

**Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters**



NEWS CLIPS

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6/14/2010 Labor

CAW members back proposed VIA Rail strike

On Friday, the [Canadian Auto Workers \(CAW\)](#) announced that more than 94 percent of its members voted in favor of a proposed strike at [VIA Rail Canada Inc.](#) The union set a strike deadline of midnight on June 27.

The CAW and railroad plan to resume negotiations June 21 in Montreal and continue bargaining until the strike deadline. The union represents more than 2,000 VIA Rail workers who perform on-train and clerical services, including maintenance and ticketing. A contract between the CAW and VIA Rail expired at 2009's end.

"The bargaining committee remains determined to reach a settlement without a dispute, but the corporation's concession demands must be stopped," said CAW President Ken Lewenza in a prepared statement.

- ### *Labor Board Explores Electronic Voting*

By KRIS MAHER

The National Labor Relations Board is exploring electronic-voting methods for unionization elections, which employer advocates fear could be used to circumvent the current secret-ballot process and favor unions.

On Thursday, the NLRB put out a request for information to contractors who can provide "secure electronic voting systems" for remote and on-site elections. The board also asked for information about safeguards to ensure "that votes cast remotely were free from distractions or other interferences, including undue intimidation or coercion."

Some attorneys are interpreting the request for information as a step toward Internet or telephone balloting which they argue could favor unions. Today unionization votes overseen by the NLRB at private-sector employers are typically cast in person via secret ballots on company property.

"There's nothing to stop people from saying 'Let's do our Internet voting or telephone voting together to show our solidarity' " which could lead to peer pressure, said Chuck Cohen, senior counsel at Morgan, Lewis & Bockius, and former Republican appointee to the NLRB during the Clinton administration.

NLRB Chairman Wilma Liebman said the board's move is "exploratory and informational" and that questions about how electronic voting might be used are premature. She also said the National Mediation Board, which oversees organizing in the rail and airline sectors where workers are often dispersed, uses electronic voting exclusively.

Some business groups and business-side lawyers have expected the Democrat-controlled labor board to make changes to the election process through rulemaking after a controversial union-backed bill, the so-called card-check bill, which could have eased union organizing rules, failed to gain traction in the Senate.

Michael Lotito of Jackson Lewis LLP, who represents companies during union organizing, said he believes the NLRB wants to speed the election process and electronic voting would help do so. Unions want speedier elections, saying delays enable employers to hold meetings to intimidate workers.

Conference of Mayors report lauds HSR

Monday, June 14, 2010

The U.S. Conference of Mayors Monday released a new report stressing the positive impact of high speed rail on various U.S. corridors, citing four specific cities as examples. The four cities—Los Angeles, Chicago, Orlando, Fla., and Albany, N.Y. —could significantly benefit from high speed rail (HSR) with as many as 150,000 new jobs and some \$19 billion in new business revenues created in total, the report said.

Prepared by the Economic Development Research Group and sponsored by Siemens Mobility, the report, conducted from January through May of 2010, assessed high speed intercity passenger rail's economic impact on the city, metropolitan, and regional economies. It examined job creation, the effects of improved market access, greater connectivity, work-related travel time savings, and increased income and business sales.

The full report can be accessed at usmayors.org/highspeedrail.

Specific findings show that HSR in the U.S. could significantly increase jobs and business sales if fully implemented as planned by 2035. Higher potential impacts were noted when travel times between cities were reduced to under three hours.

The study also demonstrated that HSR service could help drive higher-density, mixed-use development projects surrounding the stations, ranging from current station additions in Chicago, to new hotel development in Orlando and Albany, as well as additional large-scale developments adjacent to Union

Station in Los Angeles. Such local development, the report says, could help create approximately 30,000 new jobs across these four cities alone.

“Transportation is the backbone of America’s economy,” said Tom Cochran, CEO and executive director of The United States Conference of Mayors. “Our country cannot successfully compete in the global economy if we fail to invest adequately in our domestic transportation infrastructure, particularly in cities and their metropolitan areas—which underpin so much of our country’s economic input. And that investment should include dedicated federal funding for high speed intercity passenger rail service in the pending authorization of the federal surface transportation law.”

Total new business and job growth projections, as provided by the report, include:

In Los Angeles, up to \$7.6 billion per year in new business, including \$4.3 billion per year in Gross Regional Product (GRP) growth and up to 55,000 jobs.

In Chicago, up to \$6.1 billion per year in new business, including up to \$3.6 billion per year in GRP growth and up to 42,000 jobs.

In Orlando, up to \$2.9 billion per year in new business, including up to \$1.7 billion per year in GRP growth and up to 27,500 jobs.

In Albany, up to \$2.5 billion per year in new business, including up to \$1.4 billion per year in GRP growth and up to 21,000 jobs.

Additionally, HSR’s projected larger flow of passengers will lead to increased tourism and business travel, generating additional spending at local hotels, restaurants, and retail stores. Projections show that by 2035, HSR can annually add roughly \$255 million in the Orlando area; \$147 million in the Los Angeles area; more than \$100 million in the Albany-Saratoga area; and \$42 million in the Chicago area.

The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,204 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor. More information about the Conference is available at usmayors.org.

N.Y.-CSXT agree on high-speed rail



Monday, June 14, 2010

New York state and CSXT have set aside differences so that planning can go forward for a high-speed rail line across upstate New York. The parties have signed a pair of agreements to facilitate planning for the passenger-train track that New York intends to build.

According to a report in the Rochester Democrat and Chronicle, state officials have begun a two-year, \$4.5 million planning effort that they hope will yield details of the new line, on which Amtrak passenger trains would travel up to 110 mph from Albany to Buffalo. Trains crossing upstate now are limited to 79 mph on tracks they share with CSXT freights.

The state also intends to press ahead with the first 11 miles of that proposed high-speed line, to be built on CSXT-owned land in Monroe and Genesee counties with \$58 million in federal stimulus money. But federal guidelines leave only about 27 months to finish the track and there's no guarantee yet that trains could go 110 mph on that stretch as state officials have planned.

New York for years has hoped to build a high-speed passenger line on the freight railroad's right-of-way, which now carries two tracks in most places but has room for two more. Using that right-of-way would be far less expensive than acquiring land from private owners.

State officials said they would begin preparing new, more detailed plans for the entire corridor. They have said they would seek federal money to pay for it. In January, New York was awarded \$151 million for seven smaller projects, including the 11-mile high-speed test track.

But it came to light last month that state and CSX officials had been at odds over the terms of a previously undisclosed agreement that any new high-speed passenger track had to be at least 30 feet away from CSX's freight tracks. That undercut the state's plan to use the CSX right-of-way, as there are numerous places where a 30-foot separation would leave no room for the third track.

Relations between the parties soured when CSXT concluded that state officials were ignoring the agreement. That led to meetings last month, arranged by U.S. Rep. Louise Slaughter, D-Fairport, that led to signing of the new agreements. CSXT spokesman Robert Sullivan said the agreements show the railroad's willingness to work for better passenger rail lines while maintaining freight service.

In those agreements, the state agreed its rail study would consider various track-location options, including acquiring new land if there isn't sufficient room in CSXT's right-of-way. The railroad promised to cooperate with the study and said it would consider relaxing the 30-foot separation rule at limited locations.

Track-separation issues will have to be worked out if the state is to build the 11-mile test track.

Supreme Court to review Alabama
rail tax

Tuesday, June 15, 2010

The Supreme Court Monday agreed to hear arguments over whether a 4% tax that Alabama collects from the railroad industry for its use of diesel fuel can be challenged as discriminatory.

Railroad companies have challenged Alabama's tax policy, including Norfolk Southern, whose challenge was rejected by the 11th U.S. Circuit Court of Appeals in December 2008, allowing Alabama to continue collecting the tax. But CSX, which paid \$7.1 million under the tax in 2006 and 2007 combined, has asked the Supreme Court to review the matter, and the court has now agreed.

“The railroads’ principal competitors in Alabama, motor carriers and water carriers, are expressly exempt from sales and use taxes on purchase and consumption of diesel fuel, and therefore paid no such tax,” CSX lawyers wrote in the brief to the Supreme Court. CSX also argues that the lower courts are conflicted on the legal issue, and that only the Supreme Court can settle the matter.

The tax helps fund the state’s education budget.

NS and CSX argue that the sales and use taxes on diesel fuel is unfair because trucks are exempt from comparable fees. Alabama state officials defend the measure, noting the trucking industry pays a 19 cent-per-gallon motor fuels tax that the railroads do not. “The only thing different is the label,” said Margaret Johnson McNeill, assistant counsel in the Alabama Department of Revenue.

The court agreed only to decide the narrow question of whether the tax can be challenged, not whether it is discriminatory.

Scabbing with Prisoners Held Improper by Arbitrator; Employer defies arbitrator and continues to use jailbirds.

Inmates mowing medians violated labor agreements

STEPHANIE JONES stephanie.jones@journaltimes.com | Posted: Tuesday, June 15, 2010 7:43 pm

RACINE - Racine County's use of inmates to mow state highway medians and shoulders violated 2009 labor agreements, an arbitrator has decided.

Racine County has been using jail inmates for the last year to mow state highway medians, and that upset union members who filed a grievance.

An arbitrator decision, publicly released Tuesday, said Racine County did violate 2009 labor agreements by using inmates to mow, but the arbitrator's decision did not directly say the county needed to stop using inmates to mow.

Now, County Executive William McReynolds said he plans to continue the practice of using inmates to mow and is considering appealing the decision to circuit court.

The practice of having inmates mow state highway medians came last year after the state Department of Transportation cut funding, leaving the county the option of letting the grass grow except for one cut a year or looking for other alternatives, such as using inmates.

"The big picture is the state is not stepping up to their responsibility. It's their highways," McReynolds said.

The union, Teamsters Local 43, which represented the county's seasonal employees, argued that the work the inmates were doing kept them from their jobs.

After about 45 seasonal employees were not rehired last summer, the union's bargaining representative, Wes Gable, filed a grievance saying the work violated the union contract.

Gable did not return a call for comment Tuesday.

"Using (community service workers) to perform bargaining unit work is an attack on the terms of the collective bargaining agreement," the arbitration document says, citing the union's position.

But the county argued: "the mowing in question would not have been done had bargaining unit employees been required to do that task, since there is no money in the budget to pay them to do it," according to the county's position included in the arbitration decision.

In the end, the arbitrator has ruled in favor of the union, saying the county did violate union agreements.

The decision said the county needs "to make whole" the union employees. But McReynolds questioned how that could be done considering that no one else was paid for the work.

Canadian Pacific's DM&E Acquisition upheld by court

Tuesday, June 15, 2010



Canadian Pacific's acquisition of the Dakota, Minnesota & Eastern Railroad Corp. in 2008 was upheld by an appeals court, which rejected challenges by the Sierra Club and Metra, the Chicago area commuter rail agency, local media report.

The U.S. Court of Appeals for the District of Columbia said the Sierra Club had no stake in the matter that would allow it to sue, and rebuffed claims by Metra that the Surface Transportation Board abused its discretion in approving the purchase. Both plaintiffs claimed the board's approval was premature.

Canada's second-largest railroad won U.S. regulatory approval for the deal in September 2008. The company paid \$1.48 billion for DM&E to expand its access to ethanol and coal markets in the U.S. Midwest.

Metra, which provides commuter rail service in the Chicago area, said the board should have attached conditions to the approval to protect its track rights between Chicago and Wisconsin. The Sierra Club challenged the board's decision to approve the takeover while it deferred an environmental impact study.

"The Sierra Club has not shown, as it must, a casual connection between the government action that supposedly required the disregarded procedure" and "some reasonably increased risk of injury to its particularized interest," the

Commentary: It all boils down to
productivity

Wednesday, June 16, 2010

In a struggling economy, how have the railroads been able to produce solid earnings, consistently outperforming financial barometers like the Dow Jones Industrial Average or the S&P 500? It can be summed up in one word: productivity.

At Wednesday's 2010 Bank of America-Merrill Lynch Global Transportation Conference, Norfolk Southern Executive Vice President Finance and CFO James A. Squires illustrated how it's done. NS's "Productivity Scorecard," comparing the first two months (April and May) of this year's second quarter with the same period last year, showed some impressive gains. As the economy began to recover, carload volume grew by 25%, but crew starts grew by only 10% while the number of railroad employees fell slightly, by 1%. Gross-ton-miles per employee, per gallon of fuel, and per train-hour improved 29%, 8%, and 5%, respectively.

These types of productivity gains, along with improvements in other performance and efficiency measures, are driving investors to the railroads. Growing volume, continued pricing strength, and lower costs are expected to produce higher-than-expected second-quarter profits, according to some Wall Street analysts.

The seeds of the railroads' success story were planted 30 years ago, when the industry was partially deregulated through the Staggers Rail Act. The railroad industry still has problems—a handful of disaffected customers who seek to turn back the clock pre-Staggers, the specter of some degree of reregulation, the raid on capital budgets by the unfunded mandate of PTC—but the fact remains that this is an industry that can be counted on to stay in business—and Wall Street knows it.

Safety 6/17/2010

U.S. roads haven't closed security gaps, Teamsters Rail Conference says

U.S. railroads haven't made significant progress toward closing security gaps that put rail workers' safety at risk, according to the Teamsters Rail Conference, which recently released the results of its latest Safe Rails/Secure America survey.

In a report titled "High Alert Report 2: Four Years Later Workers Continue to Warn of Security Gaps on Nation's Railroads," (<http://www.teamster.org/content/rail>) the conference states that overall results of a survey among Brotherhood of Locomotive Engineers and Trainmen (BLET) and Brotherhood of Maintenance of Way Employees Division (BMWED) members shows workers continue to report an "unacceptable level of vulnerability."

"While the carriers have made some progress in several key areas (such as the securing of remote-control devices and the number of employees trained on their role in the employer's emergency action plans), the overall results suggest that workers do not believe that the rail companies have significantly improved the security of their operations," said Teamsters International Vice President John Murphy, BLET National President Paul Sorrow and BMWED President Freddie Simpson in a joint letter announcing the survey results.

No railroad emerged as a "strong across-the-board leader" regarding security efforts, they said. Each railroad both outperformed and underperformed its peers in different areas, "without many extreme variations from the industry norm." the letter states.

In 2004-05, the Teamsters Rail Conference polled more than 4,000 BLET and BMWED members in the first Safe Rails/Secure America survey, and published the results in a report titled, "High Alert: Workers Warn of Security Gaps on Nation's Railroads."

The new survey posed identical questions to determine if, in the intervening five years, effective steps have been taken by the rail industry to address the security gaps revealed in the 2005 report, according to the conference. BLET and the BMWED members completed 7,280 surveys in 2008 and 2009 that evaluated safety and security measures in place at Class I's.

In April, Teamsters Rail Conference officials met with representatives from the Association of American Railroads, Amtrak and each Class I to brief them on survey results. The conference also provided copies of the report to the Federal Railroad Administration, Transportation Security Administration and congressional members.

6/17/2010 MOW

UP to bolster lines in Illinois, Missouri

[Union Pacific Railroad](#) plans to spend \$8.8 million to improve lines in Illinois and Missouri.

A \$7.7 million project involving a 46-mile line between East Clinton and Dixon, Ill., is slated for completion at July's end. The work includes removing and installing more than 50,000 ties, spreading 16,700 tons of ballast and replacing 41 grade crossing surfaces.

Meanwhile, a \$1.8 million project involving a 20-mile line between Waverly and Marshall, Mo., is scheduled to conclude in mid-July. Work includes removing and installing more than 10,000 ties, spreading 9,700 tons of ballast and replacing 24 crossing surfaces.

This year, UP has budgeted \$2.6 billion for capital expenditures, including infrastructure improvements.

Supreme Court Ruling Wipes Out 600 NLRB Decisions

By: Michael Whitney Thursday June 17, 2010 1:35 pm

Tweet24

In a 5-4 decision (PDF) issued this morning, the Supreme Court ruled that more than 600 cases decided by two members of the National Labor Relations Board are invalid and will need to be re-opened. That means more than two years' worth of work by the NLRB is out the window, leaving thousands of workers in limbo. The NLRB excerpted the relevant sections of the decision and the dissent:

The 5-4 decision authored by Justice Stevens concluded, "We are not insensitive to the Board's understandable desire to keep its doors open despite vacancies. Nor are we unaware of the costs that delay imposes on the litigants. If Congress wishes to allow the Board to decide cases with only two members, it can easily do so. But until it does, Congress' decision to require that the Board's full power be delegated to no fewer than three members, and to provide for a Board quorum of three, must be given practical effect rather than be swept aside in the face of admittedly difficult circumstances."

In writing the dissent, however, Justice Kennedy said, "the objectives of the statute, which must be to ensure orderly operations when the Board is not at full strength as well as efficient operations when it is, are better respected by a statutory interpretation that dictates a result opposite to the one reached by the Court."

The case in question was *New Process Steel v. NLRB*; with two members, the NLRB decided to recognize a union at the Indiana plant of New Process Steel. The company challenged the authority of the Board (supported by the US Chamber of Commerce, of course), and the Court ended up siding against the NLRB.

The NLRB was hobbled for 27 months with just two of its five members; the Board operated at this diminished capacity for the last year of George W. Bush's term, and more than a year under President Obama. Essentially, the two board members, Democrat Wilma Liebman and Republican Peter Schaumber, knew that they wouldn't get any reinforcements and made the decision – with the counsel of both the NLRB lawyers and the Department of Justice – to proceed to hear more than 600 cases and issue decisions without a third member. Any decision issued was done so with a 2-0 vote. Cases in which Liebman and Schaumber disagreed were shelved. And even if another member was added who dissented was on the Board, cases in which Liebman and Schaumber agreed would have been 2-1. Yet Justice Stevens, joined by Alito, Thomas, Roberts, and Scalia, ruled that any case decided by just two members of the NLRB is invalid and should be reopened, wiping out two years of decisions by the already beleaguered NLRB. Kennedy dissented with Breyer, Ginsburg, and Sotomayor.

So what's next for the NLRB? For the 600 overturned cases, the Board must now figure out a process to reopen the decisions as well as scheduling any pending decisions shelved by the two member board, in addition to new cases since March. It's a daunting task for the NLRB, its members, and its staff that were just beginning to get their groove back with an operational member board.

The Board now has four members, following recess appointments of Craig Becker and Mark Pearce in March. But that's only for the next month and a half: Peter Schaumber's term expires in August. As Kim Freeman Brown of American Rights at Work put it:

Now hundreds of decisions in cases already decided by the NLRB will have to be re-opened, needlessly delaying finality for workers who were led to believe they already had it.

Today's Supreme Court decision should be a wake up call for President Obama and the Democratic caucus of the Senate, which will need to swiftly move to keep the Board operational after August. There's also the matter of first nominating, and then appointing or confirming, someone to be the NLRB's General Counsel, as the man currently in that role, Ronald Meisburg, basically skipped town to join a unionbusting firm.

If neither Obama nor the Senate acts, the NLRB will be completely vacant by the end of next year. It will be a ghost town. Maybe the Obama administration can throw a bone to the "absolute idiots" at the "Washington special interests" in labor unions and get the NLRB up to full capacity. After all, it was Supreme Court Chief Justice who asked an important question while hearing the NLRB case:

The last twist of the knife comes from straight the chief justice, who asks mildly, "And the recess appointment power doesn't work why?" Katyal admits that the recess appointments process, which allows the president to fill up the board with his temporary appointments while the Senate is out of session, works just fine. It's the president who has been unwilling to pull the trigger.

Intermodal up 17.7% from '09, closing in on '08

Thursday, June 17, 2010

The Association of American Railroads reports that for the week ended June 12, intermodal traffic on U.S. railroads totaled 223,075 trailers and containers, up 17.7% from last year and down only 2.3% from pre-recession 2008.

U.S. carriers originated 288,973 carloads in the latest week, up 10.5% from the comparable week in 2009 but still down 10.3% from the same week in 2008.

Sixteen of 19 carload commodity groups were up from last year, led by an 88.9% jump in metals. Strong increases were also seen in metallic ores, 57%; coke, 49.2%; motor vehicles and equipment, 36.5%; and waste and scrap materials, 32.4%. Groups posting decreases included pulp, paper and allied products, down 7.5%; farm products, down 5.1%; and grain mill products, down 0.7%.

Canadian railroads reported 73,703 carloads for the week, up 28%, and intermodal volume of 51,334 trailers or containers, up 31.5%. Mexican railroads reported volume of 15,108 cars, up 22.9% from the same week last year, and 6,655 trailers or containers, up 39.5%.

Total North American rail volume for the first 23 weeks of 2010 on 13 reporting U.S., Canadian, and Mexican railroads came to 8,463,154 carloads, up 10.2% from last year, and 5,940,938 trailers and containers, up 12%.

- JUNE 17, 2010, 4:45 P.M. **Top Senator Sees Little Chance for FedEx Unionization Proposal**

By JOSH MITCHELL

WASHINGTON—Proposed U.S. legislation to make it easier to unionize at FedEx Corp. has no chance of clearing Congress, a top Senate Democrat said Thursday, dealing a blow to a lobbying campaign waged by rival United Parcel Service Inc. and the Teamsters union.

"I know perfectly well if I put that in the bill ... it's not going to pass," Senate Commerce Committee Chairman John D. Rockefeller (D., W.Va.) said in an interview.

UPS, the International Brotherhood of Teamsters and other major unions have spent the past year pushing for the provision to be included in a far-reaching aviation bill that would also raise safety standards in the airline industry and fund the Federal Aviation Administration. FedEx has opposed the measure, saying it would severely disrupt its air-service business.

The House passed a bill with the FedEx provision last year, but a version passed by the Senate in March excludes the measure. Mr. Rockefeller and his counterpart in the House, Rep. James Oberstar (D., Minn.), have spent months in talks to merge the bills but haven't reached agreement on a final version that could clear each chamber.

Mr. Oberstar, the main proponent of the FedEx language, said this week that he and Mr. Rockefeller agreed on the broad principles of the legislation and that no differences were insurmountable. The only major obstacle to the FedEx provision, he said, was the threat of a filibuster—a procedural tactic to effectively block a vote—by Tennessee's Republican senators, Lamar Alexander and Bob Corker. FedEx is based in Memphis, Tenn.

A spokesman for Mr. Alexander said the senator "will do everything in his power" to ensure the final FAA bill doesn't include the FedEx provision.

A spokeswoman for Mr. Corker couldn't immediately be reached for comment.

Mr. Rockefeller said he personally supported the FedEx measure but that he knew it wouldn't get the Senate votes needed for passage. He said he believed Senate Democrats might still hold a vote on the House measure.

A spokeswoman for Senate Majority Leader Harry Reid (D., Nev.) said Senate Democratic leaders "are looking to begin work" on the FAA bill next week.

The House bill would place some of FedEx's drivers and other employees under the National Labor Relations Act, allowing employees to organize locally. UPS drivers are governed by that law. The Teamsters union has said the bill would ensure fairness across the industry.

FedEx argues that it is properly covered under the Railway Labor Act because of the history and arrangement of its air and ground network

6/18/2010 Security

AAR: U.S. railroads' security measures have surpassed federal risk reduction targets

Yesterday, the [Association of American Railroads \(AAR\)](#) issued a statement in response to the Teamsters Rail Conference's recent report, "High Alert Report 2: Four Years Later Workers Continue to Warn of Security Gaps on Nation's Railroads," which summarized results of a union member survey and claimed rail workers don't believe railroads have significantly improved security.

"Feedback from rail employees can be useful in improving worker communication and training techniques," said AAR President and Chief Executive Officer Edward Hamberger. "However, it is important to keep this subjective survey in context — this is not a study or report on railroad security. It is an unscientific survey of the perceptions of a small percentage of the freight

railroad workforce about security.”

The safety and security of the national rail network and rail employees are top priorities for U.S. railroads, which have surpassed federal industry risk reduction targets, he said, adding that railroad training programs and their implementation have undergone audits by federal agencies and have received high marks for substantial progress over the past several years.

“Still, the railroads recognize this area is one in which continuous improvement is essential and we will continue to work with federal, state and local authorities — and our employees — to ensure we keep the nation’s freight-rail network as safe and secure as possible,” said Hamberger.