruiting and retaining membership is essential to our survival. For the 2001-2002 membership year, the number of paid Affiliates has remained constant. Significant growth occurred in the Associate Affiliate category where the number of members increased by 40%. Recognizing that there is a normal amount of attrition from groups that merge, or which drop their participation for other reasons, the growth in the number of "new" groups (those who did pay dues in the current year, but not in the prior year) was impressive at 58. The credit for the growth is due directly to the support provided by Affiliates who have shown their commitment to the survival of the NCCMP by writing to their constituent local unions, and by inviting the Chairman and/or the Executive Director of the NCCMP to appear at gatherings of trustees.

The financial position of the NCCMP has also shown marked improvement as a result of this growth. Dues income paid to date for the current year increased by 28% from approximately $634,000 to over $800,000. Furthermore, organizational restructuring has helped reduce the NCCMP's operating costs, bringing those costs in line with current income.

Outreach efforts to continue the current pattern of growth will continue to be a top priority. During 2001, the Executive Director actively sought and participated in a variety of speaking and exhibit opportunities to raise the profile of the NCCMP. The places and groups visited and/or to whom presentations were made included a number of national funds as well as meetings organized by International Unions and Employer Associations who support the efforts of jointly-trusteed benefit plan. These efforts will continue to receive a high priority as will our efforts to explain the mission of the NCCMP to prospective new members and report to the membership on activities undertaken on their behalf.

Member Services

This year we addressed the need for improved communication with the membership by taking advantage of new, cost effective technology. It was determined that the NCCMP needs to both transmit information as it becomes available to us and to become more effective at soliciting the input of our members in formulating policy statements on their behalf.

What became readily apparent, however, was the need to develop a comprehensive database of our membership—both the member funds and affiliate organizations, and the individual Trustees, Union leaders and benefits professionals who serve them—in order to meet that objective. Therefore, significant effort was invested in the development of a new membership database to capture the needed information. While a solid framework has been developed, obtaining membership information and updating the database to enable us to better serve the membership is a continual task. To date, the names and addresses of over 1400 fund trustees and professional advisors associated with member funds have been input into the system.

Among the member services provided in 2001 were:

Meetings:

- *Annual Conference*—This year our annual conference was held in June in San Francisco. Both the comments received, and the written evaluations, support the conclusion that the program was an outstanding success. This year the presenters were encouraged to approach their presentations from an advocacy perspective, which was extremely well received.

  Another new feature of the 2001 Conference was the presentation of the first annual **John L. Lewis Award**. This award is presented in recognition of an individual or institution who has demonstrated the type of vision and creativity exemplified by its namesake, the former President of the United Mine Workers of America. This award was named for Mr. Lewis as the creator of the UMWA Health and Retirement (Welfare) Funds, one of the first multi-employer funds and, because of its innovative work in building and operating a string of hospitals and ambulatory care clinics that literally brought health care to Appalachia, one of the most influential multiemployer funds in history. The inaugural award was presented to a successor of President Lewis, the former President of the UMWA and current Secretary-Treasurer of the AFL-CIO, Richard Trumka, for his work in the creation of the Center for Working Capital.
- *Lawyers' and Administrators' Meetings*—Two meetings of the Lawyers and Administrators' Advisory Committee were held this year. The first, held in conjunction with the Building and Construction Trades Department Legislative Conference, held the distinction of being the first event to be held in the new conference facility at the newly renovated AFL-CIO headquarters building. Attendance at the meeting was equally impressive with approximately 70 fund professional advisors in attendance. Those present heard the two key staff members from Congressmen Portman and Cardin's offices discuss aspects of the Section 415 relief provisions of the tax reform bill championed by their Congressmen. They also heard from representatives from the IRS and DOL and had the opportunity to engage the regulators in a substan-

tive dialogue. The second meeting of the group was held in San Francisco at the Annual Conference. This meeting also included representatives from the IRS and DOL and focused on more technical discussions of topics that included a presentation by the IRS Agent who supervised the creation of the new multiemployer plans audit guidelines.

Publications:

- *NCCMP Legislative Highlights of 2000*—In June 2001, we published a compilation of the legislative issues reviewed by the Working Committee in its advocacy work on behalf of multiemployer plans. This document provided brief summaries of the more substantive issues dealt with and a list of approximately 140 pieces of legislation affecting benefit plans reviewed by the Committee.
- *Multi-Elert*—In August 2001 we initiated a new service called "*Multi-Elert*," a registered trademark of the NCCMP, which is an e-mail based communications system that is intended to both keep the membership informed of breaking developments, and to solicit their input on matters that impact their funds. Issues 1-6 were distributed this year on topics ranging from the IRS' multiemployer audit guidelines, to clarification of the new Section 415 limits issued by the IRS, to an inquiry of member health and welfare funds as to whether and, if so, to what extent, their plans provide subsidized benefits to individuals whose employment and benefits coverage had been terminated as a result of the events of September 11, 2001. Judging from the feedback we have received directly, and from the number of requests from fund professionals to be added to the distribution list, *Multi-Elert* appears to be highly successful.
- *Web Page*—Although the final product will not be unveiled until 2002, we began a review and reconstruction of the NCCMP web page. It is our intent to make this web page the definitive source for information pertaining to the NCCMP and multiemployer plan issues.
- *NCCMP Update*—Also, an old service that is undergoing a renovation is the *NCCMP Update* the formal publication of the NCCMP that will be issued on a quarterly basis to inform the membership of recent activities undertaken on their behalf. This will include a review of issues for which formal comments had been filed, significant legislative activities, a "legislative scorecard" for pending matters of interest, and other features to make the membership more aware of the NCCMP and its work.

Court Actions:

As part of a comprehensive review of our operational procedures, the Board adopted formal guidelines that would apply when the NCCMP is asked to consider providing assistance to a member fund by filing an *amicus curiae* brief with the courts in support of a specific case. Since adoption of that policy, Counsel filed one brief in support of a case in the motion picture industry.

Other Agency Activity:

In addition to the filing of comments in the issues described above, the NCCMP was involved in a variety of matters to further the interests of our plans. These included responding to agency requests for informal "feelers" for general information concerning the potential impact of matters being considered for future regulation, and making formal and informal recommendations for multiemployer representation on advisory and other select committees.

The NCCMP has also filed a request with the Department of Labor for an advisory opinion with respect to the application to multiemployer plans of the current rules regarding the timing of employer contributions into 401(k) plans. If strictly applied, these rules have onerous implications for multiemployer plans and contributing employers who have operated on a basis of making a single contribution on one remittance form at one time of the month for all negotiated benefit plans. A meeting to discuss this request with representatives of the Department of Labor is scheduled to take place in early 2002.

3. ORGANIZATIONAL DEVELOPMENTS

The final section of this report concerns the organizational developments that occurred during 2001. The traditional structure of the NCCMP has been that the Board of Directors is responsible for setting policy that is then implemented by a group (the Working Committee) comprised of the paid professional advisors, working in conjunction with the Chairman. This group performed the day to day tasks of reviewing proposed legislation and regulations and maintained the relationships with regulators. Responsibility for tax issues, labor issues and *amicus* filings were delegated among three law firms and the consultants. As noted above, as a result of a management study that recommended several changes in the structure, the year began with a new Executive Director and one support staff member.

Based in part on the recommendations of the consultant, and in part on developments and issues that have arisen over the past year, there have been several other structural changes to report.

Board Membership

Membership on the Board of Directors changed significantly since the beginning of 2000. Robert A. Georgine, J. J. Barry, and Jake West all retired. New Board Members were added both to replace retiring members and to broaden participation. Edward C. Sullivan, President of the Building and Construction Trades Department, was named to the Board and was elected to the position of Chairman, succeeding Mr. Georgine. Joseph J. Hunt was elected to the Board and to the position of Board Secretary succeeding Mr. West. Martin J. Maddaloni will continue to serve as Treasurer. Other new members of the Board included James P. Hoffa, Edwin D. Hill, and Michael J. Sullivan. As always, the Board of Directors is responsible for establishing policy.

Working Committee

Supporting the work of the staff, a reconstituted Working Committee began its work in February. The Segal Company continued its fine work and provided continuity from the previous structure. Out of (budgetary) necessity, legal counsel activities that were previously performed by three separate firms were consolidated into one relationship with the Washington based firm of O'Donoghue and O'Donoghue. Rounding out the membership of the Working Committee were representatives of two of our most active Affiliate members, Bill Sweeney, Administrator of the Plumbers and Pipefitters National Pension Fund, and David Blitzstein, Director of Negotiated Benefits for the United Food and Commercial Workers. The Working Committee meets monthly to discuss the current issues—legislative, regulatory or other—and, as appropriate, to suggest policy issues for consideration by the Chairman and the Board of Directors and the Steering Committee. The Executive Director, in consultation with the Chairman, manages work-flow and day-to-day operational issues.

Steering Committee

Recognizing the time constraints of the Board of Directors to consider more routine matters, and the benefit of a membership organization that receives direction from the membership, the Board of Directors voted in October to create a Steering Committee to act in an advisory capacity to the Board and the Working Committee. The composition of this group is currently under development.

4. CONCLUSION

The work of the NCCMP is essential to the well being, if not the long-term survival, of multiemployer plans. The past year has marked a significant turning point in the rejuvenation of the organization due to an enormous amount of hard work by many people. It is, however, only a beginning. If the organization is to approach its potential it will require the continued support of those who have been its traditional supporters. To achieve that potential, that support must be expanded to include all those whose interests we represent.

NCCMP Board of Directors

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